

The Honorable Antony J. Blinken

Secretary of State

U.S. Department of State

JOINT LETTER: PROPOSED THAILAND LAW THREATENS CIVIL
SOCIETY ORGANIZATIONS COMBATting TRAFFICKING

CC:

June 17, 2021

Dr. Kari Johnstone, Acting Director, Office
to Monitor and Combat Trafficking in
Persons, U.S. Department of State

Lisa Peterson, Senior Official for Civilian
Security, Democracy, and Human Rights
and Acting Assistant Secretary, Bureau of
Democracy, Human Rights, and Labor, U.S.
Department of State

Samantha Power, Administrator, U.S.
Agency for International Development
(USAID)

Thea Lee, Deputy Undersecretary for
International Affairs, Bureau of
International Labor Affairs

**Re: Proposed Thailand law threatens civil society organizations
combatting human trafficking**

Dear Secretary Blinken:

We, the undersigned workers' rights and human rights organizations, are writing to express our concerns regarding Thailand's Draft Act on the Operations of Not-for-Profit Organizations, which the Thai Cabinet approved in principle in February 2021.¹ If enacted, this Council of State drafted law would pose serious threats to the functioning of Thai civil society as well as have a deeply damaging impact on both donors and international non-governmental organizations (NGOs) working to address human trafficking and labor rights in Thailand. For this reason, we urge the U.S. State Department, and in particular the Office to Monitor and Combat Trafficking in Persons (TIP Office), to strongly advocate for the Thai government to withdraw this bill.

The provisions in the bill represent clear violations of the right to freedom of association, enshrined in the International Covenant on Civil and Political Rights, ratified by Thailand in 1996. The bill sets out an extremely broad definition of non-profit organizations, which opens the door to arbitrary application of the law against groups that are critical of the government.² It grants the Ministry of Interior discretion to deny the registration of these organizations on arbitrary grounds, to control the activities of registered organizations, and to restrict activities funded by foreign persons, organizations and donors. As written, the draft law criminalizes the right to freedom of association, as it sets out criminal penalties for undertaking activities

¹ "Thailand's NGO law: Uprooting foreign influence or gagging govt critics?," Thai PBS World, April 21, 2021, <https://www.thaipbsworld.com/thailands-ngo-law-uprooting-foreign-influence-or-gagging-govt-critics/>.

² The draft law defines a not-for-profit organization as 'a group of individuals that are not established by any specific law but implement activities that do not have the purpose of seeking income or profits to be shared'. This definition could implicate nearly any non-business group, no matter how informal or unorganized, including community organizations, protest movements, social clubs, workers' groups, and short-lived associations.

Signatories:

1. ALTSEAN-BURMA
2. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
3. Article 19
4. Asia Democracy Network (ADN)
5. Asylum Access Thailand
6. Be Slavery Free
7. Business & Human Rights Resource Centre (BHRRRC)
8. Center for Alliance of Labor and Human Rights (CENTRAL)
9. Cross Cultural Foundation (CRCF)
10. Environmental Justice Foundation
11. Ethical Trading Initiative
12. FinnWatch
13. FishWise
14. Fortify Rights
15. Foundation for Education and Development (FED)
16. Foundation for Rural Youth (FRY)
17. Freedom Fund
18. Freedom United
19. Global Labor Justice – International Labor Rights Forum (GLJ-ILRF)
20. Greenpeace Southeast Asia
21. Human Rights and Development Foundation (HRDF)
22. Human Rights Watch
23. Human Trafficking Legal Center
24. Humanity United Action
25. Institute for Human Rights and Business (IHRB)
26. International Commission of Jurists (ICJ)
27. International Trade Union Confederation (ITUC)
28. International Transport Workers' Confederation (ITF)
29. Issara Institute
30. Lawyers' Rights Watch Canada
31. Manushya Foundation
32. MAP Foundation
33. Migrant Working Group
34. Migrant Worker Rights Network (MWRN)
35. People's Empowerment Foundation (PEF)
36. Serve the People Association, Taoyuan (SPA)
37. State Enterprise Workers' Relations Confederation (SERC)
38. The Thai CSO Coalition for Ethical and Sustainable Seafood
39. Thai Labour Solidarity Committee (TLSC)
40. Thai Volunteer Service (TVS)
41. Verité

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without prior legal registration – specifically, five years' imprisonment and large fines.³

In a March 26, 2021 letter to the Thai government, three United Nations Special Rapporteurs highlighted their concerns about the draft law and provisions that “suggest that the authorities insufficiently acknowledge the expertise and support provided by [civil society] organizations, and even consider them as a potential threat to the society.” The letter warned that the draft law “does not comply with States’ obligation to ‘create and maintain a safe and enabling environment in which civil society and human rights defenders can operate free from hindrance and insecurity.’”⁴ Indeed, a strong, functioning and free civil society is an essential part of a democratic society and is crucial for the TIP Office to receive accurate, timely and evidenced information about the trafficking situation in any given geography.

