



General Assembly

Distr.
GENERAL

A/HRC/11/NGO/38
9 June 2009

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Eleventh session
Agenda item 4

HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

**Written statement^{*} submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organization in general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 May 2009]

^{*} This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

THAILAND: NHRC not independent nor composed according to international standards

1. In its previous written submission to the Human Rights Council, the Asian Legal Resource Centre (ALRC) pointed to the resurgence of regressive anti-human rights forces in Thailand in the wake of the 2006 military coup as a grave threat to human rights in that country. It identified the repeated overthrow of elected governments by antidemocratic forces, large-scale criminal activity not followed with investigations or prosecutions, Internet censorship, use of the draconian criminal law to hunt critics of government and monarchy and threats to human rights defenders as just some of the challenges in the current period.

2. A specific consequence of the increasing disregard for human rights and human rights institutions in Thailand that has emerged since the last session of the Council, and one which should be of special concern to the global human rights community, is the appointment of new commissioners to the National Human Rights Commission (NHRC) of Thailand in disregard to the Principles Relating to the Status of National Institutions on Human Rights (The Paris Principles).

- (a) Briefly, the terms of the previous commissioners in fact lapsed during 2007, under the interim military-appointed government; however, most of the commissioners continued in their posts under the NHRC Act (1999), which provided that they were to do so until a new commission was appointed.
- (b) After the 2007 Constitution was brought into effect, two persons petitioned the courts for the former commissioners to vacate their posts, even though a new NHRC Act had not passed through parliament to regulate the process. On 30 January 2009 the Supreme Administrative Court held that the new commission could be established according to the terms of the latest national constitution, without a specific law governing its activities.
- (c) Accordingly, on 11 March 2009 the NHRC secretary invited applications for new commissioners, giving a period of one week for applications, from March 14 to 20. The Selection Committee, consisting of the presidents of the three top courts, two persons chosen by two assemblies of judges, and the president of the lower house of parliament met to consider the applications on April 8. The seventh member of the committee, from the political opposition, was not involved apparently due to the political uncertainty gripping Thailand.
- (d) On April 10 the committee sent the names and documents of its seven nominees to the Senate for consideration and approval, being those of: Police General Vanchai Srinuwatnada, assistant commissioner general of the Royal Thai Police; Mr. Parinya Sirisarakarn, managing director of a salt extraction and processing company, Kijsubudom Co. Ltd., and former member of the Constitution Drafting Assembly of Thailand (2007); Mr. Paibool Varahapaitoon, secretary to the Office of the Constitution Court; Ms. Visa Penjamano, ministerial inspector, Ministry of Social Development and Human Security; Mr. Taejing Siripanich, secretary, Don't Drive Drunk Foundation; Mr. Nirand Pithakwachara, former elected senator and member of Senate committees of inquiry into human rights abuses; and, Professor Amara Pongsapich, former dean, Faculty of Political Science, Chulalongkorn University.

- (e) On April 20 the Senate established a committee to review the nominees and the following day it announced that it would give until April 27 for public comment on the seven. Thereafter, on May 1 the Senate voted to appoint all seven as commissioners.

3. In letters to the Senate and subsequently to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights the sister organization of the ALRC, the Asian Human Rights Commission, pointed out that the procedure of selection and appointment of these seven commissioners would cause the NHRC to fall out of compliance with the Paris Principles, specifically section 1 of the principles on composition and guarantees of independence and pluralism, which reads that:

"The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of: (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists..."

4. The centrality of pluralistic composition and independence to the working of a national human rights institution under the Paris Principles is also made clear in paragraph 8 of the Nairobi Declaration at the Ninth International Conference of National Institutions for the Promotion and Protection of Human Rights in 2008, that "the independence and autonomy of NHRIs, their pluralistic representation, as well as their interaction with a broad range of stakeholders, is necessary for their compliance with international standards and their effectiveness at the national, regional and international levels".

5. However, the new NHRC of Thailand is neither pluralistic nor independent, as its selection and appointment process was non-transparent, undemocratic, secretive and conducted contrary to human rights principles from start to finish.

