THAILAND: HUMAN RIGHTS CRISIS

Peoples’ Empowerment Foundation; Justice for Peace Foundation; and Pro-Rights Foundation

1. INTRODUCTION

Thailand used to be a constitutional monarchy. It used to be governed under the rule of law, democracy and good governance. There had been many political conflicts and much violence since 14 October 1973, 6 October 1976 and ‘Black May’ 1992. Peoples’ and students’ struggle resulted in democratic governance with elections in 1997.

After a four and a half year term, there was the 2003 coup in Thailand. Later, the 2007 constitution was drafted before an election in 2011. A female prime minister was elected. Another coup on 22 May 2013 by the National Council for Peace and Order (NCPO) followed. The NCPO vested itself with executive and legislative powers. The coup reflected Thailand’s political instability. Thailand ranked the top in coup-making ranking in ASEAN. The coups have lowered political development and have greatly impacted human rights in the country.

After the 2013 coup, the National Human Rights Commission of Thailand’s (NHRCT) operation to ensure the protection of human rights has been facing many difficulties. For example, the NHRCT has not been successful in demanding a list of secret detention centers under the Martial Law. The NHRCT’s request to visit detention facilities in military camps has not always been granted.

2. INDEPENDENCE

<table>
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<tr>
<th>Establishment of NHRI</th>
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<tr>
<td><strong>Established by</strong></td>
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<tr>
<td>Law/Constitution/ Presidential Decree?</td>
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1 Chalida Tachareonsak, People Empowerment Foundation chalida.empowerment@gmail.com; Chutimas Suksai, People Empowerment Foundation chatimassuksai@gmail.com; Angkhana Neelapaijit, Justice for Peace Foundation angkhana.nee@gmail.com; and Sansanee Suthisansane, Pro-Rights Foundation prorightsfoundation@hotmail.com.
The second National Human Rights Commission was appointed by virtue of the 2007 Constitution of The Kingdom of Thailand, Chapter 11: Constitutional Organizations, Part 2 pertaining Other Organizations, Sections 256 and 257.

The National Human Rights Commission is an ‘Other Organization’ under the Constitution. The Commission consists of a President and six other members, appointed by the King with the advice of the Senate, from persons having apparent knowledge and experiences in the protection of rights and liberties of the people with due regard to the participation of representatives from private organizations in the field of human rights.

The members of the National Human Rights Commission shall hold office for a term of six years as from the date of their appointment by the King and shall serve for only one term. The Second Commission was appointed on 24 June 2009. Their term ended in 24 June 2015. However, the Commissioners are serving in an interim capacity until the new members have been selected.

The members of the Second NHRCT and their expertise are as follows:

1. Dr Amara Pongsapitch, Professor Emeritus in Political Science.
2. Dr Taejing Siripanich MD, Anti Drink Driving Campaigner.
3. Dr Nirun Pitakwatchara MD, social activist, human rights activist and former senator.
4. Mr Parinya Sirisarnkarn, 2007 Constitution Drafting Assembly member, former member of the National Economic and Social Advisory Council 2008, Vice Chairman of the Federation of Thai Industries, Nakhon Ratchasima Province, Police Committee of Non Thai police station, Nakhon Ratchasima Province.

Sor. Sivalak petitioned the Royal Household Bureau Secretary General to launch an inquiry into Mr Sirisarnkarn’s appointment as NHRCT commissioner. Mr Sirisarnkarn operated a rock salt boiler in Samrong Sub-District, Non Thai District, Nakhon Ratchasima Province. Thus, he allegedly engaged in activity resulting in human rights violations that affect the well-being of people and communities in the area where his factory is located.²

In fact, the first National Human Rights Commission confirmed that Mr Sirisarnkarn was guilty of human rights violations and ordered that the

² See also http://www.prachatai.com/journal/2009/06/24642.
limestone mining industry be closed. The order also demanded compensation for damages in this case for its impact on the community, etc. Such conduct is contrary to the relevant provision in the Constitution Act and the National Human Rights Commission Act on criteria for selection as Commissioner. Nevertheless, he was appointed as member of the Second NHRC.

