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DOI:

[10.1080/10439463.2017.1356298](https://doi.org/10.1080/10439463.2017.1356298)

Document Version

Peer reviewed version

Citation for published version (Harvard):

Young, R & Prateepornnarong, D 2017, 'A critique of the internal complaints system of the Thai police', *Policing and Society*. <https://doi.org/10.1080/10439463.2017.1356298>

[Link to publication on Research at Birmingham portal](#)

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Checked for eligibility: 18/09/2017

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Accepted for Publication by *Policing and Society*

A Critique of the Internal Complaints System of the Thai Police

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Keywords: police complaints; police misconduct; police accountability; patronage

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Abstract: One of the ways in which the police can be held accountable for their actions is through an effective system for handling police complaints and misconduct cases. In this paper, the internal complaints system of the Thai police force is critically evaluated on the basis of an original empirical study. The findings suggest that the system is ineffective primarily because the handling of complaints and misconduct cases lacks impartiality. It is demonstrated that the police cannot be trusted to investigate themselves. Notably, a number of tactics are employed by the police to undermine the complaints-handling process, including the use of financial incentives and corrupt favours. The findings of this study indicate further that the lack of impartiality is exacerbated by the political context within which the Thai police work, the patronage system within and beyond the police force, and the police's authoritarian approach to law enforcement.

Keywords: police complaints; police accountability; patronage; corruption

1. Introduction

Democratic accountability requires that the police are subject to an effective system for handling complaints of misconduct against their officers. The ‘trend to external review’ (Goldsmith, 1991), and the more recent but as yet more limited trend towards ‘civilian control’ (Prenzler and Ronken 2001; Prenzler 2004; Smith 2013) means that within police complaints systems there is often an independent or civilian element which variously reviews, manages, supervises or conducts investigations into at least more serious matters (Smith 2010). The police usually maintain an important role in such systems however, typically handling all less serious matters (which invariably make up the great majority of all complaints), as well as having a duty to refer graver issues to the independent oversight body, and to participate or cooperate in the investigation of such issues (Prenzler 2011; Smith 2013).

Even in politically stable democracies like the United Kingdom, where there is a high degree of regulatory oversight of the police (Smith, 2009a), the evidence suggests that the police will often seek to deflect those who seek to complain against them, closing ranks against external ‘challengers’ (eg, Box and Russell 1975, Young *et al.* 2005, p. 288). In this article we discuss the findings of an exploratory study of an internal police complaints system in an unstable country – Thailand. Here, the police are bound into an authoritarian political structure repeatedly subject to military take-overs. As we shall see, this context is linked to some distinctive problems in terms of the handling of complaints against the police. Whilst there is clearly value in shedding light on a particular, previously unstudied, police complaints system, the significance of the study extends beyond this. We suggest that police complaints systems in other unstable countries under similar conditions may be subject to similar problems, and that the design of future research studies (and related reform proposals) could usefully be informed by the discussion offered below.

Following this introduction, the core of the article is divided into 5 parts. Part 2 briefly reviews the literature on internal police complaints systems. Part 3 provides some context to the study by examining the political role of the Thai Police within Thailand. Part 4 provides an account of how the internal police complaints system in Thailand is meant to work, whilst Part 5 sets out the methods used in the study. The findings from the study of how the system actually works are presented and discussed in Part 6.

2. Studying internal police complaints systems

The question of to what extent the police should be allowed to investigate themselves has dominated the international debate over the handling of police complaints and misconduct for several decades. Members of the public and academics typically believe that the police cannot handle complaints against their colleagues impartially (Goldsmith 1991, Harrison and Cunneen 2000, McLaughlin and Johansen 2002, Hopkins 2009). This belief is well-founded. Prenzler and Ronken (2001, p. 152) pithily summarise research from Australia, the United Kingdom, Canada and the United States as demonstrating the ‘enormous capacity, and systemic tendency, of police organisations to protect corrupt colleagues, cover up improper practices and evade accountability.’ They note, in particular, ‘the apparent pathological inability of police to objectively investigate their peers’ (p. 157).

A lack of impartiality is discernible in numerous police practices which can have the effect of neutralizing complaints, even if it is often difficult to be sure in particular instances whether these amount to intentional ploys, unconscious bias or defensible attempts to give complainants a realistic appreciation of their options and their likelihood of success (Brown 1987, p. 30; Maguire 1989, p. 192). The main such practices are as follows:

(i) Deflecting attempts to register complaints

Those who seek to complain do not always succeed in having their complaints recorded and acted upon. The first well-designed studies of recorded complaints in England found that around a third of the complainants surveyed who had registered their grievance in person at a police station found the police to be unhelpful or actively discouraging, and whilst these respondents by definition nonetheless pursued the matter, other potential complainants may have given up at this stage (Brown, 1987, p. 14; Maguire and Corbett 1989, p. 191). Of those who get past the 'front desk' and manage to speak to an officer with the power to record a complaint, 'there is evidence that at least half leave without an official complaint being recorded' (Maguire and Corbett 1989, p. 191). A smaller-scale English survey of recorded complaints in the late 1990s found that 58% of the 51 respondents claimed that the police had tried to discourage them from making a complaint at the first point of contact (Waters and Brown 2000, p. 626), whilst the equivalent figure for Victoria, Australia a decade later was 40.8% (Prenzler *et al.* 2010, p. 7).