Importance of civil society for countering human trafficking and supporting survivors

Expanding arbitrary government controls over civil society organizations will seriously hamper their operations, prompt self-censorship, and curtail whistle-blowing on corrupt officials who could retaliate against groups accusing them of either direct involvement or ignoring human trafficking. By effectively placing Thai civil society under the control of government officials, the draft law would have a devastating impact on the country's already deficient efforts at combatting human trafficking.

³ Several NGO submissions to Thailand's Council of State provide detailed analysis of the bill, including those prepared by [Article 19](#), the [International Commission of Jurists \(ICJ\)](#) and [Human Rights Watch](#).

⁴ “Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders,” OL THA/ 2/2021, March 26, 2021.

As noted by three UN Special Rapporteurs in the March 26, 2021 letter, civil society plays an important role in curtailing human trafficking and in undertaking activities that support trafficking prevention and support for survivors. This role includes supporting people belonging to minorities and marginalized groups, supporting crime prevention, promoting corporate social responsibility and accountability, conducting research, exposing abuses, and empowering vulnerable groups, including women, youth, migrant workers, stateless persons, and others.⁵

Civil society organizations in Thailand support the government's inter-agency teams in locating and identifying trafficking victims nationwide,⁶ establish and run primary and secondary shelters, and ensure vulnerable groups are aware of prevention and protection activities.⁷ Civil society organizations have also played a crucial role in identifying legal and policy gaps contributing to human trafficking and forced labor, making concrete recommendations for reforms, and drawing international attention to these issues. Many of the populations most vulnerable to human trafficking are beyond the government's reach, such as undocumented migrant workers who fear law enforcement officials, making NGOs and community-based organizations critical to reach those populations. Furthermore, many migrant worker organizations in Thailand are unregistered, and would face serious, and likely insurmountable, challenges in registering and complying with the onerous reporting program and financial reporting requirements set out in the draft law.⁸

Civil society groups were critical proponents of efforts to end the egregious exploitation of Burmese, Khmer and Lao migrant workers on Thai fishing boats, seafood factories, and other parts of the Thai economy where they face exploitation and abuse.⁹ Human trafficking and egregious rights abuses, including murders at sea, on Thai fishing vessels were primary factors leading to Thailand being downgraded to Tier 3 in the 2014 Trafficking in Persons Report, and debt bondage and forced labor remain critical areas of concern in the fishing fleets.¹⁰ These

⁵ "Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders," OL THA/ 2/2021, March 26, 2021.

⁶ Paul Buckley and Ubonwan Boonrattanasamai, "Trafficking in Persons in Thailand," *Thailand Migration Report 2019*, Edited by Benjamin Harkins, United Nations Thematic Working Group on Migration in Thailand, 2019, <https://thailand.iom.int/thailand-migration-report-2019-0>, p. 159.

⁷ Courtland Robinson, Charlie Thame and Casey Branchini, "Anti-Human Trafficking in Thailand: a Stakeholder Analysis of Thai Government Efforts, the US TIP Report and Rankings, and Recommendations for Action," Johns Hopkins, https://www.academia.edu/27488198/Anti_Human_Trafficking_in_Thailand_a_Stakeholder_Analysis_of_Thai_Government_Efforts_the_US_TIP_Report_and_Rankings_and_Recommendations_for_Action, p. ix.

⁸ Under Thai law, the board members of an NGO/foundation must be Thai nationals and there are financial and administrative requirements, all of which make it nearly impossible for migrant workers to register an organization independently.

⁹ Civil society organizations were some of the first to receive complaints of fishermen trafficked in Indonesian waters and they assisted with the rescue operations and provided long-term shelter for victims.

