



ARTICLE 19



## Breaking the Silence

Thailand's renewed use of *lèse-majesté* charges

March 2021

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## PREFACE

This ARTICLE 19 report about the renewed use of Thailand's draconian *lesè-majesté* provision is exceptionally timely. Now, as before, Thai authorities are using *lesè-majesté* charges to stifle political speech and punish those calling for democratic reforms. ARTICLE 19's analysis of the *lesè-majesté* law is essential, and this report makes clear that the law is fundamentally incompatible with the right to freedom of expression.

In 2017, when I was the UN Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, I issued a statement expressing my concern after the Thai authorities charged student activist Jatupat Boonpatararaksa with violating Section 112 of the Criminal Code — Thailand's *lesè-majesté* provision. At the time, I said that “[t]he *lesè-majesté* provision of the Thai Criminal Code is incompatible with international human rights law.”

Mr. Boonpatararaksa was the first person charged with royal defamation after King Rama X took the throne. He was arrested for sharing a BBC news article about the king on his Facebook page. The charges against him came during a period — from 2014 to 2018 — when Thai authorities targeted at least 98 people with *lesè-majesté* charges.

After a two-year hiatus, the Thai government has again begun prosecuting activists and critics under Section 112. I am dismayed to hear that Mr. Boonpatararaksa is again under investigation for royal defamation and could be sent back to prison. Equally shocking is the news that a prominent human rights defender is being investigated under Section 112 merely for referencing my 2017 statement concerning Thailand's *lesè-majesté* provision during a speech she gave at a protest last year.

Other absurdities abound in the application of Section 112. A civil servant in her 60s was recently sentenced to 43 years in prison for reposting video clips on YouTube and Facebook. A high school student — a 16-year-old child — is facing fifteen years in prison for a message written on his shirt. A prominent pro-democracy activist is under investigation for alleged royal insult in 17 separate cases, which could, in theory, result in cumulative sentences exceeding 250 years.

The Thai government must immediately reverse course and end the abusive application of Section 112 against peaceful protesters, government critics, and pro-democracy activists. What I said during the last wave of prosecutions under this provision bears repeating today: “*Lesè-majesté* provisions have no place in a democratic country. I urge the authorities of Thailand to take steps to revise the country's Criminal Code and to repeal the law that establishes a justification for criminal prosecution.”

David Kaye

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Former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (2014-2020)

March 2021

## INTRODUCTION

Last year, a vigorous pro-democracy protest movement swept across Thailand, led by a new generation of activists seeking political reforms. The protests were driven by frustration with Thailand's military-backed government and the pervasive feeling among youth that they had been disenfranchised. The February dissolution of the Future Forward Party,<sup>1</sup> which enjoyed widespread support among young voters, and the June disappearance of exiled pro-democracy activist Wanchalearm Satsaksit in Cambodia<sup>2</sup> added fuel to the fire. As the protests grew in number and scope, the demands of the protesters coalesced around a new constitution, a new government, and an end to the harassment and intimidation of government critics. In a shocking departure from historical norms, thousands of Thai activists and protesters also began to openly question the role of the monarchy in Thai politics.

The Thai government, headed by former coup leader Prayuth Chan-o-cha, responded swiftly and sternly to the overt challenges to the political status quo. Authorities charged hundreds of protesters under a variety of laws, with some prominent activists being targeted in multiple cases and potentially facing decades behind bars. Authorities censored online expression, leaning on social media companies to remove critical content. Thai Police dispersed protesters forcefully with the assistance of water cannons and tear gas in October and November 2020.

In late 2020, authorities revived a dormant tactic – initiating legal action against individuals alleged to have defamed the monarchy under Section 112 of Thailand's Criminal Code, Thailand's notorious *lèse-majesté* provision. Since 2018, authorities had respected a *de facto* moratorium on the use of Section 112, which protects members of the Thai monarchy from insults, threats, and defamation.

