

Case No.1
Students' hairstyle
(Complaint No. 597/2554; Report of Consideration for proposing Legal and Policy
Recommendations No. 416/2555)

The complainant, a fifteen years old student in a school affiliated to Office of the Basic Education Commission (OBEC), sent a letter of complaint to the NHRCT which can be summarized as follows: A Ministry of Education's rule that students' hair must be cut short, close-cropped for male students and not covering the lowest tip of the ear lobe for female students, affects right and liberty of individual persons and is violation of human rights. And compromise made by some schools, allowing dancing art students to wear long hair, is discrimination according to Section 30 of the Constitution of the Kingdom of Thailand B.E. 2550. The complainant claimed that the hairstyle fixed by Ministry of Education caused students who are becoming teenagers to lack confidence and concentration for studying. It was found from interviews of students in a research that what students worried most was hairstyle regulation because teenagers wanted to have good personality, be pretty. Hairstyle restriction therefore made students very distressing and is a cause that lead to several other problems. The complainant also read an article written by an academic who had said about hairstyle that Thailand adopted students' hairstyles and uniforms from Japan during the Second World War when at that time louse was widespread, very short hairstyle was therefore popular.

The National Human Rights Commission by its Sub-Commission on Investigation of Violation of Human Rights on Unfair Laws and Treatment had thoroughly considered related facts and evidence, and saw that in fixing hairstyles of students, Ministry of Education used authority according to paragraph 3 and paragraph 11 of the Revolutionary Proclamation No. 132 to issue Ministerial Regulation No. 1, B.E. 2515 (1972) of which item No. 1 (1) stated that the following dressing and behaviours are considered inappropriate for being student: For male students, wearing long hair with hair in the front and on the top longer than 5 centimetres and hair around the head not cut close-cropped, or wearing mustache or beard. For female students, wearing hair longer than nape of the neck. In school or place of education that students are allowed to wear hair longer than that, they must neatly tie it, it is also inappropriate for students to use cosmetics or artificial materials to beautify themselves.

Minister of Education later issued ministerial regulation No. 2, B.E. 2518 (1975) repealing wordings in (1) of paragraph 1 of ministerial regulation No. 1, B.E. 2515 (1972) and replace them with wordings in (1) newly set which state about students' dressings and behaviours that the ministerial regulation considered to be inappropriate: male students with hair longer than base of the hair on the side and the back or with mustache or beard; female students with hair longer than nape of the neck. If any school or education institute permits students to wear hair longer than that, hair should be neatly tied, , it is also inappropriate for students to use cosmetics or artificial materials to beautify themselves. Later the Child Protection Act B.E. 2546 (2003) repealed the Revolutionary

Proclamation No. 132. However, the ministerial regulation was still in effect as the Child Protection Act B.E. 2546 provided that ministerial regulations issued with authority from to the Revolutionary Proclamation No. 132 would continue to be in effect as long as they are not contradictory with the Child Protection Act B.E. 2546 until a ministerial regulation is issued according to the Child Protection Act B.E. 2546.

The Sub-Commission took consideration and had a view that although to fix hairstyles of students as provided in the ministerial regulation is restriction of individual persons' right and liberty, Section 64 of the Child Protection Act B.E. 2546 provides that pupils and students must behave according to regulations of their school or place of education. What were provided in the ministerial regulation can be considered then to be a case with specific legal provisions that the Constitution of the Kingdom of Thailand B.E. 2550 provides to be in effect in general and it must be actions that are necessary for promoting good behaviours of students and do not affect essence of students' rights and liberties as well. Since the ministerial regulation was issued according to this rule, it can be enforced according to Section 29 of the Constitution of the Kingdom of Thailand B.E. 2550.

Some schools allow certain individual students to wear long hair because of necessity, such as students who learn dancing art, students who have religious necessities, or health reasons. This exception is consistent with the Most Urgent Note of the Education Ministry, Sor Thor 0204/5285 dated 12th May 2003 allowing schools or places of education to consider relaxing regulations or rules concerning wearing of hairstyles appropriate for age and conditions of students at current situation which is not opposing or contradictory with the ministerial regulation. This would not be considered as unfair discrimination according to Section 30 of the Constitution of the Kingdom of Thailand because those schools or places of education make concessions for students who wear long hair with reason of necessity according to conditions of individual students as appropriate. This is treatment of children with consideration of fairness and best interest of students, consistent with Section 22 of the Child Protection Act B.E. 2546 which provides that "any action towards children, no matter it is about, must consider best interest of children and there must not be any unfair discrimination."

At this stage, even if it is heard that fixing students' hairstyles is not violation of human rights according to Section 29 and Section 30 of the Constitution of the Kingdom of Thailand B.E. 2550, Ministry of Education had not come out with guidelines for actions that are clear and in the same direction. The National Human Rights Commission therefore passed a resolution to propose **policy recommendations through the government cabinet to Ministry of Education to improve and amend ministerial regulations being enforced now, making them consistent with right and liberty dimension recognized and protected by the Constitution of the Kingdom of Thailand B.E. 2550 and international obligations.**

The government cabinet through Ministry of Education should consider reviewing, improving and amend ministerial regulations concerning students; hairstyles which were issued according to the Revolutionary Proclamation No. 132 dated 22nd April 1972, repealing ministerial regulations being in use at present and issue new regulations

that are consistent with the Child Protection Act B.E. 2546, taking into consideration human dignity and best interest of children, and consistent with current situation, to come up with guidelines for practice that are central standards on students' hairstyle for schools or places of education to do in the same direction and able to set up rules and exemptions as necessary in any way that is not unfair discrimination against individual persons.

From the policy recommendations the National Human Rights Commission had proposed to the government cabinet as mentioned above, the cabinet assigned Ministry of Education to consider taking actions. Office of the Permanent Secretary of the Education Ministry invited representatives from various government agencies to discuss this matter on 27th November 2012. The meeting agreed that ministerial regulation No. 1, B.E. 2515, and No. 2, B.E. 2518 issued according to the Revolutionary Proclamation No. 132 dated April 22, 1972, should be repealed, and a working group was appointed to consider issuing new regulations. Ministry of Education would compile related ministerial regulations, such as those about hairstyles, behaviours, and dressing of pupils and students, to help prepare drafts of the new ministerial regulations, so that they would be clear and more covering.

Case No. 2**Rights and liberties of individual persons in case of the regulations of the Office of the Prime Minister concerning hairstyles and dressing of civil servants, employees and persons working in state enterprises, B.E. 2516
(Complaint No. 61/2553, Report of results of consideration for proposing Legal and Policy Recommendations No. 50/2554)**

The complainant sent a complaint letter to the National Human Rights Commission which can be summarized that a regulation of the Office of the Prime Minister concerning hairstyles and dressing of civil servants, employees and persons working in state enterprises, B.E. 2516 (1973) is a regulation that restricts rights of the complainant and opposing or contradictory to the Constitution of the Kingdom of Thailand B.E. 2550.

The National Human Rights Commission through its National Human Rights Sub-Commission on Investigation of Violation of Rights Related to Judicial thoroughly considered relevant facts and evidence and saw that the Constitution of the Kingdom of Thailand B.E. 2550 has provisions to recognise individual persons' rights and liberties that cannot be restricted except by authority of legal provisions or rules issued by authority of specific legal provisions for matters that this constitution has set and as necessary, and cannot affect essence of rights and liberties. Moreover, the constitution also provides that persons who are military man, police officers, civil servants and other state officials, and staff or employees of state organizations also have rights and liberties according to the Constitution the same as other persons in general, except those restricted in laws or rules issued by authority of legal provisions specifically in parts concerning politics, capability, discipline or ethics.

