



'THE SOUND OF THE POLICE' AND THE READDRESSING OF ITS ROLE

A COMPARISON OF THE INDONESIAN, SRI LANKAN,
AND CAMBODIAN CONTEXTS

'The Sound of the Police' and the Readdressing of Its Role: A Comparison of the Indonesian, Sri Lankan, and Cambodian Contexts

Author:

M.Y. Azeez

Editor:

Iftitahsari

Cover Design:

Ahmad Haetami

Visual Elements:

Pngtree oleh 58pic

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Table of Content

Introduction	4
1. The Criminal Justice System: An Overview	4
2. Role of the Police, Findings on Police Abuse of Power, and Public Perceptions	7
3. Police Relationship with the Judiciary	18
4. Efforts Taken Towards the Reformation of the Police Institution	21
5. Proposed Recommendations.....	23
Discussing the existing political system	23
Revamping the police institution.....	24
Reforming the police education system	26
Amending necessary laws.....	28
Transparency and accountability mechanisms.....	29
Stricter sanctions and enforcement rules	30
Actions of third parties	31
Conclusion.....	31
Authors' Profile	33
Editor's Profile.....	34
ICJR's Profile.....	35

INTRODUCTION

The Police play a vital role within any criminal justice framework, and the test of their efficiency lies in the reduction of crime. This paper points to the issues with the criminal codes and procedures in Indonesia, Sri Lanka, and Cambodia, the role of the Police institution as the entity of law enforcement and highlights the fact that bad laws inevitably lead to bad policing. All three chosen countries have had periods in their history where the police institution was radically changed or drastically affected. The Suharto military regime in Indonesia, the 30-year civil war in Sri Lanka, and the Pol Pot regime in Cambodia have undoubtedly affected the Police institution in one way or another. Despite many instances of police personnel acting heroically, the actions of a handful of unscrupulous officials discredit the entire Police force. Whether this negative streak in policing is a result of the aftermath of military regimes or civil wars is unknown, but it is clear that post-war policing techniques need to be improved.

The analysis focuses on four key areas where the Police have violated citizens' rights to personal integrity, namely, arbitrary arrest, arbitrary detention, torture, ill-treatment, brutality, and corruption, which are seen as a series of events rather than isolated incidents. Moreover, the relationship the police have with the judiciary is strained and uncoordinated, leading to delays in the pursuit of justice. Despite all three countries vowing to reform their Police, the desired positive results have not yet come to fruition, and the efforts have failed to yield a favourable response from the public. With police violations increasing in communities each year, reforming the system has reemerged as a prominent topic of debate, demanding radical change.

1. THE CRIMINAL JUSTICE SYSTEM: AN OVERVIEW

The backbone of any criminal justice system is the criminal procedure. In jurisdictions where a code is prominent, it aids in defining the legal rights of individuals and the relationship between different judicial bodies. By setting down clear rules, the underlying legal culture and expectations of the parties involved are established, and the development of the legal institutions is shaped.¹ Regardless of whether it is a civil or common law jurisdiction, the criminal procedure must not only reflect the legal framework but also notions of social context and human rights. Moreover, a harmonious synchronization between legislation and law enforcement entities such as the police, the judiciary,

¹ J Bengoetxea, Legal institutions and the comparison of legal cultures (2022) 12(6) Onati Socio-Legal Series Volume 1647

and the corrections and rehabilitation authorities is crucial in achieving an overall sound criminal justice system.

1.1 Indonesia

The classification by Palmer identifies the Indonesian legal system as a Mixed System of Civil Law, Muslim Law, and Customary Law.² Since the collapse of authoritarian rule in 1998, Indonesia has embarked on sweeping legal, political, and institutional reforms.³ Despite impressive democratic gains, significant challenges persist in law enforcement.⁴ In 1981, Indonesia enacted the current criminal procedure code, *Kitab Undang Hukum Acara Pidana* ("KUHAP"), which takes a formalized approach to the justice system and compartmentalizes the criminal process into three distinct stages; investigation, prosecution, and adjudication. Indonesia's adoption of the traditional civil law approach has meant that few of the rights of the defendant are clearly articulated in the KUHAP. For example, a right against self-incrimination or a standard of proof that protects the presumption of innocence is not made clear. Moreover, there is no regular judicial avenue at the pretrial stage to assert that rights have been violated by the police or seek appropriate deterrent remedies such as suppression of illegally obtained evidence.⁵ Moreover, the system still lacks accountability, is undemocratic, and is not fully aligned with fundamental human rights principles, particularly regarding respect for a fair trial.⁶ Although it purported to establish a "Criminal Justice Under One Roof System," the results have been the opposite.⁷

1.2 Sri Lanka

The legal system of Sri Lanka is a complex mixture of English common law, Roman-Dutch law, and personal laws. The basis of criminal law and procedure is the English common law.⁸ The principal enactments giving life to the criminal justice system of Sri Lanka are the Penal Code (1833), the Code of Criminal Procedure Act (1979) the Evidence Ordinance (1895), and the Bail Act (1997). Despite efforts to reform the law, continued violations of citizens' rights at the hands of the Police prove that

² VV Palmer, *Mixed jurisdictions worldwide: the third legal family* (Cambridge University Press, 2012)

³ Petra Stockmann, *Indonesian Reformasi as Reflected In Law: Change & Continuity In Post-Suharto Era Legislation On The Political System And Human Rights* (2004)

⁴ 'Indonesia: Freedom in the World 2023 Country Report' (*Freedom House*, 2020)

<<https://freedomhouse.org/country/indonesia/freedom-world/2023>> accessed 12 November 2023

⁵ R.R. Strang, 'More adversarial, but not completely adversarial: Reformasi of the Indonesian Criminal Procedure Code' (2008) 32 *Fordham Int'l LJ* 188

⁶ Muhammad Arif Setiawan, 'Arrest and Detention in Indonesian Criminal Procedure Code under Human Rights Perspective' (2022) 1(2) *SINOMICS Journal* 153-162

⁷ *Ibid* (n 5) 199

⁸ NHA Karunaratne, *World factbook of criminal justice systems* (1976) Bureau of Justice Statistics

the principle of the rule of law is limited only to the statute books and is absent in practice.⁹ Moreover, the Police have been guilty of abusing the provisions of the discredited Prevention of Terrorism Act No. 48 of 1979 (PTA), a draconian law that the government has long promised to repeal. The anti-terror law was used as a device of control by successive governments during the protracted war against the LTTE until its end in 2009, which remains to this day a source of deep angst for individuals fearing oppression.¹⁰ While general criminal law and procedure may offer a sliver of protection for the accused, the PTA has been constantly weaponized by the Police to target minority communities and civil society groups.

1.3 Cambodia

The Cambodian legal system is a hybrid system, a derivative of Cambodian customs, the civil legal system inherited from colonial France and the principles of common law.¹¹ Under the Khmer Rouge in 1975, the entire Cambodian legal system was destroyed. All people involved in the legal system were killed or forced to flee the country. At the end of the massacres, an estimated six to ten legal professionals remained alive in Cambodia.¹² After Vietnam invaded Cambodia in 1979, the legal framework was influenced by the Vietnamese system. During the presence of the United Nations Transitional Authority in the country in the early 1990s, several laws were enacted. As a result of foreign assistance for legal and judicial reform in the country, the Cambodian system also absorbed common law features.¹³ The Code of Criminal Procedure and the Criminal Code of the Kingdom of Cambodia are the two documents that form the legal framework of the country's criminal law and procedure. While an attempt to rebuild the legal system has been made since the fall of the Khmer Rouge, its application has been more criticized than praised.¹⁴ The army and police have unclear lines of authority and are frequently tied to political factions in the government, leading to a "too many weapons in too many hands" situation.¹⁵ The Cambodian criminal justice system has been noted to be disturbingly inadequate and criticized for being weak, corrupt, and susceptible to political

⁹ N Madsis, 'A critical analysis on the application of the legal principle of rule of law in the criminal justice system of Sri Lanka' (2017) 4(3) *Forensic Research & Criminology International Journal* 84-90

¹⁰ 'Sri Lanka Vows to Introduce Sweeping Police Reforms' (*Aa.com.tr*, 22 February 2017) <<https://www.aa.com.tr/en/asia-pacific/sri-lanka-vows-to-introduce-sweeping-police-reforms/755666>> accessed 12 November 2023

¹¹ Kong Phallack, "Overview of the Cambodian Legal and Judicial System and Recent Efforts at Legal and Judicial Reform," in, Hor Peng, Kong Phallack and Jörg Menzel (eds.), *Introduction to Cambodian Law* (Phnom Penh: Konrad-Adenauer-Stiftung, 2012) 7

¹² Dolores A Donovan, 'Cambodia: Building a Legal System from Scratch' (1993) 27 *INT'L* 445

¹³ 'Southeast Asian Region Countries Law: Cambodia' (*Libguides.com*, 2016)

<<https://unimelb.libguides.com/c.php?g=930183&p=6721969#:~:text=The%20Cambodian%20legal%20system%20is,1953%20and%20up%20until%201975.>> accessed 12 November 2023

¹⁴ ICJ Global Redress and Accountability Initiative, ICJ Global Redress and Accountability Initiative (2017)

¹⁵ 'Causes of Impunity in Cambodia' (*Hrw.org*, 2023) <<https://www.hrw.org/reports/1999/cambo2/Cambo996-02.htm>> accessed 12 November 2023

manipulation.¹⁶

2. ROLE OF THE POLICE, FINDINGS ON POLICE ABUSE OF POWER, AND PUBLIC PERCEPTIONS

Despite the primary role of the police being to serve and protect, violations by the police in terms of procedure have ultimately led to negative public perceptions of this entity. All three countries note that levels of corruption within their police forces hinder the ability of the police to effectively change the distrusting perception of the public towards them. In addition, an overview of the police forces of the three jurisdictions showcases similar traits, power-hungry and corrupt, fused with a general disregard for procedures and a lack of respect for human rights. The abundance of research confirms the position that police violations tend to be more apparent in difficult governance environments. Apart from political instability, the poor socio-economic circumstances of police officers have also been a key factor in abuse at the hands of the police.