The renewed use of Section 112 represents a grave threat to freedom of expression in the country. The provision has been interpreted in an extremely broad manner in the past and carries an extremely harsh penalty; each offence carries up to fifteen years' imprisonment and a fine.

Since 24 November 2020, legal action has been initiated against at least 59 individuals, including many protest leaders, under Section 112.<sup>3</sup> Authorities appear to be using the threat of prosecution under the provision to suppress the recent explosion of public discourse concerning the role of the monarchy in Thai politics. However, authorities are increasingly targeting expression only tangentially related to the monarchy, as well as commentary on the law itself.

This briefing sets out the international human rights law obligations relevant to *lèse-majesté* provisions. The briefing draws from media reporting, official documents, and other publicly available information, as well as the records of Thai Lawyers for Human Rights, which is providing legal representation to many of the individuals facing charges because of their protest activities. It then analyses the recent invocation of Section 112 to target pro-democracy protesters against Thailand's international human rights law obligations. The briefing concludes by making recommendations to the Thai government.

<sup>1</sup> ARTICLE 19, 'Thailand: Dissolution of opposition party a further blow to human rights', 21 February 2020, <https://www.article19.org/resources/thailand-dissolution-of-opposition-party-a-further-blow-to-human-rights/>.

<sup>2</sup> Human Rights Watch, 'Cambodia: Thai Activist Abducted in Phnom Penh', 5 June 2020, available at: <https://www.hrw.org/news/2020/06/05/cambodia-thai-activist-abducted-phnom-penh>.

<sup>3</sup> Thai Lawyers for Human Rights, 'The number of prosecutions under "Lèse Majesté" in 2020-21', 17 December 2020, updated 22 February 2021, available at: <https://tlhr2014.com/en/archives/24103>.

## INTERNATIONAL STANDARDS ON FREEDOM OF EXPRESSION

Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), a human rights treaty which Thailand ratified in 1996, protects the right to freedom of expression. It provides that: ‘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’.<sup>4</sup>

Per the terms of the ICCPR, the right to freedom of expression may be limited in certain narrowly defined circumstances. Any restrictions of the right to freedom of expression must meet a strict three-part test: they must be provided by law, in pursuit of a legitimate aim, and necessary and proportionate to that aim.<sup>5</sup> Legitimate aims are exhaustively listed in the ICCPR as respect of the rights or reputations of others, national security, public order, public health, and public morals.<sup>6</sup>

Section 112 penalizes three kinds of expression:

- Insults;
- Defamation; and
- Threats.

Defamation laws are only legitimate if they are narrowly tailored to protect the reputations of individuals and if they are proportionate to that aim.<sup>7</sup> True statements of fact should never be limited by defamation laws.<sup>8</sup> Further, while expression may be limited for the legitimate aim of protecting the reputation of others, it must not be limited to curtail the expression of opinions or value judgments.<sup>9</sup> In Thailand, authorities regularly use Section 112 to address statements of fact or opinion, indicating that the vast majority of prosecutions fail to address a legitimate aim.

Criminal defamation provisions are highly problematic from a proportionality perspective. A significant consensus has emerged among human rights experts and international organisations in favour of the decriminalisation of defamation.<sup>10</sup> In General Comment 34, the Human Rights Committee, the body tasked with monitoring implementation of the ICCPR, stated that imprisonment for defamation is ‘never an appropriate penalty’ and urged states parties to ‘consider the decriminalization of defamation’.<sup>11</sup>

Human rights bodies have warned against laws and policies that protect royalty and other public figures from insult. In General Comment 34, the Human Rights Committee expressed concern about *lèse-majesté* laws, noting that the value of uninhibited expression is particularly high when it comes to public debate in the political domain. It stated:

<sup>4</sup> International Covenant on Civil and Political Rights, Article 19(2).

<sup>5</sup> Human Rights Committee, General Comment No. 34, CCPR/C/GC/34, 12 September 2011, Para 22.

<sup>6</sup> International Covenant on Civil and Political Rights, Article 19(3).

<sup>7</sup> See, ARTICLE 19, ‘Defining Defamation: Principles on Freedom of Expression and Protection of Reputation’, 2017, Principle 2(a).

