Research Article

A COMPARISON OF THE ROLE OF HUMAN RIGHTS COMMISSIONS IN THE PREVENTION AND SUPPRESSION OF TORTURE AND ENFORCED DISAPPEARANCES IN THAILAND AND THE PHILIPPINES*

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Abstract

This study examines the roles and responsibilities of Thailand's National Human Rights Commission and the Philippines' Commission on Human Rights in preventing and addressing torture and enforced disappearances. Conducted as qualitative research, the study employs a document-based analysis that focuses on constitutional provisions, legislative frameworks, and international human rights conventions, including the Paris Principles, the Convention Against Torture, and the International Convention for the Protection of All Persons from Enforced Disappearance. By adopting a comparative approach, the research evaluates the effectiveness of each institution in fulfilling its mandate within the context of international human rights standards.

The findings indicate significant operational differences between the two commissions. The Commission on Human Rights of the Philippines plays a more active and dynamic role, with powers to conduct investigations, initiate legal proceedings, and carry out unannounced inspections of detention facilities. In contrast, the National Human Rights Commission of Thailand primarily acts as an advisory body, with its activities limited to reporting violations and promoting human rights awareness. The Philippine commission also offers extensive legal assistance and support to victims,

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ensuring alignment with global human rights expectations. These findings emphasize the need for Thailand to amend its legal framework to empower its human rights commission with broader authority, including direct action and comprehensive investigative powers. Strengthening Thailand's commission in this way would enhance its ability to protect human rights, meet its obligations under international conventions, and provide adequate support to victims of torture and enforced disappearances.

Keywords: Human Rights Commission, Prevention of Torture, Enforced Disappearance

Introduction

The National Human Rights Commission (NHRC) is a national body tasked with monitoring and protecting human rights. Its foundation is based on the Paris Principles, adopted by the United Nations General Assembly in 1993, which provide guidelines and minimum criteria for establishing human rights institutions in each country. A key requirement of these principles is that ratifying countries must establish independent organizations dedicated to promoting and protecting human rights. These organizations perform various functions, such as advising governments on human rights issues, ensuring laws align with international standards, and advocating for the signing and ratification of human rights treaties. However, the effectiveness of such institutions can vary depending on the social and political context of each country, which significantly impacts their ability to safeguard human rights

In Thailand, the National Human Rights Commission (NHRC) was established under the Constitution of the Kingdom of Thailand, B.E. 2560 (2017 A.D.) and further empowered by the Constitutional Act of the National Human Rights Commission B.E. 2560 (2017 A.D.) (Constitution Drafting Committee, 2017). Woraluk Sanguankaeo highlighted the NHRC's strengths, such as its broad authority to support underprivileged groups and its diverse committee, which builds public trust. However, a significant

limitation is that its decisions are advisory and lack enforcement power, reducing its effectiveness in compelling action. (Sanguankaeo, W, 2015)

Lertporn Udompong reviewed the NHRC's performance, noting an increase in human rights cases reported: 232 in 2018, 551 in 2019, and 465 in 2020. Personal rights and freedoms were the most reported issues in 2018, while justice-related rights dominated in 2019 and 2020. Despite these efforts, the NHRC faces four main challenges: its centralization in Bangkok, inadequate public relations, legal limitations, and internal leadership issues (Udompong, L, 2021)

Nowadays, anti-torture and other cruel, inhuman, and enforced disappearance protection topics are intriguing in many countries (Decaux, E., & Janina, S, 2021) Many countries have agreed to ratify these related international conventions. As of May 2024 A.D., the Convention against Torture and Other Cruel, Inhuman or Degrading Acts has been ratified by 178 countries (United Nations General Assembly, 2024). Furthermore, the Convention on the Protection of All Persons from Enforced Disappearance has been signed by 115 countries (United Nations General Assembly, 2024). Like other countries, Thailand also ratified these conventions in October 2007 A.D. and May 2024 A.D., respectively (United Nations General Assembly, 2024)

