

**STATEMENT OF COMPLIANCE WITH THE PARIS PRINCIPLES
OF THE [NATIONAL HUMAN RIGHTS COMMISSION OF THAILAND]
- [NOVEMBER 2008] -**

I. BACKGROUND

At the April 2006 meeting of the International Coordinating Committee of National Human Rights Institutions (ICC), it was agreed that members currently accredited with status A would have their accreditation renewed every five years, as part of a regular process of re-accreditation, commencing in October 2006 according to an agreed schedule. The National Human Rights Commission of Thailand (hereafter the NHRCT) is scheduled for a re-accreditation review in October 2008.

The NHRCT first submitted its application for accreditation as a National Institution to the in 2002. At this time it was granted an "A" status.

The following sections provide background information on the NHRCT based on supporting documentation submitted by the institution to the Secretariat of the ICC, in accordance with Article 3 of the ICC Rules of Procedure.

II. DOCUMENTATION PROVIDED IN SUPPORT OF THE APPLICATION

To permit the ICC to make a determination as to the compliance of the NHRCT with the Paris Principles, the following documentation has been submitted by the NHRCT in support of its application:

- ❖ Constitution of the Kingdom of Thailand (2007) [hereafter the "2007 Constitution"];
- ❖ Constitution of the Kingdom of Thailand (1997) [hereafter the "1997 Constitution"];
- ❖ National Human Rights Commission Act B.E. 2542 (1999) [hereafter the "Act"];
- ❖ Executive Summary of the 2006 Annual Report (hard copy of the whole document to be sent by normal mail) [hereafter the "2006 Executive Summary"];
- ❖ "Assessing Thailand's Compliance with the Obligations under the International Covenant on Civil and Political Rights and in Relations with the Constitution" (July 2005) [hereafter the "ICCPR Statement of 2005"];
- ❖ Annual Budget Allocation for the NHRC and Its Expense During the Period of 2000-2007 [hereafter the "Budget"]; *and*
- ❖ Statement of Compliance with the Paris Principles of the National Human Rights Commission of Thailand (30 June 2008) [hereafter the "Statement of Compliance"] with the following annexes;
 - Annex 1: Unofficial translation of provisions relating to the National Human Rights Commission in the Constitution of Thailand B.E. 2550 (2007)
 - Annex 2: Statement of the NHRC "The Concern of the National Human Rights Commission of Thailand over Human Rights Situation Within the Country" (26 September 2006)
 - Annex 3: Statement of the National Human Rights Commission of Thailand on the Exercise of the Freedom to Assemble Peacefully and Without Weapon" (19 June 2008)
 - Annex 4: Chart illustrating the NHRC's Sub-Committees (June 2008)
 - Annex 5: Chart illustrating structure of the Office of the National Human Rights Commission
 - Annex 6: Flow chart of complaints handling and investigation

It is to be noted that the above documents were also submitted to the ICC Secretariat in electronic format on a CD-ROM.

III. CHARACTER OF THE NHRI

1. Establishment

The NHRCT was initially established under the 1997 Constitution (sections 199-200) and further regulated by the NHRCT Act of 1999, which details mandate, functions and powers of the NHRCT. In 2007 a new Constitution entered into force, which disciplines the NHRCT at the sections 256 and 257. The 2007 Constitution reproduces the provisions of the 1997 Constitution, but expands upon the NHRCT's powers by giving the Institution the ability to refer cases and opinions on cases to the Constitutional and Administrative Courts, and to file lawsuits on behalf of claimant parties at the Thai Court of Justice.

Therefore, the basis for the NHRCT consists of the 2007 Constitution and the 1997 Act (hereinafter the Act).

According to the *Statement of Compliance* (p. 2), the 2007 Constitution requires a new law to govern the NHRCT to be enacted to comply with the provisions of the 2007 year as from the date of the declaration of policies of the Council of Ministers to the National Assembly, -on 17 February 2009- (as per Section 303 of the 2007 Constitution).

There is no explicit reference to the geographical jurisdiction of the NHRCT. However, the definition of the phrase "human rights" given in Section 3 of the 1999 NHRC Act refers to "human dignity, right, liberty and equality of people which are guaranteed or protected under the Constitution of the Kingdom of Thailand or under Thai laws or under treaties which Thailand has obligations to comply [with]". This brings to assume that the NHRCT's jurisdiction includes all the national territory.

2. Independence

The 2007 Constitution (Chapter XI) differentiates constitutional organs in 'constitutional independent organs' (i.e. Election Commission; Ombudsmen; National Counter Corruption Commission) and 'other constitutional organs' (Public Prosecutors, National Human Rights Commission and National Economic and Social Council).

The NHRCT's members are to perform their duties with independence and impartiality (The Act, section 9). The Institution is accountable only to the National Assembly (Statement of Compliance, section 2).

The NHRCT asserts that it is independent of any government instruction (Statement of Compliance, p.3). In particular, the Statement of Compliance (p.4) refers to the Institution's continued observation of its duties during the *coup d'état* of 2006, and in the context of anti-government protests in June 2008 (see Annexes 2 and 3 to the Institution's Statement of Compliance, respectively, and sections 0 and V of this summary).

The 2007 Constitution contains several provisions intended to avoid the creation of conflicts of interest:

- | | |
|-------------|--|
| Section 14 | NHRCT members are excluded from becoming members of the Thai Privy Council; |
| Section 102 | NHRCT members are disallowed from being candidates for seats in the Thai House of Representatives; |
| Section 204 | NHRCT members are barred from appointment to the Thai Constitutional Court; |
| Section 230 | NHRCT members are ineligible to be members of the Thai Election Commission. |

Section 6 of the *Act* indicates that the President and members of the NHRCT are prohibited from holding the following offices and appointments while in office at the NHRCT:

- | | |
|---|---|
| - Members of the House of Representatives | - Election Commissioners |
| - Members of the Senate | - Ombudsmen |
| - members of political parties | - Members of the National Counter Corruption Commission |
| - political officials | - Members of the State Audit Commission |
| - members of local assemblies | - Members of the National Economic and Social Council |
| - local administrators | |

Section 7 of the NHRC Act of 1999 also prohibits the following persons from being members of the NHRCT:

- Government officials holding permanent positions or receiving salaries;
- Officials and employees of State agencies, enterprises, local government organisations
- Directors of Advisors to State agencies and enterprises
- Any persons holding any position in a profit-seeking partnership, company, or organization, or any employees in one of the afore-mentioned organizations.

In the event that the Senate elects to membership in the NHRCT a person falling into any of the categories named in Section 7 of the *Act*, that person may assume her duties as a member of the NHRCT only if they resign from their previously-held position within 15 days of being elected to membership in the Institution.

Section 9 of the *Act* further indicates that, for the purposes of Thailand's Organic Law on Counter-Corruption, the members of the NHRCT are to be considered State officials. The documentation provided by the Institution is silent on the issue of whether members can incur legal liability for actions they undertake as members of the NHRCT.

3. Appointments processes and organisational infrastructure

3.1. Composition of the NHRI's membership and appointment processes

The NHRCT consists of President and ten members (*Act*, Section 5, in accordance with the 1997 Constitution, section 199). The provisions of the 1997 Constitution, however, are amended by the 2007 Constitution (Section 256), which creates a President of the NHRCT and six members.

