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F R E E D O M of E X P R E S S I O N and the M E D I A



b a s e l i n e
s t u d i e s

'Everyone has the right to freedom of expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'

ARTICLE 19 OF THE UNIVERSAL
DECLARATION OF HUMAN RIGHTS



FREEDOM OF EXPRESSION AND THE MEDIA IN THAILAND

*part of a series of baseline studies on
seven Southeast Asian countries*

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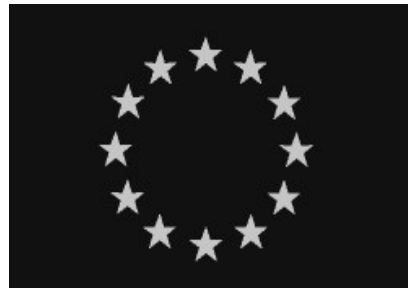
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Freedom of Expression and the Media in Thailand

Contents

| | |
|---|----|
| 1. INTRODUCTION..... | 5 |
| 2. KEY RECOMMENDATIONS..... | 8 |
| 3. BACKGROUND..... | 11 |
| 3.1. History | 11 |
| 3.2. Current Social and Political Context | 13 |
| Demography and language | 13 |
| Religion..... | 14 |
| Government..... | 15 |
| Political parties | 16 |
| Independent watchdogs and legal system..... | 16 |
| Security forces..... | 17 |
| Civil society | 18 |
| 3.3. The History of Mass Media in Thailand | 19 |
| Print media | 19 |
| Cinema | 22 |
| Radio | 22 |
| Television..... | 23 |
| 4. INTERNATIONAL AND CONSTITUTIONAL OBLIGATIONS ... | 25 |
| 4.1. General Standards | 25 |

| | |
|---|----|
| Freedom of expression and the media..... | 28 |
| Public service broadcasting..... | 29 |
| Independence of media bodies..... | 30 |
| ICCPR on media pluralism | 31 |
| 4.2. Constitutional Obligations..... | 33 |
| Constitutional history | 33 |
| Constitutional guarantees..... | 33 |
| 4.3. Absence of an Asian Regional Human Rights Mechanism..... | 36 |
| Need for Law Reform | 36 |
| 4.5. Emergency Decrees..... | 37 |
| Executive Decree on “Emergencies” | 38 |
| 4.6. The National Human Rights Commission | 40 |
| Recommendations | 41 |
| 5. MEDIA SITUATION..... | 42 |
| 5.1. Print Media | 44 |
| Radio | 47 |
| Community Radio | 47 |
| 5.3. Television | 49 |
| TV programme content..... | 51 |
| iTV: the first non-state TV station | 51 |
| 6. MEDIA REGULATION | 52 |
| 6.1. Press Regulation..... | 52 |
| Press Act B.E. 2484 (A.D. 1941)..... | 52 |
| Press Self-regulation..... | 55 |
| 6.2. Broadcast Regulation | 57 |

| | |
|---|----|
| Broadcasting Regulatory Bodies: National Broadcasting Commission and National Telecommunications Commission | 58 |
| The NBC selection panel appointment..... | 59 |
| 6.3. Other Laws Pertaining to Broadcasting | 61 |
| Draft Broadcasting Business Act | 61 |
| Old Broadcast Laws..... | 66 |
| 6.4. Foreign Ownership..... | 67 |
| Recommendations | 69 |
| DEFAMATION LAW | 70 |
| 7.1. The Special Case of Lese Majeste | 70 |
| 7.2. Civil Defamation..... | 71 |
| 7.3. Criminal Defamation..... | 72 |
| The Use of Defamation Laws Against the Media..... | 77 |
| The Case against Supinya Klangnarong and the editors of <i>Thai Post</i> | 81 |
| Sondhi vs Thaksin Shinawatra..... | 86 |
| Recommendations | 89 |
| 8. INFORMAL RESTRICTIONS ON FREEDOM OF EXPRESSION. | 90 |
| 8.1. Take Over of the Media by the Groups Connected to the Prime Minister | 90 |
| The Story of iTV: Shin Corp's take over | 90 |
| The dismissal of iTV staff | 91 |
| Matichon take-over bid..... | 92 |
| 8.2. The Banning of Foreign Media | 92 |
| 8.3. Interference with Community Radio | 93 |
| Suggestion on radio license for TAOs | 93 |
| Community radio crackdown in 2005 | 94 |

| | |
|---|-----|
| Other Measures of Harassment and Intimidation to Restrict Freedom of Expression | 96 |
| Prime Minister’s Weekly Radio Address | 96 |
| Investigation of Journalists’ Financial Assets by AMLO | 97 |
| Media Ethics Bill and Media Monitoring..... | 98 |
| Violence Against Media Practitioners | 101 |
| 8.6. The Media and the Unrest in the South Thailand..... | 102 |
| Banning of Tak Bai VCD’s and coercion of journalists | 103 |
| Recommendations | 105 |
| 9. FREEDOM OF INFORMATION | 106 |
| 9.1. Implementation of the Freedom of Information Law | 106 |
| Enforcement and Limitations of FOI..... | 108 |
| Government refusal to comply with the disclosure tribunal’s rulings | 111 |
| Independent bodies claiming exemption from information disclosure | 111 |
| The Future of the OIC | 111 |
| 9.3. Tsunami and Emergency Communications | 112 |
| Recommendations | 115 |
| Annex 1: Diagram of the NBC and NTC Selection..... | 116 |
| Annex 2: Extracts from ARTICLE 19’s Memorandum on Thailand’s Criminal and Civil Defamation Provisions | 117 |

1. INTRODUCTION

Thailand has repeatedly made international news headlines over the last two years, although not always in a way its government or indeed its people would be proud of. There has been the tsunami that hit the Andaman coast in the south in December 2004 and the victim identification and clean-up operations that followed it, the hosting of the Miss Universe competition in May 2005. However, much of the international news about Thailand has been about human rights abuses, such as the “war on drugs” launched by the Thai government in January 2003, which led to the extra-judicial killing of over 2,000 people, most cases of which still have not been resolved, or the government’s handling of the escalating violence in the Malay-Muslim dominated provinces in the far south of the country. This report focuses on the situation regarding freedom of expression and freedom of information in Thailand and in this area as well there has been increasing cause for concern over the last four years.

To better understand the situation in Thailand today—the fears and dashed hopes of media academics and practitioners—we have to go back a decade to the events of May 1992, commonly referred to as “Black May” in Thailand, when the attempt by a military clique to regain power was thwarted by mass protests led by students and the middle classes in Bangkok. These events have come to serve as an example for media studies courses around the world of how civil society can assert itself with the help of modern communication technologies and in the face of heavy State media censorship.

In the aftermath of May 1992, reforms of both the political system and the media were initiated and came to fruition in 1997, a significant year for freedom of expression in Thailand for two reasons. First, it was the year in which the most recent constitution was promulgated, which we discuss in more detail in Chapter 4.2. Second, later that year the Asian economic crisis hit the country and its media industry hard and triggered the rearrangement of the Thai media landscape towards its current structure, which is outlined in Chapter 5. The 1997 Constitution is an important point of reference for this report, the template against which, along with international standards, the situation regarding freedom of expression and information is measured. Judging by the developments in the first eight years, the contrast between the spirit of the Constitution and the institutional practices is very harsh indeed.



In January 2005, the Thai Rak Thai Party won the parliamentary elections with an overwhelming majority and Thaksin Shinawatra¹ was returned as Prime Minister for a second term. He had been the first prime minister to complete a full four-year term after Thailand's return to democracy post-1992—all his recent predecessors having been ousted early by crumbling coalitions and non-confidence votes. Was this apparent political stability reason to rejoice; an indication that the 1997 Constitution had indeed created a more open and democratic society? Not according to his critics.

Since Thaksin first came to power in 2001, a veritable publishing boom has developed around his persona, involving both his devotees as well as his detractors. Columnists and intellectuals have come up with new terms such as “Thaksinomics” and “Thaksinocracy” to characterise his populist economic policies and autocratic style of leadership that have earned him admiration in the eyes of the Thai public and secured his re-election in January 2005. Since then, however, an economic slow-down, the continuing violence in the South and corruption scandals involving government ministers have led to a rapid decline of his popularity.

This report is not about the policies and persona of Prime Minister Thaksin. It is however impossible to do an analysis of freedom of expression and information in Thailand without taking into account the impact Prime Minister Thaksin's government, with its CEO-style of leadership and business-focus, has had at all levels of society. He has frequently been compared to another Prime Minister—Italy's Silvio Berlusconi, who like Thaksin is an extremely rich businessman whose business empire includes mass media and telecommunications companies and who has taken up politics, not without allegations of a conflict of interest.²

The media reform process prescribed by the 1997 Constitution were constantly delayed under the first Thaksin government (see Chapter 6). Furthermore, the absence of a proper regulatory system has allowed existing radio and TV broadcasting operators, as well as telecommunications businesses—both State-owned and those owned by companies controlled by families of government ministers and army generals—to continue to reap the benefits of their concessions in the absence of free competition. There are also widely diverging interpretations of what media reform should entail. To the government, it means privatising State broadcasters by transforming them into profitable businesses and listing them on the stock market,

¹ A note on citing names: with Thai names the given name is the one used to address and refer to a person, not the surname. This convention is followed in both text and references in this report.

² Thaksin formally divested himself from his business interests when he took office but, by signing his shareholdings over to his family, he has in fact remained close to them, a fact that both he and the Thai public sometimes tend to forget. We will return to this point in Chapter 7.

while to media reform campaigners and civil society movement, it means making the State broadcasters independent from government interference and turning them from government mouthpieces into true public service broadcasters.

iTV, the “independent” TV station launched in 1996, has been bought out by Shin Corp, the conglomerate controlled by the Prime Minister’s family, and this has led to its programming shifting from critical political coverage to more entertainment. Community radio has also suffered from rival interpretations of its purpose, as well as government interference, again facilitated by the absence of an independent regulator, a point that is discussed in Chapters 5.2 and 8.3.

The Thai press—once regarded as the most independent in Southeast Asia—has lost its crown, being more lapdog than watchdog in the eyes of one of its practitioners.³ It has come under economic pressure to toe the government line by the provision/withdrawal of advertising contracts from State agencies and businesses affiliated with government ministers, which make up a significant part of the overall advertising market.

While sections of the journalistic community do need to shape up in terms of their work practices and ethics, fulfilling their role as watchdog is made difficult by the tactics of the government which can best be described as “policy avalanche”. The CEO-style leadership of Prime Minister Thaksin has led to the announcement of countless policies, campaigns and commissions, and it is difficult for journalists to match the manpower of the State apparatus and keep up with all the announcements made by the government or to investigate the implementation of them, since new ones are announced on an almost daily basis. The government has managed to monopolise the agenda-setting role, and many journalists and proprietors choose the easy option of following that agenda. Those who do stray from the fold and publish critical reports and allegations of corruption are increasingly sued for defamation, a problem we discuss in Chapter 7.

With hindsight, it may appear that the opening up of the media between 1992 and 2001 was a false dawn but there are initial signs that civil society is gaining strength once again and that the government may yet loose its grip on the media due to weakening economic prospects and a disillusionment by the public. It can only be hoped that a new dawn of media freedom in Thailand will not come at the expense of another economic crisis, as happened in 1997.

³ Kavi Chongkittavorn at a Thai Journalists Association (TJA) seminar. Reported in the *Bangkok Post*, 30 January 2004.



2. KEY RECOMMENDATIONS

In regards to International and Constitutional Obligations

- The Thai government should support the development of an Asian Human Rights Mechanism.
- All laws affecting freedom of expression and the media should be reviewed for compliance with the Thai Constitution and those which fail to meet the standards it prescribes should be repealed or amended as necessary to remedy this problem.
- The government should adopt emergency decrees only as absolutely necessary and in accordance with constitutional and international standards in this area. All restrictions on freedom of expression in existing emergency decrees should be repealed immediately.
- The government should support the activities of the National Human Rights Commission rather than criticising them.

In regards to Media Regulation

- The Press Act should be repealed in its entirety.
- The Thai authorities should do all within their power to ensure the proceed the establishment of a National Broadcasting Commission in a manner which is consistent with both the Constitution and the law, and that ensures the appointment of members who will discharge their responsibilities so as to promote the public interest and broadcasting freedom and independence.
- The draft Broadcasting Business Act should be adopted as soon as possible, after proper consultation with interested stakeholders, and the existing Radio and Television Broadcasting Act should be repealed. Provisions allowing for the State to use broadcasters in emergency situations should be removed from the draft Bill, while strong provisions requiring broadcasters to be fair and impartial in their coverage of matters of public controversy and politics should be included.

- All State broadcasters should be transformed into independent public service broadcasters with a clear remit to serve the public in a balanced and impartial manner.
- The rules on foreign participation in the media should be reviewed to ensure that they do not unduly restrict the right of foreigners to freedom of expression, or the right of Thais to a diversity of information.
- The authorities should not pressure the media to set up self-regulatory bodies or attempt to interfere with the work of existing bodies.

In regards to Defamation Law

- The provisions in the Constitution, Penal Code and other laws providing the monarchy with special protection against criticism or defamation should be repealed.
- The defamation provisions in the Penal Code should be repealed in their entirety.
- The civil defamation provisions should be amended to exempt certain statements, such as those made in the legislature or courts, or fair and accurate reports of these, from liability and to place a cap on damage awards other than losses that are specifically proven.
- Potential defamation plaintiffs should consider taking cases before the Press Council of Thailand instead of going to court and, when they do go to court, should restrict their claims to reasonable levels of compensation. Public officials should, in particular, exercise considerable restraint before taking defamation cases to court, whether directly or via intermediaries.
- The courts should interpret the existing defamation laws in accordance with constitutional guarantees of freedom of expression and, in particular, ensure that statements in the public interest are not found to be liable under defamation law.

In regards to Informal Restrictions on Freedom of Expression

- Officials should refrain from interfering in the media, including by expressing undue or politically motivated criticism of the media.
- Media owners should respect the editorial independence of their media outlets, as well as the right of staff to respect for their own freedom of expression.



- Officials should refrain from using vague appeals to nationalism, respect for the institution of the monarchy or national security as a way of influencing media content.
- Media outlets, including public media, should not provide undue coverage of, or access to, representatives of certain political parties, even if they form part of the government. Coverage of political figures and events should be balanced and reflect the range of views held in Thai society.
- Officials should strictly refrain from any indirect interference in media freedom, including by auditing the accounts of critical journalists or by threatening prosecutions.
- Officials should respect the 20 per cent frequency allocation to community broadcasters and not try to allocate these frequencies to State broadcasters, local or otherwise. The authorities should refrain from interfering in existing community broadcasters, outside of exceptional cases where this is warranted by an overriding social interest, while at the same time doing all that they can to ensure that the proper regulatory structure for broadcasting, as envisaged by the Constitution and the Frequencies Act, is put into place as soon as possible.
- The government should not seek to introduce a law regulating media ethics but should, instead, leave this up to the appropriate self-regulatory and broadcasting bodies.
- Until the proper broadcast regulatory framework is put into place, the State authorities which control broadcasting frequencies should refrain, as far as possible, from making any changes to the status quo.
- Public advertising should never be used to influence media content and it should be allocated to media outlets on a non-discriminatory basis, in accordance with sensible business grounds.
- Officials should absolutely refrain from committing violence against media workers and any officials found to have committed such acts should be prosecuted to the full extent of the law. The authorities should make all reasonable efforts to identify and prosecute private individuals who are guilty of committing violence against media workers.

In regards to Freedom of Information

- The Official Information Act should be amended to bring it more fully into line with international standards in this area. In particular, it should extend to all public bodies, clear time

lines for the disclosure of information should be provided for and the exceptions should be narrowed.

- Public bodies should respect the decisions of the Information Disclosure Tribunals and comply with them promptly.
- Clear measures should be put into place to ensure advance warning for tsunamis and other natural disasters and to provide appropriate information to those who have been affected by these events.

3. BACKGROUND⁴

3.1. History

The State of Thailand has existed in its current shape since the late 19th century, bordered by Myanmar (Burma) to the west, Laos to the north, Cambodia to the west and Malaysia to the south. Until 1939, it was known as the kingdom of Siam. Siam emerged as a political entity during the 13th century around the riverine State of Sukhothai. In shifting power struggles with the Khmer and Burmese kingdoms, its centre of power has over the centuries gradually moved down the Chao Phraya river via Ayutthaya, and Bangkok became the capital in the late 18th century.

Early cultural and political influences included the Hinduist Khmer civilisation, and it was during the Sukhothai period under King Ramkamhaeng that the Theravada form of Buddhism reached Siam from Sri Lanka via the southern Thai State of Nakhon Si Thammarat. The invention of the Thai alphabet around 1283 has also been ascribed to King Ramkamhaeng, considered to be the founding father of Thai culture.

Historically, the monarchy has played a significant role in Siam, and the kings⁵ were synonymous with the State, a point to which we return when looking at defamation law and lese-majeste in Chapter

⁴ For more background information see *Wikipedia, the free encyclopedia*: <http://en.wikipedia.org/wiki/Thailand> (which includes a Thai language version). For official information from the government's Public Relations Department see: http://thailand.prd.go.th/inbrief/inbrief_view.php?id=1.

⁵ It was exclusively men who were heads of State, even though literature and recent popular culture have highlighted the significant role women have played in deciding the fate of the kingdom.



7.1. While King Ramkamhaeng has been credited with having laid the foundations of the Thai State and culture, Kings Rama IV and V are regarded as the great reformers who brought the country into the modern age and who, through acquiring knowledge of and adapting to Western concepts of statehood, were able to stand up, on the one hand, to the European imperial powers England and France who arrived on the scene in the 19th century, and, on the other, to consolidate their own positions vis-à-vis internal rivals.

Thailand prides itself in never having been colonised by European imperial powers, though it did have to cede control over parts of Burma, Laos, Cambodia and Malaya to the French and British.

Starting in King Chulalongkorn's (Rama V) reign, the Bangkok elite increasingly looked towards Europe for education, technological and cultural innovation. It was a western-educated group of officers who in 1932 staged a bloodless coup and forced then King Prajadhipok to introduce a constitution and turn Siam into a constitutional monarchy. The two leaders of the coup, Phibun Songgram and Pridi Phanomyong played a significant role in shaping the country in the first half of the 20th century, though in very different ways. Phibun was elected Prime Minister in 1938 and put the country on an authoritarian, militarist-expansionist course, allying the country with Japan and fostering a strong sense of nationalism in its officials and the wider population, relying heavily on radio to spread his message.

It was under his rule that the country's name was changed from Siam to Thailand. Pridi, by contrast went underground during the 2nd World War and, with the help from the United States, formed the *Seri Thai* movement to free the country from Japanese presence. When the fortunes of the Japanese waned in Southeast Asia, Phibun Songkhram was forced to resign and Pridi Phanomyong was made regent in 1944 and then Prime Minister for a short time in 1946-7, until rumours about his involvement in the death of King Ananda Mahidol were used to orchestrate a coup d'état and Phibun was reinstated as Prime Minister in 1948. For the next four decades, the military was the defining force in Thai politics, with Field-Marshal Sarit Thanarat continuing and expanding the nationalist and fervently anti-communist policies started by Phibun and retarding Pridi's attempts to democratise Thai society.

Where Phibun had used radio as a means to foster nationalist sentiment, Sarit in the 1950s also made use of the emerging medium of television, and both utilised the institution of the monarchy for their own purposes. Yet the current and now longest-reigning monarch King Bhumipol Adulyadej emerged from their shadows and has—despite his official position being “merely” a representational and ceremonial one—played a crucial role at the key

crises of Thai politics since the 1970s. His advice is heeded and the monarchy is to this day is highly revered by most Thais.

During the wars in Indochina in the 1950s and 60s, the country gave logistical support to the United States and benefited through an economic boom surrounding the, legal and illegal, supply industries to the United States army in the region. Rampant corruption amongst the military elite and the dissatisfaction of a rising urban middle-class erupted in Bangkok in October 1973 in the form of mass demonstrations led by university students. Despite a brutal crackdown by riot police in which about 70 students were killed, the military leaders Thanom Kittikachorn and Praphat Charusatien could not hold on to power and the King announced through national radio their departure and the return to a constitutional government. Political parties had been banned under Thanom and Praphat, so there was no established civilian power structure to replace them and a right-wing backlash occurred in 1976, with hundreds of student demonstrators being killed by paramilitary groups. A military regime was once again in power, this time with the approval of the King.

Stability eventually returned with the appointment in 1981 of General Prem Tinsulanonda as Prime Minister. General Prem put Thailand on track to democratisation and was re-elected twice in general elections until he was defeated in the 1988 elections. A rise in favouritism under Prime Minister Chatichai Choonhavan led to deepening factions amongst the still powerful military and a coup in 1991 installed an interim government whose anti-corruption policies proved popular. However, events following elections in 1992 were seen as an attempt to re-install military rule and led to massive protests by a now sizeable civil society in Bangkok. Once again, King Bhumipol intervened, military strongman General Suchinda Kraprayoon was forced to resign, and Thailand returned once again to civilian rule. The period since the promulgation of the 1997 Constitution is the focus of this report and, after the following brief background remarks on the current context, we examine in detail the state of freedom of information and expression in Thailand today.

3.2. Current Social and Political Context

Demography and language

The overall population of Thailand was 62 million at the time of the last official count in 2002, the majority of which are classified as ethnically Thai, although in some accounts the 30 per cent of the population living in the Northeast of the country (*Isan*) are classified as ethnically Lao. Statistical figures about the size of ethnic



minorities vary, but the largest minority group are the Chinese, with about 10 per cent of the population, followed by Malays who constitute about 3 per cent of the population and many small ethnic groups living mainly along the mountainous borderland with Burma and Laos, and commonly referred to as “Hill Tribes”, who make up about 1 per cent of the overall population.

Half of the Thai population earns a living through agriculture, about one third works in the service sector and about 14 per cent in industry.

The national language is Thai, based on the dialect spoken in the central provinces around Bangkok, although there are significant regional variations in the dialects of the Thai language family spoken around the country, as well as a considerable number of native Malay language speakers in the Southernmost provinces. In addition, there are also several distinct languages spoken by the Hill Tribes. Notwithstanding this linguistic diversity, languages other than Thai, Chinese and English are all but absent from the newspapers and broadcasters that constitute Thailand’s media.

Religion

Thailand is known as Buddhist kingdom and 95 per cent of the population are Buddhist and on the whole follow the Theravada school. The monkhood and its teachings were standardised and brought under central State control at the time of the other bureaucratic reforms instituted in the late 19th century by King Chulalongkorn, but recent decades have seen the rise of diverse Buddhist “sects” competing for followers and their donations.⁶ Thailand also has a significant Muslim minority of 4 per cent which constitutes the majority population in the four southernmost provinces on the border with Malaysia, formerly the Sultanate of Patani, and there are Muslim and Christian communities spread throughout the country. The right to practice freely any religion is enshrined in Section 38 of the 1997 Constitution and, in the Muslim provinces in the South, family matters within Muslim communities are adjudicated according to Islamic law.

The link between Buddhism, the monarchy and the Thai nation has been toned down somewhat in recent years to accommodate non-Buddhist Thais. Nevertheless, mutual suspicion (fed by readily-available stereotypes) between Buddhist and Muslim Thais is still in

⁶ For an overview of the Buddhist movements and their political roles, especially since the 1990’s, see: Jackson, Peter A., “Withering centre, flourishing margins: Buddhism’s changing political roles”, in Kevin Hewison, Ed., *Political Change in Thailand: Democracy and Participation* (London: Routledge, 1997).

evidence, particularly in the light of a recent escalation of violence in the Muslim provinces in the South since 2003. Sections of the Buddhist Sangha are campaigning to see the Constitution amended to declare Buddhism explicitly as the national religion of Thailand.

According to Section 9 of the 1997 Constitution, the King has to be a Buddhist and is the patron of all religions in Thailand. He also appoints the heads of the official religious bodies such as the Supreme Patriarch for the Buddhist Sangha Supreme Council and the *Chularachamontri* for the Central Islamic Committee of Thailand.

Government

Thailand is a constitutional monarchy that is divided into 72 provinces (*changwat*), the governors of which are civil servants appointed by the government. Executive power rests with the Prime Minister and his cabinet who are appointed by the King, usually from the party or coalition emerging strongest in the election to the House of Representatives.

The legislative branch – the Thai parliament - consists of two chambers:

- The House of Representatives (*Sapha Phuthaen Ratsadon*) has 500 seats, 100 of which are filled from party lists while the remaining 400 members are elected in a first-past-the-post system in provincial constituencies. Parliamentary terms last 4 years if they are not shortened by a successful no-confidence motion against the government, as happened repeatedly in the 1990s.
- The Senate (*Wuthisapha*) forms the second chamber and comprises 200 seats. Since 1997, the Senators are also appointed in public elections. Senators cannot be members of a political party while MPs have to belong to a political party. Senators also have to be educated to a level equivalent to or above a bachelor's degree. Casting a vote at elections is a Thai citizens duty, and participation in elections is around 70 per cent .

In the January 2005 general election 25 political parties competed for seats, but only 4 parties were successful, the overwhelming winner being Prime Minister Thaksin Shinawatra's Thai Rak Thai (TRT) party. The official results were as follows:

Table 3.1: Result of 2005 Election

| Political Party Name | Number of MPs | MPs by Election | MPs by Consti-tuency | MPs by Party List | Total |
|----------------------|---------------|-----------------|----------------------|-------------------|-------|
| | | | | | |



| | | | | | |
|---------------|------------|----------|------------|------------|------------|
| Thai Rak Thai | 309 | 1 | 310 | 67 | 377 |
| Democrat | 69 | 1 | 70 | 26 | 96 |
| Chart Thai | 18 | 0 | 18 | 7 | 25 |
| Mahachon | 2 | 0 | 2 | 0 | 2 |
| Total | 398 | 2 | 400 | 100 | 500 |

Source: Election Commission of Thailand.

URL: <http://www.ect.go.th>

Political parties

Traditionally, Thai politics has relied upon a patron-client relationship model which has allowed politicians to develop a strong provincial base which they could then use to bargain with political parties to channel government projects and funding to their constituencies. Until 2001 most parties had a distinct regional base, in the case of Chart Thai the Central Provinces, the Democrat Party the South and Bangkok, the Northeast for Chart Pattana and New Aspiration Party (now both merged with TRT).

The 1997 Constitution had as an aim a reduction of the number of small parties who had historically been able to destabilise a coalition government by shifting their allegiance to a rival party offering better terms. The legal changes to that end have certainly been effective, and some commentators are now wondering whether the changes have indeed facilitated the (democratic) emergence of a one-party State.

The Election Commission, an autonomous body established by the Constitution, vets candidates, monitors the elections and has the power to disqualify and fine candidates who are found to be cheating. In the 2005 general election, it did not disqualify a single candidate despite strong allegations of voting irregularities and, instead, rushed to confirm the new parliament. There is now increasing doubt over the efficacy of the Election Commission, as well as several of the independent watchdogs.

**Freedom of
Expression and
the Media
in Thailand**

Independent watchdogs and legal system

The 1997 Constitution provided for ten new institutions to facilitate political reform and to safeguard the Constitution against tampering

by government or any other State institution, including two judicial organs, the Administrative Court and the Constitutional Court.

The Constitutional Court was created as the country's highest judicial power in 1998 and upon petition rules on the constitutionality of draft legislation, as well as government decisions or the actions of State agencies brought to its attention. Its decisions are final and binding.

While some of the independent bodies provided for in the 1997 Constitution have had a promising start, those related to media and communications regulation have been slowest off the mark, with the National Telecommunications Commission (NTC) only operational since late 2004 and the National Broadcasting Commission has not been established, a point we return to later, particularly in Chapter 6. Confidence in the political independence of those bodies has increasingly been dented in the last five years, with politically-motivated investigations being launched by the Anti-Money-Laundering Office (AMLO), and the Election Commission (EC) giving a clean bill of health to all winning MPs in the 2005 election despite serious allegations of electoral fraud against certain candidates.

Security forces

The premiership of General Prem Tinsulanonda in the 1980s brought about a gradual change of the political system from military government towards civilian rule. Prem had told the military brass to choose between a military and apolitical career and to retire from the armed forces if they wished to run for political office. The most recent attempt to take control of government, in 1991-2, was under General Suchinda Kraprayoon, ostensibly to put an end to rampant corruption under the civilian government of Chatichai Choonhavan. But when the generals were found to have simply replaced one system of corruption with another one in which the armed forces were again the main beneficiaries, they faced strong public resistance. Despite this, the security forces, both the police and the military, are still forces to reckon with.

Thaksin himself rose through the ranks of the police force before switching to become a full-time businessman and later a politician. His autocratic style has been compared with that of two military strongmen in Thailand's past, Field Marshals Sarit Thannarat and Phibul Songkram. Ukrist Pattamanand has taken issue with these simple comparisons, pointing out that Thaksin was a democratically elected, civilian leader who, while adapting characteristics of these military rulers, was careful not to repeat the mistakes of his civilian predecessor Chatichai who was toppled by the military. Ukrist



argues that under the premiership of Thaksin there has been a re-politicisation of the military and that the so-called de-politicisation identified by other observers never really took place.⁷ Pending media reform, the security forces, particularly the army, are still in control of a large part of Thailand's broadcast media, namely TV channels 3 and 5 as well as a large nationwide network of radio stations.