2.1 Indonesia

Since the police and military were separated in 1999, the Indonesian National Police, known in the country as 'Polri' have been allowed to develop into a more civilian force focused on conducting criminal investigations in a domestic role, rather than being part of a military force designed to preserve state authority.¹⁷ Many hoped the split and Indonesia's embrace of democracy would create the conditions for police reform.¹⁸ Much work, however, is still needed.

The last half of 2022 has seen Polri beset by a series of rolling scandals that have exposed police negligence and brutality to the world.¹⁹ The events showcased that corruptive attitudes and violative actions amongst most of the police officials were being formed from the higher rungs of the institutional ladder, which trickled downward, making it a fervent issue to be addressed.

Arbitrary Arrests

The law prohibits arbitrary arrest and provides for the right of any person to challenge the lawfulness

¹⁶ 'Crime, Police And The Justice System In Cambodia' (*Factsanddetails.com*, 2014) <https://factsanddetails.com/southeast-asia/Cambodia/sub5_2d/entry-2907.html#:~:text=of%20using%20torture.-> accessed 12 November 2023

¹⁷ ICG, Indonesia: National Police Reform (Asia Report No. 13, 2001)

¹⁸ Llewellyn A, 'From Murder to Stadium Crush: Can Indonesia's Police Reform?' (*Al Jazeera*, 20 March 2023) <<https://www.aljazeera.com/news/2023/3/20/from-sambo-to-kanjuruhan-can-indonesias-police-reform>> accessed 12 November 2023

¹⁹ Baker J, 'The End of Police Reform' (*Indonesia at Melbourne*, 15 November 2022) <<https://indonesiaatmelbourne.unimelb.edu.bau/the-end-of-police-reform/>> accessed 12 November 2023

of their arrest in court.²⁰ In Indonesia, the power to issue a warrant for arrest and detention is solely under the investigator's discretion; generally, the investigator is part of the police institution.²¹ No other authorities, such as prosecutors or judges, determine and review substantively the legality of the urgency and the grounds of arrest and detention. However, occurrences of arbitrary arrests are common when they are used as a tool to silence dissent and suppress opposition, creating a climate of fear and intimidation. Individuals mostly affected tend to be human rights defenders, journalists, etc.²²

A recent example of illegal arrests was when, in February 2023, three human rights defenders were forcibly arrested by the police, which prompted the Asian Human Rights Commission to write an open letter to the Chief of the National Police, seeking to immediately halt the investigation and prosecution of the three activists. The Commission noted that based on the information received, the Police had failed to show an assignment letter, or arrest warrant to state the reasons for the arrest, a brief description of the alleged crime, and where they were going to be taken, thereby violating the right stipulated in Article 18 of the KUHAP. The Commission also referred to Article 17 of Police Regulation No. 8 of 2009 which the police violated by following improper procedure. In multiple cases, the police have used vague and overly broad laws to justify these arrests, such as the blasphemy law or the electronic information and transactions law.²³

Arbitrary Detention

Detention in police stations is still common despite the requirement that only different authorities should be responsible for housing detainees. This practice is also against the Criminal Procedure Law's regulation, which only allows detention in Police stations when detention facilities are unavailable. Detention rooms in the police station, the Prosecutor's Office, and the Court should only be used for transit and not as a permanent place of detention.

In 2022, there were multiple media and NGO reports of police temporarily detaining people for criticizing the government, participating in peaceful demonstrations, and other nonviolent activities.²⁴ Regardless of whether they arrest suspects legally or otherwise, the police have been guilty of subjecting these people to excessive force during their detention period or keeping them in harsh,

²⁰ US Department of State, Country Reports on Human Rights Practices for 2022 - Indonesia (2023) 7

²¹ ICJR and Rumah Cemara, Police Violence and Criminal Justice Procedure Law Issues (Submission for UPR Indonesia, Session 41 of the Working Group on the UPR)

²² Ibid (n 20)

²³ Amnesty International, SILENCING VOICES, SUPPRESSING CRITICISM THE DECLINE IN INDONESIA'S CIVIL LIBERTIES (2022)

²⁴ Ibid (n 20) 9

unsuitable conditions. In Indonesia, incommunicado detention is recognized in practice under drug-related policies, counter-terrorism laws, separatist movements, and political activism. According to Article 28 of the Law of Terrorism, investigators can arrest someone for up to 21 days in total.²⁵ The Law of Narcotics also has the potential to cause incommunicado detention based on the provision of a period of arrest that can reach up to 3x24 hours, which can also be extended for another 3x24 hours.²⁶ Such detention measures become dangerous because they open up individuals to the possibility of being tortured, or being subjected to cruel, inhumane mistreatment. Moreover, there is no arrangement in the KUHAP regarding where to place suspects during the long period of arrest, such as in drug-related cases and terrorism cases. A lack of control mechanisms to oversee detention facilities has created room for torture and abuse. Amnesty International received many credible reports that individual units within the Criminal Investigation Divisions were using unofficial places of detention for the detention, extortion, and interrogation of criminal suspects.²⁷

Torture, Ill-treatment, and Brutality

There are countless reports of torture and other ill-treatment against various groups. Despite the Constitution prohibiting such practices, the Commission for Disappeared and Victims of Violence counted 16 deaths in the 50 cases of alleged torture and other abuse by security forces investigated from May 2021 to June 2022.²⁸ In 2021, Legal Aid Institution (LBH) Masyarakat, found that 22 out of 150 people who were part of the legal counselling in Jakarta were tortured during the investigation stage.²⁹ Additionally, the National Commission on Human Rights from 2020 to 2021 has received a report on the death of 11 detainees in police stations, happening less than 24 hours after the arrests were made.³⁰ On September 2022, four police officers allegedly tortured Yulius Yatu after he had publicly criticized the police response to a recent protest against rising fuel prices in North Maluku on social media.³¹ Another incident of torture was witnessed when a widely circulated video showed a West Papuan boy being terrorised into a confession by officials using a snake, which prompted the United Nations to call for swift and impartial investigations against the perpetrators.³² The deaths of Joko Dodi Kurniawan, Rudi Efendi, and Hermanto were suspected to have been caused by torture,

²⁵ Terrorism Act No. 5 of 2018, Article 28.

²⁶ Joint Stakeholders Report, On Issues Relating to the Revision of Penal Code and Situation of Torture in Indonesia Available at https://www.upr-info.org/sites/default/files/documents/2017-04/js30_upr27_idn_e_main.pdf

²⁷ Amnesty International, UNFINISHED BUSINESS POLICE ACCOUNTABILITY IN INDONESIA (2009) 27

²⁸ Ibid (n 20) 2

²⁹ Yosua Octavian dan Aisya Humaida, 'Potret Penahanan: Minim Bantuan Hukum, Masih Terjadi Penyiksaan, dan Pemerasan' (2021) 8

³⁰ Komisi Nasional HAM, Catatan Kekerasan Negara 2020-2021 (2022)

³¹ Ibid (n 20) 4

³² Helen Davidson, 'UN Urges Torture Inquiry after Indonesia Police Put Snake on West Papua Boy' (*The Guardian*, 23 February 2019) <<https://www.theguardian.com/world/2019/feb/23/un-urges-torture-inquiry-after-indonesia-police-put-snake-on-west-papua-boy>> accessed 13 November 2023

resulting in three police officers being charged with their deaths.³³

Polri has faced multiple allegations of police brutality and excessive force in the past. Being rarely charged and tried for such actions, the police leadership often say such incidents will be evaluated and investigated but takes no concrete action. The existing regulation on the use of force in duties, especially firearms, was never robust as it could only be found in a Head of Police Institution's Regulation Number 1/2009. Mandatory control mechanism by the judicial body for extrajudicial killing cases is unavailable in the current Criminal Procedure Law.³⁴ Polri has misused 'less-lethal weapons' such as tear gas and water cannons, usually as a first choice and not as a last resort pointing to a general culture of excessive force among police that needs to be addressed.³⁵ Considering statistics, in 2020, Amnesty Indonesia verified 51 videos depicting 43 separate incidents of violence by Polri during protests against the Omnibus Law on Job Creation.³⁶ Similarly, according to the Indonesian Legal Aid Institute, at least 52 people died at protests in 2019 alone, with few of these deaths ever being prosecuted in court.³⁷ KontraS alleged police used excessive force in at least 118 instances. In October 2022, the police fired at least 11 rounds of tear gas at fans in Kanjuruhan Stadium as a form of crowd control following a soccer match, prompting a fatal crash that resulted in 135 deaths, including 43 children.³⁸

Police Corruption

Corruption and scandals within the Indonesian police force are prevalent. In a comparative analysis carried out by Jon S.T. Quah, statistics demonstrated Indonesia's police corruption as a serious issue compared with other Asian countries like Japan, South Korea and Taiwan. It was found that low salaries of police officers, red tape, lack of meritocracy in recruitment and promotion, and lack of accountability of police officers are usually the driving forces of corruption within the Police institution.³⁹

³³ ICJR, "Penahanan di Kantor Kepolisian Harus Dihapuskan", Available at <https://icjr.or.id/penahanan-di-kantor-kepolisianharus-dihapuskan/>

³⁴ Ibid (n 21)

³⁵ Aisyah Llewellyn, 'Indonesia's Police on Trial' (*The Diplomat.com*, 27 October 2022) <<https://thediplomat.com/2022/10/indonesias-police-on-trial/>> accessed 13 November 2023

³⁶ 'Indonesia: Investigate Verified Evidence of Police Violence during Omnibus Law Protests' (*Amnesty International Indonesia*, 2 December 2020) <<https://www.amnesty.id/indonesia-investigate-verified-evidence-of-police-violence-during-omnibus-law-protests/>> accessed 13 November 2023

³⁷ 'At 50, Indonesia's Legal Aid Institute Continues to Stand on the Side of Victims' (*The Conversation*, 27 October 2020) <<https://theconversation.com/at-50-indonesias-legal-aid-institute-continues-to-stand-on-the-side-of-victims-148777>> accessed 13 November 2023

³⁸ Ibid (n 18)

³⁹ Quah, J.S., 'Combating police corruption in five Asian countries: a comparative analysis. *Asian Education and Development Studies*' (2020) 9(2) 197-216

A *Sambo's case* is one of the biggest police scandals to hit Indonesia recently. Ferdy Sambo, a former inspector general in the National Police, was found guilty of the premeditated murder of his adjutant, Brig. Gen. Nofriansyah Yosua Hutabarat, as well as attempting to destroy evidence in early 2023.⁴⁰ This event is among a string of incidents in the recent past to have stirred public dissatisfaction and has led to the Indonesian Police being regarded as among the most corrupt and least trustworthy public institutions in Southeast Asia's largest economy.⁴¹ The case has uncovered the involvement of other police personnel who attempted to cover up the crime, and committed ethical violations after they tampered with evidence which included removing CCTV footage and filing misleading crime scene reports, thereby leading to an obstruction of justice. Although the *reformasi* regimes established the Corruption Eradication Commission in 2003 to prevent and prosecute corruption in law enforcement institutions, prosecuting high-ranking police officers has been no easy task.⁴² Despite its success in 2012 in prosecuting Inspector General Djoko Susilo for graft and money laundering, its failure in 2015 to prosecute Commissaries General Budi Gunawan who was a suspect in a graft case has led the public to believe that the Commission is not as strong as it claims to be.

