

# The Independent Systems for Handling Police Complaints in Thailand: A Brief Assessment

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## Abstract

Independent police oversight in Thailand falls within the purview of the Office of the Ombudsman, the National Human Rights Commission (NHRC) and the National Anti-Corruption Commission (NACC). These bodies are not specialized police complaints agencies, but their role in handling police complaints is of vital importance. This paper provides a brief assessment of the systems under the control of the above agencies. In so doing, the criteria for success of police watchdog bodies in the United Nations Office of Drugs and Crime's (UNODC) *Handbook on Police Accountability, Oversight and Integrity* are adopted as a benchmark. The findings show that there has been a creeping trend towards regulatory capture within the systems under review. The findings also highlight that the Ombudsman and the NHRC are not sufficiently equipped with power that helps ensure that disciplinary and/or criminal proceedings can be brought against an officer found to have committed misconduct.

**Keywords:** Police complaints, police watchdog, police accountability, police malpractice, independent watchdog bodies

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## ระบบดำเนินการเรื่องร้องเรียนเจ้าหน้าที่ตำรวจที่เป็นอิสระในประเทศไทย: การประเมินผลโดยสังเขป

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### บทคัดย่อ

การสอดส่องดูแลการปฏิบัติหน้าที่ของเจ้าหน้าที่ตำรวจอย่างเป็นอิสระในประเทศไทยเป็นภารกิจที่อยู่ในความควบคุมของผู้ตรวจการแผ่นดิน คณะกรรมการสิทธิมนุษยชนแห่งชาติ และคณะกรรมการป้องกันและปราบปรามการทุจริตแห่งชาติ แม้องค์การเหล่านี้มิได้เป็นหน่วยงานเฉพาะในการรับเรื่องร้องเรียนเจ้าหน้าที่ตำรวจ แต่ก็มีบทบาทและหน้าที่สำคัญในการดำเนินการกับเรื่องร้องเรียนเมื่อเจ้าหน้าที่ตำรวจตกเป็นผู้ถูกร้อง บทความนี้นำเสนอการประเมินผลโดยสังเขปเกี่ยวกับระบบของสำนักงานผู้ตรวจการแผ่นดิน สำนักงานคณะกรรมการสิทธิมนุษยชนแห่งชาติ และสำนักงานคณะกรรมการป้องกันและปราบปรามการทุจริตแห่งชาติในการดำเนินการเรื่องร้องเรียนเมื่อเจ้าหน้าที่ตำรวจตกเป็นผู้ถูกร้อง ในการประเมินระบบดังกล่าว แนวทางความสำเร็จของหน่วยงานรับเรื่องร้องเรียนกรณีเจ้าหน้าที่ตำรวจปฏิบัติหน้าที่โดยมิชอบซึ่งปรากฏอยู่ในคู่มือการตรวจสอบได้ การสอดส่องดูแลการปฏิบัติหน้าที่ และความซื่อสัตย์สุจริตของเจ้าหน้าที่ตำรวจโดยสำนักงานว่าด้วยยาเสพติดและอาชญากรรมแห่งสหประชาชาติ จะถูกนำมาใช้เป็นเกณฑ์การประเมิน ผลการประเมินพบว่า มีช่องทางที่ระบบการดำเนินการกับเรื่องร้องเรียนฯ ขององค์การต่าง ๆ ในการศึกษาจะถูกรบกวนโดยฝ่ายการเมือง นอกจากนี้ ผลการประเมินยังบ่งชี้อีกว่า ผู้ตรวจการแผ่นดิน และคณะกรรมการสิทธิมนุษยชนแห่งชาติ ไม่มีอำนาจเพียงพอในการดำเนินการทางวินัย และทางอาญาต่อเจ้าหน้าที่ตำรวจที่ถูกพบว่าประพฤติมิชอบ

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## Introduction

An effective police complaints system is of necessity for democratic society because it ensures that the police can be held accountable for their professional conduct and that people's rights can also be properly protected (Box & Russell, 1975; Young et al., 2005; Walsh, 2009). Nonetheless, dealing effectively with police complaints is laborious, especially in an authoritarian democracy like Thailand where the police have always been subjected to undue influence of members of the political and economic elite (Pongsudhirak, 2003; Phongpaichit & Baker, 2004; Moore, 2013). A recent study on the internal police complaints system of the Thai police indicated that most Thai police cannot deal with complaints against their colleagues effectively as the police-led system seriously lacks impartiality (Prateepornnarong & Young, 2017).

In Thailand, the gravity and widespread of police corruption and malpractice, coupled with the failure of the police to investigate their peers impartially, brought about a strong desire to subject the police to independent oversight (Phongpaichit & Piriyarangsan, 1996; Wanichwiwatana, 2004). This was achieved following the promulgation of a new constitution in 1997. However, the constitution did not introduce a coherent system for dealing with police complaints; rather, it is a patchwork of independent watchdog bodies with overlapping jurisdictions, all of which extend beyond police malpractice (Harding & Leyland, 2011). The Office of the Ombudsman, the National Human Rights Commission (NHRC) and the National Anti-Corruption Commission (NACC) are the key watchdog bodies handling police complaints, particularly the serious ones.

Generally speaking, the Ombudsman deals with administrative shortcomings as well as action or inaction giving rise to injustice; the NHRC handles complaints about human rights violations; and the NACC investigates corruption and malfeasance in office (Leyland, 2007; Harding & Leyland, 2011; Rukhamate & Thananithichote, 2015). Although these watchdog bodies are not specialized police complaints agencies, their role in handling complaints against the police is of vital importance. The fact that the watchdog bodies under review are all independent of the government and the police can arguably help to enhance impartiality in the complaints-handling process and lead to a fair outcome (Huntington, 1952; den Heyer & Beckley, 2013).