<sup>8</sup> *Ibid.*, Principle 10; General Comment No. 34, para. 47.

<sup>9</sup> *Ibid.*, Principle 13.

<sup>10</sup> See, ARTICLE 19, ‘Defining Defamation’.

<sup>11</sup> General Comment 34, para 47.

*[T]he mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties... Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition... [L]aws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned.<sup>12</sup>*

International human rights courts have also consistently held that public officials should tolerate more, not less, criticism than ordinary citizens. By choosing a profession involving public responsibilities, officials knowingly open themselves to scrutiny of their words and deeds by the media and the public at large.<sup>13</sup> To ensure that debate can take place freely, uninhibited by the threat of legal action, the use of defamation laws by public officials should be circumscribed as far as possible. In general, the more senior the public official, the more criticism he or she may be expected to tolerate, including of his or her behavior outside of official duties.

More fundamentally, Section 112 and other laws offering special protection to heads of state and high-ranking public officials invert the fundamental democratic principle that the government is subject to public scrutiny. Such laws tend to chill public debate by threatening penalties for critical expression. Human rights courts have held that there should be no laws that grant special protection to heads of state or other public functionaries.<sup>14</sup> This principle is particularly important in cases of unelected heads of states, such as monarchs, who cannot be held accountable at the ballot box.

The justification of *lèse-majesté* laws on the basis of national security grounds has also been rejected by human rights experts. Principle 7 of the Johannesburg Principles states that national security should not be used as a justification to restrict ‘criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials’.<sup>15</sup>

While threats may be legitimately restricted under international human rights law, the prohibition against threats contained in Section 112 is incredibly broad, open to wide interpretation, and fails to narrowly capture the kinds of threats – such as threats of physical harm – that could be legitimately prohibited under international law. The inclusion of ‘threats’ in Section 112 of the Criminal Code hence fails to meet the basic requirement of legality set forth in the three-part test described above. Furthermore, Thailand’s Criminal Code also contains several offences relating to threats of force, indicating that a separate offence to protect royalty is unnecessary.

Human rights bodies and experts have repeatedly called for Section 112 to be repealed or reformed in line with international human rights law. In 2017, David Kaye, the then-Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, stated that, “The *lèse-*

<sup>12</sup> General Comment 34, para 38; See, ARTICLE 19, ‘Defining Defamation’, Principle 11.

<sup>13</sup> European Court of Human Rights (European Court), *Bodrozoc and Vujin v. Serbia*, App. 38435/05 (2009), para 34.

<sup>14</sup> European Court, *Pakdemirli v. Turkey*, App. 35839/97 (2005).

<sup>15</sup> ARTICLE 19, Johannesburg Principles on National Security, Freedom of Expression, and Access to Information, 1996, Principle 7.



*majesté* provision of the Thai Criminal Code is incompatible with international human rights law.”<sup>16</sup> He urged Thailand to ‘take steps to revise the country’s Criminal Code and to repeal the law that establishes a justification for criminal prosecution’.<sup>17</sup>

The Working Group on Arbitrary Detention has considered a number of detentions under Section 112 and concluded that the detentions were ‘arbitrary’.<sup>18</sup>

In its 2017 review of Thailand’s compliance with the ICCPR, the Human Rights Committee expressed concern ‘that criticism and dissent regarding the royal family is punishable with a sentence of 3-15 years’ imprisonment, about reports of a sharp increase in the number of people detained and prosecuted for the crime of lese-majesty since the military coup, and about extreme sentencing practices, which result in dozens of years of imprisonment in some cases’.<sup>19</sup> It recommended that Thailand, ‘review article 112 of the Criminal Code, on publicly offending the royal family, to bring it into line with article 19 of the Covenant’.<sup>20</sup>

