

Thailand: National Human Rights Commission Act, B.E. 2542 (1999)

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Comments The Act came into force on the day following the date of its publication in the Government Gazette.

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BHUMIBOL ADULYADEJ, REX.

Given on the 25th Day of November, B.E. 2542;
Being the 54th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that :

Whereas it is expedient to have a law on the National Human Rights Commission;

This Act contains provisions relating to the restriction of rights and liberties of the people which section 29 together with section 35 and section 48 of the Constitution of the Kingdom of Thailand allow to be done by virtue of provisions of law;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly as follows;

Section 1. This Act is called the "National Human Rights Commission Act, B.E. 2542".

Section 2. This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3. In this Act :

"human rights" means 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;

"Commission" means the National Human Rights Commission;

"President" means the President of the National Human Rights Commission;

"member" means a member of the National Human Rights Commission.

Section 4. The President of the National Human Rights Commission shall have charge and control of the execution of this Act and shall have the powers to issue Regulations or Notifications with the approval of the National Human Rights Commission for the execution of this Act.

Regulations and Notifications under paragraph one that are of general applicability shall come into force after their publication in the Government Gazette.

CHAPTER I

The National Human Rights Commission

Section 5. There shall be the National Human Rights Commission consisting of a President and ten other members appointed, by the King with the advice of the Senate, from the persons having apparent knowledge or experiences in the protection of rights and liberties of the people, having regard also to the participation of men and women and representatives from private organizations in the field of human rights.

The President of the Senate shall countersign the Royal Command appointing the President and members.

Section 6. The President and members shall have the qualifications and shall not be under any prohibition as follows:

- (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 judgment 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 a private agency on the ground of dishonest

performance a 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 asset;

(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

Section 7. A person elected as a member shall :

(1) not be a Government official holding a permanent position or receiving salary;

(2) not be official or employee of a State agency, State enterprise or local government organization or not be a director or advisor of a State agency;

(3) not hold any position in a partnership, a company or an organization carrying out business for sharing profits or incomes, or be an employee of any person.

In the case where the Senate has elected a person in (1), (2) or (3) with the consent of that person, the elected person can commence the performance of duties only when he or she has resigned from the position in (1), (2) or (3). This shall be done within fifteen days as from the date of election. If that person has not resigned within the specified time, it shall be deemed that that person has never been elected to be a member and a new member shall be selected and elected.

Section 8. The selection and election of members shall be proceeded as follows :

(1) there shall be a Selective Committee consisting of the President of the Supreme Court, the President of the Supreme Administrative Court, the Prosecutor-General, the Chairman of the Law Council, Rectors or representatives of higher education institutions which are juristic persons; provided that each institution shall have one representative and all such representatives shall elect among themselves to be five in number, representatives of private organizations in the field of human rights under section 24; provided that each organization shall have one representative and all such representatives shall elect among themselves to be ten in number, representatives of political parties having a member who is a member of the House of Representatives; provided that each party shall have one representative and all such representatives shall elect among themselves to be five in number, representatives of public media in the businesses of newspaper, radio broadcasting and television broadcasting, being elected from each business to be three in number and the Secretary-General of the National Human Rights Commission as secretary. The Selective Committee shall have the duties to select and prepare a list of names of twenty two persons who are suitable to be members under section 5; provided that regard must be given to participation of woman and men, and submit such list to the President of the Senate. The nomination must be made with consent of nominated persons including documents or evidence showing that the nominated persons are suitable to be

members and have the qualifications and are under no prohibitions under section 6 within sixty days as from the date when a ground for the selection of persons to be in such office occurs. The resolution making such nomination must be passed by votes of not less than three-fourths of the number of all existing members of the Selective Committee;

(2) the President of the Senate shall convoke the Senate for passing, by secret ballot, a resolution selecting the nominated persons under (1). For this purpose, persons who receive the highest votes which are more than one-half of the total number of the existing senators shall be elected as numbers in consecutive order, but if no persons are elected or if less than eleven persons are elected, the name-list of those not elected on the first occasion shall be submitted to the senators for voting on another occasion. In such case, the persons who receive the highest votes which are more than one-half of the total number of the existing senators shall be deemed to be elected as numbers. In the case where there are persons receiving equal votes in any order resulting in having more than eleven elected persons, the President of the Senate shall draw lots to determine who are elected persons. In the case where no person is elected or where less than eleven persons are elected, the Selective Committee shall proceed with the selection and preparation for a list of persons under (1) to be submitted to the Senate for passing a resolution for reelection.

The elected persons under (2) shall meet and elect among themselves the President and notify the President of the Senate of the result. The President of the Senate shall tender the matter to the King for further appointment.