(ii) Informal settlement

This is where the police discourage the complainant from initiating or pursuing a formal investigation by offering to resolve the matter more informally. For example, an investigating officer may offer an apology on behalf of the force or promise to have a 'quiet word' with the officer complained against. Settlement is often made to seem more attractive by stressing negative aspects of formal investigation including the length of time it will take, the difficulties of substantiating a complaint, and the slim chances that any serious disciplinary action will be imposed as a result (Hill *et al.* 2003, pp. 18-22). Sometimes an informal response may be proportionate and in line with the complainant's aims but research has repeatedly found that an improper degree of pressure is placed on some complainants to either withdraw their complaints completely or accept an informal process and outcome (Brown 1987, p. 34; Landau 1994). Most such studies are based on complainant perceptions

as reported in interview so are impossible to verify, but Young *et al.* (2005, pp. 285-287) observed and tape-recorded 19 meetings between complainants and officers appointed to handle their complaint and reported that in 42% of cases complainants were actively dissuaded from pursuing a formal investigation and in a further 29% informal resolution was misleadingly presented as the only option. Once complainants had agreed to informal resolution their role as an active participant in the process came to an end, leaving them with a sense of exclusion.

(iii) Discrediting

English research of some vintage has illuminated the police practice of discrediting complaints. Box and Russell (1975, p. 320) highlighted that ‘condemnation of the condemners’ and ‘denial of victim’ are two of a number of tactics that the police use to undermine the plausibility of the complainant’s version of the incident. This can be achieved most easily by using the prior criminal record of the victim of malpractice to discredit that person as a legitimate complainant (Box and Russell 1975, p. 324; Hill *et al.* 2003, p. 23), but low social status (Smith 2009b, p. 254), the fact that a complainant is facing charges arising out of the incident in question, and a host of other ‘special reasons’ may be used to serve the same purpose (Goldsmith 1996, p. 47).

‘State talk’ (Corrigan and Sayer 1985) constitutes another technique for the denial of the victim. Law enforcement agencies will often exaggerate the danger and hardship they face when performing their duty in order to justify their excessive use of coercive powers in particular situations (Sim 2000). Thus black detainees in England and Wales who die following the application of force by police officers tend to be labelled as violent, erratic and having ‘super-human strength’ (Pemberton 2008).

(iv) Fabrication of evidence and the code of silence

Evidence may be fabricated by the police in order to weaken a complaint against a police officer (Sanders *et al.* 2010, p.666). Box and Russell (1975, p. 319) argued that ‘at the risk of stating the obvious, policemen [sic] have good reasons for ...constructing an “account” of the events which denies, excuses, justifies, or otherwise explains the alleged police misconduct’. Smith and Gray (1983, p. 581) found that ‘police officers will normally tell lies to prevent another officer from being disciplined or prosecuted’. More commonly, officers refrain from reporting the transgressions of their colleagues (Westmarland and Rowe 2016) and remain silent when evidence is sought in relation to an investigation (Klockars *et al.* 2004).

(v) Intimidation

Maguire and Corbett (1991) found that a number of complainants in England claimed that they were threatened by the police to withdraw their complaints. One complainant told them that ‘he [the 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’ (p. 92). Canadian research has also documented coerced withdrawals of complaints (Landau, 1994). Some complainants have reported what they perceived to be actual reprisals, such as being unfairly charged or stopped on the street ‘on flimsy grounds’ (Brown, 1987, p. 17). In New South Wales, Australia, two-thirds of the 103 client advocates and legal representatives who had lodged complaints for their clients reported at least one form of police retaliation against their clients, and the same research found that 27% of the 287 clients reported to have declined to make a formal complaint cited fear of police retribution as their reason (Goodman-Delahunty *et al.* 2014, pp. 84-88). Young or otherwise marginalized persons seem particularly anxious about making a complaint for fear of reprisals (Radford *et al.* 2005; Schulenberg *et al.* 2015).

Such tactics and practices help explain why those aggrieved by police actions often decide against making a formal complaint, why there is low public confidence in most police complaint systems, why so many complainants withdraw from the process, why so few complaints are substantiated, and why most complainants remain dissatisfied having experienced the process (see further Prenzler *et al.* 2010). The other side of the coin is that satisfaction and substantiation rates tend to be higher where complaints are dealt with in a neutral, more thorough, and less exclusionary way, either through the injection of mediation or restorative values and processes (Young *et al.* 2005) or through case-handling by an agency genuinely independent of the police (Prenzler 2009, pp. 164-170).

Despite the fact that internal police complaint systems appear to be stacked against complainants, the subjects of those complaints are typically critical of how such systems operate. Thus police officers complain that too much credence is given to complainants, that their own accounts and interests are not given enough weight, that they feel excluded from the process (especially during informal resolution procedures), and that the time-consuming process leaves an enduring stain on their record within the police organization – even where the complaint is deemed unsubstantiated (Maguire and Corbett 1991, p. 73; Hill *et al.* 2003; Warburton *et al.* 2003; Schulenberg *et al.* 2015). This ‘internal face’ (Torrible 2016) of police complaints systems helps us to understand why police officers are so keen to undermine complaints.

The vast majority of the evidence pertaining to these issues derives from relatively stable democracies in the English-speaking world, however. Relatively little is known about the operation of police complaint systems in societies where democratic values are less well entrenched, although it is clear that the trend to external review is less pronounced in Asia, Africa and South America (Goldsmith and Lewis 2000; Nalla and Mamayek 2013; Smith 2014). The present study aims to illuminate the workings of the internal police complaints

system in Thailand and to consider whether the issues discussed above play out any differently in this Asian context.