This paper provides a brief assessment of whether the systems under the regulatory oversight of the watchdog bodies in question are effective in dealing with police malpractice. The principles for the effective handling of police complaints do not exist in Asia; as a result, the criteria for successful police watchdog bodies stated in the United Nations Office of Drugs and Crime's (UNODC) *Handbook on Police Accountability, Oversight and Integrity*<sup>1</sup> are adopted as a benchmark for the assessment. Following this introduction, the paper briefly reviews the literature on police accountability; there follows a review of literature on independent oversight of the police from international and Thai perspectives. Then, it assesses the Thai independent police complaints systems using established international arrangements as a benchmark.

## Police Accountability

Accountability is, on top of legitimacy and professionalism, another fundamental component for democratic policing (Marenin, 2005). Public accountability of the police embraces the notion of transparency within it. This means that the public will be able to know what the police are doing and will also be capable of holding them accountable for their action if the need arises (Sanders et al., 2010; Loveday, 1999). Robust structures of police accountability are therefore instrumental in “*achieving public safety and fairness in operational behavior*” (Ellison, 2007: 248). In theory, police accountability is underpinned by the mechanisms ensuring that: (i) the police force has liability for the services it provides, and (ii) individual officers are answerable for the treatment they mete out to ordinary people on a daily basis, especially in relation to human rights and civil liberties; undeniably, these two levels of police accountability are closely intertwined (McLaughlin, 2005).

Within the police force, accountability is enhanced by a wide variety of principles and practices ensuring internal oversight. This includes organizational strategies and policies; reporting system; codes of ethical conduct; appraisal systems, and disciplinary control. External oversight can be achieved via the prosecution service and law courts; the police complaints system; NGOs, and the news media (McLaughlin, 2005). With the rise of emerging threats to national and global security (e.g., terrorism and insurgency), enhancing police accountability poses considerable difficulty because it can be depicted as an obstacle to effective policing. A collision between police accountability and effective policing can result in so called “accountability deficits” – the situation where, within existing frameworks of regulations, the police can be deemed formally accountable

under law but, in fact, remain unaccountable to the person who accused them of committing wrong (Smith, 2013). In Thailand, for instance, the families of thousands of people who lost their lives at the hands of the police in the name of keeping the majority of the society safe from drugs have apparently struggled to hold the police accountable for their wrongdoing (Prateepornnarong & Young, 2017).

## Police Oversight

### Controlling Police Conduct Externally

As noted in the preceding section, the handling of police complaints constitutes one of the elements in police accountability. As a matter of principle, *“although the public has relinquished to the police the authority to enforce the law, the public retains the right to control the police bureaucracy externally, if the need arises”* (Terrill, 1988: 239). Strong arguments against police complaints being subjected to police investigation have been made by numerous groups of people, academics, NGOs and government agencies. For example, the Australian Law Reform Commission (ALRC) declared that:

*“To ask the police to ‘investigate’ complaints against their own places them in a ‘hopeless conflict of interest position.’ Police investigators, whether consciously or otherwise, will tend to be skeptical of complainants and will be ‘softer’ on the police concerned.”* (ALRC, 1995: 149)

Previous research from many parts of the world including Thailand showed that the repeat failure of the police to investigate their peers impartially reinforced the argument that the police should not investigate themselves (Prateepornnarong & Young, 2017; Harrison & Cunneen, 2000; McLaughlin & Johansen 2002; Hopkins 2009). The notion that police should not investigate police resulted in demands for an independent element in the handling of police complaints (Goldsmith, 1991; Prenzler, 2011).

### Independent Police Oversight

In recent decades, independent oversight of the police is regarded as a core principle of democratic policing in many parts of the world (Commissioner for Human Rights, 2009; UNODC, 2011). The ultimate aim of independent oversight is to ensure that complaints against police malpractice by ordinary citizens are recorded properly and investigated effectively (Walsh, 2009; den Heyer & Beckley, 2013). Waves of reforms to

the handling of police complaints, particularly the creation of independent police complaints bodies, have been evident within the English-speaking jurisdictions (Smith, 2013). Savage (2013: 95) highlighted that, *“the extent of the independent investigation of complaints against the police has become almost the litmus test of whether a police complaints system is deemed to be effective, just and fair—or at least seen to be so.”*

Independent police complaints systems can be loosely classified into three different models: a supervisory model, a review model and an investigative model (Prenzler & Ronken, 2001; Uglow, 2002; Strudwick, 2003; Seneviratne, 2004; Ferdik et al., 2013; Smith, 2013). Under a supervisory model, the police are entirely responsible for complaints investigation while a complaints authority merely gives some advice on the way in which complaints should be investigated (Uglow, 2002; Reiner, 2010). A review model provides greater independence compared to a supervisory one as complaints will be independently audited by a complaints authority, but again the police remain in charge of investigating all complaints from scratch (Seneviratne, 2004; Prenzler, 2011). An investigative model ensures maximum independence compared with the first two models because a complaints authority is capable of conducting an investigation into police complaints from the outset (Prenzler & Ronken, 2001; Strudwick, 2003).

## Independent Police Complaints Systems: International Contexts

To date, independent police complaints systems exist in many parts of the world. Police complaints systems from five jurisdictions across the globe are discussed below to reflect the trend towards independent oversight of the police.

### The Police Ombudsman for Northern Ireland

From among the English-speaking countries, Northern Ireland has progressed relatively quickly in relation to a transformation of police oversight. Complaints against the police in Northern Ireland are now under the control of the Police Ombudsman for Northern Ireland (PONI).

Prior to the arrival of PONI, the complaints system was under regulatory oversight of the Independent Commission for Police Complaints (ICPC). Hayes (1997: 38) examined the ICPC system and underlined some of the key weaknesses including the following:

*“All investigations in Northern Ireland are carried out by police officers in the Complaints and Discipline Department of the RUC [Royal Ulster Constabulary], albeit that 365 of 2,343 investigations*

*undertaken in 1995 were conducted under the supervision of a member of the ICPC. This weakness was highlighted by the survey of complainants I conducted.”*

In addition, “*most disciplinary hearings are heard by senior police officers alone*” (1997: 39). These criticisms contributed to the ICPC’s demise.