Membership

Paragraph 1 of section 199 of the 1997 Constitution indicates that members of the NHRCT will be appointed by the King of Thailand on the advice of the Thai Senate, from amongst "persons having apparent knowledge and experiences in the protection of rights and liberties of the people, having regard also to the participation of representatives from private organisations in the field of human rights." These provisions (with the exception of the number of members of the NHRCT) are reproduced at paragraph 1 of Section 256 of the 2007 Constitution.

Section 5 of the *Act* diverges from the provisions of both the 1997 and 2007 Constitutions in respect of the minimum qualifications of prospective members of the Institution, by additionally providing that the appointment of members to the NHRCT shall "[have] regard to the participation of men and women".

There are significant variations in the procedures for the selection and appointment of members to the Institution differ given in the 1997 Constitution, the 2007 Constitution, and the NHRC Act of 1999. Each piece of enabling legislation is treated in turn below.

The 1997 Constitution

The 1997 Constitution does not elaborate beyond the stipulation at Section 199 (paragraph 3), which states that "[t]he...selection [and] election... of members of the National Human Rights Commission shall be as provided by law."

The 1999 Act

Section 6 of the NHRC Act of 1999 provides the following minimum qualifications for the Institution's prospective President and members:

- (1) being of Thai nationality by birth;
- (2) being not less than thirty five years of age;
- (3) not being a member of the House of Representatives or the Senate, a political official, a member of a local assembly or a local administrator;
- (4) not being a holder of any position of a political party;
- (5) not being of unsound mind or of mental infirmity;

- (6) not being addicted to drugs;
- (7) not being a bankrupt;
- (8) not being a person sentenced by a judgement to imprisonment and being detained by a warrant of the Court;
- (9) not being a person having been discharged for a period of less than five years on the nomination day after being sentenced by a judgement to imprisonment for a term of two years or more except for an offence committed through negligence;
- (10) not having been expelled, dismissed or removed from the official service, a State agency or a State enterprise or from, private agency on the ground of dishonest performance of duties, gross misconduct or corruption;
- (11) not having been ordered by a judgement or an order of the Court that his or her assets shall dissolve on the State on the ground of unusual wealthiness or an unusual increase of his or her assets;
- (12) not being an Election Commissioner, an Ombudsman, a member of the National Counter Corruption Commission, a member of the State Audit Commission or a member of the National Economic and Social Council;
- (13) not having been removed from office by a resolution of the Senate.

Additional specific qualifications are required of prospective members only under Section 7 of the Act:

- (1) not be a Government official holding a permanent position or receiving salary;
- (2) not be an official or employee of State agency, State enterprise or local government organisation or not be a director or advisor of a State enterprise or State agency;
- (3) not hold any position in a partnership, a company or an organisation carrying out businesses for sharing profits or incomes, or be an employee of any person.

Appointment Process

Section 8 of the *Act* indicates that a “Selective Committee” will be responsible for the selection and election of members to the institution. The “Selective Committee” is to consist of the following persons:

- The President of the Supreme Court of Thailand
- The President of the Supreme Administrative Court of Thailand
- The Prosecutor-General
- The Chairman of the Law Council
- A maximum of five “[r]ectors of representatives of higher education institutions which are juristic persons
- A maximum of ten representatives from private human rights organizations (defined in Section 24 of the NHRC Act of 1999 as “a juristic person under Thai law which carries out business directly related to the promotion and protection of human rights as prescribed by the Commission and which does not have political objectives or seeks [*sic*] profits from carrying out such business”)
- A maximum of five representatives of political parties seated in the House of Representatives, with each party represented by only one person,
- A maximum of three representatives from the media (newspaper publishing, radio, and television broadcasting), each of whom represents one of the three media categories; and
- The Secretary General of the NHRCT acting as secretary to the Selective Committee.

The Selective committee must prepare a list of twenty-two potential candidates for membership in the institution, and must submit this list to the President of the Senate. Nominations so submitted must be made (a) with the consent of the person being nominated to membership, and (b) with documentation and evidence that the nominated person possesses the qualifications necessary to hold the position (*Act*, section 8(1)).

In the event that a replacement member is being sought because a member has vacated office under the provisions of Section 12 of the *Act* (as described below), proceedings to choose a new member must be initiated within thirty days of the former member’s departure from office. Where

members vacate their posts at the Institution while the National Assembly is not in session, this time period begins within thirty days of the re-commencement of the Assembly (*Act*, Section 13).

The Selective Committee must also be certain that nominated persons are not under any of the prohibitions on membership given in the *Act* (see section 2 of the Summary). The afore-mentioned assurances must be provided within 60 days from the initial vote within the Senate to elect new members of the Institution. The list of nominees may only be approved by an affirmative vote of at least 75% of “all existing members of the Selective Committee.”

The President of the Senate must convene the Senate to pass, by secret ballot, a resolution accepting the persons nominated by the Selective Committee (*Act*, section 8(2)). Those nominees receiving the highest votes of more than 50% of the all the existing Senators are elected to the institution in consecutive order, such that the eleven nominees that each receive the highest number of votes are elected to membership of the NHRCT.

If, in the initial round of voting, no members are elected or fewer than eleven (11) are elected, the entire list of nominees is re-submitted to a second round of voting. If, after the second round of voting, the same result obtains, “the Selective Committee shall proceed with the selection and preparation for a list of persons under (1) to be submitted to the Senate” for approval once again (*Act*, section 8(2)).

The same Section of the *Act* further states that, in the event that any of the nominated parties receive equal votes, such that there are more than eleven prospective members of the Institution, the President of the Senate will draw lots to determine who the successful nominee will be.

The 2007 Constitution

Section 256 of the 2007 Constitution incorporates several other sections of the Constitution by reference in establishing the procedures for selection and appointment of members to the NHRCT¹.

The Selection Committee responsible for choosing a shortlist of prospective members of the Institution is the same as that responsible for the selection and election of Thailand’s three Ombudsmen (2007 Constitution, section 256). According to Section 243 of the 2007 Constitution, this Selection Committee is composed of:

- The President of the Supreme Court of Justice of Thailand;
- The President of the Supreme Administrative Court of Thailand;
- The President of the Constitutional Court of Thailand;
- The President of the House of Representatives
- The Leader of the Opposition in the House of Representatives
- One (1) person elected by the General Assembly of judges of the Supreme Court of Justice; and
- One (1) person elected by the General Assembly of judges of the Supreme Administrative Court of Justice

In respect of the last two positions, Section 243 of the 2007 Constitution incorporates the stipulation at paragraph 2 of Section 231(1) of the 2007 Constitution, which provides that the persons elected by the General Assembly must be neither judges nor members of selection committees responsible for the nomination of candidates to other constitutional organs.

According to Section 206(1) of the 2007 Constitution, which governs the appointment of judges to the Constitutional Court of Thailand, the Selection Committee must present a short list of candidates within 30 days of the call for members of the Institution. The short list that is ultimately forwarded to the President of the Senate for approval must have the approval of $\frac{2}{3}$ of all of the members of the Selection Committee.

The President of the Thai Senate must convene the Senate to pass a resolution approving the shortlist created by the Selection Committee within 30 days of the names being received (2007 Constitution, section 206(2)). The Senate’s voting on short-listed candidates proceeds by secret ballot; where the candidates on the short list are approved by the Senate, the short list is forwarded to the King for appointments to proceed.

¹ Specifically, Section 256 incorporates the following Sections by reference: 243, 204(3), 206, 207, and 209(2).