Public Perceptions

Negative narrations about the police are plenty; brutality, violations of the law, criminal activities, corruption, sexual harassment, extortion and even murder have led the Indonesian public to lose their faith in their police. The little quantitative work undertaken on public perceptions of police indicates extremely low levels of public trust and confidence.⁴³ *If You Lose Your Goat: Public Perceptions of Police in Indonesia*, offers a unique qualitative analysis where public opinion toward the police is generally unfavourable. It critically explores what Indonesians think of their police service, and what they want from Polri in the future. The findings indicate that while people loathe police corruption, eradicating it is not cited as a top priority. Furthermore, while people express a desire to have a police force that can deter, investigate, and solve crimes, these factors do not dominate thinking.⁴⁴ Rather, judgements are formed by the public primarily based on how they, or people they know, are treated by the police, sentiments encapsulated in notions of procedural justice policing.⁴⁵

⁴⁰ ERWIDA MAULIA, 'Former Indonesian Police General Gets Death for Killing Subordinate' (*Nikkei Asia*, 13 February 2023) <[⁴¹ Ibid](https://asia.nikkei.com/Politics/Former-Indonesian-police-general-gets-death-for-killing-subordinate#:~:text=Ferdy%20Sambo%2C%20a%20former%20inspector,residence%20in%20Jakarta%20last%20July.> accessed 13 November 2023</p></div><div data-bbox=)

⁴² Fachrizal Afandi, 'Who Will Clean up Indonesia's Dirty Cop Problem?' (*The Jakarta Post*, 9 December 2022) <<https://www.thejakartapost.com/opinion/2022/12/09/who-will-clean-up-indonesias-dirty-cop-problem.html>> accessed 13 November 2023

⁴³ Muradi, *Politics and Governance in Indonesia: The Police in the Era of Reformasi* (Routledge, 2014) 39

⁴⁴ Davies, S.G., Buttle, J. and Meliala, A., 'If You Lose Your Goat: Public Perceptions of Police in Indonesia' (2015) 6(2) *Journal of Social Science Research* 1036-1046.

⁴⁵ T.R Tyler, *Why People Obey the Law* (Yale University Press, 1990) 57

2.2 Sri Lanka

The Sri Lankan police force, descended from a legacy of 150 years of British colonialism, still functions with officers who are poorly paid, marginally trained, and inadequately equipped.⁴⁶ Police powers are wide and tend to change depending on the rank of the officer. Government security forces have a long history in Sri Lanka of committing serious abuses with impunity and have rarely been held to account for their transgressions.⁴⁷ In 2022, peaceful anti-government protests were held around the country amid demands that President Gotabaya Rajapaksa resign, as the country suffered its worst economic crisis in decades. The protests resulted in many fundamental rights violations at the hands of the Police.

Arbitrary Arrest

The 1978 Constitution of the Democratic Republic of Sri Lanka guarantees in Article 13(1) that “no person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.” This provision applies to citizens and non-citizens. Even though the Criminal Procedure Code allows for arrests without a warrant for cognizable offences, it is the alarmingly broad and powerful provisions of the PTA, that have been the main cause of arbitrary arrest and detention. The aftermath of the 2019 Easter Sunday bombings saw the arrest and indictment of five prominent Muslims in 2020 and 2021 under the PTA for their alleged involvement in the attacks. Advocates on behalf of these individuals claimed the government had been unable to produce credible evidence of their alleged connections to terrorist activity.⁴⁸ Arbitrary arrests, harassment, surveillance, and other draconian crackdowns of peaceful protesters, primarily of protest leaders,⁴⁹ were a common occurrence during the ‘Aragalaya’ of 2022; protests aimed at toppling the Rajapaksa presidency.⁵⁰

Arbitrary Detention

The PTA allows suspects to be detained for extended periods, as opposed to the 24-hour maximum provided for in the general law. Keeping in line with the political unrest, a recent example of wrongful

⁴⁶ N Ratnapala, *Police of Sri Lanka: Police-Public Relations* (Office of International Criminal Justice, 1988)

⁴⁷ International Commission of Jurists, “Authority without Accountability: The Crisis of Impunity in Sri Lanka,” (2012) 1

⁴⁸ US Department of Justice, Sri Lanka Human Rights Report 2022 (2023) 12

⁴⁹ ‘Sri Lanka: Heightened Crackdown on Dissent’ (*Human Rights Watch*, 2 August 2022)

<<https://www.hrw.org/news/2022/08/02/sri-lanka-heightened-crackdown-dissent>> accessed 13 November 2023

⁵⁰ Aan48)ya Wipulasena and Hannah Ellis-Petersen, ‘Sri Lankan Government Accused of Draconian Treatment of Protesters’ (*the Guardian*, 5 August 2022) <<https://www.theguardian.com/world/2022/aug/05/sri-lanka-police-draconian-protesters-wickremesinghe>> accessed 13 November 2023

detention was in August 2022, when the Police detained Wasantha Mudalige, a student activist. As convenor of the Inter-University Students' Federation, he had taken a prominent part in the protests. Despite having produced no evidence of any involvement in “terrorism,” the authorities have used extraordinary powers under the said Act to keep Mudalige in detention. Only on December 14 of the same year was he produced before a magistrate. During detainment, he was held in solitary confinement and in poor conditions, which can violate the prohibition on torture or other ill-treatment under international human rights law.⁵¹

A 2020 report by the constitutionally mandated Human Rights Commission of Sri Lanka found that, as of September 2018, at least 29 PTA prisoners had spent 5 to 10 years on pre-trial detention, and 11 had spent 10 to 15 years on remand. The commission said the longest period a person had been in remand before trial was then 15 years.⁵² In 2017, the UN Working Group on Arbitrary Detention identified significant challenges to the enjoyment of the right to personal liberty, resulting in arbitrary detention across the country. The preliminary findings indicated that there are no effective safeguards against arbitrariness and there is an urgent need to strengthen mechanisms for independent monitoring and oversight.⁵³

Torture, Ill-treatment, and Brutality

Despite the constitution's prohibition of such practices, authorities continue to employ them. According to Member of Parliament, M. A. Sumanthiran, Sri Lanka is one of the worst countries for torture by the police.⁵⁴ Using the PTA, the Police have enabled them to extract false confessions through torture and other cruel, inhumane, degrading treatment. While the general law deems confessions given to a police officer to be inadmissible, the PTA on the other hand admits confessions given in police custody.⁵⁵ Another report published by Human Rights Watch (HRW) titled ‘*We live in constant fear*’ explored cases of alleged atrocities of the police forces in Sri Lanka. The summary of

⁵¹ ‘Sri Lanka: End Arbitrary Detention of Student Activist’ (*Human Rights Watch*, 16 January 2023) <<https://www.hrw.org/news/2023/01/16/sri-lanka-end-arbitrary-detention-student-activist-0>> accessed 13 November 2023

⁵² “‘In a Legal Black Hole’” (*Human Rights Watch*, 7 February 2022) <<https://www.hrw.org/report/2022/02/07/legal-black-hole/sri-lankas-failure-reform-prevention-terrorism-act>> accessed 13 November 2023

⁵³ ‘Sri Lanka Must Urgently Implement Reforms to End Arbitrary Detention, UN Rights Experts Say’ (*OHCHR*, 15 December 2017) <<https://www.ohchr.org/en/press-releases/2017/12/sri-lanka-must-urgently-implement-reforms-end-arbitrary-detention-un-rights>> accessed 13 November 2023

⁵⁴ Shania Dedigama, ‘Police Brutality and Corruption: The Rot Starts at the Top’ (*Groundviews*, 20 November 2022) <<https://groundviews.org/2022/11/20/police-brutality-and-corruption-the-rot-starts-at-the-top/>> accessed 13 November 2023

⁵⁵ ‘A Confession under Duress: The Nallarattnam Singarasa Case’ (*Asian Human Rights Commission*, 2023) <<http://www.humanrights.asia/resources/journals-magazines/article2/special-edition-un-human-rights-committee-decisions-on-communications-from-sri-lanka/a-confession-under-duress-the-nallarattnam-singarasa-case/#:~:text=The%20PTA%20provides%20for%20the,under%20threat%E2%80%9D%20on%20the%20accused.>> accessed 13 November 2023

the report stated, “We found that police frequently use torture to try to obtain confessions rather than undertaking the more difficult and time-consuming process of gathering evidence through investigations.⁵⁶ In 2022, Ahnaf Jazeem, accused of promoting ‘religious extremism’ was arrested and detained whereby he was threatened and forced into a confession.⁵⁷ From January to September 30 2022, the HRCSL documented 291 complaints of torture, compared with 302 for all of 2021.⁵⁸ The study also found that about 84 per cent of PTA prisoners are tortured after their arrest, and over 90 per cent of those were forced to sign a document in a language, Sinhala, they could not comprehend.⁵⁹

