

Recommendations regarding the draft bill on the Operation of Not-for-Profit Organizations
(as per NHRCT letter to the Cabinet No. 0008/104 dated 15 December 2021)

Background

The Cabinet, in principle, approved the draft bill on the Operation of Not-for-Profit Organization B.E.... proposed by the Office of the Council of State. Subsequently, the Cabinet released principles related to money laundering as proposed by the Anti-Money Laundering Office. The Council of State adopted these principles into the draft bill for further consideration.

The National Human Rights Commission received a complaint alleging that the draft bill has content limiting freedom of operation of private organizations which would be in contrary to or inconsistent with Section 26, Section 36, Section 40 and Section 42 of the Constitution of the Kingdom of Thailand. Consequently, the National Human Rights Commission gathered and studied facts and relevant laws in order to conduct a thorough analysis for the formulation of recommendations to amend the draft bill to be in accordance with the human rights principles.

Recommendations

The National Human Rights Commission has considered, in its duties and powers, that the implementation of government measures against not for profit organizations should focus on promotion and development rather than regulatory compliance in order to conform with the Constitution of the Kingdom of Thailand, Section 42, Section 43, Section 78 and Section 257 (3) and in accordance with the International Covenant on Civil and Political Rights (ICCPR), Article 22 and Article 25 of the International Covenant on Economic and Social Rights; and Culture (ICESCR) Article 8, Sustainable Development Goals (SDGs), Goal 17 and the National Strategy Opportunity Creation and Social Equality Article 4.3 Social Empowerment Sub clause 4.3.1 and Sub clause 4.3.3. In addition, the draft bill on the Operation of Not-for-Profit Organizations B.E.... has the intent to control and regulate the operations of not for profit organizations that may cause problems and obstacles in converging activities for public benefit and affect collaboration with the government in the development of the country. This shall include the repetition of rules, which are already available under other existing rules, may be too much of a law and create

burden on the people. In addition, the provisions of the draft law affect the rights and freedoms of individuals in many respects, whether it is the freedom to unite in associations, cooperatives, unions, organizations, communities or other groups. Moreover, the principles of equality, non-discrimination, right to privacy, freedom of communication, and the determination of penalties that affect the rights and liberties of life and body and are not in accordance with the principle of proportionality as proposed by the Anti-Money Laundering Office. The proposals should have been formed from existing laws such as the Anti-Money Laundering Act of 1999 and the Anti-Money Laundering Act, B.E. 2016.

The National Human Rights Commission, therefore, deems it appropriate with the given duties and power to make recommendations for the amendment of the draft law to comply with the human rights principles to the Council of Ministers and the Council of State, as follows:

1) It should promote and support the principle that emphasizes on the integration of the people with the objective of carrying out activities for the public benefit in order to help the people to gain opportunity, equality, fairness, and good quality of life and develop a sustainable society. It should further promote participation, knowledge and understanding of the democratic form of government with the King as Head of State. Additionally, it should promote participation in public policy processes, strengthen civil society organizations and promote participation and partnership in national development jointly with the government in order to stimulate sustainable development in accordance with the Constitution of the Kingdom of Thailand and the Sustainable Development Goals.

2) The principles and rationale aimed at regulating and limiting freedoms in associations, cooperatives, unions, organizations, communities or other groups that affect independent decision-making of non-profit activities should be reviewed. Such bodies must be able to carry out non-profit activities or profit-sharing activities without being compelled to notify or register. Failure to notify or register shall not be a ground for the organization to withdraw the organization or criminal prosecution but it can be a reason that affects the receiving or not

receiving government funding. In addition, there must be a comprehensive and systematic hearing of opinions of all parties concerned. The impact of the law will also need to be analyzed.

3) There shall be a clear definition of the term “not for profit organization” and a scope of law enforcement that applies to such Organizations in order to avoid affecting the freedom of association and not to impede the activities of non-profit or profit-sharing organizations that come in various forms.

4) There should be consideration of examining existing laws or regulations that established criteria, procedures and conditions governing, supervising and examining not for profit organizations in order to avoid repetition and creating unnecessary burdens. In addition, the rules for discretion should be clearly defined by not allowing government officials to exercise their powers arbitrarily or discriminately.

5) The provisions that impose criminal penalties in the event of unregistered or registered action should be repealed to only be applied for uninformed or unregistered acts that result in criminal penalties. Criminal penalties should be imposed only on serious offenses.

6) Non-profit sharing organizations should be regulated and supervised at the risk of harming state security or illegal activities, especially without formality. The criteria should be clearly defined so that it does not affect other not for profit organizations that have good intentions and contribute to the real development of the country by reviewing existing laws to be in line with the FATF Recommendations Article 8 of the Financial Action Task Force (FATF).

In this regard, the National Human Rights Commission has assigned the Office of the National Human Rights Commission to inform the Office of the Council of State for acknowledgment of recommendations for amendment to the draft law to comply with the human rights principles.