



A Thai-Indo human rights defenders community exchange Protection International organised in December 2018, in Southern Thailand, with the Southern Peasants Federation of Thailand (SPFT) and six Indonesian buruh tani (peasant farm workers) organisations.

National Human Rights Institutions and the Protection of Human Rights Defenders: Insights from Indonesia and Thailand

National Human Rights Institutions (NHRIs) are not always equipped or designed to be effective and to comply with their mandate. They often function alongside other government bodies that are party to rights violations. However, even in contexts where governments lack political will, NHRIs' commissioners who take proactive, entrepreneurial approaches to their mandates can expand their role in the protection of human rights defenders (HRDs), and even potentially devise measures that create an enabling environment for the defence of rights. Drawing on examples from Indonesia and Thailand, this Policy Brief identifies opportunities and vulnerabilities of NHRIs in protecting HRDs.

Introduction

The mandate of NHRIs to protect HRDs has become increasingly pronounced since the 1990s. The Paris Principles affirmed the relevance of NHRIs for the implementation of human rights standards at national level, while the UN Declaration on HRDs¹ reaffirms that everyone has the right to promote and protect human rights. In a 2013 report², former Special Rapporteur on the situation of HRDs, Margaret Sekaggya, argued that NHRIs themselves can be considered HRDs, and her successor Michel Forst went further by setting up specific recommendations for NHRIs to play a more consistent role in the protection of HRDs. In 2018, the Global Alliance of National Human Rights Institutions (GANHRI), which accredits NHRIs, issued the Marrakesh Declaration³ explicitly calling upon NHRIs to protect and promote an enabling civic space where HRDs can operate, with special focus on women HRDs (WHRDs).

GANHRI accreditation is ranked from A to C and is based on criteria set out in the Paris Principles.

- A broad mandate, based on universal human rights standards;
- Autonomy from Government;
- Independence guaranteed by statute or Constitution;
- Pluralism;
- Adequate resources; and
- Adequate powers of investigation.

Depending on the degree of compliance with these six criteria, NHRIs shall be accredited by GANHRI with three status: (A) Fully compliant with the Paris Principles; (B) Partially compliant with the Paris Principles; (C) Non-compliant with the Paris Principles.

Both Thailand and Indonesia have experienced growing authoritarianism in their government structures over the past years. Since 2014, Thailand has been ruled by the military junta's National Council for Peace and Order (NCPO). Under the NCPO, there has been an increase in violence, threats and judicial harassment of HRDs. Thailand's NHRIs, the National Human Rights Commission of Thailand (NHRCT) was downgraded to B-status after the 2014 coup, due to concerns about its functional independence, the selection and appointment process, perceived neutrality of the NHRCT commissioners and staff members, as well as its questioned ability to respond to urgent human rights issues.

Indonesia held elections in 2019, with disputes on election results leading to violence. Under President Widodo, threats and violence against HRDs have been met with impunity. Land rights activists, anti-corruption actors and movements in the Papua region have all faced threats. Indonesia has three NHRIs—Komnas HAM, Komnas Perempuan (the Anti-Violence Against Women National Commission, also referred to as Komper) and the Child Protection Commission (CPNC). The Witness and Victim Protection Agency (LPSK) also works in coordination with these agencies. Komnas HAM has A-status under GANHRI.

Despite the limited legal mandates and the sensitive political environment, both NHRIs have found avenues – in some cases more consistent than in others – to provide some sort of support to groups and individuals who engage in human rights defence and that are threatened for that same reason. This policy brief (i) summarises insights and reflections on the role of NHRIs in HRD protection based on interviews held with commissioners and staff of these institutions, as well as individual HRDs; and (ii) identifies possible actions that NHRIs can undertake to play a relevant role in supporting HRDs even when their mandates and resources are limited.

Expansion of the role of NHRIs in HRD protection

In its research, Protection International found that NHRIs could expand their role in the protection of HRDs by exploiting opportunities within existing NHRIs frameworks. Despite the limitations inherent to their formal mandates, which often avoid explicitly entrusting them with the protection of HRDs, commissioners can play with the boundaries of NHRIs frameworks and find avenues to proactively contribute to the protection of civic spaces and HRDs. As former commissioner, Siti Noor Laila of Komnas HAM, explained in an interview with PI team in Indonesia,

“With the existing limitations, Komnas uses positive opportunities and interpretations. Komnas HAM can provide opinions in court, giving a significant influence from suspicion of crime. Other institutions respect and appreciate Komnas HAM, but not all do.”