Civil society

Increasing levels of education and urbanisation coinciding with the war in Indochina in the 1960s brought about an emerging civil society that was increasingly discontent with army rule. Its attempts to assert itself in 1973 and 1976, and again in 1992, were also the occasions on which the image of Thailand as peaceful and non-violent society was found to be at odds with the bloody suppression of civil dissent by the Thai security forces. The violent crackdowns notwithstanding, civil society groups continued to grow and, at the end of military rule in Thailand, there was a flourishing scene of rural and urban grassroots movements, NGOs and protest groups, campaigning for better conditions for poor farmers, against large-scale development projects and so on. While the grassroots organisations found themselves at odds with the middle class over the activities of big business and the use of natural resources, they both came together to constitute a new civil society movement in their desire to limit the power of the central State, a fact that, according to Pasuk Phongpaichit, big business has taken advantage of in order to contain the threat from civil society movements against itself.⁸

⁷ McCargo, Duncan and Ukrist Pathamanand, *The Thaksinization of Thailand* (Copenhagen: NIAS Press, 2005), Chapter 4.

⁸ Phonpaichit, Pasuk, "A country is a company, a PM is a CEO", paper given at a seminar "'Statesman or Manager?' Image and Reality of Leadership in SEA", April 2004.



Selection of early Thai newspapers (Photo: Jens Franz)

3.3. The History of Mass Media in Thailand

Print media

Mass media in form of the printing press arrived in Siam/Thailand during the reign of King Rama III, when the American missionary Dr Bradley launched the *Bangkok Reader* (in Thai language, 1844-1845) and *Bangkok Calendar* (in English, 1847-1850), the first newspapers to be printed on Thai soil. They were both published for only a short period and were closed down towards the end of Rama III's reign. A font of the Thai script had been created earlier by Ann Judson, an American missionary in Burma, and used to print Christian texts in Calcutta, India, and it was this press and typeface which Dan Bradley brought to Siam in 1835.⁹

King Mongkut (Rama IV, ruled 1851-1868), who together with his son King Chulalongkorn was credited with reforming Siam into a modern nation State, in 1858 ordered the establishment of a second printing press in order to publish *Ratchakitja* (the Government Gazette), the State's official organ, a role that it fulfils to this day. King Mongkut's motivation for this was allegedly twofold. He

⁹ "100 FIRSTS: First Printing" in *The Nation*, 16 October 2004.



wanted to inform both government officials and the wider public about new laws and regulations but also saw the need to counter articles appearing in the *Bangkok Reader* (which had been brought back as a monthly in 1864) and other newspapers. These articles were critical of Thai society and regarded as an unreliable source by King Mongkut. The *Bangkok Reader* was also the first newspaper to be charged with libel and soon went bankrupt due to the enormous financial burden this imposed.

The significance of the print media in the development of modern Thai society, especially during the era of absolute monarchy, has been mentioned in many studies.¹⁰ It is, therefore, not surprising to see this significance leading to early cases of media interference by those in power going back to the beginnings of print media in the country. Rattana Meknantapaisit's study, "Politics and Printing Acts (1910-1944)",¹¹ highlights the continuous attempts at media interference since the earliest days of the medium. Her research also argues that it is necessary to demystify the common belief that press freedom was given by the rulers out of "generosity" during the absolute monarchy. Rather, it was legal protections in treaties Siam had signed with the European colonial powers which left those newspapers owned by foreigners immune from the restrictions introduced in Thai law.

In the early days of Thai newspaper publishing, the audience was still very limited, comprising the royalty, the upper classes and foreigners. The average circulation of the *Bangkok Recorder* was only 150 copies.¹² Many of the early newspapers were printed in English and their distribution was restricted to members of the royal family and Western missionaries. However, the situation was changing and, with the papers carrying articles criticising the ruling class and government officials, as well as providing lighter reading matter in the form of features and entertainment, the role of the press changed from serving the ruling class, government officials and foreigners to providing information for common Thais. Educational reform and a consequent rise in literacy rates also provided a wider potential readership for the newspapers, though it has to be pointed out that all printing activity was very much limited to Bangkok. The first daily newspaper appeared in 1868 and, in 1904, the first Chinese newspaper appeared in the capital to cater for the large number of Chinese immigrants.¹³

¹⁰ Kamuttapitsamai, Utcharaporn, *Thai Domestic Matters Before 1932 Revolution: Reflection from Newspaper Articles* (Bangkok: Thammasat University Press, 1989).

¹¹ Meknantapaisit, Rattana, *Politics and Printing Acts (1910-1944)*, dissertation of Liberal Arts Faculty, Bangkok: Thammasat University, 1988.

¹² Sukatipan, Saitip, "The Media and Politics: A Study of Radio Broadcasting in Thailand", PhD Thesis, UMI, Ann Arbor, 1988, p. 42.

¹³ Pongsudhirak, Thitinan, "Thailand's media. Whose watchdog?" in Hewison, Kevin (ed.), *Political Change in Thailand* (London: Routledge, 1997), p. 219.

Newspapers were launched with great enthusiasm: 46 newspapers were introduced between 1926 and 1927, 30 of which folded during the first year of business, 8 during the second year and 5 during the third year. It was considered a good start for the print media in Siam, although many publications were, in the words of the American Consul, “futile and irresponsible”.¹⁴

Right from the beginning of newspaper publishing in Siam, journalists have had a significant role in moving Thai society towards modernisation. During the 1927-1937 period of reform towards a constitutional monarchy and the emergence of a civil society in Siam a group calling themselves the “Gentlemen Group”¹⁵ were promoting the idea that the “freedom of journalists is freedom of the people”.¹⁶

Journalists were viewed as those who echoed the “people’s voice” and were active in the emerging social movements. In State purges of progressive forces, such as the crack down on the ‘Rebels for Peace’ in 1952,¹⁷ or the sweeping arrests by the government of General Sarit Thannarat in 1958,¹⁸ many journalists found themselves among those arrested by the regime. The struggle of previous generations of journalists against injustice established a strong degree of credibility for the media, particularly newspapers, among the Thai public. Blatant violence against journalists, such as arrest and murder, are no longer widespread in the cities as in the past. Unfortunately, violence against journalists has not disappeared altogether and is still occurring, mostly on a provincial level.

Between 1977 and 1987, the newspaper market prospered along with Thailand’s economic growth and media became a major business sector in the country. Business newspapers were introduced, reflecting the economic growth and serving the interests of the urban middle class. Through their increasing dependence on advertising revenue at the expense of sales revenue, many newspapers became closely linked to, and at the mercy of, economic trends.

¹⁴ Yokkamolsarn, Siriporn, “Development of Mass Communication” in *Mass Communication on the Path of Capitalism, Political Economics for Communittee*, Bangkok, p. 24.

¹⁵ Choosak, Pattarakulwanit, “Riddles Behind the Portrait of Gentlemen Group” in Karnjane La-ongsri and Tanate Arpornsuwan, Eds., *History through Different Mirror Angles*, (Bangkok: Matichon, 2001).

¹⁶ “Freedom of journalists is freedom of the people” is still referred to until today. See Sampat Pungratit, “Media Movement for Professional Justice,” a reference document in round table discussion “Freedom in News Reporting and Justice Process” (22 November 2002) XX.

¹⁷ Katithammanit, Wiwat, *Rebel for Peace* (Bangkok: Kobfai, 1996).

¹⁸ Tongphao, Thongbai, *Lard Yao Communists: Memoirs of Communist Suspects in Lard Yao Prison*, (Bangkok: Kaofang, 1991).



Therefore, when the Thai economy plummeted in the Asian financial crisis of 1997, newspapers in the country were inevitably affected. Many newspapers had to close down while others were bought out and merged into larger business conglomerates.¹⁹

Cinema

The first cinematic performance in Siam was by a Japanese/French troupe in Bangkok in 1896-7.²⁰ Cinema was the first mass medium to effectively spread beyond the royal court and the Bangkok city limits and reach the wider population in the provinces. The films shown were of foreign origin until the first Thai features were produced in the 1920s, and thus the touring entrepreneurs with their mobile cinemas were providing Thais with a view of the outside world. Cinema production, like radio and other communication technologies emerging at the time, was something of a plaything for members of the aristocracy who brought them back from Europe together with the ideas associated with the technologies, but in contrast to cinema, radio would focus much more on Siam's internal affairs.

Radio

While newspapers were introduced by private entrepreneurs and are to this day associated with the private sector, radio broadcasting took a different path. The first official radio broadcast in Siam was aired on 25 February 1930 (coronation day) and consisted of a speech by King Prajadhipok (Rama VII). The broadcast was intended to "promote education, trade and entertainment for public."²¹ Regular broadcasts began the following year and proved highly popular. By the end of 1931, almost 13,000 radio receiver sets had been registered in Siam.²²

During the political transition from absolute to constitutional monarchy in 1932, radio was adopted by General Phibun Songkhram as an important element in the campaign to explain to the people the political changes brought about by the coup d'état. One of Phibun's main missions after coming to power in 1938 was to establish the

¹⁹ Phiphitkul, Wilasinee, *Making Quality Information* (Bangkok: Thailand Research Fund, 2003), p. 40.

²⁰ Hamilton, Annette, "Rumours, Foul Columnies and the Safety of the State", in Craig J. Reynolds (ed.), *National Identity and its Defenders* (Chiang Mai: Silkworm Books, 1991), p. 351.

²¹ Klangnarong, Supinya, *Article 40 and Media Reform Discourse*, dissertation of Journalism Faculty, Bangkok, Thammasat University, 2000.

²² Barmé, Scott, *Luang Wichit Wathakan and the Creation of Thai Identity* (Singapore: ISEAS, 1993), p. 46

Government Public Relations Office under the Officer of Prime Minister to “propagandise and campaign for democracy.” In the same year, control of national broadcast radio was transferred from the Post and Telegraph Department to the Government Public Relations Office.

Only State agencies were allowed to operate radio stations and the idea of radio serving as the State’s instrument to disseminate its views and to “make the public understand” its position has continued to prevail in the minds of State officials, though the emphasis has shifted over time:²³

- Building a new political system under the constitution (1933-1939): radio was to publicise government press releases and speeches as well as information from State agencies.
- Nationalism, war and propaganda (1940-1957): radio was an instrument to serve the State’s ideology of nationalism. When General Phibun Songkram returned to power in 1947, radio stations were registered as companies and broadcasting on FM began. State agencies established different broadcast radio stations and provided concessions for private sector operators.
- Trade in patronising military dictatorship (1958-1972): the radio network was expanded across the country to support the government’s anti-communist campaign. The content of programmes broadcast was strictly monitored; this era also saw an increase in the number of entertainment programmes.
- Suppressing democracy (1973-1982): the State-owned radio network was used to vilify the student movement. A National Radio and Television Censorship Commission was established and, after the coup d’état on 6 October 1976, the revolutionary committee issued Order No. 15 to control news reports on the radio.
- Economic growth period (1983-1991): the marked increase in levels of consumption brought about a boost in advertising revenues. But while the advertising and music industries grew continuously, the allocation of radio frequencies remained patronised by the State.

Television

Television came to Thailand during the second term of General Phibun Songkhram with the first television show being broadcast by Channel 4 Bang Khunprom on 24 June 1955, Thailand’s National Day.²⁴ The programmes included a mixture of news, musical and

²³ Sirakarn, Sikharet, *Desired Model of Public Broadcast Radio in Thailand After A Broadcast Radio Reform According to Article 40 of the 1997 Constitution*, dissertation of Journalism Faculty, Bangkok, Thammasat University, 2001.

²⁴ These events were associated with State occasions. The first official radio broadcast occurred on Coronation Day, when Siam was still an absolute monarchy,



dance drama, and foreign films. Once again the medium was used by the Phibun government to sway voters in his favour in the 1957 election campaign. Only his Seri Manungka Sila Party was allowed to utilise the national television to promote itself. But the political figure who made the medium his own by doing with television what Phibun had done with radio was General Sarit Thanarat, who announced his coup d'état on national television Channel 4 Bangkok when he ousted General Phibun Songkhram on 16 September 1957.²⁵

To promote his development ideology, General Sarit launched a new television Channel 5 as a communication device for the military with local subsidiary stations in the regions: Channel 5 Khonkaen, Channel 8 Lampang and Channel 10 Hat Yai were founded not for communication among the people but as “a communication network from State to people”.²⁶

Other national TV stations emerged in the following decades. Thailand was the first country in Southeast Asia to broadcast in colour with the launch of the second military-owned station Channel 7 in 1967, but there was little sign of a democratisation of the airwaves. Like radio, television concessions were only granted to State agencies who in some cases subcontracted the day-to-day operation to concessionaries (with political or familial connections).

In the Black May 1992 events mentioned in the Introduction, television stations in particular came under heavy criticism for having obliged the military by showing only the demonstrators' transgressions and avoiding any mention of the security forces' atrocities, thereby failing to fulfil their role of informing the public.

A “window of opportunity” was opened in the aftermath of Black May, with the government granting a license to the first non-state-controlled free-to-air TV station, iTV, and the drafting of the 1997 “People's Constitution”, which was seen as the beginning of a new era for the Thai media. The next chapter, among other things, assesses the Constitutional provisions relating to freedom of information and expression, and this is followed by a more sobering account in subsequent chapters of why these freedoms have not yet or only in part been implemented.

and television was launched to mark National Day.

²⁵ Klangnarong, see note 21 on page 22.

²⁶ The attitudes of the State officials controlling the State broadcast stations has not changed much since then and many still see the mass media mainly as tools to convey the State's policies to its subjects.

4. INTERNATIONAL AND CONSTITUTIONAL OBLIGATIONS

4.1. General Standards

The *Universal Declaration on Human Rights* (UDHR), which the UN General Assembly adopted in 1948, defines the right to freedom of expression at Article 19 as follows:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.²⁷

Thailand ratified the *International Covenant on Civil and Political Rights* (ICCPR)²⁸ in January 1997. This is a legally binding treaty that in Article 19 guarantees the right to freedom of opinion and expression in very similar terms to the UDHR:


1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include 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.

This article, like most national constitutions and international law, acknowledges that the right to freedom of expression does not come without responsibilities. It does concede possible restrictions of that right, but strictly defines how and under what circumstances these may be imposed:

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain

²⁷ UN General Assembly Resolution 217A(III), adopted on 10 December 1948. A Thai version can be found at: <http://www.unhchr.ch/udhr/lang/thj.htm>.

²⁸ UN General Assembly Resolution 2200A(XXI), 16 December 1966, entry into force 23 March 1976. Thailand did not ratify the optional additional Protocols 1 and 2. The ratification of Protocol 1 would allow Thai citizens to appeal to the UN Human Rights Committee if they felt their rights granted under the ICCPR had been violated. In addition to being a signatory to the ICCPR, Thailand has also acceded to the Convention on the Elimination of All Forms of Racial Discrimination (CEDAW) in 1985; and the International Covenant on Economic Social and Cultural Rights (ICESCR) in 1999.



restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.²⁹

It is a maxim of human rights jurisprudence that restrictions on rights must always be construed narrowly; this is especially true of the right to freedom of expression in light of its importance in democratic society. Accordingly, any restriction on the right to freedom of expression must meet a strict three-part test, approved by both the Human Rights Committee³⁰ and the European Court of Human Rights.³¹ This test requires that any restriction must a) be provided by law; b) be for the purpose of safeguarding a legitimate public interest; and c) be necessary to secure that interest.

The third part of this test means that even measures which seek to protect a legitimate interest must meet the requisite standard established by the term “necessity”. Although absolute necessity is not required, a “pressing social need” must be demonstrated, the restriction must be proportionate to the legitimate aim pursued, and the reasons given to justify the restriction must be relevant and sufficient.³² In other words, the government, in protecting legitimate interests, must restrict freedom of expression as little as possible. Vague or broadly defined restrictions, even if they satisfy the “provided by law” criterion, will generally be unacceptable because they go beyond what is strictly required to protect the legitimate interest.

Freedom of expression and freedom of information have both long been regarded by international bodies as vital human rights. The United Nations General Assembly, in its very first session in 1946, adopted Resolution 59(I), which states:

Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.³³

As this resolution notes, freedom of expression is both fundamentally important in its own right and also key to the fulfilment of all other rights. It is only in societies where the free

²⁹ http://193.194.138.190/html/menu3/b/a_ccpr.htm.

³⁰ See, for example, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

³¹ See, for example, *Goodwin v. United Kingdom*, 27 March 1996, Application No. 17488/90, paras. 28-37.

³² *Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 62 (European Court of Human Rights). These standards have been reiterated in a large number of cases.

³³ 14 December 1946.

flow of information and ideas is permitted that democracy can flourish. In addition, freedom of expression is essential if violations of human rights are to be exposed and challenged.

The importance of freedom of expression in a democracy has been stressed by a number of international courts. For example, the African Commission on Human and People's Rights has held:

Freedom of expression is a basic human right, vital to an individual's personal development, his political consciousness, and participation in the conduct of public affairs in his country.³⁴

Similarly, the Inter-American Court of Human Rights has stated:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. ... [I]t can be said that a society that is not well informed is not a society that is truly free.³⁵

This has repeatedly been affirmed by both the UN Human Rights Committee and the European Court of Human Rights.

The fact that the right to freedom of expression exists to protect not only conventional statements but also controversial expression is well established. For example, in a recent case the European Court of Human Rights stated:

According to the Court's well-established case-law, freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".³⁶

These statements emphasise that freedom of expression is both a fundamental human right and also key to democracy, which can flourish only in societies where information and ideas flow freely.

³⁴ *Constitutional Rights Project and Media Rights Agenda v. Nigeria*, 31 October 1998, Communications 105/93, 130/94, 128/94 and 152/96, para. 52.

³⁵ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, 13 November 1985, Series A, No. 5, para. 70.

³⁶ *Nilsen and Johnsen v. Norway*, 25 November 1999, Application No. 23118/93, para. 43.



Freedom of expression and the media

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. The European Court of Human Rights has consistently emphasised the “pre-eminent role of the press in a State governed by the rule of law”.³⁷ It has further stated:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.³⁸

As the UN Human Rights Committee has stressed, a free media is essential in the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.³⁹

The Inter-American Court of Human Rights has stated: “It is the mass media that make the exercise of freedom of expression a reality.”⁴⁰ Media as a whole merit special protection, in part because of their role in making public ‘information and ideas on matters of public interest. Not only does [the press] have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog”’.⁴¹

It may be noted that the obligation to respect freedom of expression lies with States, not with the media *per se*. However, this obligation does apply to publicly-funded broadcasters. Because of their link to the State, these broadcasters are directly bound by international guarantees of human rights. In addition, publicly-funded broadcasters are in a special position to satisfy the public’s right to

³⁷ *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

³⁸ *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.

³⁹ UN Human Rights Committee General Comment 25, issued 12 July 1996.

⁴⁰ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

⁴¹ *Thorgeirson v. Iceland*, note 37 above, para. 63.

know and to guarantee pluralism and access, and it is therefore particularly important that they promote these rights.

Public service broadcasting

The advancement of pluralism in the media is an important rationale for public service broadcasting. A number of international instruments stress the importance of public service broadcasters and their contribution to promoting diversity and pluralism.⁴² ARTICLE 19 has adopted a set of principles on broadcast regulation, *Access to the Airwaves: Principles on Freedom of Expression and Broadcasting*,⁴³ which set out standards in this area based on international and comparative law. In addition, the Committee of Ministers of the Council of Europe has adopted a Recommendation on the Guarantee of the Independence of Public Service Broadcasting.⁴⁴

A key aspect of the international standards relating to public broadcasting is that State broadcasters should be transformed into independent public service broadcasters with a mandate to serve the public interest.⁴⁵ The Council of Europe Recommendation stresses the need for public broadcasters to be fully independent of government and commercial interests, stating that the “legal framework governing public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy” in all key areas, including “the editing and presentation of news and current affairs programmes”.⁴⁶ Members of the supervisory bodies of publicly-funded broadcasters should be appointed in an open and pluralistic manner and the rules governing the supervisory bodies should be defined so as to ensure they are not at risk of political or other interference.⁴⁷

Furthermore, the public service remit of these broadcasters should be clearly set out in law and should include the requirements that they:

⁴² See, for example, the Declaration of Alma Ata, 9 October 1992 (endorsed by the General Conference of UNESCO at its 28th session in 1995) and the Protocol on the system of public broadcasting in the Member States, Annexed to the Treaty of Amsterdam, Official Journal C 340, 10 November 1997.

⁴³ ARTICLE 19, *Access to the Airwaves*, (ARTICLE 19:London, March 2002).

⁴⁴ Recommendation No. R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting, adopted 11 September 1996.

⁴⁵ See *Access to the Airwaves*, Principle 34. See also the Declaration of Sofia, adopted under the auspices of UNESCO by the European Seminar on Promoting Independent and Pluralistic Media (with special focus on Central and Eastern Europe), 13 September 1997, which states: “State-owned broadcasting and news agencies should be, as a matter of priority, reformed and granted status of journalistic and editorial independence as open public service institutions.”

⁴⁶ Recommendation No. R (96) 10, see note 44 above, Guideline I.

⁴⁷ Ibid., Guideline III.



- provide quality, independent programming which contributes to a plurality of opinions and an informed public;
- provide comprehensive news and current affairs programming which is impartial, accurate and balanced;
- provide a wide range of broadcast material which strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences;
- be universally accessible and serve all the people and regions of the country, including minority groups;
- provide educational programmes and programmes directed towards children; and
- promote local programme production, including through minimum quotas for original productions and material produced by independent producers.⁴⁸

Finally, the funding of public service broadcasters should be ‘based on the principle that member states undertake to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions’.⁴⁹ Importantly, the Council of Europe Recommendation stresses that “the decision-making power of authorities external to the public service broadcasting organisation in question regarding its funding should not be used to exert, directly or indirectly, any influence over the editorial independence and institutional autonomy of the organisation.”⁵⁰

Independence of media bodies

In order to protect the right to freedom of expression, it is imperative that the media be permitted to operate independently from government control. This ensures the media’s role as public watchdog and that the public has access to a wide range of opinions, especially on matters of public interest.

Under international law, it is well established that bodies with regulatory or administrative powers over both public and private broadcasters should be independent and be protected against political interference. In a Joint Declaration in 2003, the UN, OSCE and OAS special mandates protecting freedom of expression state:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic

⁴⁸ *Access to the Airwaves*, note 43 on page 29, Principle 37.

⁴⁹ Recommendation No. R (96) 10, see note 44 on page 29, Principle V.

⁵⁰ *Ibid.*

nature, including by an appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.⁵¹

Regional bodies, including the Council of Europe and the African Commission on Human and Peoples' Rights, have also made it clear that the independence of regulatory authorities is fundamentally important. The latter recently adopted a *Declaration of Principles on Freedom of Expression in Africa*, which states:

Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.⁵²

The Committee of Ministers of the Council of Europe has adopted a Recommendation on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, which states in a pre-ambular paragraph:

[T]o guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector...specially appointed independent regulatory authorities for the broadcasting sector, with expert knowledge in the area, have an important role to play within the framework of the law.⁵³

The Recommendation goes on to note that Member States should set up independent regulatory authorities. Its guidelines provide that Member States should devise a legislative framework to ensure the unimpeded functioning of regulatory authorities and which clearly affirms and protects their independence.⁵⁴ The Recommendation further provides that this framework should guarantee that members of regulatory bodies are appointed in a democratic and transparent manner.⁵⁵

ICCPR on media pluralism

Article 2 of the ICCPR places an obligation on States to 'adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant'. This means that States are

⁵¹ Adopted 18 December 2003. Available at: <http://www.unhchr.ch/huricane/huricane.nsf/view01/93442AABD81C5C84C1256E000056B89C?opendocument>.

⁵² Adopted by the African Commission on Human and Peoples' Rights at its 32nd Session, 17-23 October 2002.

⁵³ Recommendation No. R(2000) 23, adopted 20 December 2000.

⁵⁴ Recommendation No. R (96) 10, see note 44 on page 29, Guideline 1.

⁵⁵ Ibid., Guideline 5.



required not only to refrain from interfering with rights but also to take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under an obligation to create an environment in which a diverse, independent media can flourish, thereby satisfying the public's right to know.

An important aspect of States' positive obligations to promote freedom of expression and of the media is the need to promote pluralism within, and ensure equal access of all to, the media. As the European Court of Human Rights has stated: "[Imparting] information and ideas of general interest ... cannot be successfully accomplished unless it is grounded in the principle of pluralism".⁵⁶ The Inter-American Court has held that freedom of expression requires that 'the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media'.⁵⁷

The UN Human Rights Committee has stressed the importance of a pluralistic media in nation-building processes, holding that attempts to straight-jacket the media to advance "national unity" violate freedom of expression:

The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democratic tenets and human rights.⁵⁸

The obligation to promote pluralism also implies that there should be no legal restrictions on who may practice journalism⁵⁹ and that licensing or registration systems for individual journalists are incompatible with the right to freedom of expression. In a Joint Declaration issued in December 2003, the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression state:

Individual journalists should not be required to be licensed or to register.

Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair

⁵⁶ *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88 and 15041/89, para. 38.

⁵⁷ See *Compulsory Membership*, note 35 on page 27, para. 34.

⁵⁸ *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

⁵⁹ See *Compulsory Membership*, note 35 on page 27.

and transparent process, based on clear and non discriminatory criteria published in advance.⁶⁰

4.2. Constitutional Obligations

Constitutional history

Thailand has seen as many as 16 constitutions since it became a constitutional monarchy in 1932, but most of these were drafted by the regime of the day to legitimate its paternalistic rule rather than to grant and define the fundamental rights and duties of Thai citizens. The 1932 Constitution formally introduced for the first time a Western notion of human rights to Siam/Thailand,⁶¹ but this did not take hold in what was at the time still a highly stratified society where, in an interpretation of Buddhism that saw power legitimised by the assumption of merit,⁶² “rights” had been associated only with the ruler.

The most recent Constitution, which was drafted as a consequence of the popular uprising against the Suchinda regime in May 1992 and passed into law in 1997, was promulgated to put an end to paternalistic/military rule, to democratise and decentralise the State, and, once again, firmly to enshrine the protection of individual rights. Compared with the first Constitution of 1932, which granted citizens 9 individual rights, the current one contains 40. The public was consulted in the drafting process and the resulting Constitution has been widely praised for its liberal character and the fact that it explicitly grants citizens the right of both freedom of expression and information. For the first time in Thai history, the 1997 Constitution has been declared the basis of all laws, and a Constitutional Court has been established to safeguard this supremacy.

Constitutional guarantees

The sections of the 1997 Constitution relating directly to mass media and freedom of expression are Sections 37, 39, 40 and 41.

Sections 37 and 39 protect the right of every person to express their opinion and of “communication by lawful means” and, at the same

⁶⁰ Joint Declaration, see note 51 on page 31.

⁶¹ One of the key drafters, Pridi Banomyong, received his law degree from the University of Paris.

⁶² Aphornsuvan, Thanet, *The Search for Order: Constitutions and Human Rights in Thai Political History*, 1997, p. 8.



time, outlines the limitations of these rights, but also the limitations to censorship and interference by the State:

Section 37. A person shall enjoy the liberty of communication by lawful means. The censorship, detention or disclosure of communication between persons including any other act disclosing a statement in the communication between persons shall not be made except by virtue of the provisions of the law specifically enacted for security of the State or maintaining public order or good morals.

Section 39. A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise, and make expression by other means. The restriction on liberty under paragraph one shall not be imposed except by virtue of the provisions of the law specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing the deterioration of the mind or health of the public.

The closure of a pressing house or a radio or television station in deprivation of the liberty under this section shall not be made. The censorship by a competent official of news or articles before their publication in a newspaper, printed matter or radio or television broadcasting shall not be made except during the time when the country is in a state of war or armed conflict; provided that it must be made by virtue of the law enacted under the provisions of paragraph two.

The owner of a newspaper or other mass media business shall be a Thai national as provided by law. No grant of money or other properties shall be made by the State as subsidies to private newspapers or other mass media.

Section 40 defines broadcasting frequencies as a national resource and deals with the establishment of an independent regulatory body for radio and TV:

Section 40. Transmission frequencies for radio or television broadcasting and radio telecommunication are national communication resources for public interest.

There shall be an independent regulatory body having the duty to distribute the frequencies under paragraph one and supervise radio or television broadcasting and telecommunication businesses as provided by law.

In carrying out the act under paragraph two, regard shall be had to utmost public benefit at national and local levels in education, culture, State security, and other public interests including fair and free competition.

Section 41 unequivocally rules out State interference in the running of private media enterprises:

Section 41. Officials or employees in a private sector undertaking newspaper or radio or television broadcasting businesses shall enjoy their liberties to present news and express their opinions under the constitutional restrictions without the mandate of any State agency, State enterprise or the owner of such businesses; provided that it is not contrary to their professional ethics.

Government officials, officials or employees of a State agency or State enterprise engaging in the radio or television broadcasting business enjoy the same liberties as those enjoyed by officials or employees under paragraph one.

Section 45 gives employees the right to unionisation, though by the end of 2000, of all the media companies only the *Bangkok Post* employees had realised this right. When staff at the iTV station formed a union in January 2001, they found themselves sacked the very next day, a case we analyse in more detail in Chapter 8.1:

Section 45. A person shall enjoy the liberty to unite and form an association, a union, league, co-operative, farmer group, private organisation or any other group.


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

Freedom of Information is enshrined in Sections 58 and 59 of the 1997 Constitution. Section 58 grants citizens the right to receive information from State agencies:

Section 58. A person shall have the right to get access to public information in possession of a State agency, State enterprise or local government organisation, unless the disclosure of such information shall affect the security of the State, public safety or interests of other persons which shall be protected as provided by law.

Section 59 explicitly extends this right to information on government projects:

Section 59. A person shall have the right to receive information, explanation and reason from a State agency, State enterprise or local government organisation before permission is given for the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or her or a local



community and shall have the right to express his or her opinions on such matters in accordance with the public hearing procedure, as provided by law.