3. The Thai Police in Context

The reputation of the Thai national police force – the Royal Thai Police (RTP) – has long been unenviable (Asian Human Rights Commission 2006). An opinion poll (ABAC Social Innovation in Management and Business Analysis 2007) found that over two-thirds of respondents viewed the police as unfairly discriminatory, submissive to influential politicians, and involved in extortion, bribery and position-buying (during an annual reshuffle); notably, less than a fifth felt that the police treated people equally according to the principles of human rights.

A decade later, another poll demonstrated that public confidence in the Thai police was at 15.92 per cent only (NIDA 2014, Daily News 2014). Most Thais do not see the RTP as a legitimate public body (Asian Human Rights Commission 2006). This lack of legitimacy can be traced to the culture of abuse and malpractice in certain parts of the Thai police community.

Police malpractice has long been a matter of grave concern in the criminal justice system of Thailand (Khruakham and Lee 2013, Leechainan *et al.* 2012). The brutality and dishonesty of the Thai police, together with their involvement in political controversies, is well documented (Pinthong 2012). Many Thai officers have deliberately participated in a number of the country's most serious crimes (Economist 2008). For example, in the 'Blue Diamond' affair, the Thai police were implicated in the theft and subsequent disposal of precious jewels from the Saudi royal family, the fabrication of evidence to cover up their own crimes, and homicide (McCarthy 1994, Marshall 2010). In 2009, the Supreme Court found Police Lieutenant General Chalor Kerdthes guilty of ordering the murder of two key witnesses in the

case, for which he was given a death sentence (Shay 2010); the related killing of four Saudis remains an ongoing saga (McClincy 2012, Ashayagachat 2014).

The Thai police are also mired in political controversy on a much wider scale. The RTP's chief officer, the Commissioner General, is directly answerable to the Prime Minister (National Police Act 2004, s. 6) and as such subject to political direction. Thai political leaders have often made use of this power in an attempt to suppress political opponents (Haanstad 2008, pp. 59-60) or to boost their own popularity. For example, in 2003, then Prime Minister Thaksin Shinawatra demanded that the police launch a 'war on drugs' (Human Rights Watch 2008, Economist 2008), and set the 'rules of engagement' in a speech calling for unrestrained action:

With the [drug] traders, you must use hammer and fist, that is, act decisively and without mercy. (Phongpaichit and Baker 2004, p. 158).

Government policy on the 'war on drugs' was translated into directives from the police leadership, creating obligations subordinate officers needed to satisfy (Armacost 2004). Furthermore, the rhetoric that urged the killing of drug dealers gave the police licence to employ draconian measures in pursuit of the policy objectives. Thus the campaign 'saw "suspects" often hastily identified, mostly based on highly questionable intelligence and forced admissions, and dealt with in a violent fashion that resulted in a host of mysterious "disappearances"' (Liow and Pathan 2010, pp. 53-54). Shortly after the 'war' began to produce 'casualties' in the form of extra-judicial killings by the police (Phasuk 2012), Thaksin urged the police not to relent, declaring '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' (Phisitsetthakan 2004, p. 232). Human Rights Watch (2008) was later to report that official investigations found that half of the 2,800 people who died of extrajudicial

killings during the first three months of the campaign had no connection whatsoever to drugs. The police (along with the military) were similarly implicated in thousands of extra-judicial killings (Economist, 2008) in implementing Thaksin's war-like approach (Moore, 2013) to dealing with Muslim insurgency in the south of the country. Following a military coup in 2014 the position has, if anything, deteriorated further. Amnesty International (2017 pp. 360-61) notes reports of torture and other ill-treatment by the 'security forces in the context of routine law enforcement operations' with 'police officers and soldiers... responsible for human rights violations against members of vulnerable communities...' It can thus be seen that politics is directly implicated in the scale and seriousness of police malpractice in Thailand. In such a situation, it can be questioned whether it is realistic to trust the police to investigate complaints against themselves in an effective manner.

Recognition of the problems of police malpractice and police corruption has resulted in attempts within Thailand to subject the police to an element of external oversight, but it cannot be said that there is a coherent police complaints system. Rather, the 'system' comprises a patchwork of institutions with overlapping jurisdictions, all of which extend beyond police malpractice. The three key external bodies which play a part in handling serious complaints against the police may be briefly described (see further Harding 2006; Leyland 2007; Harding and Leyland 2011). The Office of the Ombudsman conducts inquiries into complaints against state officials and agencies, primarily on grounds of action or inaction which perpetuates injustice (1997 Constitution, s.244). The National Human Rights Commission (NHRC) examines and reports the commission or omission of acts which violate human rights (2007 Constitution, s. 257). The National Anti-Corruption Commission has the power to investigate and determine whether state officials 'have become unusually wealthy or have committed an offence of corruption' (2007 Constitution, s.250(3)).

None of the bodies external to the police has a specific mandate to ensure the integrity of the internal police complaints system. In other words, they do not hear appeals from, or review, manage or supervise, decisions made within the internal system, but rather receive complaints related to their remit directly from members of the public. They can nonetheless be regarded as stakeholders in the internal police complaints system because some of those who turn to them have tried but failed to gain satisfaction from that system and now either seek an alternative means to press their complaint, or wish to complain about the police complaints system itself. Let us now look at that system in more detail.