Speaking of the NHRCT, one human rights practitioner said in an interview with PI team in Thailand that “Commissioner Angkhana Neelapaijit is about the only person in the NHRCT who ever does anything much about human rights. The rest of the NHRCT makes up a part of the junta's ‘brick wall’”.

The willingness of commissioners to act, even when other members of the NHRIs are unwilling or unable,

¹ UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 8 March 1999, A/RES/53/144.

² UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, 27 February 2013, A/HRC/22/47

³ GANHRI Declaration on Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of national human rights institutions”, 10 to 12 October 2018, Marrakech, Morocco.

was highlighted as a crucial point in several interviews with staff of both commissions and with defenders. The commissioners' willingness or proactivity can be reflected in different types of action NHRIs can undertake to play a significant role in HRD protection, as the UN Special Rapporteurs on HRDs have highlighted in their reports.

Former Special Rapporteur on HRD, Margaret Sekaggya, highlighted in her 2013 report on the situation of human rights defenders (A/HRC/25/55) that *"National human rights institutions that comply with the Paris Principles are in a unique position to guide and advise Governments on their human rights obligations"*, and indicated a number of recommendations to

make them more useful in their role of protecting HRDs:

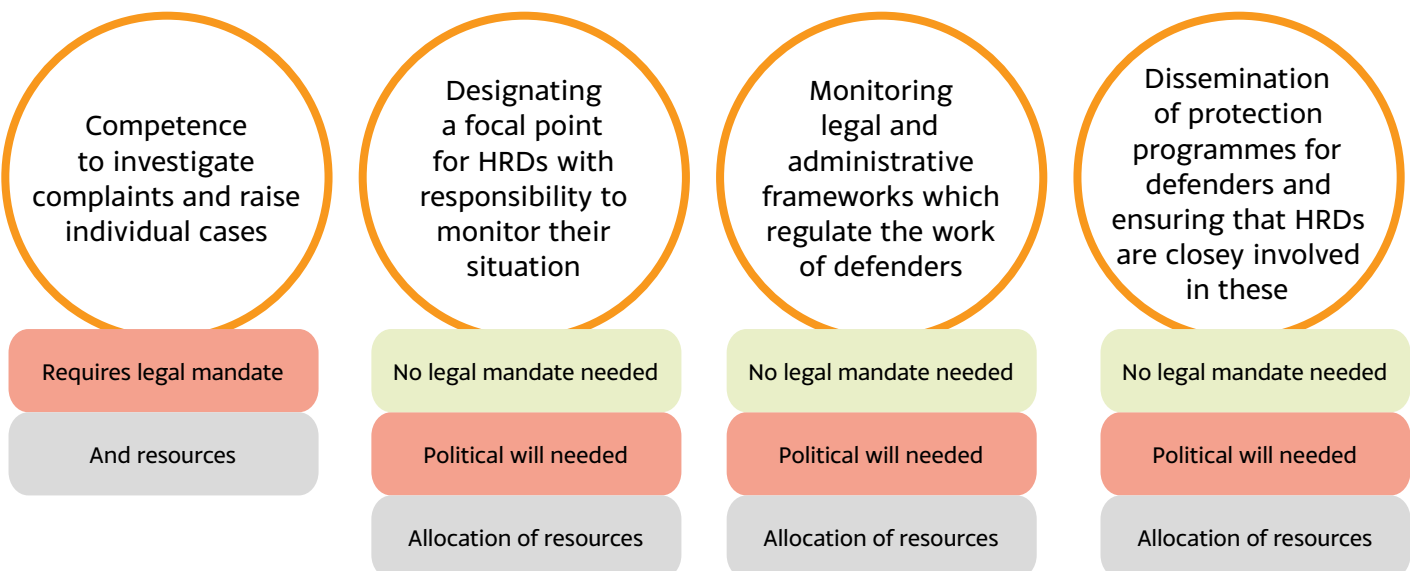
- Including competence to investigate complaints and provide effective protection (para. 79)
- Designating a focal point for HRDs (para. 80)
- Monitoring legal and administrative frameworks which regulate the work of defenders (para. 81)
- Dissemination of protection programmes for defenders (para. 82)

All these recommendations, except for the first one, do not require specific legal mandates to be undertaken by NHRIs.



Specific recommendations by the former Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya

"National human rights institutions that comply with the Paris Principles are in a unique position to guide and advice Governments on their human rights obligations".



