

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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DRAFT NGO LAW THREATENS CIVIL SOCIETY ORGANIZATIONS IN AFGHANISTAN

The Afghan Cabinet is poised to approve a draft Law on Non-Governmental Organizations (NGOs), which aims to “regulate affairs related to registration and establishment of and facilitation of monitoring and assessment and ensure transparency in the activities of NGOs,” in Afghanistan.¹ The bill directly infringes on human rights, including the rights to freedom of expression and association, guaranteed by the International Covenant on Civil and Political Rights, to which Afghanistan is a state party.²

The draft bill was approved by the Cabinet Law Committee on 31 December 2019. The Law Committee, in addition to approving the draft bill, established a technical committee - that included a representative of the Ministry of Justice (MoJ), Ministry of Economy (MoE) and Organizations Coordination Agency - to meet to reassess and finalize NGO employee salaries and other issues that were raised in the committee’s meeting. It has further delegated the MoJ to incorporate amendments raised in the Law Committee into the draft bill before submitting the draft to the cabinet for approval.³ According to the MoJ, the draft bill was submitted to the cabinet for approval after the amendments were implemented. Amnesty International reviewed the draft that was sent to the Cabinet for approval.

The bill, despite improvements, still represents a serious threat to the existence of civil society organizations in Afghanistan, as it imposes unnecessary and disproportionate restrictions on associations and would exert undue influence and control over NGOs, including allowing the government to determine who is able to form an association, and to regulate every aspect of their operations.

Amnesty International is calling on the Afghan authorities to amend the bill to make it in line with international laws and standards, and to ensure a full and effective realization of the rights to freedom of expression and association in the country.

RIGHT TO FREEDOM OF ASSOCIATION

Articles 8 and 9 of the draft bill mandates all “domestic and foreign organizations” to register and establish their existence with the MoE. Under Article 13, the registration and establishment of these organizations will be decided by the “Commission for Assessment of Organization”. While the commission, based on the article 14, includes two representatives from civil society organizations and a representative of the Afghanistan Independent Human Rights Commission (AIHRC), the majority of the members are government officials or political appointees

¹ Office of the Second Vice President, Law Committee Approves the Draft NGO Law and the Draft bylaw on the Joint Government and Media Committee, 31 December 2019. <https://www.vpo.gov.af/%d8%a9%d9%85%db%8c%d8%aa%d9%87-%d9%82%d9%88%d8%a7%d9%86%db%8c%d9%86-%d8%b7%d8%b1%d8%ad-%d9%82%d8%a7%d9%86%d9%88%d9%86-%d9%85%d8%a4%d8%b3%d8%b3%d8%a7%d8%aa-%d8%ba%db%8c%d8%b1-%d8%af%d9%88%d9%84%d8%aa/>

² Office of the United Nations Higher Commissioner for Human Rights, Ratification Status for Afghanistan, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=1&Lang=EN

³ Office of the Second Vice President, Law Committee Approves the Draft NGO Law and the Draft bylaw on the Joint Government and Media Committee, 31 December 2019.

such as the Deputy Minister of Economy for Financial and Administrative Affairs, who will act as its head; a representative of Ministry of Finance; and a representative of Ministry of Foreign Affairs-.

Under Article 17, para 1, clause 1, application for registration and establishment may be rejected on ground of contradiction of articles of association and document of registration of NGOs with provision of this law, which is overly broad, and it may be used to target independent and critical NGOs. Not only does clause 3, article 48, lead to a rapid and unnecessary dissolution of an NGO, but also it can have a chilling effect on NGOs' ability to critically monitor the government's actions. The bill also imposes burdensome administrative requirements on NGOs that would obstruct their operations, including an obligation in Article 18 for NGOs to renew their licenses and work permits every three years. Any such renewal will be approved only if the MoE decides that NGOs' activities comply with "this law and other legislative documents."

Article 23, para 1, clause 10 prohibits NGOs from "using equipment against national interests... and religion and religious rituals," which again are vague and overly broad grounds, and may be used to deregister independent and critical NGOs.

In Article 30, the Commission for Assessment of Organizations can access details of the NGO's bank account. Article 33 requires NGOs to present their "annual audited financial statement to Ministry of Economy within the first quarter of next fiscal year." Article 34 allows the Ministry of Economy to "monitor and evaluate financial statements and financial affairs of the organization." Under Article 37, NGOs are restricted to procuring equipment for the operation "from within country." NGOs can only bring in "vehicles, machineries, parts and other required equipment" if permitted by "relevant institutions." Article 38 requires NGOs to submit annual work plan, project concept note, including project contract and budget details to the Department of Coordination. Article 43 permits the Ministry of Economy "to monitor and evaluate the structure, leadership, management and modus operandi of organization." These provisions would put NGO operation firmly under the government's direct control. The provisions would also allow the government arbitrary powers to interfere with legitimate NGO activities and, effectively, to order the closure of any NGO deemed to have criticized the government or its policies.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has criticized laws that impose a prior authorization procedure for NGOs to be able to operate and has warned about laws and policies that request NGOs to undertake frequent, onerous and bureaucratic reporting requirements which eventually obstruct the legitimate work carried out by such NGOs. In cases of non-compliance with the bill, Article 59 prescribes some penalties, as it states that NGOs "shall be fined from one hundred thousand Afghani (100,000 AFN) to two hundred thousand Afghani (200,000 AFN) as per the circumstances. If the violation is repeated, the organization shall be dissolved."

