



**Office of the United Nations High Commissioner for Human Rights
Regional Office for South East Asia**

**Technical Comments on the draft Organic Law on the National Human Rights
Commission of Thailand (B.E...)
August 2017**

In November 2015 the National Human Rights Commission of Thailand (NHRCT) was downgraded from “A” to “B” status by the Global Alliance of National Human Rights Institutions (GANHRI) (formerly the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights), a global body that accredits national human rights institutions (NHRIs) worldwide. The downgrading of the NHRCT by the GANHRI was due to concerns about its functional immunity and independence, the selection and appointment process, perceived neutrality of the NHRCT Commissioners and staff members, and its ability to respond to urgent human rights issues. The ongoing deliberations on the draft Organic Law on the National Human Rights Commission of Thailand (B.E.....) by the National Legislative Assembly provides an important opportunity to address the concerns of the GANHRI and to ensure full legislative compliance with the Paris Principles in enable the GANHRI to consider an upgrade of the NHRCT to “A” status.

In this regards, the South-East Asia Regional Office of the United Nations High Commissioner for Human Rights analysed the current version of the draft Bill (dated 6 June 2017) to assess its compliance with the Paris Principles and with the recommendations and observations made by the GANHRI. While the current draft Bill includes a number of positive provisions, there are still a large number of issues which require amendments to be in full compliance with the Paris Principles. On 21 July 2017, the OHCHR Regional Office sent a letter to the National Legislative Assembly on the draft law and made the following recommendations:

1. Selection and appointment process:

The manner in which the members of NHRIs are appointed is crucial to its independence, professionalism, integrity and credibility. The Paris Principles require a clear, transparent, merit-based and participatory selection and appointment process. The selection process should include legislative branch, and civil society organizations, trade unions, university experts, lawyers, and journalists. The selected members should also be representative of the country’s social, ethnic, religious and geographic diversity, and have meaningful representation of women at all levels of the recruitment and selection process. Some of the key requirements for a such process are:

1. Broad publication and advertisement of vacancies;
2. Maximization of the number of candidates from a wide range of societal groups;
3. Broad consultation and/or participation during the application, screening, selection and appointment process;
4. Assessment of applicants on the basis of pre-determined, objective and publicly available Criteria; and

5. Selection of members serving in their own individual capacity rather than representing an Organization.

The GANHRI has repeatedly raised concerns regarding the selection procedures of the Commissioners under the 2007 Constitution. It has noted that the selection process exclusively involves officials from a small number of public institutions with no clear representation or requirement for public consultation with key stakeholders groups or civil society; no provisions for broad consultation and/or participation in the application, screening and selection process; and lack of a clear and detailed criteria upon which to assess the merit of the eligible applicants.

Section 11 and 13 of the draft bill, which outline the selection process, address some of the concerns raised by the GANHRI and include provisions such as: the need to publicize the nomination and selection and the inclusion of civil society organisations (CSOs) and other key stakeholders groups such as the Lawyers Council of Thailand, medical and public health professionals, media professionals and education institutions in the Selection Committee. However, the draft Bill does not explicitly guarantee the representation of women and other social, ethnic, religious and geographically diverse groups in the Selection Committee. It also does not contain provisions outlining clear objective criteria for assessing the suitability of the Commissioners in relation to their human rights expertise.

Moreover, the last paragraph of Section 11 allows exemption to the representation of CSOs and various stakeholders in the Selection Committee in the event of delay in the selection of the members of the Selection Committee. This runs contrary to the purpose of forming an inclusive Selection Committee and therefore the concerns raised by the GANHRI will remain unaddressed.

OHCHR therefore recommends that the draft Bill include provisions guaranteeing the representation of women as well as people of social, ethnic, religious and geographic diversity in the Selection Committee. To ensure a merit-based and transparent recruitment process, the Bill should include provisions outlining clear criteria upon which the Selection Committee can review the candidates based on credible human rights expertise. Alternatively, the Bill can include a provision requiring the Selection Committee to develop clear and objective criteria for assessment, to be made publicly available prior to the announcement of the application process. OHCHR also recommends that the last paragraph of Section 11, allowing the Selection Committee to recommend the Commissioners even when the representatives from CSOs and other stakeholders groups are not selected in the Selection Committee, be removed.

The provisions in Section 22 of the draft Bill which provide a mandate for the President of the Supreme Court and the President of the Supreme Administrative Court to appoint a temporary Commissioner are unnecessary and should be removed to ensure that there is only one established procedure for nomination and appointment.

2. Qualifications of the Commissioners:

The qualifications of the Commissioners should ensure a pluralist representation of society involved in the promotion and protection of human rights and to effectively fulfill the mandate of the Commission. If members of the Commission are from diverse professional backgrounds and groups the Commission will be better able to effectively address human rights issues as broadly as possible. The members of the Commission should also reflect gender balance and the ethnic diversity of the country.

Sections 8, 9 and 10 of the draft Bill outline the qualifications and requirements for the Commissioners. Individuals below the age of 45, individuals who do not have a Bachelor's degree, monks or priests, former members of political parties or holders of political offices, as well as independent professionals are prohibited from becoming a Commissioner.

