

Executive summary
Research Paper on
*National Human Rights Commission
and the Investigation and Monitoring of
Human Rights Violations in the Private Sector*

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Article 257 Paragraph 1 (1) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and Article 15 (2) of the National Human Rights Commission Act B.E. 2552 (2009) lay down mandates for the National Human Rights Commission (NHRC), which has the authority to inspect, monitor and report any actions taken or the neglect of actions in Thailand considered to be human rights violations, as well as any other action that does not adhere to commitments made in the international human right instruments ratified by Thailand. NHRC is also mandated with the duty to suggest appropriate measures, adjustments or amendments for persons or specific agencies that have violated human rights either by their actions or inaction so that they operate according to the law. In case no improvement is made by an agency as per the NHRC suggestion, NHRC needs to report the agency to Parliament to redress the issues of the agency further. In such a case, an argument was posed by a non-governmental organization stating that NHRC was established with only the scope to protect human dignity, rights and liberties of Thai citizens that are recognized in the Thai Constitution from being abused by government agencies. The Thai Constitution does not legitimize or authorize NHRC to reorganize, restructure or improve the civil relationship and interaction within the private sector, which includes non-governmental organizations. In case the private sector does not follow the suggested measures to solve the problem of its human rights violation, NHRC cannot ask the Prime Minister to order the agency at fault to follow the suggestions. Besides, human rights protection in private sector relationships may have an impact that contradicts with the independency intended in private law, such as the protection of equality in the selection of contractors by the private sector. The point is whether this matter

lies within the scope of the mandate of NHRC or not, and if so, then how far do the boundaries stretch. Furthermore, if the status and the decision power or bargaining power in making agreements in the private sector are different, and if one party is always in a disadvantageous position, appearing in an unfair contract (such as contracts in which employees are taken advantage of or contracts that provide no protection to consumers), then the State must intervene. The State can provide protection to the disadvantaged party in such cases. Human rights principles play a role in the individual interest or civil interest, which was traditionally considered only to be a private matter. This also reveals human rights violations may exist in relationships among members of the private sector themselves.

Hence, NHRC initiated a study research on “National Human Rights Commission and the Monitoring of the Human Rights Violation among the Private Sectors” through the consultancy of Thammasat University Research and Consultancy Institute. This research aims to study the concepts, principles, and international standards, as well as case studies, regarding the scope of authority of the NHRC in investigating and monitoring human rights violations in the relationship among members of the private sector themselves. The recommendations of clear guidelines for performing duties within the scope of work mentioned above will help members comply with the intentions of Article 257 Paragraph 1 (1) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and Article 15 (2) of the National Human Rights Commission Act B.E. 2552 (2009). The methodology used for this research was documentary research. The objectives of the study was to apply the knowledge acquired to propose guidelines for NHRC’s duty to investigate violations of human rights in relations with the private sector

From the research, the research team summarized significant points about the NHRCT and their role of investigation and monitoring human rights violations in the relationship among members of the private sector and make recommendations related to the duties of NHRCT regard to investigate violations among the private

sectors. The comments and suggestions are legislative measures and other measures, as follows:

1. Legal Measures

1.1 Setting clear definitions and authorizations of NHRC about investigating and monitoring human rights violations in the relationship among members of the private sector

The research team considered the lack of clear definitions of the authorization in investigation and monitoring human rights violations in the relationship among members of the private sector themselves to be a significant point. This lack consequently leads to the argument of what NHRC can do and how far the boundaries stretch.

To practically solve this problem, the NHRC may need to set clear regulations or guidelines about the authorization it has in this matter to help the public understand. For instance, NHRC could identify categories of cases it can accept for consideration, various steps for receiving complaints, developing cases and investigations.

Besides in the above regulations or guidelines related to the investigation of human rights violation in the relationship among members of the private sectors, NHRC may also need to define the scope of the term “right to privacy”. A clear definition would provide significant boundaries as to whether or not an incident is a human rights violation among members of the private sector. In regulating the scope of the term “right to privacy” of individuals, NHRC may use the guidelines agreed to in the ICJ (International Commission of Jurists) meeting in Stockholm, Sweden, in 1969. This conference defined “the right to privacy” as*the right to be let alone to live one’s own right with minimum degree of interference. This means the right of individual to lead his own right protected against:*

(a) interference against private, family and home life;

- (b) interference with his physical or mental integrity or his moral or intellectual freedom;*
- (c) attacks on his honor and reputation;*
- (d) spreading the false message, disparage in public.*
- (e) disclosure of irrelevant embarrassing facts relating to his private life*
- (f) using the name or identification mark or image without power*
- (g) spying, prying, watching and besetting;*
- (h) interference of his correspondence;*
- (i) disclosure of information given or received by him in circumstances of professional confidence*
- (j) misuse of his private communications, written or oral;.*

Thus, it may be said that the areas that an individual is entitled to the protection and respect of his/her right to privacy is to live independently. The individual has the right to search for happiness in any way he/she wishes, as long as it is not against the law or against public peace and morals and does not violate the rights and liberties of others. Therefore, if there is incident in which a member of the private sector violates such entitlements of others, it would be considered as a human rights violation in the relationship among members of the private sectors themselves.

As such, even though NHRC has the authorization to investigate human rights violations in the relationship among members of the private sector, it would have the authorization and responsibility to investigate and monitor only the dimension of interference and encroachment on the right to privacy that may be a human rights violation. However, NHRC is not allowed to go beyond this dimension to investigate

illegal actions that violate other specific laws under the authority of other government agencies.

NHRC needs to implement capacity building programs on the above matters to enhance knowledge and expertise of personnel of the NHRC office. Apart from this, public relations work is also needed to educate the general public on these matters as well. These responses will reinforce the standards of operation in parallel throughout society.

1.2 The improvement for clear, concrete roles of NHRC

Assignments of authorities and responsibilities of NHRC enable it to directly provide opinions and suggestions to the minister of each ministry for use in setting policies and measures to protect human rights. The policies may be said to derive from cases of complaints on issues affecting the majority of people in society. The suggestions by NHRC impact State agencies, State Enterprises and businesses, as well as help the private sector to better recognize the significance of human rights issues. Hence, this role should be mandated as one of the authorities and responsibilities of NHRC.

Additionally, NHRC should be assigned to promptly respond or immediately take action on urgent and recurring cases, whether or not complaints have been filed, if it is important and frequently occurred.

In such cases, NHRC can support medical care services, food, clothing, improving or transferring accommodation or even officially taking action against the human rights violators, or abusing other people to be out of work. The implementation is the good policy, in order to tackle the problem of human rights violations quickly and promptly. NHRC also fixed the problem and deal with the abuse.

Such a policy would ensure appropriate and comprehensive solutions to the issue of human rights violations.

To have this measure or assignment, laws in relation to the authorizations and responsibilities of NHRC may need to be amended. Dialogue and brainstorming

among the experts would encourage consultation and consideration on how these roles, duties and responsibilities should be increased or improved.

2. Other Measures

From the research on laws of foreign countries concerning human rights issues, the guidelines and the experiences of those countries can be used as a model to adjust and improve the NHRC's practices of its responsibilities, especially on important points. Apart from the legal aspect, there are also other supplementing measures, namely:

2.1 The establishment of NHRC Branch Offices in other provinces in order to provide more effective and rapid assistance to the people in those areas.

2.2 Monitoring and evaluating the implementation of the National Human Rights Plan of Action should be carried out by both outsider and in-house evaluators by forming a committee with the appointment of representatives from the ministerial level to be in-house evaluators. This measure will help impel the Plan into concrete practices, since each ministry already has the role and responsibility to implement the plan. Their additional role as an "evaluator" would make all official agencies in each ministry realize and recognize the significance of the implementation of the plan of action on human rights. However, in the initial stages, a study might be needed to clarify the monitoring and evaluation needs before designing the framework.

2.3 Raising awareness and consciousness in human rights principles among the public, starting from childhood and youth so that they can see its value and continuously promote and apply the principles of respecting human dignity, rights and liberties, non-discrimination and equality. This method may effectively help to promote and support the tasks and missions to achieve human rights goals.

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