The Police (Northern Ireland) Act 1998 has replaced the ICPC with, perhaps, the only fully independent police complaints body in the world – the PONI (Prenzler, 2016). Notably, the PONI is capable of investigating every complaint from the outset (Seneviratne, 2004; Porter & Prenzler, 2012). In addition, it also has the power to investigate any possible malpractice on its own initiative (Savage, 2013). Most importantly, the PONI can also direct disciplinary proceedings being brought against the officer concerned even though it does not have the power to do the same when it comes to criminal prosecution (Criminal Justice Inspection Northern Ireland, 2011).

### **The Independent Police Investigative Directorate, South Africa**

In South Africa, police brutality was especially notorious during the apartheid regime as the police were subjected to political manipulation. As a result, one of the principal questions during the transformation to democracy in the country was concerned with reforms to police oversight (Faull, 2011; Bruce, 2017). Later, the Independent Complaints Directorate (ICD) was created in 1997 and became the first independent police watchdog in South Africa.

The ICD was independent of the police, namely the South African Police Service (SAPS). However, it was still under political control as the ICD chief was answerable to the Minister of Police. However, the fact that the ICD referred a high proportion of complaints to the police, together with the rate of unsubstantiated investigations each year (e.g., in 2009, 87 percent of complaints were unsubstantiated, see further Faull, 2011), drove members of the South African public to regard the ICD as a ‘toothless watchdog’ (Faull, 2011). Added to this, there was also concern over a degree of independence in the ICD system. For instance, a critical commentary in 1996 on the SAPS Act in connection with the ICD stated that:

*“...it [the ICD] should be and be seen to be absolutely independent of the ministry, and not only of the police command structure, in its structure and operations. ... Even greater independence would be*

*achieved if the ICD became a free-standing unit in the manner of the Human Rights Commission or Public Protector ..., accountable to parliament rather than the executive.” (Manby, 1996: 444)*

It was not until the enactment of the Independent Police Investigative Directorate Act in 2011 that the ICD was replaced by with the Independent Police Investigative Directorate (IPID). Although the IPID reports to the Minister of Police (IPID Act 2011), it has more power compared to its predecessor. For instance, the SAPS is obliged by law to notify the IPID in writing within 24 hours once it has been made aware of any offences committed by their own personnel. In addition, the IPID is also capable of compelling the police to give evidence and any information it requires for investigation. Most importantly, the National Police Chief is legally bound to initiate disciplinary recommendations issued by the IPID within 30 days, and report the progress and/or the outcome to the Minister of Police and the IPID thereafter (Berg & Howell, 2016).

#### **The Office of the Independent Police Review Director, Ontario, Canada**

Conflict between the police and ordinary citizens in Toronto, Ontario during the 1970s was well-documented (McMahon & Ericson, 1984; Lewis, 1991). In those days, few people formally registered complaints against the police with the police themselves, owing to fear of reprisal and a widespread perception of bias in the handling of complaints (Watt, 1991).

In 1981, the Office of the Public Complaints Commissioner was created as the first civilian review board in Ontario. But it was the enactment of the Metropolitan Toronto Police Force Complaints Project Act in 1984 that made the Office a permanent unit and also renamed it the Office of the Police Complaints Commissioner (OPCC). The Police Services Act 1990 expanded the OPCC’s jurisdiction from the police service in Toronto to all police services in Ontario. A number of other complaints agencies were also established to work in concert with the OPCC such as the Special Investigations Unit (SIU), and the Ontario Civilian Commission on Police Services (OCCOPS) (Ferdik et al., 2013).<sup>2</sup>

The former Police Complaints Commissioner made the following claim to reassure the public about the robustness of the OPCC:



*“This feature [of police investigating themselves] is seen by many as a fundamental weakness in the process permitting police the opportunity to manipulate the process to the detriment of the complainant...The monitoring and review power of the public [police] complaints commissioner, together with the commissioner’s extraordinary right of initial investigation, was intended to ensure that initial investigation and adjudication by police would be thorough and impartial.” (Lewis, 1991: 159)*

The arrival of a new Ontario government in 1995, however, diminished the Police Complaints Commissioner’s role as most of his responsibility to investigate complaints was devolved back into the hands of the police. This has caused public dissatisfaction as ‘the responsibility for management and discipline within the force rested with the police’. The system was seen to be ‘biased, in-favor of the police, and ineffective at minimizing officer misconduct.’

Reforms to police oversight in Ontario occurred again in 2009 when the Office of the Independent Police Review Director (OIPRD) was introduced as a result of review reports on the police complaints system undertaken in 2004 and 2005 (OIPRD, 2010). The arrangements for the OIPRD are promising compared to its predecessor. First, the person eligible to serve as the OIPRD Director is barred from having a police background. Second, the OIPRD is capable of receiving all police complaints and is also able to determine whether or not a complaint will be investigated independently by the OIPRD or the police under its supervision. At the completion of investigation, however, the OIPRD neither has the power over the final penalty decision nor does it have the power over the determination of disciplinary measures (Ferdik et al., 2013).

### **The Independent Police Complaints Council, Hong Kong**

The trend towards independent oversight of the police has been slow to spread to Asia, but Hong Kong is one of very few Asian jurisdictions alongside South Korea and the Philippines to have made significant progress by establishing an independent police oversight body (Nalla & Mamayek, 2013).

Historically, strengthening police oversight in Hong Kong was part of the overhaul of the Hong Kong Police Force (HKPF) in the early 20th century. Radical reforms to the HKPF were prompted by the rampant corruption-related misconduct in the force. Walsh noted that:

*“With very few exceptions, [the police] officers were all profitably engaged in a highly organized system of corruption. They acted as ‘caterers’, arranging liaisons between their subordinates and the criminals and collecting payment for their services. These considerable sums were then distributed in agreed proportions among their subordinates and superiors.”*

A series of corruption scandals had eventually led to the establishment of the Independent Commission against Corruption (ICAC) in 1974. Notably, the first police complaints body of Hong Kong – the Complaints against Police Office (CAPO) – was also created in that same year, but it is merely an internal unit within the HKPF (Smith, 2014).

