

Legal Opinion:
**An illegitimate process to revise the Songkhla's Comprehensive Plan
to facilitate the development of Chana Industrial Zone**

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It has been reported that the Department of Public Works and Town & Country Planning and the Songkhla Provincial Authority has convened a meeting of the Comprehensive Plan Advisory Committee in Songkhla on 28 September 2020. One of the main agendas is the review of the proposed revision of the Ministerial Regulation applied to the Songkhla's Comprehensive Plan B.E. 2559 pursuant to Section 35 of the Town Planning Act B.E. 2562 (2019) to facilitate the development of the Chana Industrial Zone in Songkhla. It was claimed the move has been made commensurate to the cabinet resolution on 18 August 2020 regarding a summary of meeting of the Committee for Development Strategies in the Southern Border Provinces no. 1/2020 in which the cabinet allows the Department of Public Works and Town & Country Planning and the Songkhla Provincial Authority to proceed with the plan to utilize land related to private investment in the three Tambons (Tambon Sakom, Talingchan and Na Thap, Chana District, Songkhla) appropriate to the local area and the urgent plan to promote private investment and the outcome of public hearing as proposed by the Southern Border Provinces Administration Centre (SBPAC).

A legal organization advocating for access to rights and freedoms and environmental justice, EnLAW finds the process to revise the Songkhla's Comprehensive Plan to facilitate the Chana Industrial Zone, a large scale industrial development plan, shrouded in a lack of lawfulness and a lack of justice to the public and the environment in various aspects including;

1. The revision of the Songkhla's Comprehensive Plan according to the cabinet resolution to facilitate the Chana Industrial Zone has not been carried out in compliance with the criteria and the intent of the town planning law

According to the Department of Public Works and Town & Country Planning, the revision of the Ministerial Regulation applied to the Songkhla's Comprehensive Plan B.E. 2559 has been carried out within its mandate and in compliance with Section 35 of the Town Planning Act B.E. 2562. It is further claimed that the Comprehensive Plan's revision is made just on a specific area or a part of land appropriate to the changing situation and the environment or to serve public interest. But in reality, the revision of the Songkhla's Comprehensive Plan has been made exclusively to make possible the development of private industrial development projects in the Chana District by dismantling legal barriers which impede the investment. The Ministerial Regulation applied to the Songkhla's Comprehensive Plan B.E. 2559 has been promulgated based on the process to assess the local potential and based on public consultation as people were involved with the process to develop the Comprehensive Plan. According to the Comprehensive Plan, most of the area in Tambon Sakom, Talingchan and Na Thap, Chana District, Songkhla is marked as either as greenbelt or agricultural land and industrial development is prohibited. As the state and private sectors want to invest in the area, they see it necessary to revise the type and criteria of land utilization in the area of the three Tambons in Chana district to initially make possible preliminary industrial development and infrastructure development paving the way for large scale industrial development. The revision of the Comprehensive Plan's criteria is, however, inconsistent with the data concerning the local potential and is inappropriate to the land which has been used for agricultural and marine resource purposes.

This will give rise to the development which is alienated to the local potential and could unleash extensive impacts on the environment and natural resources as well as local livelihood.

Based on the information, the revision of the Songkhla's Comprehensive Plan as proposed by the Department of Public Works and Town & Country Planning is not being made to cater to the changing situation and environment or to serve public interest, which are the conditions set forth in the Town Planning Act B.E. 2562's Section 35 invoked to make possible the revision. On the contrary, it shall constitute a breach to the intent and objectives of town planning law which exists to provide a framework and policy for balanced and sustainable development taking into account the conservation of natural resources and the environment.

2. The outcome of public hearing on the Chana Industrial Zone conducted by the Southern Border Provinces Administration Centre (SBPAC) which has led to the cabinet resolution on 18 September 2020 lacks legal legitimacy. It is inappropriate to invoke such outcome to justify the revision of the Songkhla's Comprehensive Plan.