## SECTION 112 – A HISTORY OF SILENCE

Siam (present-day Thailand) was governed by an absolute monarchy until 1932. When Siam codified its laws in 1908, Section 98 of the Criminal Code penalized displaying malice or defaming (but not insulting) the king, queen, heir-apparent or regent.<sup>21</sup> At the time, the maximum sentence was seven years’ imprisonment and a fine not exceeding 5,000 baht (approximately USD 165) or both. Section 100 of the Criminal Code extended legal protection for princes and princesses with a maximum sentence of three years’ imprisonment and a fine not exceeding 2,000 baht or both.<sup>22</sup> Section 104 punished anyone who created disloyalty or insulted the king, the government, or the country; caused unrest among the people (sedition); or caused the people to breach the laws. Those convicted of the charge could be sentenced up to three years’ imprisonment and a fine not exceeding 1,000 baht.<sup>23</sup>

In 1927, as tension rose among progressive groups using print media to criticise the absolute monarchy, King Rama VII added a clause under Section 104 to restrict ‘any political and economic doctrine that brings hatred or contempt the Government’. He increased the maximum sentence under Section 104 to 10 years’ imprisonment and a fine not exceeding 5,000 baht or both.<sup>24</sup>

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<sup>16</sup> UN Office of the High Commissioner for Human Rights, Thailand: UN rights expert concerned by the continued use of *lèse-majesté* prosecutions, 7 February 2017, available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21149&LangID=E>.

<sup>17</sup> *Ibid.*

<sup>18</sup> International Federation for Human Rights, ‘*Lèse-majesté* must not be used to criminalize pro-democracy protest leaders and participants’, 25 November 2020, available at: <https://www.fidh.org/en/region/asia/thailand/lese-majeste-must-not-be-used-to-criminalize-pro-democracy-protest>.

<sup>19</sup> UN Human Rights Committee, Concluding observations on the second periodic report of Thailand, CCPR/C/THA/CO/2, 25 April 2017, para 37.

<sup>20</sup> *Ibid.*, para 38.

<sup>21</sup> Somchai Preechasilapakul and David Streckfuss, ‘Ramification and Re-Sacralization of the Lese Majesty Law in Thailand’, January 2008, pg. 3, available at: <https://www.law.cmu.ac.th/law2011/journal/20682.pdf>.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, at 3-4.

<sup>24</sup> *Ibid.*, at 4.

After the 1932 revolution, in which the absolute monarchy was replaced by a constitutional monarchy, the *lèse-majesté* provision was amended again by adding an exemption for cases in which an opinion was expressed in good faith or for the public interest.<sup>25</sup> Furthermore, the maximum penalty was reduced to seven years' imprisonment and a fine not exceeding 2,000 baht or both.

However, in 1956, amidst the Cold War in Southeast Asia, Thailand's military government adopted a new criminal code, and the crime of *lèse-majesté* was re-formulated in Section 112.<sup>26</sup> The new formulation resulted in several important changes. First, the good faith and public interest exemption was removed. Second, whereas previous versions of the *lèse-majesté* provision had protected against defamation and threats (acts of malice) only, the new provision also made 'insult' a culpable act.

The *lèse-majesté* provision was amended again after the 6 October 1976 student massacre at Thammasat University, as students were accused of being influenced by communism and mocking the Crown Prince during a protest prior to the massacre. A minimum sentence was added into the provision and remains today.<sup>27</sup>

The current formulation of Section 112 provides that, 'Whoever, defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years'.<sup>28</sup>

Complaints under the *lèse-majesté* provision can be filed by any member of the public and are also often filed by government departments.

While *lèse-majesté* has been prosecuted in Thailand for decades, it is often invoked during times of national tumult and has frequently been wielded as a tool of political control. There were 329 recorded cases of *lèse-majesté* from 1947-2005, with significant numbers of cases during student uprisings in 1976 and 1977 (21 and 42, respectively).<sup>29</sup> From 2007-2016, the Court of Justice reported 837 cases under Sections 107-112.<sup>30</sup> It is likely that all cases reported by the Court of Justice are under Section 112 since no prosecutions under Sections 107-111 have ever been reported.<sup>31</sup>

After Thailand's May 2014 military coup d'état, *lèse-majesté* cases rose dramatically. In November 2014, police stated that they had dealt with more than 10,000 complaints of *lèse-majesté* offences in recent years and confirmed that prosecutions had increased since the coup.<sup>32</sup> In the years following,

<sup>25</sup> *Ibid.*

<sup>26</sup> Tamtai Dilokwittayarat, 'The image of communism in Thai Politics', 2003, Political Science Journal, Thammasat University.

