

THE LAW AFFECTING CIVIL SOCIETY IN ASIA

REPORT OVERVIEW

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DEVELOPMENTS AND CHALLENGES FOR NONPROFIT AND CIVIL SOCIETY ORGANIZATIONS

Made up of more than 40 countries, Asia defies easy categorization. On the one hand, many countries are home to vibrant civil society sectors. On the other hand, in too many countries, state regulatory controls are becoming increasingly restrictive, particularly for advocacy and other groups engaged in independent civil society activity. Recognizing these restrictions has become more important considering COVID-19, as effective public health responses are being hampered by regulatory burdens on civil society.

CHALLENGES

In restricting civil society, governments in Asia are using a wide range of regulatory tools:

Laws that impede the formation or registration of civil society organizations: The laws in several Asian countries, from China to Nepal to Vietnam, have created a multi-step registration process, with approvals required from multiple government actors. Many laws use vaguely worded concepts of national security or political activities that can prevent CSOs from engaging in a wide range of legitimate activity.

Prohibition of the operation of unregistered groups: Several countries in Asia, and particularly in Southeast Asia, reinforce the prohibition on unregistered groups with criminal sanctions. This is particularly problematic where registration procedures are highly cumbersome, discretionary, and subject to delays.

Burdensome reporting requirements: CSOs across the region remain subject to heavy, detailed reporting requirements. These often require a daunting volume of information, or are required so frequently that CSOs can be easily overwhelmed. Moreover, the failure to comply with reporting requirements may serve as a basis for termination.

Regulatory scrutiny of foreign organizations: Foreign organizations working within civil society are often subject to complex registration and reporting requirements in Asian countries. A notable example is the 2016 Chinese law on the management of overseas NGOs, which places the registration and supervision of foreign NGOs with the Ministry of Public Security. There is also increasing scrutiny over the flow of foreign funding into Asian countries, as demonstrated by the Foreign Contributions Regulation Act (FCRA) in India and the Overseas NGO Law in China.

OPPORTUNITIES

At the same time, we also witness countervailing trends:

Procedural safeguards in the registration context: Some countries within Asia are introducing procedural safeguards in relation to the registration of CSOs. These include time limits for government review; requirement of a written explanation in case of refusal; rights to appeal to administrative or judicial bodies; and other safeguards.

Growth of domestic giving and philanthropy: Governments are encouraging private giving in several ways – through laws on foundations or trusts or zakat, which may serve as vehicles to attract and disseminate private funding; through the enactment of charity laws to promote public benefit activity; and through tax exemptions for CSOs as organizations or tax incentives for donors.

Economic activities and social entrepreneurship: Regulation of economic activities of CSOs varies widely and restrictions remain; however, countries such as South Korea and Thailand are seeking to encourage the development of social enterprises through specific social enterprise legislation, setting innovative examples for other countries to follow.

RECOMMENDATIONS

Based on these trends, ICNL recommends that governments:

- Facilitate the formation and establishment of CSOs;
- Provide for voluntary registration and streamline registration procedures;
- Strengthen the independence and professionalism of registration bodies;
- Remove territorial limitations on the activities of registered organizations;
- Simplify termination and dissolution rules;
- Refrain from or reduce invasive supervisory approaches;
- Remove or reduce foreign funding restrictions;
- Facilitate philanthropic giving; and
- Facilitate, within appropriate limits, the ability for CSOs to engage in economic activities.

ABOUT THE REPORT

We hope that this report will help encourage greater discussions regarding reform needs and reform potential in Asia. Originally published in 2015, this report was revised and updated in 2019 by Mark Sidel and David Moore. It provides an overview of the regulatory environment affecting civil society and civil society organizations across Asia, focusing on a number of countries and key themes. The report highlights regulatory trends impacting civil society, including registration, termination, state supervision, legal treatment of foreign organization, and rules related to funding sources, including cross-border philanthropy and economic activities. [The full version of the 2019 revised report is available here.](#)