4.3. Absence of an Asian Regional Human Rights Mechanism

At present there exists no regional body in (Southeast) Asia to monitor compliance of new and existing legislation on a national level with international law or an Asian human rights charter.

Although there is strong support for the implementation of an ASEAN human rights mechanism from human rights NGOs and national human rights commissions in most of the ASEAN member countries, the governments in the region have been less keen to push forward the creation of an ASEAN or Asia-wide institution comparable to the Inter-American Commission on Human Rights or the European Court of Human Rights. The governments are, however, not explicitly opposed to it. A joint communiqué of the 26th ASEAN Ministerial Meeting held in Singapore on 23-24 July 1993 declared that, "... in support of the Vienna Declaration and Programme of Action of 25 June 1993,...ASEAN should also consider the establishment of an appropriate regional mechanism on human rights".⁶³ The "Working Group for an ASEAN Human Rights Mechanism" was formed in 1996 by human rights advocates from both governmental and non-governmental organisations to create and maintain momentum for the creation of such a mechanism.

4.4. Need for Law Reform

There are still several old laws and decrees in force that contradict the 1997 Constitution, such as the 1941 Press Law which has been used repeatedly to threaten newspaper publishers with sanctions and closure. The Transition Article 335(1) of the Constitution, however, allows for these laws to remain effective until amended or repealed by parliament.

Since the 2001 elections which brought Prime Minister Thaksin and his Thai Rak Thai Party (TRT) to power with a comfortable majority, the government's willingness to push through the reforms demanded by the Constitution and to respect the independence and authority of the constitutional bodies has frequently been doubted by

⁶³ Quoted by Carlos P. Medina Jr (n.d.) in "Background of the Working Group for an ASEAN Human Rights Mechanism", URL: <http://www.hrnw.org/asean/ahrm.htm>.

the opposition, academics and NGOs. There is a trend towards an increasing politicisation of the Senate (which appoints the members of the independent watchdog institutions) in favour of the ruling TRT party, and the impartiality of some of the Constitution Court judges has also been questioned.

After Thaksin's second electoral victory in February 2005 he did mention legal reform as one priority for his second term in office and promised to amend 106 laws he identified as being in violation of the Constitution. However, he also immediately warned that it would take time to work through all obsolete laws and orders, a factor that had thwarted previous governments' attempts at legal reform because they found themselves out of office before the amendments had passed through parliament.⁶⁴

4.5. Emergency Decrees

Another development under Thaksin's premiership which has given cause for concern about the strength of the democratic legislative process has been the issue of two Emergency Decrees under Section 218 of the Constitution by the Thaksin government in 2003.

Section 218 states:

For the purpose of maintaining national or public safety or national economic security, or averting public calamity, the King may issue an Emergency Decree which shall have the force as an Act.

The issuance of an Emergency Decree under paragraph one shall be made only when the Council of Ministers is of the opinion that it is the case of emergency and necessary urgency which is unavoidable. [. . .]⁶⁵

Emergency Decrees can only be accepted or rejected retroactively by the National Assembly, but not amended. The first Emergency Decree, issued in January 2003, introduced a telecoms excise duty, which the government claimed was necessary to secure the national economy amidst a telecoms industry restructuring. The second decree, amending the penal code to deal with "terrorist" offences, was hastily introduced in August 2003 despite earlier promises by the government to follow the proper legislative process.

There was widespread agreement amongst academics, the opposition and NGOs that neither Emergency Decree addressed a matter of

⁶⁴ "Govt to focus on laws that violate the constitution", *Bangkok Post*, 4 April 2005.

⁶⁵ http://www.kpi.ac.th/en/con_th7.asp.



urgency, as required by Section 218, and that they were, therefore, in breach of the Constitution. The Telecoms Excise Decree was alleged to have benefited the big established telecoms companies with existing licenses, particularly Advanced Info Systems (AIS), a part of Shin Corp, the Prime Minister's family's business.⁶⁶

The second emergency decree, the anti-terrorism decree, was also seen as ill-defined, curbing freedom of expression and being introduced opportunistically by Prime Minister Thaksin to curry favour with the US administration and to make up for having earlier shown reluctance to join the US-led 'war on terrorism'. The Constitutional Court was asked by opposition MPs to examine the legality of the Telecoms Excise Decree and, in May 2003, it ruled in favour of the government, raising doubts about its independence.⁶⁷ The Court was also asked to rule on the constitutionality of the Anti-Terrorism decree and, in February 2004, returned a 10:4 split ruling in favour of the government.⁶⁸

Executive Decree on "Emergencies"

In July 2005, although none of the obsolete laws conflicting with the provisions of the 1997 Constitution had been repealed, the cabinet passed The Executive Decree on Public Administration in Emergency Situations. This decree grants the prime minister extraordinary powers in case of an "emergency". It is in effect in Narthiwat, Pattani and Yala, and was renewed for three months on 19 October 2005. This is an approach adopted by military regimes in the past and it is indicative of Prime Minister Thaksin's habit of bypassing parliamentary scrutiny, despite his government's overwhelming majority in parliament.

Reacting to calls from many quarters to lift martial law which had been declared in large parts of the Southern Provinces in 2004, the government seemed to agree that the draconian powers granted to the army were hindering rather than helping to alleviate the violence in the South. It did argue that some form of security law would be needed in its stead, but the draconian powers it granted to the Prime Minister took everybody by surprise and caused an outcry from Senators, media representatives and community leaders in the South, the region the decree was ostensibly aimed at.

⁶⁶ In parliament the opposition linked a Bt8 billion rise in the stock value of AIS directly to the Decree and described it as the biggest example of 'policy corruption', disadvantaging both the State and consumers. The communications minister was accused of having copied the tax model from a report written by Boonklee Plangisiri, the CEO of Shin Corp. *The Nation*, 29 May 2003.

⁶⁷ The judges returned a 8:6 split vote. *The Nation*, 2 May 2003.

⁶⁸ *The Nation*, 20 February 2004

The executive decree on emergency powers was passed one day after concerted attacks on State institutions and entertainment venues in Yala Province in which two policemen were killed, and just one week after the London underground bombings, but also at the time the government's popularity rating was at an all-time low due to rising oil prices, the ongoing southern unrest and emerging news of cabinet involvement in corruption scandals—allegations of the Prime Minister's sister herself being involved in a case of bribery in connection with the construction of the new Bangkok airport were just emerging. It was also merely days before Thailand's human rights record was due to be debated at the UN Human Rights Committee in Geneva.

The government justified its move by saying that the new powers would be used cautiously and that they were an improvement upon martial law.⁶⁹ The decree allows the Prime Minister to empower State officials to examine correspondence and tap into phone conversations, to prohibit the publication of media deemed to be a threat to national security or to be “distorting the facts” and, crucially, it exempts officials acting under its provisions from civil, criminal or disciplinary action.⁷⁰ It is significant that the draft had been sitting on the shelf for half a year, suggesting it could easily have been submitted to parliamentary scrutiny. This has naturally raised suspicions as to the real motives behind the introduction of it by executive decree, especially since the attacks in Yala Province were not as serious as previous incidents in 2004.

The press united in its condemnation of the decree as a severe infringement of the right to free expression and of the public right to receive information. Three days after royal endorsement of the decree, security forces on the ground were already invoking it to prevent journalists from reporting factual information such as the assassination of a school headmaster.⁷¹ The National Reconciliation Commission (NRC), a panel set up by the Prime Minister in March 2005 to find a peaceful solution to the Southern unrest, said that the government had also broken its promise to seek its advice before introducing any new security legislation. The NRC feared that the decree would actually worsen the violence by granting the security forces impunity.

⁶⁹ The emergency executive decree did not actually repeal martial law and, according to Deputy Prime Minister Visanu Kruengarm, they were initially be used alongside each other to avoid “legal voids”. “Security Powers to get boost”, *Bangkok Post*, 16 July 2005. The three most recent impositions of Martial Law in the Southern Provinces were however revoked a week later.

⁷⁰ Sidebar, *Ibid*.

⁷¹ “Decree must be abolished promptly, editors say”, *The Nation*, 20 July 2005.



4.6. The National Human Rights Commission

The National Human Rights Commission (NHRC) is an independent body set up for the purpose of promoting and protecting the human rights granted under both the Constitution and international treaties. Its remit is set out in Section 200 of the 1997 Constitution:⁷²

Section 200. The National Human Rights [sic!] have the powers and duties as follows:

to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceeding;

The NHRC has repeatedly come under strong criticism from the government for daring to publicise and to report its findings on human rights violations by the Thai State to the UN Human Rights Committee, most recently in 2003. These included the extra-judicial killings of drug suspects and the violent suppression of a demonstration against a gas pipeline. Prime Minister Thaksin has on various occasions lashed out at UN organisations and representatives for criticising Thailand's human rights record, stating that since Thailand did not rely on UN aid, it would not have to listen to the UN's criticism. This ignores the important fact of Thailand's obligations under the ICCPR.

The fact that the current Prime Minister is so intolerant of criticism (both national and international) builds upon a cultural background in Thailand where people have been and often still are reluctant to criticise superiors. This attitude is deeply ingrained in the education system and can be found throughout society, including some members of professions where a critical outlook might be deemed essential for their trade, such as journalists and academics.

A seminar held by the King Phrajadhipok Institute in 2001 to reflect on the first five years of the 1997 Constitution found that many Thai people were still unaware of how to exercise rights such as free speech and access to information, and that many did not yet understand the relevance of these rights to them.⁷³ A climate of increased violence by the State against marginal and/or vilified

⁷² The extent to which the NHRC can fulfil its remit and what the hindrances are, are discussed in Chapter 4.6.

⁷³ KPI Congress IV: Five Years of Political Reform Under the New Constitution, 8-10 November 2002 (summary: <http://www.kpi.ac.th/download/Group1.pdf>).

groups such as illegal immigrants, Muslims in the South and alleged drug dealers has also lead to a perception amongst the general Thai public that these groups do not deserve to have their elementary human rights respected.

Human rights courses are to be included in the national school curriculum but the question of how to educate both State officials and the general public about their rights and responsibilities remains a problem, an issue to which we return in the discussion of freedom of information in Thailand in Chapter 9.

To sum up, while both the current Constitution and Thailand's international obligations guarantee a range of rights, including freedom of expression and information, the effective implementation of these rights is still some way off. A free and independent, self-regulated and responsible media are vital to the success of this reform process, as they have the capacity to inform, educate and be a forum for open debate and criticism.

Recommendations:

- The Thai government should support the development of an Asian Human Rights Mechanism.
- All laws affecting freedom of expression and the media should be reviewed for compliance with the Thai Constitution and those which fail to meet the standards it prescribes should be repealed or amended as necessary to remedy this problem.
- The government should adopt emergency decrees only as absolutely necessary and in accordance with constitutional and international standards in this area. All restrictions on freedom of expression in existing emergency decrees should be repealed immediately.
- The government should support the activities of the National Human Rights Commission rather than criticising them.



5. MEDIA SITUATION⁷⁴

The mass media have undeniably played a significant role in shaping Thailand and its politics since the late 19th century. The chronological overview in Chapter 3.3 illustrates how different media technologies were adapted at certain stages for particular projects in the history of Thai political discourse. The May 1992 events showed the failure of the State broadcast media to provide balanced accounts, the limitations of print media due to censorship, but also the potential of technologies that were emergent at the time – mobile phones and fax machines – to disseminate information which was not carried on the State channels. Since 1992, the Internet, text messaging and community radio have been added to the Thai media landscape. This chapter gives a brief overview of the media technologies and players over the last decade.

Bangkok has remained the centre of media production throughout the history of Thailand and in a currently ongoing process to privatise the State-owned broadcast media operators, tendencies to decentralise at least parts of radio production that had emerged during the 1990s are being reversed.

The data in this overview are mainly taken from two studies:

1. “Newspaper Market and State Regulations in Thailand” by Nuannoi Trirat and Thanee Chairat⁷⁵
2. “Radio and Television Market Structure” by Somkiat Tangkitvanich and Tanawit Suttirattanakul⁷⁶

On the media consumption side, the urban-rural divide in media use is least pronounced with television, which is also the most-consumed medium in Thailand, with 86 per cent watching TV on a daily basis. In popularity it is followed by radio, which 48 per cent of the urban population and 33 per cent of the rural population tune into daily. While it is not surprising to find cinema consumption less pronounced in the rural areas, newspaper and magazine reading levels too are significantly lower than in the urban areas.

A more recent survey conducted by the National Statistical Bureau in 2003 found the gap between urban and rural newspaper readership less pronounced, with 72.3 per cent of urban respondents saying they read newspapers “regularly”, compared with 45.1 per cent of the

⁷⁵ Trirat Nuannoi and Thanee Chairat, “Newspaper Market and State Regulations in Thailand,” a draft research paper in the “Media Reform” Research project (Bangkok: Thailand Research Fund, 2003).

⁷⁶ Tangkitvanich, Somkiat and Tanawit Suttirattanakul, “Radio and Television Market Structure” in “Media Reform” Research project (Bangkok: Thailand Research Fund, 2003).

rural population. 87.2 per cent claimed that they read the news/current affairs section of the newspapers.⁷⁷

Table 5.1: Pattern of media consumption in Thailand, 2001
(12-year olds and above)

| Media consumption | Nationwide | Bangkok | Urban areas (outside Bangkok) | Rural areas |
|-------------------------|------------|---------|----------------------------------|-------------|
| Consumers (million) | 50.2 | 8.7 | 3.8 | 37.8 |
| Per centage | | | | |
| Television (daily) | 86 | 93 | 91 | 84 |
| Radio (daily) | 36 | 47 | 48 | 33 |
| Newspapers (daily) | 21 | 44 | 43 | 14 |
| Magazines (fortnightly) | 13 | 25 | 22 | 9 |
| Cinema (monthly) | 13 | 13 | 14 | 4 |

Source: AC Nielsen Media Index (2001)

It is the business aspect of the media, involving tremendous investment and profit, that attracts many business people from different backgrounds.⁷⁸ To understand the media in Thailand, one therefore has to go beyond merely understanding their function as a communication medium and also look at them as business associations striving to make profits.

Advertising revenue is the main source of income for most media outlets in Thailand, with the exception of the State-run Channel-11 operating under the Public Relations Department (PRD), and the market share of advertising revenues can be gleaned from Diagram 5.1.

A distinctive feature of the media industry, however, is that for many producers and consumers it is more than a mere business enterprise, even though the non-commercial aspects of the media are increasingly being commodified as well. Nuannoi and Thanee analyse newspapers as a unit of mass media as well as a significant business effecting the development of the country. This significance is not merely a result of the value and size of the print media economy but also takes into account its function as a means to

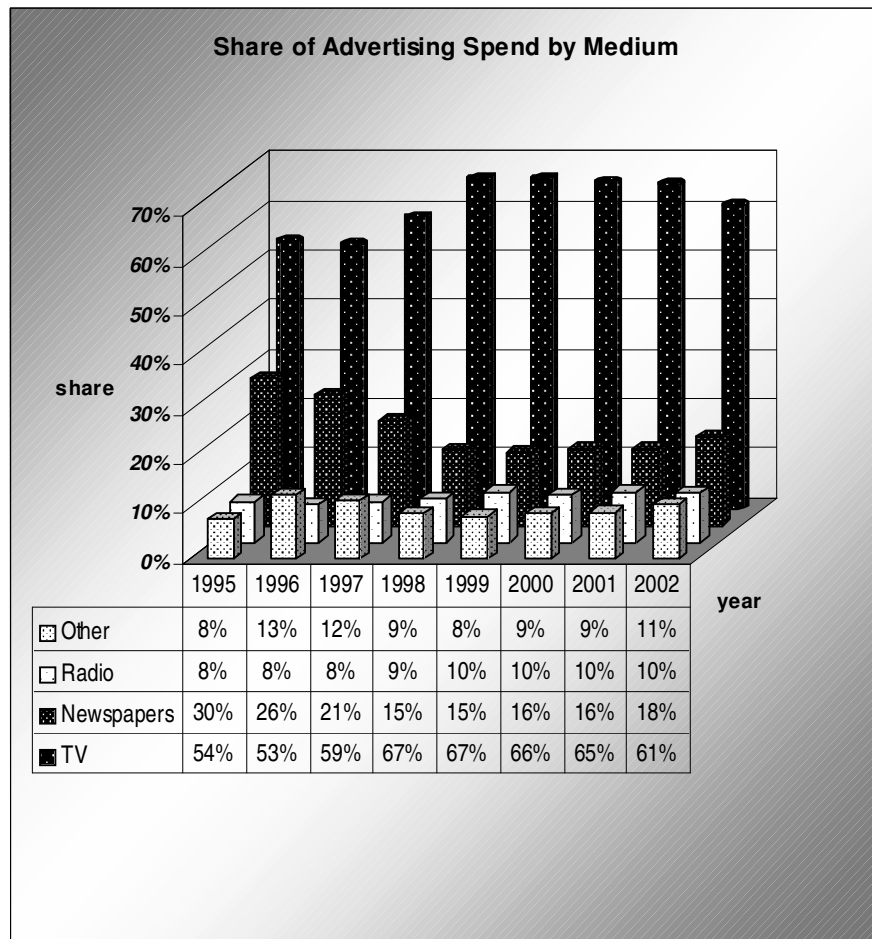
⁷⁷ "More than half of nation's households read the newspapers", *The Nation*, 26 August 2003.

⁷⁸ Interview of Somporn Juengrungruengkit, *Nation Weekly*, 12:605, 5-11 January 2004.



exchange social, cultural economic and political information between different groups in society.

Diagram 5.1:



Source: Thai Farmers Bank Research Centre

In theory, media ownership can be categorised into 2 groups:

1. State-owned media which often view information as a public commodity to be protected against a private sector monopoly in the public interest.
2. Private media which, although they may distort information under the influence of political parties or commercial pressures, are at least not government controlled.

In the case of Thailand, the print media are exclusively privately owned.

5.1. Print Media

When the economic crisis hit Thailand in 1997, it came at a time many newspaper publishers had borrowed heavily to expand their businesses and newspapers in the country were inevitably hit hard by the economic downturn. Many newspaper proprietors had to close down their businesses while others were bought up and turned into big business co-operations by their rivals.⁷⁹ Twelve out of 25 daily newspapers went out of print, mostly Thai-language business papers but also the hard-hitting *Siam Post* and the English-language *Asia Times*, a paper its proprietor Sondhi Limthongkul of Manager Group had hoped to build into a transnational Asian newspaper. 1500 journalists were made redundant in the process.⁸⁰ The prediction by an analyst for Merrill Lynch that only four of the national Thai-language newspapers would survive did not come true though, and in recent years several new newspapers and magazines have been launched, notably *Kom Chad Luek* by the Nation Multimedia Group, *Post Today* by the Bangkok Post Group and *ThaiDay*, an English-language supplement to the *International Herald Tribune*, by Manager Group.

Thai-language daily newspapers account for 87per cent of the newspaper market and their market share in 2002 was as described in Table 5.2 below.

Table 5.2: Market share of Thai-language daily

| Daily | Percentage |
|----------------------|------------|
| <i>Thai Rath</i> | 34per cent |
| <i>Daily News</i> | 19per cent |
| <i>Khao Sod</i> | 15per cent |
| <i>Matichon</i> | 12per cent |
| <i>Kom Chad Luek</i> | 11per cent |
| Others | 9per cent |

Thai Rath and *Matichon* are considered to be at the more broadsheet end, whereas *Daily News* and *Khao Sod* are considered to be at the tabloid end. The *Thai Post*—it was founded in 1996 with the explicit aim of providing a critical check on government policies—has quite

⁷⁹ Pipitkul, Wilasinee, *Making Quality Information* (Bangkok: Thailand Research Fund, 2003), p. 40.

⁸⁰ Eng, Peter, "Economic woes pummel Thai, Indonesia media", *Columbia Journalism Review*, Jul/Aug 1998. URL: http://www.findarticles.com/p/articles/mi_qa3613/is_199807/ai_n879393.



a high political profile although it occupies only a niche section of the market, as measured by AC Nielsen.

Two daily business newspapers from two major players in the market, Nation Multimedia and Manager Group, account for 8 per cent of the overall newspaper market, of which Krungthep Turakij holds 85 per cent and Pujadgarn (Manager) holds 15 per cent. Other weekly business newspapers account for 1 per cent of the market, and while they have recently become more significant again due to the economic recovery and business-focus of the country, their sales remain limited to the big cities.

The market for English-language daily newspapers and its potential for growth are limited by the relatively small number of fluent English-speakers. Market share stands at 4 per cent of the overall newspaper market. 90 per cent of sales are concentrated in Bangkok and there are only 2 major national newspapers in the market: *Bangkok Post* holding 55 per cent and *The Nation* 45 per cent of the market. In 2005, Manager Group released a local English-language supplement to the *International Herald Tribune*, although there are no figures available for that yet. Chinese-language newspapers have an even smaller market share and they too are limited mainly to Bangkok and other urban areas.

Nuannoi and Thanee conclude that the newspaper business has constantly become more competitive. The three biggest entrepreneurs in 2001 still shared over 55 per cent of the market for the Thai-language daily newspapers, although this was down from 75 per cent in 1997. Since 2001, the situation has changed further and, while we do not have access to more up-to-date information on market share, there have been concerns about competition having become less open through the increase of State agency advertising, combined with the advertising spend of businesses under the control of members of the cabinet.

Advertisement income of the newspaper is from the following sources:

- Advertisement agencies 25-30 per cent
- Direct sales 70-75 per cent

Meanwhile, newspapers' income from sales is from:

- Subscribers 15-20 per cent
- Bookstores or stalls 80-85 per cent

Most sales of Thai-language daily newspapers are through bookstores or newspaper stalls while the English-language daily newspapers are mostly through subscription. *Thai Post* is an

exception to the general trend of relying more on advertising than on sales in that its income is mainly from newspaper sales.

There are several professional bodies representing print journalists and publishers, the two main ones being the Thai Journalists Association (TJA)—which was formed in 2000 through the merger of the Reporters Association of Thailand with the Journalists Association of Thailand—and the Thai Press Association, under Royal Patronage, which was founded in 1941. The work of the Press Council of Thailand is discussed in more detail in Chapter 6.1.

5.2. Radio

In the absence of the broadcast reform prescribed by Section 40 of the 1997 Constitution, which is discussed in Chapter 6.2., both radio and television continue to be in the hands and under the control of State agencies and affiliated private businesses.

The 520 radio stations across the country are owned by the State sector and mostly run by the private sector. The major obstacle to radio development in Thailand is a very short-term concession and a high-risk due to the fact that the State, the radio wave distributor, can cancel the concession anytime, and often does so for either economic or political reasons. Some concessions are done without transparency, others without a contract at all, and there is substantial corruption in the radio business.

Entrepreneurs in the radio market in Thailand have a tendency to group together. The 3 major radio entrepreneurs in Bangkok increased their market shares from 13 per cent in 1999 to 18 per cent in 2001, with a tendency to expand their by buying up airtime on or whole schedules of stations in the rest of the country. This is having a negative impact on small entrepreneurs in the provinces who have brought airtime from army or police-owned stations and financed their programmes through local advertising. The latest plans of the government to privatise State media enterprises has led MCOT and the army radio network to cancel the concessions they had given to private entrepreneurs with a view to building up their assets for a listing on the stock market.

Community Radio

Since 1992, and especially after the introduction of the new Constitution in 1997, a strong grassroots movement advocating in favour of community broadcasting (almost exclusively radio) has



emerged. The Chuan government had set up a 2-year pilot project for community radio in 56 of the 76 provinces, allegedly to ward off the demand for greater broadcast frequency redistribution.⁸¹ Various academic and NGO groups have developed a network amongst themselves and have toured the provinces holding seminars on community radio. The Campaign for Popular Media Reform (CPMR) and the Thai Broadcast Journalists Association (TBJA) are both very active in this movement.

In December 2001, the first community radio station went on air in Kanchanaburi Province, and half a year later 150 stations were ready to start broadcasting, amid threats by the Public Relations Department (PRD) to close down any stations that did not hold a license, despite the fact that, with no licensing body—the NBC has not been established—it was impossible to get a license. Police confiscated the transmitter of a community radio station in Ang Thong province, in central Thailand, in October 2002 and a month later arrested one of its broadcasters on behest of the Post and Telegraph Department, enforcing the 1955 broadcasting act, which would appear to contravene the 1997 Constitution.

Meanwhile, attempts from civil society groups to promote democracy in media through community radio had become strengthened, as reflected in the increased number of community radio stations established nation-wide. An update of 14 March 2003 showed Table 5.3. At the end of March 2003, a government panel announced that community radio stations could use interim frequencies under the control of the PRD until the NBC had been appointed. Earlier, Paiboon Damrongchaitham—he was the chairman of Grammy entertainment, one of the big Thai media production companies—had lodged a complaint asking the government to crack down on the 100 radio stations broadcasting without a license.⁸² Worryingly, though, this government panel also recommended that the government should set up a supervisory committee to control community radio broadcasting.

The end of 2002 also saw the first community TV station start broadcasting in Chiang Rai, North Thailand, for the Akha ethnic minority group, with support from the World Bank. Initially, however, it only had a reach of only 2km and 54 TV sets and shut down temporarily after three months to improve both its geographic reach and the quality of its programmes, as well as to secure further funding; it has been on air sporadically since that time.

⁸¹ Siriyuvasak, Ubonrat, "Community Radio Movement: Towards Reforming the Broadcast Media in Thailand", 2002, p. 2, footnote 1. URL: <http://www.wsisasia.org/materials/uajit.doc>.

⁸² Paiboon also received a warning from the Constitutional Court after he had questioned the validity of the Supreme Administration Court's ruling on the vested interests of the NBC selection panel.

Table 5.3: Community radio station in provinces

| Region | No. of stations | No. of stations on air | No. of stations temporarily suspended | No. of stations to be established | No. of stations inaccessible |
|--------------------------|-----------------|------------------------|---------------------------------------|-----------------------------------|------------------------------|
| North (16 provinces) | 49 | 19 | 2 | 16 | 12 |
| South (7 provinces) | 11 | 2 | 1 | 2 | 6 |
| Central (9 provinces) | 14 | 8 | 1 | 1 | 4 |
| East-West (15 provinces) | 26 | 6 | 1 | 2 | 17 |
| Northeast (19 provinces) | 40 | 24 | - | 3 | 13 |
| Total 66 provinces | 140 | 59 | 5 | 24 | 52 |

Note: 9 radio stations are mobile-broadcast ones

5.3. Television

In their study, Somkiat Tangkitvanich and Tanawit Suttarattanakul note that television and radio are the most accessible media among Thai public. According to a survey by AC Nielsen in 2001, regular audience percentages for television and radio, respectively, are 86 per cent and 36 per cent of the population. By contrast, only 20 per cent of the public read newspapers on a regular basis.

Both television and radio rely mostly on advertising revenues. The income from advertising for television in Thailand grew more than two-fold between 1980–1990 and more than tripled between 1991 and 2002. The growth in radio advertising revenue in the same later decade was even higher, having risen more than four-fold.

There are currently six television stations in Thailand which broadcast free-to-air nation-wide, three of which are operated by State operators (Channels 5, 9 and 11), while the other 3 (Channels 3, 7 and iTV) are operated by private concessionaires. There is only one nation-wide cable TV channel in Thailand, namely UBC. There



are 78 legally registered subscription-based cable networks in the provinces.

Table 5.4: Ownership of TV stations

| Station | Owner/Controller | Operator |
|------------|---|------------------------------------|
| Channel 3 | Mass Communication Organisation of Thailand | Operated by concessionaire |
| Channel 5 | Royal Thai Army | Army managed commercial TV station |
| Channel 7 | Royal Thai Army | Operated by concessionaire |
| Channel 9 | Mass Communication Organisation of Thailand | State enterprise |
| Channel 11 | Public Relations Department | Non-commercial |
| iTV | iTV Public Company Limited | Operated by concessionaire |

Source: http://www.prd.go.th/en_media.asp

Apart from Channel 11, which is also the only TV channel to broadcast two hours of regional content daily for each of the 4 regions of the country, all of the TV stations generate advertising revenue.

Two subscription-based cable-TV operators, IBC and UTV, started business in the 1990s but merged into UBC in 1998 after both suffered financial difficulties in the economic slump post-1997. IBC was founded by Thaksin but Shin corp withdrew from UBC after the merger. In 1998, the PRD gave a 25-year pay-TV license to Thai Television (TTV), owned by Worldstar TV. This station started out slowly though and was initially only available in Bangkok.

The audience share of Thai terrestrial television stations in 2002 was according to AC Nielsen as follows:

Table 5.6: Audience share of Thai TV

| TV station | Percentage |
|------------|-------------|
| Channel 7 | 27 per cent |
| Channel 3 | 26 per cent |
| Channel 5 | 20 per cent |
| Channel 9 | 12 per cent |
| iTV | 12 per cent |
| Channel 11 | 3 per cent |

Most news programs are produced by the channels themselves, while entertainment programmes are produced by companies and agencies.

The two more popular television channels, Channel 7 (27 per cent) and 3 (26 per cent), have significant negotiating power to set prices for advertisement, and this was reflected in average price increases of 8.8-9.5 per cent during 1990-2003, while the average rate of inflation during that period was only 3.9 per cent.

TV programme content

The more popular television channels focus primarily on entertainment programs and this has created pressure for other channels to be more populist in their programming. MCOT-run Channel 9 has been changed to MODERN 9 TV. iTV, which was originally established as a voice of democracy during the 1992 Black May, is becoming more and more profit-oriented. Channel 11, under the Office of the Prime Minister, is often used as a vehicle for State publicity but is under some pressure to improve its audience share with a view to privatisation.

