Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

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7 July 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 50/17 and 52/4.

In this connection, we would like to express the following concerns over **the draft Act on Associations and Foundations for Public Consultation published on 6 November 2024** (the "**Draft Law**"). We consider that, if implemented as currently drafted, the proposed Draft Law would impose onerous requirements and restrictions on non-profit organisations that are inconsistent with international law, including the right to freedom of association, freedom to participate in public affairs and freedom of expression.

Background

We understand that the Draft Law aims to provide a comprehensive and modern legal framework for the creation and operation of associations and foundations in Thailand, which are currently governed by the Civil and Commercial Code and other laws.

We note that the Draft Law aims to regulate the establishment, operation, and dissolution of associations and foundations in Thailand. It introduces new provisions and requirements for associations and foundations, such as the need to obtain permission from the Registrar of the Ministry of Interior to register an association or foundation, the obligation to report any funds or donations from foreign sources exceeding a certain threshold, the establishment of a Committee to Regulate and Review Appeals related to Associations and Foundations, new requirements for directors of associations and foundations, new rules for the general meetings, and amendments of the regulations of associations and foundations. The Draft Law further prescribes criminal penalties for violations, which include fines and imprisonment.

International law and human rights law standards

We respectfully draw your Excellency's Government's attention to the relevant international human rights law provisions enshrined in the International Covenant on Civil and Political Rights (ICCPR), to which Thailand acceded in October 1996, the Universal Declaration of Human Rights (UDHR), to which Thailand acceded in 1948, the Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the Declaration on Human Rights Defenders to which Thailand acceded in December 1998, and the Financial Action Task Force

(FATF) and its guidance (FATF Recommendations), which Thailand follows as a member of the Asia Pacific Group on Money Laundering, an associate member of the FATF and one of the FATF-Style Regional Bodies.

We bring your Excellency's Government attention to the "principle of legal certainty" under international law (ICCPR article 15(1)) which requires that laws be sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse. We note that several provisions in the Draft Law may contravene this principle due to their broad and vague nature.

Article 22(1) of the ICCPR states that "everyone shall have the right to freedom of association with others." In turn, article 22(2) ICCPR provides that any restrictions on the exercise of the right to freedom of association must be "prescribed by law" and "necessary in a democratic society in the interests of national security or public safety, public order *(ordre public)*, the protection of public health or morals or the protection of the rights and freedoms of others."

For a restriction to meet the ICCPR requirement of being "prescribed by law," it must have a formal basis in law, as must the mandate and powers of the restricting authority. The law itself must be publicly accessible and sufficiently precise to limit authorities' discretion and enable an individual to assess whether or not his or her conduct would be in breach of the law, as well as foresee the likely consequences of any such breach. To meet the requirement that a restriction be "necessary in a democratic society," the restriction must be the least intrusive instrument among those that might achieve one or more of the legitimate aims enumerated above. In determining the least intrusive instrument to achieve the desired result, authorities should consider a range of measures, with prohibition remaining a last resort. The word "necessary" means that there must be a "pressing social need" for the interference. When such a pressing social need arises, States must then ensure that any restrictive measures fall within the limit of what is acceptable in a "democratic society". To conform to the principle of proportionality, any restriction must be appropriate and narrowly tailored to achieve their protective function. The onus of establishing the necessity and proportionality of the restriction always rests on the State.

Article 19 of the ICCPR guarantees the right to freedom of expression, which includes "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice", and protects, inter alia, political discourse, commentary on one's own or public affairs, canvassing, discussion of human rights and journalism. As stipulated by the Human Rights Committee in its general comment 34, the enjoyment of the right to freedom of expression forms the basis for the enjoyment of other rights, including the right to freedom of association (CCPR/C/GC/34).

Under article 19(3) of the ICCPR, any restriction on the right to freedom of expression must be: (i) provided by law; (ii) serve a legitimate purpose; and (iii) be necessary and proportional to meet the ends it seeks to serve. In this connection, we recall that the Human Rights Council, in its resolution 12/16, called on States to refrain from imposing restrictions which are not consistent with article 19(3), including:

discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

In addition, the Declaration on Human Rights Defenders, reaffirms each State's responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, including every person's right, individually and in association with others, "at the national and international levels […] to form, join and participate in non-governmental organizations, associations or groups" and "to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means" (A/RES/53/144, art. 5).