In the case of complaint, facts are that Office of the Prime Minister's regulation on hairstyle and dressing of civil servants, employees and persons working in state enterprise, B.E. 2516, is a regulation issued by a resolution of the government cabinet on 29th May 1973 without referring that it was issued by authority of what specific legal provisions. Considering enforcement and appropriateness of this regulation, it is seen that Office of the Prime Minister's regulation on hairstyles and dressing of civil servants, employees and persons working in state enterprise, B.E. 2516, came into effect on July 1, 1973. This regulation was appropriate for conditions of the country at that time and was a form of policy to support Thai people who wished to preserve Thai culture, so it was aimed to make civil servants, employees and persons working in state enterprise acted as examples for the people in general in terms of hairstyles and some dressings. However as time has gone by, this regulation may not be appropriate for enforcement at present because hairstyles and dressings of civil servants, employees and persons working in state enterprise have changed according to social conditions. There is now also an issue of gender diversity. In addition, when intention for issuing this regulation was taken into consideration, it was found that the real intention for issuing this regulation was to implement a positive measure that was to promote good practices. However, in the last part of the regulation, it was reverted to negative measure as there was disciplinary

punishment for those who do not practice it. This measure therefore became restriction of individual persons' rights and liberties beyond necessity and thus affected the essence of rights and liberties according to Section 29 of the Constitution of the Kingdom of Thailand B.E. 2550. Although in principle, it is necessary for the government to see that they should keep this regulation, but should also study, improve and amend the regulation, making it consistent with current situation by adding some things as necessary and appropriate and taking into consideration rights and liberties of individual persons according to the Constitution. The National Human Rights Commission then **passed a resolution to propose policy recommendations to the government, Office of the Prime Minister in particular, to study, improve and amend Office of the Prime Minister's regulation on hairstyles and dressings of civil servants, employees and persons working in state enterprise, B.E. 2516, making it consistent with present conditions by taking into consideration rights and liberties of individual persons according to the Constitution as well.**

From the policy recommendations proposed by the National Human Rights Commission to the government, Office of the Prime Minister in particular, as mentioned above, Office of the Prime Minister then asked ministries, departments, government agencies not affiliated to Office of the Prime Minister, ministries, provincial authorities, and state enterprises that are covered by the regulation to consider giving their opinions about problems and obstacles they faced in implementing the regulation and their suggestions for improving the regulation. In total, 127 agencies reported back to Office of the Prime Minister results of their consideration, and Office of the Prime Minister is in the process to consider appointing a committee to improve and develop the Office of the Prime Minister's regulation, study, analyse and propose repeal or improvement/amendment of existing regulations, rules and Office of the Prime Minister's proclamations, and arrange for new regulations, rules and Office of the Prime Minister's proclamations that are suitable for working conditions at present and consistent with the Constitution, and changing economic, social and technological conditions.

Case No. 3**Right in the judicial process: Request to erase criminal record and destroy fingerprint sheets****(Complaint No. 379/2552; Report of results of consideration for proposing Legal and Policy Recommendations No. 652/2555)**

The complainant sent a complaint letter to the National Human Rights Commission which can be summarized that the complainant had requested to the conscription registrar, asking to be exempted temporary from a selection process for conscription. However, as the complainant did not know that he must report himself at the conscription office, state prosecutors sued the complainant at a court of justice on charge of avoiding to accept a summon for conscription which is an offence according to Section 25 and Section 44 of the Military Service Act .E. 2497 (1954) of which punishment is imprisonment for a maximum of three months or a fine of no more than 300 Thai Baht, or both imprisonment and fine. The court adjudged to fine the complainant 150 Thai Baht. A consequence of having a criminal case record and punishment record is that the complainant was not considered being recruited to work in companies. The complainant then submitted a petition to the Criminal Register Division, Royal Thai Police, asking to erase criminal record and destroy fingerprint sheets of the complainant. The Criminal Register Division informed the complainant that this could not be done because the complainant did not fall under the rules according to the Police Regulation Code as the case was not of type 32 in Chapter 4 paragraph 1.3.

The National Human Rights Commission through its Sub-Commission on Investigation of Violation of Human Rights on Unfair Laws and Treatment had thoroughly considered related facts and evidence and saw that the complainant's case was an offence of not accepting a summon for conscription according to Section 25 of the Military Service Act B.E. 2497 of which punishment was imprisonment to a maximum of three months or fine no more than 300 Baht or both imprisonment and fine. Even if the court adjudged to fine the complainant 150 Baht, it did change the offence to be one with only fine punishment. This case was also not the one with light penalty, or case of which degree of punishment is not higher than light penalty, or an offence according to the traffic law, or offence according to other laws of which punishment is only fine according to paragraph 1.10 of the Royal Thai Police's regulation concerning police regulation code not related to case, type 32 – fingerprinting, B.E. 2554 (2011), Chapter 4 – separation and destruction of fingerprint sheets and list of personal records or account of personal records. The complaint's case was not covered by paragraph 1.10 and not in accordance with any of the 12 items in the Royal Thai Police's regulation concerning police regulation code not related to case, type 32 – fingerprinting, B.E. 2554 (2011), Chapter 4. The Royal Thai Police therefore could not delete the complainant's criminal record and destroy his fingerprint sheets as requested.

The National Human Rights Commission, however, passed a resolution to propose policy recommendations to the Royal Thai Police through the government cabinet to make its actions consistent with rights and liberties dimension according to the Constitution of the Kingdom of Thailand B.E. 2550 and international obligations that provide their protection and recognise them in consideration of human dignity and liberties in this profession as follows:

1. The Royal Thai Police should consider amending the Royal Thai Police's regulation concerning police regulation code not related to case, type 32 – fingerprinting, B.E. 2554 (2011), Chapter 4 – separation and destruction of fingerprint sheets and list of personal records or account of personal records, by considering to remove information from the criminal record system in additional cases as follows:

1) All cases of offence according to legal provisions, whether they are in any law that have punishment in form of imprisonment or fine or both imprisonment and fine for cases which do not have light penalty, or cases of which their penalties are not higher than light penalty, or offences according to law on land transport, or offences according to other laws of which penalties are limited only to fine, when these cases receive court trial and the court gives final judgment limiting punishment only to fine alone.

2) In cases that use Chapter 7 Special Measures instead of criminal proceedings in Section 86 and Section 90 of the Juvenile and Family Court and Juvenile and Family Procedure Act B.E. 2553 (2010), Section 86 lays down a principle that in case that a child or juvenile was charged with a criminal offence of which the highest penalty is imprisonment of a maximum five years, whether this imprisonment comes with fine or not, if the child or juvenile has never been punished by imprisonment from a final judgment to imprisonment, except it is punishment for an offence committed by carelessness or offence with light penalty, if the child or juvenile is conscious of one's past faults before suing takes place, if the Director of detention home sees that the child or juvenile could reform oneself to become a good person without having to sue, a rehabilitation plan is to be made for the child or juvenile to implement. If state prosecutors agree with this plan for the best interest of the child or juvenile, the plan is to be implemented immediately and report to the court. Section 90 of the Act lays down a principle that when a child or juvenile was sued in court for a criminal offence with a maximum penalty of twenty years imprisonment according to the law, whether it comes with fine or not, if it appears that the child or juvenile has never been adjudged to receive imprisonment penalty by a final judgment to imprisonment, except it is punishment for an offence committed by carelessness or offence with light penalty, before judgment is delivered, if the child or juvenile was conscious of one's own faults, and the injured agreed, and the plaintiff did not object, when facts appear that nature of the case is not severely harmful to society beyond appropriateness, and the court sees that the child or juvenile could reform oneself to become a good person and the injured has

been appropriately remedied and compensated if a rehabilitation plan, which would benefit future of the child or juvenile and the injured more than using court trial, the court is to issue an order to the director of detention home, or any person the court sees as appropriate, to take actions to develop such a plan. If the court agreed with the rehabilitation plan, it is to be implemented and the court would temporarily dispose of the case.

In both cases mentioned above, if persons responsible for implementing the rehabilitation plan have completely implemented it, it would result in the right to sue in a criminal case being repressed.