While it is highly desirable that the appointed Commissioners have relevant and solid human rights experience and they should not be politically influenced in their job, it is inappropriate to identify a tertiary degree, age or a profession as a prerequisite. There may well be people who have operated at a grassroots/community level, having skills and experience on human rights issues but not necessarily having had the opportunity to acquire a Bachelor's degree. There may also be former office holders and young human rights activists who have advocated and campaigned on human rights and who possess relevant skills and experience.

OHCHR therefore recommends that the draft Bill is reviewed to ensure that the criteria for the selection is based on skills and experience (both technical capacity and knowledge) on human rights issues. Unnecessary requirements regarding age, academic degree or profession should be removed to ensure that the pool of candidates for the selection of the Commissioners comes from diverse professional backgrounds and groups. The draft Bill should also include provisions ensuring gender balance and ethnic, cultural and religious diversity in the composition of the Commission.

3. Guarantee of Tenure:

The guarantee of tenure of the Commissioners of the NHRCT is important to ensure independence and pluralism. The GANHRI has highlighted that the Commissioners may be dismissed only on serious grounds of misconduct or incompetence, in accordance to fair, objective and impartial procedures clearly outlined in the law. The dismissal of the members before the expiry of their term, without any specific reasons and without effective functional immunity allowing to contest the dismissal is incompatible with the principle of independence of the Commission.

Section 20 of the draft Bill outlines the conditions for the dismissal of the Commissioners. Under the current Bill, besides death, or resignation, Commissioners can be dismissed for lacking specific qualifications or having prohibition characters under Section 8 or 9 or for failing to submit an assessment report of the country's human rights situation within the stipulated time as outlined in Section 40.

Section 21 outlines the procedures for dismissal. It gives power to the Selection Committee to make a final decision on the dismissal of the Commissioner for lacking qualifications or for possessing prohibition characters. However, the Bill does not elaborate on the procedures for dismissal of Commissioners for failure to submit human rights assessment report. Moreover, the Bill is also ambiguous on whether a Commissioner or all Commissioners would be dismissed for failing to submit a report. The Bill also does not include adequate provisions for Commissioners to contest the dismissal.

OHCHR therefore recommends that Sections 20, 21 and 40 of the draft Bill are revised to guarantee the tenure of the Commissioners. The amendments should ensure that dismissal is only allowed on serious grounds of misconduct or incompetence, and that proper procedures are in place for the Commissioners to have the opportunity to contest a dismissal.

Moreover, OHCHR is also of the view that the Senate, which is responsible for the appointment of the Commissioners, would be a more relevant body to make a final decision on a dismissal. The Senate can make its final decision based on recommendations by the Selection Committee and only after the relevant Commissioners have had the opportunity to

contest their dismissal in a fair and independent manner. The Bill should also include provisions allowing the Commissioners to seek legal recourse in case they perceive a dismissal to be unfair.

4. Mandate and Functions of the NHRCT:

The NHRCT has an important role to promote and protect all human rights at the national level. At the World Conference of Human Rights in Vienna in 1993, NHRIs which complied with the Paris Principles were recognized as key actors in promoting and protecting human rights at the national level, including monitoring States' compliance with international human rights treaties which they have ratified. The NHRCT's mandate is therefore broader than the national legal framework of Thailand as it also includes international human rights treaties to which Thailand is a State Party. Therefore, Section 4 of the draft Bill should be amended to reflect this component.

While the draft Bill has outlined a number of functions and the mandate of the NHRCT, it is also important that the following mandates listed below are amended or incorporated to establish the NHRCT as an important national institution for the protection and promotion of human rights in Thailand. OHCHR is concerned that the mandates of the NHRCT under the current draft have been reduced when compared to the 1999 NHRCT Act and under the 2007 Constitution. It is therefore vital that the draft law is amended to include the mandates listed under the 1999 NHRCT Act and 2007 Constitution.

- Section 25 of the draft Bill prevents Commissioners from participating in any course, program or training except when the course or program is established by the Commission itself. As human rights is a dynamic and evolving field, the Commissioners should be encouraged rather than prevented from advancing their learning through training and capacity development programs in relation to human rights including by agencies other than the NHRCT. The NHRCT should have the authority to decide on the capacity development needs of the Commissioners as well as to determine the types of training and courses that are needed for the Commissioners, to be able to fulfill its mandate. OHCHR would therefore recommend that Section 25 is removed. Section 24 should also be revised to allow Commissioners the opportunity to attend meetings, seminars, and conferences by invitation of regional and international human rights CSOs or foundations.
- Section 26 (3) requires the Commission to propose measures on the amendment of national legislations and policies. However, it does not oblige the Government to consult with the NHRCT on the formulation of, or amendments to, legislation having human rights implications. The Bill should include provisions obliging the Government to seek the Commission's opinion on its legislation, policies and programmes on the promotion and protection of human rights in Thailand.
- Sections 34, 37 and 39 of the draft Bill outline the complaint procedures of the NHRCT. Section 34 allows the victims or persons who witness human rights violations the right to file a complaint and Section 37 allows the Commission or those assigned by the Commission to file a complaint if human rights violations are deemed to be a criminal liability. Section 39 (4) restricts the Commission from receiving complaints which are not filed in good faith and where its examinations are not beneficial to the public. The current provisions in the Bill on complaint procedures are very narrow and can unnecessarily limit the ability of victims or their families to file complaints at the NHRCT. The Bill should therefore be amended to allow victims, or their families members or any other person or organisation on their behalf to file the complaints at the NHRCT. Moreover, the Bill should also include provisions allowing NHRCT to