Furthermore, we refer your Excellency's Government to the Financial Action Task Force (FATF)'s updated recommendation 8 which provides guidance to States on the laws and regulations that should be enacted to oversee and protect the subset of Non-for-profit Organizations (NPOs) that have been identified as being vulnerable to terrorist financing concerns and requires all States to "review the adequacy of laws and regulations that relate to NPOs, which the country has identified as being vulnerable to terrorist financing abuse." The FATF recognizes the importance of regulating the NOP sector but stresses the importance of avoiding the adoption of blanket measures. The regulation adopted must be "focused and proportionate"; "a one size fits all' approach to address all NPOs is not appropriate." Therefore, "a risk-based approach applying focused measures in dealing with identified threats of terrorist financing abuse to NPOs is essential given the diversity within individual national sectors, the differing degrees to which parts of each sector may be vulnerable to terrorist financing abuse, the need to ensure that legitimate charitable activity continues to flourish, and the limited resources and authorities available to combat terrorist financing in each country. [...] and that focused measures adopted by countries to protect NPOs from terrorist financing abuse should not disrupt or discourage legitimate charitable activities."

FATF has reaffirmed that State compliance with recommendation 8 should be implemented "in a manner which respects countries obligations under the Charter of the United Nations and international human rights law," including the State obligation to promote universal respect for, and observance of, fundamental human rights and freedoms, such as freedom of expression, religion or belief and freedom of peaceful assembly and of association."

We set out our observations below, grouped thematically, with reference to these international human rights instruments.

Registration, Governance and Reporting

The Draft Law appears to impose stringent registration, governance and reporting requirements that would inhibit the autonomy and operation of associations and foundations, including those who strive for the protection and realization of human rights, by granting the Thai authorities unfettered discretionary authority to interfere with an association or foundation's formation and internal governance. These would make it difficult, if not impossible, for an association or foundation to be established and operate without endorsement from the Thai authorities, which is inconsistent with

the international human rights law standards set out above.

Registration

We observe that section 6 of the Draft Law, which requires any association or foundation to be registered, appears to be disproportionate and prohibitively onerous. The effect of section 6 appears to be that no unregistered group (regardless of size or type) would be permitted to operate in Thailand. Such restriction would be disproportionate as even very small groups with limited funding and resources or spontaneous grassroots movements would be required to register as an association or foundation and comply with the provisions of the Draft Law, which imposes onerous reporting and governance requirements, as set out in further detail below.

Section 6 of the Draft Law also provides that permission from the Registrar must be obtained in order to register an association or foundation. This would be inconsistent with international best practice. It has been recognised generally that a "notification" procedure complies better with international human rights law than a "prior authorisation" procedure.[1]

Sections 14 and 31 of the Draft Law provide that the Registrar may deny an association's registration or strike an existing registration upon a finding that the association is "*contrary to the law or good morals or endangering public order or national security*", without defining or offering guidance as to what would constitute a threat to public order or national security.

The Draft Law also imposes onerous requirements for registration, such as the requirement under section 12 that a minimum of 30 members are required to establish an association or foundation and that the application must be submitted by three persons. High membership requirements are generally considered to be inconsistent with international law as associations should be allowed to exist with as few as two members (A/HRC/20/27, para. 54).

Such broad and mandatory registration requirements fail to meet the principles of proportionality and necessity and appear therefore inconsistent with: (i) article 20 of the UDHR, which provides that everyone has the right to freedom of peaceful and assembly and association; (ii) articles 21 and 22 of the ICCPR, and (iii) article 5 of the Declaration on Human Rights Defenders.

We respectfully bring your Excellency's Government attention to the repeated findings of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Human Rights Committee's that undue and strict registration requirements for NGOs may disproportionately obstruct their legitimate activities (A/61/267, para. 23).

We also wish to refer to Human Rights Council resolution 22/6, which calls upon States to ensure that "procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-

[1] See, for example, Kiai, M, 2012, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association*, Human Rights Council at paragraph 58.

registration, in accordance with national legislation, and are in conformity with international human rights law" (A/HRC/RES/22/6, para. 8).

Governance

We note that section 6 of the Draft Law stipulates that an association or a foundation must have a board of directors to conduct its activities and to represent it in any affairs related to outsiders, under the supervision of the general meeting or the meeting of the association or foundation. Section 18 provides that the board of directors must consist of at least three directors, and at least half of them must be Thai nationals. Section 17 sets out the relevant qualifications and provides that directors must not be mentally incompetent, have a criminal record or disreputable behaviour, or have been removed by the Registrar from the office of a director. In addition, directors are required to be at least 20 years old and not hostile to democratic rule with the King as Head of State.