Where the short list is *not* approved by the Senate, the short list is returned to the Selection Committee for re-selection of prospective members of the Institution received (2007 Constitution, section 206(2)). If the Selection Committee disagrees with the Senate's rejection of the short-listed candidates and endorses the original list in a unanimous vote, the short list is subsequently forwarded directly to the King for appointments to proceed.

In the event that the Selection Committee does not unanimously endorse a list of candidates rejected by the Senate, the process of selecting prospective members of the Institution is to be re-conducted within a 30-day timeframe, in accordance with Section 206(2) of the 2007 Constitution. Where the selection of prospective candidates is not accomplished within this timeframe, three (3) judges of the Supreme Court of Justice of Thailand and three (3) judges of the Supreme Administrative Court of Thailand are appointed as the new Selection Committee responsible for completing the task of creating a short list of nominees.

The Secretariat notes that a new selection process for the NHRCT's members that will be established by the Institution's new enabling act is provided at page 6 of the *Statement of Compliance*. The NHRCT's new enabling act will be created one year from the "date of the declaration of policies of the elected government to the National Assembly, which falls on 17 February 2009."

The terms of office of members

The members of the NHRTC hold office for six years and may serve for only one term. (2007 Constitution, section 256, para. 4). The *Act* further details the mandate, functions and powers of the NHRCT, as well as procedures for the selection and election of the institution's President and members, the qualifications required for a person to be eligible for membership in an institution.

Pursuant to 1997 Constitution (section 199) and 2007 Constitution (section 259), which both stipulate that the matter of the remuneration of the Institution's members is to be provided for by law, the *Act* (Section 16, para. 1) indicates that the President and members of the NHRTC are to receive monthly remuneration and travel allowances in accordance with "the rules and rates as prescribed by a Royal Decree." Sub-committees are to "receive meeting and travel allowances in accordance with the rules and rates as prescribed by a Royal Decree." (*Act*, Section 16, para. 2).

No information on a Royal Decree setting out the rates of remuneration and indemnity for members and sub-committees was submitted by the Institution with its Statement of Compliance.

The "qualifications, prohibitions, selection, election, removal and determination of the remuneration of members of the National Human Rights Commission shall be as provided by law." (2007 Constitution, section 256, para. 3). Where a member of the Institution vacates office for one of the reasons given in Section 209(1) of the 2007 Constitution, the remaining members of the Institution are to continue serving and executing their duties (2007 Constitution, section 209(2)).

Pursuant to Section 199 of the 1997 Constitution and Section 259 of the 2007 Constitution, which both stipulate that the matter of the removal of the Institution's members is to be provided for by law, the *Act* (sections 10-13) detail the procedures governing the resignation and dismissal of the Institution's members.

According to the Statement of Compliance (section 3 p.5), the present Commission was appointed in July 2001, in accordance with the procedure established at Section 8 of the Act.

Section 12 of the *Act* indicates that a member of the NHRCT may vacate his or her office for the following reasons:

- Resignation;
- Death;
- Removal from office "by a resolution of the Senate under the organic law on counter corruption"; or
- Disqualification because of failure to relinquish a position in Government that places them in a conflict of interest, contrary to Section 7 of the NHRC Act of 1999 (as described in section 2 of this summary).

Additionally, under Section 11 of the *Act*, the member may be removed if he or she has performed his or her duties:

- Without giving regard to the interests of the country and the public
- With partiality;
- While engaging in misconduct or immoral conduct that would seriously affect or damage the performance of his or her duties or the promotion or protection of human rights;
- While entertaining an interest in “any activity or business which has directly affected or caused the same damage” as that described immediately above; or
- If seriously defective in the performance of his or her duties.

Section 11 of the *Act* allows the government to initiate proceedings to remove a member of the Institution from office. The provision states that 25% of the membership of either the House of Representatives or the Senate may lodge a complaint with the President of the Senate to have a resolution removing a member of the NHRCT from office, on the grounds given immediately above.

The NHRCT has no advisory body (Statement of Compliance, p.5).

Although none of the Constitutions refer to the selection and appointment of the NHRCT’s governing body, the Act (section 8) details the procedure by which the members of the governing body are appointed: members elected in accordance with the procedure detailed within the enabling Act (see section 3.1 of this summary) elect the President of the Institution amongst themselves and notify the President of the Senate of the result of the vote. The President of the Senate is thereafter responsible for submitting the name of the selected candidate for the Presidency of the Institution to the King of Thailand for appointment (Act, Section 8(2), para. 2).

3.2. Pluralism

As indicated in section 3.1 of this summary, Section 5 of the Act expands upon the provisions of the 1997 Constitution in respect of the minimum qualifications of prospective members of the Institution, by additionally providing that the selection of prospective members for the NHRCT shall “[have] regard to the participation of men and women”. Section 8(1) of the Act also indicates that, in the context of the appointment of members to the institution, “*regard must be given to men and women*”.

The 2007 Constitution (section 256) makes gender-indifferent references to “the participation of representatives from private organisations in the field of human rights.”

According to the *Statement of Compliance* (p. 6), the NHRCT membership consists of 6 men and 5 women, whose ages range from the early forties to mid-eighties.

The *Statement of Compliance* also asserts, at page 6, that pluralism of the Institution is ensured by the “representation of civil society groups on Sub-Committees created by the Institution”. The organization’s information-gathering activities are also cited as guarantees of its pluralism. These activities address various populations and employ multiple formats (seminars, workshops, private meetings and discussions, etc.).

3.3. Organisational infrastructure

3.3.1.Organisational Structure

As discussed in section 3.1 of this summary, the Act (section 5) is modified by the 2007 Constitution (section 256), which creates a President of the NHRCT and six members. Further details on the organizational structure of the NHRCT are given in the Act, which differentiates broadly between two distinct bodies within the NHRCT: the National Human Rights Commission (Sections 5 – 16) and the Office of the National Human Rights Commission (Sections 17 – 21). These provisions are occasionally modified by the provisions of the 2007 Constitution.

National Human Rights Commission

Members of the Institution are required to be impartial and independent in the performance of their duties, bearing in mind “the interests of the country and the public (Act, section 9).

Annex 4 to the *Statement of Compliance* clarifies the structure of the NHRCT

There are five 33 Sub-Committees grouped around 4 main themes²:

1. **human rights protection:** (examining individual cases of complaints) seven sub-committees under this group focus on massive human rights violations and violence: Protection (4), Fact Finding of Violence in the South (1); Human Rights in the Process of Justice (1); and Ad-Hoc Sub-Committees (on Complaints Before 2002 and on the Violent Incident on 22 July 2007) (1).
2. **the administration of justice:** this category contains the following Sub-Committees: Legislation, Justice System and Disappearances; Promotion of Equal Opportunity and Equality; and the Right of Detainees and Prisoners; Ad-Hoc Sub-Committee on Campaigning Against Torture.
3. **social-related issues:** this category contains the following nine (10) thematic Sub-Committees: Education and Development; Right of Ethnic Groups; Right to Housing; Labour Rights; Anti-Human Trafficking; Right of Children and Youths; Human Rights Education; Economic, Social and Cultural Rights; Health, Elder Persons and Persons With Disabilities; Equal Opportunities and Equalities.
4. **natural resources and environment:** this category contains the following four environmentally-themed (4) Sub-Committees: Right Related to Water, Coastal and Mineral Resources and Environment; Right to Land and Forest Management (2); and Bio-Resources and Intellectual Property (1); Leakage and Contamination of GM Papaya Seeks to the Open Fields (1); Impacts of the US-Thailand Free Trade Agreement (1); and Amendment of the Legislation on Local Decentralization (1).

