

**REPORT OF
THE NATIONAL HUMAN RIGHTS COMMISSION
OF THAILAND**

*The First National Human Rights Commission of Thailand:
Some Reflections of the Six-Year Experience*



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The First National Human Rights Commission of Thailand: Some Reflections of the Six-Year Experience

The First National Human Rights Commission of Thailand started in July 2001. Under the National Human Rights Commission Act B.E. 2542 (1999), the Commission will hold office for a six-year term and serve only one term. Subsequently, the present Commission ends its term since July 2007 and remains until the newly appointed members take office. It is, therefore, the good opportunity that the report to the 12th Annual Meeting will reflect its experience of the past six years.

Inception under the 1997 People's Constitution

The 1997 Constitution was a result of an ongoing transformation from long military-led rule to democracy. People's uprising in May 1992, especially among the urban middle class, triggered the process of political reform. As a result of public participation in the Constitution drafting process, the later Constitution, for the first time in Thai history, referred to "the human dignity, right and liberty of the people" and the equal protection of Thai people irrespective of their origins, sexes or religions. The 1997 Constitution, dubbed as the "People's Constitution", safeguarded people's basic rights and their participation in public affairs, provided for strong elected-government, asserted the respect of the rule of law and the accountability of the administration to the public. Therefore, a number of independent organizations, including the National Human Rights Commission, were established to carry out the role of checks and balances with the administration.

The National Human Rights Commission Act B.E. 2542 (1999) as the organic law was later issued and stipulated, among others, the powers and duties of the Commission as follow:

- To promote the respect for and the practice in compliance with human rights principles at domestic and international levels
- To examine and report the commission and omission of acts which violate human rights or do not comply with obligation under international treaties relating to human rights to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action.
- To propose policies and recommendations with regard to the revision of laws, rules or regulations for the purpose of promoting and protecting human rights
- To promote education, researches and the dissemination of knowledge on human rights
- To promote co-operation and co-ordination among government agencies, private organizations, and other organizations in the field of human rights
- To prepare an annual report for the appraisal of human rights situation in the country and disseminate to the public
- To propose opinions to the Council of Ministers and the National Assembly in the case where Thailand is to be a party to a treaty concerning the promotion and protection of human rights

At the beginning, the NHRC saw itself working in the transition to sustaining political democracy. A number of legacies of authoritarian traditions with bureaucratic polity, overshadowed people's participation in public affairs over decades. It is also compounded by the adverse impacts of economic development and globalization, which challenge the safeguard of people's basic rights and freedoms. Noticeably, the predicaments driving the country into neo-liberalism and economic globalization, make human rights problems a great deal more complex, especially the intertwining violations of all civil, political, economic, social, and cultural rights. These are factors compounding to human rights situations in Thailand and posing challenges the NHRC to fulfill the tasks.

Institution building and networking

Under the circumstances, the NHRC has attached one most significant point in performing duties, i.e. the mutual learning and understanding in order to keep its tasks relevant to specific contexts and reality of human rights situations. The universality of human rights, including international human rights standards, can be achieved through their effective applicability responding to domestic circumstances, local dynamics and plurality. In other words, what the NHRC looks for is unity in diversity.

The NHRC's role, therefore, has served as social-learning promoter to become part and parcel of society, not apart from it. The so-called "human rights culture" can be built through this process, but the question is how the mutual understanding can be created between the NHRC itself and the public at large. That is why, at the formative stage, the focus and locus of the works are attached to networking and participation.

The works of the Commission have been undertaken by various Sub-Commissions with their members comprising those from civic, academic and professional groups at all levels of society who can give consultation and advice on the matters, or even help investigate specific cases, as well as take an active part and preliminary decision in preparing reports to be submitted to the NHRC. This is the two-way traffic of mutual-learning and continuing process where research, education and dissemination of information can play a major role in keeping the public informed and taking part in the social sanction and implementation of human rights promotion and protection.

Another important aspect in carrying out its tasks is the long-term public policies and law reform to address human rights situations. The day-to-day human rights violations which the NHRC has investigated are studied to rectify situations at the structural level, especially concerned with the rights of expression, to be informed, and to participate in public affairs. If the law and policy execution deems unjust or inappropriate, then a change or correction is to be recommended accordingly.