<sup>27</sup> Somchai Preechasilapakul and David Streckfuss, 'Ramification and Re-Sacralization'.

<sup>28</sup> Hong Xiyue, 'Thailand Protests: Lese-majeste law put back in force', *Deutsche Welle*, 8 December 2020, available at: <https://www.dw.com/en/thailandprotests-lese-majeste-law-put-back-in-force/a-55869209>.

<sup>29</sup> *Ibid.*

<sup>30</sup> The Court of Justice, 'Section 107-112 case in the Court in 2007-2016', October 2016, available at: <http://oppb.coj.emworkgroup.co.th/th/content/page/index/id/18114>.

<sup>31</sup> Sections 107-111 deal with assassination of the King, acts of violence against the King, assassination of the Queen, acts of violence against the Queen, and support in the commission of assassinations or acts of violence against the King or Queen, respectively.

<sup>32</sup> The Sunday Nation, 'Lese majeste complaints top 10,000', *The Nation*, 2 November 2014, available at: <https://www.nationthailand.com/news/30246773>.

Thai authorities prosecuted more than 98 people under the provision, and at least 43 people were convicted.<sup>33</sup>

In 2015, military courts set a new high for *lèse-majesté* punishments when the courts sentenced Tiansutham (surname withheld) to 50 years' imprisonment and Sasivimol (surname withheld) to 56 years' imprisonment after finding each guilty of multiple counts of the offence in relation to Facebook posts allegedly insulting the monarchy. The sentences of both defendants were halved after they acknowledged guilt.<sup>34</sup>

The *de facto* moratorium on the prosecution of *lèse-majesté* cases from March 2018 until late 2020 has been widely reported to be the result of a personal intervention by King Rama X, who ordered that Section 112 not be used.<sup>35</sup> In 2018, the Attorney General's office took several steps to slow the tide of prosecutions under Section 112. It issued a directive requiring prosecutors to collect all investigation reports under Section 112 and to refrain from making any decisions on pending files.<sup>36</sup> The Attorney General's Office also issued a regulation amending prosecutorial guidelines, which prosecutors use to decide whether to prosecute an alleged offender. A decision to not prosecute could now also be based on consideration of *'the impact on the stability and safety of the King, the Queen, the Heir-apparent, or the Regent'*.<sup>37</sup> The Regulation further empowered the Attorney General to decide whether to prosecute any case, removing this power from the discretion of individual prosecutors.<sup>38</sup> In June 2020, Prime Minister Prayuth Chan-o-cha confirmed that the king had instructed the government not to enforce Section 112.<sup>39</sup>

## A NEW WAVE OF LÈSE-MAJESTÉ CASES

In November 2020, in response to ongoing pro-democracy protests taking place across Thailand, Prime Minister Prayuth Chan-o-cha stated that all laws, including Section 112, would be enforced against the protesters.<sup>40</sup> In justification of the reversal of the *de facto* moratorium on the use of Section 112, he said, 'It is necessary for the government and security agencies to enhance our measures by enforcing all pertaining laws against protesters who violate the law or infringe on the rights and freedoms of other citizens'.<sup>41</sup>

Senators and MPs from various political parties have voiced support for the decision to enforce Section 112 once again. Senator Chadej Insawang, Deputy Chairman of a Committee on the Protection of the

<sup>33</sup> Al Jazeera, 'Thailand's lese majeste law: A weapon to silence dissent?', *Al Jazeera*, 15 October 2020, available at: <https://www.aljazeera.com/news/2020/10/15/thailands-lese-majeste>.