Other sub-committee Covers:

- **Drafting the National Human Rights Commission Act B.E.** (please see section 1 of this summary for further details on the mandate of this Sub-Committee);
- **International Human Rights Affairs;**
- **Scrutinizing the Works of the Commission and the Office;**
- **Accreditation of Human Rights NGOs:** according to the 2006 Annual Report (p.5), this Sub-Committee is responsible for facilitating the participation of private human rights organizations in the NHRCT's activities. According to Report, 29 private human rights organizations were registered with the NHRCT in 2007 for three-year terms, entitling these NGOs to engage in the following activities:
 - Receipt of complaints and gather basic information of human rights violation cases;
 - Receipt of information and technical assistance from the NHRC;
 - Receipt of assistance of capacity building programme;
 - Receipt of assistance of human rights related activities; and
 - Participation in activities as notified by the NHRC.

Office of the National Human Rights Commission

According the Act (section 17), the Office of the NHRCT has the status of an agency of the Thai government, and is "attached to the National Assembly under the law on the organisation of the National Assembly". It is under the supervision of the President. The Act (section 19) also provides that officials in the Office are considered ordinary officials of the Thai National Assembly under Thai law, and that the President of the Commission is in charge of the administration of the Office. The Office of the NHRCT has "autonomy in personnel administration, budgeting and other activities provided by law (2007 Constitution, section 256).

Section 20 of the Act creates the position of Secretary-General of the Office of the NHRCT, and makes the Secretary-General answerable to the President of the Commission. The provision also creates the position of Deputy Secretary-General, "to assist the Secretary-General in the performance of duties."

The day-to-day operations of the Office are supervised by the Secretary-General (Statement of Compliance, p. 7).

² See the new coloured-chart illustrating the Sub-Committees as attached.

Annex 5 to the Institution's Statement of Compliance clarifies the structure and reporting relationships of the Office of the NHRCT. The chart illustrates that the Office and the Commission are separate entities linked through the Chairperson (read: President) of the NHRCT.

The Office of the NHRCT is supervised by the Secretary General. Reporting to the Office's Secretary-General are Advisors to the Office, the Coordinating Assistance Unit, and the Internal Inspectors.

Reporting to the Secretary-General are the Deputy Secretary-Generals, who are themselves responsible for supervising four Bureaus within the Office:

- the Central Administration Bureau (responsible for the management of the day-to-day affairs of the Office);
- the Human Rights Promotion and Network Co-ordination Bureau (responsible for promotion, human rights network coordination and public relations);
- the Human Rights Protection Bureau (which coordinates the receipt of human rights complaints and human rights protection);
- and the Research and the Rule of Law Bureau (which coordinates the research, evaluation, reporting and data and information gathering activities of the Office).

Each Bureau has several Units which carry out the tasks of the respective Bureaus.

Budget

The 2007 Constitution (Section 168, para. 8) states that the State must provide adequate budget appropriation for the independent operation of constitutional organs, including the NHRCT. Section 256 of the 2007 Constitution further provides that the Office of the NHRCT enjoys autonomy in budgeting, among other activities.

According to the Act (section 21), the Office of the NHRCT must receive the consent of the Commission before it submits "an estimated annual budget to the Council of Ministers via the President of the National Assembly". The National Assembly considers the budget of the NHRCT as part of its overall annual consideration of the annual budget of the state. In this process the President of the Commission or a person nominated by him or her may be called upon by the relevant level of government (the Council of Ministers, the House of Representatives, the Senate, or the Standing Committees) to explain elements of the submitted budget.

The *Budget* submitted by the NHRCT along with its Statement of Compliance provides an overview of the annual budgetary allocation of the NHRCT in millions of *baht*. The *Budget* notes that budgetary allocations were made in 2000 preparatory to the royal appointment of the NHRCT's members and the creation of the Office in 2001. The Budget also notes that the activities of promotion and protection were not differentiated within the budget between 2000 and 2005.

| | Percentage (%) growth of the budgetary allocation over the prior year | Percentage (%) of the budgetary allocation spent | Percentage (%) of the budget used for protection and promotion activities | Percentage (%) of the budgetary allocation expended on salaries and remuneration |
|----------------------------|---|--|---|--|
| 2001 | 138 | 98 | 3 | 10 |
| 2002 | 107 | 99 | 19 | 68 |
| 2003 | 184 | 90 | 56 | 40 |
| 2004 | 113 | 100 | 39 | 42 |
| 2005 | 126 | 85 | 41 | 48 |
| 2006 | 137 | 94 | 46 | 42 |
| 2007 | 113 | 89 | 32 | 40 |
| Average (2001-2007) | 131 | 75 | 34 | 41 |

The average growth of the Institution's budget year on year from 2001 to 2007 is 131%, while on average the Institution has spent 75% of its budgetary allocation each year during the same period. Between 2001 and 2007, 34% of the Institution's budget was spent on promotion and protection

activities, while on average 41% was spent on salaries and remuneration for Commission members and staff of the Office of the NHRCT.

According to the *Budget*, the NHRCT's budget in 2007 was 146,074,900 *baht* (approximately \$ 4,349,751 USD).

According to the Statement of Compliance (p.5), if the NHRCT feels that its annual budgetary allocation is insufficient to its estimated need, it may submit a motion indicating such to the government committee responsible for reviewing the annual state budget.

3.3.2. Staffing

The Office of the NHRCT is responsible for the administration of the Commission. The President of the Commission is in charge of the personnel administration in the Office of the NHRCT (Act, Section 19). This is in accordance with the 2007 Constitution (section 256, para. 6), which affirms the autonomy of the Office of the NHRCT in matter of personnel administration.

The Institution's Statement of Compliance (p.7) indicates that the Office of the NHRCT presently has 96 permanent officers and more than 80 temporary staff members. At page 8 of the Institution's 2006 Executive Summary, the staffing levels of the Institution are given as follows:

| Categories | Number (persons) |
|--|-------------------------|
| 1. Commissioners | 11 |
| 2. Advisors to the Commission | 1 |
| 3. Experts to the Commission | 2 |
| 4. Personal assistants to Commissioner | 22 |
| 5. Officers | 93 |
| 6. Administrative staff members | 62 |

3.3.3. Regular meetings

Section 14 of the *Act* governs the meetings of the NHRCT's members (i.e. the Commissioners, rather than the staff of the Office of the NHRCT). One-half of the total membership of the Commission must be present for there to be the quorum required for decisions taken in such meetings to be binding.

According to the provision, meetings are presided over by the President of the Commission, or, in the President's absence, by one elected by the members present at the meeting. Decisions made at the meeting are taken by a majority of votes, with the person presiding over the meeting holding an additional deciding vote in case of deadlock (Act, section 14). Where meetings entail "consideration of a matter in which a member has a private interest, that member has no right to attend such meeting" (Act, section 14).

The Institution asserts that the NHRC operates full-time, and that members of the Institution meet regularly once a week (Statement of Compliance, p.7).

4. Relations with Civil Society and human rights institutions

4.1. Formal Relationships with Civil Society

Section 199 of the 1997 Constitution and Section 256 of the 2007 Constitution indicate that the appointment of members to the Institution must take into consideration the need to ensure "the participation of representatives from private organisations in the field of human rights."

The Act (section 15) indicates that promoting cooperation and coordination with private and other human rights organizations is part of the Institution's mandate³. The Office of the NHRCT is to co-operate with private organizations in the field of human rights for the purpose of human rights protection (Act, section 18).