4. The disciplinary and complaints system of the Thai police

There is no dedicated complaints system within the Thai police force. Every police complaint made to the police will simply go through the standard police disciplinary system, the framework for which is set out in The National Police Act (NPA) 2004. This defines ‘misconduct’ and ‘gross misconduct’, prescribes norms for dealing with misconduct cases, and outlines the categories of disciplinary action. In addition, the Police Regulations on Factual Investigation 2013 and the Police Regulations on Interrogation 2004 set out more detailed procedures for handling misconduct and police complaints.

The RTP’s Office of Inspector General (OIG) is the core institutional organ overseeing disciplinary standards of the Thai police nationwide (Thanyasiri 2010). The responsibility of the OIG in Thailand is roughly equivalent to that of the Professional Standards Department (PSD) in each local police force in England and Wales (Mawby and Wright 2008). In recent years, however, the OIG has not carried out the handling of police complaints on its own; as a Superintendent based there confirmed in interview, it has instead referred complaints to the local force area concerned. This is possible because each and every police force area in

Thailand also has the responsibility to deal with misconduct and police complaints. In practice, most complaints are normally handled at local level.

The bringing of disciplinary proceedings may arise from a complaint, media coverage of police abuse, or reasonable suspicion on the part of a superior officer of a breach of disciplinary standards (Police Regulations on Factual Investigation 2013, reg. 5). According to section 84 of the NPA, the superior of the officer to whom the allegation of misconduct relates should carry out an initial assessment of such allegation, primarily to determine whether, if proved, it would likely constitute misconduct, gross misconduct, or neither. If the superior comes to the view that an investigation into the case is warranted, they should appoint a disciplinary panel. This is usually made up of two superior police officers and one other civil servant selected by the police (eg, from the Ministry of the Interior), to undertake an investigation into the allegation of misconduct (Police Regulations on Factual Investigation 2013, reg. 10 para. 2). The panel has the task of collecting evidence and determining whether a disciplinary allegation is well founded (Police Regulations on Factual Investigation 2013, reg. 19 para. 1). Over the course of the investigation, the panel will examine not just disciplinary matters but also criminal matters (National Police Act 2004, pts. 5 and 6). It should be noted however that the law on police disciplinary procedures grants victims (if any) no rights to participate in the investigation process.

On completion of their investigation, the panel members must prepare a report providing an accurate summary of the evidence as well as indicating their opinion whether the officer complained about has a case to answer for misconduct or gross misconduct, and what disciplinary action should be taken. If criminal liability can also be identified, the panel has the power to recommend that criminal proceedings be brought against the officer concerned (Police Regulations on Factual Investigation 2013, reg. 31(1)-(3)). In the event that gross

misconduct has been indicated, a separate panel – the interrogation panel – will be convened to undertake a more rigorous investigation (Police Regulations on Interrogation 2004, pt. 3).

Similar to the procedures governed by the Police Regulations on Factual Investigation, the interrogation panel needs to issue a report at the end of the investigation on whether there is a case to answer in respect of misconduct or gross misconduct (Police Regulations on Interrogation 2004, ss. 31-32). If the report finds a case to answer for misconduct it falls within the remit of the direct superior of the officer concerned to take the action proposed by the disciplinary panel. But if the report finds a case to answer for gross misconduct it falls within the purview of the police leadership to take the recommended action, except where the National Police Chief is the guilty officer, in which case the power to take the proposed action lies with the prime minister (National Police Act 2004, ss. 72, 89-90).

Under the system of the Thai police, it can be seen that the superior of the officer suspected to have committed misconduct is placed at the heart of the disciplinary process whilst victims of malpractice are barred from having involvement. The Thai system exemplifies ‘a simple minimalist model of accountability’ (Prenzler 2009, p. 80) where the handling of misconduct is regarded as an internal affair and is under the control of the police hierarchy, arguably, to pre-empt humiliating exposure (Prenzler and Ronken 2001). We now turn to how the system operates in practice and the question of whether the current arrangements are effective in holding Thai police accountable for misconduct.

5. The Study: Research Methods

The research reported here was shaped by a number of factors. First, it formed one element of a doctoral study of the police complaints system in Thailand (anon 2016) and, as such, was subject to limitations in terms of time and resources. Second, there is little by way of a tradition of socio-legal research in Thailand, certainly as far as the police complaints system

is concerned, and thus scant evidence-based literature from which one might develop hypotheses to test deductively. A qualitative approach was thus deemed appropriate in which the data gathered would be analysed inductively in order to identify key themes and generate novel insights. In other words, the present study is both exploratory and trail-blazing. Third, previous attempts by researchers to examine the Thai police have met with resistance and obfuscation (e.g., Poothakool 2012). Moreover, critiquing an institution that has a reputation for retaliation against those who challenge it raises issues of personal safety (e.g, Kittayarak 2007, p. 54) and legal liability (in that the police may sue for defamation – Prachatai 2017). Fourth, the main fieldwork took place during a six week period from 13th June to 30th July 2014, not long after several months of political turmoil and violence culminated in an unexpected military coup on 22nd May 2014. This made potential interviewees particularly anxious about participating in anything that might open them to criticism (notably more so than is culturally the norm anyway in Thai society). In light of these factors the study adopted a low-key, small-scale qualitative approach, seeking to generate a sample of stakeholders in the internal police complaints system whose views could illuminate its operation.