The CAPO deals with human rights violations and other general police misconduct but complaints about police corruption remain within the remit of the ICAC; interestingly, Wong (2010: 13) highlighted that:

*“In theory, CAPO is, structurally speaking, relatively independent and fairly effective against lower-rank line officers on operational matters. In practice, it is still far from being an independent, objective, and credible complaint investigative agency.”*

The key reason is that CAPO officers are actually police officers and are also subjected to internal transfer within the HKPF (Hong Kong Human Rights Commission, 1993; Wong, 2010; Nalla & Mamayek, 2013).

Changes in the landscape of police oversight in Hong Kong were introduced in 1977 when a non-statutory police complaints review agency – the Unofficial Members of the Executive and Legislative Councils (UMELCO) – was created. The UMELCO was replaced by the Police Complaints Council (PCC) in 1986 which was soon renamed to become the Independent Police Complaints Council (IPCC). It was not until the enactment of the Independent Police Complaints Council Ordinance in 2008 that the IPCC was put on a permanent statutory footing (Smith, 2014). The CAPO has not been dismantled as a consequence of the emergence of the IPCC. Instead, the handling of police complaints in Hong Kong has become a two-tier system. Under this system, the CAPO still investigates all police complaints, but, under the supervision and review of the IPCC. After review, the IPCC is also capable of making recommendations to the Hong Kong Police Chief but cannot institute disciplinary proceedings against the officer concerned (Wong, 2010; Smith, 2014).

### **The Police Integrity Commission, New South Wales, Australia**

Prior to the existence of a specific police complaints system, the New South Wales (NSW) Ombudsman, founded in 1979, was the only public complaints authority in New South Wales. The key function of the NSW Ombudsman in relation to the police is the overseeing of police integrity matters (den Hayer & Beckley, 2016).

In 1996, the Wood Royal Commission had conducted a systematic review into police practice in New South Wales. In its interim report, the Commission pointed out that, *“within a short time of commencing its inquiries, the Royal Commission came into possession of intelligence suggesting that there were significant groups of serving police acting in ways which were corrupt”* (1996: 1). One of the main recommendations of the Commission then was the establishment of a permanent investigative agency for serious and corruption-related police malpractice (Ross, 2007). The Wood Report proved to be the main driver of police oversight reforms in New South Wales and the Police Integrity Commission (PIC) was established soon after the interim report was produced. The NSW Ombudsman remains one of the police watchdogs in New South Wales even though the PIC has been created; the law authorizes the PIC to handle serious matters whilst leaving less serious ones to the Ombudsman (Prenzler, 2011; den Hayer & Beckley, 2013).

One of the distinctive features of the PIC is that former police officers from the New South Wales Police Force are prohibited from serving with the PIC (Police Integrity Commission Act 1996: s. 10(5)). In addition, it has been granted some statutory powers not available to the NSW Ombudsman. For instance, it has the power to intercept telecommunication (Committee on the Office of the Ombudsman and the Police Integrity Commission, 2006: 134). Although the PIC and the Ombudsman are empowered to handle police complaints, the Wood Royal Commission also argued in its 1997 report that the police should bear most responsibility for handling complaints *“otherwise there was a risk that it might abandon all responsibility and interest in maintaining high standards”* (1997: 524). The Commission’s premise was again reinforced by the findings of the Ten Year Review of the Police Oversight System in New South Wales (Parliament of New South Wales, 2006). In consequence, the majority of complaints investigations are, to date, still in the hands of the police while a smaller proportion of complaints are investigated by the PIC and the Ombudsman as their roles became more advisory (Prenzler, 2011).

In short, although the overall trend of police oversight is towards greater independence, retrogressive changes can also be found (e.g., in Canada). In addition, different jurisdictions, as can be seen, are dissimilar in their approach to how much power to give to the independent body. More importantly, it is highlighted how each cycle of reforms to the handling of police complaints in these jurisdictions have left the people disappointed and therefore resulted in demands for further reforms (Smith, 2006). Many of these issues have played out in a similar way in Thailand, although it is fair to say that within that jurisdiction the reform process remains at a relatively early stage.

### **Independent Police Complaints Systems: The Thai Context**

Prior to 1997, independent oversight of the Thai police fell within the remit of the Counter Corruption and Malfeasance Commission (CCMC) – a review-style watchdog body, which looked into professional misconduct in general and accusations of corruption in particular. The CCMC was independent of the police but its executives were answerable to the prime minister. Uwanno (2013: 186) pointed out that the CCMC was hopelessly ineffective for two important reasons. First, it was *“politicized in the sense that political interference could be real and effective”*; furthermore, it seriously lacked power to bring offenders to justice. In consequence, no senior officials had ever been indicted for corruption and/or malfeasance as a result of a CCMC investigation (Dalpino, 1991).

Following the constitutional reforms in 1997, the CCMC was replaced by the National Anti-Corruption Commission (NACC) and other independent watchdog bodies including the Office of the Ombudsman and the National Human Rights Commission (NHRC) were also created. It should be noted, however, that the promulgation of the 1997 Constitution did not lead to the creation of a specialized police complaints body. Instead, police oversight responsibility lies primarily with the Ombudsman, the NHRC and the NACC.

### **The Office of the Ombudsman**

The Ombudsman was created in Thailand to serve as *“another weapon [alongside other watchdog bodies] to combat the endemic corruption associated with Thailand’s central and local government”* (Leyland, 2007: 153). Added to this, it also deals with administrative shortcomings and complaints about action or inaction by officials leading to injustice (Prateepornnarong, 2016).

The Ombudsman has the power to inquire into complaints against public officials including the police; however, it does not have investigatory powers similar to the police when they investigate crime (Leyland, 2007). The Ombudsman needs to indicate, at the end of an inquiry, whether the officers complained against have a case to answer for misconduct. It is, however, incapable of constituting disciplinary proceedings or criminal proceedings. Hence, when it comes to disciplinary action, the Ombudsman can only send an inquiry report with some recommendations to the police force for further action. Should the police fail to take any action the Ombudsman has the power to inform the minister overseeing the Thai police force so that the police can be instructed to take action. If the minister neglects to do so, the law authorizes the Ombudsman to submit an inquiry report to the Prime Minister and the National Assembly as a last resort.