³ This is affirmed at Section 200 of the 1997 Constitution, and at Section 257 of the 2007 Constitution.

Section 23 of the Act further provides that the NHRCT may receive complaints from persons alleging human rights violations “via a private organisation in the field of human rights to be referred to the Office of the National Human Rights Commission”. Section 24 further provides that the aforementioned private organizations may forward cases received through such mechanisms to the NHRCT to be dealt with further. According to the NHRCT (e-correspondence of 3 October 2008) “all human rights NGOs can forward cases of complaints to the NHRCT. However, those NGOs which register with the NHRCT may be requested to assist in fact-finding, if appropriate, and can receive technical assistance from the NHRCT”.

The Secretariat refer to sections 3.3.1 and 7 of this summary, for a more detailed discussion of the Institution’s complaints receiving mechanism, and the role of private human rights organizations within this mechanism.

The members of the NHRCT are variously human rights lawyers, lecturers, educators and social activists, and hold a variety of academic qualifications ranging from doctoral degrees to elementary school diplomas (Statement of Compliance, p. 6).

As discussed at section 3.2 of this summary, the Institution’s Statement of Compliance also asserts that the “representation of civil society groups on Sub-Committees created by the Institution is an essential means of ensuring the Institution’s pluralism and representativeness.” The Institution contends at page 7 of its Statement of Compliance that the “continuance of its public outreach activities is essential to ensuring that its functions remain relevant to the reality of the human rights situation on the ground in Thailand.” The Institution describes its interaction with Thai civil society organizations at page 8 of its Statement of Compliance, including HIV/AIDS networks, LGBT organizations, ethnic minority groups, labour unions, and members of the media.

4.2. Regular Consultations

While both the 1997 and the 2007 Constitutions create the offices of Ombudsmen (Sections 196 and 197 of the 1997 Constitution; Sections 242-245 of the 2007 Constitution), neither Constitution provides for regular consultations between the Institution and the Thai Ombudsman, nor is any such provision contained in the Act.

The Institution’s enabling legislation does provide for the NHRCT to set forth remedial guidelines in the context of a particular complaint and to have its guidelines enforced by the Prime Minister within sixty days of the receipt of the Commission’s report on the matter by the Prime Minister’s office (Act, section 30). The Institution may also forward such reports to the National Assembly in order to ensure the implementation of remedial measures (Act, section 31 and 2007 Constitution, section 257).

The 2007 Constitution also allows the NHRCT to endorse complaints it considers credible to the Constitutional Court, the Administrative Court, and the Court of Justice, where appropriate (2007 Constitution, Section 257), although there is no regular reporting relationship established in either document. For further details about this functional capacity of the Institution, please see section 6.1 of this summary.

According to Statement of Compliance (p.8), the NHRCT consults with various national institutions, including law enforcement agencies, prison authorities, and educational institutions, and provides human rights training and education, as well as various government ministries (the Ministry of Foreign Affairs; the Ministry of Justice; the Ministry of Defense and the Army; and the Ministry of Social Welfare and Human Security) on issues of human rights. The Statement of Compliance also discusses the Institution’s cooperation with Parliamentary Sub-Committees in the context of *ad hoc* investigations of alleged massive human rights abuses.

4.3. Cooperation with the United Nations, regional and national institutions

Section 200 of the 1997 Constitution and Section 257 of the 2007 Constitution provide generally that the Institution is responsible for promoting cooperation and coordination amongst human rights organizations. This is affirmed at Sections 15 and 18 of the NHRC Act of 1999. No Section of the enabling legislation, however, explicitly provides a framework for the Institution’s cooperation with regional, national, and/or international organizations beyond that discussed at sections 4.1 and 4.2 of this summary.

According to pages 9 and 10 of the Institution's Statement of Compliance, the NHRCT has met with representatives from national human rights institutions in other countries (the Association for the Prevention of Torture; New York Law School; the Human Rights Bureau of the Ministry of Justice of Japan; the Association for the Rescue of North Korean Abductees; and the Democracy, Human Rights and Labour Bureau of the US State Department). According to the Statement of Compliance, the Institution has also participated in the following regional and international conferences:

- The 12th annual meeting of the Asia Pacific Forum on National Human Rights Institutions
- The 8th International Conference of National Human Rights Institutions for the Promotion and Protection of Human Rights
- Several regional workshops co-hosted by the institution, dealing with the topics of human rights defenders, torture prevention, and international human rights law.

The Institution's Statement of Compliance also indicates that the NHRCT meets with the UN's officers and Special Rapporteurs on a regular basis, through the UN's Regional Office of the High Commissioner for Human Rights in Bangkok. According to page 10 of the Statement of Compliance, the Institution is currently collaborating with the OHCHR's Country Team in Thailand to produce a report entitled "Dignity and Justice for All of Us: Our Voices are Heard in Thailand", to commemorate the 60th anniversary of the Universal Declaration of Human Rights.

At the regional level, the Institution's Statement of Compliance indicates that the NHRCT has since its inception been a member of the Asia Pacific Forum of National Human Rights Institutions. According to the Statement of Compliance (page 10), the Commission hosted the first official meeting between three other Southeast Asian national human rights institutions (from Indonesia, Malaysia, and the Philippines), with a view towards creating a formal framework for cooperation between the institutions.

5. Accessibility

5.1. Procedures and mechanisms to ensure accessibility

Section 200 of the 1997 Constitution and Section 257 of the 2007 Constitution both provide that the Institution shall perform its duties with regard to the national and public interest. In particular, each of the afore-mentioned sections provides that one of the NHRCT's duties is "to promote education, research and the dissemination of knowledge on human rights". This is affirmed at Section 15 of the NHRC Act of 1999.

The Institution's enabling legislation further provides at Section 23 that "[a]ny person whose human rights are violated has the right to lodge a petition in writing" detailing the substance of the alleged human rights violation. Section 23 of the NHRC Act of 1999 also provides for complainants to petition the Institution verbally, in accordance with the provisions of "a Regulation issued by the Commission." No such Regulation has been submitted by the Institution as part of its application for re-accreditation by the ICC Sub-Committee on Accreditation. Section 23 also provides for complaints to be submitted to the Institution by registered mail with return receipt, or through the offices of a private human rights organization (see section 3.1 of this summary for the definition of a "private human rights organization" under Thai law).

According to pages 10 and 11 of the Institution's Statement of Compliance, in practice the NHRCT receives complaints by telephone, fax, and e-mail. The Statement of Compliance also discusses the Institution's practice of going to smaller villages and communities in Thailand to gather information that may form the basis of complaints directly from local people and potentially affected parties.

5.2. Procedures and mechanisms for addressing public opinion

As indicated immediately above in section 5.1 of this summary, the NHRCT's Statement of Compliance indicates at page 11 that, in practice, the members and staff of the Institution travel to small communities to receive information on the human rights situation throughout Thailand. The Statement of Compliance also asserts that the Institution has attempted to mediate disputes between local communities and "pro-economic/business development groups" in the context of natural resource development projects, by organizing seminars and public forums to hear public opinions on contentious matters.

According to the Statement of Compliance, the Institution also publicly disseminates key cases, and conducts major studies on human rights issues affecting members of the public in Thailand; these

studies addressed the issues of violence in southern Thailand, rights affected by land and forest management, and the rights of persons internally displaced by development.

