#WhatsHappeningInThailand

JOINT OPEN LETTER

on The Draft Act on the Operations of Not-for-Profit Organizations

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27 December 2021

Cabinet Ministers of the Royal Thai Government
Government House
1 Phitsanulok Road Dusit
Bangkok, Thailand

Cc: Council of State
All members of the National Assembly of Thailand
National Human Rights Commission of Thailand

Re: The Draft Act on the Operations of Not-for-Profit Organizations

Dear Ministers

We, the undersigned Thai and international organizations, write to express our deep concern regarding the Draft Act on the Operations of Not-for Profit Organizations B.E... ('Draft Act') dated 21 December 2021. We are civil society groups working on a wide range of social, economic, environmental and human rights issues and collectively our activities assist millions of people in Thailand.

Whilst each of our organizations are very different from each other, we are united in our alarm and opposition to the Draft Act which contains numerous provisions that would subject not-for- profit organizations (NPOs) and its members to excessively restrictive measures curtailing their rights to freedom of expression, association, peaceful assembly and other human rights, including facing arbitrary interference with the right to privacy.

Whilst many aspects of the Draft Act are concerning, in particular, Sections 19, 20, 21, 25, 26 and 27 are extremely problematic.

Under Sections 19 and 21, several of the proposed requirements for information disclosure do not specify the purpose, which could enable the exercise of arbitrary power. Existing legislation (including the Civil and Commercial Code, Revenue Code, regulations on foreign private organizations) already requires a particular level of transparency and relevant authorities have the power to investigate when necessary.

Section 20 is overly broad, vague and drafted so that legitimate activities by most not-profit organizations in Thailand could, to some degree, be interpreted as falling under its prohibited categories. In its current form, this section could allow for arbitrary interpretation and implementation. In a country of 70 million people, any of these provisions could easily be applied arbitrarily to severely restrict freedom of expression, association, peaceful assembly, and other human rights.

Section 20 states that “a Not-for-Profit Organization must not operate in the following manner: (1) Affect the government’s security, including the government’s economic security, or relations between countries.
(2) Affect public order, or people’s good morals, or cause divisions within society.
(3) Affect public interest, including public safety.
(4) Act in violation of the law.
(5) Act to infringe on the rights and liberties of other persons, or affect the happy, normal existence of other persons.”

The list of prohibitions in this section is so broad that it could likely capture activity by NPOs working on most issues of public interest, or bilateral and multilateral development initiatives involving civil society (1).

Additionally, Section 20 does not respect the principle of legality in international law, which requires that laws be drafted in a way that makes their consequences foreseeable so that organizations and people can regulate their behaviour in accordance with them.

Section 21 curtails certain privacy rights that NPOs are entitled to. Requirements around foreign funding are overbroad and violate the right to freedom of association, which embraces the ability to seek and secure, both domestic and international (2).

Sections 25, 26 and 27 propose punishments which are overly punitive, disproportionate and likely to discourage individuals and groups from being active participants in Thailand’s civil society.

This Act, if passed with its currently excessively broad provisions, could be easily misused and abused to significantly restrict the rights to freedom of expression, association, peaceful assembly and other human rights. Not only could it have a significant impact on a wide range of grassroots, national and international civil society groups in Thailand, but such an Act threatens Thailand’s status as a hub for local and international not-for-profit organizations working on diverse issues of public interest in Southeast Asia.

Urging the Government of Thailand to support civil society and to uphold human rights is consistent with the constitutional requirement to protect fundamental rights. Additionally, this is in line with Thailand’s National Strategy on Public Sector Rebalancing and Development. While we recognize that the Royal Thai Government has a duty to protect public order and national security, authorities must do so in a manner that is in accordance with international human rights law, and that is proportionate, necessary and fulfills the government’s obligations to ensure and facilitate respect for human rights.

We note that the United Nations Charter recognizes the importance of international cooperation to promote “universal respect for, and observance of, human rights and fundamental freedoms for all”.

In light of the above grave concerns, we consider the Draft Act inconsistent with Thailand’s constitutional requirement to protect fundamental rights and its obligations under international

1 "Summary analysis, Thailand draft NPO bill”, International Center for Not-for-Profit Law, December 23, 2021.
2 Ibid.

human rights law and standards. We call upon the Thai government to withdraw the Draft Act immediately and reaffirm its constitutional and international obligations to measurably protect, promote and fulfill the rights to freedom of expression, association, peaceful assembly and other human rights.

Additionally, the undersigned Thai organizations call on all members of the National Assembly of Thailand and the National Human Rights Commission of Thailand to support a vibrant, diverse and independent civil society and oppose the Draft Act in its current form.

Finally, we urge the Thai Government to ensure a fully transparent and constructive consultative process of an adequate time frame that meaningfully involves the general public, not-for-profit organizations and other relevant stakeholders, and results in an outcome that benefits, rather than harms, people in Thailand and this region.