Sri Lankan police officers are rarely prosecuted for misconduct, including brutal force on citizens. In cases in which they are found guilty, only minor punishments or warnings are given. According to human rights groups, the police used excessive and unprovoked force against peaceful protesters, bystanders, and journalists during the anti-government protests in 2022. The security forces deployed tear gas, water cannon and rubber bullets, leaving at least 50 people injured.⁶⁰ Several journalists in the past have recalled accounts of other incidents where the police had shown little regard for the public and accused it of unwarranted use of force as well.⁶¹ In 2022 alone over 1,200 complaints were filed on trumped-up charges, abuse of power, assault, and torture.⁶² The police shootout in Kataragama, in 2018, stirred up public protests and raised questions about the use of firearms by the police.⁶³ Similarly, in 2011 and 2014, Roshan Shanaka and Indika Jayasinghe were shot dead by the Police respectively.⁶⁴ Moreover, in 2016, the Police came under public scrutiny when Sumith Prasanna, a youth died after allegedly being pushed off the third floor of a building.⁶⁵

Police Corruption

Corruption in Sri Lanka has been a perennial issue, emanating from the top echelons of political power to minor staff levels. Despite the establishment of the Commission to Investigate Allegations of Bribery

⁵⁶ “‘We Live in Constant Fear’” (*Human Rights Watch*, 23 October 2015) <<https://www.hrw.org/report/2015/10/23/we-live-constant-fear/lack-accountability-police-abuse-sri-lanka>> accessed 13 November 2023

⁵⁷ Ibid (n 52)

⁵⁸ Ibid (n 48) 7

⁵⁹ Ibid (n 52)

⁶⁰ ‘Protesters in Sri Lanka Face Excessive Force, Arbitrary Arrests and Attacks with Impunity’ (*Civicus Monitor*, 2022) <<https://monitor.civicus.org/explore/protesters-sri-lanka-face-excessive-force-arbitrary-arrests-and-attacks-impunity/>> accessed 13 November 2023

⁶¹ ‘Sri Lanka: Journalist Assaulted and Detained at Protest’ (*Ifj.org*, 31 July 2023) <<https://www.ifj.org/media-centre/news/detail/category/press-releases/article/sri-lanka-journalist-assaulted-and-detained-at-protest>> accessed 13 November 2023

⁶² Ibid (n 54)

⁶³ Piyumi Fonseka, ‘Shooting Incident in Kataragama: Villagers Look for Clues as Police Allegedly Breach Law’ (*Dailymirror.lk*, 25 January 2018) <<https://www.dailymirror.lk/article/Shooting-incident-in-Kataragama-Villagers-look-for-clues-as-police-allegedly-breach-law-144628.html>> accessed 13 November 2023

⁶⁴ The Daily Mirror, Editorial, 27th January, 2018.

⁶⁵ Ranil Wijayapala, ‘Was He Pushed or Did He Fall?’ (*Sundayobserver.lk*, 17 January 2016) <<https://archives.sundayobserver.lk/2016/01/17/sec05.asp>> accessed 13 November 2023

or Corruption, a dedicated body set up for the independent investigation of bribery and corruption, progress has been slow.⁶⁶ According to the Global Corruption Barometer for Sri Lanka by Transparency International in 2019, 80% of respondents identified corruption to be a major problem in Sri Lanka and 47% opined that the government was doing very badly in addressing it. Interestingly, the report noted that despite the high level of perceived corruption in the police, over half the respondents trusted the police. The belief that police officers are frequently paid bribes for traffic offences could have resulted in the high level of perceived corruption in the police; whereas the high degree of trust in the police could be attributed to the police force in general.⁶⁷ However, in two public surveys taken in 2020, the police topped the sector as the most corrupt on the Island while as a percentage of total respondents, 50% of them, unprompted, selected the Police as one of the top three most corrupt sectors. A study done in 2012 indicated that a greater percentage (61.3%) of police respondents viewed the insufficiency of their monthly remuneration as a factor which influences corruption-headed behavior.⁶⁸

Public Perceptions

Among the damaging legacies of Sri Lanka's civil war was the erosion of trust between citizens and police officers across the country. This was predominant in the Northern Province, which endured the most violence, and in the Eastern Province. While some of this sentiment remains today despite the war ending in 2009, there is also dissatisfaction in the Southern part of the country concerning how the police interact with members of the public.⁶⁹ International attention and criticism of the county's abusive police system has had little impact and many still live in fear of police authorities or despise them.

2.3 Cambodia

In the mission of the Cambodian National Police, it is stated that the police are to work together to serve and protect the people. In reality, a different truth unfolds. Cambodia's Police are held to be notoriously corrupt and inept. In addition to the Cambodian National Police, there exists another police force: the '*gendarmerie*' which is a primarily military force 'under the authority of the RGC

⁶⁶ Verite Research, Insights for Mitigating Corruption: Summary Findings (2019) 13

⁶⁷ Transparency International Sri Lanka, GLOBAL CORRUPTION BAROMETER 2019 SRI LANKA (2019) 11

⁶⁸ Silva, G.R.P., 'Corruption perception of selected Sri Lankan establishment: a case of Sri Lanka police' (2012) 1st Annual International Research Conference

⁶⁹ Johann Rebert, 'Community Policing in Sri Lanka: A Foundation for Wider Police Reform?' (*EU-CIVCAP*, 1 March 2017) <<https://eu-civcap.net/2017/03/01/community-policing-in-sri-lanka-a-foundation-for-wider-police-reform/>> accessed 13 November 2023

Ministry of Defence but is placed directly under the command of the Prime Minister'.⁷⁰ The Cambodian Criminal Procedure Code provides the Gendarmerie with the same powers of arrest as those held by the Judicial Police. Grave concerns have been raised regarding the impact on citizens' rights by the significant functional overlap of these two institutions. Cambodia's 'safety from the State' rights, which is a collection of selected civil and political rights that foster people's physical integrity has often shown unsatisfactory numbers as law enforcement agencies pay scant respect to the rights of its people.⁷¹

Arbitrary Arrests

Being a persistent issue in Cambodia, it is used often as a tool of repression against political opponents, activists, and journalists who dare criticize the government. By late 2022, at least 49 arbitrary arrests, including 40 political activists, one journalist, and eight land rights activists were recorded. It is to be believed that the actual number of arbitrary arrests is higher as victims in rural areas may not have filed complaints due to the difficulty of travelling to the offices of human rights NGOs or due to concern for their family's safety.⁷² 'Incitement' has been used as an arbitrary charge to suppress and punish those who speak out of turn about the government in the same year, new incitement charges against at least 15 political activists, union members, and journalists were filed. According to a report by Human Rights Watch, there were at least 30 cases of arbitrary detention in 2019 alone. The same report also highlights that many of these arrests were made without proper warrants or due process.⁷³

Arbitrary Detention

The Cambodian Criminal Procedure Code provides for due process rights for detainees and other persons deprived of their liberty whereby pre-trial detention is allowed for up to 18 months with possible extension by permission from a judge.⁷⁴ However, many are detained for longer periods than the law prescribes. The arbitrary arrests and detention of trade union leader, Chhim Sithar in December of 2022 called on the Cambodian Police for a breach of human rights law.⁷⁵ Interestingly,

⁷⁰ LM Hay, 'Institutions for the rule of law and human rights in Cambodia' (2006) 5(1) Asian Human Rights Commission

⁷¹ 'Cambodia: UN Body Reviews Civil and Political Rights Situation amid Intensified Government Repression' (*International Federation for Human Rights*, 7 March 2022) <<https://www.fidh.org/en/region/asia/cambodia/cambodia-un-body-reviews-civil-and-political-rights-situation-amid>> accessed 13 November 2023

⁷² US Department of Justice, Human Rights Report Cambodia 2022 (2023) 6

⁷³ 'Cambodia: Wave of Opposition Arrests' (*Human Rights Watch*, 20 October 2019)

<<https://www.hrw.org/news/2019/10/20/cambodia-wave-opposition-arrests>> accessed 13 November 2023

⁷⁴ Sun, V., 'Pre-Trial Detention and Its Alternatives in Cambodia: A Critical Study of National Practice, Criminal Procedure Code, and Its Adherence to International Human Rights Standards' (2021)

⁷⁵ 'Cambodia: Arrests of Strikers May Amount to Breach of Human Rights Law – UN Experts' (*OHCHR*, 5 January 2022)

<[https://www.ohchr.org/en/press-releases/2022/01/cambodia-arrests-strikers-may-amount-breach-human-rights-law-un-experts#:~:text=GENEVA%20\(5%20January%202022\)%20%2D,law%2C%20UN%20experts%20said%20today.>](https://www.ohchr.org/en/press-releases/2022/01/cambodia-arrests-strikers-may-amount-breach-human-rights-law-un-experts#:~:text=GENEVA%20(5%20January%202022)%20%2D,law%2C%20UN%20experts%20said%20today.>) accessed 13 November 2023

the Cambodian police have turned to making illegal arrests and arbitrarily detaining individuals under the country's drug-related policies⁷⁶

In 2020, the United Nations called on the government to release all political prisoners and end the practice of arbitrary detention. However, despite international pressure, the Cambodian government has shown little willingness to change its approach. According to the UN Office of the High Commissioner for Human Rights, as of December 2022, there were at least 4,000 instances of arbitrary detention.⁷⁷

Torture, Ill-treatment, and Brutality

Cambodia acceded to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1992. Nonetheless, cases of torture are continuously reported, particularly in police custody.⁷⁸ More than 500 allegations of torture or ill-treatment by police and prison officials since 2008 have been reported. In 2022, physical and psychological abuse of detainees and inmates at the hands of police officials during interrogation reportedly continued.⁷⁹ A released prisoner reported that police in Siem Reap Province beat him to force a confession that he stole property from a school. In contrast to the stark, short-lived and sometimes random brutality meted out in police custody, it is reported that the abuse in prison is more likely to be sustained, targeted and premeditated.⁸⁰

In 2020, a police arrest video drew sharp criticisms and comparisons to the murder of George Floyd by US police officials, which showed an officer placing his knee on the suspect's neck.⁸¹ While the use of excessive force was not acknowledged, the Police admitted that "unprofessional acts" were committed, and the individuals involved would receive punishment. Interestingly, Phnom Penh Police Chief Sar Theth stated, when questioned about the comparison, that Cambodia was better than the US as the "person did not die". This paints a grim picture of the accepted normalcy of the police utilizing excessive means of force.