¹⁰ "Endline research findings on fishers and seafood workers in Thailand," Ship to Shore Rights, ILO, March 10, 2020, https://www.ilo.org/asia/media-centre/news/WCMS_737990/lang--en/index.htm

migrant workers typically approach NGOs and migrant worker associations for assistance because they do not trust Thai government officials to protect them, are not fluent in Thai, and believe NGOs' support is critical for any hope for justice through the system.¹¹ Many Thai NGOs currently play an important role in bridging gaps in access to justice for migrants by reporting labor abuses and crimes into official government mechanisms¹² and providing legal assistance, translation and representation to migrant workers, particularly women, in desperate situations facing human rights and labor rights abuses.¹³

NGOs also play a critical role in softening the impact of discriminatory government laws and regulations against migrant workers and their families, some of which place migrants in vulnerable situations where they are susceptible to human trafficking.¹⁴ Migrants already face severe limits in their rights to organize to protect themselves because of oppressive restrictions on their rights to freedom of association and collective bargaining.¹⁵ Civil society groups have stepped up to facilitate the establishment of many registered and unregistered migrant worker organizations, worker centers, legal aid organizations and other service providers which represent these workers in the workplace and in wider social, political and cultural spaces. These organizations have worked to improve working conditions and take action against employers who use deceptive, coercive and exploitative conditions, with notable examples in the seafood, fishing and garment sectors.

Key concerns regarding the impact of the law

The provisions in the Draft Act on the Operations of Not-for-Profit Organizations threaten to stifle civil society efforts to combat trafficking in several ways. These include:

¹¹ "Access Unknown: Access to Justice from the Perspectives of Cambodian Migrant Workers in Thailand, Global Alliance Against Traffic in Women," 2017, <https://www.gaatw.org/resources/publications/918-access-unknown-access-to-justice-from-the-perspectives-of-cambodian-migrant-workers-in-thailand>; see also Benjamin Harkins and Meri Åhlberg, "Access to Justice for Migrant Workers in South-East Asia, ILO, 2017, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_565877.pdf; see also "Ensuring migrant workers access to justice: An assessment of Thailand's Migrant Workers Assistance Centers," ILO, 2020, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_762346.pdf

¹² "Ensuring migrant workers access to justice: An assessment of Thailand's Migrant Workers Assistance Centers," ILO, 2020, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_762346.pdf.

¹³ Benjamin Harkins and Meri Åhlberg, "Access to Justice for Migrant Workers in South-East Asia," ILO, 2017, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_565877.pdf, p. 23.

¹⁴ "Migrants, CSOs and the battle for labour rights in Thailand," Asian Correspondent, January 11, 2016, <http://apmigration.ilo.org/news/migrants-csos-and-the-battle-for-labour-rights-in-thailand>

¹⁵ Thai law affords the right to establish or lead a labor union to Thai nationals by birth only. This discrimination in the law prevents migrant-dominated labor sectors and workplaces from organizing and having official representation; see "Time for a Sea Change: Why union rights for migrant workers are needed to prevent forced labor in the Thai seafood industry, International Labor Rights Forum, March 2020, <https://laborrights.org/publications/time-sea-change-why-union-rights-migrant-workers-are-needed-prevent-forced-labor-thai>

1. **Broad discretion to arbitrarily deny registration:** Civil society organizations that approach human trafficking differently from the Thai government, or express critical views of the government's handling of human trafficking policies, issues and cases, could be denied registration in an arbitrary fashion without the right to administrative appeal and could be forced to work illegally under the new law or to close down operations. Any challenge of registration revocation made to an Administrative Court would require the NGO to remain shut down during the entire appeal process, which could take years.
2. **Criminal penalties:** Civil society groups that continue their anti-trafficking activities in an unregistered status would face criminal charges that include up to five years' imprisonment and a fine of 100,000 Baht (US \$3,225). Migrant worker groups, particularly those that are unregistered, would be very reluctant to take such risks to operate for fear of prosecution, imprisonment, and finally, deportation. Migrant workers frequently have debts, based in part on the financial sacrifices they make to come to Thailand, and may be reluctant to jeopardize their ability to work and pay them off through activism that could get them arrested and prosecuted. This is particularly relevant to migrants from Myanmar, given the political situation there.
3. **Foreign funding restrictions:** According to the draft law, non-profit organizations would be required to seek prior approval from the Minister of Interior for activity supported by foreign funding. This provision is a deliberate attempt to monitor, control and restrict NGO activities that receive foreign funding and, in practice, would make it almost impossible for foreign support to continue for civil society activities that the Thai government dislikes. Many Thai NGOs could face being driven out of operation entirely, especially those like anti-trafficking groups that reveal corruption and malfeasance that the government would prefer remains hidden. There are three other reasons why such a restriction is problematic for anti-trafficking work. First, as local anti-trafficking organizations typically rely on foreign funding, the financial restrictions could negatively impact their outreach and prevention work or ability to respond to trafficking cases in real time. This is similarly problematic if the government is unable to process and register these organizations in a timely manner. Second, this approach suggests a reluctance for any additional or ongoing international monitoring on labor practices and trafficking issues in industries with international supply chains – sectors where trafficking violations are often found and where most anti-trafficking work takes place. Foreign NGOs, including the signatories of this letter, are concerned that they would be prevented by the Thai government from being allowed to aid Thai NGOs monitoring supply chains and providing information to consumers in buyer countries. Third, the restrictions on foreign funding for anti-trafficking projects on Thailand would also impact regional programs based out of the country, which currently serves as a hub for crucial regionally based, anti-trafficking and related human rights programming work.