These requirements, particularly the age and nationality requirements, are potentially discriminatory, and are likely to have a disproportionate effect on certain groups, making it more difficult for them to form and register associations. In addition, undefined and overly broad terms such as "disreputable behaviour" could be used to disqualify directors who hold dissenting opinions or whose views do not align with those of the government.

With regards to the requirement for directors related to not being "hostile to democratic rule with the King as Head of State," we note that, similar legislation in Thailand, notably article 112 of the Criminal Code, has been repeatedly denounced by United Nations human rights bodies and mechanisms as being inconsistent with international human rights law. Under international law, individuals have the right to criticise public officials, including a King, and to advocate peacefully for the reform of any public institution, including the monarchy, and that any restriction on freedom of expression must strictly comply with the requirements set by article 19(3), described above, including necessity and proportionality. Establishing the above-mentioned requirement in relation to the directors of associations in Thailand would be arbitrary and inconsistent international law.

In addition, we note that section 26 of the Draft Law provides that a director may be suspended or removed from office if the director "*has committed any act which may be harmful to the economy, or national security, or public order or good morals*". Again, there is no guidance or definition in the Draft Law as to what constitutes an act that may be harmful to the economy, national security or public order or good morals. Ambiguous and broad terms are open to abuse and risk being used to suspend or remove directors that hold opposing political views. The reference to "*any act which may be harmful to the economy*" is also ambiguous and very broad. It would appear that the effect of these provisions would be to afford the Registrar wide-ranging and ill-defined discretion, which may be abused to deny registration of associations that express dissenting opinions or views that are divergent to those held by the Thai Government under the pretext that such views implicate undefined notions of public order and national security.

The Draft Law could also enable Thai authorities to interfere with the governance of non-profit organisations in wide-ranging circumstances. Section 20 of the Draft Law provides that the Registrar may repeal the decisions made at a meeting if they are in contravention of the Draft Law or the regulations of the association or foundation, upon the complaint of a member or an interested person within 30 days from the date of the decision. Section 21 provides that, if an association violates its regulations, the Registrar may instruct it to rectify or suspend such violation within the prescribed period of time.

The governance standards imposed by the Draft Law appear to contravene articles 21 and 22 of ICCPR and to be inconsistent with international law standards, which expect minimal government interference in the operation and activities of non-profit organisations. The Draft Law does not appear to identify a social need beyond the grounds above, nor any substantial benefit that would be advanced by the adoption of these measures. The measures also risk interfering with the right to freedom of expression, and the right to be free from discrimination (articles 19 and 26 of ICCPR).

Reporting and approvals

We note that section 8 of the Draft Law requires "*any funds or donations from other organisations, agencies or foreign private individuals exceeding the threshold set by Ministerial announcement*" to be reported to the Registrar within 15 days of receipt. The imposition of mandatory reporting of foreign funding beyond an unspecified threshold appears to be invasive. Non-profit organisations and their donors are entitled to privacy and non-interference in a similar manner as private entities. While States may have a legitimate interest in imposing certain reporting requirements on registered organisations, such requirements "*should not inhibit associations' functional autonomy and operation*" (HRC resolution 22/6).

The requirement to report foreign funding may impact and restrict the ability of non-profit organisations to seek, receive and use funding and other resources from foreign persons without prior authorisation or undue impediment. The reporting requirement is likely to have a disproportionate effect on non-profit organisations and may deter them from receiving international support, which is an important source of funding for many human rights organisations. These reporting requirements would therefore interfere with the right to freedom of association and the right to solicit, receive and utilize resources for the purpose of peacefully promoting and protecting human rights, contrary to article 20 of the UDHR, article 21 of the ICCPR and articles 5 and 13 of the Declaration on Human Rights Defenders.

In addition, section 12 of the Draft Law requires prior approval from the Registrar for any activities involving foreign entities or international organisations. This would be inconsistent with article 5(c) of the Declaration on Human Rights Defenders, which guarantees the right to communicate with non-governmental and inter-governmental organisations. Such a provision could severely limit the ability of non-profit organisations to collaborate internationally and inhibit the exchange of information and resources necessary for human rights advocacy. Governments need to "ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, 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" (A/HRC/23/39, para. 82 (b)). Further, regulatory measures that compel recipients of foreign funding to adopt negative labels constitute undue impediments on the right to seek, receive and use funding (para. 82 (d)).