⁷⁶ Hasselgård-Rowe, J. 'Detaining people who use drugs in Cambodia: A dual-track system' (2021) *International Journal of Drug Policy*,

⁷⁷ *Ibid* (n 72) 5

⁷⁸ Civil Rights Defenders, *Human Rights in Cambodia-A Country Report* (2015) 3

⁷⁹ *Ibid* (n 72) 3

⁸⁰ Seiff A and Kuch Naren, 'Police Brutality a Serious Concern in Cambodia, Says Rights Monitor' (*ucanews.com*, 26 June 2014) <<https://www.ucanews.com/news/police-brutality-a-serious-concern-in-cambodia-says-rights-monitor/71257>> accessed 13 November 2023

⁸¹ Narin S, 'Cambodian Arrest Video Draws Comparisons to Police Excesses in George Floyd Case' (*Voice of America*, 2 July 2020) <<https://www.voacambodia.com/a/cambodian-arrest-video-draws-comparisons-to-police-excesses-in-george-floyd-case/5485997.html>> accessed 13 November 2023

Police Corruption

A pervasive culture of impunity continues in Cambodia and corruption is rampant. Ranking as one of the world's most corrupt countries, an extensive forensic investigation launched found that corruption stretches far beyond the country's borders, all the way to Australia.⁸² According to Transparency International's Global Corruption Barometer in 2015, more than half of Cambodians perceive their police to be corrupt,⁸³ and many lack faith in the police's ability to maintain law and order. In 2017, Kampong Thom, a provincial police chief was removed from office after allegations surfaced that bribes were demanded by him from officers under his command in return for promotions.⁸⁴ More recently, the police commissioner of the Southeastern Province of Svay Rieng, Koeng Khorn was accused of corruption by 28 of his subordinates.⁸⁵

Public Perceptions

In the eyes of the public, the police constitute a threat to their safety and security; they are mistrusted and regarded as criminals.⁸⁶ In a survey conducted to examine the findings about security in Phnom Penh and public perception of security, the majority response was the lack of confidence in the Police, authorities and courts to adequately protect them.⁸⁷

3. POLICE RELATIONSHIP WITH THE JUDICIARY

All three countries have in theory accepted that the police role is to enforce the law and the role of the judiciary is to uphold the law. However, in practice, the lines are blurred, and encroachment is evident, especially in cases pertaining to criminal law. In an interview with a Cambodian Court Official, part of the reason as to why the police and courts fail to function in sync is because the Police view

⁸² Mary Ann Jolley, 'Threats and Corruption: Behind the Scenes of Cambodia's Election Crackdown' (*Al Jazeera*, 13 July 2018) <<https://www.aljazeera.com/features/2018/7/13/threats-and-corruption-behind-the-scenes-of-cambodias-election-crackdown>> accessed 13 November 2023

⁸³ Ibid (n 67)

⁸⁴ Buth Reaksmeay Kongkea, 'Police Chief Sacked in Corruption Scandal' (*Khmer Times*, 27 March 2017) <<https://www.khmertimeskh.com/15461/police-chief-sacked-in-corruption-scandal/>> accessed 13 November 2023

⁸⁵ 'Cambodian Provincial Police Accuse Their Boss of Corruption, Again' (*Radio Free Asia*, 14 February 2022) <<https://www.rfa.org/english/news/cambodia/police-02142022185934.html>> accessed 13 November 2023

⁸⁶ 'Police Abuses in Cambodia' (*Asian Human Rights Commission*, 2023) <<http://www.humanrights.asia/resources/books/monitoring-the-right-for-an-effective-remedy-for-human-rights-violations/police-abuses-in-cambodia/#:~:text=In%20the%20eyes%20of%20the,as%20the%20following%20examples%20demonstrate.>> accessed 13 November 2023

⁸⁷ Meas Rasmey, Cheng Vichet and Kith Rathamony, A Survey on Public Perceptions of Security and Confidence on Crime regarding Pick-pocketing, Theft, Burglary and Robbery in Phnom Penh, Cambodia today Available at http://uc.edu.kh/paper_series/A%20Survey%20on%20Public%20Perceptions%20of%20Security%20and%20Confidence%20on%20Crime%20regarding%20Pick-pocketing,%20Theft,%20Burglary%20and%20Robbery%20in%20Phnom%20Penh,%20Cambodia%20today.pdf

the courts as lower than themselves.⁸⁸ Whether the same can be said about Indonesia and Sri Lanka is debatable but the clear lack of functional harmony between the two entities in the two countries may bear testament to such fact. A healthy relationship between the Police, the public prosecutor and/or the judiciary is vital as each could serve as a checking mechanism for the other. While it is true that each entity should remain independent to curb corruption, criminal justice, however, is not only achieved by a single institution but through the combined efforts of all and thus a certain degree of co-dependence is necessary. Therefore, collaboration among these parties is imperative to achieve a sound criminal legal framework and to ensure that the human rights of the people are not violated.

3.1 Indonesia

The constitutional amendments issued by the People's Consultative Assembly (MPR) in 2000 failed to regulate the relationship between the police, prosecution service and the judiciary. An investigator in a criminal case, who is generally part of the Police institution, has broad authority, ranging from opening criminal cases to conducting coercive measures such as arrest, detention, search, seizure, etc.⁸⁹ After initial investigations, the investigator submits a dossier to the prosecutor for examination and approval. It is seen that since the police prepare the dossier through independent investigations and have no input from the prosecutors; the role of the prosecutor is limited to merely accepting or rejecting the proposed dossier.⁹⁰ This can be attributed to the 1981 Code of Criminal Procedure, whereby the Suharto regime controlled the criminal justice system by positioning the police as the prosecuting authority at pre-trial hearings and the public prosecutor as merely the postman.⁹¹ As a result, case files tend to be reviewed and returned multiple times leading to inordinate delay which in turn causes damage to the working relationship between prosecutors and investigators.⁹² In certain cases, where the police believe their work to be done and the prosecutor refuses to certify the dossier as complete, the police simply choose to not proceed further and drop the case altogether.⁹³ The predictable result seen is the common lack of cooperation between the police and the prosecutor.

There also exists the issue of judges being too dependent on the suspects' written statements made by investigators, and ignoring facts revealed at trial, such as claims of torture during the investigation process. When a defendant raised a declaration of torture, the judge in the trial then would only

⁸⁸ Human Rights Watch, Interview with Banteay Meanchey Court official, Sisophon, March 5, 1999

⁸⁹ Ibid (n 21)

⁹⁰ R.M. SURACHMAN & JAN S. MARINGKA, PUBLIC PROSECUTORS OF INDONESIA (2006) 1-2

⁹¹ Fachrizal Afandi, 'Police a Missing Passenger in Indonesia's Reform Train' (*The Jakarta Post*, 1 October 2022)

⁹² PRICE WATERHOUSE COOPERS, REPORT OF THE GOVERNANCE AUDIT OF THE PUBLIC PROSECUTION SERVICES OF THE REPUBLIC OF INDONESIA (2001) 102

⁹³ Andi Hamzah, Draft Academic Bill: Code of Criminal Procedure 21 (2008) (unpublished manuscript, on file with author).

examine the investigator to ask for confirmation regarding how the investigation process was conducted.⁹⁴ Moreover, the existing judicial control mechanism for coercive acts at the hands of the police is limited in the form of the pretrial hearing, which merely has a narrow jurisdiction. The existing pretrial hearing is also limited to an administrative and post-factum assessment.⁹⁵

3.2 Sri Lanka

In Sri Lanka, criminal prosecutions are headed in the Magistrate courts and High courts. While proceedings are instituted in the Magistrate's Court in one of the following ways stated under Section 136 of the Code of Criminal Procedure, prosecutions in the High Court are instituted by the Attorney-General alone by way of indictment.⁹⁶ In the Magistrates Court, the police have the power to carry out prosecutions, unless the Attorney General takes over. Though public prosecutors do not play a role in the arrest and detention of suspects as it is a police function, it becomes necessary at times to advise the police regarding a *prima facie* case against the suspect and arrest the suspect thereafter. This allows the prosecution to be slightly more involved with the police. Though the prosecutor and police attempt to ensure a speedy trial, the backlog of cases often results in an inordinate amount of delay.⁹⁷

It has been noted in the past that the police have used their close ties with judges to influence judicial decisions. Fear of sanction by the Judicial Service Commission has undermined judges' willingness to move aggressively against the police. Entrenching this problem are informal local networks of contacts and collaboration between police, judges and the Bar. In part, due to these ties, there are no effective checks on any of the law enforcement institutions.⁹⁸

3.3 Cambodia

Though the country's judiciary is supposed to be independent and judicial power is not to be granted to the legislative or executive branches, it is rarely seen so. In practice, the police often wield far more power than the courts. Prosecutors do not exercise supervisory control over police, leading the police institutions to function under their own commanders. Article 36 of the Cambodian Criminal Procedure

⁹⁴ Zainal Abidin, et al., *Menyelisik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia* (2019) Institute for Criminal Justice Reform 89 - 90

⁹⁵ Supriyadi W. Eddyono, et.al., 'Pretrial Hearing in Indonesia: Theory, History, and Practice in Indonesia' (2014) Institute for Criminal Justice Reform 69

⁹⁶ DP Kumarasingha, *THE ROLE AND FUNCTION OF PROSECUTION IN SRI LANKA* (Resource Material Series No. 35) 119-120
⁹⁷ *Ibid* 128-130

⁹⁸ 'Sri Lanka's Judiciary: Politicised Courts, Compromised Rights' (*Crisisgroup.org*, 30 June 2009)

<<https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lanka-s-judiciary-politicised-courts-compromised-rights>> accessed 13 November 2023

Code requires Prosecutors to direct police investigations, but this is rarely adhered to in reality. Police officers often do not feel it is their role to prepare a report, investigate, or even enforce warrants and summonses. The crippling cooperation and lack of collaboration between the police and the judiciary often result in the poor implementation of criminal justice procedures. The desync between the police and the judiciary arises when the Police claim they have risked their lives to make an arrest, but criminals are allowed to escape due to the corruption and delay of the court. Even when arrest warrants are issued, the courts may still release suspects, alleging that the police have not provided adequate evidence or properly prepared the necessary paperwork. This release of defendants or suspects tends to create friction between the police and the courts as each party continuously criticizes the other.⁹⁹ The courts, on the other hand, require sufficient evidence to prosecute, which they say they often do not receive from the police.¹⁰⁰

4. EFFORTS TAKEN TOWARDS THE REFORMATION OF THE POLICE INSTITUTION

The Police in any country is imperfect which leads to governments undertaking reformative measures. However, positive change is snail-paced. What is evident from the three countries is the lack of an existing check and balance system between criminal justice institutions, accountability for the consequences stemming from excessive authority and failure to fully align with fundamental human rights principles. How have the police become synonymous with violence and corruption? What needs to be the tipping point for lasting structural change? Does the answer lie instead in more radical reform of the criminal justice system as a whole? What does a failing police force mean for democratic processes in a country? These burning questions need to be addressed before it is too late. Structural reforms and democratic accountability are needed to restore credibility and erase the perception that police 'exist for their enrichment', according to experts,¹⁰¹ but this has been an age-old discussion. More than once, calls generated for reform have fallen on deaf ears or reduced to lip service.

