

THE NATIONAL HUMAN RIGHTS COMMISSION AND ITS ROLES IN POLITICAL, SOCIAL AND ECONOMIC DEVELOPMENT

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INTRODUCTION

National human rights commissions (NHRC) have been formed and operate successfully in many countries. In Thailand, NHRC is the first institution of its kind. It was established under the 1997 Constitution and came into operation in July 2001 when the National Human Rights Commission Act B.E. 2542 (1999) took effect. Thailand's NHRC has the status of an independent institution under the constitution. It is aimed mainly at promoting and protecting human rights and ensuring that the laws and regulations safeguarding human rights, including international human rights treaties, are implemented effectively. In order to guarantee protection of human rights, the Act mandates NHRC to perform its functions independently, free from government control and intervention by political or private interests.

The purpose of this paper is to examine the role and function of the Thai NHRC, particularly its role during the 1997 financial crisis and the cur-



rent political situation. The first part of the paper provides background on the historical development of politics in Thailand since the 1932 “revolution.” Part two contains a discussion of the political crisis that occurred after Thailand adopted the 1997 Constitution. In part three, the economic and social problems that Thailand faced during the financial crisis in the late 1990s are examined. The last part of the paper contains a discussion on the role of NHRC in the political, social and economic development of Thailand after the institution was established.

POLITICAL DEVELOPMENT IN THAILAND

The modernized legal and political systems of Thailand have been reformed several times. The most important reform emerged in June 1932 when a group of military officers and civil servants seized power. That action ended 800 years of absolute monarchy in Thailand and marked the start of a constitutional monarchy system, under which the previous monarchical form of government was abolished and a democratic government was created. It enabled the government to function under a parliamentary system and vested judiciary power

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in the courts. Judges perform their duties in the name of the King and are assured of independence in adjudicating cases according to the law.

It may be noted that Thailand does not enjoy a smoothly functioning democratic system. Although its political system has undergone gradual democratization, the country's executive power is almost always in the hands of the military, bureaucrats and businesspersons-turned-politicians. Furthermore, Thailand's democratic process has been undermined by several coups d'état throughout the past three-quarters of a century. Since 1932, there have been several successful military coups and unsuccessful attempted coups in Thailand. At different times, such as in 1973 and 1992, pro-democracy demonstrations were staged against autocratic rule and those incidents led to political chaos and bloody suppression of the demonstrators. The political system of Thailand took a very significant turn in 1997 when a new constitution, the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was adopted. The Constitution was introduced following the political turmoil in 1992 when middle-class demonstrations were suppressed by a military strongman who wanted to install him-

self as prime minister following a coup in 1991. The incident led to a vigorous campaign for political reform and drafting of a new constitution. The 1997 Constitution, Thailand's 16th since 1932, was called the "People's Constitution," because it was drafted by an assembly elected by the people. The Constitution was approved and entered into force in September 1997.

The passage of the 1997 Constitution may be linked more to economic globalization than modernization. The Constitution was regarded as the most democratic constitution in Thai history. It contained 336 articles promoting and guaranteeing civil rights, freedom, and liberty for all Thais. The 1997 Constitution was drafted in an atmosphere of strong mistrust of those in authority. The Constitution had three major aims: (a) to fight corruption; (b) to put an end to rickety coalition governments; and (c) to reduce the power of politicians and the central government in favor of local governments and ordinary citizens. It incorporated a thorough system of checks and balances in order to prevent abuse of political power, stamp out government corruption, and ensure a corruption-free and transparent electoral process.

The 1997 Constitution had a substantial impact on the reorganization of political, legal and judicial systems in Thailand. First, it established the Constitution Court and the Administrative Court, which work in parallel with the Courts of Justice. The Constitution also reformed parliamentary and electoral systems, and structurally changed the cabinet, the bureaucracy, local administration, education, health care, welfare, state-owned enterprises, telecommunications, etc. It also empowered ordinary citizens to defend their rights and enforced the rule of law by incorporating rights “to get access to public information,” “to participate in the decision-making process of state officials,” “to present a petition,” “to sue a state agency,” “to receive an explanation and reasons from a state agency before permission is given for any project,” and so on. In addition, it enabled people to initiate legislation or launch an impeachment process on the back of 50,000 signatures.¹ A large number of human rights principles were enshrined in the Constitution, including free education up to the high school level, free good-quality health care, access to a clean environment and public information, the right of local communities to uphold their own traditional cultures and knowledge, etc.²