As regards criminal proceedings, the Ombudsman is only capable of suggesting that the police convene an investigative panel to look into criminal offences and request that it be kept informed of the progress every three months (Prateepornnarong, 2016).

### **The National Human Rights Commission**

The Thai NHRC was created out of political compromise as the original vision for the NHRC was watered down within the legislative process (see further Harding, 2006). That such an institution is sorely needed in Thailand is evidenced by the fall-out of the war on drugs campaign and the fight against the ongoing insurgency in the Southern part of the country, both of which involved extrajudicial killings and enforced disappearance (Phongpaichit & Baker, 2004; Human Rights Watch, 2008; Liow & Pathan, 2010; Moore, 2013).

The NHRC is capable of inquiring into accusations of human rights abuses including the remit to conduct a criminal investigation which may lead to prosecution in court (Harding & Leyland, 2011). Upon completion of an inquiry, the NHRC needs to identify whether the officers complained against have a case to answer for misconduct but it neither has the power to take disciplinary action nor does it have the power to initiate criminal proceedings. Instead, it has to send an inquiry report with some recommendations to the police authority for further action. The NHRC's complaints-handling process is similar to that of the Ombudsman in that the failure of the police force to take action will allow the NHRC to take a step-by-step action beginning with reporting such failure to the minister overseeing the Thai police force, then the Prime Minister and finally the National Assembly (Prateepornnarong, 2016).

However, when it comes to criminal offences, the NHRC has no power to require the police force to convene an investigative panel, it can only report criminal misconduct to the police as normal practice in accordance with the criminal procedures.

### **The National Anti-Corruption Commission**

Corruption has been and still is endemic in Thailand (Quah, 2010; Phongpaichit & Piriyaangsan, 1996; Prateepornnarong & Young, 2017). As a replacement of the CCMC, the NACC was designed to be a specialized anti-corruption body independent of the government. The NACC's statutory responsibility, however, does not just include fighting corruption but also dealing with professional misconduct (Harding & Leyland, 2011).

The NACC is a 'hard drug' for police malpractice compared to the Ombudsman and the NHRC. It is capable of exercising powers similar to those enjoyed by the police when dealing with police complaints in the same way as the police do when investigating crime. At the end of the investigation, it falls within the NACC's purview to demand disciplinary action being taken against the officer concerned; the police are bound to act upon the NACC's requirement. Furthermore, in cases where the NACC investigation report indicates that the officer complained against has committed criminal offences, it has the power to refer the case to the public prosecutor. More importantly, if a conflict between the NACC and the public prosecutor arises over a prosecution decision, the NACC enabling legislation also permits the commission to bring the case to court in its own right (Prateepornnarong, 2016).

## **A Brief Assessment of the Independent Police Complaints Systems in Thailand**

In the UNODC's Handbook, the criteria distilled from the existing literature on police oversight and the report by the UN Special Rapporteur on extrajudicial, summary or arbitrary execution were presented; among other criteria, independence and power of the watchdog bodies are particularly emphasized to indicate how the handling of police complaints can be done impartially (UNODC, 2011). In this part, therefore, we will be assessing independence and power of the Thai systems in accordance with the Handbook.

### The Element of Independence

Independence is a key element for the effectiveness of a complaints system as it helps a complaints authority become objective and impartial when addressing complaints (Huntington, 1952). It is laid down in the UNODC's *Handbook that, "the [police complaints] mechanism should have full operational and hierarchical independence from the police and be free from executive or political influence"* (2011: 70).

The Thai complaints bodies in question are structurally independent of the police and the government, but the key question concerns their operational independence. This paper draws on the concept of 'regulatory capture' to reflect the extent to which the Thai police complaints bodies are operationally independent. Regulatory capture is a concept originally discussed in the field of political science and public administration before being applied to other related fields (Novak, 2013). It seeks to explain the situation where the regulatory body falls under the influence of, or is manipulated by, the agencies it regulates (Prenzler, 2000; Dal Bó, 2006). Posner (2014) highlighted that one of the ways in which regulatory capture could happen is through the infiltration of the people having close ties with the regulatees into the regulatory body.

When it comes to the Thai police complaints bodies in question, Leyland (2007: 159) highlighted that:

*"[M]any posts [in the watchdog bodies] were filled by high-ranking former members of the military and the police force, and the same individuals circulated from one watchdog body to the next."*

In his recent study, Prateepornnarong (2016), found that there has always been a proportion of seats in the independent police complaints bodies, particularly the NACC and the NHRC, that are taken by former senior police officers.<sup>3</sup> Owers (2012) pointed out that police culture is high-octane while Box and Russell (1975) also reflected that the very powerful police culture, especially reciprocal relationships among the police themselves, makes it difficult for them to deal with complaints against their colleagues impartially. Haanstad (2013) found that, in Thailand, the strategic pedagogy in the Thai Police Academy that is aimed at reinforcing the notion of an emotive brotherhood among cadets helps create strong social networks after graduation, and the networks can develop into a culture of nepotism that may last a career or a lifetime.

Therefore, having ex-police personnel serving with independent police complaints bodies raises the prospect of the complaints systems being captured.

Prateepornnarong (2016) found that a number of complainants giving interviews for the study expressed serious reservations about the impartiality of the handling of complaints by the commissioners who have a police background. For example, one complainant recounted an incident where he had been informed by the NHRC commissioner (a former senior police officer) even before the investigation into his complaints that the officers he complained about were innocent. A few more complainants also shared their experience of having their complaints dismissed by the complaints bodies under review without any investigation simply for the reason that the inquiring officers accepted the written accounts of the alleged misconduct incidents provided by the police.

According to the criteria in the UNODC's *Handbook* (2011: 70), 'making police staff members of an external agency should generally be avoided'. The NACC has unfortunately failed to heed this advice. The relevant enabling legislation allows the police to refer corruption cases to the NACC (Prateepornnarong, 2016). The NACC has, however, signed a Memorandum of Understanding (MoU) with the Royal Thai Police and permitted the officers who have been informed of the case from the outset to sit in a sub-committee to help the NACC with an investigation (Intarathawon, 2006). This means that officers who receive complaints against the police about corruption now has greater involvement and influence within the NACC complaints system.