The study by Somkiat and Tanawit finds most television programs shown during prime time, except on Channel 11, are drama and game shows, a fact that any fleeting observation of Thai television would confirm. These entertainment programs have increased from 39.1 per cent of total broadcasting in 1998 to 49.7 per cent in 2003, while the share of news programs has decreased from 30.1 per cent in 1998 to 26 per cent in 2003.

It may be noted that a combination of State control over the television market and the fact that only a limited number of entrepreneurs are involved in the market has led to a number of results. First, those entrepreneurs with a stake in the field tend to gain a lot of profit from the business. Second, documentary and education programs, as well as programs for the elderly and children, are very limited. Third, issues of public concern do not receive much attention.

iTV: the first non-state TV station

When iTV (Independent Television) was launched in 1996 as the first terrestrial television station that was not owned by the State,⁸³ it seemed to answer a demand amongst parts of the population for

⁸³ The company was initially called "Siam Infotainment Company Limited" but in 1998 changed its name to iTV.



independent and critical programming. Significantly, people in the provinces bought special antennae and amplifiers to be able to receive its UHF signal. The Anand government awarded a 30-year license to the private sector, in reaction to the strong demands by civil society for media reform post-Black May 1992. iTV won the concession, which stipulated a content split of 35 per cent news, 35 per cent “edutainment” and 30 per cent entertainment, and initially had a 10 per cent cap on share ownership by any individual/company to guarantee its editorial independence. The financial backing for iTV had come from Siam Commercial Bank and, while iTV did not have to pay its concession fees during the first three years of operation, the 1997 economic slump one year after its launch plunged the company into massive debts. By 2000, it had accumulated losses of Bt2 billion (USD 48.9 million) due in part to high concession fees.⁸⁴ The question of how to resolve the financial crisis led to a conflict between the bank and the content provider and shareholder Nation Group as Siam Commercial Bank wanted to involve Shin Corp in the debt restructuring. Nation Group as a shareholder was eventually overruled and Shin Corp took over iTV with an investment of 39 per cent of the shares.

6. MEDIA REGULATION

6.1. Press Regulation

Press Act B.E. 2484 (A.D. 1941)

Attempts by the State to control content and distribution of print media circulating in Thailand go as far back as the early days of Thai newspapers in the late 19th century. The Press Act B.E.2484 of 1941 has been in force for over 60 years and, while it was promulgated at the height of the hyper-nationalist phase under Field Marshall Phibun, it turned out to be less draconian than the military decrees which superseded it in the period from 1958 to 1990.⁸⁵ This is not to say that it provided for a free press in Thailand though.

⁸⁴ “Shin Corp takes first step into iTV”, *The Nation*, 31 May 2000.

⁸⁵ Streckfuss, David, *The Poetics of Subversion. Civil Liberty and Lese-Majeste in the Modern Thai State*, PhD-Thesis, Ann Arbor., UMI Dissertation Services, 1998, p. 442f.

The 1941 Press Act is still in force today and is also still being used to censor the print media in Thailand. The role of controlling the print media falls to the Director General of the Police Headquarters (formerly the Royal Police Department), who is entitled to prohibit the printing or importation of any printed materials:

Section 8. The Director-General of the Police Department or his Deputy is empowered to issue order. By way of publication in the Government Gazette, prohibiting the importation or bringing into the Kingdom of any printed matter therein specified, either for or without any period of time.⁸⁶

The Censor may also prohibit the publication and/or distribution of printed material if he finds that it “might” disrupt public order or offend public morality, the mere potential to offend being sufficient for a ban:

Section 9. When there is a publication or preparation for publication of any printed matter which, in the opinion of the Press Officer, might be contrary to public order or good morals, he may issue a written order to any particular person or issue a general order, by way of publication in the Government Gazette or daily newspaper, prohibiting the sale or distribution of such printed matter. He may also seize the said printed matter and the printing block for the same.

Section 21. When there has been a publication of printed matter which, in the opinion of the Press Officer, might be contrary to public order or good morals, he may carry out the following measures:

To give a written warning to the printer and/or publisher; and in giving such writing, he may also summon the printer and/or publisher to receive verbal explanation and to affix their signature in acknowledgement.

To order in writing the suspension from being a printer and/or publisher, and/or from using the printing presses which are under responsibility of printer for a period of not exceeding thirty days. However, such order may be given only after a warning under subsection 1 has been given but disregarded by the recipient.⁸⁷

In the case of daily/periodical publications deemed to have the potential to undermine public order, the police can demand the submission of copy for examination prior to publication:

⁸⁶ *Press Act B.E. 2484* (semi-official translation obtained from Faculty of Laws Library, Thammasat University, Bangkok, Thailand). The Thai version can be found at URL: <http://www.lawreform.go.th>.

⁸⁷ *Ibid.*



Section 36. When there has been a publication in a newspaper, which, in the opinion of the Press Officer, might be contrary to public order under Section 34, he may carry out one of the following measure;

To give a written warning to the publisher, editor and/or proprietor of newspaper, in giving such order, he may also summon the said persons to receive explanation and affix their signature in acknowledgement

To issue a written order to the publisher, editor and/or proprietor of newspaper requiring the submission to Officer Censor for his examination articles or contents to be published in newspapers for a period of time not exceeding fifteen days, provided that such order may be issued only after a warning under 9 (1) has been given out disregarded by the recipient.

In case of emergency arises in the Kingdom or in time of international crisis or war, a written order may be issued to any person requiring the submission of matters or contents to be further published in a newspapers to Official Censor for his examination, or to order the immediate suspension or revocation of license, or suspension from being a publisher, editor and or proprietor of newspaper which is under his responsibility, either for or without any period of time; and such other order may afterwards be modified.

Professional bodies such as the Thai Journalists Association (TJA) and the Press Council of Thailand (PCT) have, since 1998, repeatedly called for the abolition of the “draconian” and “dictatorial” 1941 Press Act, identifying it as the single greatest legal obstacle to the freedom of the press.

These demands notwithstanding, the Act is still being used by State officials to intimidate publishers. In 2001, it was applied by Royal Thai Police Special Branch 14 times to issue warnings to newspapers.⁸⁸ In one case in August 2001, Special Branch Police invoked the Act to issue warnings to *Thai Rath* and *Krungthep Thurakij* newspapers for their reporting on the landmark share concealment case against Prime Minister Thaksin, arguing that covering the case posed a threat to national security.⁸⁹

The Thai government, in its 2004 Country Report to the UN Human Rights Committee, admitted the unlawfulness of current media legislation and even made particular mention of the 1941 Press Act:

483. The Ministry of Interior has started to make a survey on all laws which may be in contrary with the freedom of expression of the people under Section 39 of

⁸⁸ “A dated overview of press freedom”, *The Nation*, 7 March 2002

⁸⁹ “Journalists dub 2001 ‘year of interference’”, *Bangkok Post*, 31 December 2001.

the Constitution in order to seek ways to repeal or revise them to ensure consistency with the Constitution, for example the Press Act (1941).

484. The Cabinet has approved the Bill on Registration of the Press which once in force shall supersede the former Press Act (1941).⁹⁰

This was not the first time the government had admitted that the 1941 Press Act was inconsistent with the 1997 Constitution. In 1998/9, Interior Minister Sanan Kachornprasart, under the previous Chuan administration, responded to calls for its abolition by holding meetings with media and police representatives to discuss the matter. In those meetings, the police and civil servants agreed that the 1941 Act contravened constitutional rights, but saw a need to maintain a registration system to control both Thai and foreign print publications, pointing to pornography and threats to national security as matters of concern. Press representatives argued that registration could be done through the Commercial Registration Department and that the Criminal Code would be sufficient to deal with offences against public decency and national security.⁹¹ It remains to be seen what exactly the Bill on Registration of the Press envisaged by the current government will entail.

The 1941 Press Act is only one element in the State's spectrum of methods to control the print media, and we return to the other methods used—legal, structural and informal—in Chapters 7 and 8.

Press Self-regulation

Several Thai governments have pondered and/or implemented the idea of a media monitoring centre to keep the media in check. Prior to the 1997 Constitution, State officials and security forces were, in accordance with the laws and decrees mentioned in 6.1. and 6.2. granted explicit powers to censor the print and broadcast media, the Constitution now rules prior censorship except in times of war. Section 41 protects the individual right of journalists to freedom of expression, as long as it is not contrary to “professional ethics”.

In July 1997, the Press Council of Thailand (PCT) was founded by 30 newspapers with the aim of providing an independent body for self-regulation of the Thai Press, just as the Chavalit government decided to set up a media monitoring centre to curb what it perceived to be negative reporting of its policies (this was the height of the Asian economic crisis). It is not clear whether the newspaper

⁹⁰ Thailand State Report to the United Nations Human Rights Committee, CCPR/C/THA/2004/1.

⁹¹ “Sanan backs abolition of obsolete control”, *Bangkok Post*, 12 May 1999.



industry organised itself to set up a self-regulatory body out of a genuine desire for an improvement of journalistic standards or to ward off an initiative by the government to establish a censorship body. Several journalists had pointed out the lack of professionalism and corruption amongst some of their colleagues, and urged that journalists needed to clean up their own act to gain/maintain credibility in the eyes of the public.

The Press Council forms a committee consisting of 22 members, who are, apart from the last category, drawn from the Council's member organisations:

Table 6.1: Professions of Press Council Members

| Profession | Members |
|----------------------------------|---------|
| Newspaper Managers / Proprietors | 5 |
| Editorial staff | 5 |
| Journalists | 5 |
| Experts from other fields | 7 |

It has established a 30-point code of ethics⁹² and its rulings are supposed to be published in all the members' newspapers, though in most cases so far this has not happened. Sceptics claim the PCT is toothless, since it has no real power to punish offenders, only to publish its findings and demand action from the respective publisher. In one significant case in 1999, the PCT investigated allegations of corruption among Government House reporters and found two journalists, one each from *Bangkok Post* and *Thai Rath* newspapers, guilty of having taken bribes from politicians. The *Bangkok Post* reporter was suspended by his employer and resigned, but was immediately re-employed by *Naew Na*, a Thai-language broadsheet, with no further protest coming from the PCT.⁹³ Prior to the establishment of the PCT, the Reporters Association of Thailand (RAT, now merged into TJA) had frequently been called upon to deal with allegations of bribery, ranging from politicians and businessmen paying for journalists' meals or giving them money "for transport" to more substantial "gifts" such as golden company shares or necklaces and cars. In one case in 1995, then Foreign Minister Thaksin Shinawatra had given mobile phones to reporters,

⁹² An English translation of which can be found at:
http://www.presscouncils.org/library/Thailand_press_council.doc.

⁹³ Duncan McCargo, *Politics and the Press in Thailand: media machinations* (London: Routledge, 2000), p. 173f.

which were, however, following a complaint to the RAT, all returned.⁹⁴

The PCT spoke out against a media ethics council proposed by TRT MPs in February 2003, demanding that the media be left to regulate themselves and calling on broadcasters to set up a council with a similar role to that of the PCT in relation to the print media, namely to set standards and monitor their implementation for the broadcast media.⁹⁵

In 2003, the PCT also managed to arrange for its members to use their PCT membership in lieu of bail if they are arrested on defamation charges, a significant development particularly in light of many plaintiffs preferring to go to court rather than (or in addition to) seeking redress through the PCT, an issue to which we return when looking at the use of defamation laws in Chapter 7.4. In the light of Thailand's draconian and oppressive defamation laws, it is essential to have an alternative body that is seen to be effective in dealing with wrong-doings and defamatory statements made by newspaper professionals and publishers without having to involve the courts.

6.2. Broadcast Regulation

The situation regarding regulation of the Thai broadcast media is similar to that of the press in that the existing laws conflict with the 1997 Constitution. The need for reform of the broadcast media is seen to be much more urgent by academics and grassroots organisations, since these media are currently still in the hands of State agencies, even though Section 40 of the Constitution explicitly calls for media reform and declares the airwaves to be a national resource to be used for the public good. Various pieces of legislation pertaining to broadcast media have been drafted, tabled, passed or withdrawn since 1997, but this, combined with the continued application of outdated but still existing laws, has led to increased confusion over the media reform process and, overall, has stalled rather than facilitated reform.

After the 1992 Black May, the National Radio and Television Censorship Commission, a censorship body, was terminated and replaced by the National Radio and Television Commission. Despite

⁹⁴ Ibid., p. 70f.

⁹⁵ The media ethics council proposal as a government attempt to stifle freedom of expression is discussed in Section 0.



this, there have still been attempts from different governments to control programme content.⁹⁶

Broadcasting Regulatory Bodies: NTC and NBC

As stipulated in Section 40 of the 1997 Constitution, the Allocation of Telecommunication and Broadcasting Frequencies Act (Frequencies Act) was passed in March 2000. It lays out the remit of two commissions, the National Broadcasting Commission (NBC) and the National Telecommunications Commission (NTC), as well as the procedure for the appointment of two selection panels whose task is to vet the candidates for the respective commissions and submit a list of 14 final nominees to the Senate, which will then select and appoint 7 members each for the NBC and NTC.⁹⁷

The Frequencies Act of 2000 also assigns 40 per cent of the available broadcast frequencies to the State sector, 40 per cent to the commercial sector and reserves 20 per cent for not-for-profit community broadcasting. This model won over alternative suggestions made in the drafting process of having one community radio station per province or allocating 20 per cent of airtime to community broadcasting. It is not clear though how these 20 per cent will be allocated—for example, whether it is 20 per cent of all licenses granted, or 20 per cent of the spectrum—whether it applies equally to AM, FM and TV broadcasting, and how emerging digital broadcasting technologies will be regulated. These issues will be left to the NBC and NTC to define in their master plans. There are also conflicting views of who exactly qualifies to hold these community broadcasting licenses, and the battle over these frequencies and their commercialisation escalated in 2005, an issue to which we return in Chapter 8.

The two institutions most relevant for the reform and regulation of the broadcast media, the National Broadcasting Commission (NBC) and the National Telecommunications Commission (NTC), have taken years to establish. The NTC was finally formed in August 2004 and has now published its master plan and issued the first Internet license in June 2005. In September 2005, the Senate appointed seven candidates for the NBC but by December they were

⁹⁶ Pipitkul, Wilasinee, see note 79 on page 45, p. 120.

⁹⁷ A draft bill published by the Council of State in 1998 had proposed only one regulatory body but the NGO sector was vehemently opposed to this model, since it would have meant a high concentration of power, and its operational logic would have been economic, thereby disregarding the public right to communicate. In Parliament, the two-body model was eventually adopted. See Ubonrat Siriyuvasak, “On Democratising the Broadcast Media for Santi Parachatham”, 2002, p. 15ff. URL: http://www.amarc.org/amarc/ang/intro/CSP_Thailand_SRO.doc.

still waiting for royal endorsement were still battling with the Administrative Court ruling that invalidated the selection process.

The failure to appoint these two commissions swiftly has led to procrastination in the broadcast media reform process, and left community radio stations operating in legal insecurity and under threat of State intervention. Without reform, the status quo of the Thai media landscape has been upheld, which has been of most benefit to the established broadcast media operators. In the absence of the NBC and NTC, various government ministries took it upon themselves to censor the media. In 2003, for example, the Culture Ministry attempted to ban 18 songs with “immoral” lyrics from being played on radio and the ICT Ministry introduced a curfew for online gaming and a web-rating and Internet censorship body.

The NBC selection panel appointment

Even before the Frequencies Act had been passed, there was controversy over the choice of the members of the NBC selection committee, with NGOs criticising the predominance of people close to the then government or existing media companies.

The nomination process also saw an array of organisations claiming to represent media interests, many of them consisting of broadcast media operators in the form of army and business representatives rather than actual media workers. The only organisation representing exclusively TV professionals was the TV Cameramen and Reporters Association of Thailand (TVCRA). To prevent vested interests from hijacking the 4 seats of the 17-strong selection panel allocated to media professionals, 11 media worker organisations, the TVCRA and the Thai Journalists Association (TJA) among them, joined their efforts and formed the Network of Journalists for the People.

Broadcast media operators also argued that print journalist groups had no role to play in the NBC selection process, since it was a concern only for the broadcast media. The above mentioned journalists network was accused of being a front for print publishing groups who were keen to branch out into broadcasting, particularly the Nation Group, whose managing editor, Kavi Chongkittavorn, was the president of the TJA at the time.⁹⁸ The entertainment media producers, in turn, had a strong interest in maintaining their grip on the airwaves and appealed to the public with a star-studded concert rally to make the point that people wanted to be entertained by TV

⁹⁸ In their defence it has to be said that the Nation Group had already been involved in TV and Radio production, notably on the iTV channel before driven out by the Shin Corp buy-out.



and Radio, not “bored” by news programmes, a thinly veiled jibe at media reform campaigners.⁹⁹

In the end, the Council of State whittled down the number of organisations entitled to vote on the selection of the four media representatives on the NBC selection panel from an initial 46 to 27, excluding print media associations and cultural groups as well as some military associations. Of the remaining 27, the commercial and military broadcast operators were in a majority of 2:1, holding 18 seats.

Media rights campaigners face a dilemma. If they went along with botched and biased selection processes for the two commissions, they would accelerate the establishment of the new NBC and NTC, but risk ending up with commissions that would act in the interests of the government and big media enterprises, exactly the groups who already controlled and benefited from the airwaves. If, however, they campaigned against the selection process, including by legally challenging it, they would delay the establishment of the NBC and NTC, thereby perpetuating the status quo.

One example of this is the exclusivity rule granting Shin Satellite Plc. the sole right to operate satellite services in Thailand. The exclusivity rule expired in September 1999, but since the NTC has not been operational until recently, Shin Corp continues to hold this quasi-monopoly. Another example is the grey area in which community radio broadcasters have operated so far, being able to refer to the provision of the 1997 Constitution that broadcasting frequencies are national assets to be used for the public interest, as well as the Frequencies Act, but nevertheless being threatened with closure by the authorities.

In the end, a legal challenge to the selection panel was brought. In May 2002, the Administrative Court held that the entire NBC selection panel should resign but they refused, the committee chairman arguing that panel members would be neglecting their duty if they resigned before they had nominated the 14 NBC candidates to the senate. In early 2003, as there had been sporadically since 2001, there was talk of dissolving the selection panel for the NBC. In March 2003, the Supreme Administrative Court upheld the earlier ruling and nullified the list of NBC candidates drawn up by the panel, stating that the panel had not made its selection in a non-partisan way as required.¹⁰⁰ Nevertheless, some panel members still refused to step down and thereby blocked the establishment of a new NBC selection panel. In the meantime, the Prime Minister’s Office had denied several NGOs, such as consumer organisations and the

⁹⁹ “Unity against broadcast bill”, *The Nation*, 20 July 2002.

¹⁰⁰ An article in *The Nation*, 5 March 2003, gives more detail on the Court’s ruling.

Women's Foundation, the right to cast ballots at the next NBC selection panel election. By July 2004, the places of the six panel members who had resigned were filled, while those panel members who had refused to resign despite the court ruling retained their positions, and five months later a new shortlist with 14 NBC candidates was drawn up, 8 of whom had been on the previous shortlist.

In May 2005, the Senate panel tasked with vetting the shortlist candidates (once again) came to the conclusion that the selection process had been illegal and recommended that the list be scrapped. However the Senate seems to have ignored the recommendation of its panel and continued with its examination of the candidates.

Finally on 23 September 2005, the Senate completed the selection of the candidates. They appointed seven candidates to sit on the NBC. This selection, as in the previous case, provoked protests from media experts and civil society activists. They alleged that vote rigging had occurred.¹⁰¹ One month after the appointment, whilst the appointed candidates waiting for royal endorsement, the Administrative Court once again issued a ruling that invalidated the selection process.

6.3. Other Laws Pertaining to Broadcasting

Draft Broadcasting Business Act

A new Broadcasting Bill, entitled Operation of Radio and Television Broadcasting Business Act, the counterpart to the 2002 Telecommunications Business Act, has been around in a draft form since 2000, and when passed it will repeal The Radio and Television Broadcasting Act B.E. 2498 (A.D.1955), as amended, and provide the operational framework for the NBC.

Every broadcaster will have to apply for a license, including current operators. Only the Public Relations Department's broadcasting operations will be exempt and will continue to be accountable primarily to the government. The State media operator, MCOT, started in 2004 to lobby for the same status of exemption as was granted to the PRD in Section 12. The government is planning to list this State enterprise on the stock exchange and, without the secure prospect of being able to hold on to its large range of frequencies, it would look much less attractive to investors. However, if both MCOT and PRD were outside the remit of the NBC, its regulatory impact on the State sector would be considerably reduced.

¹⁰¹ <http://www.ifex.org/en/content/view/full/69536/>



Section 8 of the draft Bill distinguishes three types of broadcast operation:

- operation for public service purpose;
- operation for community service purpose; and
- operation for commercial purpose.

It also provides for a fund to subsidise the production of appropriate programmes in the first two categories, the money for which would come from the NBC's licensing revenues, particularly from the commercial licences.

Both the public and the community service categories are given prescribed objectives and are allowed to generate revenue to cover their operational costs, whereas commercial broadcasters are expected to operate for profit and are free to set their own objectives within the rules of the NBC. The public service category is defined:

Section 9: The operation in public service category must have objectives to promote knowledge, education, arts and culture, religion, health, hygiene, sports, public safety, national security, livelihood, information dissemination, community services or any other public services. It shall aim to accommodate the disabled and the under-privileged to have an access to radio and television broadcasting services. To achieve such objectives, the program may be designed as educational or entertainment. Such programs shall generate income that would be adequate to cover operating cost following the rules prescribed by the Commission.¹⁰²

This definition seems to fulfil the criteria of the Council of Europe and the ARTICLE 19 principles for public service broadcasting, described in Chapter 4.1. The extent to which this definition of "public service" differs from international criteria becomes clear in Section 14, where applications for public service licenses are in effect limited to the State sector:

Section 14: The applicants from governmental sector must be those of ministry, bureau, department, local administration, public enterprise or other governmental agency, whose missions are relating to radio or television broadcasting operation, or those governmental agencies who have been specified by the Commission to operate radio and television broadcasting.

Applicants from ministry, bureau, department, local administration or related governmental agency, shall apply for the license under public service category.

¹⁰² All quotes of the Broadcasting Business Bill are taken from an unofficial translation of the 2002 draft.

In case of public enterprise, the applicants shall apply under commercial-purpose operation category.

Earlier drafts of the Bill had explicitly prohibited broadcasters in the public service category from airing advertising, which had been welcomed by media academics and activists as it would have taken away the incentive for government agencies to hold licences for profit purposes and public service programmes would have been financed from the NBC fund.¹⁰³ Section 9 now contains the phrase “adequate income”, and Section 27 allows broadcasters in any license category to raise income through advertising, subject to the NBC’s rules.¹⁰⁴

There are no explicit provisions to detach public sector broadcasters from government control and, in prescribing the drafting of a code of ethics for broadcast operators in Section 51, specific mention is made of the need of State sector media to ‘reinforce better understanding between the government and its people’, a phrase that may be taken to imply not dialogue but a one-way communication from State to citizens. With this limitation for State sector broadcasters, Section 52 of the draft Bill goes on to provide protection for media professionals following their code of ethics:


Section 52: The licensee shall have a duty to carry out the operation in a way that the broadcast program producers, presenters, news anchormen, reporters and staffers in different positions in radio broadcasting or television operation are fairly treated while they are performing their duties under the Codes of Ethics. They must not act in any manners to force these people to work against the principle of press freedom or freedom of expression.

Sections 24 and 36 of the draft Bill also contain provisions to prevent business domination and monopolisation, and if found guilty of such offences operators can be fined and/or receive a jail term of up to two years.

Section 24: In granting license for frequency usage to any individual licensee, the Commission may allocate one or several frequencies by judging from the characteristics and the necessity of the business operation. However, the Commission must take into consideration the frequency distribution to different individuals in order to prevent potential business domineering of radio and television broadcasting operation that might threaten the freedom of expression

¹⁰³ Yong, Thepchai, “No doubt who still wants to rule the air waves”, *The Nation*, 17 December 2002.

¹⁰⁴ In 2005, there was a drastic rise in community radio stations being launched for profit purposes, a move the community radio movement opposes. A more detailed analysis of community radio is given in 0.



and restrict diversity of program. Other measures have to be specified to prevent such domineering characteristics over the mass media.

If it deems appropriate, the Commission shall have a power to specify certain action as domination over radio and television broadcasting operation or the mass media domination pursuant to paragraph one.

The provision that has received the most media attention so far is Section 34:

Section 34: Director, Manager, staffers, workers and other operators of the licensee in private and public sectors including station director, program presenter, news anchormen, and other staffers working in different positions in radio and television broadcasting operation must not be members of the parliament, senators, politicians in political positions, members of local councils, local administrators or executives in political party.

This clause prohibiting elected politicians and State officials from acting as hosts and presenters of radio and TV programmes or taking control of broadcasters as executives was welcomed by media-reform campaigners, but did not meet with much enthusiasm from government politicians, many of whom at the moment are hosting their own shows. With the State sector continuing to operate 40 per cent of the broadcast media under the Frequencies Act of 2000, this restriction is seen as necessary to avoid a conflict of interest and keep the airwaves free from political influence.¹⁰⁵ Politicians will of course still be able to appear on programmes as guests or experts, but clearly defined in their role as politicians and not as celebrity chef or “objective” programme host. The limitation does not seem to apply to the community broadcast sector though. Some critics have claimed that this restriction infringes upon a politician’s right freely to choose his or her profession.

The Bill also provides for State use of broadcast media in emergency situations, and while the inclusion of this section had been subject of debate too, it improves upon previous legislation (see below):

Section 39: In case of natural disaster or emergency situations or any incidents prescribed by the Commission that requires broadcasting of public announcement, the licensee shall give cooperation to government agency if requested.

The NBC is given the right to prohibit certain kinds of programmes in accordance with the Constitution, but only after having held a public hearing and subsequently having notified parliament. It also

¹⁰⁵ Yong, Thepchai, “Keep the talking heads apolitical”, *The Nation*, 4 May 2004.

has the right to suspend a programme immediately if it is found to violate the law's provisions:

Section 41: To protect the public's interest or consumer's rights, the commission shall prescribe the rules prohibit any broadcasting program that contains any characteristics as stated under Section 39, paragraph two in the Constitution of the Kingdom of Thailand. However, to issue such notification, the Commission shall take into consideration the differences among the consumers, their ages, sexes and status.

Prior to issuing the notification, the Commission shall open for a public hearing forum for public, professionals, consumer protection group and the licensee.

Section 42: In the case where any broadcasting program violates the provisions under this Chapter or creates serious adverse impact to the society, the Commission shall authorize its commission member to order an immediate suspension of the program.

In Chapter 3, on consumer protection, the Bill sets out the provisions for a complaints procedure and the sanctions available to the Commission if licensees are found to have caused damage to a complainant:

Section 45: Anyone who suffers from damages as a result of the broadcasting program which contains untruthful elements or violates individual's rights or those who finds inappropriateness in the broadcasting program; program that creates damaging affects to the society; or being treated unfairly from the broadcasting services of the licensee, they shall file complaints to the Sub-committee on Program Supervision for consideration.

Section 40 provides for access to radio and TV broadcasting by the disabled and under-privileged. Other issues of debate were whether the Bill should regulate advertising on pay-TV and whether the text leaves too much scope for interpretation and subsequent appeals to the courts.

At the time of going to print, however, despite promises from Deputy-Prime Minister Vishanu Kruang-Ngarm in 2004 to put the Bill before parliament as soon as possible, it once again seems to have fallen dormant. In any case, the NBC itself would have to be functional in order to implement the Bill and, as described above, that has still not happened. The taking away of regulatory powers from government agencies and police and handing them to an independent body has to be welcomed, though the exemption of the PRD as one of the major national broadcasters is regrettable. At the same time, the powers given to the NBC emphasise the importance



of a transparent selection of its members in order to make this body truly independent from government and business control.

Old Broadcast Laws

Until the above draft Broadcasting Business Bill is passed into law, the Radio and Television Broadcasting Act B.E. 2498 (A.D. 1955), as amended, is still in effect, despite being in conflict with the 1997 Constitution by limiting the freedom of broadcast media quite drastically.

The provision for government use of the airwaves in emergency situations in Section 39 of the draft Broadcasting Business Bill, discussed above, is a marked improvement over the provisions in the Radio and Television Broadcasting Act B.E. 2498 (A.D. 1955):

Section 11. The Prime Minister shall, for the benefit of public order or the national defence, issue a transitory order empowering the competent official to seize, use, prohibit the using or transferring of, a radio set or a television set or any part of it belonging to any person within the period and with the condition as specified in the order.¹⁰⁶

Ministerial Regulation No.14, issued under the Radio and Television Act B.E. 2498 (A.D. 1955), provides an indication of the extent of possible limitations on what can be broadcast:

Article 16. Broadcasts must subjects to the following conditions:

- (1) Do not express any contempt or offence to the royal family, the Government or foreign leaders.
- (2) Do not initiate contempt to the country, the government, government officials or any group of people.
- (3) Do not express haltered, look down, or damage to any group of religious or show disrespect to a respected person a site of homage or a respectable object.
- (4) Do not disrupt public order, disrupt unity of people or international relations.
- (5) Do not undermine public morals, tradition, and proper customs of the nation.
- (6) Do not involve political actions that may threaten or disrupt national security.
- (7) Do not include sexual explicit or pornographic broadcasts or content.

¹⁰⁶ Official, unknown translator, Faculty of Laws Library, Thammasat University.

- (8) Do not express cruelty, inhumanity, or ugliness to audience.
- (9) Do not express unreal, useless, statement that will mislead people, especially children and youth.
- (10) Do not show unusual or extreme cruelty of a criminal or method which will induce or lead to more crimes.