The Draft Law would impose additional onerous reporting requirements. Section 23 provides that an association or a foundation must prepare at least one balance sheet every 12 months, which must indicate the amount of its assets and liabilities and the income and expense account. The balance sheet must be completed and furnished to the auditor for review and proposed to the meeting of the association or foundation for approval within 120 days from the last day of the fiscal year. Section 24 provides that the association or foundation must prepare an annual progress report to be presented to the meeting when the balance sheet is presented. A copy of the meeting minute and a copy of the balance sheet of the previous year, authenticated by a certified auditor, must be filed with the Registrar within 30 days from the date of the meeting.

Similarly, section 25 provides that the association or foundation must also prepare a membership register according to the format prescribed by the Registrar and keep it together with the registration evidence and documents at the office of the association or foundation. Upon the admission of new members, or any change of the membership register, the association or foundation must notify the Registrar of the admission or change by 31 January of the following year.

These requirements would impose significant administrative burdens on associations and foundations, which could impede their functional autonomy and operations and risk diverting already-scarce resources from their core activities. The reporting requirements appear to be disproportionate as they apply regardless of the size and type of the organisation and would make it very difficult for smaller organisations with limited resources to operate in Thailand.

The reporting measures imposed by the Draft Law also appear incompatible with the international law expectation that there will be minimal interference in the operation and activities of non-profit organisations. They also appear to go far beyond the FATF Recommendations, which, as noted above, propose a focused, proportionate and risk-based approach to addressing terrorist financing risks rather than the imposition of wide-ranging requirements applicable to all organisations, regardless of the nature or size of the organisation. We echo in this context the Special Rapporteur on freedom of peaceful assembly and association's position that "[i]n order to meet the proportionality and necessity test, restrictive measures must be the least intrusive means to achieve the desired objective and be limited to the associations falling within the clearly identified aspects characterizing terrorism only" (A/HRC/23/39, para. 23).

Dissolution

Sections 15, 18, 28, 30, 47 and 48 of the Draft Law appear to grant the Thai authorities unfettered powers to dissolve or suspend, without due process of law, foundations and associations whose activities are deemed to violate the law against public morality, threaten national security or disturb public spaces. The violations that give rise to the right to dissolve an association or foundation are ambiguous and very

broad. As a result, they would be open to abuse by authorities who may dissolve or suspend foundations or associations in an arbitrary and subjective manner. In particular, there is a risk that concepts of public morality, national security or the disruption of public spaces could be used to dissolve or suspend associations or foundations that hold or express dissenting views and to suppress legitimate free speech.

International law standards allow associations to pursue a wide range of activities and purposes, and any restrictions should be proportionate and limited to narrow and clearly defined exceptions. As it has been indicated by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, "the suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient" (A/HRC/20/27, para. 75). The Special Rapporteur has further stated that where a registration license has been rejected, the organization "should have the opportunity to challenge the decision before an independent and impartial court" (A/HRC/20/27, para. 61).

Non-compliance and sanctions

The Draft Law would introduce criminal sanctions and empower the Registrar to work with law enforcement to arrest and initiate legal proceedings against individuals who violate it. The UDHR and ICCPR protect freedom of expression (article 19), freedom from arbitrary detention (article 9) and the right to a fair trial (article 10 UDHR and article 14 ICCPR) for all individuals. Articles 9 and 10 of UDHR and articles 9 and 14 of the ICCPR protect individuals from being subject to arbitrary arrest or detention and provide that criminal liability can be imposed only following a fair and public trial before an impartial and independent tribunal.

Section 49(1) of the Draft Law would grant the Registrar and competent officials the powers to enter into a building, a place, or an office of an association or a foundation to examine the facilities, the licenses, and the methods of the association or foundation, or to inspect the information, documents, or evidence relating to the association or foundation where there is a ground to believe the association or foundation is conducting illegitimate activities. Sections 26, 49(4) and (5) would grant powers to issue a subpoena in writing for the applicant, director, member, employee, representative, or any person involved with the association or foundation to give evidence, explain, or send in or produce documents or evidence for the review or examination of the association or foundation and to execute duties as designated by the Committee or the Registrar.

These powers are very wide-ranging and potentially open to abuse as there is no definition or guidance as to what constitutes "illegitimate activities". These powers and sanctions set out in the Draft Law are likely to deter organisations from expressing ideas that do not align with the Government for fear of reprisals, creating a chilling effect on the exercise of the rights to freedom of expression. There is a substantial risk that the powers granted under article 49(1) could be used to quell dissenting views or opinions on the pretext that the association is involved in "illegitimate activities". The Registrar

and competent officials would also have the power to report the case or complain to an administrative official, or the police, or an inquiry official for a legal action against the person who is suspected of having committed an offence under the Draft Law.

