

MODELS OF NATIONAL INSTITUTE OF HUMAN RIGHTS IN THE WORLD AND REFERENCE VALUES FOR VIETNAM

• Assoc.Prof. Ph.D. Hoang Van Nghia*

***Abstract:** National Human Rights Institutions, including the National Human Rights Commission, Ombudsman, the National Human Rights Council and the National Human Rights Institute are independent, universal institutions in the current protection and promotion of human rights. However, among these agencies there are particularities in the functions, tasks and organizational and operational powers. This article introduces the experiences and practices of the organization and operation of some models of the National Institute of Human Rights in the world and the value of reference to Vietnam in order to contribute to the clarification of independent institutions regarding human rights in accordance with the Paris Principles 1993.*

***Keywords:** National Human Rights Institutions, National Human Rights Institute, Human Rights.*

1. The necessity of establishing a National Human Rights Institution

Our Party and State have always affirmed that guaranteeing human rights is the goal and nature of the socialist regime. Therefore, for more than 70 years of building and completing the model of the State of the people, by the people and for the people, human rights, especially the right to live in independence, the right to seek happiness

and the right to freedom have always been of particular interest and have been achieved many great achievements.

In the context of the implementation of the XII Party Congress Documents , as well as the implementation of the 2013 Constitution, at present, the study of scientific and practical arguments to promote the formation of an independent National Human Rights Institution is very essential.

(*) The Department of International Cooperation, Ho Chi Minh National Academy of Politics.

The 2013 Constitution specifically emphasizes the protection and promotion of human rights as well as the protection of the Constitution.

More than 30 articles in Chapter II of the 2013 Constitution detail and specifically stipulate on human rights, basic rights and obligations of citizens. In particular, Article 119 (2) of Chapter XI affirms that the protection of the Constitution is a shared responsibility of all state agencies and all the people, and at the same time lays the foundation for the establishment of a mechanism of Constitution protection. This is also the highest legal basis for researching and promoting the formation of an independent institution to increase efficiency and effectiveness for the protection of the Constitution in general and human rights in particular. These include models of a National Human Rights Institutions, such as the National Human Rights Commission, Ombudsman, the National Human Rights Council and the National Institute of Human Rights.

Being an active and full member of regional and global human rights institutions, especially the United Nations Human Rights Council and the ASEAN Intergovernmental Commission on human rights necessarily demands Vietnam to soon build and establish a new independent institution in the guarantee of human rights. This is an objective requirement in the current

trend of international integration and development practice of the country in the current context.

It is worth noting that the establishment of the National Human Rights Institution must meet a number of international standards on national human rights mechanisms, compatible with regional and international trends. Through its internal and external activities, this agency can actively contribute to the propaganda activities on Vietnam's human rights achievements; as well as in cooperation and struggle on human rights.

Currently, more than 130 countries around the world have different models of a national human rights institution that reflect the characteristics of the Paris Principle; (including over 60 countries with the National Human Rights Commission model, 70 countries with the Ombudsman, more than 10 countries with the Human Rights Council and the National Institute of Human Rights). In Southeast Asia, in addition to the 5 countries that already have the National Human Rights Commissions, some other countries are also preparing to follow this trend. In addition, ASEAN countries are continuing to perfect existing mechanisms, especially the participation of non-governmental organizations, regional organizations to which Vietnam is a member, such as APEC, ASEM, ... all consider human rights a major concern, a major and

regular activity. The above situation requires that we set up a human rights institution capable of meeting foreign affairs.

The construction of the National Human Rights Institution reflects the characteristics of the Paris Principles and at the same time satisfies specific conditions of political practice, socio-economic development, awareness and legal culture of society in Vietnam. To do so, there should be a careful analysis based on the reference to the successful and compatible models with Vietnamese conditions. Consultation on the process of developing policies and laws, monitoring the implementation of human rights and being the focal point to coordinate the development of human rights action plans and programs, directly participating in the drafting process, submitting national reports on the implementation of international human rights conventions,... are the top criteria of a national human rights institution. The model of the National Human Rights Council or the National Human Rights Institute in some countries around the world basically meets these criteria.

Reality in Vietnam shows that, in order to better implement the protection of human rights, it is necessary to have a specialized agency on this issue. Such an agency should be organized based on international rules and practices, but must maintain the socialist orientation and leadership of the Party, the views of

the Party and State on human rights. In order to establish such an agency there must be a roadmap of step-by-step preparation of legal bases, personnel and operating conditions.

The establishment of the National Human Rights Institution, organized and operated under the Paris principles adopted by the United Nations in 1993 in Paris, is an urgent requirement in the context of Vietnam's deep and wide integration into international and regional mechanisms.

The comments and recommendations of the International Human Rights Conventions Committees as well as the United Nations Human Rights Council suggest that member states should consider establishing a national body that operates according to the Paris principles to strengthen the promotion and guarantee of human rights.