For compliance with the first paragraph, competent officials may announce details of broadcasts which are deemed to be banned as a guidelines for subcontractors or permit holders to comply with.

6.4. Foreign Ownership

The Foreign Business Act B.E. 2542 (A.D.1999) regulates the economic activities of foreigners in Thailand. A “foreigner” is defined in Section 4 of the Act as a:

- (1) Natural person not of Thai nationality.
- (2) Juristic person not registered in Thailand.
- (3) Juristic person registered in Thailand having the following characteristics.
 - (a) Having half or more of the juristic person’s capital shares held by persons under (1) or (2) or a juristic person having the persons under (1) or (2) investing with a value of half or more of the total capital of the juristic parson.
 - (b) Limited partnership or registered ordinary partnership having the person under (1) as the managing partner or manager.¹⁰⁷

Foreigners are prohibited from owning certain types of businesses and engaging in certain kinds of trade, and media organisations top the list, ahead of rice farming and the making of Buddha images:

The businesses not permitted for foreigners to operate due to special reasons:

- (1) Newspaper business, radio broadcasting or television station business.¹⁰⁸

Other prohibited types of business are those pertaining to national security and national culture, and advertising is listed in an

¹⁰⁷ Foreign Business Act B.E. 2542 (A.D.1999). Available in English translation at: http://www.dbd.go.th/eng/law/fba_e1999.phtml.

¹⁰⁸ Ibid.



additional third group of prohibited businesses in which ‘Thai nationals are not yet ready to compete with foreigners’.¹⁰⁹

The effect of this Act is that foreign companies can only be minority shareholders in the Thai media industry, and while Section 4 would suggest that they can hold up to 50 per cent of shares, ministerial regulations and other legislation have in some cases reduced that threshold further. In 2001, the Senate included in the Telecoms Business Bill a clause that limited foreign ownership in any telecommunications operator to 25 per cent. Thus amended, the Bill was swiftly passed into law and consequently caused confusion and resentment within the telecoms industry. It was not, as might be suspected, merely international investors and telecommunications industry and their local partners who protested against the limit, but also several academics and activists who saw a danger of the Thai industry falling behind technologically. Observers also pointed out that because of the impact of the 1997 economic crisis, Advanced Info Systems (AIS, the major mobile telephony branch of Shin Corp) was the only company that fulfilled the stricter limitation of 25 per cent foreign ownership. Eventually, the Cabinet agreed to raise the limit to 49 per cent, but to date the Act has not been amended.¹¹⁰ The protection of national interests here neatly coincided with the protection of the interests of the established players, though the government rhetoric only ever emphasised the first point and remained mute about the latter.

The draft Broadcast Business Bill also caps foreign ownership of a commercial free-to-air broadcaster at 25 per cent, with no single foreign shareholder allowed to own more than 15 per cent, and stipulates that at least 75 per cent of the company’s directors must be Thai nationals. The Bill does, however, make provision for exceptional circumstances where foreign ownership may temporarily rise above 25 per cent, and the rules relating to subscription services allow up to 50 per cent foreign ownership and directors.

¹⁰⁹ Ibid.

¹¹⁰ The implications of the Act, as well as the debate around it and the concurrent telecoms concessions reform, were very complex but this is beyond the scope of this report, which focuses on freedom of expression.

Recommendations:

- The Press Act should be repealed in its entirety.
- The Thai authorities should do all within their power to proceed the establishment of a National Broadcasting Commission in a manner that is consistent with both the Constitution and the law, and that ensures the appointment of the members who will discharge their responsibilities so as to promote the public interest and broadcasting freedom and independence.
- The draft Broadcasting Business Act should be adopted as soon as possible, after proper consultation with interested stakeholders, and the existing Radio and Television Broadcasting Act should be repealed. Provisions allowing for the State to use broadcasters in emergency situations should be removed from the draft Bill, while strong provisions requiring broadcasters to be fair and impartial in their coverage of matters of public controversy and politics should be included.
- All State broadcasters should be transformed into independent public service broadcasters with a clear remit to serve the public in a balanced and impartial manner.
- The rules on foreign participation in the media should be reviewed to ensure that they do not unduly restrict the right of foreigners to freedom of expression, or the right of Thais to a diversity of information.
- The authorities should not pressure the media to set up self-regulatory bodies or attempt to interfere with the work of existing bodies.



7. DEFAMATION LAW

International law does recognise that freedom of expression carries with it certain duties and responsibilities, and that to protect public order, morals or the reputation of an individual it may be limited. Limitations to freedom of expression, including to protect reputations, must, however, be proportionate to the damage done and not go beyond what is necessary in the particular circumstances.

Thai legislation contains provisions for defamation in two separate laws: The Thai Penal Code B.E.2499 (A.D.1956) for criminal defamation and the Thai Civil and Commercial Code (CCC) B.E. (A.D.) for civil defamation. Before we turn to these, we address the special question of defamation of a member of the Thai royal family.

7.1. The Special Case of Lese Majeste

The monarchy is a highly respected institution in Thailand and is generally respected by all Thais. The 1997 Constitution places the King above comment or criticism:

Section 8. The King shall be enthroned in a position of revered worship and shall not be violated.

No person shall expose the King to any sort of accusation or action.

Section 122 of the Penal Code stipulates: “[W]hoever defames, insults or threatens the King, the Queen, the Heir-apparent or Regent shall be punished with imprisonment of three to fifteen years.” An offence under this section is constituted by one or more of the following offences:

- An act of defamation under Section 326.
- An act of insult.
- Express threat, including physical or verbal threat that will incur harm to body, property, rights, freedom or reputation, other than those which constitute a usual exercise of one’s rights.

There is no need to have a previous cause for hatred. A judgement in 1960 established as guideline that “the defendant expressed a verbal defamation statement against the king in a public place. Thus the

defendant cannot seek protection under Section 329 (4) of the Penal Code.”¹¹¹

Defamation of the King or Queen is also an offence under the Printing Act B.E. 2484 (A.D. 1951), Section 48(2). The editor is culpable whether or not she or he had any collaboration with the writer.

In Section 134 the Penal Code also stipulates a penalty if an offence is committed against the monarch or a leader of another (friendly) nation:

Section 133. Whoever defames, insult or threatens the Sovereign, his Queen or her Consort, Heir-apparent, or Head of a foreign state shall be punishable with imprisonment of one to seven years or fine of two thousand to fourteen thousand baht or both.

Section 134. Whoever defames, insults, or threatens a foreign Representative accredited to the Royal Court shall be punished with imprisonment of six months to five years or fine of one thousand baht or both.

In practice, lese majeste is rarely prosecuted as an offence. Instead, allegations of lese majeste are used as a political tool to discredit opponents. An example of this was when, in 2002, police expelled reporters from the Hong Kong-based magazine *Far Eastern Economic Review* and banned the publication after it had printed a report hinting at a rift between Prime Minister Thaksin and King Bhumipol. The Prime Minister declared that action had to be taken not out of concern for his own reputation but because of that of the Monarchy.¹¹² The latest example, still under investigation, occurred when, during the 2005 general election campaign, stickers with quotes by the King on the unsuitability of corrupt politicians were confiscated by Bangkok police. The King's words had allegedly been added to and this was said to constitute defamation of the Monarch. The Democrat and Thai Rak Thai parties involved in the affair accused each other of trying to frame one another.¹¹³

7.2. Civil Defamation

The defamation provisions in the Thai Civil and Commercial Code do not distinguish between libel and slander. Section 423 of the CCC states that “any person who, contrary to the truth, asserts or circulates as a fact that which is injurious to the reputation or credit

¹¹¹ Case No. 51/2503, p. 73.

¹¹² See Chapter 8.2 for details.

¹¹³ Bangprapa, Mongkol, “Grounds seen for lese majeste”, *Bangkok Post*, 7 February 2005.



of another, or his earnings or prosperity in any manner, shall compensate the injured party for any resulting damage.”¹¹⁴ The court can also order (additional) measures to restore the injured party’s reputation.

There are two defences to a civil defamation case:

- Justification – the defendant can show that a statement was true and that there was a valid reason for making it. The truthfulness of a statement is in itself not an absolute defence against a defamation claim.
- Privileged communication – the defendant has made a statement in good faith to persons he/she has rightfully believed to be interested in it, even if the statement later turns out to be erroneous. Being unaware of the erroneousness of a statement does not constitute a defence, provided the person ought to have known it was false.¹¹⁵

Section 448 sets a deadline for claims for damages arising from defamation, namely that claims can only be made up to ‘one year from the date the wrongful act and person responsible became known to the injured person, or ten years from the day when the wrongful act was committed’.¹¹⁶

A detailed analysis of the compliance of Thai defamation laws with international standards relating to freedom of expression is explained in ARTICLE 19’s Memorandum of Thailand’s Civil and Criminal Defamation Provisions (see Annex 2 for the extracts of this Memorandum).¹¹⁷

7.3. Criminal Defamation

Articles 326-333 of the Thai Penal Code B.E. 2499 (A.D.1956) establish the offence of criminal defamation. They provide for various penalties for this crime, including up to two years’ imprisonment where the defamation is by means of publication or otherwise in permanent form.

The following analysis and case studies have been translated from Professor Pisit Chawalathawat’s *Laws and The Press’s Ethic*.¹¹⁸

¹¹⁴ Tilleke and Gibbins International Ltd.: *Thailand Legal Basics* (Bangkok: 2003), p. 156. Available at: http://www.tillekeandgibbins.com/Publications/thailand_legal_basics/other_legal_is_sues.pdf.

¹¹⁵ Ibid., p. 157.

¹¹⁶ Ibid., p. 156.

¹¹⁷ The full analysis can be accessed at ARTICLE 19’s website: www.article19.org.

¹¹⁸ Chawalathawat, Pisit, *Kodmai Lae Chaariyatham Suemuanchon (Laws and*

Section 326. Whoever imputes any thing to the other person before a third person in the manner likely to impair reputation of the such other person or to expose such other person to hatred or contempt is said to commit defamation, and shall be punished with imprisonment not exceeding one year or fine not exceeding twenty thousand bath , or both.

This Section stipulates that there are two major elements to a defamation offence. First, the external element consists of (1) an imputation; (2) committed to another person; and (3) likely to impair the reputation of the other person or to expose the other person to hatred or contempt. Additionally, to make a person liable for defamation offences an internal element or intention is required. An offender must have acted intentionally, with full acknowledgement of the fact that the offended will be defamed, or exposed to contempt or hatred. An intended act refers to an action an actor commits with full consciousness of his or her action and of the expected results from the action.

For example, an editor who printed and published a defamatory article in his or her newspaper could not claim that someone else provided the content.¹¹⁹

The following example is of a case involving the report of a rumour dating from 1966. The defendant, as a witness in the case where the plaintiff was accused of arson, when interviewed by a police officer, testified that “Since Ms. Add told me, I am curious. I had heard the rumor from people in the market that the owner of Sri Amarit shop paid Mr. Seri Ithisombat (the plaintiff) a sum of 50,000 Thai Baht for him to set the fire. I didn’t have any clear acknowledgement whether the said information is true or not.” The defendant mentioned that it was a rumour, not information which someone who had known the matter told him or her. Neither was it persuasive information for an audience to believe the defendant’s word. The defendant was asked to testify before an official without having any intention to mislead other people or make other believe that the plaintiff received a sum of money to set fire to the market. Since what the defendant reported was only the rumour, it did not constitute the offence of defamation.¹²⁰

In a case in 1982, a newspaper published the full name of a plaintiff in a column, stating that the plaintiff had behaved immorally and despite the fact that the plaintiff had passed an executive development program didn’t correct his conduct to be a morally upright person. The newspaper claimed that the plaintiff had been

Media’s Ethic (Bangkok: Double Nine Press, 2001).

¹¹⁹ Case No. 1310/2500, p. 1300.

¹²⁰ Case No. 140/2509, p. 1144.



connected to hiring someone to murder a newspaper reporter because of the plaintiff's habit of abusing his power, to be governed by emotion and that if the country was run at hand of executives like the plaintiff, it would soon be on the brink of collapse. The presentation in this news is neither a rightful representation, nor a just comment which is the ethical act of a newspaper or a statement of fact. Therefore it constitutes a defamation offence under Section 328 of the Penal Code.¹²¹

Defamation offences also cover the deceased:

Section 327. Whoever imputes any thing to a deceased before a third person, and such imputation is likely to impair reputation, of the father, mother, spouse or the child of the deceased or to expose such person to hatred or contempt, is said to commit defamation, and shall be liable to the same punishment as provide in Section 326.

For example, it is reported that Mr Kor's father was shot dead due to a narcotic drug trade backlash, but ten days later the truth is revealed that the cause of death had been a crime of passion. Despite the dead person not constituting the status of a person under the Civil and Commercial Code, the Penal Code maintains that the defamation offence can still be imposed upon a defamation of the dead, since under Thai custom it may taint the reputation of the living relatives of the offended.

If the defamed person died before she or he could lodge a complaint, living relatives, namely father, mother, spouse or a child of the dead may lodge a complaint and be treated as the offended on behalf of the deceased.

Section 328 amended by Act Amending the Penal Code (No. 11) B.E. 2535

If the offence of defamation be committed by means of the publication of a document, drawing, painting, cinematograph film, picture or letters made visible any means, gramophone record or an other recording instruments, or broadcasting or by propagation by any other means, the offender shall be punished with imprisonment not exceeding two years or fine not exceeding two hundred thousand bath.

Offence of defamation committed by means of publication refers to an act of distribution of a defamatory statement such as a newspaper publishing an article, or a television channel broadcasting audio and visual content to the audience. Whereas other kinds of distribution refers to any public display or broadcast before people, such as addressing 1,000 people by loudspeaker in a public place. Section 328 stipulates that the dissemination of defamatory statements

¹²¹ Case No. 526/2525, p. 151.

results in a penalty additional to the penalty for an offence in Section 326.

For example, the defendant is not a supervisor of the plaintiff but he or she made a memorandum to a governor of a province, accusing the plaintiff of not fully devoting appropriate time to work as a government official, not obeying the supervisor's direction and initiate disunity among government officials. The act is a defamation to the plaintiff but not a just comment as a competent official under the Penal Code, Section 329(2). Despite the memorandum of the defendant having been circulated among 12-13 other relevant officials, it did not constitute distribution to the public, advertisement or publication under Section 328.¹²²

Section 329. Whoever, in good faith, expresses opinion or statement :

by way of self justification or defence, or for protection of a legitimate interest;

in the status of being an official in the exercise of his functions;

by way of fair comment on any person or thing subjected to the public criticism;

by way of fair report of the open proceeding of any Court or meeting, shall not be guilty of defamation.

The exemption under Section 329 protects an expression of an opinion or a statement made in good faith which is not liable to a penalty if it is believed or perceived that the opinion or statement is true, based on a person's reasonable understanding. For example, a group of villagers may send a letter to a newspaper stating that the distribution of clothes by officials to victims of a disaster had been conducted unjustly, and a section of the letter states "We received only old and torn clothes while the *Kamnan* (sub-district chief) and *Palad* (deputy district chief) took the new ones." However, if it is an intended and knowingly false statement, it is unjust and thus will not receive immunity under Section 329.

An example of the application of Section 329(4) is illustrated in the following case from 1965. The plaintiff was sued for violation of national security laws. The defendant published an article in his newspaper with a headline: "Ex-spy *Kamnan* faints in court. Witness revealed he colluded with Khmer" and further published the statement: "The Disloyal *Kamnan* who betrayed the Nation by revealing military and police movements to Khmer fainted and fell over in court when an important witness revealed he had been ordered to contact Khmer soldiers." The news mentioned that "the plaintiff in this case was arrested by the police and brought to

¹²² Case No. 223/24, p. 211.



military court in Bangkok.” The overall statement is comprehensible as a news report, though the statement may not report precisely on what happened in court. As this statement does not reveal any malicious intention, the content was considered a fair report of the open proceeding in court and as such protected under Section 329(4) and not treated as defamation.¹²³

Section 330 provides exemption from penalties when a defendant can prove that the statement is true:

Section 330.- In the case of defamation, if the person prosecuted for defamation can prove that the imputation made by him is true, he shall not be punished.

But he shall not be allowed to prove imputation concerning personal matters, and such proof will not be of benefit to the public.

If the statement is on a personal matter and the proof is not of public interest, the defendant is still guilty of defamation. A scope of personal matters would be a non-work related statement such as “the Minister of the Interior likes to play golf and commit adultery with married caddies.”

The head of the Buddhist Sangha, the Supreme Patriarch, is specially protected by the Sangha Act Amendment (No.2) B.E. 2535 (A.D. 1992) to the 1962 Act:

Section 44 Bis. No person shall defame, insult or express aggression against the Supreme Patriarch. Any person who violates shall be liable to imprisonment for a term of not exceeding one year or to a fine not exceeding two hundred thousand Baht or to both.

Section 44 Tri. No person shall impute any group of monks or others priest, causing disgrace or disunity. Any person who violates shall be liable to imprisonment for a term of not exceeding one year or to a fine not exceeding two hundred thousand Baht or to both.

It is not clear to which extent this law has been applied but in 2001-2 two draft bills were circulating in Parliament—one from the Education Ministry and the other by the House Committee on Religion, Arts and Culture—both providing for an increase to the maximum prison terms for offending media. Senior Buddhist monks had at the time repeatedly been exposed for wrongdoing, there was infighting amongst groups of clerics, and the lawmakers’ reaction was not to impose stricter controls and regulations on the monkhood, but to call for harsher censorship of the media to avoid such scandals being reported.

¹²³ Case No. 990/2508, p. 1570.

7.4. The Use of Defamation Laws Against the Media

Somchai Krusuansombat, a former president of the Press Council of Thailand, who has long been asking for justice regarding the issue of defamation, described the situation of media and defamation cases in an interview in 2002 as follows:

In the past, if we were sued in defamation cases for criticizing political issues, public figures and politicians, the penalty was a probational sentence. No imprisonment was imposed upon us. Now it has escalated to the extreme. Too many cases are in court. Most cases result in prison sentences without probation. I don't know what's going on or whether it's new trend. If it keeps going on like this, there will be chilling effects that will affect our performance and rights as enshrined by the Constitution. With fear and doubt, the brave will be fewer.¹²⁴

Somchai also described the practices used by plaintiffs to harass the media as much as possible:

In case of defamation, a plaintiff can report to the police at any place in the Kingdom. They can send a representative to report on their behalf. An editor, on the other hand, must be present at each and every place the defamation is reported. If the plaintiff reports in ten provinces, it's an endless chaos for the editor. Next, to get a bail is difficult on us. We pay 50,000 or 100,000 Thai Baht [USD 1250 or 2500] for a bail after they reported. If a case is reported in 30 police stations, the editor must pay the bail for 30 stations. It's such a pain for newspapers in provincial areas.¹²⁵

As mentioned in Chapter 6, the PCT succeeded in 2003 in having the Press Cards of members accepted in lieu of bail by public prosecutors. The Attorney-General agreed to 'exempt from the collection of money as a bail for temporary release during the process of public attorneys' investigation for the case where 50,000 Baht bail was previously imposed and journalists shall be regarded as independent profession to be treated with dignity and trust'.¹²⁶ Following the Attorney-General's lead, the police in April 2004 also agreed to allow members of the PCT 'to use a person to bail or the sum of not exceeding 50,000 Baht as a bail for temporary release'.¹²⁷

¹²⁴ Interview with Somchai Krusuansombat, *Thai Post*, 20 October 2002.

¹²⁵ Ibid.

¹²⁶ "Letter No. OrSor. 0003/Wor353, dated 18 December B.E.2545, Re: Temporary Release for Practitioners of Journalism, signed by Mr. Rewat Chamchalerm, Deputy Attorney General, acting on behalf of the Attorney General." In *The Sixth Anniversary of the National Journalism Association*, 4 July 2546, p. 64.

¹²⁷ "Directive of the Police Headquarters No. 260/2546, dated 24 April B.E.2546,



The PCT is continuing its campaign to push for amendments to the defamation laws and to improve its implementation in dialogue with State officials.¹²⁸

In principle, defamation laws in Thailand are subject to the Constitution. In practice, however, the Penal Code regarding defamation is still enforced “universally” against journalists who are obliged to criticise public figures to comply with their ethical responsibility to inform the public.

An interesting analysis of the Thai defamation laws and the press’s responsibility mentioned that:

Many cases of defamation brought before court during the past decades were processed by judges, defendant’ and plaintiff’s attorneys, public prosecutors, and judicial commissioner relying solely on the jurisdiction of the Penal Code regarding defamation – to be specific, Sections 326 and 328. In rare cases, the exemption in Sections 329 and 330 will be applied. This approach brings many drawbacks and makes journalists lose before they even appear in court if they are defendants. Since the scope is that ‘A statement is likely to damage or make a third person, contempt or hatred’, the burden of proof and investigation of the plaintiff is usually limited to proving whether a published article damaged his or her reputation, generated contempt or hatred. Indeed, criticism of a public figure should rely on jurisdiction from Section 39 of the Constitution B.E. 2540 as a vital fundament of judgement. It is the right of the press to be proceeded with this aspect, [judged according to this provision] when she or he is sued under Section 326 or 328 of the Penal Code. The burden of proof should fall to the plaintiff to prove beyond doubt that the defendant had had hidden malicious intention, intended to publish though she or he knew the statement to be fault or damage other’s reputation, or that the defendant recklessly allowed the statement containing the defamatory statement to be published.¹²⁹

The Constitution has been in force for eight years and the Constitution Court should, in accordance with the provisions of Section 264,¹³⁰ rule on the above-mentioned deadlock, whether to

Re: The Use of a Person to bail or A bail for Temporary Release of Members of the National Journalism Association, signed by Pol. Gen. Sant Sarutanont, the Director of the Police Headquarters.” In *The Sixth Anniversary of the National Journalism Association*, 4 July B.E.2546.

¹²⁸ “Defamation law being misused, seminar told”, *Bangkok Post*, 10 January 2005.

¹²⁹ Siang Sao Long (pseudonym) “Take a Close Look, ‘Defamation laws might be in conflict-against the Constitution’ “ (“*Do Kan Chad Chad ‘Kwampit Tan Minpramat’ Ard Kad-Kaeng Tor Rattahamanoon*”) (*Bangkok: Manager Daily*, 24 November 2003).

¹³⁰ Section 264. In the application of the provisions of any law to any case, if the

implement Section 39 of the Constitution or to implement the defamation laws as stipulated in Sections 326–330 of the Penal Code. This was one of the suggestions arising from a hearing by the National Human Rights Commission of Thailand on press rights and defamation laws held in April 2005, where participants called for the decriminalisation of defamation. As Ruangchai Sapniran, an editor at *Matichon* put it: “We can have our fingerprints taken, are photographed, shackled or locked up behind bars. That is too much for someone accused of libel. Our human rights are violated by the justice system itself.”¹³¹ He also called for clearer definitions of what constituted “public figures” and “public issues” so that newspapers could make a better public interest defence when faced with defamation suits.

One problem with challenging the use of defamation laws in Thai courts is that many cases are settled out of court before a verdict is reached. A recent prominent example of this practice was the case of former Democrat Party secretary Sanan Katchornprasart, who in September 2002 sued three newspapers in the *Matichon* group for Bt100 million in damages each over allegations by a *Matichon* reporter that he had sexually molested her. In April 2004, *Matichon* newspaper published a surprise statement saying that the sexual harassment report had been inaccurate and Sanan dropped the defamation suits at the same time. The publishers of *Matichon* were heavily criticised by media academics, women’s groups and journalists for not standing up for their own staff.

At a seminar on “The Mass Media and the Libel Offence” held at the Office of the Attorney-General in April 2005, the head of the criminal litigation department suggested that the press could avoid legal action by making use of Section 41 of the 1941 Printing Act, under which a damaged party no longer had the right to sue if the newspaper had published a correction.¹³² But that does not seem to be very helpful if the newspaper believes that it was right to publish the article, unless the suggestion was for the media to back down regardless of the truth of their reporting, when faced with a defamation suit.

Court by itself is of the opinion that, or a party to the case raises an objection that, the provisions of such law fall within the provisions of section 6 and there has not yet been a decision of the Constitutional Court on such provisions, the Court shall stay its trial and adjudication of the case and submit, in the course of official service, its opinion to the Constitutional Court for consideration and decision. In the case where the Constitutional Court is of the opinion that the objection of a party under paragraph one is not essential for decision, the Constitutional Court may refuse to accept the case for consideration.

The decision of the Constitutional Court shall apply to all cases but shall not affect final judgements of the Courts. [Official, Council of State]

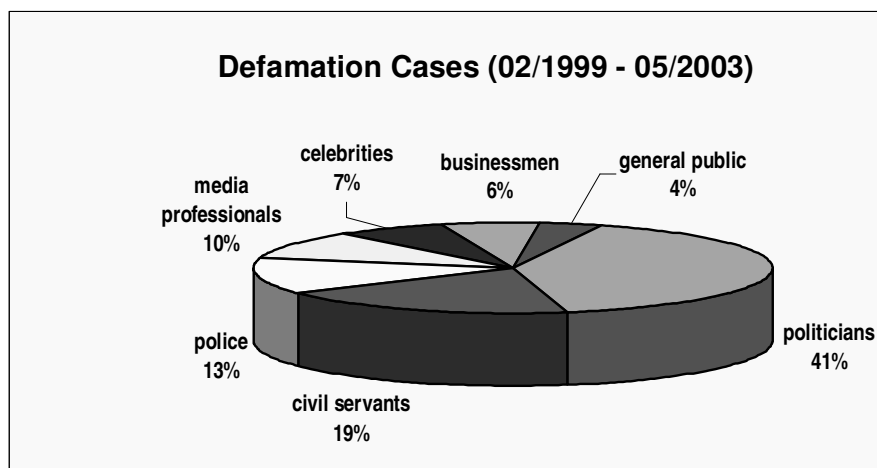
¹³¹ Bangphrapa, Mongkol, “Capitalism to blame for rise in libel suits against the media”, *Bangkok Post*, 1 May 2005.

¹³² “Prosecutor: Simple correction can help media firms to avoid lawsuits”, *The Nation*, 5 April 2005.



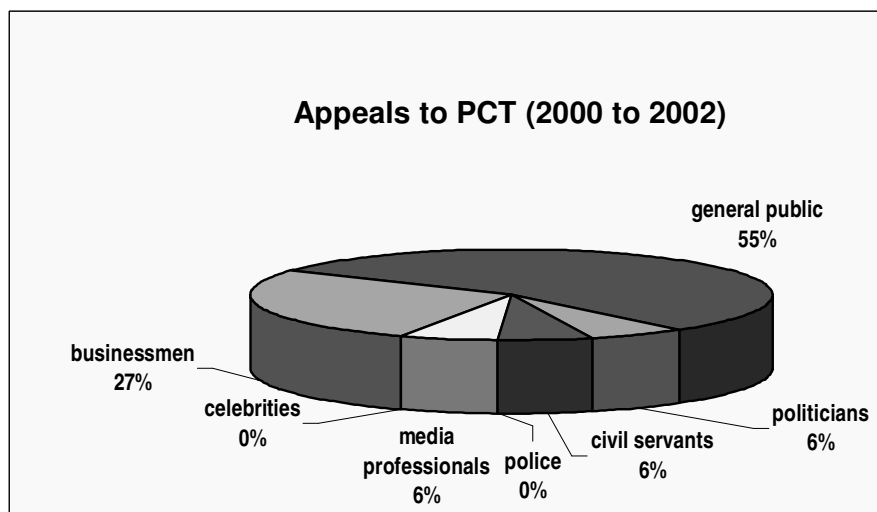
The two diagrams below show very graphically the situation regarding defamation cases brought against the media in Thailand. The data covers the period from February 1999 to May 2003 and shows, broken up by profession of the plaintiffs, the number of defamation cases brought before courts compared with the number of complaints filed with the Press Council of Thailand.¹³³

Diagram 7.1:



Source: Thai Rath Information Centre

Diagram 7.2:



Source: Press Council of Thailand

¹³³ Table taken from Nuannoi Threerat and Thanee Chairat, "Newspaper Market and State Regulations in Thailand", unpublished (Bangkok: Thailand Research Fund, 2004).

What stands out clearly is the difference by occupation. Politicians are responsible for the largest share of defamation cases, but make up only 6 per cent of the appellants to the PCT. Politicians, together with other State officials (civil servants and police), account for 73 per cent of libel cases but only 12 per cent of PCT complaints, whereas the public and business people present the inverse picture with 82 per cent of PCT complaints and only 10 per cent of the defamation cases. In this light, the following case would seem somewhat unusual, since it has the CEO of a large telecommunications conglomerate, Boonklee Plangsiri, the current CEO of Shin Corp, suing a media activist and the editors of a newspaper—Supinya Klangnarong and the *Thai Post*. But when public perception and media reports are taken into account it suddenly fits the pattern again, since both the public and the media often commit the understandable oversight of conflating Shin Corp with its founder—Prime Minister Thaksin, who passed his shares in Shin Corp to his family when he took office,¹³⁴ but is widely believed to still be the controlling force over it.

The Case against Supinya Klangnarong and the editors of *Thai Post*

One defamation case brought before the Bangkok courts in 2003 and 2004 has attracted particular attention both nationally and internationally, since it epitomises the way in which defamation laws have become the weapon of choice to stifle defiant voices and induce a climate of fear and self-censorship in the Thai media. By filing defamation cases with claims for exorbitant damages that, if awarded, would completely bankrupt a newspaper publisher, plaintiffs are seeking to chill critical voices.