5. Mr. Paiboon Varahapaitoon, Director of the Committee Affairs Bureau of Secretariat of the Senate and Secretary General of the Constitutional Court.


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<th>Mandate</th>
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| The second National Human Rights Commission has the powers and duties under the 2007 Constitution of The Kingdom of Thailand, Section 257 as follows:

1. to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceedings;

2. to submit the case together with opinions to the Constitutional Court in the case where the Commission agrees with the complainant that the provisions of any law are detrimental to human rights and beg the question of the constitutionality as provided by the organic law on rules and procedure of the Constitutional Court;

3. to submit the case together with opinions to the Administrative Courts in the case where the Commission agrees with the complainant that any rule, order or administrative act is detrimental to human rights and begs the question of the constitutionality and legality as provided by the law on establishment of Administrative Courts and Administrative Court Procedure;

4. to bring the case to the Courts of Justice for the injured person upon request of such person if it deems appropriate for the resolution of human rights violation problem as a whole as provided by law;

5. to propose to the National Assembly and the Council of Ministers policies and recommendations with regard to the revision of laws, rules or regulations for the promotion and protection of human rights;

6. to promote education, research and the dissemination of knowledge on
human rights;
(7) to promote cooperation and coordination among government agencies, private organizations and other organizations in the field of human rights;
(8) to prepare an annual report for the appraisal of situations in the sphere of human rights in the country and submit it to the National Assembly;
(9) other powers and duties as provided by law.

In the performance of duties of the National Human Rights Commission, regard shall be had to interests of the country and the public.

The National Human Rights Commission has the power to demand relevant documents or evidence from any person or summon any person to give statements of fact including other powers for the purpose of performing its duties as provided by law.

After 2007, political instability and parliamentary crises has stalled the Draft National Human Rights Act of 2009, drafted after the enactment of the 2007 Constitution. Since the Act did not pass the parliamentary review, the 1999 National Human Rights Act has been used mutatis mutandis to determine the scope and the office of the second Human Rights Commission.

Section 8 and 9 in the Draft National Human Rights Commission Act 2009 also empowered the NHRCT to recommend if Thailand should ratify an international convention and the power to appoint sub-commissioners to assist the commissioners.

The 2007 Constitution allows the National Human Rights Commission to bring the case to the Courts of Justice for the affected person upon request. Nevertheless, after the recent coup, the NHRI cannot exercise this power.

Selection and appointment

Is the selection formalized in a clear, transparent and participatory process in relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice?


The Office of the Council of the State has considered the inquiry and ruled that the selection process shall be in accordance with the criteria and process in the NCPO Order No. 48/2557, regarding the selection process
for vacant positions, dated 29 May 2014. “Should there arise the need to appoint a Commissioner of the Human Rights Commission, where these positions are vacant, the selection process for the holders of such positions shall follow the rules and procedures as stipulated in the Constitution B.E. 2550 (2007), and which have been applied hitherto ...”.

An announcement from the Office of NHRCT, dated 22 May 2015, on the Selection Committee for the National Human Rights Commissioners, outlines the selection committee as follows:

1. The President of the Supreme Court of Justice
2. The President of the Constitutional Court,
3. The President of the National Legislative Assembly, acting as the President of the House of Representatives
4. Mr Peng Pengniti, a person elected at a general meeting of the Supreme Court of Justice
5. Mr Chalermschai Wasinon, a person elected at a general meeting of the Supreme Administrative Court

They are empowered to select the commissioners within 30 days and nominate the candidate and their consent to the President of the National Legislative Assembly to pass on for the King’s appointment.

Is the selection process under an independent and credible body which involves open and fair consultation with NGOs and civil society?

No. The selection process of the 3rd Commission follows the process used in the selection of the previous (2nd) Commission, except there are not 5 instead of 7 selectors (no representative of the Parliamentary Opposition and no President of the Supreme Administrative Court). There is no representation or consultation with civil society organizations. The process is secretive and therefore not transparent. There were 121 candidates.