Notwithstanding its envisaged role as a blueprint for democratic reforms in Thailand, the Constitution had several flaws and drawbacks. In particular, its major provisions, which were aimed at creating political stability and curtailing political pluralism, concentrated power in a smaller number of hands and paved the way for Thaksin Shinawatra to subvert fledgling democratic institutions, undermine constitutional checks and balances, and use both state and monetary power for his own benefit. Because of this shortcoming, the 1997 Constitution was short-lived; it was annulled on September 19, 2006 when the military staged a coup against the

elected, but controversial, government of Thaksin Shinawatra.³ In spite of its relatively short life span, the 1997 Constitution provided a platform for the development of fair and transparent governance and for political, social, and economic reform in Thailand.

POLITICAL CRISIS

A number of constitutionally independent bodies were established under the 1997 Constitution, including the Constitutional Court, Administrative Court, Ombudsman, National Counter-Corruption Commission, Election Commission and National Human Rights Commission. This new set of independent institutions was created in order to provide checks and balances and to eradicate the scourge of “money politics.” However, within a few years of their operations it was found that these independent bodies could not perform their duties as intended. The powers and significance of most independent institutions were weakened and eroded by the intervention of new-style politicians like Thaksin who used both state and monetary power for personal gain.

During his time as prime minister, Thaksin had done everything to enrich himself, his family and cronies. In order to do that, he first had to undermine the checks and balances of the Constitution. Since first winning an election in 2001, the Thaksin government had exerted undue influence over most major institutions by appointing close associates to the key positions in the Election Commission and the Constitutional Court.⁴ Thaksin also consolidated control of the military by systematically appointing relatives or his classmates to major command positions that would give him personal control over the military forces. The former prime

¹ “All things considered,” *The Economist*, February 28, 2002.

² “A new order: Thailand survey,” *The Economist*, February 28, 2002.

³ “Fears over Thai constitution plan,” *Financial Times*, September 24, 2006.

⁴ D.S.L. Jarvis, “Problems and Prospects in Thaksin’s Thailand: An Interim Assessment,” *Asian Survey* 42, no. 2 (2002): 297-319.

minister, who himself was a telecommunications mogul turned politician, had applied restrictions on freedom of expression, including exercising tight control of broadcast media and applying a variety of pressures on the print media. For example, he ordered the Anti-money Laundering Office to use the anti-money laundering law to threaten and discredit journalists and media that were critical of his government. Furthermore, as part of the campaign of media control and manipulation, shares of iTV (originally Siam Infotainment Company Limited), the country's only independent non-state-owned broadcasting company, and various newspapers were acquired by people close to Thaksin and his Thai Rak Thai Party.⁵

The critical factor that led to the collapse of the Thaksin regime and the interruption of the Thai democratic system was the former prime minister's sale of his family-controlled telecommunications firm, Shin Corp, to Temasek Holdings of Singapore for 73.3 billion baht without paying any tax. All these factors triggered mass protests from the Thai middle-class that ultimately paved the way for the coup led by General Sonthi Boonyaratkalin, the Army Chief of Staff, on September 19, 2006.⁶

After the bloodless coup that successfully overthrew Thaksin while he was out of the country, the coup leaders declared martial law, dissolved the National Assembly, abolished the 1997 Constitution, and appointed a committee to draft a new one. The head of the army and declared coup leader reaffirmed in a press conference that he would restore democracy and would return power to the people as soon as possible.⁷ However, coup opponents, consisting of academics, anti-coup groups and former members of Thaksin's now-dissolved Thai Rak Thai

Party, still feared that the military leaders would cling to power and General Sonthi would take over as Premier of the new government.

FROM FINANCIAL TO SOCIAL CRISIS

The financial crisis in the late 1990s and the adoption of the International Monetary Fund (IMF) reform programs led Thailand to adopt reforms in many sectors. The financial crisis, which spread throughout Asia in 1997/98, started when the Thai government decided to deregulate foreign exchange controls from July 1, 1997. From 1990 to 1994, the Thai government had accepted obligations under Article VIII of the IMF agreement which demands the complete deregulation of current account transactions and removal of restrictions on payments and transfers of capital. It also adopted a series of further liberalization measures, which resulted in less control over flows of foreign currencies into and out of the country. This set the stage for the later crisis.

