

THAILAND

SUBMISSION TO OFFICE OF
THE COUNCIL OF STATE ON
THE DRAFT ACT ON THE
OPERATIONS OF NOT-FOR-
PROFIT ORGANIZATIONS

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Amnesty International is a global movement of more than 10 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

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INTRODUCTION

Amnesty International is a global movement of more than ten million people who campaign for the respect, protection and fulfilment of human rights around the world. The movement has members and supporters in more than 150 countries and territories and is independent of and impartial to any government, political ideology, economic interest or religion. Amnesty International bases its work, including this analysis, on international human rights law and standards. Amnesty International has provided recommendations to Thai government agencies in many cases that have raised a wide range of human rights concerns, including with regard to the right to freedom of association.

Amnesty International welcomes the opportunity provided by the public consultation and hereby submits comments on the Draft Act on the Operations of Not-for-Profit Organizations B.E... (Draft Act). The analysis is based on relevant international human rights law and standards and Thailand's obligations pertaining to the right to freedom of association. The recommendations were prepared on the basis of the official [draft](#) provided on the website of the Office of the Council of State from 12 to 31 March 2021.

The Draft Act contains numerous provisions that would unduly restrict the right to freedom of association and other human rights. In particular, it may have a significant impact on organizations which are advancing the promotion, protection and realization of human rights in Thailand, and threatens Thailand's status as a hub for international non-governmental organizations in Southeast Asia.

The right to freedom of association is guaranteed in key international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a party.¹ Article 22 of the ICCPR specifically states that "everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests". The right to freedom of association is also an important enabler of the right to participate in public affairs, enshrined in Article 25 of the ICCPR.

The UN Declaration on Human Rights Defenders outlines particularly the rights of individuals to form, join and participate in civil society organizations, associations or groups to promote or defend human rights,² a key component of the right to association. It also articulates the importance that civil society organizations are able to freely exercise the rights to association and expression, including through activities such as seeking, obtaining and disseminating ideas and information; advocating for human rights; engaging in governance and the conduct of public affairs; accessing and communicating with international human rights bodies; and submitting proposals for policy and legislative reform at the local, national and international levels.³

The UN Special Rapporteur on the right to freedom of peaceful assembly and of association has similarly emphasized that associations should enjoy the rights to express an opinion, disseminate information, engage with the public, and advocate before governments and international bodies for human rights, for the purpose of, among others, advocating changes

¹ Thailand ratified the ICCPR on 29 October 1996.

² Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter, UN Declaration on Human Rights Defenders) 1998, Art. 5, adopted by General Assembly Resolution A/RES/53/144, Art. 13

³ UN Declaration on Human Rights Defenders, Articles 6, 7 and 8

in the law.⁴

The right to freedom of association is likewise guaranteed under the [Constitution of the Kingdom of Thailand](#) in Sections 42 and 4 as follows:

Section 42 *A person shall enjoy the liberty to unite and form an association, co-operative, union, organisation, community, or any other group.*

The restriction on such liberty under paragraph one shall not be imposed except by virtue of a provision of law enacted for the purpose of protecting public interest, for maintaining public order or good morals, or for preventing or eliminating barriers or monopoly.

Section 4 *Human dignity, rights, liberties and equality of the people shall be protected.*

OVERALL CONCERNS

While the right to association is not absolute, international human rights law requires states to ensure that any restriction imposed on individuals' right to gather and organize must be adequately prescribed by law, in accordance with the principle of legality, and be necessary and proportionate to a legitimate aim. According to Article 22 of the ICCPR, states may impose restrictions on the right to freedom of association only "in the interests of public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others".⁵

The Human Rights Committee, the body overseeing the implementation of the ICCPR, noted that "the existence of any reasonable and objective justifications for limiting the right to freedom of association is not sufficient. The State party must further demonstrate that the prohibition of an association is necessary to avert a real and not only hypothetical danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose".⁶

The Draft Act does not provide sufficient justifications to place limitations on the right to freedom of association, and includes reasons to impose restrictions that go beyond those permitted by international human rights law such as in the interest of diplomatic relations with Thailand's neighbours, the protection of "*propriety, morality, and openness*", and the avoidance of "*any hidden and fraudulent agenda*".