Drawing on personal contacts and using a mixture of purposive and snowball sampling, semi-structured interviews were conducted by the first named author with seven policing personnel, namely two senior police officers (a Deputy Commander and a Superintendent), four more junior officers (interviewed as a group) and a former Deputy Commissioner (now retired). Further interviews took place with seven citizens who had made a serious complaint against the police, a social researcher, a human rights lawyer, a senator, a judge, an investigator from the Ombudsman as well as one of the three Ombudsmen themselves, and two commissioners from each of the NHRC and the NACC. The interview schedule was designed to prompt respondents to address the following topics: the public perception of the police, police malpractice, experience of the internal complaints system, the police and patronage, and

police approaches to law enforcement. This narrowed the focus of the research to topics that previous literature on the Thai police, together with previous research on police complaints systems, suggested would be most pertinent to explore, whilst leaving room for respondents to cover these topics in ways that were meaningful to them.

The period of fieldwork was characterized by tension, particularly during interviews with serving police officers, who proved unwilling to discuss the issues other than in general terms. It was evident to the interviewer that pushing deeper into sensitive areas would have been counter-productive at best, and life-threatening at worst. It is worth adding that the interviews had been risk-assessed in advance, in accordance with the guidance of the Institution of Occupational Safety and Health (2012), and the research as a whole received ethics approval by the relevant ethical review committee at [XXXX university]. It was deemed unwise to attempt to digitally record the interviews so contemporaneous notes were taken instead.

The interview data were then subjected to thematic analysis (Braun and Clarke, 2006). In brief, codes were attached to recurring words, phrases or ideas, and these codes were then grouped in order to identify more general themes. The semi-structured nature of the interview schedule meant that certain topics were bound to be found in the data, but the themes themselves were not pre-determined. For example, whilst discussion of patronage was prompted, the question of how, if at all, patronage affects the police complaints system was an open one and our findings on this were arrived at inductively through analysis of the original interview data collected.

Ideally this research would also have involved the collection and analysis of statistical evidence on the workings of the internal police complaints system. Statistics on police complaints are not published as a matter of course, however, and there are important gaps in the data which do enter the public realm from time to time. Statistics on substantiated

investigations into police malpractice, for instance, are unavailable. Attempts were made to discover whether fuller statistics were kept internally, but the senior police officers interviewed said that no such data existed.

Figures gathered by Chotchakornpant *et al.* (2009, p. 3) indicate that an average of 250 complaints against the RTP were made annually over the seven years from 2002-2008. This suggests a relatively low level of complaints, given that there are some 200,000 Thai police officers. As we shall see, however, there is reason to be sceptical of police records of complaints, and not just because of the point that potential complainants may refrain from complaining out of fear or lack of confidence in the system. The analysis below therefore relies upon the qualitative data collected for this study.

6. The Study: Findings

The views of the Thai complainants interviewed for this study clustered around the position that the internal police complaints system lacks transparency, impartiality, and effectiveness. This led them to conclude that the investigation of complaints should be undertaken by an independent body. As can be seen from the following representative extracts from the interview data, these views were expressed in strong terms, reflecting their depth of feeling on the matter:

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.
(Complainant A)

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. (Complainant C)

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

The prominent human rights lawyer we interviewed argued that most people would not trust the police to investigate the alleged misconduct of their colleagues because '... the police will distort the facts and/or fail to deal with complaints [against the police] particularly when the complaints are related to influential figures'. From the Thai perspective, 'influential figures' refer to those who are in authority and/or enjoy wealth and privilege either at local or national levels (eg, politicians or senior police officers). Another aspect to this phenomenon is that those complainants who themselves are perceived to be within the favour of the influential may have their complaints taken more seriously. The seasoned social researcher interviewed for this research argued that '... if any complainants have connections with the police, they will be treated with care'.

It is not invariably the case, however, that those with influence can engage in malpractice with impunity. The bringing of disciplinary and criminal proceedings against Police Lieutenant General Pongpat Chayapan (then head of the Central Investigation Bureau) and six other senior officers for a number of serious offences including bribery, oil smuggling and insulting the monarch (Guardian 2014, Gecker 2015) proves that, at least on occasion, the disciplinary system of the police can work effectively. The possibility that a complaint might result in serious disciplinary consequences was acknowledged by Police Officer A (group interview) to shape the thinking of investigating officers. As he put it:

You know, when any officers are disciplined, their future career prospect will certainly be ruined; accordingly, the investigators will be sympathetic towards their colleagues and that's why they usually opine to the commander to give the officers who proved to be wrong lenient punishment.

This sympathetic stance was also said to shape an internal investigation in cases where the Office of the Inspector General had taken an interest. Police Officer A (group interview) remarked:

If the Office of the Inspector General concludes that the officer involved has committed misconduct, the penalty is quite tough. So we need to be careful about the investigation and the justification we make.

In other words, this officer is acknowledging that the reason that care is taken in the investigation and the drafting of the report to the OIG is the perceived need to justify the behavior of the officer who is subject to the complaint, in order to preclude the imposition of an unfairly tough penalty. Police Officer D (group interview) expressed concerns that investigations conducted by independent bodies would be more likely to result in discipline, an outcome that was evidently feared.

I also think that an investigation conducted by [an independent body] would definitely demoralise the police because some issues are trivial but when being disciplined, the officers involved will not be free from the taint and this profoundly affects their performance and future career prospect.