3) In cases according to Section 12 of the Domestic Violence Victim Protection Act B.E. 2550 (2007) which lies down a principle that in case a court adjudged that person who committed domestic violence was guilty according to Section 4, the court has authority to order use of rehabilitation, treatment and probation methods on offender, requiring the offender to compensate for the relief fund, do public works, avoid any act that causes domestic violence, or be on parole with methods and period of time determined by the court instead of punishing the offender. When these measures are completely implemented instead of punishment, it would result in no more punishment, or in case that there is a compromise, withdrawal of complaint, or withdrawal of a legal charge for an offence according to Section 4, inquiry officials or court, depending on each case, are required to record preliminary agreements before a compromise, withdrawal of complaint or withdrawal of a legal charge and order use of rehabilitation, treatment and probation methods on offender, requiring the offender to compensate for the relief fund, do public works, avoid any act that causes domestic violence, or be on parole with methods and period of time determined by the court instead of punishing the offender. When these measures are completely implemented instead of punishment, it would result in a compromise, withdrawal of complaint, or withdrawal of a legal charge for an offence according to Section 4. Thus the right to sue in a criminal case could be repressed.

4) In cases that the National Anti-Corruption Commission (NACC) had conducted an investigation and passed a resolution that any allegation with no ground would be rejected according to Chapter 8, Section 91 of the Organic Act on Counter Corruption B.E. 2542 (1999).

2. The Royal Thai Police should define the term “criminal” more clearly. From information given by a representative of the Royal Thai Police, at present its database contains criminal record of about 9,000,000 persons which is rather high comparing with the total population of Thailand. Data of each person’s offences is recorded in the Criminal Record Register, resulting in members of society understand and stigmatize that the person is a criminal which is a very strong word, even if the offence committed by the person was from carelessness or the one with light penalty. Therefore to make it appropriate, there should be consideration to change related terms. For example, “criminal records” should be changed to

“records of persons accused of committing a criminal offence” in order to clearly communicate to members of society, making them clearly understand. Data should also be segregated by ranking levels of offence, so it would be clear how much information can be revealed, and rights and liberties of persons would not be affected when information about criminal records or records of persons who was accused of committing criminal offence(s) is revealed.

From these policy recommendations that the National Human Rights Commission had proposed to the government cabinet, the government cabinet asked the Royal Thai Police to consider taking actions. The Royal Thai Police gave approval in principle on August 14, 2012, by taking information about all types of offence of which courts had given final judgment to punish offenders only by fining alone, and cases according to Section 12 of the Domestic Violence Victim Protection Act B.E. 2550, off the criminal record information system, added to the existing 12 cases. Totally there are around 390,000 cases of all types of offence of which courts had given final judgment to punish offenders only by fining alone. After giving approval, the Criminal Record Register Division rushed to take actions and has removed such data of 35,128 persons from the information system. So far no cases which were in line with the Domestic Violence Victim Protection Act B.E. 2550 have been sent to the Criminal Record Register Division.

As for cases that use Chapter 7 Special Measures instead of criminal proceedings in Section 86 and Section 90 of the Juvenile and Family Court and Juvenile and Family Procedure Act B.E. 2553 (2010), and cases that the National Anti-Corruption Commission had conducted an investigation and passed a resolution that any allegation with no ground would be rejected according to Chapter 8, Section 91 of the Organic Act on Counter Corruption B.E. 2542 (1999). Concerning having clearer definition of “criminal”, and adjustment of wordings to make them appropriate, it is in the process of systematizing the matters to consult with the Royal Thai Police for consideration later.

Case No. 4

Rights and liberties in professional practices:

A case of a person who had been punished by imprisonment was deprived of his right to be civil servant

(Complaint No. 184/2550; Report of results of consideration for proposing Legal and Policy Recommendations No. 43/2555)

The complainant had complained to the National Human Rights Commission through electronic mail that in summary, he used to be sued in a narcotic drug case and the court adjudged the complainant to receive punishment of three-years-six-month imprisonment. At present, the complainant has been released for more than five years and has an honest profession, being an employee of a provincial administrative organization. The complainant wished to apply for examination to be a civil servant. However, because the complainant used to be imprisoned, he was deprived of his right in this matter. When the complainant phoned to make inquiry at a government agency where he wanted to take an examination to become a civil servant, he was informed that he had no right to take the exam and even if he scored full marks, there was no way that he could become a civil servant.

The National Human Rights Commission through its Sub-Commission on Investigation of Violation of Human Rights on Unfair Laws and Treatment had thoroughly considered related facts and evidence and saw that by studying to compare rules concerning qualities forbidden for persons who wished to be civil servant according to various acts, or holders of political positions, or commissioner of an organisation established according to the Constitution of the Kingdom of Thailand B.E. 2550 (1997), these rules could be categorized into three groups as follows:

1. Organisations with an Act or rules that make a final judgment of imprisonment a forbidden qualification and quality for becoming a civil servant without any exemption to allow use of careful consideration to exempt certain forbidden qualities, such as the University Personnel Act of B.E. 2547 (2004), Regulations for Political Official Act B.E. 2535 (1992), and Ministry of Defense Regulations on Installing, Transferring and Re-installing in Civil Service B.E. 2539 (1986). In this group, there is no exemption for persons who wish to become civil servants and used to be punished with imprisonment by a court's final judgment, except punishment for offence committed by carelessness or offence with light penalty, without any exemption that allows use of careful consideration, except for forbidden qualities concerning cases of being imprisoned by a court's final judgment, except it is a penalty for offence committed by carelessness or offence with light penalty. There is then no flexibility in law enforcement, closing any opportunity for persons who used to be imprisoned by a court's final judgment to apply to become a civil servant.

2. Organisations that use an Act, regulations or rules that make a final judgment of imprisonment a forbidden quality for becoming a civil servant with an

exemption allowing the agencies to have specific rules or use careful consideration in recruiting persons with forbidden quality to become their civil servants, such as Rule for Parliamentary Officials Act B.E. 2554 (2011), Civil Servant Act B.E. 2551 (2008), Bangkok Metropolitan Administration Civil Servants and Personnel Administration Act B.E. 2554 (2011), Royal Thai Police Act B.E. 2547 (2003), Rule for State Prosecutor Act B.E. 2553 (2010) and Act on Judicial Service of the Courts of Justice B.E. 2543 (2000). In this group, exemption is given to persons who used to be punished with imprisonment by a court's final judgment, except for offence committed by carelessness or offence with light penalty. Consideration to give an exemption is to be done on case by case basis, or with a proclamation to give general exemption. This exemption is also to be given according to regulations and in accordance with resolutions of the committee. This therefore gives opportunity to persons who used to be punished with imprisonment by a court's final judgment to become civil servants.

3. Organisations established according to the Constitution of the Kingdom of Thailand B.E. 2550 (1997) and organizations that define the time period of which a person is freed from punishment as a qualification the person is able to hold a position in the organization, such as the National Election Commissioner, National Anti-Corruption Commissioner, National Human Rights Commissioner, Members of the House of Representatives, Members of the House of Senate and ministers, for example. There is a rule forbidding persons to apply or be nominated for the positions in case they were adjudged to imprisonment by a court and had been freed less than five years, except for an offence committed by carelessness or offence with light penalty. This group of organizations which have clearly defined the time period that a person must be freed after imprisonment identify an exemption for persons who had been imprisoned by a court's final judgment to exempt punishment for offence committed by carelessness or offence with light penalty which gives an opportunity for persons who used to be punished with imprisonment by a court's final judgment to be able to hold those positions.