Before Thailand ratified key conventions, torture and enforced disappearances were significant concerns. Studies by Pakaporn Prempanichnukul (Prempanichnukul, P, 2021) and Jarupat Roopsanga (Roopsanga, J, 2018) highlighted the lack of legal mechanisms to address these issues and urged Thailand to adopt relevant international conventions. In response, Thailand implemented the Prevention and Suppression of Torture and Enforced Disappearances Act B.E. 2565 (2022 A.D.) in 2023, offering comprehensive protection against such abuses by government officials (Udompong, L, 2021) This Act aligns with Article 26 of the Thai Constitution and the frameworks of the Convention against Torture and the Convention on the Protection of All Persons from Enforced Disappearance. However, the Act leaves the roles and responsibilities of the

National Human Rights Commission (NHRC) unclear, potentially limiting its ability to safeguard individuals from abuses by government officials. Despite this limitation, the NHRC retains some authority under the Constitution B.E. 2560 (2017 A.D.) and the Constitutional Act on the NHRC B.E. 2560 (2017 A.D.), which outline its general powers and duties to promote and protect human rights. While these measures represent progress, clarity in the NHRC's role remains essential for effective human rights protection. (Constitution Drafting Committee, 2017)

It is recommended that the Human Rights Commission should effectively safeguard human rights, particularly in cases of torture and enforced disappearances; it is crucial to align its actions with the conventions that Thailand has ratified. This study aims to compare the role of Thailand's National Human Rights Commission with international human rights organizations such as the Philippines, which is 'A' level of national human rights institutions (Republic of the Philippines commission on human rights, 2024) based on the content of Convention against Torture and Other Cruel, Inhuman or Degrading Acts, and the Declaration on the Protection of Persons from Enforced Disappearance. We hope that the comparison result may be instrumental in improving the effectiveness of Thailand's Human Rights Commission.

Research objectives

1) This study aims to compare the role of Thailand's National Human Rights Commission with that of foreign human rights organizations in relation to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Declaration on the Protection of All Persons from Enforced Disappearance (DPPED).

Research Methodology

This study employs qualitative research, specifically document-based research, to compare the role of the National Human Rights Institutions in Thailand and the Philippines in protecting the human rights of victims under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Declaration on the Protection of All Persons from Enforced Disappearance (DPPED).

In Thailand, the analysis considers the following legal frameworks:

- The Constitution of the Kingdom of Thailand B.E. 2560 (2017 A.D.)
- The Constitutional Amendment Act B.E. 2560 (2017 A.D.)
- The Prevention and Suppression of Disappearances Act B.E. 2565 (2022 A.D.)

For the Philippines, the study examines:

The 1987 Philippines Constitution (Constitutional Commission, 1987)

- Executive Order No. 163, which declares the effectiveness of the Commission on Human Rights as stipulated in the 1987 Constitution and provides operational guidelines. 6
- Republic Act No. 9745, also known as the Anti-Torture Act.
- Republic Act No. 10353, also known as the Anti-Enforced or Involuntary Disappearance Act.

Results

The National Institute for Human Rights is an organization formed according to the Paris Principles, which requires each country to have an independent organization responsible for protecting human rights within those countries. Such an organization must be specified in the constitution of each country. In the case of Thailand, such an organization is the “National Human Rights Commission.” (The National Human Rights Commission: NHRC), and in the case of the Philippines, it is “The Commission on Human Rights” (The Commission on Human Rights: CHR).

General duties of human rights organizations according to Thailand and the Philippines constitutions in comparison of power, differences in the scope and nature of their powers regarding the remedy of victims of human rights violations was found. There are also suggestions to amend the law for the authorities in various ways to protect human rights in the country, including giving human rights organizations of both countries the power to perform other legal duties.

1) Authority to conduct investigations, investigate, and provide legal assistance to the NHRC which has inferior characteristics to the Philippines. The constitution only empowers investigating and reporting facts regarding human rights violations. The Philippines has the power to investigate all forms of human rights violations, both on its own and in response to complaints, including the protection from prosecution of any person who has a testimony or has the necessary documents or evidence to facilitate the investigation of the truth in an investigation conducted by or under the authority of the CHR. In addition, they have the power to visit prisons or detention facilities.