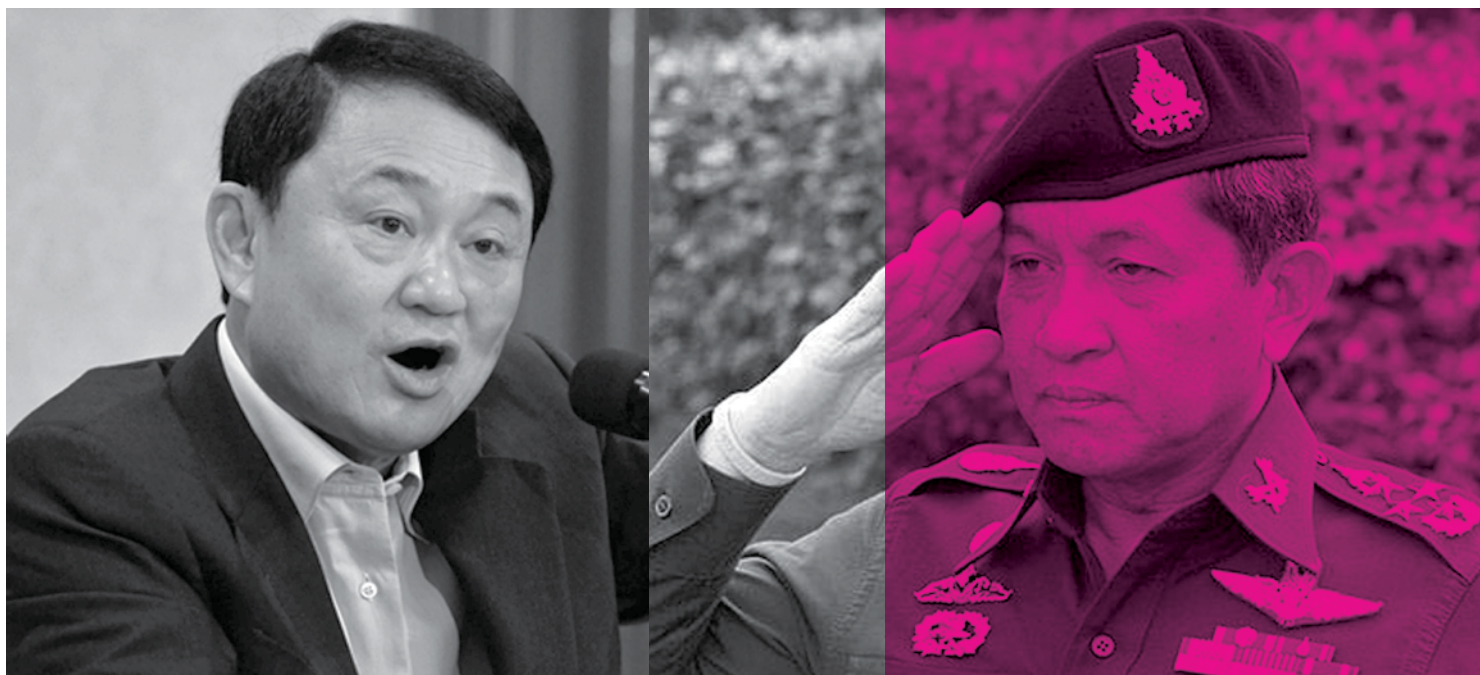
The government loosened restrictions on capital flows, but it poorly regulated and mismanaged the financial sector. The country's institutions were not developed enough to fully understand and cope with any possible consequences of the liberalization. The government allowed the financial market to grow rapidly without control, which attracted more and more money into the economy. However, the money was unscrupulously and wrongly spent, such as on property speculation and on projects that lacked justifiable investment opportunities, such as construction of already over-supplied real estate projects. This affected the Thai corporate sector's capacity to compete and to do business.⁸ During the first half of 1997, the Bank of Thailand attempted to defend the value of the Baht by spending huge sums of money to prop up the overvalued currency. It committed almost all its foreign reserves to doing

⁵ *Ibid.*, 301-303.

⁶ Asian Human Rights Commission, *Thailand Military Coup 2006*, http://thailand.ahrchk.net/docs/AHRC_Thailand_Coup_2006.pdf.