The 1st Commission was selected in accordance with the Paris Principles. The 27 member selection committee represented multiple sectors including 10 CSO representatives. There was a lot of discussion and exchange of views on suitability of candidates. In the first stage, candidates required two-thirds support from the selection committee i.e. at least 21 of the 27 members, to be short-listed. This meant that CSO’s if they voted together could block unsuitable individuals. In the second stage, 22 names are submitted to the Parliament for its consideration. The Parliament then selects 11 from among this number and the Chair of the Parliament forwards their names to the King for his approval and appointment. This selection process was of high quality within the South-East-Asian region.
<table>
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<tr>
<th>Question</th>
<th>Answer</th>
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<tbody>
<tr>
<td>Is the assessment of applicants based on pre-determined, objective and publicly available criteria?</td>
<td>No, the assessment process is not open to the public.</td>
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<tr>
<td>Is there a provision for broad consultation and / or participation, in the application, screening and selection process?</td>
<td>No, the assessment process only requires the participation of the Selection Committee.</td>
</tr>
<tr>
<td>Is there a requirement to advertise vacancies? How is it usually done?</td>
<td>Yes.</td>
</tr>
</tbody>
</table>
|                                                                           | According to the NHRCT, the vacancies were widely publicized through advertisements in the print media; radio spots including community radio stations; banner ads on many television stations; flags outside the NHRCT office; posters at the Government Complex; letters to state agencies and other organizations; online including websites and social media (personal communication 8 July 2015). Even so, it seems the majority of people, especially in rural areas were not aware of the call for applications and the selection process of the NHRCT. In comparison between the whole population and consumption of information, it could be said that the public relations had not been done efficiently. For example, the display of posters and Japanese-style flags only took place at the office of the NHRC within the Government Complex in Bangkok. These were not displayed in public or in the rural areas. The announcement of the Secretariat Office should not focus only on candidates, but should also address the public. It should have been an opportunity to publicize the work of the NHRI as well. Most people do not sufficiently know or understand the work of the National Human Rights Commission. A technical seminar was conducted by the Office of the NHRCT on the “Implementation of the Selection Process for the National Human Rights Commissioners” on 2 June 2015 with the attendance of about 100 people with diverse opinions, especially about the selection process. The meeting reflected concerns over the selection committee and the selection process that does not meet the Paris Principles. As a result, the commissioners selected would be inappropriate and may not be able to respond to various aspects of human rights. These views were not communicated to
the Selection Committee members.

The deadline for applications was 15 June 2015. There were a total of 121 candidates including NGO workers, soldiers, police, academics, retired government officials and businesspersons.

The observations of the selection committee have not been released to the public. However, following direct request for information from the People’ Empowerment Foundation, the NHRCT informed as follows (personal communication, 3 August 2015):

“On 21 July 2015, the selection committee has announced the results of the selection of the third batch of the NHRC members including seven members recruited from 121 candidates. Based on the review of the experience in protecting rights and liberties of the people and assessment of their concepts, the candidates shortlisted are:

1. Mrs. Chatsuda Chandeeying, former court clerk of the Samut Prakan Juvenile and Family Court, married to Dr. Weerachai Chandeeying, medical doctor at the Samut Prakan Provincial Hospital;
2. Mr. Baworn Yasinthorn, [leader of the ultra-royalist movement Citizen Volunteers for Defense of the Three Institutions – PEF];
3. Mrs. Prakayrat Tonteerawong, business-owner, former board member of the Thai Women Empowerment Funds and former associate judge of Nonthaburi Juvenile and Family Court and former President of the Association of Women Lawyers of Thailand (AWLT), former President of the Institute for Education and Development of Conflict Management by Peaceful Means Foundation (IDF);
4. Mr. Wat Tingsamid, a former Supreme Court judge, Office of the Court of Justice;
5. Associate Professor Supachai Thanomsap, a visiting lecturer and medical doctor at Ramathibodi Hospital;
6. Mr. Surachet Satidniramai, the acting Permanent Secretary of the Public Health Ministry;
7. Mrs. Angkhana Neelapaijit, a human rights defender, President of the Justice for Peace Foundation, former member of the 2007 Constitutional Drafting Committee [and wife of Mr. Somchai Neelapaijit, human rights lawyer who ‘disappeared’ in March 2004 – PEF].