To sum up, although the Thai independent police complaints bodies are structurally independent, the extent to which both former and current police officers have been, and still are, involved in the operation of their systems suggests that there is creeping trend towards capture.

### **Sufficiency of Power**

Effective complaints bodies need strong teeth (Kuris, 2015). Complaints against the police, if substantiated, may lead to either disciplinary or criminal proceedings or both. It is laid down in the UNODC's *Handbook* that a strong agency should "*be able to enforce proposed disciplinary measures*"; *as regards criminal action, "the [complaints] agency should have the power to refer cases for criminal prosecution to the public prosecutor..."* (2011: 69).



When it comes to sufficiency of power, the now defunct CCMC is a classic case of a toothless watchdog. The fact that the CCMC was bound to send its investigation report to the police for further disciplinary or criminal action simply rendered its investigation outcomes ineffective because the police were determined to protect their colleagues (Lertmaneerat, 2001). Turning to the independent complaints bodies under review, unlike the NACC, the NHRC and the Ombudsman are only capable of proposing recommendations which may include the initiation of disciplinary action; they are unable to enforce the proposed recommendations. The ramification of this is that, in the past, recommendations by the Ombudsman and the NHRC have been ignored or watered down by the police, who argued that there was not sufficient evidence to suggest that the officers concerned have committed disciplinary offences (NHRC Annual Report, 2012; Ombudsman Annual Report, 2013).

In respect of criminal proceedings, it can be seen from the previous section that the Ombudsman and the NHRC in particular do not have the power to conduct a criminal investigation. This means if their inquiry report indicates criminal offences have been committed by the officers complained against, they only can submit their report to the police to commence criminal proceedings. It can be seen that the existing arrangements in relation to statutory power render the investigation outcomes of the Ombudsman and the NHRC largely ineffective.

The above discussion shows how the complaints systems under the regulatory oversight of the Ombudsman and the NHRC lack the statutory powers needed to enable them to handle disciplinary and criminal offences effectively.

## **Discussion and Conclusion**

The failure of the police to investigate complaints against their peers adequately led to demands across the world for an independent element in police complaints systems. The creation of independent police complaints systems has become a global trend particularly in the English-speaking jurisdictions. Thailand has benefited from this trend, but only to a relatively small extent.

A police complaints system that is effective relies on a number of factors, but it is arguable that the elements of independence and sufficiency of power are the two most important ones. Independence arguably aids the complaints body in handling complaints without fear or favor, while sufficient power consolidates the complaints body's position,

especially when it comes to bringing the officers found to have committed misconduct to justice. Thailand does not have a proper police complaints system but, mainly, the handling of complaints falls within the purview of the Ombudsman, the NHRC and the NACC. The assessment of the independent systems for handling police complaints in Thailand demonstrates that there is a creeping trend towards capture within the Thai complaints bodies in question, as both former and active police officers have meaningful involvement in the operation of their complaints systems. In addition, it is found that insufficient power is another key obstacle, especially for the Ombudsman and the NHRC to put their recommendations into effect, as well as to bring the officers found to have committed misconduct to justice.

Thailand is now, as shown in the above section, encountering democratic deficits in terms of the effectiveness of its independent systems for handling police complaints; that means even though police complaints systems independent of the police and of political control do exist in the country, it is improbable to perform its duties effectively owing to regulatory capture and a lack of necessary powers (i.e., the power to require the police force to take disciplinary action against the officer having done wrong.). Notably, the same situation is comparatively endemic in most parts of the African and South American continents (Goldsmith, 2000; Berg & Howell, 2016). Judging from the above findings, the way in which police complaints are handled is in need of reform. The question in hand therefore is how to build and sustain reform within Thailand.

While further consideration of possible reforms to the handling of police complaints in Thailand lies beyond the contribution of this paper, a tentative conclusion can be reached that Thailand should seek to establish an independent police complaints body with tailor-made arrangements to deal with police complaints in an effective fashion. This could be the creation of a single independent police complaints body that is in line with the ‘civilian control’ model of a police complaints system (see further Savage, 2013).<sup>4</sup> Crucially, this new body should be granted necessary power, not least the power to investigate complaints that can lead to prosecution in court and the power to demand the police force to take disciplinary action against the officer who committed misconduct. As Thailand is keen on portraying itself as a democratic polity committed to the rule of law and good governance, while reforms to the Thai police force are now high on the agenda (McNeil, 2017), accordingly, there are grounds for cautious optimism that the above suggested approach could be adopted.

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## Endnotes

<sup>1</sup> The *Handbook on Police Accountability, Oversight and Integrity*, hereinafter, will be referred to as the UNODC's *Handbook*.

<sup>2</sup> The SIU and the OCCOPS have played important roles in dealing with police malpractice in Ontario but they are not discussed here as they fall outside the scope of this article.

<sup>3</sup> In Thailand, politicization of appointments of the members of independent watchdog bodies can be another dimension to this phenomenon, but, given the complexity of the issue and the space available in this paper, this dimension will be excluded.

<sup>4</sup> The civilian control model of a police complaints system lays emphasis on the principle that the police should not investigate themselves.