Section 9. Members shall perform their duties with independence and impartiality and shall have regard to the interests of the country and the public.

Members shall be a State official under the organic law on counter corruption.

Section 10. Members shall hold office for a term of six years as from the date of their appointment by the King and shall serve for only one term.

Member who vacate office upon the termination of the term shall remain in office to continue to perform their duties until the newly appointed members take office.

In order to have the newly appointed members to perform their duties upon the termination of the term of the outgoing members, the proceeding of selection and election for the new members shall be proceeded sixty days prior to the expiration of the term of the outgoing members.

Section 11. Members of the House of Representatives or senators of not less than one-fourth of the total number of the existing members of each house have the right to lodge with the President of the Senate a complaint in order to request the Senate to pass a resolution removing a member from office on the grounds that such member has performed his or her duties

without giving regard to the interests of the country and the public or with partiality or misconduct or immoral conduct that may seriously affect or damage the performance of his or her duties or the promotion or protection of human rights, or of having any interest in any activity or business which has directly affected or caused the same damage therein, or having or having had a conduct in violation of human rights or being seriously defective in performing his or her duties.

The resolution of the Senate under paragraph one shall be passed by votes of not less than three-fifths of the total number of the existing members of the Senate.

Section 12. In addition to the vacation of office upon the termination of the term, a member vacates office upon :

- (1) death;
- (2) resignation;
- (3) being disqualified or being under any of the prohibitions under section 6;
- (4) acting in contravention of section 7;
- (5) being removed from office by a resolution of the Senate under section 11;
- (6) being removed from office by a resolution of the Senate under the organic law on counter corruption.

Where a case under paragraph one occurs, the remaining members may continue the performance of duties and it shall be deemed that the Commission consists of the remaining members, except where remaining thereof are less than seven.

Section 13. In the case where members vacate office under section 12, the proceedings under section 8 shall be commenced within thirty days as from the date members vacate their office. In this case, the Selective Committee shall prepare a list of persons twice the number of those vacating office and submit such list to the President of the Senate.

In the case where members vacate office when the National Assembly is not in session, the proceedings under section 8 shall be proceeded within thirty days as from the date the National Assembly commences its session.

Section 14. At a meeting, the presence of not less than one-half of the total number of existing members shall constitute a quorum.

The President shall preside over the meeting. If the President does not attend the meeting or is unable to perform his or her duties, the members present shall elect one among themselves to preside over the meeting.

The decision of the meeting shall be made by majority of votes; in case of an equality of votes, the person presiding over the meeting shall have an additional vote as casting vote.

In a meeting, if there is a consideration of a matter in which a member has a private interest, that

member has no right to attend such meeting.

Section 15. The Commission has the powers and duties as follows :

- (1) to promote the respect for and the practice in compliance with human rights principles at domestic and international levels;
- (2) to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties relating to human rights 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 Nation Assembly for further proceeding;
- (3) to propose to the National Assembly and the Council of Ministers policies and recommendations with regard to the revision of law, rules or regulations for the purpose of promoting and protecting human rights;
- (4) to promote education, researches and the dissemination of knowledge on human rights;
- (5) to promote co-operation and co-ordination among Government agencies, private organizations, and other organizations in the field of human rights;
- (6) to prepare an annual report for the appraisal of situation in the sphere of human rights in the country and submit it to the National Assembly and the Council of Ministers and disclose to the public;
- (7) to assess and prepare an annual report of the performance of the Commission and submit it to the National Assembly;
- (8) to propose opinions to the Council of Ministers and the National Assembly in the case where Thailand is to be a party to a treaty concerning the promotion and protection of human rights;
- (9) to appoint a sub-committee to perform the tasks as entrusted by the Commission;
- (10) to perform other acts under the provisions of this Act or as the law prescribed to be the powers and duties of the Commission.

Section 16. The President and the members shall work regularly on a full-time basis and shall receive monthly remuneration and travel allowance in accordance with the rules and rates as prescribed by a Royal Decree.

The sub-committee shall receive meeting and travel allowances in accordance with the rules and rates as prescribed by a Royal Decree.

CHAPTER II

The Office of the National Human Rights Commission

Section 17. There shall be the Office of the National Human Rights Commission having the status of a Government agency attached to the National Assembly under the law on the organization of the National Assembly and shall be under the supervision of the President.

Section 18. The Office of the National Human Rights Commission has the responsibility in the general affairs of the Commission and shall have the powers and duties as follows :

- (1) to be responsible for the administrative works of the Commission;
- (2) to receive petition of human rights violation and submit it to the Commission and to investigate or examine matters which are petitioned as entrusted by the Commission;
- (3) to conduct study on and promote education and the dissemination of knowledge in the field of human rights;
- (4) to co-operate with Government agencies, private organizations or any other organizations in the field of human rights of the purpose of protecting human rights;
- (5) to carry out any other performance as entrusted by the Commission.