The mandatory registration under the Draft Act effectively renders unregistered organizations illegal, inconsistent with international human rights law and standards which stipulate that registered and unregistered associations are entitled to equal protection of the right to freedom of association.

Moreover, the Draft Act provides new criminal offences that are overly broad and vaguely defined. Notably, the Draft Act allows the imprisonment of individuals solely for operating non-registered organizations.

⁴ Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, 21 May 2012, paras. 12, 13 and 64

⁵ Article 22(2) of the ICCPR

⁶ Human Rights Committee, *Lee v. South Korea*, Communication No. 1119/2002, Views adopted on 20 July 2005, para. 7.2

Upon careful examination of the provisions of the Draft Act, Amnesty International considers the Draft Act inconsistent with Thailand's obligations under international human rights law and standards. If adopted in its current state and implemented, Thailand would be violating its commitments under international law to promote and protect the right to freedom of association.

CONCERNS AND RECOMMENDATIONS BY SECTION

A. ILLEGITIMATE REASONS TO RESTRICT THE RIGHT TO ASSOCIATION

The government has justified the adoption of the Draft Act on the need to better regulate not-for-profit organizations, including for reasons that are impermissible under international human rights law such as avoiding tax evasion and public fraud, increasing the transparency of the funding of organizations, ensuring "*propriety, morality and openness*", and guaranteeing associations do not operate in the interest of a "*hidden or fraudulent agenda*".

The reasons provided in the Draft Act read as follows (emphasis added):

At present, many not-for-profit organizations have been established in the Kingdom. Some have been established based on specific laws, while others have been operated by groups of individuals and have not been established under the law. This has led to an incomplete oversight and there are many organizations which claim to be not-for-profit organizations but have been operating in a for-profit manner to generate income shared among themselves while evading tax payments, which is tantamount to a public fraud. Many of them accept money or property from natural persons, legal entities or groups of individuals who do not hold Thai nationality, or which have not registered in the Thai Kingdom, and used it to implement activities that may have impact on the relations between the Kingdom of Thailand and neighboring countries or may affect public order. It is therefore necessary to promulgate a law to regulate the operation of not-for-profit organizations in the Kingdom to ensure propriety, morality, openness, transparency, the genuine serving of public and national interest without any hidden and fraudulent agenda in order to uphold public interest, and public order and good morals. Many countries have adopted similar such laws. Therefore, it is necessary to draft this law.

.....

Whereas it is expedient to have a law on the operations of Not-for-Profit Organizations.

This Act contains provisions which restrict rights and freedoms of individuals which are provided by virtue of Section 26 coupled with Sections 32, 36 and 42 of the Constitution.

The reasons and necessities for restricting the rights and freedoms of individuals pursuant to this Act shall serve to ensure the operations of not-for-profits organizations on a matter of propriety, morality, openness, transparency, and the genuine serving of public and national interest without any hidden and fraudulent agenda in order to uphold public interest, and public order and good morals of the people, in the operation of not-for-profit organizations in the Kingdom. The promulgation of this Act complies with conditions prescribed in Section 26 of the Constitution of the Kingdom of Thailand.

While the ICCPR recognizes that States may impose restrictions on the right to freedom of

association, such restrictions must meet three conditions: be provided by law; pursue a legitimate aim, which are only the protection of public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others; and be necessary and proportionate to that legitimate aim.

In this respect, the Draft Act includes several reasons to limit the right to freedom of association that go beyond what is permissible under international human rights law. Firstly, the Draft Act cites the “*impact on the relations between the Kingdom of Thailand and neighboring countries*”, a reason that does not constitute a justifiable ground to restrict the right to freedom of association. The Draft Act also includes a reference to the need to guarantee that associations do not operate in the interest of a “*hidden and fraudulent agenda*”, another impermissible justification to restrict this right and that would have a particularly stigmatizing effect over organizations who use foreign funding by equating their objectives to those of foreign agents.