2) The constitution of the Philippines attaches great importance to the protection of the CHR by adopting the guidelines for the conduct that arise when insults or violations occur, as well as the rules of the courts. While Thailand's is not clearly stated. Thailand's Constitution emphasizes the NHRC's role in clarifying and reporting on human rights situations, including raising awareness about human rights issues. However, unlike the Philippines' Commission on Human Rights (CHR), the NHRC lacks certain powers, such as supporting research, requesting assistance from various agencies, and appointing personnel, which are not included in Thailand's Constitution. Despite these differences, Thailand's Constitutional Act on the National Human Rights Commission B.E. 2560 (2017 A.D.) expands the NHRC's powers, including: (Constitution Drafting Committee, 2017)

1. Requesting information from government agencies, private sectors, or individuals as witnesses or evidence.

2. Conducting inspections at locations suspected of human rights violations.
3. Allocating travel expenses for stakeholders providing information.
4. Notifying relevant agencies of human rights violations and recommending remedies. If agencies fail to comply without reasonable grounds, the NHRC may report to the Cabinet.
5. Filing complaints on behalf of victims in criminal cases where they cannot act for themselves.

These additional powers aim to strengthen the NHRC's capacity to protect and promote human rights within Thailand.

A comparison of human rights institutions in Thailand and the Philippines regarding the prevention and suppression of torture and enforced disappearances reveals that Thailand's Prevention and Suppression of Torture and Enforced Disappearances Act B.E. 2565 (2022) does not explicitly assign any role to the NHRC. Consequently, the NHRC must rely on its authority under the Constitution B.E. 2560 (2017) and the Constitutional Act on the National Human Rights Commission to protect citizens' rights from violations, including torture and enforced disappearances. (Constitution Drafting Committee, 2017)

At the same time, CHR has the power to protect the rights of victims who may be subjected to torture. From Republic Act No. 9745 with the right to take the following actions:

1) Have the right to know relevant, up-to-date information about all detention centers and detention facilities within the jurisdiction.

2) When there is a complaint by the victims, they have the right to a quick and impartial investigation.

3) Have the right to provide legal assistance in the investigation, follow-up, and lodging of complaints for persons subjected to torture and cruel, inhuman, and degrading discrimination or punishment or for interested parties.

4) Have the right to express opinions with relevant agencies. This is for consideration when enforcing the prohibition against eviction, return, or extradition of criminals, suppose there are reasonable grounds to believe that such a person is in danger that may arise from the act of torture.

5) Responsible for working with relevant agencies to ensure all officials are educated and trained to prevent torture.

6) The Chairman of the Board plays the role of one of the Supervisory Committees for implementing the Republic Act No. 9745.

Furthermore, in opposition to enforced disappearances, the CHR of the Philippines has the following powers and duties under Republic Act No. 10353: (Congress of the Philippines, 2012)

1) Be the recipient of the case when anyone encounters an incident of enforced disappearance.

2) The power to receive information about detainees from relevant agencies. Upon request.

3) The power to regularly inspect and visit all places of detention is independent, without prior notice and restriction.

Conclusion and Discussion

The comparative study of the roles of human rights institutions in Thailand and the Philippines reveals both similarities and differences in their powers and responsibilities.

Similarities:

Both institutions share the authority to provide remedies to victims and advise their respective governments on appropriate legal amendments to protect human rights.

Differences:

Thailand:

The National Human Rights Commission of Thailand (NHRC) operates as an independent organization tasked with protecting human rights through coordination with other organizations.

The NHRC has powers to order, investigate, and report but lacks proactive authority for initiating direct investigations. Its powers are constrained by several conditions (Rojjanasom, R, 2021) such as requiring the NHRC to act as a plaintiff in cases where offenses have already occurred.

The NHRC cannot initiate complaints or condemn violations autonomously. Notably, its role in preventing and suppressing torture and enforced disappearances is not explicitly detailed in its enabling laws, limiting its capacity in these areas.

Philippines:

The Philippine Commission on Human Rights (CHR) has broader powers, including the authority to proactively investigate causes of human rights violations and provide legal assistance to victims.

The CHR is empowered to take a more direct role in addressing human rights violations, making it more active in both prevention and resolution compared to its Thai counterpart.

The role of the National Human Rights Commission of Thailand (NHRC) under the current Constitution differs from its powers as outlined in the Constitution of Thailand B.E. 2550 (2007 A.D.), which granted the NHRC judicial authority to act as a joint plaintiff alongside victims in cases involving human rights violations (Subongkoj, R, 2018)

This shift aligns with studies by Udompong (Udompong, L, 2021) and Subongkoj (Subongkoj, R, 2018), which highlight the NHRC's legal limitations. These limitations include:

Structural Constraints: The NHRC's internal operational structure may lack sufficient expertise in investigative processes or proactive measures

Comparative Effectiveness: When compared to other relevant organizations, the NHRC's capacity in handling cases, especially those involving the prevention and suppression of torture and enforced disappearances, is limited.