<sup>34</sup> iLaw Freedom, 'Tiansutham: posted facebook "Yai Dangdued"', available at: <https://freedom.ilaw.or.th/en/case/649>.

<sup>35</sup> Thai Lawyers for Human Rights, 'Changes in Thailand's lèse-majesté prosecutions in 2018', 15 January 2018, available at: <https://tlhr2014.com/en/archives/10431?lang=en>.

<sup>36</sup> *Ibid.*

<sup>37</sup> สำนักงานอัยการสูงสุด, แนวทางปฏิบัติในการดำเนินคดีอาญาตามประมวลกฎหมายอาญา มาตรา 112, 21 กุมภาพันธ์ 2561, available at: <http://www.ogad.ago.go.th/dagsu/images/stories/v61/v54.pdf>.

<sup>38</sup> *Ibid.*

<sup>39</sup> Hong Xiyue, 'Thailand Protests'.

<sup>40</sup> Panu Wongcha-um & Kay Johnson, 'Special Report-The last taboo. A new generation of Thais is defying the monarchy', *Reuters*, 18 December 2020, available at: <https://www.reuters.com/article/us-thailand-protests-youth-specialreport-idUSKBN28S1AQ>.

<sup>41</sup> Hong Xiyue, 'Thailand Protests'.

Royal Institution; Jurin Laksanawisit, Democrat Party leader and Commerce Minister; and Pareena Kraikupt, Ratchaburi MP from the Palang Pracharath Party, have all indicated approval for the *lèse-majesté* law and the use of it against the pro-democracy protesters.<sup>42</sup>

Between 24 November 2020 and 20 February 2021, the Thai police have opened investigations into at least 59 individuals in relation to complaints under Section 112.<sup>43</sup> Most of those under investigation are Thai nationals in their twenties or thirties who have played a key role in the youth-led protest movement, including by calling for sweeping political reforms and curbs on the powers of the monarchy.<sup>44</sup> Several prominent protest leaders face multiple complaints under Section 112.

Student activists Parit ‘Penguin’ Chiwarak and Panusaya ‘Rung’ Sithijirawattanakul face 17 and eight complaints respectively, while human rights lawyer Anon Nampa faces ten. Another prominent protest leader, Panupong ‘Mike’ Chadnok also faces seven complaints.<sup>45</sup> Each may face lengthy prison sentences if prosecuted and convicted. If convicted on all counts and given the maximum sentence, Parit could be imprisoned for 255 years.<sup>46</sup>

Section 112 has been deployed against those who criticise the law itself. Police are investigating prominent human rights activist and ARTICLE 19 consultant Pimsiri Petchnamrob in relation to a public speech in which she cited a statement from the then-Special Rapporteur on freedom of expression David Kaye that *lèse-majesté* laws have no place in democratic countries.

In the wake of the King Rama X’s accession to the throne, a series of legal reforms greatly expanded the monarch’s control of extraordinary financial assets. Section 112 has been used recently to target individuals that criticise corporations substantially owned by the king. On 20 January 2020, the Digital Economy and Society Ministry filed complaints under Section 112 of the Criminal Code and the Computer Crime Act after former leader of the now-dissolved Future Forward Party Thanathorn Juangroongruangkit criticised the role of Siam Bioscience in producing the AstraZeneca COVID-19 vaccine in Thailand.<sup>47</sup> Siam Bioscience is nearly wholly owned by the king.<sup>48</sup>

Moreover, those being investigated for alleged *lèse-majesté* offences include a 16-year-old high school student and a 17-year-old university student. The 16-year-old could face up to 15 years in prison for wearing a crop top with the words ‘My father’s name is Mana. Not [King] Vajiralongkorn’ written on the back.<sup>49</sup>

<sup>42</sup> Bangkok Post, ‘Lawmakers back Section 112’, 12 December 2020, available at: <https://www.bangkokpost.com/thailand/politics/2034035/lawmakers-back-section-112>.

<sup>43</sup> Thai Lawyers for Human Rights, ‘The Number of Prosecutions’.