2.1 No efforts have been made to comprehensively and adequately study and disseminate information concerning the environmental and health impacts from the project's implementation, even though such information is indispensable for the effective exercise of the right to opinion of stakeholders

The information disseminated by SBPAC and used as part of the public hearing in July 2020 fails to include clear detail of the project, particularly the impacts and safeguard measures to ensure the public to come to terms with the entailing change. Such information is necessary for the analysis and assessment of the impacts and risks to ensure the effective expression of concerns and opinions in compliance with the Regulation of the Office of the Prime Minister on Public Consultation's Clause 7 which states that;

"Information related to the state's projects to be disseminate to the public by a state agency shall at least include the followings... (7) Possible impacts on the people who live or work within the project's area and its vicinity and on the general public including measures to prevent, address or remedy the injury or damage which may stem from the impacts..."

The project is consisted of a large-scale industrial complex situated in an area of over 16,000 rais including heavy and light industries and three deep-sea ports. But the information disseminated at the public hearing by SBPAC is based on the Project's Feasibility Study which offers minimal information on the impacts and safeguard measures. Such information is insufficient to help people to come to terms with the impending environmental and health impacts. It will therefore not enable them to effectively express their opinions. In particular, the impacts on marine ecological system which is one of the most important potentials of Chana District, have not been studied and no information about them has been offered. Failure to provide clear information on such impacts could be attributed to an inadequate study to develop the Environmental Impact Assessment. By arguing that it is yet at the stage where approval of the project is reviewed, SBPAC has yet to develop the EIA report, even though the public hearing was concerned with the change of town plan to transform greenbelt into industrial zone to serve industrial development as planned. During the public hearing, SBPAC failed to explain candidly to the public that the outcome of the public hearing would be used to justify the revision of the town plan.

The implementation of such large-scale project will inadvertently and immensely affect people's livelihood and natural resources as well as the environment in Songkhla and adjacent provinces, particularly the transformation of land use by turning agricultural land into a gigantic

industrial complex. Such change will inevitably cause pollution and impacts on the environment and the ecology as well as livelihood of local people. By design, the project is composed of a series of industrial projects and deep-sea ports which will be concurrently developed. Therefore, the study to assess environmental impacts has to be planned to ensure it covers the whole scope of the project and it should not be treated as piecemeal studies.

In addition, the impact assessment must take into account environmental, health and social costs and such tolls have to be assessed to see if it is worth it. Will the projected increase of employment be worth it considering that a number of people will lose their livelihood and the damage will be inflicted on natural resources and the environment? The capacity of state authorities to regulate and prevent the impacts should also be taken into account and their capacity to cope with environmental pollution. Therefore, prior to commencing the project, it is incumbent on the government to study and assess local capacity and the impending impacts or to carefully carry out the comprehensive Strategic Environmental Assessment (SEA). Such information is needed for making a sound decision regarding the implementation of the project as prescribed for in the Constitution B.E.2560's Section 58. And local people should be allowed to participate in the SEA process as well. This will ensure that necessary information is available before any decision is made regarding the policy, plan and project based on the outcome of the study. It should also offer an option for not pursuing the project or the development plan if it may have led to irrecoverable environmental impacts with the absence of effective safeguard measures.

2.2 The public hearing regarding the project organized by SBPAC breaches the right to public participation and is therefore a breach of the Constitution and relevant laws.

The SBPAC's July 2020 public hearing was conducted based at least one restriction that people who were allowed to express their opinions about the project had to be people who lived in the area within the project site including Tambon Sakom, Talingchan and Na Thap, Chana District, Songkhla only. SBPAC, therefore, organized the public hearing in the three Tambons where the project will be implemented only without considering its actual impact. It is a violation of the right of residents outside the three Tambons. Even though they live outside, but they can potentially be affected by the project's implementation. As a result, they should be entitled to the right to express their opinions about the project as well since it is a large-scale development project which may cause immense change to natural resources and the environment as well as people's livelihood and health. Such multi-faceted impacts shall not be confined just within the three Tambons. Also, given that the public hearing is directly related to the revision of the Songkhla's Comprehensive Plan, therefore, people in other Tambons and Districts of the Songkhla should be informed and allowed to exercise their right to participate and express their opinions about the project since its inception stage.