Section 19. Officials of the Office of the National Human Rights Commission shall be ordinary officials of the National Assembly under the law on parliamentary official service.

The powers and duties of the Parliamentary Official Service Commission shall be the powers and duties of the Commission and the President shall be in charge of the administration of the affairs and personal administration of officials of the Office of the National Human Rights Commission under the law on the organization of the National Assembly and the law on parliamentary official service.

Section 20. The Office of the National Human Rights Commission shall have the Secretary-General of the National Human Rights Commission who is responsible for the performance of duties of the Office of the National Human Rights Commission, directly answerable to the President and who is the superior of officials and employees of the Office of the National Human Rights Commission. There shall also be Deputy Secretary-General of the National Human Rights Commission to assist the Secretary-General in the performance of duties.

Section 21. The Office of the National Human Rights Commission shall, with the consent of the Commission, submit an estimated annual budget to the Council of Ministers via the President of the National Assembly for its consideration of appropriation budgets, adequate for the independent administration of the Commission, in an annual appropriations bill or supplementary appropriations bill, as the case may be, In this matter, the Council of Ministers, the House of Representatives, the Senate or the Standing Committees may, if requested by the President, allow the President or the persons entrusted by the President to give explanations.

CHAPTER III

Examination of Human Rights Violations

Section 22. The Commission shall have the duties to examine and propose remedial measures under this Act for the commission or omission of acts which violate human rights and which is not a matter being litigated in the Court or that upon which the Court has already given final

order or judgement.

Section 23. Any person whose human rights are violated has the rights to lodge a petition in writing which shall contain details as follows :

- (1) name and address of the petitioner or his or her representative;
- (2) facts and circumstances which are causes of the commission or omission of acts which violate human rights;
- (3) signature of the petitioner or representative appointed in writing by the petitioner.

Petition may be made verbally in accordance with a Regulation issued by the Commission.

The petition shall be submitted at the office of the National Human Rights Commission or by registered post with return receipt or to any member or via a private organization in the field of human rights to be referred to the Office of the National Human Rights Commission or by any other mean as prescribed by the Commission.

Upon receiving the petition under paragraph one, the Office of the National Human Rights Commission shall, without delay, notify the petitioner or the representative; provided that notification shall be made no later than three days as from the date the petition is received.

Section 24. In the case where a petition from a person whose human rights are violate is lodged with a private organization in the field of human rights or where there appears to the said organization of such committed or omitted act thereof, if that organization considers the case to be prima facie it may propose the matter to the Commission for further proceeding.

A private organization in the field of human rights under paragraph one shall be 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 profits from carrying out such business.

Section 25. In the case where the Commission deems it appropriate to examine any case of a human rights violation or where the Commission has received a petition of human rights violation under section 23 or has received a petition from a private organization in the field of human rights under section 24 and is of the opinion that it is a prima facie case which is under its powers and duties, the Commission shall notify a person or agency alleged to be a human rights violator or a person or agency whom the Commission considers to be involved in human rights violation to give a responded statements of facts within the period specified by the Commission. In the said notification, the Commission shall summarize details of facts sufficiently for a correct and complete response.

In the case where the Commission deems the received matter is not within its powers and duties or has rejected to consider such matter, the Commission shall, without delay, notify the petitioner or the private organization in the field of human rights of which the petition is submitted, and, for the interest of protecting human rights, may refer the matter to a person or

agency involved with the matter as it deems appropriate.

In the case where the Commission deems the matter should be appropriately considered by another responsible agency, it may refer the matter to such agency regardless of the stage of proceeding of the matter. In this case, the Commission may make a written inquiry of the progress to the agency. If it appears that that agency has not proceeded or has rejected to consider the matter, the Commission may bring the matter back to its consideration; provided that such matter is within its powers and duties.

In making a referral to another agency or bringing back the matter for consideration under paragraph three, the Commission shall, without delay, notify the petitioner or the private organization that has made a submission.

Section 26. When the period for responding statements of facts under paragraph one of section 25 has lapsed, the Commission shall proceed its examination of human rights violation by giving the petitioner and those involved an opportunity to provide details and present appropriate evidence to prove facts concerning the act alleged to be a human rights violation.

In conducting the examination of the human rights violation under paragraph one, if the parties are required to be present before the Commission, the parties have the right to bring lawyers or their counsel to the examination proceedings in accordance with the rules prescribed by the Commission.