<sup>44</sup> James Lovelock, ‘Young Thais defiant over lese majeste clampdown’, *Union of Catholic Asian News*, 7 January 2021, available at: <https://www.ucanews.com/news/young-thais-defiant-over-lese-majeste-clampdown/90899#>.

<sup>45</sup> Thai Lawyers for Human Rights, ‘สถิติผู้ถูกดำเนินคดีมาตรา 112 “หมิ่นประมาทกษัตริย์” ปี 2563-64’, 18 February 2021, available at: <https://tlhr2014.com/archives/23983>.

<sup>46</sup> James Lovelock, ‘Young Thais’.

<sup>47</sup> Masayuki Yuda, ‘Thailand targets Thanathorn for questioning king’s vaccine maker’, *Nikkei Asia*, 21 January 2021, available at: <https://asia.nikkei.com/Politics/Turbulent-Thailand/Thailand-targets-Thanathorn-for-questioning-king-s-vaccine-maker>.

<sup>48</sup> *Ibid.*

<sup>49</sup> Rebecca Ratcliffe, ‘UN expert urges Thailand to stop targeting protesters with royal insult law’, *The Guardian*, 27 December 2020, available at: <https://www.theguardian.com/world/2020/dec/27/un-thailand-protesters-royal-insult-law-lese-majesty>.

Other activists have been targeted for allegedly wearing traditional Thai dress to parody the royal family, making disparaging Facebook posts, and giving speeches arguing that the power and wealth of the king should be limited by a constitutional amendment.<sup>50</sup> Several of those under investigation do not know what they have done that could constitute a violation of Section 112.<sup>51</sup>

At the time of writing, most of the cases initiated since November 2020 remain under investigation in the hands of police authorities.

On 9 February 2021, the Attorney General formally charged Arnon Nampha, Parit Chiwarak, Somyot Pruksakasemsuk, and Patiwat Saraiyaem, prominent activists associated with the protest movement, with violations of Section 112 and Section 116, which establishes the crime of sedition.<sup>52</sup> The charges stem from their participation in a protest on 19 September 2020. On the same day, the Bangkok Criminal Court denied the accused's request for bail, and they were taken into pre-trial detention. On 12 February, the Court of Appeal denied their appeal of the lower court's ruling on bail.<sup>53</sup> The four activists remain in pre-trial detention at the time of writing.

The pre-trial detention of the four activists is a worrying development. The Attorney General's office is expected to decide whether to charge at least 16 more individuals with violations of Section 112 in March 2021. The charging and detention of these individuals, who are prominent leaders of the protest movement, would mark a serious escalation in the government's crackdown on the rights to freedom of expression and freedom of assembly.

Recent *lèse-majesté* convictions in long-dormant cases also suggest an increased interest by the government in using Section 112 to suppress public discourse concerning the monarchy. On 19 January 2021, the Bangkok Criminal Court sentenced Anchan Preekert, a retired civil servant, to 87 years' imprisonment under Section 112. She was accused of re-posting 29 video clips and posts concerning the monarchy on YouTube and Facebook. The court reduced the sentence to 43-and-a-half years after she acknowledged her guilt.<sup>54</sup> The sentence is the longest meted out under *lèse-majesté* offences in Thai history. The day prior to Anchan's conviction, a court convicted a poet and cartoonist of violating Section 112.

In addition to the charges brought by the Thai government against activists, the Ministry of Digital Economy and Society (DES) sought to pressure social media platforms to aid in suppressing content critical of the monarchy. The Thai government asked Facebook, Twitter, YouTube, and several other sites to remove nearly 10,000 posts that the government alleges violate Section 112.<sup>55</sup> Facebook and Twitter have removed thousands of the allegedly illegal posts but have refused to remove all of them.

<sup>50</sup> Thai Lawyers for Human Rights, 'The number of prosecutions under "Lèse Majesté" in 2020-21'.

<sup>51</sup> Rebecca Ratcliffe, 'UN expert urges Thailand to stop targeting protesters with royal insult law'.