The current Special Rapporteur, Michel Forst (who is about to end his mandate), has also addressed and emphasised what can be considered as good practices for HRD protection by NHRIs in various occasions. In the HRC resolution 31/55 of 1 February 2016, the Special Rapporteur stressed that NHRIs are key actors for the creation of an enabling environment for HRDs:

"[T]hey support the creation of an enabling environment through human rights awareness, human rights education and human rights monitoring, including of the situation of HRDs. They connect advocacy at the national level with regional and international mechanisms, and

participate in the work of the Human Rights Council, including the universal periodic review process. National human rights institutions receive and investigate complaints of violations, raise systemic and constitutional concerns with the judiciary and assist in training defenders about their rights and security. They may also observe public demonstrations to safeguard the freedom of assembly by documenting police abuse". (S94)

In the same resolution, Forst issued specific recommendations to NHRIs, following up on his predecessor's recommendations: (a) develop plans of action to protect defenders, establish focal points



Specific recommendations by the current Special Rapporteur on HRDs Michel Forst

Monitoring of HRDs situation

Observe public demonstrations to safeguard the freedom of assembly by documenting police abuse

Monitor complaints of violations received from HRDs

Taking action in cases of violation

Investigating complaints of violations received where possible

Raising systemic and constitutional concerns with the judiciary

Link with international HR Institutions

Ensure effective follow up of recommendations on HRDs addressed to governments by the UN and intergovernmental organisations

Actively participate in the preparation and follow-up of visits by the Special Rapporteur

NEW

Explicit inclusion of HRD protection and support activities in their workplan

Develop plans to protect defenders

Establish focal points to coordinate with defenders

Assist in training defenders about their rights and security

Participate in the work of the HRC, including the Universal Periodic Review process, raising issues of concern regarding HRDs

to coordinate their implementation and interact with defenders on a regular basis; and (b) monitor and investigate complaints received from defenders on the violations of their rights. (ibid, § 117).

Most of these activities do not require legal mandates but rather political will, knowledge of international recommendations and standards, and appropriate allocation of resources.

Another important form of protection is public support, in the form of statements or awareness-raising campaigns that increase the visibility and legitimacy of HRDs. This can effectively contribute to preventing threats and attacks, as well as to reducing impunity. This type of support is especially valuable in drawing the attention of competent authorities at higher levels that can stop harassment by lower level officers, or even in drawing international attention to violations committed by local and national authorities. One land rights defender in Thailand explained that the NHRCT had been instrumental in pressuring local authorities to stop a construction project that violated environmental and community rights:

“Soldiers wanted to clear the area to construct a new road that would harm the environment, so the NHRCT put pressure on the provincial governor, who called for a meeting to find a solution. Currently, the soldiers have stopped constructing the new road.”

International awareness gives the NHRCT leverage, as the same land rights defender explained: *“Circulating this info to the global community put pressure, and the provincial governor could not stay [comfortable], so he needed to respond to this case.”*

Civil society also plays a crucial role in ensuring that commissioners respond to human rights violations, as it can help build information and raise awareness, thus promoting and amplifying the pressure that NHRIs can put on authorities. The media also play an important role as they help mould public opinion, which can ultimately influence government action.

“The media are very influential, as well mass organizations and civil society. Komnas is more respectful of external dynamics if civil society and mass organizations come. When the media reports on something, Komnas HAM also appears there.” (HRD, Indonesia)

Another form of support NHRIs can offer is accompanying HRDs in specific situations.

Accompaniment can encompass different actions and measures that aim to support individual HRDs or groups. For instance, in Thailand, NHRCT commissioners have accompanied HRDs when they made complaints to police or other relevant authorities, thus ensuring that the right to report human rights violations could be safely exercised by HRDs. NHRCT commissioners have also organised special monitoring missions in response to reports of threats to HRDs. This can also be seen as a form of rapid response that helps to reduce, at least temporarily, the likelihood of attacks.

Mediation between HRDs and authorities is another form of accompaniment that NHRIs can use very effectively. In 2017, after two land rights defenders were charged with libel offences and computer-related violations under Thailand’s Computer Crimes Act, Commissioner Angkhana Neelapaijit invited the military complainants to travel to the NHRCT Office for mediation and recommendations. All charges were later dropped. In another case, then Commissioner Niran Pitakwatchara responded rapidly to the situation faced by an HRD who was placed on the authority’s surveillance list as an “influential person of interest”. Pitakwatchara made clear in his communication with the authorities that this person and his community were HRDs with whom the NHRCT was working, and subsequently the police desisted in pursuing accusations against the defender.