⁷ "Media ban may turn junta's friends into foes," *The Nation*, January 14, 2007.

⁸ A. Siamwalla, Y. Vajragupta, and P. Vichyanond, *Foreign Capital Flows to Thailand: Determinants and Impact* (Bangkok: Thailand Development Research Institute, 1999).



this. The Thai government eventually decided to allow the value of the Baht to float, which caused the currency to lose half its value while doubling the cost of foreign debt, thus pushing many banks and businesses into situations of severe financial pressure, if not bankruptcy. More than half of the foreign loans became non-performing loans, and 56 bankrupt finance companies were closed as a result. All these outcomes led to the collapse of Thailand's economy in 1997, which subsequently extended to other countries and became known as the 1997 Asian Financial Crisis.⁹

That crisis was not the only crisis Thailand has faced in recent years. A more serious and long-term crisis for Thailand is that relating to the environment, overexploitation of natural resources, and poverty and wealth distribution. It may be noted that Thailand's economic policies have been based on neo-liberalism, with emphasis on the role of the private sector. Although such a policy stand has helped Thailand to gain recognition from the

world's multilateral economic institutions, such as the World Bank and IMF, it has generated adverse impacts for Thailand. The country's economic policies have led to wide-spread degradation of its environmental quality and natural resources. Various development projects, which heavily exploit natural resources, such as forests, water and marine resources, have caused harmful effects on the environment. They also deprive grass-roots communities of their traditional subsistence resources, and cause social conflict. Economic growth has widened the gap between the rich and the poor and has made the agricultural and rural sectors secondary to the industrial and urban sectors.

All these problems resulted from the lack of political development. Political imbalances create poverty and exacerbate social and human rights problems.¹⁰ Unlike people in business sectors, grass-roots Thais do not have much chance to take

⁹ J. Laird, *Money Politics, Globalisation, and Crisis: The Case of Thailand* (Singapore: Graham Brash, 2000).

¹⁰ Commission on Human Rights, *Question of the Realization in All Countries of the Economic, Social and Cultural Rights Contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights*, E/CN.4/1994/19, November 25, 1993: 23.

part in developing and formulating various public policies. As a result, the political and economic systems adopted and implemented by Thailand in past decades have not played much of a role in reducing economic and social disparities. The majority of Thais are still living in poverty. Failure in the agricultural sector has driven the rural poor to leave their land and move to urban areas. However, the industrial and service sectors' capacity to absorb labor has worsened substantially in the past several years, particularly after the 1997 financial crisis. Furthermore, the continuous in-migration of the rural poor accelerates the expansion of urban areas, while deteriorating environmental conditions and lessening the quality of life. It may be correct to say that all these problems generate effects on human rights and cannot be reduced or eradicated without political reform.¹¹ Whether or not the forthcoming constitution will really lead to true democracy and help secure Thailand's economic and social development remains to be seen.

THE ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION

According to Article 199 of the 1997 Constitution, NHRC consists of a chairperson and 10 other members appointed by His Majesty the King on the advice of the Senate. The commissioners are selected from people of diverse backgrounds having expertise or experience in human rights. Each commissioner holds office for a term of six years and serves only one term. As required by the Constitution, NHRC has the responsibility to monitor the government's human rights performance, promote greater human rights awareness and make the government and other agencies accountable for violations of human rights. NHRC is equipped with the following authorities: (a) to conduct impartial

investigations into allegations of human rights violations; (b) to monitor the implementation of the government's human rights obligations; and (c) to promote greater awareness and understanding of human rights.

NHRC does not have the power to bring those found responsible for human rights abuses to justice, but may conduct investigations and make recommendations to the relevant government agencies to rectify wrongdoing. NHRC performs the role of enabling out-of-court resolution of human rights disputes alternative to judicial review by the courts. It uses simple procedures. The formal rules of evidence and procedure do not apply to its dispute resolution methods, making NHRC less intimidating to complainants. NHRC generally holds conciliation and mediation proceedings, which enable it to find equitable solutions, thereby avoiding the cost and lengthy delays associated with the courts.

Within the six years of its operations, NHRC has made some remarkable contributions in solving the country's human rights problems. This is so despite the fact that its efficiency and significance has been marred by a lack of enforcement power. NHRC has successfully raised human rights awareness in Thailand by passing a number of resolutions on various human rights issues. It has also conducted examinations into and rectified cases of human rights violation, as well as provided guidance and policy recommendations as to how the government should deal with human rights violations.