Such restriction is therefore contrary to or is considered disproportionate to what is provided for in the Constitution's Section 58 and other laws invoked by SBPAC to organize such public hearings including the Regulation of the Office of the Prime Minister on Public Consultation B.E.2548 which defines "**stakeholders**" as "**a person who may suffer unavoidable injury or damage directly from an undertaking of any State's project.**" The Regulation does not restrict the right to participate just among the people who live within the project site. And in fact, in order to determine the scope of people who could be affected by the project and to ensure they have the right to express their opinions, a preliminary study of the impact has to be first conducted. But in this case, SBPAC has rushed through the public hearing without first determining the scope of the impacted area and doing

so by restricting public participation and confining it to just people who live within the administrative boundaries of the three Tambons.

In addition, it has been reported that during the public hearing by SBPAC on 11 July 2020, security forces were heavily deployed along with road closure and the setting up of various checkpoints. Even though SBPAC claims it was part of security protocol, but it has made attending the hearing more challenging and gave rise to an unwelcoming atmosphere, particularly toward the civic groups which are opposed to the project. There have been reports that they have been stopped from participating and plainclothes officials have visited them at their homes just prior to the public hearing day.

3. Revising the Comprehensive Plan to facilitate a large-scale industrial project with high risk may lead to severe impacts on the environment, health, and livelihood of the public. There ought to be a study of local potential and a comprehensive assessment of impacts. Meanwhile stakeholders should have access to information and can exercise their right to participate and fully express their opinions before any decision is made.

Even though the revision of the Songkhla's Comprehensive Plan by the Department of Public Works and Town & Country Planning is an action commensurate to the cabinet resolution, but it is obvious that such revision of town plan will elicit the transformation of rural greenbelt and agricultural land into a large-scale industrial project of private sector with the potentially high risk in terms of the impacts on the environment, health and livelihood of the people. Such case is akin to the "undertaking (which) may severely affect the natural resources, environmental quality, health, sanitation, quality of life or any other essential interests of the people or community or environment" pursuant to the Constitution B.E. 2560's Section 58 which provides that the state shall undertake to study and assess the impact on environmental quality and health of the people or community and shall arrange a public hearing of relevant stakeholders, people and communities in advance in order to take them into consideration for the implementation. In addition, according to the Town Planning Act B.E.2562 which provides for powers and duties and responsibilities of the Department of Public Works and Town & Country Planning, it also upholds the right to public participation and the prioritization of environmental impact, the principle of which is fundamental for the planning and developing of town plan and the revision of the Comprehensive Plan, as clearly stipulated in Section 9/1 that;

"The formulation and preparation of area-use policy plans under section 8 (1) and land use plans under section 8 (2) **shall require public hearing, consultation and participation** in accordance with the rules and procedures prescribed by the Town Planning Commission with the approval of the National Town Planning Policy Board, having regard to persons to be affected by each type of plans, **and shall require publicity through diverse and comprehensive methods, with information adequate for public comprehension of impacts on the people, communities, the environment, biological diversity and directions for remedying grievances or injuries to the public or communities.**"

Until now, both the Department of Public Works and Town & Country Planning and the Southern Border Provinces Administration Centre (SBPAC) as well as the cabinet have failed to carry out a study to assess the impacts and to conduct public consultation in full compliance with the Constitution's Section 58 prior to the declaration of the Chana Industrial Zone and the revision of the Songkhla's Comprehensive Plan. It also did not appear that during the meeting on 28 September 2020 of the Comprehensive Plan Advisory Committee in Songkhla, the information concerning the study of

impacts of the Chana Industrial Zone has been reviewed viz-a-viz the revision of the Songkhla's Comprehensive Plan. Or only the cabinet resolution and input from SBPAC was considered with no regard to the adverse impact on the achievement of the enforcement of the town planning law to ensure development takes place hand in hand with the balanced and sustainable maintenance of natural resources and the environment which is the Department of Public Works and Town & Country Planning's major commitment.

Given a lack of lawfulness and a lack of justice toward the public and the environment as said, EnLAW thus urges the Department of Public Works and Town & Country Planning to immediately scrap the process to revise the Songkhla's Comprehensive Plan to facilitate the Chana Industrial Zone. We demand that the Department of Public Works and Town & Country Planning and concerned agencies genuinely respect the principle and intent of the right to public participation, community rights and the maintenance of natural resources and the environment as prescribed by the Constitution, town planning law and other relevant laws.