Thank you for your attention to the issues and recommendations expressed in this letter. We remain available to discuss this matter further with the Royal Thai Government and would welcome further opportunities to support the government in meeting its constitutional and international obligations.

NOTE: A recent statement of concern by a coalition of Thai NGOs was issued on 15 December 2021 and a joint letter responding to an earlier Draft Act from a group of international NGOs was released on 31 March 2021. The International Centre for Not-for-profit Law published analysis of the current Draft Act on 23 December 2021 - for more information or to receive a copy,
please email asia@icnl.org.

Sincerely,

1. Amnesty International
2. APCOM Foundation มูลนิธิแอ็พคอม
3. Article 19
4. Asian Forum for Human Rights and Development (FORUM-ASIA)
5. Asian Network for Free Elections (ANFREL) มูลนิธิอันเฟรล
6. Campaign for Popular Democracy (CPD)
7. Civicnet Foundation มูลนิธิการเรียนรู้และพัฒนาประชาสังคม
8. CIVICUS: World Alliance for Citizen Participation
9. Community Resource Centre Foundation มูลนิธิศูนย์ข้อมูลชุมชน
10. Cross Cultural Foundation มูลนิธิผสานวัฒนธรรม
11. ENLAWTHAI Foundation มูลนิธินิติธรรมสิ่งแวดล้อม
12. Feminist's Liberation Front เฟมินิสต์ปลดแอก
13. Foundation for Labor and Employment Promotion มูลนิธิเพื่อการพัฒนาแรงงานและอาชีพ
14. Green South Foundation มูลนิธิภาคใต้สีเขียว
15. GreenpeaceThailand กรีนพีซ ประเทศไทย
16. Home Net Thailand Association สมาคมเครือข่ายแรงงานนอกระบบ (ประเทศไทย)
17. Human Rights and Development Foundation (HRDF) มูลนิธิเพื่อสิทธิมนุษยชนและการพัฒนา (มสพ)

18.Human Rights Lawyers Association สมาคมนักกฎหมายสิทธิมนุษยชน
19. Law Long Beach กลุ่มนักกฎหมายอาสาเพื่อสิทธิมนุษยชน สิ่งแวดล้อม และประชาธิปไตย
20. Lawyers' Rights Watch Canada
21.Manushya Foundation มูลนิธิมนุษยะ
22.Migrant Working Group เครือข่ายองค์กรด้านประชากรข้ามชาติ
23.Network of Indigenous Peoples in Thailand เครือข่ายชนเผ่าพื้นเมืองแห่งประเทศไทย
24.NGO Coordinating Committee on Development (NGOCOD) คณะกรรมการประสานงานองค์กรพัฒนาเอกชน(กป.อพช.)
25.Non-Binary Thailand กลุ่มนอนไบนารีแห่งประเทศไทย
26.Peace and Culture Foundation มูลนิธิยุติธรรมเพื่อสันติภาพ
27.Rainbow Sky Association of Thailand สมาคมฟ้าสีรุ้งแห่งประเทศไทย
28.Social Democracy Think Tank - Thailand
29.Sustainable Development Foundation
30.TEA Group กลุ่มโรงน้ำชา
31.Thai Allied Committee with Desegregated Burma Foundation มูลนิธิร่วมมิตรไทยพม่า
32.Thai Volunteer Service Foundation มูลนิธิอาสาสมัครเพื่อสังคม
33.The Northeastern Women's Network เครือข่ายผู้หญิงอีสาน
34.The Relative Committee of May 1992 Heroes
35.The Southern Feminist's Liberation - Thailand เฟมินิสต์ปลดแอก ณ ภาคใต้
36. WeMove ขบวนผู้หญิงปฏิรูปประเทศไทย
37.เครือข่ายองค์กรงดเหล้า มูลนิธิวิถีสุข
38.โครงการปฏิรูปการเกษตรและพัฒนาชนบท จังหวัดพิจิตร
39.เครือข่ายเกษตรกรรมทางเลือกและการพัฒนาที่ยั่งยืน จังหวัดพิจิตร
40.เครือข่ายประชาชนเพื่อสิทธิชุมชนและการอนุรักษ์ (คสอ.)
41.เครือข่ายทรัพยากร ดิน น้ำ ป่า ภาคเหนือตอนล่าง
42.เครือข่ายทรัพยากร ดิน น้ำ ป่า จังหวัดกำแพงเพชร
43.เครือข่ายประชาชนติดตามแผนพัฒนาจังหวัดสตูล
44.สมาคมสภาคนพิการทุกประเภทแห่งประเทศไทย
45.นางอังคณา นีละไพจิตร (Mrs Angkhana Neelapaijit)
46.นายวันชัย พุทธทอง (Mr Wanchai Phutthong)
47.น.ส.สุธาวัลย์ บัวพันธ์ (Miss Suthawan Buapan)

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