The selection committee for the NHRC shall submit the names of the shortlisted candidates for confirmation to the President of the National Legislative Assembly (NLA), after which the appointments will be made following royal assent.
<table>
<thead>
<tr>
<th>Divergences between Paris Principles compliance in law and practice</th>
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<tr>
<td>The selection process for the second and third NHRCT does not comply with the Paris Principles. The Constitution and the organic laws give power and authority to judges in the selection process. Judges may be upright and have legal knowledge; nevertheless, they may have limited understanding of human rights because human rights is about the universality of humanity, diversity and is broader than the law.</td>
</tr>
<tr>
<td>The NHRCT has explained its incapacity to make proposals “to enhance the operation of NHRC, particularly collaboration with civil society sector, given the current political, social and economic context of Thailand now and in future” (personal communication, 20 July 2015).</td>
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<table>
<thead>
<tr>
<th>Functional Immunity</th>
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</thead>
<tbody>
<tr>
<td>Are members of the NHRI granted immunity/protection from prosecution or legal liability for actions taken in good faith in the course of their official duties?</td>
</tr>
<tr>
<td>The law does not grant the NHRCT immunity/protection in the course of their official duties.</td>
</tr>
<tr>
<td>Does the NHRI founding law include provisions that promote:</td>
</tr>
</tbody>
</table>
| * security of tenure;  
* the NHRI’s ability to engage in critical analysis and commentary on human rights issues free from interference;  
* the independence of the senior leadership; and  
* public confidence in national human rights institution. |
| No. For instance, Mr Charan Dittapichai is a former commissioner who have been impeached and removed from his position because he joined a ‘Red-Shirt’ political rally and gave a speech in front of former prime minister General Prem Tinsulanonda’s residence. Despite the fact that he was not impeached by the 8 other Human Rights Commissioners because he has exercised his freedom to public assembly and freedom of expression in his personal capacity, the National Legislative Assembly considered his speech as a violation of the principle of political neutrality and impeached him. |
| NHRCT officials monitor and comment on the current political crisis without State interference.  
A Commissioner can be removed from the office after an impeachment. Political criticism must be exercised with caution and it should also be noted that the lines between political and human rights commentary are blurred.  
The National Human Rights Commission should be protected from any litigation due to a critical analysis, when a commissioner gives a critical
<table>
<thead>
<tr>
<th>Commentary in good faith.</th>
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<tbody>
<tr>
<td>Are there provisions that protect independence and effectiveness in a situation of a coup d’état or a state of emergency where NHRIs are further expected to conduct themselves with a heightened level of vigilance and independence?</td>
</tr>
<tr>
<td>No. After the coup, the atmosphere was one of surveillance and strict control. The Commissioners were monitored and their meetings with villagers required asking for the military authorities permission beforehand. The NHRCT has clarified that it is their right to conduct an inquiry without permission. According to the National Human Rights Commission of Thailand’s report to the ICC-SCA on 28 October 2014; it is stated that, after the coup and the declared martial law, the NHRI has contested the declaration of the martial law and requested that the martial law should respect human rights. The Commission and the NCPO representatives have met at the Commission on Human Rights and have reached a common agreement that a detainee under the martial law must be released within seven days. The Committee can visit detainees. The NHRCT has visited detainees four times and found that everyone is treated with respect of human dignity, despite some claims of torture by lawyers representing detainees. The NHRCT confirmed that the declaration of martial law violates people’s basic human rights. If the NCPO still insists on the necessity and need to declare a martial law, the NHRCT suggested that the NCPO should be able to provide its reasons to the public. The NHRCT is free from the domination of the NCPO. Nevertheless, it is facing many difficulties to visit any person in a prison to inspect a torture claim.</td>
</tr>
<tr>
<td>Divergences between Paris Principles compliance in law and practice</td>
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<tr>
<td>The 2007 Constitution on constitutional organization does not comply with the Paris Principles. The Thai government uses the domestic law as a mode of operation rather than its adherence to the international law. Thus, the Commission should advise the government on the need for adherence to international standards regarding to NHRIs, particularly in the Paris Principles.</td>
</tr>
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Capacity and Operations

Adequate Funding

The NHRCT is an agency under the jurisdiction of Parliament. It received a government budget for 2014 at THB 220,784,700 (USD 6,899,522 i.e. 32 THB=1 USD) The Office has a total staff of about 200 people.