The Statement of Compliance also discusses at page 11 the NHRCT's public relations activities, most notably its staging of press conferences to disseminate the Institution's position on key human rights issues.

5.3. Working Groups

Under Section 15 of the NHRC Act of 1999, the Institution is empowered to "appoint [sub-committees] to perform the tasks as entrusted by the Commission". A list of the Institution's Sub-Committees and their functions is available at section 3.3.1 of this summary.

According to page 11 of the Institution's Statement of Compliance, each Sub-Committee is composed of representatives from civil society groups and academic institutions and is chaired by a Commissioner (that is, a member of the NHRCT) to examine cases and issues falling within its mandate.

There is no clear indication from the materials submitted by the Institution that it has regional offices; however some of its outreach activities are described at section 5.2 of this summary.

According to the Institution's 2006 Executive Summary at page 9, the Office of the NHRCT was in the process of moving to a new office complex meant to house many agencies and constitutional organs of the government of Thailand. According to the 2006 Executive Summary, the rationale behind the move is that it will increase the office space available to the Institution, and its local will facilitate the Institution's interactions with other state agencies. There is no information in the materials submitted by the Institution, however, on whether or not its past and present premises were, and are, accessible to persons with disabilities.

IV. COMPETENCE AND RESPONSIBILITIES

6. General Jurisdiction and Functions

6.1. Mandate to promote and protect human rights.

Section 200 of the 1997 Constitution enumerates the powers and duties of the NHRTC as follows:

- 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 proceeding;
- 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 purpose of promoting and protecting human rights;
- to promote education, researches and the dissemination of knowledge on human rights;
- to promote co-operation and co-ordination among Government agencies, private organisations, and other organisations in the field of human rights;
- 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; and
- Other powers and duties as provided by law.

Section 15 of the NHRC Act of 1999 reproduces the provisions of Section 200 of the 1997 Constitution, and in addition provides that the Institution's mandate includes

- Promotion of respect for and practice in compliance with human rights principles at the domestic and international levels;
- The preparation and submission of an annual report on the NHRCT's performance to the National Assembly;
- The proposal of opinions to the Council of Ministers and the National Assembly regarding Thailand's accession to international human rights treaties; and
- The appointment of Sub-Committees to perform tasks created by the Commission; and

Finally, in addition to all of the duties and powers described above, Section 257 of the 2007 Constitution provides that the Institution also has the following duties:

- to refer [complaints], together with an opinion, to the Constitutional Court in the case where it agrees with a complaint addressed by a complainant that any provision of law affects human rights and begs a question of constitutionality, in accordance with the Organic Act on Procedure of the Constitutional Court;
- to refer [complaints], together with an opinion, to the Administrative Court in the case where it agrees with a complaint addressed by a complainant that a by-law, order or any other administrative act affects human rights and begs a question of constitutionality or compliance with the law, in accordance with the Act on Establishment of Administrative Courts and Administrative Court Procedure; and
- to file a lawsuit to the Court of Justice on behalf of the injured person when a request is made by the injured person and it is deemed appropriate to find a solution to violation of human rights vis-à-vis the public at large, as provided by law.

Further guidance on the thematic orientation of the Institution's mandate can be obtained from a survey of the Institution's Sub-Committees, discussed at section 3.3.1 of this summary.

6.2. The mandate in practice

According to paragraph 2 of Section 200 of the 1997 Constitution and Section 257 of the 2007 Constitution the NHRCT is to bear in mind the interests of Thailand and of the public in performing its duties.

According to pages 12-13 of the Institution's Statement of Compliance, in practice the NHRCT independently assesses the inadmissibility of complaints and takes up matters in investigations without referring them to any higher authority, so long as the courts are not already seized of any of the cases that it examines, and no final orders of a court have been given in such cases.

The Institution asserts at page 13 of its Statement of Compliance that it receives on average 568 complaints a year, and has received 3407 complaints in total from its inception in July 2001 through to December 2007 inclusive. For further discussion of the mandate of the Institution in practice, please see the previous sections of this summary. A breakdown of the complaints received by the Institution, broken down according to the types of rights allegedly infringed, is provided by the Institution in its Statement of Compliance and included immediately below.

| Communications received by the NHRC from July 2001 – December 2007 | | |
|---|---------------|-------------------|
| Total cases = 3,407 or the average of 568 cases per year | | |
| Types of rights which were allegedly infringed | Number | Percentage |
| 1. Right in the due process of justice | 828 | 24.30 |
| 2. Right to life and personal security | 546 | 16.03 |
| 3. Right to privacy | 43 | 1.26 |
| 4. Community right | 323 | 9.48 |
| 5. Right to housing | 145 | 4.26 |
| 6. Property rights | 435 | 12.77 |
| 7. Consumers' rights | 44 | 1.29 |
| 8. Right to education | 49 | 1.44 |
| 9. Right to good governance in public administration | 249 | 7.31 |
| 10. Right to health and public health services | 56 | 1.64 |
| 11. Labours' right and the right to decent occupation | 275 | 8.07 |
| 12. Right to manifest in accordance with religious belief | 5 | 0.15 |
| 13. Right to information and communication | 28 | 0.82 |
| 14. Political rights | 67 | 1.97 |
| 15. Unjust practices, but not amount to violation | 43 | 1.26 |
| 16. Others | 271 | 7.95 |
| Total | 3,407 | 100.00 |

6.3. Functions regarding national legislation

Section 200 of the 1997 Constitution and Section 257 of the 2007 Constitution provide a legal basis for the Institution to make proposals to the Thai National Assembly and Council of Ministers for the revision of laws, rules and regulation to support the agenda of human rights promotion and protection. This is affirmed at Section 15 of the NHRC Act of 1999.

According to the Institution's Statement of Compliance at page 4, in 2007 the NHRCT made 2 recommendations on legal amendments to the government, commented to the Prime Minister on the human rights impacts of 9 state policies, and made "19 recommendations to government agencies to rectify policies and practices based on the investigation of landmark cases." A detailed list of the recommendations made to the Prime Minister is provided at page 6 of the 2006 Executive Summary.

The Statement of Compliance also indicates at page 4 the activities advisory role played by the NHRCT in respect of national legislation in the context of the 2006 coup d'état, in particular on laws related to national security, international economic co-operation, and national resources conservation. According to the Statement, the Institution directed these recommendations directly to the civil government and the National Assembly without interference from the Thai military's Council of National Security.

6.4. Encouraging ratification and implementation of international standards

Section 15 of the NHRC Act of 1999 also makes the Institution responsible for advising the Council of Ministers and the National Assembly where Thailand is to be a party to any international human rights treaty. Provisions in both Constitutions (2007/257(1)) provide that the NHRCT has the power and duty "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".

According to the Institution's Statement of Compliance at page 15, the NHRCT has cooperated with human rights organizations at national and international levels to encourage the government of Thailand to accede to the international human rights conventions, such as the *Convention Against Torture* and the

Rome Statute of the International Criminal Court (the government of Thailand acceded to the CAT in October 2007). According to the Statement of Compliance, the NHRCT has also disseminated information on the *Convention on the Rights of Persons with Disabilities* and the *International Convention for the Protection of All Persons from Enforced Disappearance*.