The works of the NHRC cannot be mentioned without reference to human rights education. It is the part and parcel of human rights culture development. The NHRC encourages and cooperates with educational institutions and law enforcement authorities in designing curriculum to teach and train people to recognize the respect for human rights. Nevertheless, it is not possible to create a culture of human rights without linking a real-life experience to these institutions. This is also a two-way traffic that people both inside and

outside the institutions can learn from each other. Otherwise, academic or educational institutions will work in vacuum and cannot relate to the society. This is the life-long learning process, and the NHRC will act as a go-between to link the concrete experiences to these institutions, and to educate general public how they can better protect their own rights.

At the international level, the NHRC has also attached importance to create networks and mutual understanding. The NHRC applied to join in the Asia Pacific Forum of National Human Rights Institutions (APF) and subsequently the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights (ICC) with expectations to share experiences and learning from other institutions both within and outside the region.

During the year, the NHRC found a number of training courses in cooperation with the APF and other partners useful for enhancing capacity of the staff and help strengthen relations with participants from other national institutions. They include:

- The training programme, in collaboration with the Raoul Wallenberg Institute (RWI), on general human rights law and theory with an emphasis on the role and functions of NHRIs;
- The training programme, in collaboration with the International Service for Human Rights (ISHR), on human rights defenders;
- The training programme, in collaboration with APF and the Association for the Prevention of Torture (APT), on the Convention against Torture and its prevention;
- In addition, the NHRC has joined in the APF/Brookings-Bern Project on Internal Displacement since 2004 to conduct on-site research on the situation of internally displaced persons and the role of NHRC.

Each reference to the Advisory Council of Jurists (ACJ) is also another channel where national human rights institutions can assess its respective national situations. The recommendations made by the ACJ are welcoming to the NHRC since they have given the thoughts how international standards related to each reference can fit and become applicable within domestic context. Over the year, there are some highlighted activities which are in line with the ACJ references. They include:

- The four ASEAN Human Rights Commissions are considering the draft frameworks of activities related to the issues of common concern, which are human trafficking, human rights education, combating terrorism with respect of human rights, the realization of economic, social and cultural rights including the right to development, and migration. These issues more or less encompass the references studied by the ACJ.
- Thailand is now in the process of acceding to the Convention against Torture, after the NHRC long campaigned for Thailand to become party to the Convention. The recent training course organized in collaboration with the APF and the APT, and recommendations made by the ACJ will prove useful for future implementation of the Convention for all parties, including the NHRC.

- Concerning the ACJ reference on death penalty, a clause appeared in the 1997 Constitution, which did not regard capital punishment as punishment using cruel and inhuman means, was deleted in the 2007 Constitution.
- In addition, the ACJ recommendation on the right to education last year suggesting that the NHRC should encourage the government to sign the UNESCO Convention against Discrimination in Education to promote the right to education is positively considered by the NHRC. This will open up the space for the NHRC to establish a dialogue with the Ministry of Education and other educational institutions about its merits and impediments, if any, for Thailand to become party to the Convention.

The NHRC also attached great importance to Southeast Asia as the sub-region with shared boundaries and geographical location. A number of problems with human rights concerns are inter-linked and cannot be exclusively solved by individual countries. Lately, the four ASEAN National Human Rights Commissions signed the Declaration of Cooperation among the four National Human Rights Commissions in ASEAN with the aim to address the issues of common concern, particularly with trans-boundaries or transnational in nature.

NHRC record of complaints

Between September 2006 and August 2007, the NHRC received over 700 cases of complaint, which accumulate to over 3,000 cases over the last six years. The problems range from the rights in the due judicial process, the rights of stateless and ethnic minorities, the rights of refugees, the rights of labours and migrant workers, the rights of children and women, economic, social and cultural rights, and the rights of local communities and their sustainable resource management. The largest percentage (24.11%) of complaints was related to the due judicial process. The statistics also showed that the alleged perpetrators were mainly police officers and government officials. The NHRC also proposed over 10 recommendations to the Parliament and 2 reports to the government, most of which were concerned with the conflicts between state authorities as well as private sector and local communities related to local natural resources management and land use, and the adverse impacts on the drugs suppression policy.