In conducting the examination of a human rights violation, the Commission may appoint one or more sub-committee to carry out investigation and making factual inquiry, hearing responding statement of facts and evidence and preparing a report in accordance with the regulation prescribed by the Commission and submit it to the Commission. In this case, the subcommittee shall have the same powers and duties as the Commission, except as provided otherwise by the Commission.

In carrying out the examination of human rights violation, the Commission may appoint an official to assist in the performance thereof.

Section 27. In conducting the examination of human rights violation, the Commission shall, if it deems mediation is possible, mediate between persons or agencies involved to reach an agreement for compromise and solution of the problem of human rights violation. If the parties agree to compromise and solve the problem and the Commission considers the agreement is within the scope of human rights protection, the Commission shall prepare a written agreement for the parties and settle the matter.

If it appears to the Commission thereafter that there is non-compliance with the written agreement under paragraph one, the Commission shall further proceed with the examination under its power and duties.

Section 28. If the Commission is, subject to section 27 and when the examination is completed, of the opinion that there is a commission or omission of acts which violate human rights, the Commission shall prepare a report of the examination which shall specify details of the circumstances of human rights violation, reasons for such opinion and remedial measures for solving human rights violation which shall clearly set forth the legal duties and methods of performance of a person or agency, including the period for implementation of such measures.

In setting forth the remedial measures under paragraph one, the Commission may require a person or agency to perform his or its duties by appropriate methods to prevent a recurrence of similar human rights violation.

In the case the Commission is of the opinion that the said commission or omission of acts does not violate human rights but there is an unjust practice from which the aggrieved person deserved a remedy, the Commission may set forth remedial guidelines and notify a person or agency to appropriately perform within the scope of powers and duties of such person or agency.

The Commission shall promptly notify the examination report to the person or agency having duties to perform and to the petitioner in case a petition has been lodged with the Commission.

Section 29. The person or agency shall, upon receiving the examination report under section 28, implement the remedial measures for solving the problem of human rights violation within the period specified by the Commission and shall notify the results of the implementation to the Commission.

In the case where the implementation of the remedial measures for solving the problem of human rights violation cannot be completed within the specified period, the person or agency shall, before the expiration of the previous period, request the Commission for an extension of the implementation period together with reasons and the length of period sought for extension; provided that no request shall be made for an extension of the implementation period more than two times.

Section 30. When the period under section 29 is lapsed, if the person or agency has not implemented the remedial measures for solving the human rights violation or has not completed the implementation without justifiable reasons, the Commission shall report to the Prime Minister to order an implementation of the remedial measures within sixty days as from the date the report is received. In this case, the Commission shall specify, to the Prime Minister, details for the exercise of the legal power in the issuance thereof, except the implementation of such remedial measures is not within the power of the Prime Minister, the Commission shall proceed in accordance with section 28.

Section 31. In the case where no proceeding or order for the implementation of remedial measures for solving the human rights violation under section 30 has been taken, the Commission shall report to the Nation Assembly for further proceeding. In reporting to the

National Assembly, if the Commission deems it beneficial to the public, the Commission may disseminate to the public the case in which no implementation of remedial measures for solving the human rights violation has been taken.

Section 32. In the performance of duties, the Commission shall have the powers as follows :

(1) 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) to summon a person, juristic person or private agency 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 receiver. 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) 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 this 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;

(4) 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.

Section 33. In the performance of duties under this Act, members, members of the sub-committee or official appointed by the Commission to examine human rights violation shall be official under the Penal Code.

CHAPTER IV

Penalties

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 Bath, 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 Bath, or to both.

Transitory Provisions

Section 36. The Selective Committee shall commence the selection proceeding for the election of members under section 8 within sixty days as from the date this Act comes into force.

Section 37. In the case where there is a selection of members when there is no President of the Supreme Administrative Court, Secretary-General of the National Human Rights Commission and private organizations under section 24, the Selective Committee under section 8 shall consist of the President of the Supreme Court, the Prosecutor-General, the Chairman of the Law Council, Rectors or representatives of higher education institutions which are juristic persons, provided that each institution shall have one representative and all such representatives shall elect among themselves to be five in number, representatives of private organizations in the field of human rights that have registered with the Secretariat of the Senate within thirty days as from the date this Act comes into force, provided that each organization shall have one representative and all such representatives shall elect among themselves to be ten in number, representatives of political parties having a member who is a member of the House of Representatives, provided that each party shall have one representative and all such representatives shall elect among themselves to be five in number, representatives of public media in the businesses of newspaper, radio broadcasting and television broadcasting, being elected from each business to be three in number and the Secretary-General or Senate as secretary.

The rules and procedures for the registration of private Organization under paragraph one shall be as specified by the President of the Senate.

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