The NHRCT must submit a strategic plan and a budget to Parliament.

The NHRCT must attend a Parliamentary session for the review of its budget.

Government representatives on National Human Rights Institutions

Though there were no government officials on the commission, there were a police official, retired judges, retired state officers etc.

3. EFFECTIVENESS

The organizational structure of the National Human Rights Commission of Thailand is as below:
3.1 Complaints-Handling Mechanism

During 2014, the NHRCT received 689 complaints, categorized as follows:

<table>
<thead>
<tr>
<th>Cases</th>
<th>No. of Cases</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rights in judicial process</td>
<td>174</td>
<td>25.44 %</td>
</tr>
<tr>
<td>Community rights</td>
<td>87</td>
<td>12.71 %</td>
</tr>
<tr>
<td>Political rights</td>
<td>80</td>
<td>11.70 %</td>
</tr>
<tr>
<td>Rights to life and physical integrity</td>
<td>72</td>
<td>10.53 %</td>
</tr>
<tr>
<td>Unfair Treatment</td>
<td>69</td>
<td>10.09 %</td>
</tr>
<tr>
<td>Rights to property</td>
<td>60</td>
<td>8.77 %</td>
</tr>
<tr>
<td>Land rights</td>
<td>47</td>
<td>6.87 %</td>
</tr>
<tr>
<td>Personal rights and liberty</td>
<td>19</td>
<td>2.87 %</td>
</tr>
<tr>
<td>Rights to education</td>
<td>16</td>
<td>2.34 %</td>
</tr>
<tr>
<td>Administrative process rights</td>
<td>15</td>
<td>2.19 %</td>
</tr>
<tr>
<td>Labor rights</td>
<td>12</td>
<td>1.75 %</td>
</tr>
<tr>
<td>Rights to health and health services</td>
<td>10</td>
<td>1.46 %</td>
</tr>
<tr>
<td>Rights to housing</td>
<td>9</td>
<td>1.32 %</td>
</tr>
<tr>
<td>Rights and freedom of occupation</td>
<td>6</td>
<td>0.88 %</td>
</tr>
<tr>
<td>Consumer rights</td>
<td>2</td>
<td>0.29 %</td>
</tr>
<tr>
<td>Communication rights</td>
<td>2</td>
<td>0.29 %</td>
</tr>
<tr>
<td>Not specified</td>
<td>9</td>
<td>0.58 %</td>
</tr>
</tbody>
</table>

3.2 Performance of Sub-Commissions

The Chairperson of the National Human Rights Commission appoint sub-commissions. The Commissioners nominate the sub-commissioners. Each commissioner is composed of a President, who is a commissioner and an NHRCT official as secretary. The sub-commission assists the Commission in various affairs. Currently, there are 25.

The performance of the Sub-Commissions is not satisfactory.

- The nomination committee does not consider diversity of backgrounds and expertise especially in human rights in the selection of sub-commissioners and does not take into
account the proportion of women.

- Some sub-commissioners who have close ties with a commissioner are appointed in more than one sub-commission. Thus, their ability to function in a fact-finding mission is compromised.

- In preparing research reports or publications of the Commission, the staff grant contracts to those who have a personal connection with a sub-commissioner(s) or a working group.

- The NHRCT’s investigation report on political protest in 2013 has not been published.

- The reports submitted to treaty-bodies of the United Nations pursuant to international conventions that Thailand has ratified, such as the Covenant on Economic, Social and Cultural Rights, which was drafted by the International Affairs Bureau, is short in content and does not cover all the provisions of the Covenant.

- The Southern border provinces organizations of people do not view the NHRCT as a credible human rights agency, because the NHRCT does not work with the public. In the Deep South, which is an area that has a lot of human rights violations, the NGOs’ report on human rights abuses often presents a different picture and disputes the much fewer complaints recorded and reports conducted by the NHRCT. A small number of complaints are lodged with the NHRCT’s office because the people/ victims do not have confidence in the investigations of the Southern Border Provinces Sub-commission.

