

# THAILAND

The letter to the Office of the Council  
of State regarding The Draft Act of  
Anti-Money Laundering No... B.E....

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# Introduction

Amnesty International is a movement of more than ten million people around the world who are campaigning for respect and to protect and fulfil human rights. Our movement has members and supporters in more than 150 countries and territories. We are an independent agency independent of governments, political ideologies and without economic or religious interests. Our works are based on researches and fieldworks. They also comply with international human rights law and standards. Amnesty International Thailand (Amnesty Thailand) has made a recommendation, the documented analysis herein, to the Thai government agencies which in many cases are involved in human rights issues including the right to freedom of association.

Amnesty Thailand are pleased that opportunities are given by agencies involved in the issue of freedom of association for public consultation and opinions on the Anti-Money Laundering Act No.... B.E. .... (“Draft Act”). Therefore, the organisation would like to submit the opinion on the aforementioned Draft Act with an analysis based on international human rights law and standards concerning the right to freedom of association. It has been compared with suggestions and has been developed from the Draft Act published on the website of the Office of the Council of State between 1<sup>st</sup> December 2021 to 31<sup>st</sup> January 2022. (B.E. 2565)

The Draft Act consists of the provisions which excessively restrict the right to freedom of associations and other human rights. It especially affects the capacity of the organisation to promote, protect and assure civil and political rights in Thailand. These include economic, social and cultural rights. This also affects Thailand, the centre of international not-for-profit organisations in Southeast Asia.

Right to freedom of association has been guaranteed in major human rights instruments including Article 22 of the International Covenant on Civil and Political Rights (ICCPR), of which Thailand is a State Party.<sup>1</sup> It states that “every person has the right to freedom of association including the right to form and join labour unions to protect one’s interests.” The right to freedom of association is also an important factor in the formation of the right to privacy, expression, assembly and participation in public events. This is guaranteed in Articles 17, 19, 21 and 25 of the ICCPR.

The Universal Declaration of Human Rights guarantees the individual right to form, join and participate in civil society organisations, associations or groups to support and protect human

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<sup>1</sup> Thailand has become a State Party of the ICCPR by accession on 29<sup>th</sup> October 1996

rights.<sup>2</sup> These are vital components of the right to freedom of association. It also indicates the importance of civil society organisations that can exercise their rights of association and freedom of expression. These include activities such as seeking, obtaining and disseminating any idea and information, campaigning for human rights; participating in governance and implementation of public activities, accessing to and communicating with international human rights organisations and submitting proposals concerning policy and legal reformation at the local, national and international levels.<sup>3</sup>

UN Special Rapporteurs are concerned with 4 main issues. They consist of Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association; Special Rapporteur on Promotion and Protection of Rights to Freedom of Expression and Comments; Special Rapporteur on the Situation of Human Rights Defenders; and Special Rapporteur on Promotion and Protection of Human Rights and Fundamental Freedoms in Combating terrorism.<sup>4</sup> The UN Special Rapporteurs have expressed their concerns about the Draft Act and have requested the Thai government to “realise that government officials often misuse criminal penalties especially as tools to silence civil society organisations and human rights activists to the extent that it may have widespread impact on the right to freedom of expression and expressing opinions, peaceful assembly and association.<sup>5</sup> This includes the possibility of obstructing people from participating in legitimate activities of not-for-profit organisations (NPOs)... The state shall apply criminal penalties by taking into consideration their obligations under the UN Charter and the international human rights law and must **not** oppose to the obligations of each country to promote, respect and observe fundamental rights and freedoms.<sup>6</sup>”

The UN Special Rapporteurs on the right to freedom of peaceful assembly and association similarly emphasise that associations should have rights to express their opinions, publish information, participate in public events, campaign with governments and international organisations on human rights to advocate for legal changes, etc.<sup>7</sup>

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<sup>2</sup> The Universal Declaration on the rights and responsibilities of individuals, groups and social organisations in supporting and protecting universally recognised fundamental human rights and freedoms (hereinafter referred to as the Universal Declaration of Human Rights Defenders), 1998, Article 5, endorsed by the resolution of UN General Assembly. A/RES/53/144, Article 13

<sup>3</sup> The Universal Declaration of Human Rights Defenders, Articles 6, 7, 8

<sup>4</sup> The Mandate of Special Rapporteurs on the Right to Freedom of Peaceful Assembly and Association; Special Rapporteurs on Promotion and Protection of the Right to Freedom of Expression and Expression; Special Rapporteurs on the Situation of Human Rights Defenders and Special Rapporteur on Promotion and Protection of Human Rights and fundamental freedoms against terrorism, OL THA 7/2021, on 20<sup>th</sup> December 2021

<sup>5</sup> The Report of UN Special Rapporteur on the right to freedom of peaceful assembly and association, UN Doc. A/HRC/26/29, on 14<sup>th</sup> April 2014, paragraph 60

<sup>6</sup> OL THA 7/2021

<sup>7</sup> Reports of UN Special Rapporteur on the right to freedom of peaceful assembly and association, UN Doc. A/HRC/20/27, on 21<sup>st</sup> May 2012, paragraphs 12, 13 and 64

Likewise, the right to freedom of association is also guaranteed in Sections 42 and 4 according to the Constitution of the Kingdom of Thailand as follows:

**Section 42** states that *“A person is free to form the association, cooperative, union, organisation, community or other kinds of group.*

*The restriction of liberties under paragraph one shall not be permitted except by virtue of law enacted to protect the public interest, to maintain public order or good morals, or to prevent or eliminate the exclusion or the monopoly.”*

**Section 4** states that *“human dignity, rights, liberties and equality of people shall be protected.”*

## Overview of Concerns regarding the Draft Act

Human rights law requires the states to ensure that any restriction imposed on the rights of persons concerning forming groups must be sufficiently prescribed by law under the principle of legitimacy. Such restriction needs to be proportionate to the legitimate purposes. According to Article 22 of the ICCPR, the state may impose restrictions on the right to freedom of association merely *“for the benefits of national security or public safety, public order, protection of public health or good morals of society or protection of the rights and freedoms of others”*<sup>8</sup>

*The human rights committee, the agency overseeing the observance of the ICCPR, notes that “The existence of objective and reasonable purposes is insufficient to limit the right to freedom of association. The State Parties must clearly demonstrate that banning associations is necessary to avoid truly existing harm; and not simply ban them to prevent a **potential** danger to national security or democratic order. They must also [justifiably] show that less restrictive measures are insufficient to achieve the same purposes.”*<sup>9</sup>

The Draft Act does not provide sufficient justification to limit the right to freedom of association. Its contents are overly ambiguous and interpretations are overbroad. Consequently, government officials

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<sup>8</sup> Article 22(2) of the ICCPR

<sup>9</sup> The United Nations Human Rights Council, Lee v. South Korea, Communication No. 1119/2002, approved on 20<sup>th</sup> July 2005, paragraph 7.2

may exercise power beyond the limits. Moreover, these measures are not in accordance with the principles of suitability and proportionality. The Draft aims at “ *being effective and timely to the changing situation, together with the assessment of compliance with international standards on Combating Money Laundering and the Financing of Terrorism & Proliferation according to the recommendations of the ad hoc working group for the financial action task force (FATF)*<sup>10</sup>” The obligations under the UN Charter and international human rights law must be taken into account and shall not be inconsistent with the obligations of each country and shall respect and observe fundamental rights and freedoms. The FATF aims at creating the framework for policy actions so that all sectors can cope with problems of money laundering and the financing of terrorism. It is not an attempt to control certain not-for-profit organisations through strict rules.

Mandatory registration under the Draft Act renders unregistered organisations illegal. This is inconsistent with international human rights laws and standards stipulating that both registered and unregistered groups shall have equal protection of the right to freedom of association.

The Draft Act also vaguely and immoderately defines criminal offences. There are heavy fines for non-compliant associations. Besides, there are both heavy fines and punishment of imprisonment if the associations do not come to testify, or do not submit [to the officials] clarifications or pieces of evidence.

After having detailedly analysed various Sections of the Draft Act, Amnesty Thailand suggests that the Draft Act is inconsistent with Thailand’s obligations under international human rights law and standards. If the current amended Draft Act is approved by the parliament and is enforced, Thailand will violate its obligations under international law to promote and protect the right to freedom of association.

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<sup>10</sup> The memorandum of principles and rationales for the Draft Act of Anti-Money Laundering Act No.... B.E. Rationales. The Draft of which principles have been approved by the cabinet, page 4

# Concerns and Suggestions on each Section

## A. Unjustified reasons for limiting the right to freedom of association

The government provides reasons for the revision of the Draft Act. It is claimed to be necessary to regulate and direct associations, foundations and not-for-profit organisations. It is also reasoned that the current situation of money laundering is more complicated. The Special Rapporteur on the right to freedom of peaceful assembly and association has called on the government “to ensure that groups and associations, both registered and unregistered, will be able, without permission, to seek, receive and use the budgets including resources from - within the country, overseas or international - natural persons and juristic persons. They must not face unnecessary obstacles whether from individuals, associations, foundations, other civil society organisations, foreign governments and aid organisations, the private sectors, the United Nations and other agencies.”<sup>11</sup>

The amended Draft Act Section 16 requires associations, foundations and not-for-profit organisations including religious, arts, science and educational organisations; or any other organisation that does not seek profits or incomes or benefits sharing, have legal duties as follows:

(1) Prepare annual financial statements that clearly state all income, the source of that income and the entire annual spending; (2) Record transactions of both income and expenses of the organisation; (3) Provide information of persons with authority to supervise and manage benefits from activities of the organisation. Besides, not-for-profit organisations are obliged by law to retain the information, documents and evidence indicated in Sub-section (1), (2) and (3) for 5 years since their first records or since the transaction is made, unless otherwise specified. The format, criteria and items related to the preparation of these financial reports are set in the sub-regulations of the Draft Act. In addition, Section 16 states that this provision does not apply to associations, foundations or not-for-profit organisations under royal patronage.

Such requirements of financial reports are overbroad. The requirements are applied to all not-for-profit organisations. These broad enforced frameworks are thus also applied to small organisations in the

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<sup>11</sup> The UN Special Rapporteurs’ report on the right to freedom of peaceful assembly and association, UN Doc. A/HRC/23/39, on 24<sup>th</sup> April 2013, paragraph 82(b).

community which may not have the potential or administrative and financial resources to prepare such reports. It could also put these organisations at risk of lawsuits for their noncompliance or other severe consequences such as heavy fines or the possibility of being imprisoned. Therefore, the amended Draft Act may be considered disproportionate and inconsistent with the principle of consideration of the risks as recommended in Section 8 of FATF. It states that “*The state should specify which group of organisations is classified as not-for-profit by the definition of an ad hoc working group to implement financial measures [using] all relevant sources of information identifying the types and qualifications of the organisation whose natures and activities are truly at risk of the financing of terrorism.*” Section 8 also outlines a narrow framework of measures aimed at risky not-for-profit organisations and indicates that the state “*should review the adequacy of measures (...) which are related to not-for-profit groups at risk of supporting terrorism so that [the state] can proportionately and effectively deal with such risks.*”

The ICCPR accepts that the state may impose restrictions on the right of freedom of association. However, such restrictions must be under three conditions: 1). must be prescribed by legal provisions; 2). have the legitimate purposes which are to protect national security or public safety, public and order of people, to protect the health and sanitation or good morals of the people or to protect the rights and freedoms of others; and 3) to the extent necessary and proportional to those legitimate aims.

With the amended Draft Act, government officials are allowed for more extensive interpretations. It may also increase the requirements of and frequencies of reports as well as the level of details including the disclosure of specific information of the organisation. We are therefore concerned about the ambiguity of requirements in the Draft Act. The state has righteous interests to create requirements for associations, foundations and not-for-profit organisations to report to the state to ensure legal compliance of these organisations. However, these requirements “should not impede the independence of duties and management of the associations<sup>12</sup> by creating financial and time burdens. The Special Rapporteur’s mandate on the right to freedom of peaceful assembly and association also says that “burden and formal requirements of reports” could eventually “hinder the legitimate works of organisations.<sup>13</sup>”

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

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<sup>12</sup> The Resolutions of Human Rights Council 22/ 6

<sup>13</sup> UN Special Rapporteur report on the right to freedom of peaceful assembly and association, UN Doc. A/HRC/23/39, 24<sup>th</sup> April 2013, para. 38.

## B. Discrimination in Law Enforcement

**Section 16**, paragraph 4, states that *“in the case of having the reasonable cause of suspicion with the reasonable witness and evidence that any association, foundation or not-for-profit organisation is engaging in transactions related to money laundering, financing of terrorism or the proliferation of weapons of mass destruction, the competent government organisation shall (1) order the association, foundation or not-for-profit organisation to clarify facts concerning the business; or summoning any person to be inquired or submit evidence for examinations (2) issue an order to temporarily suspend such transactions for a period specified by the state organisation, but not more than thirty days. (3) Officials may enter the offices of the association, foundation or not-for-profit organisation at the time interval between sunrise and sunset, without a search warrant, when there is a reasonable cause to believe that it will be too late to get a search warrant, or that the properties or witnesses and evidence will be moved, hidden, destroyed or transmuted.*

According to international human rights law, everyone has the right to freedom of association without discrimination.<sup>14</sup> Any restriction on a person’s right to form a group or group gatherings shall be in accordance with the principle of legitimacy. Such restriction must be sufficiently prescribed by legal provisions with sufficiently explicit statements to give clear legal effects to the person or the group that may be affected.

The increased power of the officials may lead to arbitrary exercises of power against not-for-profit organisations in the areas at risk of terrorism. Officials may target organisations to search and seize suspected items without a court order required. We believe that without a mechanism to prevent abuse of authorities, such measures would stigmatise specific groups of civil society. Associations that criticise government performances could be especially affected by harsher legal enforcement or excluded or disapproved by the government. This means that the state does not fulfil its obligations to “create and maintain a safe environment enabling civil societies and human rights defenders to work independently without obstacles and insecurity.”<sup>15</sup>

Moreover, the definition of association according to Section 4 of the Draft Act is vague, broad and lacks legal certainty. It is uncertain which organisation will fit into such definition and its legal bounds.

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<sup>14</sup> Article 2 of the ICCPR

<sup>15</sup> The Resolutions of Human Rights Council 27/31

This may result in unfair restrictions or even criminal penalties for groups that are currently not even bound by this law or groups which potentially cannot comply with such strict requirements. Presently, Section 4 may be interpreted as being applicable to various groups such as academic groups, local communities or grassroots networks, professional and sports associations, art galleries, recreational groups or groups with specific interests and special disaster relief units.

Such intrusive power may also lead to violations of confidential exchanges between organisations, individuals and beneficiaries of organisations. This could put them at risk of reprisal. Therefore, we are particularly concerned about the lack of mechanisms of protection to ensure such raids shall be authorised by the qualified, independent and neutral judicial body.

The Special Rapporteur on the right to freedom of peaceful assembly and association describes various regulations that can be discriminatory especially the unfair classifications of associations by capital constraints.<sup>16</sup> Therefore, the Special Rapporteurs urge the state to approve that the associations can operate with “a simple, accessible, non-discriminatory processes.<sup>17</sup>” Similarly, the United Nations Human Rights Council has called on the state to ensure that restrictions on associations are **not** discriminatory. The [unjustified] discrimination on the basis of capital [is impermissible].<sup>18</sup>

Amnesty Thailand demands the Thai government to affirm the principles of equality and non-discrimination according to the international human rights law. This allows all persons to come together and form an association without discrimination.

## **C. The Capital**

Foreign and international sources of funding are key factors in the operations of many organisations. The control or limitation of such funds pursuant to the amended Draft Act in Sections 16 (1) and (2) may become the means of silencing organisations perceived to be critical of or independent of the control of government agencies, or silencing groups perceived as non-compliant with government policies. Legislation that interferes with foreign and international sources of funding may consequently stigmatise and undermine the righteousness of civil society organisations using such funds by showing

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<sup>16</sup> UN Doc. A/HRC/26/29, paragraphs 53-57

<sup>17</sup> UN Doc. A/HRC/23/39, paragraph 17

<sup>18</sup> The Resolutions of Human Rights Council 22/6 on the Protection of Human Rights Defenders, 2013, A/HRC/RES/22/6, paragraph 9

that these groups are “foreign agents,” “enemies of the state,” or “tools of foreign governments to spread propaganda”

Consequently, restrictions on organisations in seeking, obtaining and using resources are subject to Article 22(2) of the ICCPR. Besides, restrictions shall be imposed merely for the prescribed legitimate purposes. These include national security, public safety or public order, public health or good morals and protection of rights and the freedom of others. Although the government has shown that such restrictions are imposed following legitimate purposes, measures must still be necessary and consistent with those purposes.

Article 13 of the Universal Declaration of Human Rights Defenders states that “Everyone has an individual right as well as the right while joining with others to request, receive and use resources to peacefully promote and protect human rights and fundamental freedoms.”<sup>19</sup> Hence, there shall be no discrimination on the basis of sources of funding whether from overseas or international sources or from within the country. Besides, both legitimately registered associations and those without legal status, such as unregistered associations, should be allowed and protected in accessing sources of funding.<sup>20</sup>

The United Nations Human Rights Council has emphasised the importance of protecting civil society organisations so that they can join fundraising activities. It calls on the state **not** to delegitimise or **not** to criminalise activities of human rights protection based on their sources of funding. The Human Rights Council also urges the state to ensure that the requirements for civil society organisations to report their activities to the state do not impede their independent works and are not discriminatory based on the origins of funding.<sup>21</sup>

Similarly, the United Nations Commission on Human Rights and Special Rapporteurs on the right to freedom of peaceful assembly and association have emphasised the importance of protecting civil society organisations so that they can participate in fundraising activities. They have also argued that the restrictions on funds that hinder the associations’ abilities to carry out legitimate activities are considered interference according to Article 22 of the ICCPR.<sup>22</sup> Additionally, Article 2 of the International Covenant on Economic, Social and Cultural Rights (ESCR) of which Thailand is a State Party determines that Thailand

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<sup>19</sup> The Universal Declaration of Human Rights Defenders, Article 13

<sup>20</sup> UN Doc. A/HRC/23/39, paragraph 17

<sup>21</sup> UN Doc. A/HRC/RES/22/6, paragraph 9

<sup>22</sup> UN Human Rights Commission and Viktor Korneenko et al v. Belarus, (1274/2004) UN Doc CCPR/C/88/D/1274/2004, 2006, paragraph 7.2; UN Doc. A/HRC/23/39, paragraph. 16

has an obligation to provide “assistance and international cooperation especially in economic and technical aspects” to achieve the rights to be protected under the ESCR. The obliged assistance and cooperation also mean that Thailand shall be supportive of the financing of civil society organisations that participate in activities to acquire those rights.<sup>23</sup>

**Section 6** also requires not-for-profit organisations to make the report each year. The administrative and discretionary powers are given to the Ministry of Interior to design “the criteria and conditions” of reporting. Although disclosure and reporting may be permitted to the extent of Article 22 of the ICCPR, such requirements should be clearly stated under the Draft Act to ensure that civil society organisations do not face unduly strict or arbitrary measures which may violate the obligations of the state to protect the right to freedom of association.

In this regard, the organisations or associations must be able to work independently in a safe and favourable environment.<sup>24</sup> The Special Rapporteur on the right to freedom of peaceful assembly and association has especially noted that the ability of associations to access sources of funding and resources is a critical factor in the right to freedom of association.<sup>25</sup> The UN Special Rapporteurs also call upon the state to guarantee that associations can seek, receive and use funds without having to obtain the prior permission of the state or without any inappropriate requirement. Such facilitation shall apply also to the acceptance of funding from individuals, associations, foundations or other civil society organisations, foreign governments, private aid agencies, the United Nations and other agencies.<sup>26</sup>

Amnesty Thailand calls on the Thai authorities to ensure that associations can seek funding from any source without prior permission from the state and do not face arbitrary or discriminatory requirements due to the sources of funding.

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<sup>23</sup> UN Doc. A/HRC/20/27, paragraph 69.

<sup>24</sup> Ibid., paragraph 96

<sup>25</sup> Ibid., paragraph 67

<sup>26</sup> U.N. Doc. A/HRC/23/39, paragraph 82(b) and (c)

## D. Privacy of Associations

### Section 16 paragraph 1

*( 2 ) Recording facts relating to income and expenditure transactions under (1) the criteria, methods and forms prescribed by the commission.*

*( 3 ) Providing information regarding the persons with authority to control or manage associations, foundations or not-for-profit organisations and information concerning the real beneficiaries from activities or undertaken projects of associations, foundations or not-for-profit organisations.*

### Section 35(2/1)

*Copying computer data, computer traffic data from computer systems; ordering a person who possesses or controls computer data or the device used to store computer data to deliver computer data or such equipment to check, to decrypt any person's computer data; or to instruct the person involved in the encryption of computer data to decrypt or cooperate with the competent authorities in such decryption. This also includes seizing or freezing computer systems as necessary for the benefit of checking or consideration”*

### Section 36 (3/7)

*Preparing and developing the database of names of persons who are at risk of money laundering; the financing of terrorism or financing for the proliferation of weapons of mass destruction, to comply with the Act in connection with an investigation to know facts concerning the customers or to proceed under other laws.”*

As previously discussed, there are duties of collecting detailed information and the frequencies of data retrieval. The officials' requirements are also ambiguous. The officials are authorised to search, freeze or copy computer data and information of traffic on computers and devices without a search warrant and make the database system. These are excessively strict supervisions and controls on not-for-profit organisations. These organisations must comply with applicable laws including criminal law already. Therefore, additional measures are unnecessary to assure their compliance with FATF or with already existing laws. More consultations and communications with various sectors would make the most effective guidelines and thus achieve the objectives of the FATF.

Threats to spaces of civic movements are not merely from the issuance of rigid and inflexible guidelines. The operational methods to obtain information are not based on the principles of necessity and appropriateness. This could result in interference with the works of those organisations and their fundamental standards of the right to freedom of thought, conscience and expression.

In case there is the reasonable cause of suspicion with the reasonable witness and evidence that any association, foundation or not-for-profit organisation is engaging in the money laundering transactions, the financing of terrorism or proliferation of weapons of mass destruction, the competent governmental organisation shall (1) order such association, foundation or not-for-profit organisation to clarify facts concerning its business or summon any person to be inquired or to submit pieces of evidence for examination; (2) order temporary suspension of such transactions for a period as determined by the governmental organisation but not exceeding thirty days; (3) Officials may enter the offices of the association, foundation or not-for-profit organisation at the time interval between sunrise and sunset, without a search warrant, when there is a reasonable cause to believe that it will be too late to get a search warrant; or the property or witnesses and pieces of evidence will be moved, hidden, destroyed or transmuted.

Without a court warrant, searching the offices of the organisation, on reasonable grounds for suspicion with the reasonable witness and evidence, may unnecessarily obstruct the organisation's right to privacy. The purpose of preventing the financing of terrorist groups is legitimate. However, the requirement would allow officials who are neither independent nor impartial judicial bodies to access emails of the organisations that operate in Thailand and that receive foreign funds. It means those officials are allowed to observe and monitor communications between officers of the organisations. This is a violation of the right to privacy protected by Article 17 of the ICCPR.<sup>27</sup>

The right to privacy of associations is ensured under Article 17 of the ICCPR. The Special Rapporteur on the right to freedom of peaceful assembly and association urges the state to respect the associations' right to privacy and to ensure that officials cannot determine types of activities or create conditions that affect the associations' decision-making, or cannot enter the offices of associations without prior notice.<sup>28</sup> Independent organisations have the authority to review associations' records for transparency and accountability. Nevertheless, such measures must not be arbitrary and must respect

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<sup>27</sup> Article 17 of the ICCPR

<sup>28</sup> UN Doc. A/HRC/20/27, paragraph 65

the non-discriminatory principle including the right to privacy. Otherwise, it may affect the independence of the associations and the safety of its members.<sup>29</sup>

If the amended Draft Act is approved by the parliament and is enforced, not-for-profit organisations and their members are subject to arbitrary and unlawful interference with their privacy. This is inconsistent with the right to privacy guaranteed in Article 17 of the ICCPR. This may also violate the right to hold opinions without “interference” guaranteed in Article 19 of the ICCPR.<sup>30</sup> The government should ensure that managerial procedures for the registration of not-for-profit organisations and administrative procedures do not invade the privacy of organisations and their members.

## **E. Revocation of Registration and Determination of Criminal Penalties**

Section 16/1, paragraph 4 of the Draft Act authorises government officials to be able to enter the place of operation during the time interval between sunrise and sunset to further investigate the facts or to examine documents, evidence, persons or other information as necessary, or to seize any document or information related to the enforcement of the Act where there is the evidence to believe that there is a violation or non-compliance with the aforementioned law, and then order the suspension of transactions.

Section 51 of the amended Draft Act indicates that anyone who fails to comply with the requirement to report the transactions within the specified period or is unable to provide additional information upon request under section 16/1 paragraphs one and two shall be punished with a fine not exceeding one million baht and a further fine of not exceeding ten thousand baht per day throughout the period of violation or until the rectification is made.

Section 52 stipulates that any person reports or provides information under section 16/1 paragraph one (1) (2) paragraph four (1) by presenting false statements or concealing the truth that must be reported to the officials shall be liable to imprisonment for not exceeding two years or to a fine from fifty thousand to five hundred thousand baht or both.

Finally, Section 53 stipulates that anyone who does not come to testify, does not send a clarification letter, fails to submit accounts, documents, evidence or other information under Section

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<sup>29</sup> Ibid.

<sup>30</sup> Articles 17 and 19 of the ICCPR

16/1 paragraph four (1) without reasonable cause; or resists or obstructs an order issued under section 16/1 paragraph four (3) shall be liable to imprisonment for not exceeding one year or to a fine not exceeding twenty thousand baht or both.

Measures broadly set in Section 16/1 (1) and (2) are concerned with access to the habitat of those who have duties of reporting. They are also related to the seizure of documents and information. However, there are insufficient judicial preventive measures or investigations to ensure that the implementation of these measures will be in accordance with the principles of necessity and proportionality in democratic societies.

Additionally, Section 16/1(3) of the amended Draft Act determines broad criminal penalties. There are also specific penalties for the manager, director or a person of other positions. Personal accountabilities and potential penalties for many persons may be disproportionate. These measures may affect the persons responsible for opening accounts of not-for-profit or with small-profit or community organisations. The impact may extend to the large corporations which manage and transfer funds to these organisations.

The penal imprisonment and heavy fines due to failure to comply with duties of reporting must be taken into consideration. The penalties must follow the principle of proportionality under international law.<sup>31</sup>Therefore, when considering applying the penalties, officials must take measures that to the least possible extent affect and violate the right of associations. Hence, the penalties for the delay in submitting reports or for submitting incorrect reports including other misdemeanours should not be more severe than those of the same accusations committed by other agencies such as business organisations. Penalties should not be imposed. Instead, a warning and additional information regarding correct procedures shall be given so that rectification within reasonable time frames can be done by associations or organisations.

The suspension of association operations, despite involuntariness, is the most severe restriction. It should be practicable merely when there is an order from an impartial and independent court and merely in the presence of obvious and imminent danger and consequential distinct violation of domestic

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<sup>31</sup> See also the UN Human Rights Commission, Korneenko and others with Belarus (Communication No. 1274/2004, 31 October 2006), clause 7.6-7.7

law. It should follow international human rights law.<sup>32</sup>

The Special Rapporteur on the situation of human rights defenders notes that officials should not have the power to arbitrarily suspend activities of human rights groups. Even when the state can demonstrate that the association threaten the national security, public order or good morals of the people or against the rights of others, merely the court shall have the right to order the suspension of such activities and only in situations where there is the obvious and imminent danger which is a direct result of such activities.<sup>33</sup>

The state must ensure that no one faces prosecutions and criminal penalties simply because a person exercises the lawful right to freedom of association.<sup>34</sup> Moreover, the prosecutions of the person, alleged to have founded or operated the unregistered organisation, are inconsistent with the principle of limited restrictions on the exercise of the lawful right to freedom of association. Such restrictions must be prescribed clearly in the legal provisions so that people know precisely which actions would make them criminally liable.

Amnesty Thailand calls on the government to ensure that all suspensions or dissolutions of the association must be ordered by the impartial and independent court. They should also be in accordance with international human rights law and standards. Additionally, officials must ensure that no one becomes a criminal simply for exercising the right to freedom of association; or no one shall be intimidated, attacked, harassed, slandered, defamed, or retaliated against simply because the person joins or forms an association. Unregistered associations must be able to carry out their activities in a safe and favourable environment. Association members should not face criminal penalties merely because the association is not registered.

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<sup>32</sup> UN Doc. A/HRC/20/27, paragraph 75.

<sup>33</sup> Reports of UN special rapporteurs on the situation of human rights defenders, U.N. Doc. A/59/401, 1 October 2004, paragraph 82(r)

<sup>34</sup> UN Doc. A/HRC/20/27, paragraph 84(c)

# Recommendations

Amnesty Thailand considers that several provisions of the Draft Act restrict the right to freedom of association and other human rights. If the amended Draft Act is approved by the parliament and comes into force, non-for-profit organisations and their members will face measures that excessively limit their freedom of association. They also have to face unlawful interference by the government with their right to privacy and freedom of expression.

Based on many concerns mentioned above, Amnesty Thailand considers that the Draft Act is inconsistent with Thailand's obligations under international human rights law and standards. Therefore, the organisation calls on the Thai government to immediately repeal the Draft Act and reaffirm its obligations on human rights to protect, promote and observe the rights of association and other rights.

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