<sup>52</sup> Human Rights Watch, 'Thailand: Prominent Activists Held in Pre-Trial Detention', 9 February 2021, available at: <https://www.hrw.org/news/2021/02/09/thailand-prominent-activists-held-pre-trial-detention>.

<sup>53</sup> Thai Lawyers for Human Rights, 'The Court of Appeal denied a request to release 4 protest leaders, citing their speeches have tarnished the reputation of the monarchy, despite the lack of final verdict', 19 February 2021, available at: <https://tlhr2014.com/en/archives/26164>.

<sup>54</sup> ARTICLE 19, 'Thailand: Record-breaking lèse-majesté sentence highlights need for legal reform', 21 January 2021, available at: <https://www.article19.org/resources/thailand-record-breaking-lese-majeste-sentence-highlights-need-for-legal-reform/>.

<sup>55</sup> *Ibid.*

DES Minister Buddhipongse Punnakanta has stated that the Ministry will take legal action against the social media platforms for hosting the allegedly illegal content.<sup>56</sup>

Due to the sheer amount of content on social media that allegedly violates the *lèse-majesté* law, Prime Minister Prayuth Chan-o-cha has asked the DES, the Department of Special Investigation, the Royal Thai Police's Technology Crime Suppression Division (TCSD), and the Foreign Affairs Ministry to speed up their investigations into *lèse-majesté* cases involving social media content.<sup>57</sup> According to the Royal Thai Police, those accused of posting offending content will be summoned before the TCSD for interrogation.<sup>58</sup> On 9 January 2021, the TCSD summoned Parit Chiwarak and Panusaya Sithijirawattanakul to appear in person, but the pair refused and instead gave written statements.<sup>59</sup>

UN human rights experts have spoken out forcefully against the new wave of *lèse-majesté* cases in Thailand. Ravina Shamdasani, the spokesperson for the UN High Commissioner for Human Rights, expressed concern over the renewed use of Section 112, highlighting the investigation of the 16-year-old high school student. Shamdasani urged the government to amend the law to ensure that it is compatible with Article 19 of the ICCPR.<sup>60</sup> On 8 February 2021, the new Special Rapporteur on freedom of expression Irene Khan, the Special Rapporteur on the rights to peaceful assembly and of association Clément Voule, and members of the UN Working Group on Arbitrary Detention raised 'grave concern' about the rise in the number of *lèse-majesté* cases and an extremely harsh sentence handed down to Anchan the previous month.

## RECOMMENDATIONS

ARTICLE 19 calls on the government to:

- Immediately cease all criminal proceedings under Section 112 of Thailand's Criminal Code;
- Immediately and unconditionally release all those currently detained for violations of Section 112 of the Criminal Code; and
- Repeal Section 112 of the Criminal Code.

<sup>56</sup> Bangkok Post, 'Cops to prosecute over "S112" posts', *Bangkok Post*, 6 January 2021, available at: <https://www.bangkokpost.com/thailand/politics/2046063/cops-to-prosecute-over-s112-posts>.

<sup>57</sup> Komsan Tortermvasana, 'Speed up lese majeste inquiries: PM', *Bangkok Post*, 13 January 2021, available at: <https://www.bangkokpost.com/thailand/general/2049887/speed-up-lese-majeste-inquiries-pm>.

<sup>58</sup> Chiang Rai Times, 'Thailand's Cyber Cops to Arrest Social Media Users for Lese Majeste', *Chiang Rai Times*, 6 January 2021, available at: <https://www.chiangraitimes.com/crime-chiang-rai-thailand/thailands-cyber-cops-to-arrest-social-media-users-for-lese-majeste/>.

<sup>59</sup> Komsan Tortermvasana, 'Speed up lese majeste inquiries: PM'.

<sup>60</sup> Ravina Shamdasani, 'Press briefing notes on Thailand', *UN Office of the High Commissioner for Human Rights*, 18 December 2020, available at: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=26621&LangID=E>.