### 3.3 Performance of Officials

The performance of officials of the NHRCT is also not satisfactory.

Many officials lack understanding of the universal principles of human rights.

The recruitment of staff happens in two ways including direct admission and transfer from other agencies. Those admitted directly are not tested on their knowledge of international human rights instruments: which is needed for competent performance of the human rights officers given that the domestic laws fail to properly address human rights issue, making it necessary to refer to international standards for guidance. Staff transferred from other agencies have no previous working experience related to the protection of human rights. The transfer to the NHRCT does not require an aptitude test for knowledge or experience in human rights. Thus, these officials also cannot function effectively.

Some officials lack perceived or actual neutrality in their operations. Some had attended a political rally, some are unusually close to security officials/ agencies, such as the military police. Hence, their human rights violation monitoring and handling of complaints has been slow.

Even if joining a political rally is a personal expression; the expression of a political stance during their duties is unprofessional. For example, comments from sub-commissioners during their official meetings often reflected various conservative political inclinations.
3.3 Policy Recommendations

According to information received from the NHRCT (personal communication, 20 July 2015), in 2014 the NHRC has written and submitted to the Parliament, the cabinet, the Prime Minister and concerned agencies policy proposals and recommendations on 49 issues. Of 37 policy proposals, 12 related to legal reforms.

Some of the policy recommendations to the Cabinet were: On the right to due process – remedies to victims and defendants in criminal cases; On reform of Security Laws i.e. the 1914 Martial Law Act, the 2005 Decree on the Administration in Emergency Situations, the 2008 Internal Security Act; On the Political Situation; On the Demand of the Eastern People’s Network; On the trafficked Rohingyas and Bangladeshis; On the rights of the public after the Coup; On reform of the Law on the Selection of the NHRCT commissioners.

At time of writing, the government has not acted on any of these proposals.

4. THE NHRCT CRISIS

4.1 Merging the NHRCT and the Ombudsman

An effort to merge the NHRCT and the Office of the Ombudsman has been underway since the drafting of the 1997 Constitution. At that time, the Constitution Drafting Assembly did not understand the importance and the role of national human rights institutions. There was fear of this human rights mechanism and a misperception that officials would be harassed when people can use the NHRI to lodge complaints of abuse. A human rights organization is perceived as a threat. That was the sentiment among conservative civil officials. The 1997 Constitution was drafted and opened to a public hearing, a referendum, and there was overwhelming public participation in its drafting. It was considered one of the best versions of the Thai Constitution.

In the 43rd session of the Constitution Drafting Commission (CDC) on 20 January 2015, the CDC proposed changing the status of the Commission on Human Rights and the National Ombudsman by establishing an ‘Ombudsman and Guardian of the Rights of The People’: having authority to defend human dignity, freedom and equality of the people. The details on its establishment, selection process, roles and responsibility, etc. will be specified in an ‘Organic Law on the Ombudsman and Protector of the Rights of the People’.

There were many points of view on the proposed merger, both supporting and opposing it. The public that did not agree to it, observed that there is a misunderstanding of the role and functions of the National Human Rights Commission. Moreover, the debate demonstrated that the work to promote knowledge about human rights is not sufficiently accessible to the public; and that some people even resented the work of the Commission.

However, more than 50 human rights organizations and individuals from many countries have voiced a collective concerns opposing the merger of the two organizations. The reasons are that the mandate of the two organizations is different; their merger will negatively impact on the protection of the human rights of vulnerable groups.
There was also a statement from the Law Reform Commission of Thailand (LRCT) expressing its opposition to the merger. The LRCT also proposed to maintain the independence of the NHRCT and to ensure it has the same mandate as currently to carry out its duties. Additionally, the statement said that the NHRCT should have a relationship with civil society, and consider gender equality and independence from political interference in its operations. The NHRCT was recommended to improve its performance by setting clear guidelines in the law to achieve practical solutions.