Vietnam has been being an active member in international and regional institutions, especially the United Nations and ASEAN. Vietnam is a member of ASEAN and a member of the ASEAN Intergovernmental Commission on human rights, the Intergovernmental Committee on the promotion and protection of women's and children's rights, and the ASEAN Committee on the protection of immigrants' rights,... At the two cycles of the UN Human Rights Council's Universal Periodic Review (UPR) on

the realization of human rights (to which all UN member states are obliged to report), Vietnam has received recommendations for the establishment of a national human rights institution.

The process of building and perfecting a Socialist Rule of Law State, respecting and ensuring human rights and citizenship, always sets out urgent requirements for institutional improvement, mechanisms to effectively ensure human rights. Innovation and international integration, together with the development of a market economy, present great opportunities but also pose challenges to ensuring and promoting human rights.

An essential requirement to promote the development of a National Human Rights Institution is to provide a scientific and practical basis for effectiveness and efficiency in the organization of the above national human rights bodies in the world and the ability to refer to Vietnam. Through research on organizational structure and operation of national human rights agencies in the world, it is possible to study and propose some suitable models for Vietnam.

2. Some models of National Institute of Human Rights in the world and reference values for Vietnam

2.1 National Institute of Human Rights: a model of Nordic and Western Europe

The model of the Nordic and Western Europe National Institute of Human Rights with the function and role of a National Human Rights Institution that adhere to the Paris Principles is quite common in many European countries, especially in Nordic. This model includes: Swedish Institute of Human Rights and Humanitarian Law, Norwegian Human Rights Center, Danish Institute for Human Rights, German Institute of Human Rights,... Institutions following the model of the National Institute of Human Rights are all founded on the Paris Principles, the main functions are education, disseminating and propaganda on human rights, supervising the implementation of international covenants and conventions on human rights, developing national plans and programs on human rights...

The Swedish Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) is one of the leading agencies with the function of consulting, research, education and international cooperation in research and education on human rights in the world. The Institute was established very early and can be considered as one of the oldest scientific centers in this field. Although biased towards a jurisprudence-based approach at postgraduate level (there are 3 joint programs with the Faculty of Law to grant master's degree in Human Rights Law, Human Rights

and Intellectual Property Law), the Institute still promotes an interdisciplinary approach especially at the high/graduate education level (in collaboration with the faculties of Politics, History, Society and Theology). Thereby shows the meaning and importance of the multi-disciplinary approach in the research and teaching of human rights¹. The Institute has published a huge documentary system on human rights law with many works by leading scholars from Nordic and all over the world.

The Danish Institute for Human Rights (DIHR), like RWI, has far-reaching influence in national, regional and global consultation on human rights policies; promote research and education on human rights around the world, especially in developing countries. DIHR was established in 1987 initially as the Center for Human Rights, based on the UN Paris Principles of the National Human Rights Body. The Institute is part of the Danish Center for International Studies and Human Rights, established under an act of Congress.

DIHR also has different features from RWI. First of all, DIHR does not give graduate and post-graduate education in human rights majors like RWI. Moreover, in the field of research, DIHR not only focuses on the jurisprudence approach to human rights, but also highlights a multidisciplinary

approach. Therefore, the Institute is comprised of scientists from various disciplines such as Law and the humanities and social sciences (such as Politics, International Relations, History, Anthropology and Religion). However, DIHR is particularly focused on promoting international research and education on human rights at an advanced and topic-specific level with specific audiences and on a global scale, such as access to justice, legal and state reform, access to information, human rights in criminal proceedings, civil society organizations, national human rights agencies,... Short and advanced courses of these topics have contributed significantly to promoting and raising awareness of rights among civil servants and law enforcement officers.

The Norwegian Center for Human Rights (NCHR) was established, similar to the DIHR, on the basis of the UN Paris Principles. This is a national and independent agency for human rights, as well as a national and international research center for human rights. The Center has many similarities with RWI in the scope of research and teaching human rights. As a scientific institution under the University of Oslo, NCHR has the same advantages as the RWI of Lund University. Therefore, the human rights education program of NCHR has been widely deployed at the post-graduate level, both master and doctorate degrees on human rights.

2.2. Reference values to Vietnam

National Human Rights Institutes have relatively similar functions and roles to a National Human Rights Commission or other National Human Rights Institutions (such as the Human Rights Council or Ombudsman), although limited roles in consulting, advising, policy and program making, as well as monitoring implementation.