From this information, the National Human Rights Commission then passed a resolution to propose policy recommendations to the government cabinet and related agencies as follows: **The group of organizations with an Act or rules that make a final judgment of imprisonment a forbidden qualification and quality for becoming a civil servant without any exemption, such as civil servants in higher education institutes, political officials and military officers, for example, should consider review, improve and amend provisions in each of the law to make them consistent with right and liberty dimension of the Constitution of the Kingdom of Thailand B.E. 2550 and international obligations that provide protection and have been recognized without restricting rights of persons who used to be punished with imprisonment by a court's final judgment to apply to become civil servants. Any exemption should have clear and fair guidelines. Appropriateness for professional practice should be considered as well in defining exemption. A time frame may be**

fixed for persons who used to be punished with imprisonment by a court's final judgment in their application to become civil servant in order to give an opportunity for persons who used to be punished with imprisonment by a court's final judgment to be able to use their right to apply to become civil servants and revert oneself to be a good person for benefits of society and the country. In considering to take such actions, improvement of laws and regulations on this matter for other types of state officials, including state enterprise officials, should be considered as well for fairness and benefits of having the same standards.

From policy recommendations that the National Human Rights Commission had proposed to the government cabinet above, the government cabinet assigned related agencies to take these recommendations into consideration. After considering them, Ministry of Defense agreed with the recommendations to review, improve and amend provisions in each relevant law, making them consistent with the right and liberty dimension of the Constitution of the Kingdom of Thailand B.E. 2550 and international obligations that provide protection and recognise them. Office of the Higher Education Commission, on the other hand, decided to propose these policy recommendations to its Sub-Committee on Laws and Official Regulations to consider and give comments.

Office of the Prime Minister then reported results of consideration taken by agencies involved: Office of the Civil Service Commission considered the recommendations and saw that Office of the Prime Minister's Regulations concerning Officials B.E. 2547 (2004) did not say anything at all about having consideration to exempt certain qualifications, and thus accepted to take these policy recommendations to be added to consideration on other related matters. Ministry of Finance, on the other hand, considered the recommendations and saw that according to law on standard qualifications for committee members and officials of state enterprises, a person who was adjudged to imprisonment by a court's final judgment, whether the person really received the punishment or not, and was freed or time period of which the person was waiting for punishment or waiting for the penalty to be decided, depending on the case, is more than five years, the person can become a state enterprise official. This is consistent with the policy recommendations. However, at moment the Ministry of Finance is considering to additionally amend the Standard Qualification Act by using the National Human Rights Commission's recommendations to support the consideration.

From policy recommendations that the National Human Rights Commission had proposed to the Royal Thai Police and related agencies as mentioned above, the Department of Special Investigation issued a letter circulating the guidelines for investigation concerning taking the alleged persons to the scene of crime to act in addition to confession and press conference to personnel of the Department of Special Investigation to strictly follow in practice. Office of the Narcotics Control Board sent copies of a report on results of the consideration to all of its offices both in Bangkok and the provinces for them to consider and strictly practice.

Case No. 5

**Right in the judicial process and right of individual person to honour and fame:
A case of alleged offender being taken to point the scene of action in addition to
confession and press conference
(Complaint No. 198/2548; Report of results of consideration for proposing Legal and
Policy Recommendations No. 244/2556)**

The complainant made his complaint through telephone calls to the National Human Rights Commission in addition to news in general that inquiry officials or police officers controlled or took an alleged offender or offender to point the scene of action in addition to confession. When they were at the scene of action, the alleged offender was instead physically assaulted or punished by the people, or relatives of the injured, or relatives of the deceased, or the crowd at the scene, causing injuries or death to the alleged offender even if the alleged offender was under control of police officers, but the police officers did not have measures to prevent such incidence, or did not punish those who were guilty at all. The complainant had a view that even if the alleged offender did really commit any offence and should be punished by law, steps in the judicial process should be followed. The people's assault on the alleged offender is therefore violation of human rights and an unfair practice towards alleged offender or offender.

The National Human Rights Commission through its Sub-Commission on Investigation of Violation of Human Rights on Unfair Laws and Treatment heard facts from the complainant and related agencies in addition to opinions from academics and competent persons. Seminar was also organized to hear views from all sectors. Results can be summed up in two issues as follows:

Issue No.1: Taking alleged offender to point the scene of action in addition to confession

Section 39, paragraph 2 of the Constitution of the Kingdom of Thailand B.E. 2550 (1997) provides that "The suspect or the accused in a criminal case shall be presumed innocent," and paragraph 3 provides that "Before the passing of a final judgment convicting a person of having committed an offence, such person shall not be treated as a convict." Section 40 of the Constitution also provides that "A person shall have the following rights in the administration of justice: (4) the injured person, the suspect, the plaintiff, the defendant, the party, the interested person or the witness has the right to proper treatment in the administration of justice, including the right to correct, speedy, fair inquiries and the right not to make statements incriminating himself or herself." However, as court trial in Thailand has adopted the accusation system, the plaintiff has a duty to find evidence to prove offence of the defendant. Because in some criminal cases, there is no witness and evidence is difficult to find. If alleged offender who has given confession was not taken to point out the scene of action, there would be no evidence in addition to the confession. To do so, consent from the alleged offender is required and inquiry officials need to

inform the alleged offender his/her rights according to Section 134/4, last paragraph, of the Criminal Procedure Code by preparing a document or written paper for the alleged offender to sign, giving his/her consent, to prevent their actions from affecting rights and liberties of the alleged offender.

An important issue needed to be considered is that sometimes or at some places, many people come to watch an alleged offender being taken to point the scene of action in addition to confession, or to map out how the crime was committed, and the alleged offender was physically assaulted while pointing the scene of action in addition to confession. Moreover, reporters were allowed to come to the scene of action while the alleged offender was taken to point and to report to the public without hiding face, name, address and information that makes other people know identity of the alleged offender, affecting the alleged offender him/herself, persons in his/her family, relatives and people closed to him/her. Society would then understand and stigmatise the alleged offender who pointed the scene of action in addition to confession as offender even if the court has not yet given a judgment. In other countries, when alleged offender in criminal case was taken to point the scene of action in addition to confession, information about the alleged offender or offender would be concealed, and when the alleged offender was taken to point the scene of action in addition to confession, officers would mainly take safety into consideration in order to prevent rights and liberties to life and body, and reputation, of the person from being affected. If avoidable, the act would be done by another person instead or having the alleged offender covered his/her head to conceal face, or use photograph, or create or retouch photographs with computer to point out road map of the alleged offender's offence. However, if it is necessary to take the alleged offender to point the scene of action, protection would be in place by roping the area where the alleged offender would point the scene of action in two layers and measures that are appropriate, tight and not publicly humiliating would be put in place. In Thailand, if offender is a child, laws require his/her face to be covered to avoid violation of human rights. Therefore, taking alleged offender to point the scene of action in addition to confession should be done only when it is necessary and done carefully. There should also measures to prevent the alleged offender from human rights violation. Press conference, on the other hand, should be for officers to announce progress of the case without having to show the alleged offender or relatives of the alleged offender. Inquiry officials or police officers should take the alleged offender to point the scene of action in addition to confession and to press conference only for gathering evidence to have enough weight for consideration of the court, to make the court believe that the defendant is offender and adjudge to punish the person, not to take the alleged offender to humiliate him/her. Consideration should also be given to safety of alleged offender, concealment of alleged offender's personal information, and prevention against alleged offender's rights and liberties to life and body, and reputation, being affected.

Issue No.2: taking alleged offender in criminal case to press conference

Section 35 of the Constitution of the Kingdom of Thailand B.E. 2550 (1997) states that "A person's family rights, dignity, reputation and the right of privacy shall be protected. The assertion or circulation of a statement or picture in any manner whatsoever to the public, which violates or affects a person's family rights, dignity, reputation or the right of privacy, shall not be made except for the case which is beneficial to the public." Look at its positive side, press conference is organized to deter other people from committing an offence and a reminder for society to be careful. However, negatively it affects rights of alleged offenders and helps develop offenders who can study how to commit an offence through the media. In other countries, state officials would make announcement about progress of a case whether it has complete evidence or not, or the case is then being taken by what agency, which describes involved agencies' areas of work without giving details of witness as it could make it unsafe for witnesses and sometimes damage the case because information from press conference could be used to cross-examine witnesses in court. If officers want to organize a press conference, it must not affect persons involved, and alleged offender or relatives of the alleged offender should not be taken to the press conference because it would affect family of, and people around, the alleged offender, and is violation of their right to privacy. Mass media in other countries would report progress of the case as being informed by officers in the judicial process and would not give details of the news.