The NHRC persistently expressed its concerns and recommendations to state authorities and the then government over the negligence and violations of the rights as safeguarded in the 1997 Constitution, but to no avail. The NHRC also emphasized the importance of human-centred development and the right of people and local communities to have self-determination to freely pursue their economic, social and cultural development. However, villagers in many local communities still witness and bear the brunt of mega-projects which have impacts on their living, directly and indirectly.

The continued escalation of violence in the Southern part of the country is one of grave concerns of the NHRC. The NHRC have paid visits to victims in the violence-plagued areas. The NHRC perceived, as other groups of observers, that the problem requires years to come to bring the situation back to normal since the causes are deeply rooted, and parts of which stem from continued human rights violations and discrimination. The NHRC

acknowledges some recent positive development related to the authorities' attempts to solve the situation with peaceful means. Religious and cultural differences have been noted. The NHRC's concerns about government's security measures, including the government's education policy, have also been noted, as to the extent that they violate human rights more often than not. They tend to cause adverse consequences on human rights and obstruct the course of peace and unity restoration in the deep South. For example, a number of local people who were insurgent suspects were recently arrested without solid evidence under the Executive Decree on Government Administration in Emergency Situations, long detained, and forced to undergo vocational training for four months in other provinces against their will.

Even worse still, the new draft Internal Security Act as being proposed by the Internal Security Operations Command (ISOC), will allow absolute power on a permanent basis of security concerns to the ISOC Director. This is obviously against the principle of the rule of law and overrules the principles safeguarding human rights provided by the Constitution and other laws concerned. The NHRC, therefore, voiced its serious concerns over the draft bill and proposed the government discard the draft and lift the emergency-declared areas under the Executive Decree.

Constitution and the Status of the NHRC

Last year, the NHRC reported political tensions between middle-class protesters and supporters of the then Prime Minister Thaksin Shinawatra with concerns that they might possibly escalate into violence. The NHRC urged all parties to exercise self-restraints and to find peaceful solution for political reform. Unfortunately, the tensions continued, and on 19 September 2006 the military staged coup d'état and abrogated the 1997 Constitution. The reasons the military cited for the action were to prevent foreseeable violence from confrontation, the widespread corruption acts of the elected government which have not been addressed, and the unconstitutional interferences in the works of independent agencies by the then government.

Despite the coup d'état and the Constitution abrogation, the NHRC has continued its works since it was legally interpreted, rightly or wrongly, that the NHRC and its authority were established by the National Human Rights Commission Act, and thus have not been affected by the abrogation of the 1997 Constitution. The NHRC issued a statement expressing its grave concerns over the seizure of power from the civilian government by the military under the name of the Council for Democratic Reform. While recognizing serious incidents of human rights violations instigated during the administration led by former Prime Minister Thaksin Shinawatra, the NHRC perceived that such situations would not be sustainably rectified by a non-democratic means, of which people's participation is prohibited and their basic civil and political rights are curtailed. Under the circumstances, the NHRC urged the Council for Democratic Reform to respect international human rights obligations to which Thailand is party; and to allow people to exercise their fundamental rights and freedoms. The NHRC also urged them to take any necessary steps as soon as possible to restore full democracy to the Thai people.

The NHRC found the undemocratic circumstances challenging the NHRC to exert its independence and impartiality in carrying out its duties. The NHRC has continued to

independently perform its duties to monitor the works of state agencies and the government under the premiership of (retired) General Surayud Chulanont who was selected by the Council of Democratic Reform to be Prime Minister. As usual, the NHRC has conducted cases of complaints, and regularly submits its recommendations to the government. Over the year since the seizure of power, the problems of human rights as happened during the previous government persist, and political tension and division within society have continued. It is noted that a number of human rights measures, which the NHRC recommended to the elected government, were also overlooked by the current government, such as the arbitrary signing of free trade agreement with Japan.

The new Constitution was promulgated on 24 August 2007 after the draft was accepted in the referendum on 19 August 2007. The NHRC, as required by the 2006 Interim Constitution, proposed its comments on the draft to the Constitution Drafting Council, especially on the articles related to human rights and political reform. The NHRC's proposals attached specific importance to decentralization, with more power to people and recognizing local people's and community's participation in decision-making process of public policies and their implementation. The proposals were based on a number of public hearings which the NHRC organized, involving people from all walks of life.

