

Fortify Rights



# Submission of Concerns Regarding the Draft Not-For-Profit Organizations Act

investigate  
engage  
strengthen

mar  
2022



# Submission of Concerns Regarding the Draft Not-For-Profit Organizations Act

March 23, 2022

Khun Anukul Peedkaew, Director General  
Department of Social Development and Welfare  
Ministry of Social Development and Human Security

1034 Krung Kasem Road  
Klong Maha Nak, Pom Prap Sattru Phai District  
Bangkok Thailand 10100

Dear Mr. Anukul Peedkaew,

In response to your Ministry's request for input on the Draft Act on the Operation of Not-for-Profit Organizations B.E...., Fortify Rights appreciates the opportunity to detail concerns regarding the Act's failure to meet international human rights standards. Given these concerns, we respectfully urge the Thai Cabinet to drop the Draft Act and reaffirm its commitment to promote human rights in Thailand.

Our concern with the Draft Act largely stems from the overly broad and vague restrictions on the operations of not-for-profit organizations (NPOs) contained in the Draft Act that not only contravene international human rights law but also threaten to stifle the critical contributions of NPOs to Thai society.

Within the preamble, the Draft Act acknowledges its provisions "may restrict rights and freedoms of individuals," stating that these restrictions are necessary "to ensure the operations of NPOs [Not-for Profit Organizations] in the Kingdom are done with openness, transparency, serving the public interest, and also upholding public order or good morals of the people." However, under international law, certain rights and freedoms impacted by this act—such as rights to freedom of expression, association, and peaceful assembly—may be restricted only when provided by law, strictly necessary, and proportionate for a legitimate purpose. These conditions are not met under the Draft Act. For example:

- Section 3 of the Draft Act provides a far-reaching definition of a "not-for-profit organization." Under this definition, any group or gathering or persons could technically fall under the provisions of this act and face problematic restrictions on their rights.

- Section 19 requires disclosure of information about the operations of the NPO, including “implementation methods, sources of funding, and names of persons involved with its operations.” The lack of clarity about how this information may be used or shared raises concern regarding potential infringements on the right to privacy and other abuses. This provision may pose potentially significant risks to individuals and organizations involved in highly sensitive work aimed at benefiting and protecting Thai society, including the work of human rights defenders.

While the draft law provides “transparency and to keep the public informed” as the rationale for the disclosures required under Section 19, these goals are already achieved and in a more responsible manner through existing laws and regulations, including the Ministerial Regulations of Regulations, Operation and Registration of the Foundation B.E. 2545 under the Civil and Commercial Code, and the Community Organization Council Act, B.E. 2551.

- Section 20 prohibits NPOs from operating in a manner that affects “government security,” “public order, or people’s good morals, or cause divisions within society,” “public interest,” and acts “in violation of the law,” or “to infringe on the rights and liberties of other persons, or affect the happy, normal existence of other persons.” These overly broad and vaguely worded provisions fail to serve a legitimate purpose as required under international law and may result in unlawful and arbitrary restrictions on rights protected under international law.
- Sections 21 and 22 relate to the funding sources of NPOs, with Section 21 providing a list of obligations and restrictions for NPOs that receive “funding or donations from foreign sources”—including information disclosure requirements as well as banking and use restrictions—and Section 22 providing annual reporting requirements for NPOs receiving “public or foreign funding.” These requirements and restrictions are unduly burdensome and create arbitrary and unnecessary obstacles that will complicate the ability of NPOs to secure and maintain vital resources needed to effectively operate for the benefit of Thai society. These provisions are also redundant with existing laws aimed at preventing and combating financial crimes, such as the Anti-Money Laundering Act B.E. 2542 and the Counter-Terrorism and Proliferation of Weapon of Mass Destruction Financing Act B.E. 2559.

The above provisions are made more concerning by the consequences for failing to comply with the Act’s overly broad requirements. For example, under Sections 19, 20, 21, and 22, NPOs deemed to be in noncompliance may be ordered “to halt its operations” after receiving a warning. Sections 25, 26, and 27 provide further penalties, including fines of up to 500,000 Thai Baht (US\$15,151) with additional daily fines of up to 10,000 Thai Baht (US\$303), for NPOs and “the person responsible for the operations of the NPO” that fail to cease operations in accordance with a government order.

As a signatory to the Universal Declaration of Human Rights (UDHR), a state party to the International Covenant on Civil and Political Rights (ICCPR) and other international instruments, and in view of the principles provided in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Thailand has made

certain commitments to uphold basic rights, including rights to freedom of expression, peaceful assembly, association. Thailand has reiterated these commitments more recently, including through the National Action Plan on Business and Human Rights. However, the Draft Act goes against these commitments and should be struck down by the Thai Cabinet.

Providing further support for the Thai Cabinet to drop the Draft Act, Thailand's current laws and regulation provide sufficient oversight and governance over the operations of NPOs, making the Draft Act unnecessary. For example, laws relevant to the operations of NPOs in Thailand include: the Community Organization Council Act B.E.2551 and the Ministerial Regulations of Regulations, Operation and Registration of the Foundation B.E. 2545 under section 136 of the Civil and Commercial Code.

We appreciate the opportunity to share these concerns about the Draft Act and your Ministry's role in facilitating the public consultation process to communicate on to the relevant parties in the Royal Thai Government. We also would welcome any opportunity to assist and support the Royal Thai Government in meeting its commitments to promote and protect human rights. Thank you for your attention to this matter.

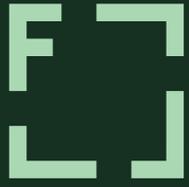
Sincerely,



Amy Smith  
Executive Director



Matthew Smith  
Chief Executive Officer



# FORTIFY RIGHTS

investigate  
engage  
strengthen

[fortifyrights.org](https://fortifyrights.org)

[fortify.rights@fortifyrights.org](mailto:fortify.rights@fortifyrights.org)

Twitter: @FortifyRights

Facebook: fortifyrights