## References

- Australian Law Reform Commission. (1995). *Under the Spotlight: Complaints against the AFP and NCA*. Sydney: ALRC.
- Berg, J., & Howell, S. (2016). Civilian oversight of police in Africa: Trends and challenges. In Prenzler, T., & den Heyer, G. (Eds.). *Civilian Oversight of the Police: Advancing Accountability in Law Enforcement*. London: CRC Press.
- Box, S., & Russell, K. (1975). The politics of discredibility: Disarming complaints against the police. *Sociological Review*, 23(2), 315-346.
- Bruce, D. (2017). *Strengthening the Independence of the Independent Police Investigative Directorate*. APCOF Policy Paper. Retrieved January 1, 2018 from <http://apcof.org/portfolio-posts/016-strengthening-the-independence-of-the-independent-police-investigative-directorate/>.
- Commissioner for Human Rights. (2009) *Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints against the Police*. Strasbourg: Council of Europe.
- Committee on the Office of the Ombudsman and the Police Integrity Commission. (2006). *Ten Year Review of the Police Oversight System in New South Wales*. Sydney: Parliament of New South Wales.
- Criminal Justice Inspection Northern Ireland. (2011). *CJINI Report on the Police Ombudsman*. Belfast: CJINI.
- Dal Bó, E. (2006). Regulatory capture: A review. *Oxford Review of Economic Policy*, 22(2), 203-225.
- Dalpino, E. C. (1991). Thailand's search for accountability. *Journal of Democracy*, 2(4), 61-71.
- den Heyer, G., & Beckley, A. (2013). Police independent oversight in Australia and New Zealand. *Police Practice and Research*, 14(2), 130-143.
- Ellison, G. (2007). A blueprint for democratic policing anywhere in the world? Police reform, political transition, and conflict resolution in Northern Ireland. *Police Quarterly*, 10(3), 243-269.

- Faull, A. (2011). *Oversight Agencies in South Africa and the Challenge of Police Corruption*. ISS Paper 227. Retrieved January 1, 2018 from <https://issafrica.org/research/papers/oversight-agencies-in-south-africa-and-the-challenge-of-police-corruption>.
- Ferdik, V. F., Rojek, J., & Alpert, P. G. (2013). Citizen oversight in the United States and Canada: An overview. *Police Practice and Research*, 14(2), 104-116.
- Goldsmith, A. J. (1991). Complaints against the police: A 'community policing' perspective. McKillop, S., & Vernon, J. (Eds.). *The Police and the Community in the 1990s*. Proceedings from Australian Institute of Criminology. Canberra: Australian Institute of Criminology.
- \_\_\_\_\_. (2000). Police accountability reform in Colombia: the civilian oversight experiment. In Goldsmith, A. J., & Lewis, C. (Eds.). *Civilian Oversight of Policing: Governance, Democracy and Human Rights*. Oxford: Hart Publishing.
- Haanstad, E. J. (2013). Thai police in refractive cultural practice. In Garriott, W. (Ed.). *Policing and Contemporary Governance: The Anthropology of Police in Practice*. New York: Palgrave Macmillan.
- Harding, A. (2006). Thailand's reforms: Human rights and the national commission. *Journal of Comparative Law*, 1(1), 88-100.
- Harding, A., & Leyland, P. (2011). *The Constitutional System of Thailand: A Contextual Analysis*. Oxford: Hart Publishing.
- Harrison, J., & Cunneen, M. (2000). *An Independent Police Complaints Commission*. London: Liberty.
- Hayes, M. (1997). *A Police Ombudsman for Northern Ireland? A Review of the Police Complaints System in Northern Ireland*. Belfast: The Stationery Office Ltd.
- Hong Kong Human Rights Commission. (1993). *Hong Kong Human Rights Report 1993*. Hong Kong: Hong Kong Human Rights Commission.
- Hopkins, T. (2009). *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*. Melbourne: Grants Publications Education.
- Human Rights Watch. (2008). *Thailand's 'War on Drugs'*. Retrieved September 16, 2017 from <http://www.hrw.org/news/2008/03/12/thailand-s-war-drugs>.

- Huntington, S. P. (1952). The marasmus of the ICC: The commission, the railroads, and the public interest. *The Yale Law Journal*, 61(4), 467-509.
- Intarathawon, S. (2006). *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*. Unpublished LLM Thesis. Ramkhamheang University: Bangkok.
- Kuris, G. (2015). Watchdogs or Guard Dogs: Do Anti-Corruption Agencies Need Strong Teeth. *Policy and Society*, 34(2), 125-135.
- Lertmaneerat, B. (2001). *The Performance within the Jurisdiction of the N.C.C.C. in Inquiring and Determining the Case of the State Official Excused of Committing an Offence Accordance with Discipline*. Unpublished LLM Thesis. Ramkhamheang University: Bangkok.
- Lewis, C. (1991). Police complaints in Metropolitan Toronto. In Goldsmith, A. (Ed.). *Complaints against the Police: The Trend to External Review*. Oxford: Clarendon.
- Leyland, P. (2007). The Ombudsman Principles in Thailand. *Journal of Comparative Law*, 2(1), 137-150.
- Liow, J. C., & Pathan, D. (2010). *Confronting Ghosts: Thailand's Shapeless Southern Insurgency*. Sydney: Lowy Institute.
- Loveday, B. (1999). Government and accountability of the police. In Mawby, R. (Ed.). *Policing across the World: Issues for the Twenty First Century*. London: UCL Press.
- Manby, B. (1996). The independent complaints directorate: An opportunity wasted? *South African Journal of Human Rights*, 12(1), 419-451.
- Marenin, O. (2005). Building a global police studies community. *Police Quarterly*, 8(1), 99-136.
- McLaughlin, E. (2005). Forcing the issue: New labour, new localism and the democratic renewal of police accountability. *The Howard Journal*, 44(5), 473-489.
- McLaughlin, E. & Johansen, A. (2002). A force for change: The prospects for applying restorative justice to citizen complaints against the police in England and Wales. *British Journal of Criminology*, 42(3), 635-653.