In this regard, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasized that States cannot refer to additional grounds to restrict the right to freedom of association beyond those listed in Article 22 of the ICCPR, even those provided by domestic legislation, and cannot loosely interpret international obligations to restrict this right.⁷

Furthermore, the Draft Act lists some reasons that could legitimately restrict the right to freedom of association but does so in a way that is vague and overly broad. Firstly, while “*public order*” are legitimate aims under which the right to freedom of association can be restricted, the Thai government must be able to demonstratively prove real, not plausible, threats to such matters that it is absolutely necessary to impose limitations.

The Draft Act also lists avoiding tax evasion and public fraud, and increasing the transparency of the funding of organizations as reasons to adopt new requirements to not-for-profit organizations. In this regard, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has recognized that, while independent bodies have a legitimate reason to examine the associations’ records to ensure transparency and accountability, states must ensure that this procedure is not arbitrary and that is respectful of the rights to non-discrimination and privacy, as it would otherwise put the independence of associations and the safety of their members at risk.⁸ By justifying these restrictions on the need to better regulate foreign funding, the Draft Act fails to recognize the legitimate work carried out by associations and their contribution to the development of the country merely because they are funded by foreign sources.⁹

Lastly, the Draft Act mentions the need to ensure “*propriety, morality and openness*” as another reason to restrict the right to freedom of association. While the protection of public morals is a legitimate reason to restrict this right under international human rights law, these vague concepts are often misused in a way that disproportionately affect marginalized groups and women. The UN Special Rapporteur on the right to freedom of peaceful assembly and of association has thus called on States to take measures to overcome specific challenges that confront marginalized groups, such as Indigenous peoples, minorities, persons with disabilities, women and youth, in their efforts to form associations.¹⁰

⁷ Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association, UN Doc. A/HRC/23/39, 24 April 2013, para. 30

⁸ UN Doc. A/HRC/20/27, para. 69

⁹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/38/34, 13 June 2018, para. 34

¹⁰ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/26/29, 14 April 2014, para. 56

Amnesty International calls on the government to withdraw the Draft Act to ensure the promotion and protection of the right to freedom of association.

B. DISCRIMINATORY APPLICATION OF THE LAW

Section 1 *This Act is called “The Act on the Operations of Not-for-profit Organizations B.E...”*

Section 2 *This Act shall come into force thirty days after the date of its publication in the Government Gazette.*

Section 3 *This Act shall not apply to not-for-profit organizations designated by the Minister and with approval from the Cabinet.*

Section 4 *In this Act*

“Not-for-profit organization ” shall include a group of individuals which is not established by any specific law, but carries out activities that do not have the purpose of seeking income or profits to be shared. (footnote: The term “shall include” is used here since there are different categories of not-for-profit organizations according to different laws such as an association, a foundation according to the Civil and Commercial Code.)

“Registrar” means the Director of the Department of Provincial Administration.

“Minister” means the Minister of Interior.

Section 3 of the Draft Act exempts certain not-for-profits organizations designated by the Minister of Interior from the application of the law, a process which is unclear and has the potential to become arbitrary and discriminatory. Furthermore, the vague definition of “not-for-profit” organizations contained in Section 4 adds additional uncertainty and fails to give an exact definition of the types of organizations that would be covered by the law.

Under international human rights law, everyone has the right to freedom of association without discrimination.¹¹ Any restriction imposed on an individuals’ right to form, gather and organize must be in accordance with the principle of legality, which requires such restrictions to be adequately prescribed by law, in terms that are sufficiently precise and clear to allow the consequences of the law to be foreseeable by those affected by them.

However, Section 3 of the Draft Act establishes an exemption that provides an unequal treatment of certain groups of individuals who are equally entitled to the right to freedom of association. Such an exemption can have dire consequences, particularly to those associations who are critical of the government that may face harsher consequences in the application of this law by not counting with the approval of the government.

