

## **Report No. 111/2559 on right and liberties to life and body in a case that a child was claimed to have his DNA sample collected in Yaha Sub-District, Yaha District, Yala Province**

### **Issue of complaint**

A complainant submitted a petition requesting the National Human Rights Commission of Thailand (NHRCT) to investigate a case of which it was alleged that on 25<sup>th</sup> November 2015, three persons with unknown affiliation who were the target of complaint travelled to the complainant's house and asked to collect DNA sample of the complainant's children, an 11-years-old boy and a 7-years-old girl. The accused asked the complainant to sign a document to give consent to the requested DNA sample collection without informing the complainant any objective of this DNA collection. DNA sample was eventually collected only from the complainant's son as her daughter cried out of fright. The DNA collection process was observed by a deputy of the local village headman. The complainant saw that the accused's action was a violation of the right of the child and thus wished this case to be investigated for justice and the complainant being remedied according to the judicial process.

### **Actions**

The NHRCT has taken this case into consideration and seen that even if DNA sample as collected from the complainant's son who was still a child with written consent from the complainant who was the child's mother, the act should be carried out by taking into consideration its necessity and protection of the child as the top concern. For DNA sample to be collected as a scientific evidence for an investigation in the judicial process, inquiry officials need to have it examined by a physician or an expert. In addition, Article 131/1, Paragraph 2, of the Criminal Procedure Code provides that this process is to be carried out only as necessary and appropriate, implying that it can be used only with an accused, an injured person or a related person without affecting rights and liberties as recognized by Section 4 of Constitution of the Kingdom of Thailand (Interim) B.E. 2557 (2014) together with the Children Protection Act B.E. 2546 (2003) and the UN Convention on the Rights of the Child (CRC). Therefore collection of DNA sample from a child, even if it is done with consent from the mother at that time, could not be done because no objective was provided why the child's DNA sample was collected and was it for protection of the right of the child or not. The action was thus considered an act of human right violation. The Commission therefore has come up with measures to correct this act of human right violation for the Royal Thai Police to consider implementing within 60 days as follows:

### **Measures for solving the problem of human rights violation**

(1) To explicitly instruct officials involved in DNA sample collection from a child that this process should be carried out according to the law and by taking into top consideration protection of the child's rights and highest interest in order to make this action consistent with Constitution of the Kingdom of Thailand, the Children Protection Act B.E. 2546 (2003) and the CRC; it must also be done legally with written consent from the child's father, mother or parent.

(2) Before DNA sample was collected, officials involved should reveal their names, positions and responsibilities, and their agency of affiliation and provided objectives

of that DNA sample collection to related persons. Collected data must also be safeguarded as confidential to reduce suspicion and build trust in the judicial process among local people.

**Successes/progress in human rights protection**

The Royal Thai Police reported results of its actions that responsible police officials had been informed to put in practice that before collecting DNA sample from body of any person, whether he or she was an accused, an injured person or a related person, the police officers responsible for such action must present themselves as police officers and provide information about their ranks, names and surnames, position and affiliation together with objectives for DNA collection to the persons to be examined. They must receive consent from the person(s) whose DNA would be collected, and if such person(s) is/are children or youth, consent must be received from father, mother or parents of the children or youth every time before DNA is collected, and personal data of the person(s) examined must be confidentially kept to reduce suspicion and build trust towards judicial process among local people.