On 2 October 2003, Shin Corp filed a criminal defamation suit against the proprietor of the *Thai Post* newspaper, three of its editors, Kannikar Wiriyakul, Roj Ngammaen and Thaweesin Sathitrattanacheewin, and Supinya Klangnarong, the Secretary-General of the Campaign for Popular Media Reform (CPMR), who was named as the first defendant. The basis for the suit was an article published in the *Thai Post* on 16 July 2003, based on an interview with Miss Supinya on the occasion of the fifth anniversary of the Thai Rak Thai party, discussing the connections between Thai Rak Thai's term in office and the profits made by Shin Corp during that period.

¹³⁴ According to information filed with the Stock Exchange of Thailand (SET), Thaksin's two eldest children and his brother-in-law were the three largest shareholders of Shin Corp in March 2005, holding about 38 per cent of the shares between them.



The plaintiff claimed that the remarks made by Supinya had been libellous and had damaged the company's reputation, and asked the court to punish the defendants, confiscate all the newspapers bearing the offending article and make them publish the decision in eight newspapers for at least one month.¹³⁵ The Criminal Court accepted the case in a preliminary hearing in December 2003, and the hearings on the merits began in July 2005.¹³⁶

Shin Corp subsequently filed a second defamation suit in July 2004 regarding the same newspaper article and against the same defendants in the civil court—this time claiming damages of Bt 400 million (ca. USD 10m), a sum amounting to 2,777 years of Supinya's salary, or roughly equal to one week's revenue of Shin Corp.¹³⁷ The civil defamation case was also accepted by the court in October 2004, but will be heard only after the criminal case has ended.

Supinya Klangnarong, in her role as the Secretary-General of CPMR, has been active in promoting the rights of the voiceless in Thailand with particular attention to the role of the media in the process of strengthening civil society. CPMR is campaigning for the full implementation of Section 40 of the 1997 Constitution, and has actively and successfully been lobbying lawmakers to structure the Frequencies Act in a way that would provide the public with access to broadcasting by reserving 20 per cent of the spectrum for community media.

In the *Thai Post* article of 16 July 2003, she was reported to have commented upon the exponential growth of Shin Corp's profits which coincided with TRT gaining power in 2001, and the conflict of interest arising from Prime Minister Thaksin's government policies benefiting and protecting the market shares of his family's interests, in particular the three telecommunications businesses:

- mobile phone services, which are carried by Advanced Info Service (AIS);
- the satellite service business of Shin Satellite; and
- and the television business of iTV.

In her defence against the defamation charges Miss Supinya has argued that Shin Corp did not have the legal personality to sue *Thai Post* and herself, since the remarks had been about the affiliated

¹³⁵ "Shin Corp sues media activist for political connection claim", *Bangkok Post*, 2 December 2003.

¹³⁶ Information on the ongoing trial from the perspective of CPMR can be found in English at: <http://www.shincorpsupinyaklangnarong.blogspot.com> and in Thai at: <http://www.popmedia.in.th>.

¹³⁷ "Supinya and the contrast between darkness and light", *The Nation*, 13 September 2004.

companies AIS, iTV and ShinSat, of which Shin Corp is a mere shareholder. She also maintains that her comments were made in good faith and were in the public interest, and that they are protected by Article 39 of the 1997 Constitution. She has further called upon the Criminal Court to suspend its deliberations and request a Constitutional Court ruling on the constitutionality of the Print Act B.E. 2484 (A.D. 1941).

The defamation cases brought by Shin Corp against Miss Supinya and the *Thai Post* have drawn world-wide condemnation, amongst many others from ARTICLE 19, the International Federation of Journalists (IFJ), the Committee for the Protection of Journalists (CPJ), Human Rights Watch (HRW), SEAPA and the Asian Human Rights Commission (AHRC). In Thailand, fund-raising dinners and theatre plays have been held in her support, attended by high-profile politicians and respected academics, though the court cases remain the proverbial David against Goliath struggle or, as one article rephrased it, “Bambi vs. Godzilla”.¹³⁸

The issues raised by Miss Supinya and reported in the July 2003 *Thai Post* article were hardly new and had frequently been made by others, often in stronger terms. As early as 1998, the Thai academic, Ukrist Pathamanand, had described how Thaksin had entered into politics to secure his business interests directly rather than having to support other political parties. Describing the monopolising trend in both politics and business due to the cooperation between Thaksin and Charoen Phokapand (CP) after the financial crisis in 1997, Ukrist writes:

Before founding the TRT party, both Thaksin and CP were forced to give financial support to various political parties simultaneously. Now, both of them can concentrate their financial and political resources in only one party. In other words, TRT will become the political party of a giant telecommunications capital group.¹³⁹

So the fact that Shin Corp picked Miss Supinya and the editors of the *Thai Post* as its targets was widely seen as an attempt to intimidate the media and non-governmental reform activists. As one outside observer, Brad Adams of Human Rights Watch, put it: “When business mixes with politics at the highest level in Thailand, it’s impossible to distinguish a libel suit from an attempt to silence the Prime Minister’s critics.”¹⁴⁰

¹³⁸ McGirk, Jan, “Bambi vs. Godzilla in Thailand”, 27 April 2005. URL: <http://www.opendemocracy.net/xml/xhtml/articles/2458.html>

¹³⁹ Pathamanand, Ukrist, “The Thaksin Shinawatra Group: A Study of the Relationship between Money and Politics in Thailand”, *Copenhagen Journal of Asian Studies*, No.13, 1998, p. 77.

¹⁴⁰ Human Rights Watch, “Thailand: Libel Suit Deepens Assault on the Press”, 1 September 2004. URL: <http://www.ifex.org/en/content/view/full/60997>



In their submission to the court, Shin Corp denied that they had supported the Thai Rak Thai party financially although, as noted below, Thaksin's wife is a major contributor. Furthermore, support is not restricted to monetary contributions. In the wake of the 2001 elections, there was much talk amongst iTV staff about the station's election coverage having favoured TRT; at that point Shin Corp held a 40per cent share.¹⁴¹ Today, iTV operators from Shinawatra Tower 3, a building it shares with Shin Corp and How Come Entertainment Co. (the advertising company of Pantongthae Shinawatra, the Prime Minister's son), and which also functions as the *de facto* TRT headquarters.

According to official figures from the election commission, in 2004 Thai Rak Thai received Bt 189 million (USD 4.7 million), almost four times as much as the combined Bt 55 million (USD 1.3m) received by the two opposition parties. The largest donor to Thai Rak Thai had been Pojamarn, Thaksin's wife, with Bt 85 million (USD 2.1 million), followed by the Thai Summit Group, belonging to the family of Transport Minister Suriya Jungrungreangkit with Bt 30 million (.¹⁴²

The latest person to raise his concerns about the conflict of interest between cabinet members and their families' business interests was Privy Councillor and still highly-revered General Prem Tinsulanonda. At a seminar in July 2005 he accused the government of applying double standards: one for "family and friends" and one for the rest of the country.¹⁴³

When the UN Special Representative on Human Rights Defenders, Hina Jilani, expressed her concern about the Shin Corp libel case in an urgent appeal to Prime Minister Thaksin himself, raising the possibility that the case might have been brought because of Supinya's human rights activities and to stop her from promoting freedom of expression and information in Thailand, the

¹⁴¹ Shin Corp has denied any editorial interference in iTV. The pressures put on iTV staff and the subsequent dismissal of 23 journalists who resisted those pressures are discussed in Chapter 8.1.

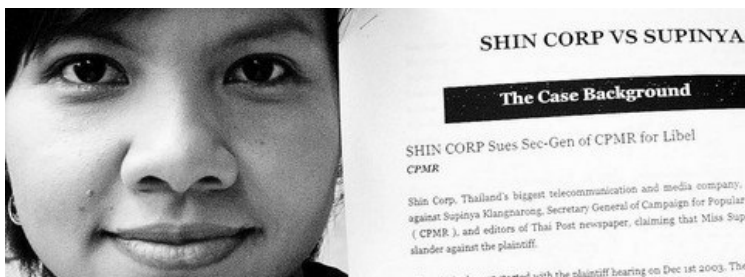
¹⁴² *Bangkok Post*, 25 March 2005. Suriya has been heavily implicated in the CTX-Scanner corruption scandal that broke out after the 2005 elections and was saved in a no-confidence motion held in June by TRT MPs having been told by party whips to vote for him even before the evidence against him had been presented in parliament. The one TRT MP who had abstained was vilified and allegedly pressured into making a public statement saying she had hit the "abstain" button by accident. Thaksin reacted to opinion polls showing a large majority doubting Suriya's integrity by complaining that the public had been misled by the TV cameras focusing on the negative aspects during the no-confidence debate.

¹⁴³ "Prem hits out at govt for 'double standards'", *The Nation*, 10 July 2005. In typical style, Prime Minister Thaksin did not speak out against Privy Councillor Prem but lashed out at the media instead, accusing them of having misrepresented what General Prem had said. See Chapter **Error! Reference source not found.** for a previous example of this tactic.

government's reply was that it had no control over the actions of Shin Corp and rejected the suggestion that the libel case had anything to do with human rights, claiming it was, as a result, not a matter of concern to the UN Special Representative.¹⁴⁴

The Prime Minister is not slow to exhort the Thai media to put Thailand's national interest and reputation above their professional ethics, but seems strangely reluctant to protect the country's image when it comes to telling a large company controlled by his family to reconsider a defamation case that is seriously tarnishing Thailand's democratic credentials.

Allegations of a conflict of interest between holding political office and looking after the family business are not resolved by intimidation through the filing of defamation cases against critics and whistle-blowers, but by implementing the provisions of the Constitution, by reforming the broadcast and telecommunications sectors, and by transferring regulatory powers from the government to an independent body to allow free and fair competition.



Supinya Klangnarong (Photo: Taipetimes)

¹⁴⁴ The Prime Minister had used less diplomatic words in another context when he vented his irritation at the UN's concern about the vast number of unresolved killings in the government's 'war on drugs' in 2003.



Defamation against media filed by business

Since Shin Corp brought the defamation suits against *Thai Post* and Supinya Klangnarong in 2003–4, other businesses have chosen to pursue the same path to silence newspapers publishing unfavourable information about them, and the compensation sought by these companies, which has been escalating exponentially. Prior to July 2005, the record for the highest amount of compensation demanded in a libel case was Bt 4.7 billion (USD 117.5 million), claimed by a securities firm which filed a case against the editor of Khao Hun newspaper, Charnchai Sanguanwong, arguing that a report in his newspaper had caused its share value to slump.

In two separate cases brought before the court in July 2005, Picnic Corporation Plc—a cooking gas company controlled by the family of Suriya Lapwisuthisin, a Thai Rak Thai MP and former minister who had to resign over the irregularities in the company in June 2005—sued first the editor and publisher of *Prachachart Thurakij* newspaper for Bt 5 billion (USD 125 million) and one week later six board members and the editors of *Matichon* newspaper for Bt 10 billion (USD 250 million) in damages. The lawsuits were based on the accusation that the defendants had suggested that the directors of Picnic Corp had “cooked the books”, a much played upon pun given that the company sells cooking gas.

The suspicion of accounting irregularities had actually led the Securities and Exchange Commission (SEC) to submit a report on Picnic Corp to the Department of Special Investigation (DSI), so the allegations do not appear to lack a foundation and they are quite clearly matters of great public interest. What is worrying about these last two cases, apart from the exorbitant damages claims, is that the Picnic Corp managers are also seeking a court injunction against the defendants to prevent them from engaging in journalism of any form for five years. (Chetchotiros, Nattaya, “Picnic Fraud expected to sink Suriya”, *Bangkok Post*, 2 July 2005.<http://www.asiamedia.ucla.edu/article.asp?parentid=29878>)

Sondhi vs Thaksin Shinawatra

Other prominent defamation cases were the ones against Sondhi Limthongkul, journalist and the founder of the Manager Media Group. Prime Minister Thaksin Shinawatra filed six criminal and civil defamation lawsuits against Sondhi and his colleague, Sarocha Pornudomsak, between September and November 2005. The lawsuits were based on Sondhi’s statement that the prime minister abused power and was disloyal to the King. Fortunately the lawsuits were dropped, following King Bhumibol Adulyadej’s advice. Otherwise, if convicted Sondhi and Sarocha could have been

imprisoned up to ten years and pay up to USD 50 million in fines and damages.

Sondhi is a staunch critic of the Prime Minister and through his live news-talk programme on TV Channel 9, Thailand Weekly or Muangthai Rai Sapda, spoke about corruption scandals involving Thaksin and his government. On September 15, the Mass Communication Organization of Thailand (MCOT) Plc, which is supervised by the Prime Minister's Office, cancelled Sondhi's programme. The management of MCOT claimed the show had made several one-sided comments on people who had no chance of countering his accusations and had broadcast improper statements concerning the monarchy.¹⁴⁵ Following the closure, Thaksin ordered his lawyer to file a number of lawsuits against Sondhi, and his colleague.

Sondhi's reaction to the closure and the lawsuits was to hold his talk show in public venues, such as the Lumpini Park, every Friday. Sondhi's show has been very popular and attracted thousands of people. The show has also been broadcast by cable TV, such as the News 1 Channel, and its content can be viewed on the Phujakarn website and are available on VCDs.

On 17 November, the Civil Court issued a gag order against Sondhi and his 11 associates. The court ordered him to refrain from making further criticism of the Prime Minister pending resolution of the defamation cases. A few days after the gag order was issued, there was another attempt for a legal action against Sondhi and Sarocha. Three police officers requested an arrest warrants against the two journalists. However, the Yasothon Provincial Court refused this request stating that there was no evidence to support the accusation.¹⁴⁶

The media that broadcast Sondhi's talk show also received harassment and legal threat. Cable TV operators were banned by the Public Relations Department to broadcast of Sondhi's show. The Pudjakarn website was threatened with a lawsuit for allegedly involving the monarchy in political affairs—the chairman of the ruling Thai Rak Thai Party's legal committee called on the Information Communication Technology Ministry to take legal action against the website.

In addition to defamation lawsuits filed by Thaksin, Sondhi also faced harassment and threats. On 3 November, a grenade was thrown

¹⁴⁵ *The Bangkok Post*, "Political Talkshow Axed by Channel 9". This article can be accessed at: <http://www.asiamedia.ucla.edu/article.asp?parentid=29878>

¹⁴⁶ "Libel Case Against Critic Fails", *South China Morning Post*, 25 November 2005. The article can be accessed at: <http://www.asiamedia.ucla.edu/article.asp?parentid=29878>



into the office of Manager Media Group. On 2 December, bags of excrements were hurled at the same site. Two high-ranking military officers— Major General Pruен Suwannathat, Commander of the First Infantry Division of the Royal Guard and Supreme Commander General Ruengroj Mahasarond—on separate occasions, told Sondhi to stop involving the monarchy in his criticism of the Prime Minister.

What makes this case special is not just the massive financial compensation sought—this is the so far the highest damages pursued by government official—but also, and probably more importantly, the King intervention in the case. King Bhumibol Adulyadej, in his 78th birthday speech on 4 December, advised the nation, and especially the Prime Minister, that constructive criticism is to be encouraged, and that lawsuits should not be deployed to silence critics. He admitted that nobody, not even the king, can do no wrong, so downright punishment to every criticism of the monarchy, without taking it into context, can also be detrimental to the perception of Thailand abroad.¹⁴⁷

Two days after the King's speech, Thaksin dropped the lawsuits. Sondhi and Sarocha, however, are not out of trouble yet. When this report went to printing in December 2005, they were still facing two police investigations into lese majeste offences for allegedly criticising the king. The first is under the jurisdiction of Provincial Police Region Three. The second is being handled by the Central Investigation Bureau.¹⁴⁸

The way in which the courts decide on these defamation cases, especially of Supinya's and Sondhi's landmark cases, will be crucial for the future of freedom of expression and information in Thailand.¹⁴⁹

¹⁴⁷ "The King Steps In", Asia Times online, 7 December 2005:
http://www.atimes.com/atimes/Southeast_Asia/GL07Ae02.html

¹⁴⁸ Human Rights Watch, "Thailand: P.M. Suits Dropped But Media Still Under Threat", 8 December 2005,
<http://www.hrw.org/english/docs/2005/12/08/thaila12178.htm>

¹⁴⁹ The Criminal Court has set 15 March 2006 as the date for the verdict on Supinya's case.

Recommendations:

- The provisions in the Constitution, Penal Code and other laws providing the monarchy with special protection against criticism or defamation should be repealed.
- The defamation provisions in the Penal Code should be repealed in their entirety.
- The civil defamation provisions should be amended to exempt certain statements – such as those made in the legislature or courts, or fair and accurate reports of these – from liability and to place a cap on damage awards other than losses that are specifically proven.
- Potential defamation plaintiffs should consider taking cases before the Press Council of Thailand instead of going to court and, when they do go to court, should restrict their claims to reasonable levels of compensation. Public officials should, in particular, exercise considerable restraint before taking defamation cases to court, whether directly or via intermediaries.
- The courts should interpret the existing defamation laws in accordance with constitutional guarantees of freedom of expression and, in particular, ensure that statements in the public interest are not found to be liable under defamation law.



8. INFORMAL RESTRICTIONS ON FREEDOM OF EXPRESSION

So far in this report, we have looked at media legislation and how it is used as a formal mechanism to restrict freedom of expression in Thailand. As the use of the defamation laws shows, the line between formal and informal restrictions can be rather fluid: the threat of a libel suit or even the knowledge of the draconian sanctions can make an editor think twice about publishing an account or allegation they believe to be true, even if it is in the public interest. Apart from the use of defamation laws, there are many other ways in which the Thai mass media have been leant upon by the State and businesses affiliated to the government, including buy-outs and channelling advertising revenue to compliant media.

8.1. Take Over of the Media by the Groups Connected to the Prime Minister

The Story of iTV: Shin Corp's take over

The case of iTV has given rise to many concerns over the. It is for these reasons, rather than a desire to highlight concerns relating to media giant Shin Corp and its founder, that the last five years and it is exemplary of the problems associated with the commercialisation and streamlining of the Thai media in general case is highlighted here.

In May 2000, after iTV had made heavy losses—due to the high license fees it had to pay to the State and drops in advertising revenue following the economic slump—and was seeking to restructure its debts, Shin Corp stepped in and bought 40per cent of the shares, rising to 80per cent over five years, in effect buying out the other shareholders over time. Of the then shareholders only the Nation Multimedia Group opposed Shin Corp gaining majority control of the station. There was also protest from members of iTV staff, academics and NGOs. The Chuan Leekpai government had lifted the 10per cent cap on ownership written into iTV's license. The concern was not only about the size of the Shin Corp share, but also the implications of the station being owned by the company belonging to the leader of a political party, who at the time was working towards become the next Prime Minister. Thaksin, for his

part, argued that he no longer had any influence with Shin Corp and its subsidiaries, since he had transferred his shares to his wife and son when standing for election. This argument is quite clearly illegitimate and, in other countries, leading politicians are expected to transfer their assets to blind trusts, rather than close relatives.

Thepchai Yong was removed as the news editor of iTV after he had openly criticised the Shin Corp bid and led a signature campaign by iTV news staff against the take-over. He claimed that his removal had been due to his criticism and was therefore unfair, while the management of iTV claimed he had been acting on behalf of Nation Multimedia Group. This claim was based on the fact that Thepchai had worked for *The Nation* before he went to work at iTV and he also happens to be the younger brother of Suthichai Yoon, the editor-in-chief of *The Nation*. With Thepchai out of the picture, iTV rapidly lost the reputation it had earned as an independent and critical news medium. Some journalists seen to be critical of TRT and its leader were sacked, while others kept their heads down.

The dismissal of iTV staff

One year after Shin Corp had first bought into iTV—after Thaksin and his Thai Rak Thai party had won the January 2001 elections—23 iTV journalists were sacked. They had expressed their concerns about the loss of independence and a bias towards TRT in the station's election coverage and had gone public about several editorial interventions in the run-up to the election. This was treated as gross misconduct, and the management of iTV stated in its dismissal letters that they been “dishonest” in their duty as journalists—their dishonesty presumably being the whistle-blowing over internal censorship of news programmes.

Among those sacked were 7 union executives who had been elected only two days earlier when iTV staff founded a labour union to represent the employees interests vis-à-vis the management. The sacked journalists considered their dismissal illegal, and 21 of them refused compensation payments and took the matter to adjudication. The effect of the sacking was that the allegations of iTV's pro-TRT bias received great public attention, and the fact that the sacked workers formed a group to continue their fight for media independence made sure that the issues raised did not disappear from the public eye.

In September 2002, after iTV management had rejected an earlier Labour Relations Committee finding against it, the Central Labour Court ruled in favour of the sacked iTV employees and ordered iTV to both re-employ them and compensate them for lost income. The case had been the first Thai case to be brought before an



International Labour Organisation (ILO) committee, which had come to the same conclusion as the Thai courts. Nevertheless, iTV decided to appeal again, this time to the Supreme Court, which in March 2005 ruled in favour of the 21 journalists and ordered iTV to rehire all 21 and pay lost wages.¹⁵⁰ While the journalists had finally won the right to be re-employed by iTV, many wondered whether there was any point since the changes they had initially protested against had long since become engrained in the business ethics of the station.

Matichon take-over bid

In September 2005, GMM Grammy (a company owned by Paiboon Damrongchaitam, a crony of PM Shinawatra) launched hostile take-over bids for two of Thailand's most influential media companies, Matichon Publishing and Post Publishing. The former publishes *Matichon*, a Thai-language intellectual newspaper, whilst the latter publishes the English-language *Bangkok Post*.

The take-over bids resulted in protests from media practitioners and academics who feared a narrowing of freedom of expression in the Thai media, and in particular political interference with these newspapers' editorial independence. A survey conducted by a Thai research centre showed that the public saw the plan as more than a business deal, and considered it to be politically motivated.¹⁵¹ Faced with growing public resentment GMM Grammy abandoned its plan to take over Matichon. However its intentions with respect to its bid for Post Publishing still remain unclear.¹⁵²

8.2. The Banning of Foreign Media

Foreign (Western) media play a notable role in Thai politics, in part because they are seen as a reflection of Thailand's international image and as having an impact on foreign investors' decisions. Their coverage of Thai affairs has also been used as a tool by Thai politicians to discredit opponents, particularly under the premiership of Banharn Silapa-Archa.¹⁵³ In the early days of newspaper production in Siam, foreign publishers had been exempt from prosecution by virtue of being subject not to Thai law but that of their home countries, although they no longer enjoy such privileges today.

¹⁵⁰ "iTV urged to adopt press freedom policy", *Bangkok Post*, 10 March 2005.

¹⁵¹ "Takeover bid sparks Thai press freedom fears", *The Age*, 16 September 2005.

¹⁵² "Grammy abandons takeover", *The Bangkok Post*, 17 September 2005.

¹⁵³ See Duncan McCargo, 2000, *op. cit.*

In January 2002, the government banned sales of one issue of the Hong Kong-based *Far Eastern Economic Review* (FEER) magazine under the 1941 Publishing Act. Initially, Prime Minister Thaksin had taken issue with the article, which was critical of the government's privatisation plans, and threatened to sue the magazine for inaccurate reporting and defamation of the country's image. But government attention then shifted to another article in the same issue of the FEER, which contained a sentence hinting at tensions between Prime Minister Thaksin and the Royal Palace, an issue the Thai media would not report on. This was deemed to be a case of lese majeste, and police blacklisted four members of FEER staff as "threats to national security" and threatened FEER's two Thailand correspondents with expulsion. FEER's editor did write to regret the "misunderstanding" and the issue was eventually laid to rest, but not before it had transpired that the Thai government had also used a US-based law firm to try and lobby the publishers of the FEER to report more favourably about Thailand.

The rationale behind these censorship activities, and who exactly was behind the blacklisting of the journalists, remains murky but it might have been an attempt to send a warning to both the international and the national media. It was followed shortly afterwards by another attempt to silence foreign media criticism when *The Economist* was threatened with legal action over an article in a February 2002 issue, which pointed at a disagreement between the King and the Prime Minister much more explicitly than the FEER had done.

It is worth noting how much more international attention the FEER ban had generated, compared with censorship attempts aimed at the national media.

8.3. Interference with Community Radio

As noted in Chapter 5.2., the promise of radio frequencies for the civic sector has not been realised and in fact the State has continuously interfered in community radio stations, less so those that have begun operating recently on a profit basis providing entertainment while more so those that are actively campaigning on social or environmental issues.

Suggestion on radio license for TAOs

The Public Relations Department disseminated a publication at the end of December 2002 proclaiming the news that Prime Minister Thaksin had plans to grant 400 Tambon Administrations (TAO, a form of local government) radio frequency licences as a "New



Year's Gift", with the possibility to eventually extend this scheme to all 7000 TAOs in the country. Media reform groups saw this as a direct threat to "genuine" community radio projects and cried foul, suspecting that these government-controlled stations would be established at the expense of the 20 per cent of the frequency reserved for community radio. This move would also have once again meant the creation of facts "on the ground" before the NBC had had a chance to do its work of properly planning the frequency spectrum.¹⁵⁴

After several months of confusing and contradictory statements from the PRD, the Council of State and the Prime Minister's office, a deputy prime minister announced in May 2003 that it had never been the government's plan to take the TAO frequencies out of the 20 per cent share for community broadcasting, and that TAO radio was considered to be public service broadcasting and would therefore draw on that frequency pool.

However, CPMR continued to doubt the legitimacy of TAO radio stations, given the close political ties of TAOs to the government, and the influence wielded by village headmen in elections. Some doubt was also raised as to where sufficient frequency spectrum would come from to cater for both community broadcasters and the proposed TAOs, as well as what audience share would be available if all of these stations were to be set up. The row has highlighted differences in understanding between the government/civil service and media reform activists. A particular point of difference is whether local State administrators represent the "*chumchon*", the Thai word for community, or whether the *chumchon* is the people organising themselves at the grassroots level, a meaning which is clearly more consistent with the Frequencies Act.

Community radio crackdown in 2005

By May 2005, the PRD estimated that there were a total of 1,800 "community radio" stations in operation, excluding 500 operating under the Community Radio Network, which had refused to acknowledge the regulatory authority of the PRD in the absence of the NBC. A PRD spokeswoman described the situation as a vacuum with no authority having the power to regulate the community radio stations, though the PRD was contributing to the chaos with its licensing scheme and actually allowing stations registered through it to broadcast advertising for up to 6 minutes per hour, an aspect media reform groups were opposed against since it constituted a

¹⁵⁴ This was actually a point the Council of State used in its argument for giving the community share of frequencies to the TAOs: to operate them until the NBC was operational.

commercialisation of community radio. Some ex-PRD officials had actually opened a consulting business, selling radio transmitters imported from Italy, and therefore were profiting from the boom in radio stations.¹⁵⁵ Commercial radio operators were complaining that their revenue was dropping, in part due to the so-called community stations offering commercial advertising.

The government reacted by announcing a crackdown on stations it claimed were interfering with established State broadcasters and air-traffic control, and set a deadline for them to reduce their transmission power of 26 May 2005, or face closure. The criteria for this system, which depended on signal strength and height of transmission antennae, were taken from PRD's registration scheme, which stipulated a maximum radius of 15 kilometres, antenna height of 30 meters and signal strength of 30 watts.

Based on the stations that were actually visited by police and targeted in the crackdown, media reform groups alleged that the move was politically motivated and was targeting mainly politically critical stations, such as FM92.25, whose host was a veteran broadcaster and an outspoken critic of the government. This suspicion was strengthened when, in June, the ICT Ministry's website censorship branch closed down the website of FM92.25 (<http://www.fm9225.com>) along with the website of Ekkayuth Anchanbutr (<http://www.thai-insider.com>).

These closures were a departure from the usual censorship activities by the web police, namely closing down or blocking websites with pornographic or separatist content, or which were related to gambling. The closure caused an uproar amongst national and international freedom of expression organisations and the Thai Webmasters Association published a statement criticising the move by the government. ICT Minister, Suvit Khunkitti, gave as reason for the closure that these websites had not obtained proper registration details for their domains, but this was widely regarded as an excuse. A few weeks later, both sites were available again under their original URLs. But the leading light behind FM92.25 decided to suspend her struggle due to the ongoing intimidation, stopped broadcasting and went abroad to study for a further degree.

In the absence of proper regulation by the NBC, the concept of what community radio should be has been thoroughly muddled by the government and entrepreneurs wanting to operate radio stations for profit. Community radio does need an independent regulatory body to police it, but *ad hoc* crack-downs by State officials, combined with opportunism by commercial operators, are not the answer, particularly when the former are targeted primarily against critics of

¹⁵⁵ Kamol Sukin, "Local radio draws big ad revenues", *The Nation*, 24 May 2005.



the government and when a blind eye is turned to violations by stations operated by government supporters.

8.4. Other Measures of Harassment and Intimidation to Restrict Freedom of Expression

Prime Minister's Weekly Radio Address

Since he first took office, Prime Minister Thaksin has repeatedly mused on reducing his contact with Government House reporters whom he regards as annoying and irritating. In January 2002, he started the radio programme “Nayok kui gap Prachachon” (the prime minister speaks with the people) to reach the Thai people directly, undistorted by intervening journalists. It is broadcast nation-wide on the PRD’s radio network every Saturday morning and has led to the Prime Minister removing himself from direct discussions with journalists while still being able to set the national news agenda.

In this programme—which would be better named “the PM speaks to *his* people”—the Prime Minister usually phones into the radio station live and speaks uninterrupted and unquestioned for 30 to 60 minutes. He talks in avuncular fashion about his activities over the previous week and what important events are coming up, and explains his government’s policies while taking issue with his critics. This programme, also broadcast on State-run Channel 11 TV, with occasional video footage accompanying the Prime Minister’s narration, generates at least 4 or 5 news stories each week which are then carried in the papers the coming days, showing that journalists are among those listening to the programmes.