The Thaksin government had attempted to weaken the power of NHRC, but the Commission was able to maintain its independence and successfully monitored the government's activities and policies. If the test of NHRC's success is whether or not it can raise public awareness and make a tremendous impact in the society,¹² its activities can be considered successful as on many occasions it effectively campaigned to draw public attention to

¹¹ E. Vierdag, "The Legal Nature of the Rights Granted by the International Covenant on Economic and Social Rights," *Netherlands Yearbook of International Law* 9 (1978): 69.

¹² J. Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca and London: Cornell University Press, 1996), 13-14.



an issue of human rights abuse. An investigation into former Prime Minister Thaksin Shinawatra's war on drugs, in which more than 2,000 people were killed, is a case in point.

The Thaksin government's promotion of violence against so-called narcotics dealers led to widespread human rights violations throughout the country. The abuses included violence against drug suspects, extrajudicial executions, blacklisting of drug dealers, intimidation of human rights defenders, and violence and other breaches of the due process of law.¹³ Throughout that administration's war on drugs, NHRC was deluged with complaints of false arrest, improper inclusion in drug blacklists, and related violations.¹⁴ NHRC's investigation resulted in harsh criticism of the government's policies and operations. NHRC strongly condemned the extrajudicial killings of drug suspects and the

failure of the police to bring the suspects to trial. However, the heavy criticism also led the government to launch a counter-attack and take action against the Commission's members. For example, Commissioner Pradit Chareonthaitawee was heavily criticized by Thaksin, who accused Pradit, of "giving away Thailand's independence" after he had presented cases of human rights violations to the United Nations High Commissioner for Human Rights in March 2003.¹⁵

The investigation on the Thai-Malaysian pipeline project in southern Thailand provides another example of highly commendable work on human rights in Thailand. In 2003, local people in the South staged protests against the construction of a gas pipeline because they believed the project would adversely affect the people's traditional way of life and pollute the Gulf of Thailand. The Thaksin government reportedly used excessive force against the demonstrators, resulting in hundreds of people being seriously injured. In addition, 12 leaders of the anti-pipeline protests were detained and denied bail and access to lawyers; they also were not informed of the charges brought against them.¹⁶ NHRC criticized the government's action and demanded that charges be brought against those involved in the incident, including commanding police officers and ministers. Although nothing was done about the wrongdoings, the NHRC report revealed abusive practices carried out on the part of state authorities and led to public condemnation of the Thaksin Administration.

Another success brought about by NHRC is the case of the Tropical Forest Conservation Fund. On July 29, 1998 the United States passed the United States Tropical Forest Conservation Act, authorizing foreign governments to reduce

¹³ United Nations, "UN Expert on Extrajudicial Executions expresses concern over recent killings in Thailand," UN Press Release, February 24, 2003.

¹⁴ "Thai rights chief attacked over drug claims," *Financial Times*, March 6, 2003.

¹⁵ "Thai drug war critic threatened," *BBC News*, March 7, 2003, <http://news.bbc.co.uk/2/hi/asia-pacific/2828203.stm>.

¹⁶ "Human Rights and the Trans Thai-Malaysia Gas Pipeline," *Friends of the Earth, Barclays*, London, 2005, also available from http://www.foe.co.uk/resource/briefings/barclays_thai_malaysia.pdf.

certain debts owed to the United States and its lending agency, the Commodity Credit Corporation. However, debt relief could be granted only on the condition that the debtor country agree to set up a fund which would be used for the restoration and conservation of rainforests in the debtor country.¹⁷

In February 2002, the United States proposed that it would transfer \$12.6 million of Thailand's debt into a "tropical forest conservation fund" over a period of 28 years. In return, the fund would establish tree plantations in Thailand to absorb carbon dioxide and undertake programs on forest restoration and conservation. The establishment of such a fund seemed to reflect the good intentions of the United States in providing debt relief to a developing country such as Thailand and in conserving the world's natural resources. However, the proposed plan raised considerable concern in Thailand when NHRC revealed the United States proposition in the mass media. Why would the United States want to provide debt relief to Thailand and other developing countries to save the Earth's atmosphere? The effort of the United States to mitigate the effects of global warming and greenhouse gas emissions through the fund was unconvincing, given the fact that the United States itself had the world's worst record on environmental issues. The United States is responsible for nearly 30 percent of total carbon dioxide emissions, and despite international pressure the United States continues to refuse to sign the Kyoto Protocol aimed at reducing carbon dioxide emissions into the atmosphere.¹⁸

Furthermore, it was suspected that the establishment of the fund would allow the United States to play an extensive role in managing natural resources and exploiting rainforests in Thailand.

