

# EXECUTIVE SUMMARY

## ANNUAL REPORT 2017

### **The Third National Human Rights Commission of Thailand (1<sup>st</sup> October 2016 – 30<sup>th</sup> September 2017)**

The National Human Rights Commission of Thailand (NHRCT) compiled this Annual Report for the year 2017 to report results of our operation in the 2017 fiscal year (from 1<sup>st</sup> October 2016 to 30<sup>th</sup> September 2017) by showing successes of major works of the Third National Human Rights Commission and Office of the National Human Rights Commission according to duties and authority of the National Human Rights Commission in Section 247 of the Constitution of the Kingdom of Thailand, B.E. 2560 (2017) and the National Human Rights Commission Act, B.E. 2542 (1999) in 7 areas as follows:

- (1) Results of operation in the area of human rights protection;
- (2) Results of operation in the area of human rights promotion and network coordination;
- (3) Preparation of policy recommendations and recommendations for improvement of laws and rules to promote and protect human rights;
- (4) Results of operation in the area of human rights research and studies;
- (5) Results of operation in the area of international human rights;
- (6) Results of operation in the area of human rights personnel development; and
- (7) Results of operation in the area of human rights information and communication technology (ICT).

## Summary of successes in 7 important areas of operation

### 1. Results of operation in the area of human rights protection consisting of results of operation as follows:

#### 1.1 Examination of human rights violation:

In the 2017 fiscal year, the National Human Rights Commission of Thailand (NHRCT) received a total of 619 petitions about human rights violation or unfair treatment or cases the NHRCT considered that there should be examination about human rights violation. Violation of rights in the justice process accounted for the highest proportion with 193 cases or 31.18 per cent. Petitions came most from individuals at 55.90 per cent or 346 cases and the area where highest number of petitions came from was the Southern Region with 145 cases or 23.42 per cent of all cases. In 2017 fiscal year, the NHRCT checked petitions and issued reports showing results of examination on cases of human rights violation from 1<sup>st</sup> October 2016 to 30<sup>th</sup> September 2017 with a total of 1,009 cases being considered or checked which can be divided into 91 cases or 9.02 per cent that were cases sent to other organizations with authority to consider correcting the problems, 884 cases or 87.61 per cent that were cases being dismissed or examination had ended, and 26 cases or 2.58 per cent were cases of which measures had been taken to solve human rights violation problems.

#### 1.2 Monitoring actions taken according to measures to solve human rights violation problems:

They can be divided into 29 reports of examination carried out before the 2017 fiscal year of which related agencies had taken actions and monitoring can be terminated consisting of 16 cases of community rights or 55 per cent and 35 reports of which the NHRCT had checked the petitions and found that they were cases of human rights violation and came up with measures to solve human rights problems for related state agencies to take actions; and 11 of them or 31 per cent involved community rights.

#### 1.3 Monitoring actions taken according to the policy recommendations:

They can be divided into 7 reports of actions taken according to results of consideration with policy recommendations before the fiscal year 2017 of which related agencies took actions according to the policy recommendations and could conclude the monitoring work within this fiscal year and 43 per cent of them or 3 cases were unfair discrimination, and 12 reports of actions according to results of consideration with policy recommendations in the fiscal year 2017 of which 25 per cent or 3 cases were right to receive public health care service.

#### 1.4 Monitoring actions taken according to policy recommendations about improvement of laws:

They can be divided into 72 reports of actions taken according to results of consideration with policy recommendations before the fiscal year 2017 of which related agencies took actions according to the policy recommendations and could conclude the monitoring work within this fiscal year and 49 per cent of them or 35 cases were right in the justice process, and 12 reports of actions according to results of consideration with policy recommendations in the fiscal year 2017 of which 25 per cent or 3 cases were right to receive public health care service.