The issue here is not so much that the Prime Minister is given 30-60 minutes of airtime each week but that this happens at the expense of open debate. The opposition Democrat leader Chuan Leekpai complained when the programme first went on air, since the opposition was not given equal access to the State-controlled airwaves, and then, in August 2002, he set up a web chat on the Internet each Sunday. This also generated occasional newspaper articles, but mostly as a reaction to Thaksin’s radio address the day before. Both opposition and media professionals cannot ask back, they can only react on the basis of what the Prime Minister has said. The media themselves have in a way been complicit in this dynamic, since they have accepted this hierarchy and give the Prime Minister’s radio broadcast prominence by picking up on it so extensively.

Investigation of Journalists' Financial Assets by AMLO

At the beginning of March 2002, it transpired that the Anti-Money Laundering Office (AMLO) had in February written to various banks requiring information on the accounts of several prominent figures who had been critical of the Thaksin government. Among the media people investigated were Nation Group editor-in-chief Suthichai Yoon and his wider family, as well as people from the newspapers *Naew Na* and *Thai Post*.

The print media, the Democrat Party, media academics and NGO activists all protested strongly against this move, branded as an attempt by government to silence its critics, and demanded to know who had ordered AMLO to conduct the probing into journalists assets.¹⁵⁶ They gathered over 1,000 signatures from media professionals and activists petitioning the two houses of parliament to investigate the issue.

The Prime Minister, meanwhile, denied having given or known about an order for AMLO to investigate the journalists and himself ordered an inquiry panel. After initial denials that AMLO had made the investigation at all, this panel then blamed an ignorant official at the AMLO, called it a regrettable misunderstanding and then focused instead on finding out who had leaked the information to the public rather than who had ordered it in the first place.

The Administrative Court temporarily suspended the AMLO investigation, but Chavalit Yongchaiyudh, the Deputy Prime Minister in charge of AMLO, said that they could not follow the court order since that would constitute negligence of its duties, a parallel claim to that lodged by nominated National Broadcasting Commission members who also refused to follow a court order.¹⁵⁷

When the government inquiry committee reported that two AMLO officials were to blame, critics saw these as mere scapegoats and there was also widespread mistrust of the finding that the investigation of the newspaper editors had been triggered by a single anonymous letter received by AMLO. The two officials found to be at fault were punished only with a pay-cut. Before the matter came to a close in mid-June, when the Administrative Court ruled that the AMLO investigation into media people's finances had been

¹⁵⁶ The anti money-laundering law allows AMLO to launch investigations based on information related to drug trafficking, prostitution racketeering, business fraud, State corruption, extortion and tax evasion but, obviously, not simply for critical reporting.

¹⁵⁷ Chavalit has a well-known habit of making baffling statements which he later clarifies as having meant something completely different.



illegal,¹⁵⁸ AMLO tried, unsuccessfully, to bring to court the person who had leaked their investigation to the media, a rather peculiar action for an organisation that relies on tip-offs from whistle-blowers itself.

The pro-active approach taken by AMLO over what was alleged to be a response to a single anonymous letter in 2002, or in September 2004, when it investigated the past of Ekkayuth Anchanbutr—coincidentally just as he had become an outspoken critic of the government—and insisted on applying the 1999 Anti-Money-Laundering Act retrospectively to a case related to him going back 20 years to 1984, contrasts markedly with AMLO's reluctance to launch investigations in other cases, the latest having been the CTX scanner corruption scandal which rocked Thailand in the spring of 2005. When the scandal was first aired in the print media, in April 2005, Peeraphan Premputi, the secretary-general of AMLO, stated that the reports were entirely groundless and the result of journalists “fantasising,” a conclusion he reached without launching a proper investigation, since he claimed that AMLO could not investigate unless given substantive evidence.¹⁵⁹ The TJA issued a statement condemning this and similar attempts to slander the media, while Prime Minister Thaksin urged the media to tread carefully so as not to damage Thailand's reputation. Playing the nationalistic card once again had some effect in portraying the media and opposition investigating the corruption allegations as stooges trying to damage the country both politically and economically, and in the process brushing over the far more serious corruption allegations.

Just as the independence of AMLO has been discredited by its working to a government agenda, other branches of the executive have been utilised by the government to silence its critics. In the case of Ekkayuth Anchanbutr, noted above, the Deputy Prime Minister Chaovalit ordered the intelligence agencies to follow him—this was an act reminiscent of the abduction and presumed murder of the Muslim Lawyer Somchai Neelaphaijit in March 2004, who had also been under surveillance by intelligence officers, notably after he had made allegations of police having tortured alleged *Jemaah Islamiyah* suspects in custody.

Media Ethics Bill and Media Monitoring

In February 2003, INN, a private broadcasting company, conducted an interview with Purachai Phimsomboon, who had just been demoted from Justice Minister in a government reshuffle, allegedly

¹⁵⁸ For more (legal) details, see an article by Thepchai Yong in *The Nation*, 27 June 2002.

¹⁵⁹ *The Nation*, 28 April 2005.

because junior officers in that Ministry who were close to the Prime Minister were unhappy with his style. INN then aired the recordings they had made of that interview containing critical remarks about Prime Minister Thaksin. Instead of dealing with the allegations made by Purachai, who was still very popular, Thaksin and TRT MPs turned on the media instead.

A Bill seeking to establish a “media ethics council” and to “draw a professional framework around the broadcast media” was tabled by Chakkrapan Yomchinda, a TRT MP who had himself once been a TV news anchor.¹⁶⁰ The reason given for tabling this bill was that if there was no law to regulate media conduct, news broadcasts could be used as a forum to make damaging remarks about other people.

The powers and remit of the proposed media council were extremely draconian. It was to have the power to withdraw broadcast licenses and to ban journalists from practising their profession, and even to impose jail terms on broadcasters. The draft bill suggested setting up a council comprising 23 people, drawn from ‘professional bodies’, crucially, hand-picked by the Prime Minister’s office.

There was an outcry amongst media reform groups, media academics and professional bodies, including the Thai Broadcast Journalists Association (TBJA). They agreed that there was a need for a complaints body, but that there was no need for further government control, and that the NBC and NTC would fulfil the role of regulating the broadcast media (once they were operational).

The Campaign for Popular Media Reform (CPMR) in a statement said:

The CPMR agrees that the broadcast media should have an ethics body to oversee them but such an agency should come from the media’s own initiative instead of [from] the government. . . .

After a week of heated debate between government and (mainly print) media, Chakkrapan withdrew his bill, saying he had not intended to augment government control over the media, and had been misunderstood.

A week later, at the beginning of March, the INN network, which had originally sparked the controversy, was told by the Army Reserve Command running a Bangkok radio station that its lease of airtime would not be renewed. INN had broadcast a popular radio phone-in “Ruam Duay Chuay Kan” on that frequency and had thought that it had already secured a renewal of its lease. Speculation


¹⁶⁰ The Bill was supported by 20 MPs and had the backing of Sanoh Tientong, who had signed it in the name of the Prime Minister. There was, however, no prior public consultation of whatever sort on the Bill.



was rife that the army had scrapped the lease due to government pressure. While the programme's future was in the balance, it went off air in mid-programme one evening, prompting cab drivers to stage an impromptu demonstration of support outside the INN office, though the Army later claimed this was due to a technical problem.

After ten days, the army chief suggested a "compromise" that allowed INN to continue broadcasting its programme. According to the Army Reserve Command, the issue of the license renewal had been completely unrelated to the conflict between INN and Prime Minister Thaksin, and they had not received any instructions from the government to act against INN.

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Media Monitoring

- No Muslim Olive Branches as Thai PM Eyes Election** 😊

Nopporn Wong-Anan

Reuters

06/11/2004
- Tribal Loyalties** 😊

Bertil Lintner, Shawn W. Crispin

Far Eastern Economic Review

04/11/2004
- What's Happening in the Land of the Free?** 😊 📄

The Daily Star

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- Thai Dilemma over Muslim Anger** 😊 📄

B Raman

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02/11/2004
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01/11/2004

Prev | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | **29** | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | Next

Source: http://thailand.prd.go.th/media_mon_list.php

8.5. Violence Against Media Practitioners

The use of violence against media practitioners is, as in the Philippines, a problem that in Thailand is almost exclusively limited to the provincial regions, although Thailand has a far better record than the Philippines, which holds the sad record for murders of journalists in Southeast Asia.

However, the statistics are dire. Between 1979 and 1984, at least 47 journalists were killed in Thailand,¹⁶¹ and, since 2000, the murder rate has been around 1-3 journalists per year.

Some of the cases can be traced back to journalists having made enemies by exposing corruption, while other cases, in which journalists-cum-businessmen were murdered, also suggest business conflicts as the motive.

In April 2001, Wirayudh Saengsopit, the host of a political news radio programme, was murdered in Surat Thani Province in the South. Following reports on corruption in local government he had been receiving threats for many months and had subsequently been given police protection until a few days before he was murdered.¹⁶² Police arrested two men for the shooting, one of which had been an official embroiled in the corruption scandal exposed by Wirayudh.

One month later Kaset Puengpak was killed in Ang Thong Province in Central Thailand, a stringer for Thai Rath who had reported on local drug dealing and police involvement, which according to the TJA had likely been the motive for his murder. A police corporal was questioned in the investigation, but nobody was arrested.¹⁶³

In the first half of 2005, two journalists were killed and, in both cases, there were grounds to believe that their murder was related to their journalistic activities. Pongkiat Saetang, the editor of the *Hat Yai Post*, was shot in the back in the southern city of Hat Yai in February 2005. He had received warnings by telephone prior to his death and, due to his continued criticism of local political corruption, the murder is considered to have been politically motivated. The TJA, the Southern Journalists Association of Thailand and international press organisations such as the IFJ and the Overseas Press Club of America all condemned the murder and called upon the Thai government to bring the perpetrators to justice.¹⁶⁴

¹⁶¹ *Bangkok Post*, 3 May 2001.

¹⁶² *Ibid.*

¹⁶³ Committee to Protect Journalists, *Attacks on the Press in Thailand*, 2002. URL: <http://www.cpj.org/attacks01/asia01/thailand.html>.

¹⁶⁴ *The Nation*, 25 February 2005.



The second case of 2005 was the shooting of Manop Rattanacharungporn, a local reporter for *Matichon* newspaper in Phangnga Province in early June 2005. Manop had been reporting on the Mangrove forest encroachment by influential people in the region and, one month after his murder, the case was taken over by the Justice Ministry's Department of Special Investigation.

8.6. The Media and the Unrest in the South Thailand

The sharp increase in violence and the extension of martial law in the three southernmost Thai provinces bordering Malaysia, Yala, Narathiwat and Pattani, has caused grave concerns about the human rights situation there, including freedom of expression and information. Not only have community radio stations broadcasting in the local Malay dialect been shut down, Islamic schools and their staff been placed under general suspicion of supporting terrorism by State officials, and an unknown number of people have been disappeared. At the same time, State schoolteachers, Buddhist civilians and State officials are frequently being ambushed and shot by alleged Islamic insurgents.

The Thai media have also found themselves in the crossfire for their reporting of the conflict in the South, but for two sharply contrasting reasons.

On the one hand, the government and security forces are calling upon the media to keep the national interest in mind when reporting on the issues in the South, while, on the other hand, parts of the media are urged not to fan the flames with their ultra-nationalist and anti-Muslim rhetoric. The latter is the concern of civil liberties and peace advocates, something that has not yet been expressed by the State and, indeed, some of the peddlers of anti-Muslim sentiment are close to the government:

In April 2005, the Student Confederation of Thailand and human rights organisations in two independent motions called upon the Senate and the National Reconciliation Commission (NRC) to investigate the programmes hosted by the ex-governor of Bangkok, Samak Sundaravej, alleging that he was causing social division and stirred up hatred and confrontation, particularly with his comments on the issue of southern unrest. The Student Federation drew parallels to the massacres of students by right-wing mobs in October 1976, when army radio stations had urged its listeners to kill student protesters at Thammasat University in the heart of Bangkok.¹⁶⁵

¹⁶⁵ Baker, Chris and Pasuk Phongpaichit, *A History of Thailand* (Cambridge:

Samak had also allegedly played a role in those events. The programmes in question were all carried on State-owned media, namely *Chao Nee Tee Muang Thai* (“This Morning in Thailand”) at 6.30-7.30am on army TV Channel 5, *Samak Dusit Khid Tam Wan* (“Samak and Dusit’s Thoughts of the Day”) on Modern Nine TV at 11.00-11.30am, and *Khor Tej Jing Wan Nee* (“The Truth of Today”) on army radio FM94 between 1pm and 3pm.

Due to the centralised nature of Thai media organisations – both national press and broadcasting being located in Bangkok – local voices from the provinces have difficulty to get themselves heard on the national level and media discourse on the South is therefore very much prejudiced by its Bangkok perspective.

Banning of Tak Bai VCD’s and coercion of journalists

In the aftermath of the Tak Bai massacre on 25 October 2004¹⁶⁶ the State’s main concern seemed not be finding out how such an atrocity could have occurred at the hands of the authorities but, rather, to control the information and video footage of these events. Ten days after the original demonstration, the police Crime Suppression Division (CSD) invited members of the media to a press conference at the police headquarters in Narathiwat. Upon arrival, summonses were issued to them to surrender any video footage of the 25 October events, and several were held and interrogated by police for a number of hours. Both SEAPA and Senator Thongbai Thongpao expressed concern about this intimidation and violation of press freedom.¹⁶⁷

On another occasion, Prime Minister Thaksin lashed out at the *Bangkok Post* for having reported on the plan of a Muslim community leader in Pattani to petition the King for royal government involvement, since the government had discredited itself with its violent actions. A Malaysian media team was also forced by Thai police to surrender their footage.

Cambridge University Press, 2005), p. 194.

¹⁶⁶ Thai security forces had arrested over 1,000 demonstrators in Narathiwat Province and then shackled and piled them into trucks to be taken to army camps in neighbouring provinces, a journey which 78 men did not survive. Prime Minister Thaksin had initially blamed the fact that the demonstrators had been fasting (it was the month of *Ramadan*) for their deaths. For more information see the *Article 2* editorial by Basil Fernando at URL:

<http://www.article2.org/mainfile.php/0305/163/>.

¹⁶⁷ IFEX Alert: “SEAPA alarmed by government attempts to intimidate the media in the wake of violence in southern Thailand”, 9 November 2004, available at: <http://www.ifex.org/en/content/view/full/62404?PHPSESSID=449ee0a5b29a6a7c9e2d8d7f17413e16>.



When Tak Bai video footage that contradicted the government's official version of events began to circulate in the format of VCDs in the southern provinces, as well as in Bangkok, police confiscated the VCDs and tried to criminalise their distribution as an offence against national security, punishable with up to 7-years imprisonment. Police also contacted CD duplication shops and warned them against duplication of any footage of the massacre. The VCDs were being used by some opposition MPs in the national election campaign, and their attempt to spread this information coincided with the Thaksin government backtracking over its promise to release the full report on the Tak Bai incident that it had itself commissioned. Forum Asia and ARTICLE 19 both protested against the government's crude attempts to suppress the right to information.¹⁶⁸ These attempts are yet another example of the government confusing and conflating the national interest with its own interests. A recent illustration of this is the executive emergency decree issued in July 2005, which has the potential to curb very seriously any reporting of events such as the Tak Bai and Kruesae Mosque massacres on the grounds of maintaining national security (see Chapter 4.6).



Protest against the killings in South Thailand (Photo: Indymedia)

¹⁶⁸ "Groups slam VCD ban", *Bangkok Post*, 26 December 2004.

Recommendations:

- Officials should refrain from interfering in the media, including by expressing undue or politically motivated criticism of the media.
- Media owners should respect the editorial independence of their media outlets, as well as the right of staff to respect for their own freedom of expression.
- Officials should refrain from using vague appeals to nationalism, respect for the institution of the monarchy or national security as a way of influencing media content.
- Media outlets, including public media, should not provide undue coverage of, or access to, representatives of certain political parties, even if they form part of the government. Coverage of political figures and events should be balanced and reflect the range of views held in Thai society.
- Officials should strictly refrain from any indirect interference in media freedom, including by auditing the accounts of critical journalists or by threatening prosecutions.
- Officials should respect the 20per cent frequency allocation to community broadcasters and not try to allocate these frequencies to State broadcasters, local or otherwise. The authorities should refrain from interfering in existing community broadcasters, outside of exceptional cases where this is warranted by an overriding social interest, while at the same time doing all that they can to ensure that the proper regulatory structure for broadcasting, as envisaged by the Constitution and the Frequencies Act, is put into place as soon as possible.
- The government should not seek to introduce a law regulating media ethics but should, instead, leave this up to the appropriate self-regulatory and broadcasting bodies.
- Until the proper broadcast regulatory framework is put into place, the State authorities which control broadcasting frequencies should refrain, as far as possible, from making any changes to the status quo.
- Public advertising should never be used to influence media content and it should be allocated to media outlets on a non-discriminatory basis, in accordance with sensible business grounds.
- Officials should absolutely refrain from committing violence against media workers and any officials found to have committed such acts should be prosecuted to the full extent of the law.



- The authorities should make all reasonable efforts to identify and prosecute private individuals who are guilty of committing violence against media workers.

9. FREEDOM OF INFORMATION

9.1. Implementation of the Freedom of Information Law

The 1997 Thai Constitution establishes an impressive foundation for the implementation of the rights to both freedom of information and expression and an Official Information Act (OIA) was passed in 1997, with a view to implementing Section 58 of the Constitution. However, the legal and practical implementation of this right some eight years after the law was adopted remains weak.

The OIA defines the kinds of information citizens have a right to access and the circumstances under which that right may be limited. A key problem, however, is that it holds individual State officials responsible rather than their departments and that it prescribes much harsher punishment for officials disclosing restricted information than for officials who are found to have failed to provide information to the public. As such, it serves to enhance the reluctance to divulge information to the public and the culture of secrecy that has historically been an integral part of Thai bureaucracy.

Sections 7 to 9 of the OIA describe the kinds of information State agencies have to make available to the public on a proactive basis, such as information on the powers and duties of the agency, regulations and by-laws pertaining to it, its budget and concessions to private individuals for the provision of public services, though by 2003 – six years after promulgation of the Act – many agencies still did not comply with those requirements.¹⁶⁹

Section 11 provides for the disclosure of information that is not yet in the public domain to individuals requesting such information:

¹⁶⁹ Wilasinee Phiphitkul, *et al.*, *Gagging the Thai Press*, Bangkok: TJA, 2005, p. 69f.

Section 11. If any person making a request for any official information other than the official information already published in the Government Gazette or already made available for public inspection or already made available for public studies under section 26 and such request makes a reasonably apprehensible mention of the intended information, the responsible State agency shall provide it to such person within a reasonable period of time, unless the request is made for an excessive amount or frequently without reasonable cause.
[...]

The phrase “within a reasonable period of time” has proven to be interpreted rather liberally by State officials and agencies have often delayed for months before eventually denying a request under the OIA without giving any reason.

Sections 14 and 15 outline the principles exceptions to the right to access information, that is, which kinds of information can legitimately be withheld by State agencies. Information with the potential to jeopardise the royal institution is categorically excluded by Section 14 and other categories of exempt information are listed in Section 15:

Section 15. A State agency or State official may issue an order prohibiting the disclosure of official information falling under any of the following descriptions, having regard to the performance of duties of the State agency under the law, public interests and the interests of the private individuals concerned:

- (1) the disclosure thereof will jeopardise the national security, international relations, or national economic or financial security;
- (2) the disclosure thereof will result in the decline in the efficiency of law enforcement or failure to achieve its objectives, whether or not it is related to litigation, protection, suppression, verification, inspection, or knowledge of the source of the information;
- (3) an opinion or advice given within the State agency with regard to the performance of any act, not including a technical report, fact report or information relied on for giving opinion or recommendation internally;
- (4) the disclosure thereof will endanger the life or safety of any person;
- (5) a medical report or personal information the disclosure of which will unreasonably encroach upon the right of privacy;
- (6) an official information protected by law against disclosure or an information given by a person and intended to be kept undisclosed;



(7) other cases as prescribed in the Royal Decree.

An order prohibiting the disclosure of official information may be issued subject to any condition whatsoever, but there shall also be stated therein the type of information and the reasons for non-disclosure. It shall be deemed that the issuance of an order disclosing official information is the exclusive discretion of State officials in consecutive levels of command; provided that, a person who makes a request for the information may appeal to the Information Disclosure Tribunal as provided in this Act.

Section 17 stipulates that in cases where the disclosure of any official information might affect the interests of a third person, that person should be notified and given the opportunity to object to the disclosure. Section 13 provides for a right to appeal against any refusal to disclose information. Although the OIA does not set clear timeframes for the disclosure of information, it does do so for the handling of complaints and appeals which individuals may lodge with the Official Information Commission (OIC). The Commission has 30 days to consider an appeal, which in exceptional cases can be extended to 60 days.

Section 13. Any person, who considers that a State agency fails to publish the information under section 7, fails to make the information available for public inspection under section 9, fails to provide him with the information under section 11, violates or fails to comply with this Act, or delays in performing its duties, or considers that he does not receive convenience without reasonable cause, is entitled to lodge a complaint with the Board, except where it is the case concerning the issuance of an order prohibiting the disclosure of information under section 15 or an order dismissing the objection under section 17 or an order refusing the correction, alteration or deletion of the personal information under section 25.

In the case where the complaint is lodged with the Board under paragraph one, the Board shall complete the consideration thereof within thirty days as from the date of the receipt of the complaint. In case of necessity, such period may be extended; provided that, the reason therefor is specified and the total period shall not exceed sixty days.

9.2. Enforcement and Limitations of FOI

There is no data on the extent to which the Thai people have made use of the OIA, but hundreds of citizens appeal to the Official Information Commission (OIC) every year about State authorities

who refuse to disclose information upon request. Journalists have made surprisingly little use of the OIA and about half of the complainants have been from civil servants themselves. This is slightly ironic because, as noted above, civil servants are the very people who are reluctant to disclose information as required of them under the OIA. State officials have been accused of waiting for an appeal to and decision by the OIC before releasing information, just to be on the safe side and not expose themselves to disciplinary action for having released information.¹⁷⁰

In August 2003, Prime Minister Thaksin championed the OIA in his anti-corruption campaign and urged the public to make more use of the act. This might have helped to raise general awareness of the right to information but, ultimately, the Thai bureaucracy and its Kafkaesque culture of officialdom and secrecy must be reformed if the Act is to be effective, and that has been yet another reform which, despite promising announcements by the first Thaksin government, has not yet been tackled.

An early example of a successful application under the Act that sparked media and public interest in freedom of information was the case of Mrs. Sumali Limpa-ovart who, in 1998, appealed to the OIC to ask an elite school to reveal the answer sheets and score records of her daughter and other students who had passed the exam. The information revealed that her daughter had been rejected in favour of students with lower scores whose parents had made donations to the school. Parents requesting exam results to see why their children have not been granted admission to prestigious schools and universities has remained one of the most frequent uses of the OIA, together with civil servants using the OIA for their own purposes (defence against disciplinary action, promotions, personal business matters).¹⁷¹

Another prominent case brought before the OIC, in 1998, was when the Thai Students Union and the Committee of May 1992 Heroes' Relatives called for the Royal Thai Army General Chettha Thanajaro to disclose information about the May 1992 uprising.¹⁷² A report on the 1992 events had been finalised in 1999, but then Prime Minister Chuan Leekphai, a civilian leader who at the time also was defence minister, initially seemed to want to withhold it on grounds of

¹⁷⁰ Kavi Chongkittavorn, "Media and Access to Information in Thailand", Paper prepared for the Asian Development Forum, 2000. URL: http://www.oic.go.th/new2/ver4/oicnewweb2/content_eng/Paperper cent 20prepared.htm.

¹⁷¹ A list of OIC rulings can be found at the OIC website; the most appealed-to panel is that covering Social Affairs, Public Administration and Law Enforcement. URL: http://www.oic.thaigov.go.th/new2/ver4/oicnewweb2/content_eng/report/social.doc.

¹⁷² Jiewsakul, Thanapol et al., *Four Years of the Constitution and Civil Governance* (Bangkok: The Organizing Committee for the Celebration of the Democracy Heroes, B.E. 2544).

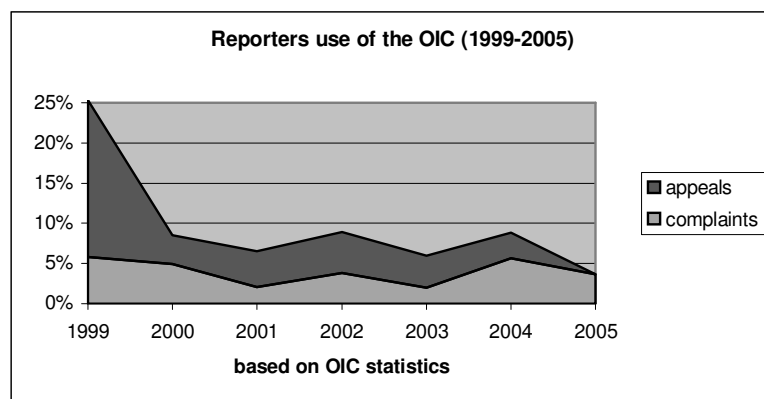


national security, while the army chief, General Surayud Chulanont, was actually in favour of its release. Chuan stated that the public could request access to the report under the OIA but that the defence ministry also had to take national security matters into account. A year later, around the time of the 8th anniversary of Black May, Chuan did finally release the 600-page report to those members of the public who had requested it under the OIA, but with 60 per cent of the content censored and with the ministry spokesman threatening the recipients with prosecution should they reproduce or distribute parts of the report.¹⁷³

The media have made relatively little use of the OIA, which has variously been attributed to their lack of investigative drive and the cumbersome and time-consuming procedure of requesting information and appealing refusals to disclose, but mainly to journalists relying on personal contacts with politicians and State officials to receive information and therefore not having to depend on the Act.

From amongst the media, the most obvious forefront users of the Act have been *Prachachat Thurakij* (Prachachart Business Daily) and *Mathichon Raiwan* (Mathichon Daily), which are newspapers with direct experience of utilising the Act, Prasong Lertrattanawisuth from *Matichon* alone having been responsible for 3 of the 6 appeals filed with the OIC by the media in 2003. The following two examples are based on Prasong Lertrattanawisuth's earlier 2000 account of experiences in utilising the Act.¹⁷⁴

Graphic 9.1:



¹⁷³ Nanuam, Wassana and Mongkol Bangprapha, "Chuan clears report for release", *Bangkok Post*, 17 and 30 May 2000. Bangkok Post journalists Wassana Nanuam and Mongkol Bangprapha had been among the 6 people who had requested access to the report under the OIA.

¹⁷⁴ Lertrattanawisut, Prasong, "Problems when Using The Official Information Act to Monitor State's Agencies." (*Panha Karn Chai PorRorBor. Kormoonkhaosarn Troadsob Nauyngan Khong Rat*). 2000 Annual Academic Conference Proceeding: "Transparent Society and No Corruption" (*Ekasarn Prakob Karn Summana Wichakarn Prachampee B.E. 2543: "Sangkom Pro'ngsai Rai Tucharit"*).

Government refusal to comply with the disclosure tribunal's rulings

Despite calls from the press and rulings by the Information Disclosure Tribunal ordering the Financial Restructuring Agency (FRA) to release information about the sales of assets between FRA and Goldman Sachs (Asia) Finance Co. Ltd., the Agency still attempted to refuse to disclose the information. The Financial and Economic Information Disclosure Tribunal ordered the immediate release of the information in April 1999, yet the FRA cited other reasons such as that it was awaiting permission to release such information from the other party of contract or that it had to pass the matter to the Council of State to judge if the FRA would be prosecuted for the disclosure. It was only when the Financial and Economic Information Disclosure Tribunal issued a final ruling that FRA must “disclose information within seven days” that the FRA eventually complied with the ruling.

Independent bodies claiming exemption from information disclosure

In 2000, when *Prachachrat Thurakij* newspaper requested a copy of minute of the investigation and a copy of the impeachment proceeding of Mr. Chuan Leekpai and Major General Sanan Kajornprasart from the Office of the National Counter Corruption (ONCC), it was refused on the ground that the ONCC considered both documents to be confidential and that the disclosure would affect the performance of the ONCC. After an appeal from *Prachachrat Thurakij*, the ONCC still refused to disclose the information, on the basis that the Office of the Official Information Commission was a State agency and had no power to give an order to the ONCC, since it was an independent organisation. The Council of State also ruled that independent organisations did not have to comply with the Official Information Act, following the arguments of the ONCC. It therefore is likely that many independent organisations, such as the National Telecommunication Commission (NTC) and the National Broadcasting Commission (NBC), which deal with matters of immense financial and social interest, may abuse their power for personal gains if they don't have to operate transparently.

The Future of the OIC

In 2004, two events suggested a further lapse into obscurity for the OIC. In April, a cabinet sub-committee decided once again that it was still too early for the OIC to be made independent, stating that



its workload was too light and, ironically, that the bureaucratic reform programme would not allow a new department to be established. In August, Deputy Prime Minister General Thammarak Issarangkura blocked two candidates on a shortlist for the OIC panel, both law professors from Thammasat University who had been critical of government policies.¹⁷⁵ In April 2005, the Prime Minister's Office indicated that it was in favour of allowing the OIC to enforce the right to access information held by independent bodies, and that a legal amendment was currently with the Council of State. It also indicated that the OIC would come under the direct control of the Prime Minister's Office instead of answering to the Permanent Secretary.

9.3. Tsunami and Emergency Communications

The devastating force of the Asian earthquake and tsunami in December 2004 also hit the South of Thailand, a fact that has been publicised worldwide, and with an initial focus on the holiday resorts in Phuket and Phang-Na Provinces, not least due to the fact that a significant number of Western tourists had been affected there. The lack of a timely warning of the impending tidal wave, as well as the efforts to identify victims and locate missing persons in the aftermath, have illustrated drastically the importance of effective emergency communications networks.