Furthermore, the definition of associations provided under Section 4 of the Draft Act is too vague and overly broad, lacking legal certainty as to which organizations would be covered under the law. This uncertainty could result in unjustifiable restrictions and even criminal sanctions for a number of groups that are currently excluded from such regulations and that do not often hold the capacity to comply with such stringent requirements. For example, Section 4 could be currently read as applicable to groups as varied as academic groups; local community groups; grassroots networks; professional and athletic associations; art galleries; recreational activity or special interests groups; and ad hoc disaster relief collectives.

As noted by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of

¹¹ Article 2 of the ICCPR

association, some legal provisions on freedom of association can have a disproportionately negative impact on certain groups even when they are stated in a general or neutral way. Marginalized groups and those who are at risk of discrimination usually face harsher obstacles to exercise their right to freedom of association, such as members of minority groups, young people and children, women, LGBTI people, Indigenous peoples, persons with disabilities, and non-nationals, including refugees, asylum seekers and migrant workers.

Moreover, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association described different regulations that can have a discriminatory impact when making unjustified distinctions among associations, such as registration requirements and funding restrictions.¹² Therefore, the Special Rapporteur has called on States to ensure associations are formed “after a process that is simple, easily accessible, non-discriminatory, and non-onerous or free of charge”.¹³ Similarly, the UN Human Rights Council called on States to ensure that restrictions on associations are not discriminatorily imposed, including on the basis of their funding.¹⁴

Amnesty International calls on the Thai government to reaffirm the principle of equality and non-discrimination under international human rights law, which allows for all individuals to come together and form associations without distinction.

C. REGISTRATION

(emphasis added) **Section 5** *In order to organize activities in the Kingdom, a not-for-profit organization must register itself under the criteria, methods and conditions prescribed by the Minister. Once the registration is complete, the organization shall be entitled to the promotion and support from the state pursuant to the relevant laws.*

Associations and foundations that have already registered per the Civil and Commercial Code, and the not-for-profit organizations registered under other laws, shall be exempted from this registration as required in the first paragraph.

In addition to ensuring compliance with laws concerning the establishment and operation of each of not-for-profit organization and as specifically required by this Act, organizations must act in compliance with the criteria, methods and conditions prescribed by the Minister of this Act.

(footnote: Since a not-for-profit organization established by other law is required to act in compliance of such law already, but now it is required to act in compliance with this law as well.)

Section 5 of the Draft Act establishes a compulsory registration process for all not-for-profit associations, and contains vaguely worded and broad requirements for associations to comply with the “*criteria, methods and conditions prescribed by the Minister [of Interior]*”. The Draft Act lacks sufficient clarity of its enforcement and it is unpredictable with regard to the legal consequences that associations may face if such criteria, methods and conditions are not met. Moreover, the Draft Act grants extensive ministerial discretion and authority and fails to provide clear definitions and requirements subjected to parliamentary oversight. Section 9 further allows the registrar excessive powers to determine grounds for denial of registration and therefore effectively deny the applicant organization the ability to carry out activities.

¹² UN Doc. A/HRC/26/29, paras. 53-57

¹³ UN Doc. A/HRC/23/39, para. 17

¹⁴ Human Rights Council resolution 22/6 on the protection of human rights defenders, 2013, A/HRC/RES/22/6, para. 9

The right to freely form associations is protected under international human rights law, regardless of whether an entity is formally registered or not.¹⁵ Some associations may choose to register with the authorities to gain legal personality, for example to access certain rights and fulfil needs like obtaining public funds, to sign contracts, for recruitment and to open bank accounts, but associations may decide not to register for different reasons.