Details are given as examples of actions taken to protect human rights by the National Human Rights Commission in the fiscal year 2017 in 19 cases as follows:

Case no.1 : Community right and right to participate in the management of natural resources and environment in case of a claim that the Mineral Bill, B.E. .... affected human rights;

Case no.2 : Community right and right to occupational freedom in case of a claim that local fishermen were affected by proclamation of the Fishery Decree, B.E. 2558 (2015);

Case no.3 : Community right in case of a claim that the Navigation in Thai Water Act (Issue no.17), B.E. 2560 (2017) affected coastal communities and communities by the water;

Case no.4 : Community right in case of a claim that construction of Laem Yai Gas Depot and pier of the gas depot affected the environment and occupations of Klong Noi community;

Case no.5 : Right to receive public health care service and welfare from the State in case of policy and plan of actions to reduce disabilities by birth by requiring that Folic acid was a part of food ingredients;

Case no.6 : Right and liberty to occupation in case of a claim that the Security Business Act, B.E. 2558 (2015)'s provisions about qualifications and prohibitions of security guards affected right and liberty to occupation;

Case no.7 : Human dignity and right and liberty to body in case of the use of shackle in form of foot padlock with 7 detainees who were in a student group called 'The New Democracy Movement' on 5<sup>th</sup> July 2016;

Case no.8 : Right in the justice process in case of a claim that inquiry officials were not fair in performing their duties;

Case no.9 : Right in the justice process related to right to properties in case of a claim that officers embezzled the property in dispute;

Case no.10 : Unfair discrimination in case of a claim that a school had forced students to undergo a blood test to check HIV virus and used it as a condition for enrollment;

Case no.11 : Unfair treatment towards a person because of sex in case of a claim that students who had gender identity different from their sex at birth had been forced to wear their hair and dress according their sex at birth to attend classroom, take an examination, receive apprenticeship and attend the degree conferring ceremony;

Case no.12 : Right of people with disabilities in case of a claim that the Distance Education Institute's announcement about enrollment of students at upper secondary level violated right of people with disabilities;

Case no.13 : Right and liberty to life and body in case of a claim that a child's DNA sample was collected by state officials in Yaha Sub-District, Yaha District, Yala Province;

Case no.14 : Right to receive public health case service in case of a claim that Navamindharadhiraj University's Faculty of Medicine Vajira Hospital transferred a complainant to another health facilities in order to use his health security right without his consent;

Case no.15 : Labour right in case of a claim that company T in Lopburi Province violated labour right and restricted liberty to travel;

Case no.16 : A case about solving problems in the management of power resources in Thailand;

Case no.17 : Children's right in the criminal justice process in case that children and juvenile's criminal offence records had been revealed;

Case no.18 : Right in the justice process in case of a petition claiming that there had been torture and inhumane treatment or other punishment in the southern border provinces;

Case no.19 : Improvement of laws to solve problems of national reserved forest and national park areas overlapping with private lands, and case of people suffered from the measures to take back forest lands according to the NCPO order no. 64/2557 dated 14<sup>th</sup> June 2014 and no. 66/2557 dated 17<sup>th</sup> June 2014.

Apart from detailed examples above, in the fiscal year 2017, there were many more important results of operation to protect human rights, such as economic right related to unfair discrimination in case of a claim that rubber tappers had not been permitted to register as rubber farmers according to the Rubber Authority of Thailand Act, B.E. 2015; unfair discrimination in case that the Bank of Thailand (BOT) required external persons who applied to be selected and enrolled as BOT staff to have certain average score throughout their education at graduate level; children's right to receive assistance and advice to guide their education and occupation in case that children had been found to have colour blindness; and right and liberty to life and body in case of a claim that people had been tortured while being detained by state officials.

### **1.5 Results of other important operation to protect human rights consisting of:**

(1) Making visits to promote respect and actions according to human right principle (under a project to prepare policy recommendations and/or recommendations on improvement of laws to promote and protect human rights from results of visits to risky places) to 10 Juvenile Training Centres, and 5 Juvenile Observation and Protection Centres;

(2) Arbitration for protection of human rights, the NHRCT came up with Regulation Concerning Rules and Methods for Arbitration, B.E. 2559 (2016), which was published in the Royal Gazette on 6<sup>th</sup> September 2016, to make arbitration mechanism an option for solving human rights violation problems. At present, 5 petitions entered arbitration process under the regulation, 3 petitions were settled and a report on results of arbitration have been considered and approved; it was about right to receive public health care service and welfare from the state in case of a claim that a state hospital refused a request to check CT Scan results, causing incorrect diagnosis.

## **2. Results of operation in the area of human rights promotion and network coordination consisting of results of operation as follows:**

**2.1 Human rights promotion** consisting of (1) Southern Border Area under Human Rights Principle Project (under the Propelling Solutions to Problems in the Southern Border Provinces Integration Plan); (2) Human Rights Works Propelling Project for Human Rights Promotion and Protection (under the Propelling Management of Alien Labour and Human Trafficking Problems Integration Plan); (3) Seminar on “Legal Problems about Nationality and Right to Citizenship of Thai State” Project; (4) Seminar for Dissemination and Propelling the UN Guiding Principles on Business and Human Rights (UNGPs); (5) 10<sup>th</sup> December International Human Rights Day Event Project; and (6) Human Rights Debate Contest in English for Higher Education Students Project.

**2.2 Network coordination** consisting of (1) coordination between government agencies, non-governmental organizations (NGOs) and other organizations working on human rights in the NHRCT Meets the People Forum; (2) coordination with education institutes, the people and human rights NGOs for cooperation with universities that had memorandum of cooperation with Office of the National Human Rights Commission; (3) promotion of works and activities with organizations that had agreement of cooperation with Office of the National Human Rights Commission; (4) coordination of human rights cooperation and activities with NGOs networks, civil society sector and people’s networks all over the country, and (5) accreditation of human rights NGOs.

**2.3 Public relations for human rights communication** consisting of the following projects as: (1) press tour for dissemination of news about human rights situation; (2) Public Relations for Human Rights Communication, (3) human rights communication work through Office of the National Human Rights Commission’s spokesperson; (4) People’s News Awareness and Understanding Survey for Human Rights Communication Planning; (5) Seminar on “Capital Punishment – Reduces Wrongdoing or Needs Rethinking”; (6) Seminar Workshop on Thai Media and Borderless Human Rights; (7) Seminar Workshop on Knowledge Promotion and Awareness Raising for Presentation of News that Respects Human Rights; (8) Seminar on the Royal Ordinance on Fishery and Sustainable Fishery on September 5-6, 2016; (9) the 28<sup>th</sup> Global Ordinary Meeting of International Society for Lesbians, Gays, Bisexuals, Transgender and Intersex; (10) Seminar on Monitoring Results of Deliberation on the Mineral Bill, B.E. ....; (11) Seminar on the Case of Thai People Being Missed from the Citizen Registration which was a result of the NHRCT’s field visit to the Eastern Region; (12) Women Human Rights Defenders Honouring Event on 6th March 2017 at Ambassador Hotel in Bangkok; and (13) Workshop on Empowerment of Muslim Women in the Southern Border Province under the project to prepare policy recommendations or recommendations for improvement of laws to promote access to justice among Muslim women in the Southern Border Provinces on May 6-8, 2017, at CS Pattani Hotel in Pattani Province.

### **3. Preparation of policy recommendations and recommendations for improvement of laws and rules for promotion and protection of human rights consisting of results of actions as follows:**

3.1 Reports on results of consideration to propose policy recommendations and recommendations for improvement laws and rules to the Parliament and related agencies, including monitoring actions according to the policy recommendations on 12 matters;

3.2 Giving human rights views on bills proposed by various government agencies on 4 matters.

### **4. Results of operation in the area of research and studies on human rights consisting of results of operation as follows:**

#### **4.1 Results of research for knowledge development:**

Research was conducted on 3 areas of human rights that were (1) research on “Human Rights Due Diligence and production of a handbook for human rights due diligence of hotel business, including a checklist on hotel business”; (2) research project on the National Human Rights Commission of Thailand’s Strategic Plan on Business and Human Rights, B.E. 2560-2562 (2017-2019); and (3) research on “Protection of Rights and Liberties of Persons Principle in case of Contempt of Court Offence”.

#### **4.2 Propelling results of research to actions in society:**

The NHRCT took actions to propel related organizations and agencies, including interested people in general, to make uses of research results as follows: (1) printing reports of research results on 4 matters and disseminating them to government agencies, private sector, civil society sector and education institutes; (2) using them as information on 4 matters to support preparation of the NHRCT’s annual report on human rights situation assessment; (3) using them to support preparation of reports on results of petition checking, results of consideration, policy recommendations and recommendations for improvement of laws on 4 matters; and (4) using them as information to support the business sector to respect human rights, such as production of media for communicating the concept of business and human rights and campaign for the business sector to act according to UNGPs on 4 matters.

#### **4.3 Production of reports on human rights situation assessment in Thailand and annual report of the NHRCT:**

In 2017 fiscal year, The NHRCT produced two reports on human rights situation assessment in Thailand, as: (1) Report for the year 2015; and (2) Report for the year 2016. Moreover, the NHRCT also produced two annual reports to show successes from operation of the National Human Rights Commission of Thailand and Office of the National Human Rights Commission of Thailand that were reports on results of the National Human Rights Commission of Thailand’s operation for the year 2015 and 2016.

## **5. Results of operation in the area of international human rights consisting of results of the NHRCT's operation as follows:**

**5.1 Cooperation with national human rights institutions at various levels** consisting of: (5.1.1) cooperation at international level under the framework of the Global Alliance of National Human Rights Institutions (GANHRI); (5.1.2) cooperation at Asia-Pacific Region level under the framework of the Asia Pacific Forum (APF); and (5.1.3) cooperation between national human rights institutions in South East Asia National Human Rights Institutions Forum (SEANF).

**5.2 Cooperation with ASEAN's human rights mechanisms and agencies of the United Nations** consisting of : 5.2.1 meetings organized by AICHR that were: (1) a meeting on promotion of Corporate Social Responsibility (CSR) and human rights in ASEAN on November 3<sup>rd</sup> - 4<sup>th</sup>, 2016 at Mandarin Orchard Hotel in Singapore, (2) AICHR Judicial Colloquium on the Sharing of Good Practices regarding International Human Rights Law on March 13<sup>th</sup> - 15<sup>th</sup>, 2016 in Kuala Lumpur, Malaysia, (3) 3<sup>rd</sup> AICHR Regional Dialogue on the Mainstreaming of the Rights of People with Disabilities in the ASEAN Community on June 19<sup>th</sup> - 21<sup>st</sup>, 2017, in Phuket, Thailand; and 5.2.2 UN Forum on Business and Human Rights 2016 on November 14<sup>th</sup> - 16<sup>th</sup>, 2016, in Geneva, Switzerland.

**5.3 Production of reports on actions according to human rights treaties** consisting of: (5.3.1); a shadow report on actions according to the International Covenant on Civil and Political Rights (ICCPR); and (5.3.2) a shadow report on actions according to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

**5.4 Cooperation with national human rights institutions in other countries** consisting of: (5.4.1) National Human Rights Institution of the Republic of Korea, (5.4.2) National Human Rights Institution of Qatar; (5.4.3) National Human Rights Institution of the Republic of Denmark, (5.4.4) National Human Rights Institution of Bangladesh; and (5.4.5) National Human Rights Institution of Australia.

**5.5 Cooperation with international organizations and international civil society organizations** consisting of : (5.5.1) a meeting with representatives from Office of High Commissioner of Human Rights (OHCHR); (5.5.2) a meeting with the UN Special Rapporteur; (5.5.3) inviting members of UN Working Group on Business and Human Rights to participate in seminar; (5.5.4) a meeting with former members of National Human Rights Commission of Germany; (5.5.5) participation in a meeting between the network of National Human Rights Institutions in South East Asia and human rights mechanisms in Europe; and (5.4.6) cooperation between the NHRCT and the Association for the Prevention of Torture (APT).

## 6. Results of operation in the area of human rights personnel development consisting of results of operation as follows:

### 6.1 Participation in training course and workshops organized by international agencies.

In 2017 fiscal year, the NHRCT sent staff of Office of the NHRCT to attend a total of 9 course trainings and workshops organized by international agencies.

### 6.2 Trainings and seminars organized by Office of the National Human Rights Commission of Thailand.

In 2017, Office of the NHRCT organized training and seminars and supported personnel to attend training organized by other organizations to promote development of human rights works as follows: **6.2.1 Training**; Office of the NHRCT organized 5 training courses and supported personnel to attend 27 training courses organized by other organizations; and **6.2.2 Seminar** : (1) Academic seminar project for development of human rights knowledge in various dimensions organized 10 seminars; (2) Workshop project for organizational development; and (3) Knowledge management project.

## 7. Results of operation in the area of human rights information and communication technology (ICT):

They were consisting of results of operation as follows: 7.1 Development of system/mechanism/personnel on information and communication technology to make operation of the National Human Rights Commission efficient and effective; 7.2 Establishment of a Human Rights Archive; 7.3 Human Rights Information Center; and 7.4 Office of the National Human Rights Commission's development of personnel on information technology.

In the 2017 fiscal year, Office of the National Human Rights Commission receive a total budget of 216,455,900.00 Baht for annual expenses and other expenses. (In 2016 fiscal year, Office of the NHRCT received 214,219,300.00 Baht.) which can be divided into 125,578,200.00 Baht for personnel expenses, 89,988,600.00 Baht or operation costs, and 889,100.00 Baht for durable goods, land and buildings. The budget was used in a basic plan for balance adjustment and development of the state's administrative system to achieve product no.1 – human rights promotion, and product no.2 – work plan for human rights protection; state personnel; work plan for integrating actions to solve problems in the southern border provinces; work plan for integrating actions to solve alien labour problems and human trafficking; and work plan for integrating actions to promote research and development. (Details are in Chapter 4 – budget showing financial status, Office of the National Human Rights Commission, and remarks to the financial budget for the year which ended on 30<sup>th</sup> September 2017.)

## Summary of Problems, Obstacles and Recommendations for Actions

The National Human Rights Commission of Thailand prepared an annual report for the year 2017 according to our duties and authority provided in Section 45 of the National Human Rights Commission Organic Act, B.E. 2560 (2017) which came into force on 13<sup>th</sup> December 2017. The Act requires the National Human Rights Commission to prepare an annual report to present to the Council of Ministers and the Parliament. The Commission is required to at least summarize problems, obstacles and recommendations for actions and disseminate this report to the public in general. From operation in the past year, the National Human Rights Commission could summarize problems, obstacles and have recommendations/guidelines for solving the problems as follows:

### **1. Downgrading of status of the National Human Rights Commission has affected human rights images of the country and the government, and also affected images of the NHRCT, possibly causing the NHRCT to lose credibility and recognition in the eyes of international human rights community:**

**1.1 There is no provision that requires broad consultation or participation of civil society sector in the application, screening and selection process, including public relations of vacancy and criteria for consideration of applicants' qualifications that clear and detailed enough.**

**Guidelines for solutions:** The NHRCT came up with proposals about selection process for NHRCT members and presented them to the Constitution Drafting Committee to prepare the National Human Rights Commission Organic Act, B.E. .... to make the selection process transparent, merit-based, focusing on consultation and/or participation of the people, and widely disseminate news about the application process, so that they would be applicants from various sectors with diverse education background to ensure independence and create public trust.

**1.2 There is no legal provision with immunity for protection and independence of the NHRCT in their performing of duties in order to protect Chairman and members of the NHRCT from having to bear any guilt, both civil and criminal, when they honestly perform their duties and use their authority.**

**Guidelines for solutions:** The NHRCT proposed to the Constitution Drafting Committee that the National Human Rights Commission Organic Act, B.E. ... should have provisions to protect operation of the NHRCT in order to prevent honest performance of duties by Chairman and members of the National Human Rights Commission from being under external influence or from being threatened with legal prosecution, enabling the NHRCT to express views on human rights independently without interference.

## 2. Monitoring actions taken according to measures to solve problems from the reports of results from examination of human rights violation by the National Human Rights Commission of Thailand which the NHRCT had sent to related agencies:

These were consisting of measures to solve human rights violation problems, policy recommendations and recommendations to improve laws. By monitoring results of actions to solve problems through coordination, it was found that related government agencies had continuously tried to solve the problems with some progress but could not terminate them or could not take actions because of some problems and obstacles to follow the resolutions made by the NHRCT as follows:

**2.1 Measures to solve human rights violation problems as the NHRCT required in the reports of results of human rights violation examination were just recommendations or suggestions, not legally binding, resulting in related government agencies not paying attention or trying to take actions in order to make these measures effectively successful. Moreover, most government agencies still tended to adhere to existing legal framework rather than trying to protect against or solve human rights violation problems.**

**Guidelines for solutions:** The Council of Ministers should pass a resolution requiring government agencies to strictly take actions according to the NHRCT's measures to solve human rights violation problems within a certain period of time. If they disagreed with the measures or were restricted by any legal provisions, they should report to the Council of Ministers with suggestions so that the Council could consider giving orders.

**2.2 Related government agencies could not take actions according to measures to solve human rights violation problems as the NHRCT required in the reports of results of human rights violation examination because:**

- They were against legal provisions and official regulations;
- They lacked clarity in the way these measures could be successfully and concretely implemented;
- They involved land conflicts of which right over land needed a long time to prove and concluded;
- They involved several related government agencies, resulting in the lack of integrated actions to solve the problems; and
- The Government agencies being informed to take actions according to the NHRCT's recommendations do not have direct authority to do so.

**Guidelines for solutions:** The Council of Ministers should pass a resolution requiring government agencies to strictly take actions according to the NHRCT's measures to solve human Rights violation problems within a certain period of time. If they disagreed with the measures or were restricted by any legal provisions, they should report to the Council of Ministers with suggestions so that the Council could consider giving orders.

2.3 Monitoring results of actions taken according to recommendations to improve laws to solve human rights violation problems that the NHRCT had sent to the Council of Ministers, it was found that when the Council of Ministers ordered related government agencies to consider taking actions and these agencies reported back, the Council of Ministers only “acknowledged” these reports; there was no definite guarantee that those government agencies would take actions according to the report and how much. In addition, there was no legal provisions to authorize the NHRCT to ask government agencies to take actions according to policy recommendations and recommendations to improve laws and rules that the NHRCT had sent to the Council of Ministers.

**Guidelines for solutions:** The Organic Act on National Human Rights Commission, B.E. 2560 (2017) should be amended to add provisions to authorize the National Human Rights Commission to monitor and ask government agencies to take actions according to policy recommendations and recommendations to improve laws and rules that the NHRCT had informed the Council of Ministers.

### **3. Consideration of a Bill of the Royal Decree on Remuneration and Travel Expenses of the National Human Rights Commission of Thailand’s Chairman, Members and Sub-Committee Members (Issue no. ...), B.E. ....**

The Office of the National Human Rights Commission had proposed this Bill since 2009 but up till now is still in the stage of consideration by the Council of Ministers.

**Guidelines for solutions:** The Council of Ministers should consider a Bill of the Royal Decree on Remuneration and Travel Expenses of the National Human Rights Commission of Thailand’s Chairman, Members and Sub-Committee Members (Issue no. ..) B.E. .... making it consistent with Section 175 of the Constitution of the Kingdom of Thailand, B.E. 2560 (2017) and Section 16 of the National Human Rights Commission Act, B.E. 2542(1999), completely within an appropriate timeframe.