By implication, both of these police officers accepted that the internal police complaint system was biased, and it is telling that both explicitly acknowledged elsewhere in the group interview that investigations by bodies independent of the police would instill more public

confidence in the complaints system. Perhaps an even more important inference that can be drawn from the above quotes, however, is that the Thai Police are anxious about the possible ramifications of a complaint. Whilst they know that a disciplinary outcome of a complaint is unlikely, they are nonetheless nervous about that possibility both for themselves and their colleagues. Officers involved in the early stages of complaint handling thus have a strong motive to prevent complaints reaching the stage of a formal investigation.

It is no surprise, then, that those who have experienced the system first-hand consider that, more often than not, the handling of complaints by the Thai police lacks impartiality. The empirical evidence from the present study suggests that there are five distinct ways in which this manifests itself.

(i) Deflecting attempts to register a complaint

Recording of complaints is a critical first step as it confers on each complaint an official status, giving rise to an obligation to undertake an investigation.

The evidence from this study suggests that, once the complaint has been voiced to the police, the responsible officer sometimes does not officially record the matter but rather waits to see how determined the complainant is to have the matter investigated. If there is little by way of pressure from the complainant, the police do nothing. The following comments from Complainant B reflect this:

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 concerned 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 [personal] 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.

According to the senator we interviewed, the police had developed a systematic mechanism designed to fool citizens into believing that their complaints had been recorded:

The police have two separate casebooks. One is formally used whereas another is fake. When people report the case to them, they simply note all the details in the fake casebook and leave it in the drawer.

The former deputy police commissioner confirmed this practice existed:

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.¹

Clearly, the more widespread such a practice is, the greater the 'dark figure' of unrecorded complaints will be.

(ii) Informal settlement

¹ Research conducted for the NACC similarly found that '[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' (Chotchakornpant *et al.* 2009, p. 58).

Once a complaint has been recorded, the police can deploy a number of different underhand tactics to silence those who have persisted this far. First, informal pressure to ‘settle’ may continue throughout the process. Complainant D recounted being cajoled into a ‘negotiated’ settlement:

I have received so many calls from the police [after the complaint was made]. They said sorry to me about what has happened. Then, they explained to me how difficult the whole situation was for them, which I think is too personal; and then, they convinced me not to go further with the case. The Deputy Superintendent personally contacted me in order to make compromise and I didn’t understand why [he did so]?

The law governing the Thai police disciplinary system does not allow for informal negotiation as part of the complaints-handling process, which means that such tactics are legally dubious at best.

Second, the police may offer the complainant a one-off payment to withdraw their complaint. Some of the police officers interviewed explained how this could happen:

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 cuts corners by giving the complainants some 3,000 Baht [Thai currency], for example, to stop the complaints process.’ (Police Officer A - Group interview)

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 accept the money as they realise that 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. (Former Deputy Commissioner)

The incentives the police use to silence the complainants may not necessarily be in the form of a payment. Sometimes officers offer to ‘do favours’ or ‘pull strings’ in exchange for a withdrawal of the complaint. As Complainant B revealed:

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 [the police] 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 accept 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? (Complainant B).

Offering a payment or doing favours in exchange for withdrawal of complaints is unlawful, but, as Complainant B implies, these tactics are nonetheless likely to be persuasive when complainants are poor and perceive themselves to be powerless, especially if they lack understanding of how the system is meant to work.

(iii) Discrediting complainants

An example of this tactic in the Thai context was provided by complainant A:

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 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 what he said; the police said my nephew was a crook, his words weren't reliable.

In Thailand, people who complain on behalf of victims who died following police contact are likely to be told that the deceased initiated any violence, and that the police were merely acting in self-defence or in order to control the situation. Complainant C, for example, brought a complaint on behalf of a nephew who had been killed during an exchange of fire with the police:

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 later proved that there wasn't any bodyguard involved; the police alone were firing on the car that my sister with my nephew was driving away.

Countering such 'state talk' in the absence of independent witnesses is difficult, particularly when the person at the receiving end of police violence died as a result. Whilst forensic evidence might support a complainant's case, it is the police who usually control such

evidence, which gives them ample scope to ensure that it bolsters the case for dismissing the complaint.

(iv) Fabrication of evidence

Earlier in this section we quoted the view of a prominent human rights lawyer that officers investigating police malpractice would ‘distort the facts’ in order to exonerate their colleagues. Without access to police records of complaints cases it is not possible to document how often this takes place or what forms such distortion takes. The former deputy police commissioner interviewed for this research claimed, however, that fabrication of evidence is a common occurrence during investigations into complaints, and explained how this tactic might be used to weaken a complainant’s resolve to pursue a matter:

In a case where a complaint is made due to the fact that the police have carried out a search in private premises without a search warrant because they believed that they would be able to catch somebody 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.

Such pressure could also be used to undermine the complainant's attempt to turn to any external watchdog bodies at a later stage. This is also true of the tactic of intimidation, to which we now turn.

(v) Intimidation

Threatening behaviour is deployed from time to time to bring Thai complaints to an end.

Complainant A explained that:

Soon after my complaints were made, a group of men whom I knew to be police officers from the local force area that I complained against had been stalking me and some witnesses of mine for months... 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.

Fear of reprisals can also intimidate citizens from registering a complaint in the first place of course, as Police Office A (group interview) recognized:

I believe that there might be some people who nurse grievances against the police but because of some apprehension that the police might bully them, they're afraid of registering their complaints with us.

(vi) Discussion

The findings presented in this section suggest that the disciplinary system of the Royal Thai Police (RTP) is ineffective in holding the police accountable for misconduct. The police demonstrate their lack of impartiality through the range of tactics they deploy to undermine complaints. As with other police forces around the world, and as one might expect, the police are pre-disposed to neutralize challenges that might cause problems for colleagues and attract

unwelcome attention to problematic policing practices. The findings on the methods of neutralization were presented using the same sub-headings as deployed in the earlier literature review (deflection, settlement, discrediting, fabrication and intimidation) in order to highlight the parallels between the Thai experience and that in the English speaking world. There are some distinctive features of these findings that are worth noting, however.

We have seen that the Thai police are prepared to offer financial inducements to persuade complainants to drop their case. In systems where legal provision is made for ex gratia payments in satisfaction of a complaint there would be nothing illegitimate about this, but that is not the case in Thailand where the transaction seems more like a bribe. Moreover, Thai police officers are reported as offering to ‘pull strings’ on behalf of the complainant’s family members (as by using their influence to gain them some advantage in the labour market).

These particular corrupt practices have not been documented in research into police complaints systems in the English speaking world. The Corruptions Perceptions Index 2016 ranks Australia, Canada, New Zealand, Ireland the United Kingdom and the United States as amongst the 20 least corrupt countries in the world, whereas Thailand ranks 101st with the majority of Asia-Pacific countries similarly situated in the bottom half of the index (Transparency International 2016). Bribery and ‘string-pulling’ are endemic in Thailand, where corruption penetrates ‘into almost every sphere of public sector transaction with citizens in their everyday life’ (Vichit-Vadakan 2011, p. 83). The implication is that countries plagued by corruption will face particular difficulties in guaranteeing the integrity of police complaints systems. Corruption can also be detected in two other features of the Thai police that exacerbate the lack of police impartiality, namely its system of patronage and its extreme authoritarianism. Both of these call for further comment.

The system of patronage in the Thai police force

Patronage is usefully defined by Scott (1972, p. 92) as:

[A]n 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.

Patronage is a long-established feature of Thai society and ‘such close relations are conducive to a lack of transparency and corruption in various small and large ways’ (Vichit-Vadakan 2011 p. 85). The top-down management style of the RTP fosters patronage within the organisation in the form of a master-servant relationship between the superior (a line manager) and his subordinates. In certain parts of the Thai police community, subordinates will corruptly collect money from illegal businesses for their superior in return for their job security (Phongpaichit and Piriyarangsan 1994, Phongpaichit *et al.* 1998). The social researcher interviewed described the police as based on a ‘feudal system of patronage’ under which ‘the superiors and subordinates protect each other for their own security in life and career prospect.’ In line with this, the human rights lawyer we spoke to explained how the master-servant relationship in the Thai police force is unshakable:

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 in exchange for their personal service such as giving help with taking bribery.

Indeed, the disciplining of a junior officer so closely tied to a superior may reflect badly on the latter. The former deputy police commissioner interviewed saw this as a reason why police superiors seek to neutralize 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.

This problem is reinforced by the legal framework; section 80(4) of the NPA stipulates that:

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.

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

The militaristic training which Thai police undertake serves to further underpin patronage. Haanstad (2013, p. 188) notes that 'many 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'. A pedagogic strategy which ensures that experience is shared amongst cadets almost 24/7 throughout four-year training results in the formation of dense, enduring social networks. Our interview with a police superintendent provided an illustration of how the ties of imaginary brotherhood fostered since he was in the police cadet academy played on his mind when it came to 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!

Though the comments convey the impression that this police superintendent managed to do the right thing on this occasion, his tone of voice and choice of words indicated how influential emotive relationships are within the Thai police. The interview given by a former deputy police commissioner cast further light on this point:

The culture of patronage – the senior-junior relationship that had very well been fostered when the police officers were in the RPCA [Royal Police Cadet Academy] 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.

Patronage also extends beyond the police force into the world of politics. As noted above the Thai police force is answerable to the Prime Minister (currently the head of the military junta); furthermore, the Prime Minister or their Deputy is also the chairperson of the Police Commission, one of the governing bodies of the Thai police force overseeing human resources and disciplinary matters (National Police Act 2004, ss. 30(1) and 31(3)). In a high-profile example, the Police Commission reinstated three senior officers who had been dismissed following a ruling by the National Anti-Corruption Commission (NACC) that they had committed malfeasance in their handling of political protests (Bangkok Post 2010). This shows how patron-client relationships between the police and the political establishment can work in order to protect wrongdoers. Overall, it may be concluded that the system of

patronage is deeply ingrained in the RTP and is a major hindrance to impartiality in the handling of complaints.

Authoritarianism

The roots of the Royal Thai Police date back to the mid-fifteenth century, when a body of police were created for the purpose of royal protection; the police have been much more concerned with upholding central political power than the rights of citizens ever since (Thaniyaphol 2006, Phongpaichit and Piriyaarangsarn 1994, pp. 114-5). It is thus not surprising that law enforcement in Thailand is authoritarian in nature. Severe measures are often adopted by the Thai police to maintain 'law and order', as we saw above in relation to the 'war on drugs' and the counter-insurgency. Everyday policing is similarly characterized by an overbearing approach in which the pronounced threat, if not the use, of violence is ever-present (Wanichwiwatana 2004, p. 85; Chotchakornpant *et al.* 2009, p. 72).