4.1 Indonesia

Having had a reputation for corruption and brutality, Polri has been undergoing what has been termed a self-guided institutional reform since the fall of President Suharto in 1998.¹⁰² Demands for 'reform'

⁹⁹ "Report on the Application of Civil and Political Rights in Conformance with Article 40 of the ICCPR," Kingdom of Cambodia (1999) para. 169

¹⁰⁰ Ibid (n 15)

¹⁰¹ Resty Woro Yuniar, 'Indonesian police scandals show Jokowi needs reforms to repair trust, critics say' (*South China Morning Post*, 19 October 2022) <<https://www.scmp.com/week-asia/politics/article/3196419/indonesian-police-scandals-show-jokowi-needs-reforms-repair-trust-critics-say>> accessed 13 November 2023

¹⁰² Ibid (35)

obscure the fact that Polri has been explicitly engaged in democratic police reform for more than 20 years to date.¹⁰³ To put the newly greased wheels of reform in motion, a new Penal Code was passed on December 6, 2022, which will in a few years replace the existing Criminal Code. However, it contains provisions that seriously violate international human rights law and standards.¹⁰⁴ Additionally, while some view *Sambo's case* as proof that public sentiment was heard, the somewhat uncommon delivery of swift justice faced critique as well. Polri regulations stipulate time limits for criminal investigators, with a maximum of three months for “highly complex crimes”. The police investigation report for the *Sambo case*, however, hit the prosecutor’s desk just five weeks after the day of the murder.¹⁰⁵ If then the mechanisms are in place to conduct investigations and commence trials without undue delay, why is it not extended to the 142,000 detainees sitting in pre-trial detention across Indonesia? *Sambo's case* made it evident that the legal structure is in place to deliver speedy justice, what the police lack is the capacity and interest and only use it as it should be used when backed by political affluents. Leading expert on Indonesian police affairs Jacqui Baker states that police reform is dead due to political elites having no incentives to reform the institution. On the contrary, such elites prefer a corrupt police force as they can easily push forward their political agendas without much push-back and thus there is no appetite on either side to clean up their act.¹⁰⁶

4.2 Sri Lanka

In Sri Lanka on the other hand, the possibility of substantive police reform has been questioned with cynicism. Many view the efforts at reform too formidable a task, that no one is willing to venture into. Besides this, Basil Fernando noted that an underlying fear lies that reformative initiatives to change the habits that have entered into the system and the incumbents of the system may cause such retaliation that the political leadership does not feel competent to deal with.¹⁰⁷ Since police abuses have mainly arisen from the provisions of the PTA, President Gotabaya Rajapaksa in 2022, published a bill to amend the act. Despite this gesture, the proposed amendments leave the most often abused provisions of the law intact. Even if enacted, it will do little to bring the Act into compliance with the country’s human rights obligations internationally.¹⁰⁸

¹⁰³ Ibid (n 19)

¹⁰⁴ Human Rights Watch, Indonesia: New Criminal Code Disastrous for Rights (2022)

¹⁰⁵ Ibid (n 19)

¹⁰⁶ Ibid (n 42)

¹⁰⁷ Basil Fernando, ‘SRI LANKA: Wild Politics and Brutal Policing - Asian Human Rights Commission’ (*Asian Human Rights Commission*, 28 June 2022) <<http://www.humanrights.asia/news/ahrc-news/AHRC-ART-019-2022/>> accessed 13 November 2023

¹⁰⁸ Ibid (n 52)

4.3 Cambodia

Cambodia, under the 1993 Constitution, adopted policies of liberal democracy, political pluralism and free market economics. To further develop these principles, a consistent legal system and sound law enforcement are required, and the Cambodian government undertook several attempts at command and structural reforms in the police force. These included the improvement of regulations for police personnel, institutional restructuring focused on changing the command structure of the police to allow for community involvement and effectiveness of leadership in the police service at large, capacity building focused on changing the command structure of the police in order to allow for community involvement and effectiveness of leadership in the police service at large, infrastructure support, enhancing the community policing, merging police services etc.¹⁰⁹ Infrastructures to support police education and training, achieving gender balance through the recruitment of newly young male and female police officers, as well as the government attempts at increasing police welfare have been a step in the right direction. Moreover, the Cambodia Criminal Justice Assistance Project has been working with the National Police with the main focus on improving the criminal justice system. However, these inputs were mainly in the form of training with unclear outcomes in the past and were criticized noting that lack of knowledge and skills within the Police was only a single factor in its level of performance, and that “organisational culture, workplace behaviour, poor supervision and management, and deeply ingrained prejudices and biases all play a part in underperformance and resistance to change.”¹¹⁰ Despite the reform initiatives proposed, the police force has remained weak and jaundiced.

5. PROPOSED RECOMMENDATIONS

Discussing the existing political system

A discourse of more fundamental issues such as the nature of the political system within which policing must take place is required when a dysfunctional policing system is a matter to be dealt with. Interestingly, scholars have noted that among the different types of non-democratic regimes, monarchies are seen as the least corrupt.¹¹¹ It is supposed that monarchs might have more incentives to keep corruption at bay to maintain a good reputation and ensure the survival of the regime.¹¹² The

¹⁰⁹ General Dr. Eng Kimsan, A Critical Study On The Factors Affecting The Effectiveness Of Police Leadership And Practices In Cambodia

¹¹⁰ AusAID, “Cambodia Criminal Justice Assistance Project CCJAP II: independent completion report” (2007) 14

¹¹¹ Kukutschka, R.M.B., ‘Anti-corruption strategies for authoritarian states’ (2018) 7 U4 Helpdesk Answer 1-18.

¹¹² R Fisman and M Golden, Corruption: What Everyone Needs to Know (OUP, 2017)

question is, why are democracies with such pride in freedom and liberty falling behind authoritarian rule in this regard?

Democracies allow for more freedoms in respect of rights as well as the freedom to exercise such rights freely. In a society where liberty is left unchecked, cracks begin to run in the foundation of law and order. When the exercise of freedom is taken too far, the police may be compelled to adopt the very methods the democratic society fought against. To combat this 'brutality' and protect liberty, placing restrictions on police is not a sufficient guarantee of freedom. Taken too far, they may even guarantee the opposite, as private interests reign free and/or citizens may turn to vigilantism. A democratic society must ask the question, "How efficient do we want the police to be?" Having traditionally been willing to sacrifice a degree of order for increased liberty, democratic societies experience a continued tension between the desire for order and the desire for liberty. The real question thus posed is then, "What am I willing to give up to remain reasonably protected?". It is impossible to choose one over the other, the balance between these varies depending on the context and period.¹¹³ Nevertheless, even if the citizen's freedoms are kept under control, having a police force whose power is too great poses a different kind of danger. There is a paradox in the fact that a democratic society needs protection from both *police* and *police*. This is one of the major challenges of democratic government rightly articulated by President James Madison in 1788 when he argued that "you must first enable the government to control the governed; and in the next place, oblige it to control itself."¹¹⁴ The review of the existing political system of each country must be considered on a case-by-case basis, as forms of government are diverse and not one size fits all. Overambitious reform programmes based on poorly adapted overseas models can compromise the long-term success of police reform.¹¹⁵ Regardless of that fact, the discourse on police reform and the existence of police corruption continues to be a common feature. It seems unlikely that substantive change will occur if governments focus only on the laws under which the Police act and fail to pay due consideration to the entire political system to which society is subject.

Revamping the police institution

Since the inception of the modern police institution, police reforms have been shaped by the need for a people-friendly, moral professional service, with the ability to secure citizens against aggressors

¹¹³ Amir, M. and Einstein, S. *Policing, security, and democracy: Theory and practice* (Office of International Criminal Justice, 2001)

¹¹⁴ 'Federalist 51' (*Bill of Rights Institute*, 2023) <<https://billofrightsinstitute.org/primary-sources/federalist-no-51>> accessed 13 November 2023

¹¹⁵ Marie Chene, *Anti-Corruption and Police Reform* (2010) 8

without violating their basic freedoms.¹¹⁶ This has been the common objective. In a letter sent to Sri Lankan Finance Minister Ravi Karunanayake by the Asian Human Rights Commission requesting urgent budgetary allocations for the Police, it was highlighted that in many countries, institutional reforms led to more humane police forces.¹¹⁷ Such reforms would fundamentally alter the structure of the Police entity and pave the way for the reshaping of its role and powers. Ideally, Code-based reform enjoys the capacity to produce positive change in a freer and more holistic manner, rather than piecemeal by precedent. Also, while there is enormous potential for code-based criminal procedure reform and its capacity to introduce new concepts into a criminal justice system, its success rests on legal actors being prepared to accept and internalize an entirely new conceptualization of their roles.¹¹⁸

For example, the Sri Lankan Police is archaic. The British, modelled the police to be a hierarchically organized, centrally commanded paramilitary force to pacify, and where necessary, discipline the indigenous population. This style of militaristic policing protected no human rights but the interests of the colonizers alone. These outdated models have been replicated in all developed countries, opting to adopt practices of community policing instead.