The mass media therefore can report to raise awareness of society about the incidence. The Royal Thai Police has already required in its Type 30 No.1 of the Police Code concerning cases forbidding officers to give interview or organize press conference to give news for cases that are being investigated or investigation is not yet completed, and cases that their circumstances or stories, if revealed to the public, could become models for other persons to use as examples to do again. The Royal Thai Police also issued an order No. 465/2550 (amended and extended) about practices concerning news giving, press conference, interview giving, dissemination of photographs to the media, and production of media for public relations, forbidding responsible officers to give permission or organize for the media of all forms to photograph, interview or give news about alleged offender who is still in custody of the police both in and outside of offices or police station, and of victims of crime, including photographs that are obscene, brutal or violate personal rights, or affect reputation, honour and human dignity, except that inquiry officials do it for benefits of the case or receive consent from alleged offender, victims of crime or the injured.

Facts given by representatives of the Royal Thai Police about actions being taken since the agency was the Police Department are the practices had been repeated stressed and understanding about press conference or dissemination of photographs to the mass media had been rehearsed according to the Police

Department's letter 0608/4545 dated 19th May 1988, and information and opinions given by representatives of various agencies, it can be summarized that related agencies recognised importance of these activities – taking alleged offender to point the scene of action in addition to confession and press conference. The Royal Thai Police has had clear rules and guidelines, but in practice, there are still some problems in following the Royal Thai Police's order and Police Code concerning cases for taking alleged offender to point the scene of action in addition to confession and press conference because they could not be enforced strictly and in all situations, resulting in practices that affected rights and liberties of persons could still be currently seen. For example, alleged offenders are still being assaulted by the crowd, the mass media reported about the staged event without concealing face, name, address and personal information of the alleged offender, and alleged offenders were taken to press conference in the way that the person was humiliated and insulted, affecting the person's reputation, honour and human dignity. These actions are violation of human rights according to Section 39, Section 40 and Section 35 of the Constitution of the Kingdom of Thailand B.E. 2550, Article 11 of the Universal Declaration of Human Rights, and Article 10 and Article 14 of the International Covenant on Civil and Political Rights.

The National Human Rights Commission therefore passed a resolution to **propose policy recommendations to the Royal Thai Police and related agencies, that are the Department of Special Investigation, Office of the Narcotics Control Board, Anti-Money Laundering Office, Local Administration Department, and Rights and Liberties Protection Department, stressing and instructing explicitly to agencies under their responsibilities to strictly follow laws, regulations and orders of the agencies in taking alleged offenders to point the scene of action in addition to confession and press conference, and come up with guidelines and methods to replace taking alleged offenders to point the scene of action or mapping how the offence was committed for benefit of evidence gathering and proceedings, and also to prevent violation of human rights, such as using actor to replace alleged offender, using cloth to conceal face of alleged offender (in case that there is no witness and offender must be the person who point the scene of action; the alleged offender must agree to do this voluntarily and with consent, and officers must provide protection to those involved in mapping the scene of action in addition to confession), imitating the scene of action, having witness at each place to point, and participation of people in the community (in case that offender commits the offence again), for example. Office of the National Human Rights Commission is required to monitor and ask for results of actions taken by the Royal Thai Police and other related agencies for evaluation and dissemination to all branches of mass media for further consideration.**

From these policy recommendations the National Human Rights Commission had sent to the Royal Thai Police and other related agencies above, the Department of Special Investigation circulated a letter to instruct personnel of the Department of

Special Investigation explicitly guidelines for investigation concerning taking alleged offenders to point the scene of action in addition to confession and press conference, requiring them to strictly follow in practice. Office of the Narcotics Control Board sent copies of a report showing results of the consideration to all offices under its authority both in Bangkok and in the provinces to take into consideration and follow strictly in practice.

The Anti-Money Laundering Office, Local Administration Department and Rights and Liberties Protection Department, on the other hand, on the other hand, accepted and agreed with the National Human Rights Commission's policy recommendations, and put them in practice in all cases in order to promote and protect human rights. At present, Office of the National Human Rights Commission has sped up monitoring results of actions done by the Royal Thai Police, so that there would be clear concrete results.

Case No. 6**Right and Liberties to Education:****A case of the Collection of education support money according to proclamation of
Ministry of Education****(Complaint No. 408/2553; Report of results of consideration for proposing Legal and
Policy Recommendations (No. 257/2555))**

The complainant submitted a complaint letter to the National Human Rights Commission which could be summarized that a school affiliated to the Ministry of Education collected education support money to cover expenses for organizing education outside of the core basic education course from parents, referring to a Ministry of Education's proclamation on education support money of education institutes affiliated to Ministry of Education dated 27th June 2008. The school sent a letter dated 8th June 2009 and 16th June 2009 to parents, asking them to support expenses of ordinary classrooms for the semester 1/2009 additional to the 1,960 Baht for basic course education. The school claimed that this request for payment had been approved by board of the education institute. The complainant saw otherwise that the Education Ministry's proclamation had not been officially printed in the government gazette before enforcement and thus was against Section 5 of the National Education Act B.E. 2542 (1999).

The National Human Rights Commission through its Sub-Commission on Investigation of Violation of Human Rights on Unfair Laws and Treatment had considered related facts and evidence and saw that the proclamation issued by Ministry of Education on education support money of education institutes affiliated to Ministry of Education dated 27th June 2008, which is now revoked, even if it was just a designation of rules for collecting payment, making it consistent with views of the Council of State and guidelines for education institutes affiliated to the ministry to use in the same direction, and thus was not printed in the government gazette, the Minister of Education used his authority to issue the proclamation, so that it would be in effect according to the National Education Act B.E. 2542 (1999) and the Ministry of Education Regulatory Act B.E. 2546 (2003). The Minister of Education therefore had to follow Section 5 of the National Education Act B.E. 2542 and the amendment (2nd Edition) B.E. 2545 (2002) and Section 8 of the Ministry of Education Regulatory Act B.E. 2546 (2003) which provides that Minister of Education acting according to this act and is to have authority to issue ministerial regulations and proclamations in order to implement this act. These ministerial regulations after being printed in the government gazette are to be in effect. Ministry of Education then should send the Education Ministry's proclamation on education support money of education institutes affiliated to Ministry of Education dated 27th June 2008 to the Secretariat of the Cabinet to consider printing in the government gazette before enforcing it to make it in accordance with provisions of the law.

Ministry of Education later issued an Education Ministry's proclamation on collection of education support money of education institutes affiliated to Office of the Basic Education Commission dated 24th March 2010 to revoke the Education Ministry's

proclamation dated 27th June 2008. The Education Ministry's proclamation dated 24th March 2010 has essence and purpose similar to the proclamation dated 27th June 2008. The only difference is their uses of authority according to provision of the law. The 24th March 2010 proclamation does not refer to Section 5 of the National Education Act B.E. 2542 (1999) and amendment (2nd Edition) B.E. 2545 (2002), and Section 8 of the Ministry of Education Regulatory Act B.E. 2546 (2003) because the ministry saw that it was just designation of rules for collection of payment, making them consistent with views of the Council of State and for education institutes affiliated to it acting in the same direction, and thus did not have it printed in the government gazette. This was a deviated understanding. This action was then to avoid sending the 24th March 2010 proclamation of the Education Ministry to be printed in the government gazette. Therefore, even if Ministry of Education issued a new proclamation on education support money of education institutes affiliated to Office of the Basic Education Commission dated 24th March 2010 and the new proclamation is in effect, it would be generally enforced and is not aimed to be enforced in any specific cases or specific persons. Parents and students are affected by this proclamation as they have more expenses for education than what the state is paying for them. This proclamation is therefore a "rule" according to Section 5 of the Administrative Procedure Act B.E. 2539 (1996) and is in effect in general.