- (a) No effort was made to publicize the process, whether by radio, television, Internet or other media, and the invitation to comment was made only via a formal government announcement. The website where persons were supposed to make comments did not even have a form or page upon which to do so. And the whole process took place against the backdrop of intense political turmoil in Thailand that led to the closure of the Association of Southeast Asian Nations summit on April 8 and the declaration of a State of Emergency in Bangkok from April 12 to 24. Therefore, there was no public or media attention brought to it at all.
- (b) Aside from the failure to invite public involvement in the selection and appointment of the NHRC, the formalities of the process under the undemocratic 2007 Constitution, and the uninterested and irresponsible manner with which the persons charged with the selection and appointment of the new commission carried out their task effectively denied pluralist and independent representation. The Selection

Committee did not bother to interview any of the candidates, basing its nominations solely on the documentation it had received. In its report to the Senate it did not give any reasoning for its selection of the seven nominees, giving details only of the votes for and against each candidate that led to his or her nomination. The seven also were not subjected to any rigorous inquiries at the Senate, merely making some brief remarks and answering a few questions, when a number of the candidates demonstrated a superior ignorance rather than knowledge of human rights.

6. That the majority of Thailand's new national human rights commissioners don't understand human rights is also manifest from their backgrounds. Out of the seven, only two have actual experience and broad knowledge on rights issues, while one has experience on specific economic and social rights. The other four, the majority of the commission, have no experience at all. Not one of the seven persons is a representative of non-governmental organizations responsible for human rights, trade unions or concerned social and professional organizations, despite the fact that there were many applicants from these backgrounds who were not selected for reasons that remain unknown.

- (a) Specific serious objections have been raised in Thailand and abroad about one of the seven, Parinya Sirisarakarn, a businessman who was himself named in a report of the former NHRC as among businesspersons responsible for environmental degradation in the northeast. The naming of Parinya as a human rights violator in an official document of the former commission apparently was not sufficient an obstacle to his appointment to the post. Nor, it seems, were his remarks before senators prior to his election that if made a commissioner he would not necessarily welcome international intervention on human rights issues in Thailand because this might be intended to interfere in the country's internal affairs. Likewise, that his many business interests could bring him into obvious conflicts with the goals of the commission apparently did not trouble the majority of senators.
- (b) That three of the seven new appointees are coming to the NHRC direct from state agencies also raises serious concerns about the independence of the commission. The inclusion of a senior policeman is of special concern as the Royal Thai Police are the top violators of human rights in Thailand, for which they enjoy complete impunity. Police who have served on agencies where inquiries have been held into police abuses have in most instances acted out of institutional loyalty to cover up violations of rights rather than expose them. The inclusion of the court administrator is of concern too given that the appointee's former boss was among those responsible for his appointment to the post, and given the numerous non-judicial roles across government that the judiciary holds under the 2007 Constitution.

7. In light of the above, the sister organization of the ALRC has called for an immediate review of Thailand's "A" Status under the accreditation system based upon the Paris Principles, and the downgrading of the NHRC to "C" Status, non-compliant with the Principles. The ALRC greatly regrets the need for Thailand's NHRC to be ejected from international human rights forums but sees no alternative lest the global human rights community be tarnished by the human rights fraud that the NHRC Thailand has become. It also feels that a strong message needs to be sent not only to the Government of Thailand but also to all other governments that seek to undermine the work of the national human rights institutions that these Principles must be fully

upheld if a country expects to be taken seriously in its rhetorical commitments to human rights institutions. This is especially so given that the authorities in Thailand received warnings and complaints on the process of selection and appointment prior to the election of these persons in the Senate but chose to ignore them and carry on with a human rights charade.

8. Although the willful non-compliance with the Paris Principles is a cause for special concern of the Human Rights Council, the Asian Legal Resource Centre notes that it is only one manifestation of the worsening human rights situation in Thailand: a decline that began under the ousted prime minister, Police Lt. Col. Thaksin Shinawatra, but accelerated dramatically after the 2006 coup. The selection and appointment of this new National Human Rights Commission in a manner contrary to the very principles that the commission is supposed to represent speaks both to the current administration's disinterest in having a functioning national human rights institution and to the low respect for and knowledge about human rights among the authorities there. Not only has the NHRC been relegated to a third-class agency of little importance to the state, but also government agencies in Thailand continue to treat human rights as at best irrelevant and more often than not as obstacles to their work. The manner of selection and appointment of the new NHRC as well as its composition are indicators of the deep anti-human rights culture that pervades official institutions in Thailand, now including, it would seem, the National Human Rights Commission itself. The unfortunate consequence is that the NHRC is today not only of little significance to the Government of Thailand, but also to the people of Thailand on behalf of whom and for whose rights it is supposed to act.

- - - - -