The Draft Law imposes criminal sanctions for several other violations. For example, using the name "association" without registration carries fines under section 61 of the Draft Law. Anyone conducting an activity on behalf of a group while convincing others to believe that it is a registered association, if doing so may "*potentially give rise to damage to … public order or good morals of the people*", shall be liable to imprisonment not exceeding two years, a fine of 40,000 Baht or both (section 52). Any director who has conducted an activity not in compliance with the object of their association, where such activity may "*undermine public order or national security*" shall be liable to imprisonment of not more than three years, a fine not exceeding 60,000 Baht, or both (section 52). Section 57 provides that failure to comply with a subpoena or an investigation request can result in a custodial sentence of up to two years and a fine not exceeding 40,000 Baht, or both.

The language of the violations is ambiguous, meaning these provisions could be used to criminalise individuals in order to quell dissenting views or beliefs. Overly broad legal provisions are contrary to the principle of legality, and any arrests or detention based on such provisions would be considered arbitrary.

Moreover, section 49(2) of the Draft Law provides that the Registrar has the right to "*place under arrest a person committing a flagrant offence pursuant to the offences described in this Act*." It is unclear what constitutes a "flagrant offence" as no threshold is imposed, which appear to make this power subject to arbitrary application. In addition, as explained above, the violations themselves are ambiguous and undefined and do not satisfy the requirement of legality under article 15 of the ICCPR, giving rise to a substantial risk that the Registrar or competent officials could improperly sanctioning legitimate free speech.

Article 35 also imposes criminal sanctions, including imprisonment and heavy fines, for non-compliance with the Draft Law. The imposition of criminal penalties for administrative non-compliance appears to be overly disproportionate and could be misused to target and intimidate non-profit organisations. Prison sentences and high fines are not necessary or proportionate responses to violations such as non-registration. These provisions therefore appear to be incompatible with articles 21 and 22 of ICCPR, article 20 of UDHR and article 5 of the Declaration on Human Rights Defenders.

Appeals

The Registrar would have very broad powers under the Draft Law affecting the rights, obligations and existence of organisations. The difficulties to appeal those decisions could prevent organisations from challenging arbitrary or unjust decisions and compromises their ability to operate freely. This appears to infringe article 9 of the Declaration on Human Rights Defenders, which guarantees the right to an effective remedy. It is a fundamental aspect of the rule of law that associations whose submissions or applications have been rejected, or persons whose rights have been adversely affected by a decision, should have the opportunity to challenge such decisions before an independent and impartial court.

Although section 9 of the Draft Law establishes a Committee to Regulate and Review Appeals related to Associations and Foundations, composed of representatives from various government agencies, experts, and associations and foundations, there is no recourse to appeal a decision of the Registrar to the judiciary. Sections 9 and 14 of the Draft Law provide that the final decision rests with a Committee composed of representatives from the Ministry of the Interior, the Ministry of Finance, the Royal Thai Police and other government actors. This would not be consistent with the right to an effective remedy (article 13 of ICCPR).

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following issues:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis of the Draft Law.

2. Please provide your observations on how the Draft Law guarantees the freedom of association in full compliance with Thailand's international obligations under article 22 of the ICCPR.

3. Please explain how your Excellency's Government has ensured and intends to ensure sufficient, inclusive and meaningful public consultation prior to the legislature further considering the Draft Law, and how it seeks to take into account comments from civil society, organisations, human rights defenders and international experts, together with the expected timeline for the legislative process.

4. Please provide information on how the assessment of the threats and vulnerabilities of the non-profit sector was carried out including whether it was carried out in line with FATF guidance, including with the proper involvement of the non-profit sector, the risk based approach required by FATF's revised recommendation 8, and provide information about any other measure that is being considered to align with the FATF recommendations, and could potentially affect freedom of association and the access to funding by NPOs.

5. Please provide more information concerning the safeguards that will be put in place to ensure foundations and associations can challenge adverse decisions foreseen in the Draft Law through judicial review, appeals, or any other court processes before an independent and impartial tribunal.

Ultimately, we call on your Excellency's Government to reconsider its approach to non-profit organisations and revise the Draft Law thoroughly with a view to addressing the aforementioned concerns. We stand ready to provide support and advice to your Excellency's Government on legislative reform in this field.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website after 48 hours. They will

also subsequently be made available in the usual report to be presented to the Human Rights Council.

A copy of the communication has been sent to the Financial Action Task Force – FATF.

Please accept, Excellency, the assurances of our highest consideration.

Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders