



Review of Thailand's Draft NPO Law and Eight Underlying Principles

The International Center for Not-for-Profit Law (ICNL) and the Global NPO Coalition on FATF are deeply concerned by Thailand's Draft Act on the Operations of Not-for-Profit Organizations approved by the Thai Cabinet in February 2021, as well as a set of eight principles approved by the Thai Cabinet for the Council of State to consider as they compile the second draft of the NPO law. While the draft NPO law presents a highly securitized approach to the non-profit sector and threatens to violate numerous aspects of international law, the eight principles use anti-money laundering (AML) and counter-terrorism (CT) justifications to rationalize several problematic provisions. These principles are not rooted in a risk-based approach and, if used to inform a subsequent draft of the NPO law, would likely result in imposing significant undue hardships on civil society groups and severely curtailing their ability to freely operate.

The Draft NPO Law

In March 2021, the Thai government held public hearing periods on two versions of a draft NPO law. One version was the draft NPO law proposed by the Council of State, and another a draft Act on the Promotion and Development of Civil Society Organizations proposed by the Ministry of Social Development and Human Security. United Nations (UN) Special Rapporteurs and numerous civil society organizations—including ICNL, which prepared a full legal analysis, enclosed—submitted comments on the Council of State's draft law, raising various concerns about its provisions. Key concerns with the draft law include:

- **Groups cannot operate without being registered, subject to criminal penalties** - The draft law broadens the definition of an NPO to include informal groups and requires all NPOs to register with the Ministry of Interior. The criminal penalties for not registering include imprisonment up to 5 years and/or fines of 100,000 baht (~\$3200 USD). A mandatory registration requirement, especially applied to an overly broad definition of NPOs, undermines effective regulation of NPOs, opens the door to dangerous government overreach, and violates international law.
- **The bill authorizes invasive inspections and burdensome reporting requirements** – The Bill allows the Registrar to enter any NPO office to inspect the “use of money or materials” and to obtain electronic communications, for any reason, and without any suspicion of criminal activity or due process protections. It also requires NPOs to “disclose sources and amounts of funds or materials used in their implementation each year” and annual tax returns, without any distinction as to the size or income level of different groups. This not only invites unjustified government interference in NPO affairs, but could chill civic activities and burden service delivery and COVID relief with unnecessary administrative work.
- **The bill vests full control and oversight of NPOs with the Minister of the Interior** - The Bill places regulatory authority of NPOs with the Ministry of Interior and its Department of Provincial Administration. The Ministry of Interior, with its security focus, is particularly ill-suited to regulate NPOs. Lacking the necessary expertise, it may seek to stifle legitimate civic activity, and in so doing, suppress community efforts to address public concerns.
- **The bill institutes blanket restrictions on foreign funding to NPOs** – The Bill permits NPOs to accept money or materials from non-Thai natural persons, legal entities or groups of individuals only for “activities in the Kingdom as permitted by the Minister.” This provision gives the Minister of Interior full discretion to authorize or block any foreign funding. Such blanket restrictions run counter to the right to free association, which embraces the ability to seek and secure resources, both domestic and international. Additionally, such restrictions diverge from FATF guidelines, which call for a “proportionate” and “targeted approach” in dealing with non-profits and allowing “legitimate charitable activity to continue to flourish.”



- **There is no possibility of appeal under the bill, including for termination** – The Bill fails to provide any appeal process for suspension or termination. Thus, almost any violation, no matter how minor, could result in revocation or termination of NPO registration. Under international norms, this is among the most severe restrictions on free association, and is only permitted when there is a clear and imminent danger resulting in a flagrant violation of national law.

The Eight Principles

On June 29, the Thai Cabinet approved a set of eight principles, for which a public hearing period is currently open through July, for the Council of State to consider as they compile the second draft of the NPO law. Although the proposed principles are said to be based on ‘international standards’ connected to NPOs and AML/CT, citing the FATF and the regional Asia/Pacific Group on Money Laundering, we are concerned that these principles are vaguely articulated and not grounded in either international norms on free association or the FATF guidelines on Recommendation 8. The Thai government undertook National Risk Assessments in 2012 and 2016 which found differentiated levels of risk varying by region of the country and focus of the NPO, implying that a uniform approach for the whole sector is not appropriate. It is also unclear to what extent NPOs were consulted, and on what basis the report found unlicensed NPOs to be at greater risk than licensed NPOs.¹ The 2017 Thailand Mutual Evaluation Report (MER) was based on the 2016 assessment, and FATF Recommendation 8 with its Interpretative Note (IN) was revised in the summer of 2016, leaving open the possibility that the assessors and the MER did not fully comply with the new NPO standard.

1. **Proposed Principle 1 – “Registration, and disclosure of registration information**, because at present there are many not-for-profit organizations that are not yet registered, and there should be penalties that are adequate and appropriate.”² The notion of mandatory registration for NPOs and penalties for NPOs that do not register contravenes international law, as well as the FATF standards from Recommendation 8. FATF’s revised Recommendation 8 Interpretative Note also supports this notion, stating that “NPOs could be required to license or register,” but only based on the risk identified, thus no longer requiring mandatory registration.³ Any argument that the NPO sector is particularly vulnerable or that treats the entire sector in a uniform manner does not conform to FATF’s guidance to adopt the risk-based approach implicit in all 40 FATF Recommendations.
2. **Proposed Principle 2 – “Concealment of the objectives involving implementation by not-for-profit organizations, and the names of individuals who are the directors or are in charge, and the disclosure of such information** since it is unclear if such information has been made available and accessible to the public.” The idea that NPOs are commonly concealing their objectives and therefore must disclose the names of individuals who are directors or are in charge, as well as other information, appears to be grounded in an inherent mistrust of NPOs and fails to recognize the right of associations to privacy.⁴ An organization that does not receive significant benefits or funding from the state or the public or engage in activities that substantially affect the public should generally be entitled to as much privacy as an individual.
3. **Proposed Principle 3 – “the preparation of annual financial report with detail of income and expenses** since existing laws do not cover foreign not-for-profit organizations.” The requirement of an annual financial report may be appropriate for certain categories of NPOs, such as those receiving more than minimal benefits from the state or engaging in a significant amount of public fundraising; however, in a

¹ Asia/Pacific Group on Money Laundering (APG),

Anti-money laundering and counter-terrorist financing measures: Thailand, Mutual Evaluation Report, Dec. 2017, Page 71

² These principles are taken verbatim from a translation of the Thai Cabinet Anti-Money Laundering Office (AMLO) principles, as provided by local partners.

³ FATF Recommendation 8 Interpretative Note, para 6. (b) (i).

⁴ Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, submitted to UN Human Rights Council, para. 65, U.N. Doc. A/HRC/20/27 (21 May 2012).

carefully developed system, there should not be a blanket requirement for all NPOs to file detailed reports on their activities and finances.

4. **Proposed Principle 4 – “The monitoring to ensure the disbursement of funds is in line with the objectives** since there is not yet any clarity concerning the registrar’s power to investigate, as well as the authority to ensure proper auditing, and ensuring whether the expenses have been used in line with the objectives or not.” The state agency responsible for overseeing registered NPOs should have some leeway to examine the books, records, and activities of an NPO during ordinary business hours, with adequate advance notice. At the same time, there should be protections in place to prevent the state agency from using the pretext of an audit to gather information about one or more individuals. The FATF standards require that any audits on the NPO sector for the purpose of determining if spending is in accordance with the NPO’s objectives must be solely based on identified risk.⁵
5. **Proposed Principle 5 – “Measures to identify the beneficiaries of funds, and document the identity of the funders** since there is not yet any law to regulate these matters, and there are no clear procedures concerning the receipt of foreign funds.” Any association, whether registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, NGOs, governments and international organizations.⁶ Furthermore, states’ responsibility to address money-laundering and terrorism should never be used as a justification to undermine the credibility of NPOs, nor to unduly impede them in legitimate work. Where the government has identified, through ongoing, representative dialogue with the NPO sector, organizations that may be at risk of terrorist financing, the government could, under FATF guidelines, institute particular oversight measures to reduce the chance of illicit financing going to those particular organizations.
6. **Proposed Principle 6 – “The retention of financial transaction data for at least five years and the disclosure of such information** since there is not yet any law regulating this matter.” It is not unreasonable for NPOs to be required to adopt a policy that will require the retention of financial and nonfinancial documents for reasonable periods of time. However, the disclosure of such information should be required only of a subset of NPOs that have been identified as being at risk, through the risk assessment process.
7. **Proposed Principle 7 – “Penalties which are effective, proportionate and help to pre-empt the commission of wrongdoing,** since the existing penalties are inadequate, ineffective, inappropriate and fail to pre-empt the commission of wrongdoing by not-for-profit organizations.” Although in theory the notion of penalties which are effective, proportionate, and help to pre-empt the commission of wrongdoing is sound, the current draft law contains excessive and disproportionate criminal sanctions. For example, the punishment of imprisonment is on its face a violation of international norms. While it is not unreasonable for the law to have special sanctions for violations unique to NPOs (e.g., reporting violations, self-dealing, or violations of expenditure limits contained in tax law), decisions to impose fines or other sanctions should be appealable to independent courts. Moreover, sanctions related to AML/TF should not only be directed at the NPO sector or be established through laws governing NPOs, but rather should be dealt with through other laws applicable to for-profit entities as well.
8. **Proposed Principle 8 – “Not-for-profit organizations supplying information to foreign organizations** since there is not yet any law to obligate the disclosure of information supplied from not-for-profit organizations to foreign organizations, nor any clear guidelines about how not-for-profit organizations share information with foreign organizations.” As with many of the principles discussed above, the

⁵ FATF Recommendation 8 Interpretative Note, para 6. (b) (iv)

⁶ Office of The High Commissioner for Human Rights, Info Note By The United Nations Special Rapporteur On The Rights To Freedom Of Peaceful Assembly And Of Association Maina Kiai, “Foreign Contributions Regulation Act 2010 And Foreign Contributions Regulation Rules 2011, April 2016, para. 68, <https://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteIndia.pdf>



concern around NPOs supplying information to foreign organizations appears to be based on a position of general mistrust of the sector at-large, and on taking a securitized approach to NPO regulation. Once again, as with laws governing AML/TF, rules around the disclosure of state secrets or other particular information should not target the NPO sector, but should be rules that apply generally, including to for-profit entities.

We ask the FATF to urge the Government of Thailand to review the draft NPO law and proposed eight principles, which contravene the letter and spirit of the FATF recommendations on Combating Money Laundering and the Financing of Terrorism & Proliferation, especially in light of the interpretive guidelines for Recommendation 8 and Recommendation 1. The Thai government has been somewhat open to engaging with international actors on the draft law, and we believe would be amenable to intervention/engagement with FATF or APG to help shape the law in an appropriate, international law-respecting direction. Any new measures should be developed in line with the FATF's risk-based approach, after conducting a detailed and inclusive risk assessment of the NPO sector, and within requirements of Recommendation 8 and Recommendation 1 and with engagement of Thai CSOs, including human rights and humanitarian organizations.

Thank you for your consideration.