In Vietnam, the advantage of establishing the National Human Rights Institute is to inherit the relatively early development history of human rights research and education institution compared to many countries in the region. The Institute of Human Rights, under the Ho Chi Minh National Academy of Politics, established in 1994, is a direct result of the comprehensive innovation in all aspects of social life and extensive international integration of Vietnam in the late 80s and early 90s of the last century. The Institute has the functions of conducting educational activities, disseminating and propagating human right for leading cadres, managers and civil servants of the entire Vietnamese political system, and at the same time has the function of researching and consulting the process of building and completing policies and laws on human rights for the Party and Government. In addition, the Institute also has the function of strengthening international cooperation, sharing knowledge and experiences in

implementing international human rights covenants and conventions and contributing to the drafting of national reports on implementations of international human rights conventions.

Under current conditions in Vietnam, it is necessary to consolidate the organization, structure, functions and activities of the Institute of Human Rights on the basis of merging a number of research, educational and policy consultation institutions on human rights. Operational regulations of the National Institute of Human Rights will be determined based on a Government Decree or Decision of the Prime Minister. The component structure of the National Institute of Human Rights will include its Advisory Council and its Directorate/Presidential board. The Advisory Council will be headed by a Minister or an equivalent Minister (in the case of a place located at the Academy, directly by the President of the Academy).

The Institute of Directorate / Leadership will consist of a Director (rank of Deputy Minister or Director General of General Department) and 3 Deputy Directors (rank of Director of Department or Deputy Director General of General Department).

The National Human Rights Institute will include: 1) Advisory Council; 2) Leadership Board; 3) Secretariat; 4) Specialized Departments / Divisions; 5) Branches in 3 regions (North, Central and South).

Specialized Departments / Divisions will be formed based on the main functions of a National Institute according to a number of features of the Paris Principles, including: Research Department, Education Department, Policy Advisory Department, Department of Plan - Program building, Information Department, ...

The Institute will include political and professional – social activists, prestigious scholars in the fields of political science, law, administration and management, philosophy, religion,... and must undertake representation structure of gender representation, ethnic composition, region, field and area of expertise in leadership, advisory councils and specialized departments / divisions.

Appointment and selection regime for leaders and members of the Institute should have a term of 5 years.

3. Conclusion

Studying the Paris Principles and the practices of formation and development of national human rights protection mechanisms, some comments can be drawn as follows:

First, the model of the National Institute of Human Rights acts as an independent advisory body under the Government, in the current conditions in Vietnam is completely feasible and suitable for development and political, historical, social and cultural specialization and legal awareness and

consciousness of the people and the whole society.

Second, the National Human Rights Institution modeled on the Institute of Human Rights, if established, still fully complies with the Paris Principles that prescribe a national human rights body (such as the Danish, Swedish, Norwegian National Institute of Human Rights...) with the main functions of consulting, formulating and perfecting policies and laws on human rights, developing programs, action plans and conducting human rights education, dissemination and propagation, participation in monitoring and implementation of international human rights conventions,...

The National Human Rights Institution (according to the model of the National Institute of Human Rights) in the current Vietnamese context, first of all, it is necessary to emphasize the function of supervising, advising the Party and Government agencies in monitoring the implementation of international human rights conventions, educating, disseminating and propagating to raise human rights awareness for rights exercisers and rights beneficiaries. At the same time, attention should be paid to the function of developing national action plans and programs on human rights as well as international cooperation and exchange of experiences in the field of human rights.

Third, the model of the National Institute of Human Rights is also a highly feasible and realistic choice in the current context of Vietnam. This model meets the function of consulting, advising, building national policies, programs and action plans on research, education, dissemination, propaganda, national reporting, propose recommendations, participate in law building and advise on policies related to human rights. Furthermore, this model ensures a broad representation of component structure based on characteristics of the Vietnamese political system.

Fourth, clearly define the functions, powers, roles and duties of the National Human Rights Institution according to the model of the National Institute of Human Rights, as well as for its members. In particular, it is necessary to emphasize the ethical qualities, qualifications and experience of members, highly representative of the ethnic composition, religion, profession, region,...

Fifth, for the model of the National Institute of Human Rights, which will be established on the basis of perfecting the functions and tasks of a number of human rights research and education institutes nationwide, with representative offices / branches in a number of localities and regions. For example, the model of the Institute of Human Rights under the Ho Chi Minh National

Academy of Politics is considered as one of the optimal options for upgrading to the National Institute of Human Rights according to the organizational model of the National Human Rights Institutes in Nordic countries and around the world.

The National Institute of Human Rights will not only be a core, nuclear agency, acting as a human rights policy adviser for the Party and Government, helping to organize the implementation of national action plans and programs on human rights, but also a scientific agency, educating and training cadres, managers, leaders, especially human rights law enforcement. This will be an important prerequisite for the establishment of the National Human Rights Commission or National Human Rights Council in the future in Vietnam in the face of the country's development practice and the need for international integration in the context of present scene.■

References:

(1) Pls. see <http://www.rwi.lu.se/institute/aboutrwi.shtml> (accessed 01.08.16).