¹⁷ M. Moya, *Innovative Mechanisms to Manage Environmental Expenditures in Africa, Asia and Latin America and the Caribbean* (Paris: WWF Center for Conservation Finance, 2002).

¹⁸ R. Daniel, "Thailand: United States' carbon sink plantation proposal rejected," *World Rainforest Movement Bulletin* 57 (April 2002).

The nine-member tropical forest conservation board proposed to be set up under the US-Thai agreement would be dominated by the United States since the appointment of the board must receive the consent of the United States government. The proposed board could disperse money from the fund to non-governmental, environmental, forestry, and conservation organizations, as well as private firms, to conduct a wide range of activities, especially collecting flora and fauna samples for the purpose of research. The identification of medicinal uses of tropical forest plants, which is the first step toward further biotechnological studies, was also under the board's authority. All supported activities would be approved and monitored by the board.

The virtually unrestricted power of the board was a cause for concern in that it would operate outside the purview of the Thai government. Particularly concerning was its power to award grants to private entities that could commercially exploit Thailand's biological resources. In addition, the draft agreement, which allowed non-governmental organizations and other private entities to apply for funding, did not make any distinction regarding the nationality of the persons who would benefit from the fund. Foreign interests could be granted access to Thailand's biological and natural resources without seeking permission from the Thai authorities.

Given its potential deleterious effects, the Thai government exercised caution in considering whether to enter into agreement with the United States. Under pressure from NHRC and Thai civil society groups, the Thai government eventually rejected the US-proposed "forest conservation fund." The movement of NHRC against the United States proposition reflected its vision that community rights and the rights over natural resources and traditional knowledge must be recognized and protected as basic human rights. It also exhibited to the world that developing countries' natural resources are not part of the global commons or the common heritage of mankind, but under the sovereign rights of individual nations.

Thailand's NHRC has been undertaking

several initiatives for the protection and promotion of human rights despite facing several obstacles. The most crucial problem facing NHRC is lack of adequate resources. The National Human Rights Commission Act B.E. 2542 (1999) mandates the government to allocate an adequate budget for the independent administration of NHRC. However, since the law does not provide any criteria to determine the adequacy of the budget, it is up to the government to decide what funds are sufficient for NHRC operations. Given the complete disregard for human rights standards by the Thaksin Shinawatra government, the Thai NHRC faced serious challenges in terms of financial constraints as it had been allocated an inadequate budget for effective operations. Under the current government, NHRC has remained underfunded and will remain so until its organization is reformed. It is proposed therefore that the law be amended to enable NHRC to be an independent administrative institution outside the executive branch. The budget of NHRC should not be set by the government but should be directly allocated and approved by the parliament.

The Thai NHRC has also suffered from constraints on investigative jurisdiction. As mentioned previously, NHRC does not have the authority to pass judgment or to compel persons or institutions to take action or rectify wrongdoing. It is authorized by the Act to report its findings and make recommendations on issues. If the organization concerned fails to comply with its recommendations, NHRC may only report its finding and recommendations to the national legislative authority and disclose the case to the public.

CONCLUSION

Thailand's National Human Rights Commission has been functioning well in promoting social learning, and, to a certain extent, has been successful in raising public awareness of human rights as well as their promotion and protection in Thailand even though it lacks adequate resources to perform its functions and despite the fact that the



Thai constitution fails to take a proactive approach to the tasks of NHRC.

NHRC will continue to do well by emphasizing its value and importance in terms of education, research and the dissemination of human rights knowledge, rather than acting as a rights defender with effective enforcement authority.

Regardless of the outcome of the political reform process currently under way and the struggle for power, Thailand must maintain the independence of NHRC and provide adequate resources for its effective operations. In addition, while NHRC should continue its successful mandate in the promotion and protection of human rights, the current law should be amended to increase the capacity and potential of NHRC to play a greater role in dealing with social and economic problems, which are the primary cause of human rights violations in Thailand.