In Indonesia, many have advocated for community policing as it is a people-centered approach that emphasizes respect for human rights, accountability, and partnership with the community. Implementation of it has been gradual in the country, as it has faced its share of challenges.¹¹⁹ Given the recent violations, calls for community policing have been persistent in Sri Lanka as well,¹²⁰ with its supporters claiming that such a policing technique emphasizes changes in organisational structures, including the way it is managed, its personnel, and its technology.¹²¹ Around 2015, the Cambodia Community Justice Assistance Partnership supported the Cambodian National Police to design and implement a program of community policing to improve the quality and effectiveness of police services at the community level. Tools were developed that were pilot-tested and subsequently found to be sound and productive which were then fully adopted and applied by the country's police.¹²² Most efforts of community policing tend to be hindered by a lack of prioritization of these new

¹¹⁶ Lundman, R. *Police and Policing: An Introduction*. (Holt, Rinehart & Winston press, 2010)

¹¹⁷ Wimalanath Weeraratne, 'SRI LANKA: Policing Sri Lanka's Police Force' (*Asian Human Rights Commission*, 1 February 2016) <<http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-006-2016/>> accessed 13 November 2023

¹¹⁸ *Ibid* (n 5)

¹¹⁹ Intan Fitri Meutia, *The Implementation of Community Policing in Indonesia* (2016)

¹²⁰ 'Introduction of Community Policing to Sri Lanka: Extending the Long Arm of the Law to a Friendly Hand for the Public' (*The Morning*, 4 May 2021) <<https://www.themorning.lk/articles/133904>> accessed 13 November 2023

¹²¹ 'Importance of Community Policing' (*Daily News*, 5 January 2023) <https://archives1.dailynews.lk/2023/01/05/features/294481/importance-community-policing#google_vignette> accessed 13 November 2023

¹²² Department of Foreign Affairs and Trade, *Cambodia Community Justice Assistance Partnership* (Doc 1, 2016)

practices by police leadership, the rotation to new posts of police officers who had championed the effort and were trained to implement it and limited resources to follow up on the concerns raised by citizens.¹²³

While it is commendable to see that all three countries have taken the first steps at transforming their policing system, it is important to note that community policing might not be the answer to all police-related issues. A study carried out by a group of collegiate researchers showed that the celebrated practice of community policing in recent decades may have few if any, positive impacts on communities in the Global South and critically examined its effectiveness.¹²⁴ The success of community policing relies on a set of contextual factors such as a minimum degree of order, a conducive political context and support from all legal and non-legal actors.¹²⁵ This study serves as a stark reminder that though community policing might be the ideal policy at the moment, where many continue to demand the reduction of police abuse and the reduction of crime, like all things, it needs to be taken with due consideration.

It would also be prudent to compare the methods implemented by other jurisdictions to reform their police and learn from them. For example, police reforms initiated in the UK during the 1980s mainly focused on the efficiency and effectiveness of their policing system and harped on innovations in police management and leadership styles.¹²⁶ The key elements of the police reforms in South Africa on the other hand, emerged in 1994 revolving around improving access to police services in communities that had been discriminated against during the apartheid regime.¹²⁷ These reforms focused on changing the command structure of the police to allow for more community involvement as well. These cases are a clear demonstration of how each country constructs a police system unique to them; the reforms being a reflection of the issues that require the attention of that particular country at that particular time.

Reforming the police education system

While some believe the answer to end police violence is to defund them, a shift from police training

¹²³ Blair, G., Weinstein, J.M., Christia, F., Arias, E., Badran, E., Blair, R.A., Cheema, A., Farooqui, A., Fetzer, T., Grossman, G. and Haim, D., 'Community policing does not build citizen trust in police or reduce crime in the Global South. *Science*' (2021) 374(6571) 3446.

¹²⁴ Ibid

¹²⁵ Groenewald, H. and Peake, G., 'Police reform through community-based policing: philosophy and guidelines for implementation' (2004) International Peace Academy

¹²⁶ Moran, J. 'Blue walls grey areas and cleanups: Issues in the control of police corruption in England and Wales (2005) *Journal of Crime, Law and Social Change* 57- 79

¹²⁷ Bruce, D. 'Democratic Reform of Police- Any Lessons for Kenya from South Africa?' (2003) Center for the Study of Violence and Reconciliation.

towards police education has long been advocated by international scholars as a mechanism for broader police reform.¹²⁸ The magnitude of police brutality cases in the United States has urged police reform, primarily through proper training and education. Sufficient training before being given powers of arrest, strengthening implicit bias education, ending the militarization of police training, requiring all police officers to attend a bachelor's degree program which emphasizes human behaviour and ending 'broken windows' police training are a few of the reforms suggested by the US Institute for Criminal Justice Training Reform.¹²⁹ It is necessary to encourage police officers to engage with the humanities and the social sciences because you need a human rights approach to enforce the law. Human rights violations are more likely to take place at the hands of the police when this disconnect exists. There needs to be an integration of academic criminology, criminal justice and human rights. If achieved it will undoubtedly be beneficial in assisting in changing the negative impression the public has of the police.

To what extent police education and training play in the making of a good police officer warrants further in-depth study but it cannot be ignored that an undeniable relationship between them exists. Interestingly, research on the impact of higher education on police constables in India produced generally negative results indicating that police officers who had completed higher education had more rigid value systems, were less interested in protecting the rights of citizens, and were indifferent towards legal boundaries.¹³⁰ However, this contradicts the findings from Western countries and highlights the limitations of perspectives that directly link higher education with improved police attitudes without an appreciation of the importance of socio-cultural contexts.¹³¹ Moreover, not only do socio-cultural contexts come into play but the processes of political reform and the pursuit of democratic police legitimacy in developing democracies have an effect as well.¹³² While citing better training and education is an obvious, reflexive and knee-jerk solution to contemporary police problems, a realistic view must be adopted bearing in mind the challenges and limitations. Corder in his *Education, Training and Police Reform*¹³³ argues that training, by itself, is not likely to have a

¹²⁸ Bayley, D. & Bittner, E. Learning the skills of policing. *Law and Contemporary Problems* (1984) 47

¹²⁹ Vision for a Path Forward' (*The Institute for Criminal Justice Training Reform*)

<<https://www.trainingreform.org/reimagining-police-training>> accessed 13 November 2023

¹³⁰ Scott, J., Evans, D. and Verma, A. 'Does higher education affect perceptions among police personnel: a response from India' (2009) 25(2) *Journal of Contemporary Criminal Justice* 214-236

¹³¹ PATERSON, Craig (2015). Higher education, police training, and police reform: a review of police-academic educational collaborations. In: KRATCOSKI, Peter C. and EDELBACHER, Maximilian, (eds.) *Collaborative Policing: Police, Academics, Professionals, and Communities Working Together for Education, Training, and Program Implementation*. CRC Press, 119-136.

¹³² Veic, P. and Mraovic, I. 'Police training and education: the Croatian perspective. *Police Practice and Research*' (2004) 5(2) *An International Journal* 137-148

¹³³ Corder, G. 'Education, Training, and Police Reform'. In: Schafer, J.A., Myers, R.W. (eds) *Rethinking and Reforming American Policing* (Palgrave Macmillan, 2022)

substantial impact on police performance since studies show that other police administrative systems, including supervision, leadership, and discipline have a more direct impact on the behaviour of police officers. It is only when these other systems are aligned with police education and training, can real change is likely to occur.

Amending necessary laws

Bad laws inevitably lead to bad policing as the scope of police powers is derived from these repressive laws. This is perfectly emphasized as “laws whose extremity is meant to correct all human wickedness cultivates that very wickedness”, by Montesquieu.¹³⁴ The police can be expected to be democratic when they act as authorized by law, and for them to do so, the laws they follow should incorporate progressive ideals and standards of international human rights. Although significant procedural and substantive legal changes will generate resistance by the Police as they perceive their authority being threatened or diminished by reform, the legal drafting process would offer the potential of something for everyone.

The Sri Lankan police, for example, continue to operate under a Police Ordinance drafted in 1895. Additionally, not only is it an outdated piece of legislation, but the larger issue it poses is the constant misinterpretation of the specifics of the Ordinance by the police to enhance their power over civil society. Scholars have also pointed out that the aftermath of the 1972 and 1978 republican constitutions of the country have led to the current state of the police as the constitutional framework itself was to displace the fundamental principle of the rule of law as a foundational principle of the legal system. What is wrong with the policing system is that it lacks a guiding principle to keep its organization together. That guiding principle can be nothing else except the principle of the rule of law.¹³⁵ In that case, constitutional reform is warranted. Most importantly, the extremely problematic PTA is in dire need of reform as an exclusive reliance is placed by the police on it to commit heinous crimes against the very people they have sworn to protect and rescue.

In Indonesia, impunity is baked into the Police Law No. 2 of 2002, placing Polri directly under the president, who on account of being the head of state, evades the burden of ministerial responsibility. This leaves the police functionally autonomous, and unchecked.¹³⁶ Moreover, the Police Law has continued to uphold Polri’s military nature despite not being part of the military. This can be attributed

¹³⁴ Gilmore, N. & Vickie, S. ‘Montesquieu’s Teachings of the Dangers of Extreme Corrections: Japan, the Catholic Inquisition, and Moderation. *The Spirit of the Laws*’ (2017) 111(3) *American Political Science Review* 460-470.

¹³⁵ *Ibid* (n 113)

¹³⁶ *Ibid* (n 19)

to the fact that the majority of the police tasks and powers in the current law were copied from the regulations concerning the military's role during the Suharto era.¹³⁷ Deriving authority from legislation which does not conform with the rule of law, it is unsurprising then that Polri applies a repressive security approach in their duties. KUHAP on the other hand, has not accommodated adequate arrangements for judicial scrutiny to control the police and this makes it harder to hold police officers accountable. Under the basic concept of Montesquieu's separation of powers, the three arms of government are meant to serve as checks and balances on each other to ensure the organs do not encroach upon the powers of the other or act beyond the powers of its own.¹³⁸ Similarly, the judiciary should be given provision to keep the Police under control.