The NHRCT sent an urgent letter dated 4 February 2015, regarding the draft of the constitution in respect of the National Human Rights Commission to the leader of the National Council for Peace and Order, the Speaker of the National Reform Council, the President of the National Assembly and Chairman of the Constitution Drafting Council. The content was against the merger.

The issues raised were as follows:

- Concern that the merger will affect the duty to promote and protect the human rights of the people because the two organizations have different mandates;
- The status of the NHRI under the Paris Principles, the standard of the National Human Rights Institutions, will be affected;
- Merger will affect the status of human rights in Thailand within the international community;
- The mandate of the National Human Rights Commission requires efficiency and effectiveness to investigate violations; providing recommendations to the Administrative Court, the Constitutional Court and the Court of Justice and filing a case on behalf of the victim. The NHRC also provides recommendations on policy and legislative updates, harmonization of human rights promotion and protection, and research and information on the human rights situation. Therefore it is imperative the National Human Rights Commission should be independent and separate from other organizations.

The Ombudsman himself has sent a letter to the President of the Constitution Drafting Committee (CDC) on 29 January 2015, stating his disagreement to the merger.

It should be noted that various institutions including the Ministry of Foreign Affairs, and internationally renowned human rights experts such as Prof. Vitit Muntarbhorn were also not in favor of the merger.

In a technical note to the government of Thailand, the Regional Office for South-East Asia of the United Nations High Commissioner for Human Rights (OHCHR) also expressed its concerns that such a merger would weaken the NHRCT and put its effectiveness at risk.

The OHCHR outlined that in the event the NHRCT is not merged with the Office of the Ombudsman, then the NHRI should be strengthened by following the advice of the ICC-SCA on independence in the management of human and financial resources.

Alternatively, if the merger were to go ahead, the OHCHR recommended that the new institution should be in full compliance with the Paris Principles including:

- Clear provisions detailing how the new body will discharge its different mandates that require different working methodologies;
• Retention of all powers of the NHRCT under the 2007 Constitution and 1999 NHRCT Act, specifically “the power to demand relevant documents or evidence from any person or summon any person to give statements of fact”.

Also, that regardless of the decision pertaining to the merger, to establish a revised selection process that complies with the Paris Principles for independent NHRIIs, including:

• Ensuring pluralist representations of civil society and other key stakeholder groups in the selection committee;

• Requiring that the selection committee engage in broad consultation with and participation from the non-governmental sector during the application, screening and selection process;

• Providing clear and detailed criteria to assess the merits of eligible applicants to effectively discharge the mandate, taking into account the applicant’s credible experience in the promotion and protection of human rights;

• Ensuring that the NHRCT Commissioners represent social, ethnic, religious, gender and geographical diversities in Thailand.

The current constitution drafting process has not been completed. Thus, the future of the two organizations is still uncertain. As of July 2015, the Constitution Reform Committee decided to suspend the merger.

4.2 Downgrading of NHRCT from ‘A’ to ‘B’

The National Human Rights Commission of Thailand was first accredited “A” status in 2004. However, the ICC-SCA has been raising a number of concerns about the NHRCT’s structure and functions, including the selection process since it was modified under the 2007 Constitution.

In October 2014, the ICC-SCA recommended that the NHRCT be downgraded to “B” status, because these concerns were not addressed, after a one-year grace period to correct itself. The NHRCT could submit supporting documents to show that concerns raised by the ICC-SCA have been addressed. At time of writing no such efforts have been taken by the NHRCT to reverse the ICC-SCA’s decision.

The ICC-SCA Assessment detailed five issues that contributed to the downgrading of the NHRCT.

1. The Selection and Appointment Process

The SCA expressed the following concerns towards a transparent and participatory selection process that promotes merit-based selection for qualified commissioners:

• There is no requirement to advertise vacancies in the NHRCT;

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The selection committee established by Section 8(1) of the enabling law is composed of officials from a very small number of public institutions, with no clear representation, or a requirement for consultation with key stakeholder groups or civil society; 

- There is no provision for broad consultation and/or participation, in the application, screening and selection process; 

- There does not appear to be clear and detailed criteria upon which to assess the merit of eligible applicants. 