Another important protection measure that NHRIs can use is the issuance of letters of protection and memoranda of understanding with relevant agencies. These memoranda of understanding (MoUs) establish cooperation agreements between the NHRIs and other national agencies or bodies that play a role in the protection of HRDs, such as law enforcement agencies. This is the case of Komnas HAM, whose MoU with the LPSK (the Witness and Victims Protection Agency) streamlined protections for HRDs who are victims of or witnesses to crimes or rights violations.

“Protective measures with the KPK (the Indonesian Corruption Eradication Commission), such as protection for whistle blowers, also exist. There are meetings with the police, and there are also meetings with regular partners. Besides assigning a special rapporteur position for human rights defenders in Komnas HAM, several efforts have been made by establishing MoUs with various agencies such as LPSK. However, given the many cases of criminalisation against HRDs, Komnas HAM may also need to do MoU or joint agreements with other law enforcement agencies such as Police, Attorney and Court.” (HRD, Indonesia)

Limitations

NHRIs are often constrained by their political environments and may not be independent enough to escape governmental influence. As one HRD interviewee from Indonesia explained, one of the limitations of NHRIs and HRD protection mechanisms is that the perpetrator is frequently the state apparatus itself. This is applicable to both country contexts, as both Indonesian and Thai governments have been using NHRIs to further positions that contravene international human rights standards. For instance, Komnas HAM recently came out partly justifying an LGBTI restrictive law in West Sumatra, arguing that “cultural rights” needed to be taken into account. In Thailand, the NCPO rewrote the NHRCT mandate emphasising language around the country’s culture, traditions and religion, and thus paving the way for interpretations that circumvent human rights standards.

Commissioner Siti Noor Laila has noted as much: “Among commissioners, there are differences of opinion on some things, like the issues of capital punishment, marriage of different religions and LGBT.” NHRIs’ actions can therefore vary greatly depending on the personal views of commissioners, whose subjectivity can also be problematic.

“The commissioner’s perspective is heavily influenced by his/her background, whether it is a political, environmental, or social background. It will show how to look, how it works, and how to make decisions. For example, the way of working of someone with a background of more conservative Islamic groups will be different from people who had a background as bureaucrats or human rights activists.”
(Commissioner Siti Noor Laila)

The background of the commissioners was also a relevant factor. One Thai HRD said: “Before the military coup, the NHRCT was still good. Before, Dr Niran was one of the commissioners of the NHRCT and worked with us. Now, a former judge is the head of the NHRCT. They focus on Thai law, but not on human rights principles”.

The commissioners’ bias also has an impact on the attention they pay to HRDs. The political will of a commissioner is crucial to determining whether the NHRI will be proactive on issues related to the protection of HRD. So much so that when a commissioner does not show such interest, institutional support decreases or even disappears, as one NHRCT staff member mentioned in an interview. One of the defining limitations of NHRIs when it comes to protecting HRDs is the lack of explicit mandate and objectives in this sense.

“In a case with a criminalised HRD, the commissioner’s mediation did not make a strong interpretation of the

international standards on human rights defenders. The commissioner was not representing the standards that apply to HRDs... but he/she was rather paying attention to national procedural law norms. There is nothing special about his/her intervention then. It is much the same as common law practice.” (HRD, Indonesia)

In addition to factors related to political will, an additional limitation is that even when a commissioner is willing to support HRDs, NHRIs’ measures are not always actionable. Even if NHRIs in both countries are vested with investigatory powers, this does not appear to determine the effective prosecution of perpetrators, as charges against rights violators are ultimately very scarce, resulting in high levels of impunity. One interviewee from Indonesia explained that this is partially due to the role of “the Attorney General’s Office, which acts as a barrier in the resolution of cases of gross human rights violations and has not been in synergy with Komnas HAM”.

Opportunities: getting ‘out of the box’

In both Thailand and Indonesia, commissioners have taken entrepreneurial approaches to their mandates by formalising working relationships with other organisations and State agencies, and by providing consistent accompaniment to HRDs at risk. In addition, even in instances where hostile actors operate with institutional impunity, civil society engagement and collaboration with NHRIs can amplify action supporting HRDs by reporting local rights violations through international complaint mechanisms or by publicly denouncing violations in the international arena. This can help bypass indifference or outright opposition at the national level. As one respondent noted, this cycle is heavily dependent on the will of the commissioner:

“Commissioners first must have a strong vision [that is] supported by...advocacy, response issues and relationships. [They must] also “lobby” the police, government and organizational management. A strong vision encourages the commissioners to make breakthroughs and integrate these into advocacy strategies and managerial gaps so as not to be held hostage to difficult bureaucratic arguments.”