The provisions to safeguard people's basic rights and freedoms are mostly contained in the new Constitution, similarly to the 1997 Constitution. The new Constitution Drafting Committee tried to solve the problem of enforcement to safeguard people's rights under the 1997 Constitution by allowing the protection provisions to be immediately effective without the pre-requisite of organic laws. People are also allowed to directly seek protection to the Constitutional Court and the Ombudsmen when their rights are violated. Communities have the right to file lawsuit against state authorities when violations of rights occur. People can gather a number of names as required by the Constitution to propose draft bills and impeach holders of political positions. In other words, a certain aspect of direct participatory democracy is more emphasized under the new Constitution.

Nevertheless, the major point of the NHRC's concern over the new Constitution is that it does not address the structural problem, which is a consequence of long-time military dictatorship and industrialization predicaments. The gap between the newly-acquired rights and liberties as safeguarded in the Constitution, and the reality of power of enforcement will continue, resulting in more conflicts and tension between interest groups and people as well as local communities.

The National Human Rights Commission under the 2007 Constitution is to comprise one President and six other members who will be royally appointed with the advice of the Senate. There is a Selection Committee consisting of the President of the Supreme Court of Justice, the President of the Constitutional Court, the President of the Supreme Administrative Court, the President of the House of Representatives, the Opposition Leader in the House of Representatives, the person who is selected by the General Assembly of the Supreme Court of Justice, and the person who is selected by the Judge General Assembly of the Supreme Administrative Court. The concern is that, without participation of representatives from civil society groups as prescribed in the 1997 Constitution, the qualified persons may be selected without due representation of various groups within

society. As for the powers of the NHRC, it is now able to directly bring cases of human rights violation to the Constitutional Court and the Administrative Court. In addition, the NHRC can submit cases to the Courts of Justice on behalf of victims when requested. In such light, the powers of the NHRC to protect people's rights increase. It is a challenge how the new NHRC can undertake these new duties efficiently and effectively.

The future role of the NHRC: The ways forward never without challenges

With constitutionally increased power, the new NHRC can be well-equipped for undertaking the duties. Nevertheless, with contextual problems stemming from nature of society, economy, culture and history, the new NHRC can perceivably find major challenges. Thailand is still facing cycles of authoritarian-democratic rule; and in the transitional process to consolidated democracy, many vulnerable groups can be excluded such as ethnic minorities, farmers, stateless people, and other underprivileged groups despite their rights being guaranteed by the new Constitution. In addition, the Constitution is not an end in itself and the full compliance depends on the continued social process to address the root causes of problems and enforce the safeguards of people's rights and freedoms. In particular, the consolidation of democracy cannot be truly achieved while people cannot have their rights respected, especially the right to life and to adequate standards of living.

It is, therefore, incumbent for the NHRC to open up the political space for these excluded and underprivileged groups, empowering by opening the space for them to voice their grievances. The NHRC has the role of mediation among institutions, media, and civil society groups to enhance people's power. In the process, the NHRC human rights education plays the role to facilitate social learning, to stabilize and to enhance associational institutions to create the culture of human rights.

Second, the direct participatory democracy and the rights guaranteed under the new Constitution will be truly effective when people from all walks of life can fully and meaningfully participate in public affairs. The NHRC has to ensure that the rule of law guarantees their freedoms of expression and peaceful assembly, including the right to get access to information.

Third, the fast-changing global economy, which predicates adjustment or even compliance of national and local economies, will increasingly complicate the issues of human rights protection and promotion. The NHRC needs to address the issues based on knowledge, sharing experiences with networks inside and outside the country. The NHRC has to find the balance between economic reality and the safeguards of people's and communities' rights to preserve their ways of livings, traditions and identities as well as local wisdom and knowledge and to freely exercise their self-determination.

Last but not least, with more powers, the new NHRC must focus on continuing capacity building and enhancement to enable the institution to deal with the increasing tasks, and the NHRC will find international co-operations, especially with other national human rights institutions such as the APF, benefit their tasks.