- McMahon, M., & Ericson, R. (1984). *Policing Reform: A Study of the Reform Process and Police Institution in Toronto*. Toronto: Centre of Criminology, University of Toronto.
- McNeil, R. (2017). *Police Reform Committee agrees with Proposed Centralization of Investigative Work*. Retrieved January 1, 2018 from [http://thainews.prd.go.th/website\\_en/news/news\\_detail/WNPOL6009200010009](http://thainews.prd.go.th/website_en/news/news_detail/WNPOL6009200010009).
- Moore, J. M. (2013). *The Thai Way of Counterinsurgency*. Greenville: A Muir Analytics Book.
- Nalla, K. M., & Mamayek, C. (2013). Democratic policing, police accountability, and citizen oversight in Asia: An exploratory study. *Police Practice and Research*, 14(2), 117-129.
- National Human Rights Commission. (2012). *Reports on the Appraisal of Human Rights Situations in Thailand and on the Performance of NHRC 2012*. Bangkok: NHRC.
- Novak, J. W. (2013). A revisionist history of regulatory capture. In Carpenter, D., & Moss, A. D. (Eds.). *Preventing Regulatory Capture: Special Interest Influence and How to Limit It*. Massachusetts: Cambridge University Press.
- Office of the Ombudsman. (2013). *Annual Report of 2013*. Bangkok: Office of the Ombudsman.
- Owers, D. A. (2012). *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. Retrieved December 12, 2017 from <https://www.ipcc.gov.uk/page/speeches>.
- Parliament of New South Wales. (2006). *Committee on the Office of the Ombudsman and the Police Integrity Commission. Ten Year Review of the Police Oversight System in New South Wales*. Sydney: Government of NSW.
- Phongpaichit, P., & Baker, C. (2004). *Thaksin: The Business of Politics in Thailand*. Chiang Mai: Silkworm Books.
- Phongpaichit, P., & Piriyaangsan, S. (1996). *Corruption and Democracy in Thailand*. Chiang Mai: Silkworm Books.
- Pongsudhirak, T. (2003). Thailand: Democratic authoritarianism. *Southeast Asian Affairs*, 277-290.
- Porter, E. L., & Prenzler, T. (2012). Police oversight in the United Kingdom: The balance of independence and collaboration. *International Journal of Law, Crime and Justice*, 40(3), 152-171.

- Posner, A. R. (2014). The concept of regulatory capture: A short, inglorious history. In Carpenter, D., & Moss, D. A. (Eds.). *Preventing Regulatory Capture: Special Interest Influence and How to Limit It*. New York: Cambridge University Press.
- Prateepornnarong, D. (2016). *An Evaluation of the Systems for Handling Police Complaints in Thailand*. PhD Thesis, University of Birmingham, United Kingdom. (Unpublished)
- Prateepornnarong, D. & Young, R. (2017). A critique of the internal complaints system of the Thai police. *Policing and Society*, 29(1), 18-35.
- Prenzler, T. (2000). Civilian oversight of police: A test of capture theory. *British Journal of Criminology*, 40(4), 659-674.
- \_\_\_\_\_. (2011). The evolution of police oversight in Australia. *Policing and Society*, 21(3), 284-303.
- \_\_\_\_\_. (2016). Democratic policing, public opinion and external oversight. In Prenzler, T., & den Heyer, G. (Eds.). *Civilian Oversight of the Police: Advancing Accountability in Law Enforcement*. London: CRC Press.
- Prenzler, T., & Ronken, C. (2001). Models of police oversight: A critique. *Policing and Society*, 11(2), 151-180.
- Quah, J. S. T. (2010). Defying institutional failure: Learning from the experiences of anti-corruption agencies in four Asian Countries. *Crime, Law & Social Change*, 53(1), 23-54.
- Reiner, R. (2010). *The Politics of the Police*. 4<sup>th</sup> ed. Oxford: Oxford University Press.
- Ross, G. (2007). Police oversight: Help or hindrance? In Mitchell, M., & Casey, J. (Eds.). *Police Leadership and Management*. Sydney: Federation Press.
- Rukhamate, P., & Thananithichote, S. (2015). The Ombudsman. In Thananithichote, S. (Ed.). *Constitutional Organizations: Foundation Knowledge and Lessons for Reforms*. Bangkok: KPI.
- Sanders, A., Young, R., & Burton, M. (2010). *Criminal Justice*. 4<sup>th</sup> ed. Oxford: Oxford University Press.
- Savage, S. P. (2013). Thinking independence: Calling the police to account through the independent investigation of police complaints. *British Journal of Criminology*, 53(1), 94-112.



- Seneviratne, M. (2004). Policing the police in the United Kingdom. *Policing and Society*, 14(4), 329-347.
- Smith, G. (2006). A most enduring problem: Police complaints reform in England and Wales. *Journal of Social Policy*, 35(1), 121-141.
- \_\_\_\_\_. (2013). Oversight of the police and residual complaints dilemmas: Independence, effectiveness and accountability deficits in the United Kingdom. *Police Practice and Research*, 14(2), 94-103.
- \_\_\_\_\_. (2014). The tripartite police complaints system of Hong Kong. *Asia-Pacific Journal on Human Rights and the Law*, 15(1-2), 119-145.
- Strudwick, K. (2003). Is independence the only answer to complainants' satisfaction of the police complaints process? A perspective from the United Kingdom. *Police Practice and Research*, 4(1), 35-46.
- Terrill, R. (1988). Civilian oversight of the police complaints process in the United States: Concerns, developments and more concerns. In Goldsmith, A. (Ed.). *Complaints against the Police: The Trend to External Review*. Oxford: Clarendon.
- Uglove, S. (2002). *Criminal Justice*. 2<sup>nd</sup> ed. London: Sweet and Maxwell.
- UNODC. (2011). *Handbook on Police Accountability, Oversight and Integrity*. New York: UN.
- Uwanno, B. (2013). Depoliticising key institutions for combatting corruption: The new Thai constitution. In Lamour, P., & Wolanin, N. (Eds.). *Corruption and Anti-Corruption*. Australia: ANU Press.
- Walsh, P. J. D. (2009). Twenty years of handling police complaints in Ireland: A critical assessment of the supervisory board model. *Legal Studies*, 29(2), 305-337.
- Wanichwiwatana, A. (2004). *The 1998 Thai Police Reform: A Study of the Persistence of Institutional Corruption*. Unpublished DPhil thesis. University of Oxford, England.
- Watt, S. (1991). The future of civilian oversight of policing. *Canadian Journal of Criminology*, 33, 349-358.
- Wong, C. K. (2010). Police powers and control in Hong Kong. *International Journal of Comparative and Applied Criminal Justice*, 34(1), 1-24.
- Young, R., Hoyle, C., Cooper, K., & Hill, R. (2005). Informal resolution of police complaints: A quasi-experimental test of restorative justice. *Criminal Justice*, 5(3), 279-317.