Moreover, title of the proclamation, "Education Ministry's proclamation on collection of education support money of education institutes affiliated to Office of the Basic Education Commission dated 24th March 2010," states that money is collected from parents to support education, but when essence of the proclamation is taken into consideration, money is collected to pay for expenses in organizing education outside of the core basic course which focuses on course that has more essence than usual – teaching by special personnel, teaching with forms or methods different from ordinary teaching, or teaching that uses innovative media and technologies specially provided at the rate appropriate for economic situation of the local area with agreement from the Basic Education Commission and consent of parents and students under rules set up by Office of the Basic Education Commission. Content of the proclamation was not at all against or opposing to Section 49, Clause 1, of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) because it collects education support money for non-core basic education course, not for the core basic education course provided by the state. However, when title of the proclamation is taken into consideration, it states that it is collection of education support money which is not consistent with reality and Section 49, clause 1, of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). Ministry of Education, therefore, should use title of a proclamation that is consistent with and appropriate for content of the proclamation; title and content of a proclamation must communicate to make parents and students understand clearly that it is for collection of money to support education outside of the core basic education course.

In putting this proclamation into effect, Ministry of Education told education institutes affiliated to Office of the Basic Education Commission to collect education support money to pay for expenses in organizing education outside of the core basic

education course with agreement from the Basic Education and voluntary consent of parents and students under rules set up by Office of the Basic Education Commission. Moreover, Office of the Basic Education Commission has set up rules according to this proclamation concerning collection of education support money of education institutes affiliated to Office of the Basic Education Commission that 22 items of expenses subsidized by the state of which education institutes cannot ask for supports from students or parents, and expenses for organizing education to promote and develop students' education quality and education institutes provide to students beyond standards provided by the state, education institutes must solicit agreement from the Basic Education Commission and inform parents and students in advance, so that they could consider to take part voluntarily in the project. This would recognise everyone's right to education and it is for free, not restricting rights and liberties of persons in education. Enforcement of this proclamation is consistent with Article 29 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), Article 26 of the Universal Declaration for Human Rights, and Article 13 of the International Covenant on Economic, Social and Cultural Rights concerning right to education that the state must provide.

However, because this proclamation is in effect in general, it has affected parents and students. Even if Ministry of Education stated that it is voluntary basis, in practice, each school would want to have support money from parents and students for development of the school and teachers to be ready and capable by increasing effectiveness and quality of students' education with various forms and methods, and money to pay for necessary expenses of school or classrooms that are close to streets which have loud noise apart from public utilities of which the state has a duty to provide according to general standards. Ministry of Education should therefore have clear principle and rationale in issuing any proclamation and should issue proclamation only for necessary items to avoid affecting rights and liberties of parents and students to be consistent with Section 29 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). Ministry of Education should propose to the government to add non-core basic education course to the core basic education course, leaving out only education items that are really outside core basic education course of which payment for incurred expenses would be requested to parents and students to pay voluntarily in order to be in accordance with Article 26 of the Universal Declaration on Human Rights and Article 13 of the International Covenant on Economic, Social and Cultural Rights to create opportunities for everyone to access education equally and it must be state provided education of which everyone has right to with appropriate methods to avoid impacts on parents and students. The state should support and pay attention to develop the country's education to progress to catch up with changes of the world and to develop education that is in good quality and appropriate for learners. In the future, Ministry of Education should develop core course by adding non-core basic education course within the core basic education course that the state has provided to education institutes all over the country because education institutes at present need to increase learners' education effectiveness and quality, and for benefits of the development of education quality in the future. Development of learners must be

taken mainly into consideration, depending on capability and appropriateness of learners as well.

The National Human Rights Commission therefore **passed a resolution to propose policy recommendations to Ministry of Education through the government cabinet to take actions to solve the problems, preventing violation of individual person's rights and liberties, right and liberty to education, and unfair practices according to 49 and Section 80 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), Article 26 of the Universal Declaration of Human Rights, and Article 13 of the International Covenant on Economic, Social and Cultural Rights, to be in accordance with right and liberty dimension according to the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and international obligations that provide protection and recognition as follows:**

1. Ministry of Education should send the Education Ministry's proclamation on collection of education support money of education institutes affiliated to Office of the Basic Education Commission dated 24th March 2010 to Office of the Secretariat of the Cabinet to consider printing in the government gazette because it is a proclamation that is enforced in general and is in accordance with provisions of law.

2. Ministry of Education should improve titles of proclamation, make them clear and be able to communicate its meaning to readers, helping them understand without confusion, because the Education Ministry's proclamation on collection of education support of education institutes affiliated to Office of the Basic Education Commission dated 24th March 2010 is describing collection of education support money of education institutes; it must be read in detail to understand that it is about collection of education support money to pay for expenses in organizing non-core basic education course, resulting in some parents had incorrect understanding, and to make it not contradictory to the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

3. The government cabinet through Ministry of Education should add non-core basic education course to core basic education course of education institutes, leaving only education items that are really outside the core basic education course of which payment for incurred expenses would be requested to parents and students to pay voluntarily because education institutes at present need to increase learners' education effectiveness and quality, and for benefits of the development of education quality in the future.

Case No. 7

Right and Liberties to Education:

**A case of right to education according to home school course
(Complaint No. 488/2554, Complaint No. 162/2555, Complaint No. 246/2555, Complaint
No. 295/2555 and Complaint No. 471/2555; Report of results of consideration for
Proposing Legal and Policy Recommendations No. 97-100/2556
and 27/2556)**

The complainant submitted a complaint letter to the National Human Rights Commission which could be summarized that home school is an alternative to promote self-learning and life-long learning among children. Ministry of Education issued a Ministerial Regulation on the Right to Basic Education by Home School B.E. 2547 (2004) requiring families to register asking permission to organize education with education service area office, resulting in home school families facing several obstacles in using their right to organize education, such as officials and coordinator's attitude against home school, Office of the Basic Education Commission's education policy that did not help facilitate families to organize education according to the national education law, interpretation of the ministerial regulation in a way that violates right to take part in administration and management of home school and also not connecting with all education systems, and monitoring and evaluation is inconsistent with the learning potential development plan, for example. The complainant had a view that home school family network should participate in the administration and management together with related agencies in all sectors to solve problems and promote and support home school.

The National Human Rights Commission through the Sub-Commission on Investigation of Violation of Human Rights on Unfair Laws and Treatment had thoroughly considered related facts and evidence and saw that to solve the problems all round and holistically and to make the matter consistent with the dimension of individual person's right and liberty, and right to education, according to Section 49 and Section 50 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), Section 12 of the National Education Act B.E. 2542 (1999) and section 12 of the amended National Education Act (3rd Edition) B.E. 2553 (2010), Ministerial Regulation on the right to organize basic education by home school B.E. 2547 (2004), Ministerial Regulation on rules and methods for decentralization of education administration and management B.E. 2550 (2007), Article 26 of the Universal Declaration on Human Rights, Article 13 of the International Covenant on Economic, Social and Cultural Rights, and Article 28 of the Convention on the Rights of the Child.

The National Human Rights Commission therefore **passed a resolution to propose policy recommendations to Ministry of Education and Office of the Basic Education Commission as follows:**

1. Ministry of Education should have a clear policy for development of home school in order to promote self-education and as an alternative for those who are interested. The three systems of education – formal education, non-formal education

and informal education – should be connected to each other, so that they would be in the same direction, and informal education in Thailand would be developed to have good quality and effectiveness.

2. Office of the Basic Education Commission should speed up production of a handbook for home school, taking into considering participation of all sectors, so that those involved would have the same direction for practices all over the country. This requires the same strategic understanding all over the country. After the handbook is used, there should be hearing about problems faced in using the handbook and evaluation done together by those involved. Data from this hearing and evaluation would be used to improve the handbook, making it updated and appropriate for home school, and for mutual learning that would lead to the problems being solved appropriately and systematically.

3. Office of the Basic Education Commission should speed up actions according to the home school development plan in two stages, that are in the following fiscal year and in long term, especially in response to the problems that had been analysed and target had already been set for the home school development plan.

4. Office of the Basic Education Commission should speed up coordination and discussion with the Territorial Defense Command and related agencies to solve problems related to military or territorial defense learning, especially to solve legal problems in order to have rules and give right to students of home school, non-formal education, alternative education and informal education to be able to apply to become territorial defense students in accordance with the Constitution of the Kingdom of Thailand B.E. 2550 (2007) which provides in Section 71 that “Every person shall have a duty to defend the country, safeguard national interests and obey the law,” so that the country would manpower that the state can call to defense the country in time of war because applying to become territorial defense student would allow young persons who are interested to receive military training and be ready to be reserve forces who could serve the country in time of war.

5. Office of the Basic Education Commission should do public relations to give home school managers, related persons and the people in general information about home school and to promote common understanding, including organizing training and providing information to officials involved, so that they have clear guidelines, and to adjust their attitudes towards home school.

6. Office of the Basic Education Commission should consult with the Comptroller General’s Department and the Council of State about rules for withdrawal of budget to subsidize home school, making them clear and become guidelines for practices in the future, and should also consult further to establish clear guidelines concerning rights and benefits of families that would receive education subsidies per head for learners and subsidies for home school.

7. Office of the Basic Education Commission should explain to create understanding among home school managers, so that home school families and learners should have knowledge and understanding about roles, authorities, duties

and operation of the Office of the Basic Education Commission, Primary Education Service Area Offices and Secondary Education Service Area Offices, and consequently have common understanding and proficiency in working together among home school managers, home school learners and related officials, and also to create good relationships and good attitudes towards each other for works in the future.

8. Office of the Basic Education Commission should review rules and procedures, reducing steps that are too complex than necessary, so that officials of the education service area Offices would be able to request for permission to organize education to a committee to consider and inform families that request for permission to organize education results of the consideration within 30 days after receiving the request according to the ministerial regulation on the right to organize basic education by home school B.E. 2547 (2004).

9. Office of the Basic Education Commission should consider placing enough and appropriate officials in each education service area to consult, give advice and facilitate families that request to organize home school, including improving efficiency of education service area offices, so that organization of home school would be effective and successful.

Case No. 8
Unfair Practice:
A case of unequal improvement of nurses and doctors' positions
by Office of the Civil Service Commission
(Complaint No. 737/2553; Report of results of consideration No. 1/2555)

The complainant submitted a complaint letter to the National Human Rights Commission which could be summarized that Office of the Civil Service Commission (OCSC) had issued a letter improving placement of various positions in center hospitals, general hospitals and community hospitals. To improve a position to a higher level, vacant positions with budget to support would be dissolved and combined together. Remuneration of this new position would be calculated from the highest level of average remuneration of these positions and average remuneration of positions that would be dissolved must cover remuneration emerged from improvement of position placement determined by the OCSC. In the field of medicine, all positions can be moved up to become "expert physician" without having to dissolve vacant positions and combine them together. The complainant had a view that this is discrimination; Office of the Civil Service Commission should raise level of position equally in all lines of work and should review related regulations in order to really be able to put them into practices.

The National Human Rights Commission through its Sub-committee to investigate violation of human rights in unfair laws and practices had thoroughly considered related facts and evidence, and had a view that OCSC had approved in principal that to improve placement of various positions in center hospitals, general hospitals and community hospitals to a higher level, creating a position that would increase personnel expenses of a government agency, the government agency has to dissolve vacant positions with budget to support. Average remuneration of the positions to be dissolved must cover average remuneration that is increased for the newly created position to prevent an increase of the agency's personnel expenditure. For example, in 737 community hospitals, a total of 377 head nurses were raised to the position of senior nurse (professional nurse 8) while remaining 360 head nurses' position was not adjusted. This is against the above-mentioned principle. As for progress in the nurse line of work, the complainant and party had no intention for everyone of them to be raised to expert level such as in the physician line of work, but only asked for adjusting the position to be senior nurse (professional nurse 8) in all community hospitals where this adjustment had not been done and there was only one position like this in each hospital. Later, Office of the Public Health Ministry Permanent Secretary issued a letter asking to exempt rules for positions in the physician line of work and dentist line of work by asking for higher positions in both lines of work to be at expert level without having to dissolve vacant positions and combine them together. Office of the Civil Service Commission (CSC) gave approval to what Office of the Public Health Permanent Secretary had requested just for

positions in the physician line of work, resulting in no need for dissolution of vacant positions without holders and in the physician's line of work, resulting in no need to dissolve positions without holder and combine them together. Later Office of the Public Health Permanent Secretary issued a letter asking its affiliated government agencies to stop making use of vacant positions, so that these vacant positions could be used to fill students with government's scholarship in the physician line of work and dentist line of work. This case is thus an unfair discrimination against persons because of differences in term of personal status according to Section 30, paragraph 3, of the Constitution of the Kingdom of Thailand B.E. 2550 with positions in other lines of work that provide public health services, especially between personnel whose status is physician and personnel with other status, that are dentist, pharmacist, professional nurse, medical radiologist, medical technician, medical scientist, physiotherapist, activity therapist, นักเวชศาสตร์การสื่อความหมาย, psychologist, clinical psychologist and public health academic, who should have equal opportunity for promotion to work at higher level as appropriate according to Article 2 (1), No.7, of the Universal Declaration on Human Rights, Article 26 of the International Covenant on Civil and Political Rights, and Article 7 of the International Covenant on Economic, Social and Cultural Rights.

The government must conduct administration of the country in accordance with the Directive Principles of Fundamental State Policies in Chapter V of the Constitution of the Kingdom of Thailand B.E. 2550: Part 4, Directive Principles of State Policies in relation to Religions, Social Affairs, Public Health, Education and Cultural Affairs; Section 80 (2), the state shall (2) to promote, support and develop the health system based upon the fostering of health that leads to a sustainable state of happiness of the people, provide and promote public health services that meet the standard thoroughly and efficiently, promote participation by private individuals and communities in the development of health and the provision of public health services. In order to implement this part of policy, the state needs personnel who could perform duties to provide public health services, so that it could achieve the goals according to the policy. These personnel consist of persons who hold various positions, having diverse status according to their professions, that are physician, dentist, pharmacist, professional nurse, medical radiologist, medical technician, medical scientist, physiotherapist, activity therapist, นักเวชศาสตร์การสื่อความหมาย, psychologist, clinical psychologist and public health academic. The government should have a fair framework for position holding and promotion of personnel who perform duties to provide public health services according to their professions, so that everyone can be confident of their progress and have good morale to do their works.

The National Human Rights Commission therefore passed a resolution to propose **overall policy recommendations to Office of the Civil Service Commission, Office of the Public Health Permanent Secretary and government cabinet, so that**

there would be guidelines for equal practices all over the country and to be consistent with the right and liberty dimension that the Constitution of the Kingdom of Thailand B.E. 2550 and international obligations that provide protection and recognition as follows:

1. Office of the Civil Service Commission should review and improve rules for creating positions at higher level of all lines of work to be in a way that is fair, taking into consideration appropriateness and consistency with characteristics of each profession, so that there would be guidelines for equal treatment of personnel in term of personal advancement of their work.

2. Office of the Public Health Permanent Secretary should request for new positions to Office of the CSC and related agencies by designing long-term vacant positions that would be filled with physicians, dentists and nurses who are students with government's scholarships contracting to work for compensation, so that the positions are clearly created to be filled with Public Health Ministry's scholarship students, preventing impacts on other lines of work that also provide public health service and need to dissolve vacant positions with budget for position improvement designed by the Office of CSC.

3. The government cabinet should have a policy requiring office of the CSC and other related agencies to consider the country as a whole in managing personnel budget of agencies that are important in providing public health and education services, so that their actions would be consistent and in the same direction, becoming guidelines for fair treatment to all individual persons because every profession is important for development of the country. Importantly, as Office of the CSC is the agency that supervises personnel management of the state sector and the agency that controls civil servants, in order to solve problems of the country as a whole and to build up morale of personnel in term of advancement in each profession, the office should review rules for creating positions at higher level to prevent differences in various ministries, departments and agencies.