4. **Intrusive supervisory powers:** The bill permits the authorities to enter the offices of not-for-profit organizations for inspection and to obtain electronic communications, which could be used for intimidation. This also threatens to violate the privacy protections of trafficking victims or their families, as they may appear in confidential files kept by the organizations that support them. The members of organizations may also face risks, especially if they are working on human trafficking cases involving complicit government officials, for example.
5. **Limits free speech:** Fear of losing registration would have a detrimental impact on free speech of NGOs in Thailand. It would greatly limit NGOs' investigative research and advocacy activities and their willingness to publicize abuses or government failures to international actors like the U.S. government and the media. Additionally, the government's ability to inspect electronic communications could have a chilling effect on free speech of NGOs.

Further regression in combating trafficking in persons

In April 2021, the Seafood Working Group (SWG) – a global research and labor rights advocacy coalition led by Global Labor Justice-International Labor Rights Forum – recommended that Thailand be downgraded in the 2021 TIP Report.¹⁶ The government has not met the minimum standards as set forth in the 2000 U.S. Trafficking Victims Protection Act (TVPA) and there has been an increase in rights abuses related to the Thai government's COVID-19 policies.

Based on consultations with several frontline civil society groups, the SWG found that the Thai government had failed to make sufficient progress in key areas, including countering official corruption and complicity in human trafficking; protection of rights to freedom of association and collective bargaining that would support forced labor prevention; and ending employer retaliation and judicial harassment of workers, trade unionists and labor rights defenders, which silences those who organize, bargain and report labor rights abuses.¹⁷

The proposed law is a further indication of the lack of political will by the Thai government for combatting human trafficking. It most starkly underscores the government's continued refusal to acknowledge the importance of a free and open civil society environment as a core aspect of the agenda to prevent human trafficking, and as part of an open and democratic society.

¹⁶ "Comments Concerning the Ranking of Thailand by the United States Department of State in the 2021 Trafficking in Persons Report Comments," Global Labor Justice-International Labor Rights Forum on behalf of the Seafood Working Group, April 1, 2021,

<https://laborrights.org/publications/comments-concerning-ranking-thailand-united-states-department-state-2021-trafficking>

¹⁷ Ibid.

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Recommendations

We respectfully urge the U.S. Department of State and its Office to Combat Trafficking in Persons to call on the Thai government to withdraw the Draft Act on the Operations of Not-for-Profit Organizations (2021) and to ensure any future laws and regulations pertaining to NGOs strictly adhere to international human rights law and standards. We also ask that the TIP Office consider the information in this letter in its ranking of Thailand in the 2021 TIP Report.

Sincerely,

The undersigned organizations

		
		
		

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 <p>ENVIRONMENTAL JUSTICE FOUNDATION</p> <p>Protecting People and Planet</p>	 <p>Ethical Trading Initiative</p> <p>For workers' rights. For better business.</p>	 <p>Finnwatch</p>
 <p>FISH WISE</p>	 <p>FORTIFY RIGHTS</p>	 <p>FED Foundation for Education and Development</p>
 <p>มูลนิธิเพื่อเยาวชนชนบท (มยช.) Foundation for Rural Youth (FRY) องค์กรส่งเสริมและพัฒนาศักยภาพเยาวชนชนบท</p>	 <p>THE FREEDOM FUND</p>	<p>ONE VOICE AGAINST MODERN SLAVERY</p> <p>FREEDOMUNITED</p>
<p>GLOBAL LABOR JUSTICE</p>  <p>ILRF INTERNATIONAL LABOR RIGHTS FORUM</p>	 <p>GREENPEACE</p>	 <p>HRDF Human Rights and Development Foundation มูลนิธิเพื่อสิทธิมนุษยชนและการพัฒนา (มสพ.)</p>

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