The Statement of Compliance also discusses the NHRCT's activities in monitoring the government of Thailand's compliance with its obligations under international human rights instruments, most notably the *International Covenant on Civil and Political Rights* (ICCPR). The document "Assessing Thailand's Compliance with the Obligations under the International Covenant on Civil and Political Rights and in Relations with the Constitution" (July 2005) (hereafter the "ICCPR Statement of 2005"), is annexed to the Institution's Statement of Compliance and provides a detailed account of the Institution's monitoring of the government's compliance and non-compliance with the provisions of the ICCPR. In the 109-page document, the NHRCT makes five key recommendations intended to ensure the government of Thailand's ongoing observation with its obligations under the ICCPR and the 2007 Constitution:

- (1) Expedient enactment and amendment of laws as necessary to guarantee the basic rights enshrined in the ICCPR and the 2007 Constitution, especially laws relating to "non-discrimination, torture, public hearings, and the right of local communities to participate in the conduct of public affairs, especially in the management of local natural resources and environment";
- (2) Implementation of the 5-year National Human Rights Plan of Action, with emphasis on the inclusion of the Concluding Observations of the UN's human rights treaty bodies;
- (3) The creation and broad dissemination of operational guidelines that confirm to internationally recognized human rights standards for law enforcement officers in Thailand;
- (4) The implementation of life-long human rights education and training in formal educational settings, public and private sector institutions and branches of Thailand's justice system; and
- (5) The creation of a national, independent and permanent mechanism to co-ordinate and ensure the compliance of agencies of the government of Thailand with the provisions of the ICCPR, including the preparation of Thailand's periodic reports to the UN's Human Rights Committee.

6.5. Programmes for teaching and research

Both Section 200 of the 1997 Constitution and Section 257 of the 2007 Constitution refer to the Institution's responsibility for promoting "education, research and the dissemination of knowledge on human rights. Section 15 of the NHRC Act of 1999 reproduces this requirement.

According to the Institution's Statement of Compliance at page 14, the NHRCT's Sub-Committees are primarily responsible for the bulk of the Institution's activities, including public consultations on human rights issues. It is primarily through the Sub-Committees, the Statement asserts, that the NHRCT conducts seminars through which the public is educated about human rights issues in Thailand and about the remedies available to them through the offices of the Institution.

The Statement of Compliance also asserts at page 15 that the NHRCT provides training in formal settings as well, most notably in educational institutions, and in training centres for law enforcement personnel.

According to the Statement, the NHRCT has concluded memoranda of understanding with several institutions (Khon Kaen University, the Law Society of Thailand, the Police Cadet, and a further 65 Thai non-governmental organizations registered with the Institution's Sub-Committee on the Accreditation of Human Rights NGOs – see section 3.3.1 of this summary for further details on the functional capacities and entitlements of duly registered organizations), with a view towards increasing the effectiveness of its human rights promotion and protection activities through cooperation in the domains of human rights education and research.

In particular, a detailed exegesis of the thematic research conducted by the Institution into issues of environment and human rights is provided at page 7 of the Institution's 2006 Executive Summary. The research projects address issues of *coastal erosion along the eastern coast of Thailand and human rights*; *The impacts of the rivers of Khong, Chi and Mun development project: The case study of a dam construction in Chi river*, and *The impacts on the new forest village project*.

6.6. General powers

Under Section 200 of the 1997 Constitution and Section 256 of the 2007 Constitution, the NHRCT is mandated to prepare reports on the human rights situation in Thailand as follows:

- To examine and report on actions and/or omissions that violate human rights and propose remedial action; and
- To report annually to the Thai National Assembly on the human rights in the country.

Additionally, as discussed at section 6.2 of this summary, the NHRCT is also capable of undertaking investigations of human rights issues in Thailand under its own power, without direction from any higher authority.

As discussed in section 5.3 of this summary, the Institution has established Sub-Commissions that address numerous specific issues in conformity with the NHRCT's mandate to investigate situations of violations of human rights.

A résumé of the Institution's annual report, please see section V of this summary.

The NHRCT has also, through its Sub-Committees, prepared reports on specific human rights situations in Thailand. Annexed to the Institution's Statement of Compliance are two specific reports on the human rights situation in the country:

Annex 2: Statement of the NHRC
"The Concern of the National Human Rights Commission of Thailand over Human Rights Situation Within the Country" (26 September 2006)

This one-page statement expresses the NHRCT's concern with the non-democratic process initiated by the Thai armed forces to remove former Prime Minister Thaksin Shinawatra from power.

The statement urges the Council for Democratic Reform under the Constitutional Monarchy (CDRM) to respect Thailand's international human rights obligations, and urges a swift return to democratic rule.

The statement closes by asserting that the NHRCT "will continue to independently perform its duties to monitor the works of the CDRM and the future government to ensure the full respect of human rights".

Further details on the actions of the Institution are provided at page 4 of its Statement of Compliance, at which the NHRCT asserts that it "conducted itself with a heightened level of vigilance and independence" during the coup d'état, "in line with the General Observation of the ICC Sub-Committee of Accreditation on the operation of NHRIs during the situation of a coup d'état or a state of emergency (please see section 0 of this summary for further details).

Annex 3: Statement of the National Human Rights Commission of Thailand on the Exercise of the Freedom to Assemble Peacefully and Without Weapon" (19 June 2008)

This two-page statement contains the NHRCT's observations on the national human rights situation in Thailand in the aftermath of anti-government demonstrations. In particular, the statement:

1. Recognises of the right of the Thai people to assemble and associate peacefully, under the 2007 Constitution and the International Covenant on Civil and Political Rights;
2. Criticizes Prime Minister Samak Sundravej for proceeding with the implementation of major infrastructural development projects without undertaking adequate consultation with affected cohorts of the Thai population;
3. Demands that the demonstrators be allowed to exercise their right to peacefully assemble and protest; and
4. Demands that the Thai government abide by the requirements of the Thai Constitution and with international human rights standards.

According to the Institution's Statement of Compliance at page 14, the NHRCT has also "continuously published...studies or action researches [on] over 20 topics", given in the Statement of Compliance as:

- Peace building in the southernmost provinces in perspective of people affected by violence
- Problems of land and forest management;
- Right to life and right to development of internally displaced persons (IDPs);
- Human rights perspective in the Environmental Impacts Assessment (EIA);
- Review of the obstacles of legislation to protect people's right to environment;
- Study of policy and legislation related to foreign migrant workers in Thailand;
- Compilation of curricula and training courses of human rights education in informal and elective systems of education;
- Study of public opinion of the draft Public Hearing Act;
- Study of existing legislation in contradiction with the Constitution and international human rights obligations;
- Study of the situation of labour rights.

6.7. Power to gather information

According to paragraph 3 of Section 200 of the 1997 Constitution, and paragraph 2 of Section 257 of the 2007 Constitution, the NHRCT "has the power to demand relevant documents of 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."

The NHRC Act of 1999 specifies the Institution's information-gathering powers at Section 32 as including

- (1) [The power] to summon a Government agency, State agency or State enterprise to give written statements of facts or opinions concerning the performance of official duty or other duties or to deliver objects, documents or other related evidence or to send a representative to give statements;
- (2) [The power] to summon a person, juristic person or private -ency concerned to give statements or to deliver objects, documents or other related evidence at the date, time and place as specified. The delivery of a summons shall be made by a registered post with return receipt to the domicile or office of the river. In the case where the delivery by the said mean cannot be made or no action was taken in accordance with the summons within reasonable period, the Commission shall redeliver the summons by the said means or by other means as the Commission deems appropriate;
- (3) [The power] to request the Court of proper jurisdiction to issue a warrant for entering into a dwelling or any place for the benefits of examining facts or gathering related evidence which shall be proceeded as necessary and without delay. Before commencing an examination or gathering of evidence, a member or an official entrusted shall manifestly show no concealment on his personal identity and shall, as far as possible, conduct the examination and gathering thereof in the presence of the occupier or the caretaker of the place or relevant person. If such persons cannot be found, the examination and gathering shall be conducted in the presence of at least two persons invited to be witnesses. In this case, the occupier or the caretaker of the place or relevant person shall facilitate the performance of duties of the member or the delegated official; *and*
- (4) [The power] to issue Regulation concerning rules and methods of paying living expense and travel allowance for the witness or the official appointed by the Commission to examine human rights violation.