Under Article 60, "security organs may, when needed, acquire required information on activities of organization in the capital through Ministry of Economy and in the provinces through Departments of Economy." Finally, Article 62 provides that, "Organizations who have been established and registered by Ministry of Economy prior to enforcement of this law, shall be obliged to regulate their activities as per the provisions of this law."

In sum, the above provisions put the independence and freedom of action and the safety of NGOs, their members and donors at risk. Many NGOs would face legal processes which could see their organizations closed.

Undue regulations, oversight and interference in the operations of NGOs would put at risk the exercise of the rights to freedom of association⁴ and expression⁵ in Afghanistan. Under international human rights law, the Afghan authorities are bound to respect, protect, promote and fulfil these rights.⁶

⁴ International Covenant on Civil and Political Rights, Art. 22 (1).

⁵ International Covenant on Civil and Political Rights, Art. 19 (2).

⁶ International Covenant on Civil and Political Rights, Art. 2 (1).

While these rights may be subject to restrictions, such restrictions must be prescribed by law and necessary (which entails a requirement of proportionality) in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedom of others.⁷

The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), recognizes the key role human rights defenders (HRDs) and NGOs play as agents of change and contributors⁸ to the “effective elimination of all violations of human rights and fundamental freedoms”⁹. In Article 5, it reinforces the right for all, individually and in association with others, to assemble peacefully, to form or join NGOs and to communicate with other NGOs or intergovernmental organizations.¹⁰

RIGHT TO FREEDOM OF EXPRESSION

NGOs provide services to communities and the public at large and play a crucial role for the dissemination of information, and to address matters of public interest. The draft bill by strictly seeking to control which NGOs may be registered, deregistered opens an arbitrary application of law to the government, and it poses a serious threat to the right to freedom of expression, including the right of human rights defenders and NGOs to know, seek, obtain, receive and hold information about human rights.

The right to freedom of expression includes the expression and receipt of ideas and opinions regarding human rights, including the development and discussion of new human rights ideas and principles, and the advocacy of their acceptance.¹¹ However, the overreaching powers contained in the draft bill pose a substantial threat for NGOs and their staff from exercising their rights to freely express an opinion or publicly take a position without fear of reprisals.

The threat to NGOs of being arbitrarily de-registered for being seen as critical of the government, or for promoting views that are not accepted or tolerated by the authorities, will certainly limit their ability to work freely.

This would further impact directly individuals and victims and of human rights that NGOs work for, particularly where there is no safe platform for the individuals themselves to advocate in a safe manner and without fear of reprisals on issues that concerns them.

The right to freedom of expression is critical for the work of human rights defenders and NGOs, as without these they would not be able to perform their monitoring and advocacy work to promote and defend human rights. It is, therefore, important that they are able to exercise this right freely, in an independent and impartial manner, without undue interference by the government.

⁷ International Covenant on Civil and Political Rights, Art. 22 (2).

⁸ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, article 5 clause (B/C), Article 16, Article 18 (2/3).

⁹ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Annex, Paragraph 4,

¹⁰ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, article 5 clause (B/C),

¹¹ International Covenant on Civil and Political Rights, Art. 19 (2).

CONCLUSION

Amnesty International is concerned that the bill would restrict the ability of NGOs in Afghanistan to carry out their crucial human rights work, as the bill can potentially be used to target and attack human rights defenders and NGOs that speak out against injustice, or they would be critical of the government actions, officials, and institutions.

The bill, if passed into law as it stands, will unduly restrict the space for civil society organizations and could put their mere existence under threat, in direct contravention of Afghanistan's obligations under international human rights law. The Afghan authorities have an obligation to respect, protect, promote and fulfil the rights to freedom of association and expression, and to create a safe and enabling environment for human rights defenders and civil society organizations

The registration process for NGOs should not be misused to restrict the rights to freedom of expression and association or to interfere with an NGO's direction and work. To ensure an enabling environment for human rights defenders and civil society organizations in Afghanistan, Amnesty International urges the authorities to stop further approval of the draft bill and amend it in line with Afghanistan's international obligations.