The lack of human rights practitioners within the staff of NHRIs hinders appropriate protection for HRDs. Moreover, the background and sometimes partisan nature of commissioners does not only obfuscate the application of human rights-based approaches, but it may also undermine the work of HRDs and the very concept of human rights. Additionally, the unwillingness



Indonesian and Thai human rights defenders participate at a workshop on protection strategies during the community exchange organised by Protection International in December 2018, in Southern Thailand.

of judicial bodies to prosecute cases brought by NHRIs traps their work in a capacity that is strictly investigatory and ultimately advisory. However, this factor reinforces the importance of mandate interpretation and the complementary role of civil society mobilisation. As Commissioner Siti Noor Laila noted:

“There are several things that Komnas HAM may be able to do that are not regulated by law, and these can be opportunities, for example, creating naming and shaming mechanisms. If you want to get out of the box [...] the fact that something is not regulated does not mean that it is prohibited and cannot be done.”

Implications for practice

NHRIs and their commissioners can expand their role and contribute to the protection of HRDs by:

- Taking proactive measures such as conducting timely field visits to places where violations and threats to HRDs are reported; providing accompaniment and advice to criminalised HRDs; planning regular monitoring missions to assess HRDs situation in different areas; issuing public statements to legitimise HRDs, so as to foster a zero-tolerance attitude towards attacks on HRDs; playing a mediator role with State authorities by taking a stand in favour of comprehensive interpretation of international human rights standards.
- Establishing MoUs with different state bodies that have a stake in HRD protection, such as the police, the military, security agencies, and anti-corruption agencies. This can be an effective means to establish coordinated measures for HRD protection.
- Bringing local and community HRD reports of violations to the international arena, be it by providing assistance in submitting complaints to international bodies or by issuing public statements internationally. Strengthening collaborations with civil society actors concerned with HRD protection and considering them as allies that can help spur NHRI action. NHRIs can benefit from civil society knowledge on contexts and situations where interventions may be necessary.
- Creating a specific area of work within NHRI structure and work plans that focuses on assessing the situation of HRDs and on taking support and protection measures when deemed necessary.
- Considering diverse backgrounds and profiles for NHRIs staff and ensuring the inclusion of staff with a human rights practitioner background, as well as with experience working with civil society.
- Ensuring that NHRI commissioners and staff members have a professed and clear obligation to interpret human rights according to international standards, as well as awareness of the UN Declaration on HRDs and related UN recommendations, particularly those indicated by the UN Special Rapporteur on HRDs on the role of NHRIs in HRD protection.

About this project

In 2017, Protection International interviewed select NHRI commissioners and HRDs to gauge institutional efficacy for HRD protection. These interviews informed both Protection International's accompaniment of HRDs in Indonesia and Thailand and the paper "Expanding the mandates of National Human Rights Institutions to protect Human rights defenders: the cases of Indonesia and Thailand" that was elaborated by Protection International teams in Bangkok (Pranom Somwong, Paola Carmagnani), Jakarta (Damairia Pakpahan, Swandaru, Cahyadi Satriya) and Brussels (Mauricio Angel, Enrique Eguren), and which was presented at the International Conference on National Human Rights Institutions (NHRIs) in Southeast Asia: Challenges of Protection – Bangkok, Thailand, 13 and 14 July 2017 hosted by Asia Centre. Over the next year, Protection International observed interactions between accompanied HRDs and NHRI commissioners. In 2019, additional interviews with select HRDs were conducted, in part focusing on experiences with the NHRI. At various stages, these observations and findings have been augmented by field experiences and academic research.

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For more information

To learn more about Protection International's work on public policies for the protection of the right to defend human rights, check PI's website:

<https://www.protectioninternational.org/en/our-work/what/public-policies>

About Protection International

Protection International (PI) is an international non-profit organization that supports human rights defenders through comprehensive protection programmes. Through these programmes, we aim at (i) empowering defenders build their own protection strategies to continue defending rights safely; (ii) influencing duty-bearing authorities to fulfil their obligation to protect them; and (iii) convincing other individuals and institutions with a stake in the protection of human rights defenders to maximise their positive contribution.



Reference

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