Penalties for non-compliance with the NHRCT's information-gathering activities are set out at Sections 34 and 35 of the NHRC Act of 1999:

Section 34: Any person, who fails to give statement, deliver objects, documents or evidence as summoned under section 32(2) shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Baht, or to both.

Section 35: Any person, who resists or obstructs the performance of duties under section 32(3) shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand Baht, or to both.

It should also be noted that private human rights organizations registered with the Institution's Sub-Committee on Accreditation of Human Rights NGOs also have limited powers to gather basic information on alleged human rights abuses, for the purpose of forwarding complaints from individuals to the Institution. For further details, please see section 3.3.1 of this summary.

7. Quasi-jurisdictional competence

Although the 1997 Constitution does not confer any investigation or complaint-handling powers on the Institution, Section 19 of the NHRC Act of 1999 gives the Office of the NHRC the power "to receive petition [*sic*] of human rights violation and submit it to the Commission and to investigate or examine matters which are petitioned as entrusted by the Commission." Section 22 of the NHRC Act of 1999 also gives the NHRCT the power to "examine and propose remedial measures under [the] Act "to address actions and omissions determined to have violated human rights.

The entirety of the complaints handling and investigation process is governed by Sections 22-31 of the NHRC Act of 1999. The relevant Sections of the Act apportion the Institution's complaint handling and investigation powers as follows:

- Section 22 Makes the NHRCT responsible for examining and proposing remedies for acts and omissions that violate human rights where no judicial authority is seized of, or has ruled on, the matter.
- Section 23 Stipulates the requirements for filing a complaint with the NHRCT (petitioner's name and address; facts and substance of the complaint; signature of the petitioner or his/her representative), and indicates that complaints must be submitted to the Office of the NHRCT in person, by post, or through the offices of a private human rights organization (please see section 3.1 of this summary for an explanation of what such an organization is). Requires the Institution to respond to complaints received in accordance with the Act's provisions within three days of their receipt.
- Section 24 Allows private human rights organizations to submit to the NHRCT cases that it believes are *prima facie* cases of human rights abuse. This Section also sets out the definition of a private human rights organization for the purposes of the Act.
- Section 25 Requires the NHRCT to immediately notify accused parties upon ascertaining that a submitted complaint meets the threshold requirements for *prima facie* validity, providing prospective respondents with a summary of the facts of the complaint made against them. Prospective respondents must respond to the allegations made within a time period specified by the NHRCT.
- Alternatively, where the Institution decides that it will not deal with a complaint or does not have the jurisdiction to deal with a complaint, the Institution must immediately notify the complainant or the sponsoring private human rights organization, in order to facilitate the complainant's pursuit or alternative remedies, with a referral from the Institution to the proper authority where appropriate.
- Under this provision, the Institution may re-assert control over the complaint, in the event that the agency to which the matter is referred does not proceed with the complaint or refuses to consider the matter.
- Section 26 The NHRCT proceeds to examination of the complaint after the lapse of the time period for the receipt of responses (under Section 25). The complainant and other interested parties are allowed to provide further details and to present evidence in the examination.
- In the event that parties must present themselves to the NHRCT, they are allowed to bring lawyers or counsellors to the examination proceedings.
- The Institution may appoint one or more Sub-Committee members to conduct the inquiry and investigation and to prepare a report on the examination and investigation, and confers upon the Sub-Committee all the powers of the NHRCT in doing so. The Commission may also appoint an official to assist in the examination process.
- Section 27 The NHRCT will, where possible, attempt to mediate a resolution to the dispute and will prepare minutes of settlement where the parties agree to a final and binding mediated resolution. Non-compliance with the mediation agreement requires the Commission to further proceed with examination of the complaint.

- Section 28 If the NHRCT concludes, upon completing its examination, that a violation of human rights has occurred, it will draft a report detailing the circumstances of the violation, with its reasons, and will enumerate remedial measures addressing the violation “which shall clearly set forth the legal duties and methods of performance of [the respondent], including the period for implementation of such measures.”
- Where unjust practices that do not amount to a human rights violation are found, the NHRCT may “set forth remedial guidelines and notify [the respondent] to appropriately perform within [its] scope and powers”.
- The Institution will promptly notify the parties to the complaint of their respective duties in accordance with the Institution’s findings.
- Section 29 Parties that receive notice of the NHRCT’s report and remedial measures under Section 28 of the Act must implement the measures prescribed therein within the period given in the report, notifying the Commission of the results of its implementation.
- If the implementation of remedial measures cannot be accomplished within the prescribed period, the respondent must request an extension of the implementation period from the NHRCT, specifying the reasons for the request and the length of the extension required, before that period expires. No more than two extensions of the implementation period are allowed any one respondent.
- Section 30 If the implementation period under Section 29 lapses, or the respondent party does not implement the remedial measures prescribed by the NHRCT in accordance with the requirements of Section 29, the Commission will report to the Prime Minister requesting an order for implementation of the prescribed remedial measures within 60 days of the receipt of the report by the Prime Minister.
- The NHRCT’s report to the Prime Minister will specify “details for the exercise of the legal power in the issuance thereof”. In the event that the remedies proposed are not within the power of the Prime Minister, the NHRCT proceeds under Section 28 of the Act.
- Section 31 Where no order for the implementation of remedial measures has been taken by the NHRCT, the Institution must report to the National Assembly for a determination from that body on how to proceed. Where the NHRCT deems it appropriate, it may publicize cases in which no implementation of the remedial measures that it prescribes has been undertaken.

The NHRCT also has the power, under Section 257 of the 2007 Constitution, to refer matters to the courts where issues raised in the human rights complaint raise issues of constitutionality, compliance with the law, and/or in situations where “a request is made by the injured person and it is deemed appropriate to find a solution to [the] violation of human rights vis-à-vis the public at large, as provided by law”. For further details on the powers and mandate of the Institution in respect of elevating complaints to the courts, please see section 6.1 of this summary.

A Flow chart of the Institution’s complaints handling and investigation process is attached to its Statement of Compliance, at Annex 6.

V. SUMMARY OF THE ANNUAL REPORT

The 2006 Executive Summary of the Institution’s Annual Report provides an overview of the Institution’s activities in the domain of human rights promotion and protection over the course of 2006. Many of the issues raised in the Executive Summary are discussed anecdotally throughout this document.

A key issue raised in the 2006 Executive Summary is the NHRCT’s conduct and fulfilment of its mandate in the context and aftermath of the September 2006 coup d’état, and its conformity with the ICC Sub-Committee on Accreditation’s General Observation on the operation of NHRIs during the situation of a coup d’état or a state of emergency (further details on this issue are available at section 0 of this summary). According to the 2006 Executive Summary, the NHRCT confirms that all cases of alleged human rights abuses stemming from the coup d’état will be investigated in accordance with the provisions of the 1997 Constitution, as well as the international human rights instruments to which Thailand is party.