investigate or inquire about human rights violations *suo motu* or at its own discretion. OHCHR recommends that Section 39 (4) should be removed as is not an objective criteria to restrict the Commission from receiving complaints. In addition, instead of outlining the complaints procedures in the Bill, OHCHR recommends that it would be more appropriate to allow the NHRCT to determine its own procedures for filing complaints and other related proceedings.

- Section 35 mandates the NHRCT to enter into a dwelling or any place to examine facts on alleged human rights violations or collect evidence. However, there are no specific provisions mandating the Commission to undertake visits to police stations, prisons and other places of detention. The draft Bill should include specific provisions mandating the NHRCT to visit and inspect all places of detention without prior notice. The NHRCT should have full access within the detention facilities and should be allowed to undertake confidential, private and unsupervised interviews with the detainees.
- Section 36 mandates the Commission to request government agencies or private organisations to provide remedy to the victims within a stipulated time. However, paragraph 3 of the same section is very vague and allows discretionary power to the Government agencies or private organisations to reject the NHRCT's request for remedy. Section 36 of the draft Bill should therefore include provisions allowing the Commission to review the justification of the Government agencies or private organisations for their non-compliance and to make necessary recommendations, including sanctions, where the Commission believes that the justification is inadequate or not appropriate.
- Section 43 of the draft Bill requires the National Assembly, the Cabinet or relevant agencies to implement the recommendations of the Commission. However, the Bill does not clarify the legal status of the recommendations of the Commission (whether the recommendations would be binding or not). The Bill also does not specify what measures the NHRCT can take in case of systematic failure by the relevant government and other agencies to implement its recommendations. OHCHR recommends that the Bill provides the NHRCT with the power to issue binding decisions. It should also include provisions allowing the NHRCT to make recommendations for sanctions against relevant authorities in the case of systematic failure to implement its recommendations.
- Section 44 requires the NHRCT to clarify and report about incorrect and unfair human rights reporting on Thailand. However, the Bill does not outline the process or mechanism for carrying out this function. The Bill also does not elaborate on what types of report the NHRCT is expected to clarify. As there will be numerous reports published each year by the State authorities, CSOs, media, independent researchers, academics or other institutions, the NHRCT will not have the capacity to review all those reports to clarify the facts. Moreover, if the NHRCT implements this function based on the Government's interest and requests, it will no longer be independent. The draft Bill should be amended to provide discretionary power to the NHRCT to determine its own human rights priorities and to prepare credible reports on those priorities.
- The draft Bill includes provisions specifying the duty of the Government and other State authorities to cooperate with the NHRCT. However, the Bill does not outline what actions the NHRCT can undertake against those officials who fail to properly cooperate in the exercise of its mandate through non-compliance, obstruction, interference or retaliation. OHCHR would like to recommend that the Bill include provisions allowing the NHRCT to recommend sanctions against officials for failing to cooperate with them or comply with its request. Moreover, the NHRCT should also be allowed to make the name of officials, persons or agencies public in case of systematic failure to cooperate.

The draft Bill should include specific provisions authorising the NHRCT to provide *amicus curiae* briefs on court proceedings pertaining to human rights.

- The draft Bill should include provisions mandating the NHRCT to study international human rights treaties and instruments on human rights and submit necessary and appropriate recommendations to the Government for ratification as well as for effective implementation of international human rights treaties. The Bill should also include specific provisions mandating the NHRCT to cooperate and engage with international human rights mechanisms, including the Human Rights Council, UN treaty bodies and Special Procedures mandate holders, as well as UN agencies and other international organizations.
- One of the main roles of the NHRIs is to promote and support the work of non-governmental human rights organizations in the country. In this regard, the draft Bill should include specific provisions mandating the NHRCT to promote and strengthen the efforts of non-governmental organizations and to develop programmes for the protection of human rights defenders.
- The draft Bill does not include provisions on the power of the NHRCT to recommend compensation to the victims of human rights violations and their families. The Bill should therefore include provisions mandating the NHRCT to recommend compensation or reparation to victims and their families. The NHRCT should also be mandated to provide interim relief or compensation to victims and their families as necessary.

OHCHR in its letter encouraged the National Legislative Assembly to consider its comments and recommendations on the draft NHRCT Bill to further strengthen its compliance with the Paris Principles, to comprehensively address the concerns raised by the GANHRI during its review in 2015, and also to ensure that the NHRCT is an independent and impartial national human rights institution.