Obtaining legal personality is crucial to the right to freedom of association. An adequate legal framework to facilitate the right to association requires states to establish a procedure to recognize organizations as legal entities in a way which is understandable, non-discriminatory and which is either affordable or free of charge.¹⁶

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has therefore recommended States to establish “a regime of notification”, instead of a “prior authorization regime”, through which associations acquire their legal personality simply by notifying authorities of their formation and it is not dependent upon state approval.¹⁷ Unregistered associations should therefore be entitled to the equal protection under the law and should be allowed to function freely, and their members operate in an enabling and safe environment, especially when the procedure to establish an association is burdensome and subject to administrative discretion, and particularly when there is a risk of criminal sanctions for those who participate in unregistered associations.¹⁸ International human rights mechanisms have reaffirmed that civil society organizations should be presumed to be operating legally until it is proven otherwise during the entire registration process.¹⁹

Burdensome and onerous requirements, including to register associations, are likely to dissuade individuals from pursuing registration and undertaking activities, which runs contrary to Thailand’s obligation to create and maintain a safe and enabling environment for human rights defenders and civil society organizations.²⁰ When requirements, steps and the timing of the registration process is complex and unclear, it creates confusion in the process and leads to applications being rejected. By imposing bureaucratic hurdles and complicating the registration process, these provisions can also become tools used to gather information for intelligence purposes, to discourage or disband organizations deemed undesirable, muzzle critical voices and exclude those who cannot afford the legal process and the registration fees.

Amnesty International therefore recommends the Thai government to provide a simple, accessible, non-burdensome, non-discriminatory notification registration process which is either affordable or free of charge.

D. FUNDING

(emphasis added) **Section 6** *Not-for-profit organizations must disclose sources and amounts of funds or property used in their operation each year to the registrar in accordance with the criteria or method prescribed by the Minister, and to submit tax returns to the Revenue Department every year in accordance with the criteria or method prescribed by the Director of the Revenue Department.*

Not-for-profit organizations may accept money or property from natural

¹⁵ UN Doc. A/HRC/20/27, para. 56

¹⁶ Ibid., para. 95

¹⁷ Ibid.

¹⁸ Ibid., para. 56.

¹⁹ Ibid., para. 60.

²⁰ Ibid., para 63.

persons, legal entities or groups of individuals who do not hold Thai nationality, or which have not been registered in the Thai Kingdom, as the case may be, to use only to carry out activities in the Kingdom as permitted by the Minister, and are required to report on the acquisition and the disbursement of such money or property, and the implementation of the activities every year to the registrar based on the criteria, methods and duration determined by the registrar...

Section 7 *The establishment of an office chapter of not-for-profit organizations, which accept money or property from natural persons, legal entities or groups of individuals who do not hold Thai nationality or which have not been registered in the Thai Kingdom, [not-for-profits organizations] are required to notify the registrar beforehand and in accordance with the criteria and conditions prescribed by the Minister.*

Sections 6 and 7 of the Draft Act impose undue restrictions on the right of associations to seek, receive and utilize resources, particularly those stemming from international or foreign sources. Moreover, under Sections 6 and 7 of the Draft Act, the Minister of Interior holds extensive discretionary administrative power in determining the activities permissible for civil society organizations who receive funds from foreign or international sources for their operation. The Draft Act is however unclear on which activities are allowed to be funded by foreign funds and which are prohibited.

Foreign and international sources of funding are a lifeline to many organizations. Controlling or limiting such funding can be an effective way of silencing organizations perceived as critical or independent of the authorities or those who are perceived to be out of line with government policies. Legislation interfering with international and foreign sources of funding can also have the effect of stigmatizing and undermining the legitimacy of civil society organizations that use such funding by portraying them as “foreign agents”, “enemies of the state”, or “tools of foreign governments’ propaganda”.

Therefore, limitations on the ability of organizations to seek, receive and utilize resources must also be in accordance with Article 22(2) of the ICCPR, and pursue only those legitimate aims listed therein, namely national security, public safety or public order, public health or morals and the protection of the rights and freedoms of others. Even when the restrictions are demonstratively pursuing a legitimate aim, measures must be necessary and proportionate to that aim.

Article 13 of the UN Declaration on Human Rights Defenders provides that “everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means”.²¹ This provision is important because it makes no distinction between the sources of funding, be it from domestic, foreign or international sources. Furthermore, it makes clear that not only legally registered associations, but also associations which have no legal status, such as unregistered associations, should also be allowed and protected to access funding from any source.²²

The UN Human Rights Council has stressed the importance of safeguarding the capacity of civil society organizations to engage in fundraising activities, calling upon States not to criminalize or delegitimize activities in defence of human rights on account of the origin of funding. The Council also called on States to ensure that reporting requirements placed on civil society organizations do not inhibit their functional autonomy and are not

²¹ UN Declaration on Human Rights Defenders, Art 13

²² UN Doc. A/HRC/23/39, para. 17.

discriminatorily imposed depending on the potential sources of funding.²³

Similarly, the UN Human Rights Committee and the Special Rapporteur on the rights to freedom of peaceful assembly and of association have stressed the importance of safeguarding NGOs' capacity to engage in fundraising activities, and have argued that funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with Article 22 of the ICCPR.²⁴ Furthermore, Article 2 of the International Covenant on Economic, Social and Cultural Rights, to which Thailand is a party, provides for an obligation on states to engage in "international assistance and co-operation, especially economic and technical" in achieving the full realization of the rights protected under the Covenant. Such assistance and co-operation include the financial support of civil society organizations engaged in activities to achieve the full realization of those rights.²⁵

Section 6 further introduces one-year reporting requirements for all not-for-profits organizations with the discretionary administrative power of the Ministry of Interior to design the "criteria or method" of reporting. While the compulsory disclosure and reporting may be under the scope permissible under Article 22 of the ICCPR, such requirements should be clearly prescribed under the Draft Act to ensure civil society organizations do not face overly restrictive or arbitrary measures which might be in violation of States' obligation to protect the right to freedom of association.

In this sense, any association, either registered or unregistered, must be able to function freely in a safe and enabling environment.²⁶ The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has specifically noted that the ability for associations to access funding and resources is an integral and vital part of the right to freedom of association.²⁷ The UN Special Rapporteur further called on States to ensure that associations can seek, receive and use funding without prior authorization or other undue impediments, including from individuals, associations, foundations or other civil society organizations, foreign governments and aid agencies, the private sector, the United Nations and other entities.²⁸

Amnesty International calls on the Thai authorities to ensure that associations should be able to seek funding from any source without prior authorization, and should not face arbitrary or discriminatory requirements due to the source of their funding.

E. PRIVACY OF ASSOCIATIONS

Section 6 [continued] The registrar shall have the authority to enter the office of not-for-profit organizations to inspect the use of money or property, or the operation of activities, per the second paragraph, and to have the power to examine and obtain a copy of electronic communications traffic made by the not-for-profit organizations for further examination.

Section 6 allows sweeping administrative power and discretion for the registrar (Director of the Department of Provincial Administration) to enter premises of any association and acquire copies of communications made by its members. Without prior notice or the

²³ UN Doc. A/HRC/RES/22/6, para. 9

²⁴ Human Rights Committee and Viktor Korneenko et al v. Belarus, (1274/2004) UN Doc CCPR/C/88/D/1274/2004, 2006, para 7.2; UN Doc. AHRC/23/39, para. 16

²⁵ UN Doc. A/HRC/20/27, para. 69

²⁶ Ibid., para. 96.

²⁷ Ibid., para. 67.

²⁸ U.N. Doc. A/HRC/23/39, paras. 82(b) and (c)

presentation of a warrant granted by the court, the registrar would hold the power to determine the grounds for entry upon which associations should come under inspection and therefore evades any judicial oversight of its enforcement. The registrar is further granted arbitrary power to conduct unlawful surveillance of correspondences of civil society organizations and its partners without a valid warrant issued by the judiciary. The justification for such extensive scrutiny remains unclear.

Associations are entitled to enjoy the right to privacy as enshrined in Article 17 of the ICCPR.²⁹ The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has therefore called upon States to respect the right of associations to privacy and ensure that authorities are not entitled to condition any decisions or activities of the association or to enter an association's premises without advance notice.³⁰ Although independent bodies have the authority to examine an association's records to ensure transparency and accountability, such measures must not be arbitrary and must respect the principle of non-discrimination and the right to privacy as it would otherwise put the independence of associations and the safety of their members at risk.³¹

If the Draft Act is passed in its current form, not-for-profits organizations and its members would be subject to arbitrary and unlawful interference with their privacy in a way that contravenes their right to privacy stipulated in Article 17 of the ICCPR, and may violate the right to hold opinions without "interference" as guaranteed in Article 19 of the ICCPR.³²

The government should ensure that administrative procedures should not invade the privacy of organizations and their members.

F. DE-REGISTRATION AND CRIMINAL PENALTIES

Section 8 *A not-for-profit organization is required to submit a financial report audited by a certified public accountant to the registrar within sixty days after the last day of fiscal year. The registrar shall then make available the audited report in the Department of Provincial Administration's information database.*

Section 9 *A not-for-profit organization which violates or fails to comply with Section 5 Paragraph 3, Section 6, Section 7, or Section 8 shall have its registration revoked by the registrar.*

Any pending appeal to the revocation of registration shall have no mitigation on the revocation.

Section 10 *Any person who operates a not-for-profit organization in the Kingdom without registration with the registrar per Section 5 Paragraph 1 shall be punishable by imprisonment not exceeding five years or a fine not exceeding one hundred thousand baht, or both.*

Sections 9 and 10 of the Draft Act provide highly disproportionate punishments for the failure of associations to comply with provisions of the Draft Act, many of which are already inconsistent with international human rights law. Section 10 also imposes criminal sanctions on individuals who may either be founders or members of not-for-profit organizations that operate without registration, which would be tantamount to forcing the dissolution of the association itself and such punishment would be disproportionate as it would criminalize

²⁹ Article 17 of the ICCPR

³⁰ UN Doc. A/HRC/20/27, para. 65.

³¹ Ibid.

³² Articles 17 and 19 of the ICCPR.

individuals merely for exercising their right to association.

De-registration of civil society organizations is the most extreme restriction and should only be considered as a measure of last resort. The involuntary dissolution or suspension of an association is the severest type of restriction and should only be allowed when sanctioned by an impartial and independent court only where there is clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law.³³

The Special Rapporteur on the situation of human rights defenders noted that authorities should not hold power to arbitrarily suspend the activities of human rights groups. When associations present a threat to national security, public order, public health or morals, or to the rights of others, it should only be the courts who are entitled to order a suspension, and only in situations of clear and imminent danger that could result directly from such activities.³⁴

States must also ensure that no person is subject to criminal prosecution and punishment for the lawful exercise of the right to freedom of association.³⁵ Furthermore, the prosecution of individuals who are alleged to have founded or operated organizations that have not been registered would be inconsistent with the requirement that lawful restrictions on the right to freedom of association be prescribed by law, which is clear so as to enable individuals to know what acts make them criminally liable.

Amnesty International urges the government to ensure that all suspensions or dissolution of associations are only conducted after an order issued by an impartial and independent court, in compliance with international human rights law and standards. Furthermore, the authorities must ensure that no one is criminalized for exercising their right to freedom of association, nor subjected to threats, attacks, harassment, smear campaigns, intimidation or reprisals for joining or forming an association. Unregistered associations must be able to carry out their activities in an enabling and safe environment, and their members should not be subjected to criminal sanctions due to lack of registration.

RECOMMENDATIONS

Amnesty International considers numerous provisions of the Draft Act overly restrictive of the right to freedom of association and other human rights. If adopted in its current state, not-for-profit organizations and its members are not only subject to overly restrictive measures on their freedom to associate, they would also face arbitrary unlawful interference with the rights to privacy and freedom to hold opinion.

In light of a wide range of concerns, Amnesty International considers the Draft Act inconsistent with Thailand's obligations under international human rights law and standards. The organization calls upon the Thai government to withdraw the Draft Act immediately and reaffirms its human rights obligations to protect, promote and fulfil the right to association and other rights.

³³ UN Doc. A/HRC/20/27, para. 75.

³⁴ Report of the Special Rapporteur on the situation of human rights defenders, U.N. Doc. A/59/401, 1 October 2004, para. 82(r)

³⁵ UN Doc. A/HRC/20/27, para 84(c)

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