In April 2005, ARTICLE 19 published a comprehensive set of guidelines on "Humanitarian Disasters and Information Rights", which outlined the particular importance of access to information in the aftermath of a disaster:¹⁷⁶

- to mitigate the loss of life;
- to reduce panic;
- to direct people on how and where to get essential services;
- to facilitate contact with relatives and friends;
- to assist in the discovery of the missing and in burying the dead appropriately;
- to provide an outlet for grief and counselling;
- to provide watchdog oversight over assistance activities and help guard against corruption; and
- to ensure two-way communication between assistance providers and the affected communities.

¹⁷⁵ *Bangkok Post*, 20 August 2004.

¹⁷⁶ See www.article19.org.

In the case of South Thailand, the Tsunami reached the beaches of Phuket one hour after the earthquake off the coast of Sumatra and, while the earthquake had been monitored by the Thai meteorological department, no tidal wave warning had been given.

Thammasarote Smith, a former senior official at the Meteorological Department had lobbied provincial authorities in the Southern Provinces bordering on the Andaman Sea to install an early-warning system for tidal waves as early as 1998, but those pleas fell on deaf ears due to the cost involved for something that seemed utterly improbable at the time. He was quoted in the *Bangkok Post* as saying that: “The department had up to an hour to announce the emergency message and evacuate people but they failed to do so. [...] It is true that an earthquake is unpredictable but a tsunami, which occurs after an earthquake, is predictable.”¹⁷⁷

The Thai government stated that it had known about the earthquake but could not have predicted the resulting tsunamis.¹⁷⁸ Kathawudhi Marlairojanasiri, the Meteorological Department’s chief weather forecaster, said it had sent out warnings through radio and television after the first waves hit, from 9am local time that morning, and a website warning had gone up three hours later.¹⁷⁹

The Thai media were also criticised for not doing enough to disseminate information widely about the impending disaster. Somsak Potisat, Chief of the Mineral Resources Department, learned of the earthquake and subsequent tsunami at about 8am local time on 26 December. He rushed to phone a radio station and then asked a TV channel to break the news to the public immediately. “I was told another programme was on air and that it couldn’t be interrupted until 11am. I explained that it would then be too late and requested that the channel provide running messages,” he said. Mr. Somsak said he had no idea when the station did broadcast a warning but he did not see any kind of coverage of the event until 11am.¹⁸⁰ A senior iTV reporter tried to shift the blame back to the meteorological department, saying that it needed to have a credible early-warning system so that the media could justifiably interrupt their lucrative programmes on such occasions.¹⁸¹

Regarding the role of the media in the aftermath of the tsunami, sections of the media were criticised for being insensitive to the feelings of the victims and concentrating on the economic impact of

¹⁷⁷ http://www.bizasia.com/crisis/dt86g/tsunami_also_brings_financial.htm.

¹⁷⁸ “Pointing the Finger: Bureau did all it could: Burin”, *The Nation*, 6 January 2005.

¹⁷⁹ “Asia Officials Failed to Issue Warnings”,
http://www.news14charlotte.com/content/top_stories/default.asp?ArID=82457.

¹⁸⁰ Vangvipula, Ranjana, “Thailand: Media Role in Tsunami Alert System”,
Bangkok Post, 19 January 2005.

¹⁸¹ Ibid.



the disaster, for example by asking tourists not how they were coping with the situation but whether they would come back for future holidays, and iTV also attributed its TV ratings gain to its coverage of the Tsunami.¹⁸² While the plight of the severely affected marginal community of the (illegal) Burmese migrant labourers in the region was for a long time ignored by the State as well as the Thai and international media, other aspects of the victim identification and reconstruction efforts received extensive coverage by the media. The fact that so many bodies had been washed away by the sea and that others were stored in containers awaiting identification gave rise to stories of spirits/ghosts haunting the area, which prompted the local Tourist Association to declare these stories as fantasies since burial rites had been held for all faiths and there were therefore no ghosts, and asked the media to drop the subject since it was harming the tourism industry.¹⁸³

Thailand has, along with other countries in the region, vied to host a regional tsunami warning centre and, as part of these efforts, has gone ahead and established an early-warning system along the Andaman coast, partly as a psychological factor to lure back tourism to the region. The National Telecommunications Commission (NTC) has also reserved some satellite and fibre-optic frequencies for emergency purposes, to avoid a communications breakdown.¹⁸⁴

As late as April 2005, four months after the tsunami, the media had already moved on and TV schedules had returned to their daily diet of soap operas. Local people, however, were feeling bitter about the national media who had done much good in the immediate aftermath. Villagers in Phang-nam, still living in temporary shelter, accused them of filing misleading reports and generally ignoring their plight, claiming that the only media source they could rely on was their local community radio station and calling for the establishment of a community TV station in the area.¹⁸⁵

¹⁸² "Tsunami news lifts iTV", *Bangkok Post*, 19 January 2005.

¹⁸³ "Ghost stories scaring tourists away", *The Nation*, 27 January 2005.

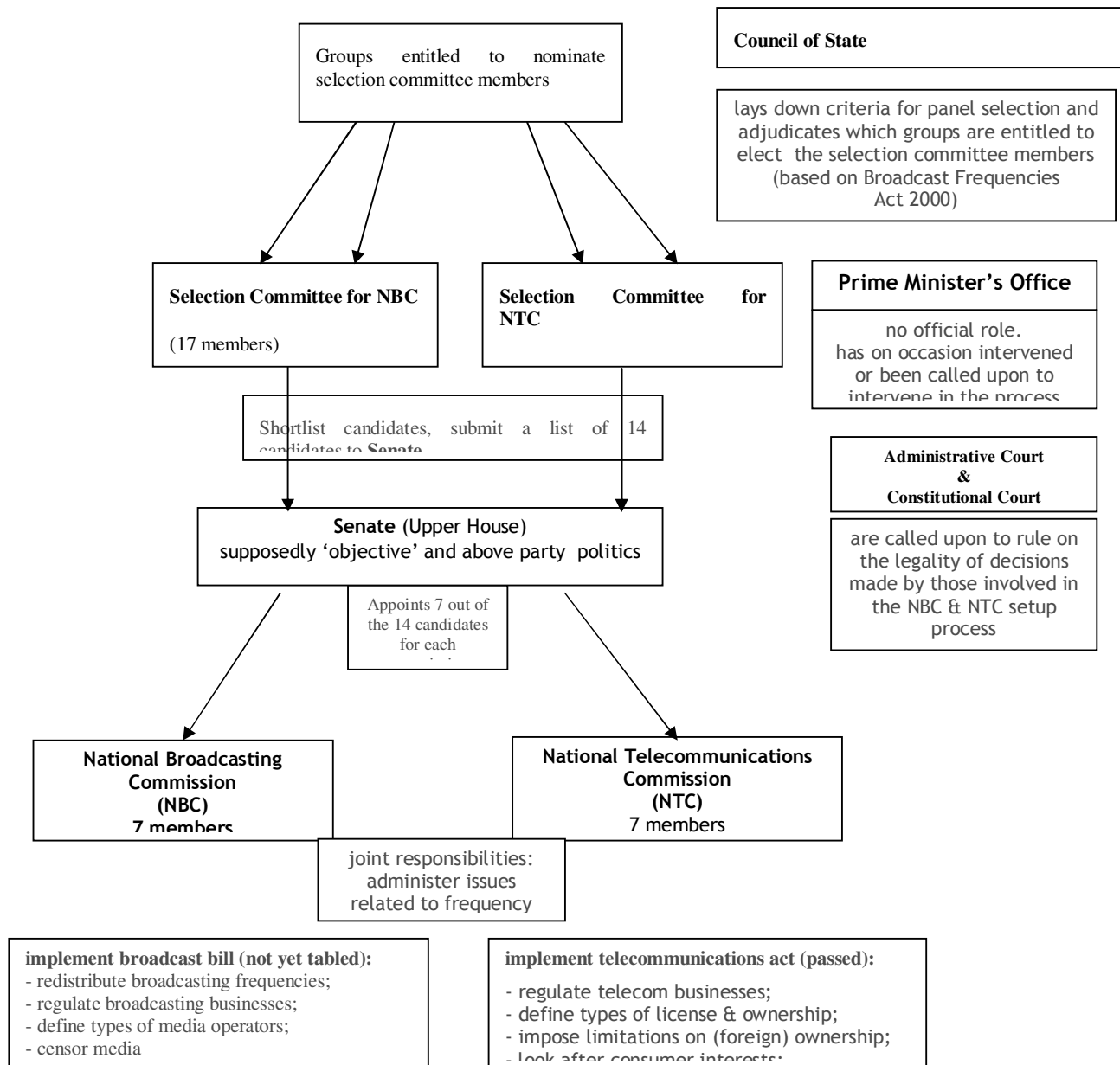
¹⁸⁴ *The Nation*, 14 January 2005. The frequency will incidentally be leased on the Shin-Corp's iPSTAR satellite.

¹⁸⁵ Hutasingh, Onnucha, "Media wave appeal wanes", *Bangkok Post*, 16 April 2005.

Recommendations:

- The Official Information Act should be amended to bring it more fully into line with international standards in this area. In particular, it should extend to all public bodies, clear time lines for the disclosure of information should be provided for and the exceptions should be narrowed.
- Public bodies should respect the decisions of the Information Disclosure Tribunals and comply with them promptly.
- Clear measures should be put into place to ensure advance warning for tsunamis and other natural disasters and to provide appropriate information to those who have been affected by these events.

Annex 1: Diagram of the NBC and NTC Selection



This diagram describes the NTC and NBC selection processes and the powers each of these bodies have.

Annex 2: Extracts from ARTICLE 19's Memorandum on Thailand's Criminal and Civil Defamation Provisions

III.C Detailed Analysis of Criminal Defamation

As noted above, ARTICLE 19's primary recommendation is that the Thai criminal defamation provisions be repealed in their entirety and replaced, as necessary, with appropriate civil defamation laws. At the same time, we recognise that this may not necessarily happen in the near future and, as a result, we provide the following detailed critique of specific provisions in the Penal Code.

III.C.1 Defences

The Thai criminal defamation law does provide for certain defences. Section 329 of the Penal Code provides that the expression of any opinion or statement in good faith will not be defamatory in four situations, namely where the expression: is by way of self justification or for the protection of a legitimate interest; is about an official in the exercise of his or her duties; is a fair comment on any person or thing subjected to public criticism; or is a fair report of the open proceedings of any court or meeting.

Section 330 further provides that truth is a defence, but proof of truth is not allowed where the imputation concerns a personal matter and such proof is not of public benefit. Section 331 further provides that statements made in court by parties or their lawyers are not defamatory.

Analysis

While these defences are to be welcomed, it is clear that they do not meet the standards set out above. The right to prove truth is limited in a manner that simply cannot be justified, in particular by requiring that impugned statements on personal matters were made in the public interest. First, depending on how the idea of public interest is interpreted, this requirement could unduly fetter open debate in society. Allegations regarding personal matters may contribute in very general ways to public debate so that, although the allegations are important, it may be hard to show that they are in the public interest. Second, one should be allowed to articulate true statements regardless of whether or not they are deemed to be in the public interest. Third, in our experience, the concept of public interest as a barrier to proof of truth in defamation cases has often been widely abused as a basis for sanctioning clearly legitimate statements.

ARTICLE 19 strongly recommends that this limitation on the right to prove truth be removed from the law. At a minimum, the onus of proof should be on the plaintiff, to show that the allegations lack any public merit.

The third part of section 329, protecting fair comment regarding someone subjected to public criticism, may be a form of protection for opinions but, otherwise, the criminal law does not recognise any difference between opinions and statements of fact. As noted above, ARTICLE 19 recommends that opinions be absolutely protected. At a minimum, the law should provide greater protection for opinions.

Much of section 329 can be seen as a form of reasonable publication defence; indeed, this defence is known in many jurisdictions as a good faith defence.¹⁸⁶ At the same time, it is clear that the scope of the section 329 defence is substantially narrower than the defence as recognised in international and comparative law, described above, which applies to all matters of public concern. The section 329 defence would not, for example, protect many statements made in good faith about the environmental or other harmful activities of a private company, regardless of whether or not these were in the public interest. This is a very serious limitation on this important defence.

Section 329 provides some protection for fair reporting on court processes and other meetings, while section 331 protects certain statements made in court. As with reasonable publication, however, these defences are too narrow. They do not, for example, cover statements made by witnesses in court, fair reporting on official reports or fair reporting on official press statements not made in a meeting. The scope of this protection should be significantly enhanced.

Recommendations:

- Section 330 should be amended so that proof of truth always constitutes a full defence to a charge of defamation.
- The defamation provisions should be amended so that opinions are always protected from defamation liability or, at a minimum, so that they receive greater protection than statements of fact.
- The scope of protection pursuant to section 329 for statements made in good faith, or made reasonably, should extend to all statements on matters of public concern.
- The scope of protected statements under the third part of section 329 and section 331 should be substantially extended in accordance with the recommendations in Part III.B.4.

III.C.2 Elements of the Offence and Onus of Proof

It is not entirely clear to us from a simple reading of the defamation provisions what is required to be proved by the prosecution but, at least on the face of these provisions, the only elements of the offence appear to be a showing that an imputation was made and that that imputation has harmed someone's reputation. In our view, this is seriously inadequate in the context of criminal defamation law.

In accordance with general principles of criminal law, the onus should be on the party bringing the case to prove all elements of the offence, and on the criminal standard of beyond a reasonable doubt. Such elements should include the core factors which constitute the offence, as well as a *mens rea*, or mental, element. In the case of defamation, ARTICLE 19 is of the view that falsity is a core constituent element of the offence since, as noted above, one cannot defend a reputation that is not deserved.

The mental element of the offence should consist of two things. First, the prosecution should be required to prove that the accused acted with knowledge that the statements were false, or at least with reckless disregard for the truth. Falsity is a core element of the offence and this should be reflected in the *mens rea* requirement. Furthermore, the mental element should include an intention to cause harm to the person whose reputation has been harmed. Simple proof of an

¹⁸⁶ ARTICLE 19 uses the term reasonable publication in an attempt to bring under one concept the different ways in which this defence has been articulated in different defamation systems.

intention to make the statement is wholly inadequate to protection of the presumption of innocence, as well as to the appropriate protection of reputation.

These views are set out in the ARTICLE 19 Principles at Principle 4(b)(ii) as follows:

[T]he offence of criminal defamation shall not be made out unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed....

ARTICLE 19 is not aware of the standard of proof applicable to criminal defamation cases in Thailand. In accordance with well-established principles of criminal law, however, this standard should be beyond all reasonable doubt or something similar. To convict where there remains a doubt as to the guilt of the accused would breach the presumption of innocence; a presumption that is applicable to criminal defamation as to all crimes.

Recommendations:

- A party bringing a criminal defamation case should have to prove that the allegations were false, as a key element of the offence.
- A party bringing a criminal defamation case should have to prove that the accused acted with knowledge of falsity, or reckless disregard for the truth, as well as with the intention of harming reputation, as the *mens rea*, or mental, element of the offence.
- The above should both be required to be proven beyond all reasonable doubt.

III.C.3 Other Concerns

a. Sanctions

As noted above, unduly harsh sanctions, on their own, constitute a breach of the right to freedom of expression. This is true even for statements which may legitimately be sanctioned, since excessive sanctions on their own cast a long shadow and exert a chilling effect on freedom of expression. This has been upheld, for example, by the European Court of Human Rights in a case involving statements which were grossly and blatantly defamatory. The damage award in the UK courts for these statements was £1.5m, three times the previously highest such award. The European Court ruled that this, of itself, was a breach of the right to freedom of expression:

[U]nder the Convention, an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered....¹⁸⁷

The threat of criminal sanctions necessarily inhibits healthy public debate, thus seriously undermining democracy by stifling important political speech. Indeed, this is one of the key concerns with criminal defamation law. The available sanctions – particularly the threat of imprisonment – are clearly disproportionate to the offence. It may be noted, in this regard, that deprivation of liberty is considered so severe a penalty that it is governed by fundamental human right rules.¹⁸⁸

¹⁸⁷ *Tolstoy Miloslavsky v. United Kingdom*, 13 July 1995, 20 EHRR 442, para. 49.

¹⁸⁸ Protected by Article 9 of the ICCPR and Article 5 of ECHR.

b. The Reputation of Deceased Persons

Pursuant to section 333 of the Thai Penal Code, if someone dies before bringing a defamation case, the father, mother, spouse or child of the deceased may make a complaint and they shall be deemed the injured person.

This appears to stop short of allowing relatives to sue on behalf of statements made about deceased persons after they are dead. At the same time, ARTICLE 19 considers that the harm from an unwarranted attack on someone's reputation is direct and personal in nature. Unlike property, it is not an interest that can be inherited; any interest surviving relatives may have in the reputation of a deceased person is fundamentally different from that of a living person in their own reputation. Furthermore, a right to sue in defamation for the reputation of deceased persons could easily be abused and might prevent free and open debate about historical events.

c. Section 327

Section 327 provides that imputations concerning deceased persons that affect the reputations of living relatives may attract defamation liability. While there is nothing *per se* wrong with this, it would appear to be unnecessary, given the way defamation is defined in the preceding section to include all allegations that harm reputation. The case posited by section 327 is merely one specific example of a means of harming someone's reputation. As such, it is unnecessary. Although this is a secondary concern, as with all repetitive or duplicative provisions, there is a risk that it might be misinterpreted to the detriment of freedom of expression.

Recommendations:

- Imprisonment or other harsh criminal sanctions should never be available for defamation.
- Section 333 should be repealed; no one should be able to sue in defamation on behalf of a deceased person.
- Section 327 should be repealed.

III.D Detailed Analysis of Civil Defamation

The Thai Civil Code contains a number of provisions which are relevant to defamation. Sections 420-426 of the Civil Code, in particular, deal with the issue of liability for wrongful acts, while sections 444-448 deal with compensation for such acts. By-and-large, these are general provisions, dealing with a wide range of wrongs, not specifically tailored to defamation, although there are a couple of provisions which are so tailored. As a result, a general criticism of the civil law is that it fails to respond to the specific issues raised by defamation law and, in particular, the need for a delicate balancing of the need to protect reputations and the right to freedom of expression.

Recommendation:

- Consideration should be given to including within the Civil Code a fully developed set of provisions specifically tailored to the question of defamation, alongside a rule barring the application of more general provisions in defamation cases.

III.D.1 Scope of the Wrong

Section 420 provides that anyone who, wilfully or negligently, unlawfully injures, among other things, any right of another person has committed a wrongful act and is bound to make compensation therefore. The right to reputation would presumably fall within the scope of this provision.

Section 423 specifically addresses harm to reputation relating to false statements of fact. It provides for liability for false statements of fact which cause harm to reputation, regardless of whether or not the person making the statement was aware it was false, provided that he or she ought to have known. Liability will not ensue where either the maker of the statement or the recipient thereof “has a rightful interest in it”. We assume this means that either the maker has a rightful interest in making the statement or the receiver has such an interest in receiving it.

Section 422 provides that where damage results from the infringement of a statutory provision intended for the protection of others, the person responsible for the infringement is presumed to be in the wrong. This would appear to apply to both sections 420 and 423, with the effect that, where a statement causes harm to reputation, the onus falls on the defendant to show that he or she should not be liable.

Section 448 provides for a limitation period of one year from the date when the wrongful act became known to the injured person, and for an overall limitation period of 10 years.

Analysis

Section 423 is clearly limited in scope to statements of fact and, as such, describes statements which are the proper subject of defamation regulation. However, it is not clear whether section 422 places the onus on the defendant to prove that the statements in question are true or whether it is for the plaintiff to prove they are false. This, obviously, is a matter of some importance, particularly in the context of statements on matters of public interest.

The scope of section 420, however, may well extend beyond statements of fact, since there is nothing in that section to suggest that statements of opinion would not be covered. As noted above, ARTICLE 19 is of the view that opinions should never be liable in defamation law. Regardless, it is well established that opinions should benefit from greater protection than false statements of fact. Section 420 certainly does not suggest that any higher standard should apply to opinions. Indeed, this is one of the problems with applying a provision on general wrongs to the area of defamation.

The one-year limitation period in section 448 is to be welcomed.

Recommendations:

- The Civil Code should make it clear that, at least for statements on matters of public concern, the plaintiff should bear the burden of proving that the statements were false for defamation liability to ensue.
- The Civil Code should be amended to make it clear that section 420 does not include the wrong of harm to reputation. Ideally, opinions should not attract any liability in defamation. Alternately, a new provision addressing defamation through opinions should be added to the Civil Code, and such provision should make it quite clear that opinions benefit from a high degree of protection.

III.D.2 Defences

The defences to defamation in the Civil Code appear generally to be more developed and protective of free speech than those in the Penal Code. Section 420 applies only in the context of wilfully or negligently causing harm to reputation. Section 423 includes two defences (or rules vitiating liability). First, liability will ensue only if the person making the statement knew or ought to have known that it was false. Second, there is no liability where either the maker or receiver of the statement 'has a rightful interest in it'. This would appear to be somewhat analogous to the common law rule of qualified privilege, whereby liability for a defamatory statement in which the speaker and hearer had a reciprocal duty and interest will ensue only if the statement was made with malice.

The limitation of liability under section 420 to wilful or negligent cases and the limitation under section 423 to cases where the author of the statement ought to have known that it was false appear to be somewhat analogous to the reasonableness defence outlined above. Much depends, however, on how they are applied in practice, and we do not have any information on this. As noted above, liability should not ensue, for example, when journalists act in accordance with generally accepted professional standards. In relation to publication, reasonableness will depend on a number of different factors, including the degree of public interest in the statements in question, the need for timely dissemination to the public, whether or not the target of the statement was approached for his or her views and so on.

Neither section 420 nor section 423 provide for the kind of protection noted above, under Exemption for Certain Categories of Statements. In particular, the Civil Code does not provide a clear list of statements which will not attract liability, such as statements made in court or in parliament. It is possible that other laws provide protection for these types of statements. It is less likely, although we do not know this, that true and accurate reports on these other statements are protected. In any case, they should be as such protection is important to ensure that the public are informed about the proceedings of these key public bodies.

On the other hand, section 423 does protect statements in which the speaker or recipient has a rightful interest. Depending on how this is interpreted, this may, at least in relation to that section, provide much of the coverage sought above. For example, this provision could be understood as providing protection for the dissemination by the media of statements of matters of public concern. If this were the case, it would go some way to meeting the standards advocated above. Section 420, however, does not include an analogous protection, probably because of its status as a general provision on liability.

Recommendations:

- The limitations of liability in section 420, to wilful or negligent cases, and in section 423, to cases where the author of the statement ought to have known that it was false, should be interpreted broadly, in line with the idea of a defence of reasonable publication.
- The law should provide broad protection for the kinds of statements noted above, under Exemption for Certain Categories of Statements.

III.D.3 Sanctions

The Civil Code provides only limited guidance on sanctions for defamation. Most of the sanction provisions relate to cases of injury to body or health which, it must be assumed, would rarely if ever be relevant in defamation cases. Section 447 deals specifically with injury caused from harm to reputation, providing that the court may order 'proper measures to be taken for the

rehabilitation of [the injured party's] reputation', in addition to compensation for damages. Section 423 refers, in this regard, to various possible forms of injury, including injury to reputation, to credit, or to earnings or prosperity in any other manner. This would appear to envisage non-material harm to reputation but not necessarily the idea of punitive damages or damages which go beyond restoring harm actually suffered.

We are not aware of how these provisions are applied in practice. In the case against Supinya Klangnarong, however, we note that Shin Corp is asking for the equivalent of approximately US\$10,000,000 in damages. It may be noted that the possibility of asking for such an award, even if it is not actually imposed, exerts a chilling effect on freedom of expression.

The ARTICLE 19 Principles include very detailed provision on sanctions for defamation which, if disproportionate, on their own represent a breach of the right to freedom of expression, as noted above.¹⁸⁹ We welcome the idea in section 447 of measures other than compensation which go to directly addressing the harm to reputation. Such measures are often both less intrusive in their impact on freedom of expression and more appropriately tailored to redressing the harm done by the defamatory statement. At the same time, it should be clear that any such measures should be taken into account when damages are assessed. If, for example, a correction or right of reply has largely addressed the harm caused by a defamatory statement, the amount of compensation should be correspondingly reduced. Indeed, the ARTICLE 19 Principles call for pecuniary awards only where other measures have failed to redress the harm.

Principle 15 sets out in some detail standards relating to financial awards:

- (a) Pecuniary compensation should be awarded only where non-pecuniary remedies are insufficient to redress the harm caused by defamatory statements.
- (b) In assessing the quantum of pecuniary awards, the potential chilling effect of the award on freedom of expression should, among other things, be taken into account. Pecuniary awards should never be disproportionate to the harm done, and should take into account any non-pecuniary remedies and the level of compensation awarded for other civil wrongs.
- (c) Compensation for actual financial loss, or material harm, caused by defamatory statements should be awarded only where that loss is specifically established.
- (d) The level of compensation which may be awarded for non-material harm to reputation – that is, harm which cannot be quantified in monetary terms – should be subject to a fixed ceiling. This maximum should be applied only in the most serious cases.
- (e) Pecuniary awards which go beyond compensating for harm to reputation should be highly exceptional measures, to be applied only where the plaintiff has proven that the defendant acted with knowledge of the falsity of the statement and with the specific intention of causing harm to the plaintiff.

Principle 15(d) is of some importance in the modern context. A tendency for damage awards to escalate in defamation cases, to the point where harm to reputation can lead to far greater compensation than even permanent physical harm, has been observed in many countries. International courts have made it quite clear that this represents a breach of the right to freedom of expression and that measures must be taken to counteract this trend.¹⁹⁰ Statutory maximum awards are one effective way of achieving this.

¹⁸⁹ In Section III.C.3.a, Sanctions.

¹⁹⁰ See *Tolstoy Miloslavsky v. United Kingdom*, note 187.

Recommendations:

- Measures should be taken to ensure that strict limits are imposed on the amount of damages that may be obtained for non-material harm to reputation caused by defamation; consideration should be given to providing for statutory limits to this.
- The law should make it clear that punitive damages, or damages that go beyond compensation for harm, are either not allowed at all or may be imposed only in the very most extreme and egregious cases.



ARTICLE 19 champions freedom of expression and the free flow of information as fundamental human rights that underpin all others. We take our name from Article 19 of the Universal Declaration of Human Rights. It states:

Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

ARTICLE 19 believes that freedom of expression and of information is not a luxury but a basic human right: it is central to achieving individual freedoms and developing democracy.

When people are denied freedom of speech or access to information, they are denied the right to make choices about their lives. Freedom of expression and access to information are essential to achieving equality for women and minorities, and to protecting children's rights. They are crucial to respond to the global HIV/AIDS pandemic, to fight against corruption and to ensure equitable and sustainable development.

ARTICLE 19 works to make freedom of expression a reality all over the world:

- ARTICLE 19 works worldwide – in partnership with 52 local organisations in more than thirty countries across Europe, Africa, Asia, Latin America and the Middle East - to lead institutional, cultural and legal change.
- ARTICLE 19 monitors threats to freedom of expression in different regions of the world and develops long-term strategies to combat them.
- ARTICLE 19 undertakes authoritative and cutting edge research and monitoring, advocacy and campaigning work.
- ARTICLE 19 produces legal analysis, set standards, and advocate for legal and judicial changes.
- ARTICLE 19 carries out advocacy and training programmes in partnership with national NGOs to enable individuals to exercise their human rights.
- ARTICLE 19 engages international, regional and State institutions, as well as the private sector, in critical dialogue.

Founded in 1986, ARTICLE 19 was the brainchild of Roderick MacArthur, a US philanthropist and journalist. Its International Board consists of eminent journalists, academics, lawyers and campaigners from all regions of the world. ARTICLE 19 is a registered UK charity (UK Charity No. 327421) based in London with international staff present in Africa, Latin America and Canada. We receive our funding from donors and supporters worldwide who share a commitment to freedom of expression.

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History

Asian Forum for Human Rights and Development (FORUM-ASIA) is a membership-based regional human rights organization in Asia and presently, it has 36 member organizations in 14 countries in Asia. It was founded following a consultation among human rights and development NGOs in Asia held in Manila in December 1991. Its regional Secretariat has been located in Bangkok, Thailand since 1994.

FORUM-ASIA has since its foundation strived to empower people by advocating social justice, sustainable human development, participatory democracy, gender equality, peace and human security through collaboration and cooperation among human rights organizations in the region.

As one of the leading NGOs in the regional platform, it seeks to facilitate dialogue, capacity-building and networking among human rights defenders, civil society actors and organizations in Asia to achieve a full realization of all the human rights and human development in the region.

FORUM-ASIA, who has obtained an NGO in Consultative Status with the UN in 2004, also promotes cooperation among governments, inter-governmental organizations and the UN for the betterment of people's lives and the full respect of human dignity.

Mission

The Mission of FORUM-ASIA is to promote and protect human rights for all, and to purport the right to development through collaboration and cooperation among human rights organizations in the Asian region.

The spirit of the Mission is captured in the organization's motto: Asian Solidarity and Human Rights for All.

To achieve this mission, FORUM-ASIA will draw on its Vision statement as its principal guideline. It will also take into account of its multiple identities and employ a set of Organizational Values and Operational Principles, as elaborated below, to bring a positive outcome for human rights in Asia and beyond.

Vision

The Vision of the FORUM-ASIA is a peaceful, just and equitable society, where all human rights are fully respected, and ecologically sustainable development is adequately promoted.

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