From the policy recommendations that the National Human Rights Commission proposed to the government cabinet, Office of the CSC and Office of the Public Health Permanent Secretary above, Ministry of Public Health made an observation that as Ministry of Public Health had many employees hired with support money, particularly in lines of work that Ministry of Public Health is in need of, such as professional nurse, medical technician, physiotherapist and public health officials, for example. These jobs should be filled when Office of Public Health Permanent Secretary has vacant position. However, as they have to follow resolution of the Office of the CSC, they have to use vacant positions in other lines of work to create positions for students with the government's scholarship, resulting in persons who had been hired as employees lack opportunities to be employed as civil servants. The government cabinet assigned a Deputy Prime Ministry and Office of the CSC to take up policy recommendations from the National Human Rights Commission to consider taking actions in the country as a whole.

Case No. 9**Rights of persons in family:****A case of taking oath in front of judge by persons of different religions
(Complaint No. 497/2554; Report of results of consideration for proposing legal and
policy recommendations No. 647/2555)**

The complainant submitted a complaint letter to the National Human Rights Commission which could be summarized that the complainant had been called to be a witness in a court of justice and was handed a court's printed paper for the complaint to take oath with wordings as follows: "If I (the witness) say anything that is untrue, even if a little, all dangers and calamities would happen to me (witness) and family (witness) immediately." Words of oath as appeared on the printed paper refer to dangers that would happen to other persons in the family. The complainant had a view that he was the person to take oath, why it has to refer to results that would happen to other persons in the family. This is violation of rights of other persons in the family and is against Section 35 of the Constitution of the Kingdom of Thailand B.E. 2550. The complainant also saw that wordings of an oath to be taken before giving evidence differ from religion to religion. An oath to be taken before giving evidence by a Buddhist has wordings printed on paper that refer to family, but an oath to be taken by a Muslim has no such wordings printed on paper that refer to family. The complainant saw that having different wordings of oath taken before giving evidence for persons of different religions is discrimination because of religious belief according to Section 30 of the Constitution of the Kingdom of Thailand B.E. 2550.

The National Human Rights Commission through the Sub-Commission on Investigation of Violation of Human Rights on Unfair Laws and Treatment had thoroughly considered related facts and evidence and saw that according to Section 112, clause 1, of the Civil Procedure Code which provides that "before giving evidence, every witness must take an oath according to one's religion or customs or make a statement that evidence would be truthfully given". Section 171 of the Criminal Procedure Code provides that "anyone who disobey court's order to take oath, give statement or give evidence would be punished with a penalty of imprisonment not more than six months or fine not more than one thousand Baht, or both imprisonment and fine". These legal provisions clearly indicates that a person who would give evidence in the court must take an oath or make a statement before giving evidence; if the person does not do so, he/she would be punished according to the Criminal Procedure Code. To take an oath or make a statement would be according to the religion or customs one believes in. The court provides an example of an oath for each religion to make it convenient for taking an oath or making a statement. According to jurisprudence, an oath taken by a witness should be specific to the person who takes the oath; nothing should be referred to family in any religion, and results of this oath taking should be with the witness who takes the oath alone and should not have impacts on other persons in the family who have not involved at all.

The National Human Rights Commission therefore passed a resolution to **propose policy recommendations to Office of the Court of Justice, Office of the Administrative Court and the Judicial Department to consider form and wordings of an oath or statement to be the same and have guidelines for practices to be in the same direction to make it systematic in all levels of court and universal. An example of oath provided should be specific to the person who takes the oath and should not refer to family in all religions, making it consistent with Section 30 and Section 35 of the Constitution of the Kingdom of Thailand B.E. 2550 and human rights principle.**

Case No. 10**Unfair Practice:****A case of disabled persons not having rights to utilize land reform area
(Complaint No. 72/2554; Report of results of consideration for proposing legal and policy
recommendations No. 2/2555)**

The complainant submitted a complaint letter to the National Human Rights Commission which could be summarized that the complainant was a person with visual disability. He bought a piece of land which was in a land reform for agricultural area. The former owner of the land had not requested for a document of title to utilize land in the land reform for agricultural area. The complainant then proceeded to request a title document at a provincial land reform office; officials at the provincial land reform office to survey and identify boundaries of the land together with the complainant. The officials however informed the complainant later that name of the complainant could not be used as name of land owner in the land reform area because a regulation of the Land Reform for Agriculture Commission on rules, methods and conditions for selecting farmers who have right to receive land in land reform area, B.E. 2535 (1992), states that any person who has right to utilize land in land reform area must be a physically complete person. Officials of the land reform office thus interpreted that this regulation referred to persons with all types of disabilities. However, the complainant saw that he was able to do agricultural work and this regulation restricted his rights. The complainant bought a piece of land measuring 19 rai, 3 ngan and 43 square wa (approximately 3 hectares), and had already planted rubber trees all over the land. At present, he uses his younger sister's name to request for the right to utilize that piece of land.

The National Human Rights Commission through the Sub-Commission on Investigation of Violation of Human Rights on Unfair Laws and Treatment had thoroughly considered related facts and evidence and saw that in this case, officials had used their judgment to give opinions and interpret the regulation of the Land Reform for Agriculture Commission on rules, methods and conditions for selecting farmers to have right to receive land from land reform for agriculture, B.E. 2535(1992), No.6 (4) that a person who has right to utilize land in the land reform for agricultural area must be a physically complete person to also cover person with all forms of disabilities. However, to consider whether or not a person could do agriculture, the person's ability to do the profession should be a main point of consideration rather physical conditions of the person. A disabled person who is a farmer, although he/she had physical disability, if the person can still do agriculture, such as to make an investment in, supervise or control agricultural work, he/she should be considered as having the qualification to do agriculture and thus is a farmer according to the regulation of the Land Reform for Agriculture Commission on rules, methods and conditions for selecting farmers to have right to receive land from land reform for agriculture, B.E. 2535(1992).

The National Human Rights Commission therefore passed a resolution to propose **policy recommendations to Office of Land Reform for Agriculture (OLRA) that it should**

improve, amend or consider review regulation of the Land Reform for Agriculture Commission concerning rules, methods and conditions for selecting farmers who would have right to receive land from land reform for agriculture, B.E. 2535 (1992), No. 6 (4), making it consistent with Section 30 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and international obligations that provide protection and recognition concerning non-discrimination because of disabilities. While there is no amendment of the regulation, the OLRA should come up with clear rules and guidelines for taking actions according to the regulation and circulate a letter to provincial governors of all provinces and all provincial land reform offices to rehearse their understanding, ensuring that actions would be taken in the same direction all over the country, and to prevent discrimination against individual persons because of their disabilities, including taking consideration to change name in the document giving permission to utilize land in land reform area (sor por gor 4-01) from name of the complainant's younger sister to the complainant's name in accordance with facts and wishes of the complainant and the complainant's sister themselves.

From the policy recommendations that the National Human Rights Commission had proposed to Office of Land Reform for Agriculture mentioned above, Office of Land Reform for Agriculture appointed a working group to review regulations and rules for practices according to regulation of the Land Reform for Agriculture Commission on rules, methods and conditions for selecting farmers who would have right to receive land from land reform for agriculture, B.E. 2535, third amendment B.E. 2538 (1995). The working group met and came up with a draft regulation of the Land Reform for Agriculture Commission concerning selection of farmers who would have right to receive land from land reform for agriculture, B.E. This draft describes qualifications of persons who would have right to receive land from the land reform, which is indicated in No. 6 (4), by deleting the words, "physically complete", to ensure equality and create opportunities for disabled persons to be able to have land to make a living. This draft is in the process of allowing related parties to give suggestions for improvement and amendment before going through the procedure to have it proclaimed as a law.