Conversely, the Philippine Commission on Human Rights (CHR) demonstrates a contrasting approach. It is explicitly empowered to take proactive actions, making it an effective mechanism for addressing human rights violations. This proactive role provides an avenue for victims to seek justice and ensures that the CHR can actively intervene in human rights cases.

Recommendations

1) Thailand’s National Human Rights Commission (NHRC) lacks explicit authority under the Prevention and Suppression of Torture and Enforced Disappearance of Persons Act B.E. 2565 (2022), requiring it to rely on other laws to address human rights violations. This creates inefficiencies in protecting victims. To enhance effectiveness, the Act should be amended to expand the NHRC’s role, allowing it to take cases, provide legal assistance, and access up-to-date information. Additionally, the NHRC should be empowered to inspect detention facilities without prior notice or restrictions and participate in preventing deportation, return, or extradition when there are reasonable grounds to believe the individual faces the risk of torture.

2) The structure of the Human Rights Commission should be improved in proactive operation, possibly by having a sub-unit responsible for investigating human rights violations and providing opportunities for the Human Rights Commission to exercise its judicial rights together with or on behalf of victims.

References

Congress of the Philippines. (2012). *Republic Act No. 10353: an Act Defining and Penalizing Enforced or Involuntary Disappearance.* Metro Manila, Philippines: Fifteenth Congress, Third Regular Session.

Constitution Drafting Committee. (2017). *Constitution of the Kingdom of Thailand B.E. 2560 (2017 A.D.).* Bangkok, Thailand: Official Gazette.

Constitution Drafting Committee. (2017). *The Constitutional Act on the National Human Rights Commission B.E. 2560 (2017).* Volume 137, Part 123a, Pages 1-24. Bangkok, Thailand: Official Gazette.

Constitutional Commission. (1987). *1987 Constitution of the Republic of the Philippines.* Manila, Philippines: Official Gazette.

Decaux, E., & Janina, S. (2021). *The International Convention for the Protection of All Persons from Enforced Disappearance – A Human Rights Instrument of the 21st Century.* Reflections on Its 10th Anniversary of the Entry into Force.

Prempanichnukul, P. (2021). Enforced Disappearance and Torture of Persons: State Responsibility on the Rights of the People. *Nitiparitat Journal*, 1(2), 1–8.

Republic of the Philippines commission on human rights. (2024). About the Commission. Retrieved on 10 June 2024 A.D. from https://chr.gov.ph/about-us/.

Rojjanasom, R. (2021). Problems related to the Exercises of Right to Judicial Process of the National Human Rights Commission to protect human rights in Thailand. *Office of the Ombudsman Thailand*, 11(1), 57-61.

Roopsanga, J. (2018). *Legal Problem Related to Enforced Disappearances in Thailand: Study Offenses to Forced Disappearances 1.* Burapha University.

Sanguankaeo, W. (2015). Guidance for Considering National Human Rights Institutions Reform in Thailand. *Journal of the Ombudsman*, 8(1), 111-133.

Subongkoj, R. (2018). Problems Related to the Exercises of Right to Judicial Process of the National Human Rights Commission to Protect Human Rights in Thailand. *Office of the Ombudsman Thailand*, 11(1), 57-61.

Udompong, L. (2021). A Study of Roles and Guidelines for Enhancement of Performance of the National Human Rights Commission of Thailand According to the Constitution of the Kingdom of Thailand B.E. 2560 (2017). *King Prajadhipok's. Institute Journal*, 29, 1-34.

United Nations General Assembly. (2006). International Convention for the Protection of All Persons from Enforced Disappearance. Retrieved on 10 June 2024 A.D., from https://shorturl.asia/jhsi5.

United Nations General Assembly. (n.d.). View the Acceptance of Procedures and the Ratification Status by Country or by Treaty: Status for Thailand – Thailand, Treaties. Retrieved on 10 June 2024 A.D., from https://shorturl.asia/qgO5d.