2. Functional immunity and independence

The SCA encouraged the NHRCT to advocate for the inclusion of provisions to clearly establish functional immunity by protecting members from legal liability for actions undertaken in good faith in the course of their official duties. 

- The NHRCT should be granted immunity from their official duties. 

- It should be able to engage in critical analysis and commentary on human rights issues free from interference and with public confidence. 

3. Addressing grave human rights issues in a timely manner

The ICC-SCA stressed that the mission of protecting human rights is not only through acting as an observer, but also conducting investigation and reporting. It also involves a systematic and relentless promotion and protection of the rights of the violated. 

- The NHRCT failed to investigate and report on the 2010 and 2014 violent demonstrations and civil unrest in a timely manner. 

- The investigation into the 2010 human rights violations was delayed by three years. 

4. Independence and neutrality

- NHRCT officials displayed their personal political affiliations in the course of their duties. In a period when the country is undergoing political unrest, during and after the coup and in a state of emergency; the SCA noted that “it is expected that a National Human Rights Institution will conduct itself with a heightened level of vigilance and independence.” This had not been demonstrated by the NHRCT. 

5. Legislative process

The SCA recommended that in the on-going legislative process, the NHRCT has an opportunity for the NHRCT to advocate for full compliance with the Paris Principles in its enabling law. 

- The selection process is beyond the National Human Rights Commission’s control. According to the Constitution and the organic Law on National Human Rights Commission. 

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Act. It is the obligation of the National Human Rights Commission to communicate this understanding to the present government and the Constitution Drafting Committee to take into account the democratic selection process, including but not limited to involvement of civil society and transparency according to the Paris Principles. The selection process, if and when performed according to the Paris Principles will ensure that the Commission on Human Rights has a capacity to protect, upgrade and improve human rights in the country for the benefit of all people in Thailand.

The National Human Rights Commission has made proposals to the government and the Parliament to amend the selection process under the 2007 Constitution to comply with the Paris Principles. Nevertheless, it did not get much attention from both the governments of Prime Minister Abhisit and Prime Minister Yingluck. This implies that the both governments had failed to support and give priority to human rights.

5. CONCLUSION AND RECOMMENDATIONS

The downgrading of the status of the National Human Rights Commission of Thailand is a crisis that demands the Thai government to pay attention to advancing the full compliance of the NHRI with the Paris Principles.

The NHRCT has been established since 1999. For 16 years it has rarely served to sufficiently protect and defend human rights. The attitude of the authorities towards human rights is quite negative. The selection of the commission is far from open and transparent. The government has an unfavorable attitude towards this mechanism as a fault-finding and dangerous organization, rather than a mechanism to protect and claim the rights of citizens. The selection process is in the hand of judges that the state trusts, rather than the people. As a result, the commissioners do not have a good understanding of human rights, international mechanisms, and international human rights laws. Hence, the NHRCT’s operations can hardly meet the standards expected of a national human rights institution.

The issue of internal conflicts within the Office of the NHRCT cultivates negative organizational culture. The conflict between the board of commissioners and senior staff has caused delay in its operations including timely release of human rights violation reports. The operations are hindered and the protection of human rights is sacrificed.

Consequently, the NHRCT needs to have quality and qualified commissioners, office and staff as well as public participation to make the public feel that the NHRCT is a mechanism to protect people.

Recommendations to the Government of Thailand:

1. The NHRCT should be maintained as a separate organization and not be merged with the Ombudsman;

2. The National Human Rights Act should be amended to ensure the selection process will comply with the Paris Principles and the ICC-SCA’s recommendations in order to have competent Commissioners.
Recommendations to the NHRCT:

1. The NHRCT should have good quality branch offices in the regions for public access and for the promotion of people’s human rights;

2. Human Rights Commission staff should maintain proper and professional positions while working with state officials to ensure impartiality. The Staff representing the Office of the NHRCT should be seen as supporting citizens rather than state officials;

3. The Commission should work with the Parliament to raise the importance of human rights to the Parliament and ensure that human rights and human security is balanced with ‘national security’;

4. Staff should be trained to have good knowledge on human rights and to work effectively with impartiality and a professional ethic.

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