Though Cambodia on the other hand, has progressed over the years after long turmoil, the time to repeal old laws is appropriate. The Government has noted that the difficulty in printing and circulating laws as well as translating laws into Khmer has been a challenge.¹³⁹ A major step forward would be to demarcate the powers of the National Police and Gendarmerie. Duality in any form is an unhealthy administrative practice. Parallely functioning entities competing to cover the same turf dissipate responsibilities and accountability.¹⁴⁰ Additionally, the administration of justice would considerably strengthen if measures were taken to resolve the issues in the basic laws, as clarifying the roles of the police and the judiciary would erase ambiguity.

Transparency and accountability mechanisms

The lack of transparent or comparable police data inhibits the public and policymakers' ability to fully comprehend and address problematic police practices and their consequences. Thus, to gain back the eroded trust and erase the fostered suspicions of the people, visibility into police practices must be provided. The UN Office of Drugs and Crime Handbook on "*Police Accountability, Oversight, and Integrity*" offers countries several tangible actions to build a culture of transparency and accountability within their police by encouraging reforms to be developed through public-police participation and not be simply prescriptive.¹⁴¹ Similarly, the "US Conference of Mayors Report on Police Reform and Racial Justice" in 2020 discussed extensively the need for transparency and accountability mechanisms to reinforce constitutional policing in the country. The recommendations put forth such as officer

¹³⁷ Ibid (n 95)

¹³⁸ R.G. Hazo, 'Montesquieu and the Separation of Powers' (1968) 54 ABAJ 665

¹³⁹ Rendak, N., Legal and Judicial Reform: Recent Developments and Prospects. Cambodia. (2006)

¹⁴⁰ the Report of the Office of the High Commissioner for Human Rights Mission to Assess the Current Situation of Criminal Justice in the Kingdom of Cambodia (1999)

¹⁴¹ UNODC, 'Handbook on Police Accountability, Oversight and Integrity' CRIMINAL JUSTICE HANDBOOK SERIES' (2017) Available at

<https://www.unodc.org/pdf/criminal_justice/Handbook_on_police_Accountability_Oversight_and_Integrity.pdf>

accountability to the public (external oversight),¹⁴² responsibility of the supervisor (internal accountability)¹⁴³ and utilization of technology such as body-worn cameras, might be worth looking at when considering police reform in Indonesia, Cambodia and Sri Lanka. Having an independent oversight body dedicated to external supervision of the police would be extremely useful to ensure transparency and accountability but the lack of initiative and support, resource constraints, and bribery amongst other variables may hinder the body from exercising authority independently and effectively. Moreover, collective efforts must be taken to eliminate any laws that impede the implementation of sensible accountability measures across the police force.

Stricter sanctions and enforcement rules

The purpose of police discipline is to help police officials serve the public while remaining within the framework of law, policy, procedures, training and organizational expectations for their behaviour.¹⁴⁴ In reality, a different truth unfolds allowing police corruption to manifest itself in a variety of ways, each requiring different types of anti-corruption interventions and sanctions. When officers stray, damaging the public confidence, measured consequences through punitive and preventive approaches should be consistently and fairly applied to hold them accountable.

It is interesting to note that while police disciplinary systems are predicated on the notion of deterrence,¹⁴⁵ a study done employing retrospective, longitudinal data from a large police department in the northeastern United States, the results demonstrated that while a few characteristics significantly affect the likelihood of future misconduct, officers who received more severe sanctions were more likely to obtain an additional sustained complaint when compared with their non-sanctioned colleagues. The most plausible explanation for this may be the fact that the perceived injustice of the disciplinary system may promote officer deviance.¹⁴⁶ While this study is not the final word on the effect of sanctions on police misconduct, the results do cast some doubt on the efficacy of police sanctions, partly because many count on police discipline as an important mechanism in preventing misconduct. We must ask the question; will the police be reformed solely by dealing stricter punishments or should it be complimented by something more?

¹⁴² Anozie, V., Shinn, J., Skarlatos, K., Urzua, J., 'Reducing incentives for corruption in the Mexico City Police Force' (2004) La Follette School of Public Affairs

¹⁴³ See Bruce, D. & Neild, R., 'The police that we want: a handbook for oversight of police in South Africa' (2005) Centre for the Study of Violence and Reconciliation

¹⁴⁴ Stephens, D. W., Police discipline: A case for change. (2016) New Perspectives in Policing

¹⁴⁵ Ibid

¹⁴⁶ Harris, C.J. and Worden, R.E., 'The effect of sanctions on police misconduct' (2014) 60(8) Crime & delinquency 1258-1288.

Actions of third parties

To implement reforms, the active participation of civil society organizations, other government agencies and the public at large is necessary.¹⁴⁷ The chances of eradicating corruption among police are slim without a push from third parties. Though civil society organizations might lack management and technical skills, they are strong in advocating social issues, mobilizing communities and pressing for reform.¹⁴⁸ Moreover, it is well-established that public support is essential to effective policing and as such considering the public desire for a respectful police force, such support will significantly aid police reform projects.¹⁴⁹ Criminological literature documents that public support for police underpins police legitimacy which in turn underpins successful policing.¹⁵⁰ Developing reform programs that incorporate public sentiments through a bottom-to-top approach will go far in improving public support for police, and helping ensure the success of police reform efforts.¹⁵¹ Also, the experience from New South Wales illustrates how politics around criminal justice can interfere with reforms, underlining the importance of aligning the ambitions of the political leadership with the reform agenda.¹⁵²

CONCLUSION

According to Lawrence Friedman, law enforcement can be effective if the three main elements that become pillars of law enforcement can work well, such as the substance of the law, law structure and the culture of law.¹⁵³ These violations by the police represent an overall failure of the existing criminal justice framework which will continue to undermine the legitimacy of the police and encourage further violence unless the underlying causes are addressed.¹⁵⁴ Police reform needs to be grounded in the realities of the country based on an in-depth assessment of the country's social and political circumstances, the current status, performance and capacity of the police and the potential of personnel to reform organisational attitudes.¹⁵⁵ The reform initiatives should integrate both short-

¹⁴⁷ Ibid (n 124)

¹⁴⁸ ASSESSMENT REPORT CIVIL SOCIETY ORGANIZATIONS IN INDONESIA. (2018). Available at: https://pdf.usaid.gov/pdf_docs/PA00T6KQ.pdf.

¹⁴⁹ Murphy, K., & Cherney, A. 'Understanding Cooperation with Police in a Diverse Society' (2012) 52 British Journal of Criminology 181-201

¹⁵⁰ Justice Tankebe and Alison Liebling, *Legitimacy and Criminal Justice: An International Exploration* (OUP, 2013)

¹⁵¹ Murphy, K. 'Public Satisfaction with Police: The Importance of Procedural Justice and Police Performance in Police-Citizen Encounters (2009) 42(2) Australian and New Zealand Journal of Criminology 159-178

¹⁵² Chan, J. and Dixon, D., 'The politics of police reform: ten years after the Royal Commission into the New South Wales Police Service (2007) 7 Criminology and Criminal Justice 443-468

¹⁵³ Lawrence M Friedman, *American Law: An Introduction*. (Norton and Co. 1984)

¹⁵⁴ 'Indonesia: The Deadly Cost of Poor Policing' (*Crisisgroup.org*, 16 February 2012)

<<https://www.crisisgroup.org/asia/south-east-asia/indonesia/indonesia-deadly-cost-poor-policing>> accessed 13 November 2023

¹⁵⁵ Ibid (n 135)

term measures that will build public trust and long term initiatives for substantive organisational changes.¹⁵⁶ While this article attempts to view the role of the police and its much-needed reform holistically, further studies will enrich the discourse on the subject and fill existing lacunae in the matter. Despite much in common, Indonesia, Sri Lanka, and Cambodia are their own countries which ultimately require tailor-made solutions. The focus should be placed on how areas such as the existing political landscape, culture and religion and lack of higher education amongst grassroots-level police officers affect the police institution and the public.

¹⁵⁶ Ibid (n 122)

Authors' Profile

M. Y. Azeez is an Attorney-at-law from Sri Lanka. She holds an LLB (Hons) from the University of Colombo and currently is pursuing a Master's in Public and International Law at her alma mater. She serves as the Director of Human Capital Development for HYPE Sri Lanka and a research associate for Security Women (UK).

Editor's Profile

Iftitahsari, obtained law degree from Gadjah Mada University, then completed her master's in Crime and Criminal Justice at Leiden University, the Netherlands in 2017. Currently working as a researcher at ICJR focusing on the issues of fair trial rights, abolition of death penalty, criminal justice reform to be more accountable and transparent justice system, as well as evidence-based drug policy reform.

ICJR's Profile

The Institute for Criminal Justice Reform, abbreviated as ICJR, is an independent research institution that focuses on criminal law reform, criminal justice system reform, and general legal reform in Indonesia.

One of the crucial problems facing Indonesia in the current transition period is reforming the law and criminal justice system to be more democratic. In the past, criminal law and criminal justice were used more as a means of supporting authoritarian power, apart from being used for social engineering purposes. It is the time for the orientation and utilization of criminal law as a tool of power to be changed to support for the operation of a democratic political system and respecting the human rights. These are the challenges in restructuring the criminal law and criminal justice in the current transition period.

To answer these challenges, a planned and systematic effort is needed to answer these new challenges. A grand design to reform the criminal justice system and the law in general should be initiated. The criminal justice system, as it is known, occupies a very strategic place within the framework of building the Rule of Law, and respecting human rights. Democracy can only function properly if there is an institutionalization of the concept of the Rule of Law. The reform of the criminal justice system designated towards the protection of human rights is thus a “condition sine quo non” for the process of institutionalizing democratization in the current transition period.

The steps in transforming the law and criminal justice system to become more effective are indeed still on-going but our effort needs wider support from various stakeholders. The Institute for Criminal Justice Reform (ICJR) seeks to take the initiative to support these measures by providing support in the context of respecting the Rule of Law and at the same time creating culture on respecting human rights in the criminal justice system. This is the reason for ICJR's existence.

Secretariat: Jl. Komplek Departemen Kesehatan Nomor B-4, Pasar Minggu, Jakarta Selatan – 12520

Phone/Fax: 02127807065

Email: infoicjr@icjr.or.id



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