The senator interviewed commented that '...the police enforce the law without acceptable standard... I think they have a wrong attitude towards the execution of their power...', and one of the NACC commissioners we spoke with opined that the police '... usually abuse their power. They are drunk with power and are keen to turn Thailand into a police state.' The judge we interviewed estimated that 'up to 70%' of non-commissioned officers were involved in 'misconduct in relation to extortion of money and acts of violence'. He believed that commissioned officers committed fewer, but more serious, wrongs, by which he meant 'corruption, fabrication of evidence and so on...'. The former deputy commissioner of police was the interviewee with arguably the best vantage point on this issue, and he was clear that the scale of police misconduct was: 'Huge. I believe that up to 90 per cent of the officers are involved with some sort of abuse of power and corruption.'

The Thai police clearly subscribe to an extreme version of the view that the ends (enforcing the law and maintaining the social order) justify the means (malpractice and violence). They have received historical support for this approach from the highest reaches of the political sphere, and many serving police leaders appear to be just as committed to authoritarian methods as rank and file officers.

Against this background it is difficult to see how victims of the police's authoritarian approach could have their grievances against the police addressed impartially, as the complainants interviewed for this study recognized:

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

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 [the internal system] is ineffective. (Complainant E).

The NHRC Commissioner we interviewed adopted much the same line when explaining why the police should not be allowed to investigate themselves:

Police investigations into complaints lack public acceptance as the police cannot ensure the public that transparency and impartiality in the handling of complaints are secured. Added to this, there'll be the problem of the police's attitude towards the points made in a complaint because they are in an organisation that always uses power to enforce the law; therefore, the police have already been fostered within a culture which is contradictory to the principle of human rights protection.

In other words, police superiors will be investigating alleged wrongdoing of an authoritarian kind that they will likely have engaged in themselves, that they will see as part of everyday

policing, and that is consistent with a police culture running from top to bottom within the Thai police. The chances of a complaint being taken seriously, other than in the sense of a threat to be neutralized, are thus slim indeed.

7. Conclusion

The findings from many jurisdictions around the world reveal that the disciplinary and complaints system of the police force is insufficient to hold police accountable for misconduct (Goldsmith 1991, Smith 2010, Prenzler and den Heyer 2016). This study finds that the same is true in Thailand. Whilst the research discussed here is small scale and qualitative in nature, it is nonetheless reasonable to conclude that the ineffectiveness of the system of the Thai police results primarily from a lack of impartiality in the handling of complaints.

A number of underhand tactics were found to have been used by the police to block complaints. Whilst these mostly mirror those reported in studies of police complaints systems in the English speaking world, the finding that the Thai Police were prepared to use illicit inducements in the form of bribes and corrupt favours adds something new to the literature. This might usefully inform the design of future research in this area. A popular method of ascertaining the views of those who complain to the police is a postal or on-line questionnaire, usually with Likert scale and other forms of closed response options, but with some scope for open-ended responses to specific prompts in relation to, for example, recommendations for reform (eg Prenzler *et al.* 2010; Goodman-Delahunty *et al.* 2014). Our findings indicate that there may be value in prompting information about the possible use of illicit inducements by the police as a means of neutralizing a complaint, and in prompting reflections on the feasibility of reforms taking root against a backdrop of entrenched corruption.

The findings also suggest that the lack of impartiality in the handling of complaints is exacerbated by the RTP's patronage system and extremely authoritarian approach to law

enforcement. There seems little doubt that the latter, in particular, is linked to the police's role in shoring up an unstable political structure. The Thai police have been required to pursue the aims of successive repressive political regimes, which helps explain their extreme reluctance to respond to complaints in a transparent and effective way – the stakes are simply too high. We suggest that similar issues may well arise in other unstable countries where democratic values are under severe threat, and corruption is rife, and that such issues will need to be addressed carefully in future research and any related policy recommendations.

Considering the above findings, this study concludes that the disciplinary and complaints system of the Thai police is urgently in need of reform. Yet whilst European countries are now required by human rights norms to conduct an effective investigation into police abuse (Smith 2010), countries in the region of Asia and Pacific are not under the same obligation (Smith 2016). Moreover, the political power of the police to block or water down reform must be acknowledged (Goldsmith 2000; Smith, 2005), as must the difficulties of achieving reform in countries with a tradition of military dominance or take-overs, a culture of police impunity, and shallow democratic roots (Neild 2000). This raises the question of how to bring about change in Thailand.

We have noted that there is currently no external, independent agency devoted solely to investigating serious police complaints, but rather a patchwork of overlapping agencies which handle police complaints as part of a broader remit. It is possible that these agencies may both remedy some of the problems of the internal police system and act as agents lobbying for more fundamental reforms, including the creation of a powerful independent police complaints body. Whilst further consideration of these issues lies beyond the scope of the present contribution, the view of the present writers is that even in the unpromising political context of Thailand, there are grounds for cautious optimism. Thailand has an interest in portraying itself as a democratic polity committed to the rule of law and the accountability of

power, and is a signatory to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It is significant that the Military did not abolish the Ombudsman, NACC and NHRC on taking power in 2014, and that it professes to be working towards a resumption of some form of Parliamentary democracy (Hariraksapitak 2016). As such, independent research findings such as those presented here may be drawn on by civil society and ex and future members of Parliament in their continuing efforts to make Thai democracy a reality.²

² We gratefully acknowledge the helpful comments of the three anonymous reviewers of the original draft of this article.

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