

## **Investigation Report No. 269/2018**

**Subject: Right in the judicial process; the case of inquiry officials allegedly not duly proceeding the prosecution of the accused who is imprisoned in another case**

### **Complaint Issues**

The National Human Rights Commission of Thailand (NHRCT) has received a complaint in which the complainant is a convict in a case of attempted murder, currently being held in Khao Bin Central Prison. In addition to this case, the complainant is also prosecuted for two other cases: criminal case No. XXX/2008 of Sakla Police Station, Phra Samut Chedi District, Samut Prakan Province, in which the inquiry official of Sakla Police Station received a complaint in April 2008, and criminal case No. XXX/2010 of Saladaeng Police Station, Bang Khae District, Bangkok, in which the inquiry official of Saladaeng Police Station received a complaint in July 2010 and already interrogated the complainant. However the cases have not seen any progress since it does not appear that the prosecutors have made any decision. Failure of the two complained inquiry officials to complete the prosecution of the complainant who has been detained could cost the complainant the benefits to which he is eligible during detention.

### **Actions Taken**

NHRCT considers that in the prosecution of criminal case No. XXX/2008 of Sakla Police Station, the inquiry official of Sakla Police Station already submitted the investigation file with an opinion to prosecute the complainant to Samut Prakan Provincial Prosecutor. The Samut Prakan Provincial Public Prosecutor then reviewed the investigation file and ordered to prosecute the complainant. Currently, it is pending the arraignment of the complainant. Therefore it is still not plausible to claim that the inquiry official of Sakla Police Station has committed an act in violation of human rights. However, since there is still a problem in coordination between relevant agencies to bring the complainant to prosecution, the Commission has decided to notify the Royal Thai Police and the Department of Corrections to instruct the inquiry officials of Sakla Police Station and Khao Bin Central Prison to coordinate to bring the complainant to Samut Prakan Provincial Prosecutor for further legal proceedings. As for the criminal case No. XXX / 2010 of Saladaeng Police Station, the inquiry official of Saladaeng Police Station received the complaint in July 2010 and already interrogated and requested the detention of the complainant.

The case is currently in the hands of the inquiry official of Saladaeng Police Station who has not yet submitted the case to the prosecutor of the Thonburi Office of Criminal Case. The Saladaeng Police Station has clarified that it "has checked and it appears that the investigation file has disappeared and therefore cannot be submitted to the prosecutor for prosecution. Therefore it requests the withdrawal of its request for the detention, and no longer wants the complainant for prosecution." Therefore the Commission considers that the actions of the inquiry official of Saladaeng Police Station affect Right in the judicial process of both the aggrieved party and the complainant who is an alleged offender in a criminal case to have a fair trial in order to prove the truth in the matter of the allegation, and also affect the public order or the welfare of the people who shall be guaranteed protection against crime. Actions of the inquiry official of Saladaeng Police Station are violations of human rights of the complainant. The Commission has therefore decided to recommend the following appropriate measures or approaches to prevent or address human rights violations to the Royal Thai Police and Saladaeng Police Station in accordance with Section 247 (1) of the Constitution of the Kingdom of Thailand B.E. 2017 and Sections 26 (1) and 36 of the Organic Act on the National Human Rights Commission B.E. 2017:

### **Recommended Appropriate Measures or Guidelines to Prevent or Address Human Rights Violations**

(1) The Royal Thai Police and Saladaeng Police Station should investigate the performance of duties of the inquiry officials in criminal case No. XXX/2010 from the first assigned official to the present one in order to ascertain who is responsible for the flaws in performing the duty, and then consider taking action against that person in accordance with applicable laws and regulations;

(2) The Royal Thai Police should consider instructing and urging inquiry officials to perform their duties in accordance with applicable laws and regulations, emphasizing that they shall strictly adhere to human rights principles in the performance of any duty that may affect the rights and freedom of a person;

(3) The Royal Thai Police should instruct police officers to study the manual of police operations in accordance with human rights principles that NHRCT has published and disseminated through [www.nhrc.or.th](http://www.nhrc.or.th).

### **Achievement/Progress in Human Rights Protection**

(1) The Royal Thai Police has informed that it has followed the recommendations of NHRCT. The Commander of the Metropolitan Police has investigated the performance of duties of the inquiry officials of Saladaeng Police Station concerning the criminal case No. XXX/2010 whether or not there is a deficiency in their performance of duties, and notified the agencies under his command to instruct inquiry officials to perform duties in accordance with relevant laws and regulations, emphasizing that in the performance of duties they must strictly adhere to human rights principles, and instructing police officers to study the operation manual of the police published on [www.nhrc.or.th](http://www.nhrc.or.th). Later, Saladaeng Police Station has informed that for the criminal case No. XXX/2010, the responsible inquiry official already interrogated the accused and made a written request for the detention of the accused to Thon Buri Special Prison (Bang Bon) and Samaedam Police Station because the accused has already been arrested and imprisoned in other cases. Afterwards the responsible inquiry official moved to another position elsewhere and handed over the case to the Deputy Superintendent (Investigation) of Saladaeng Police Station who was the head of the investigation to reassign an inquiry official to conduct further investigation. The investigation of the case was completed in October 2011, with an opinion to prosecute the accused, and the investigation file has already been submitted to the supervisor in the chain of command. However in October 2011, there was a flood in the central region and Bangkok, including at Saladaeng Police Station and the office of Special Prosecutor (Thonburi 1 ), so the investigation file could not be submitted and was kept. When the water subsided, and all workplaces resumed, completed investigation files were sent to the prosecutor, but the criminal case No. XXX/2014 was not. Later upon receiving a letter from the Office of the National Human Rights Commission of Thailand to report the results of the investigation of human rights violations, Saladaeng Police Station appointed a fact-finding committee to look into the case. The committee found that this was due to negligence, and considered penalties under Chapter 5, Section 82 of the National Police Act B.E. 2004. However, the inquiry official responsible had moved to another position in the Natural Resources and Environmental Crime Suppression Division under the Central Investigation Bureau; therefore, Saladaeng Police Station has no authority to mete out punishment. It has then sent the matter to Sub-Division 6 of the Natural Resources and Environmental Crime Suppression Division under the Central Investigation Bureau to consider further actions.

(2) The Corrections Department has informed that it ordered Khao Bin Central Prison to move the accused to Samut Prakan Central Prison for prosecution in the case of Sakla Police Station, Samut Prakan Province. However, because the accused is an inmate whose behaviors require special supervision related to drugs and cell phones, clear date and time for prosecution must be established before transferring prisoners to prosecution to prevent potential problems when such inmates are moved to other prisons for long periods of time and may have drugs-related activities and build networks. It instructed Khao Bin Central Prison to coordinate with Sakla Police Station, Samut Prakan Province, to set the date and time for the prosecution of the inmate first, and then move the accused to Samut Prakan Central Prison.