



Submission to the Universal Periodic Review of Thailand by ARTICLE 19

For consideration during the 39th Session of the Working Group

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Introduction

1. ARTICLE 19 is an international human rights organisation working to promote freedom of expression.
2. In this Universal Periodic Review (UPR) report, ARTICLE 19 assesses the progress made by the Royal Thai Government in implementing recommendations received during its second UPR cycle in May 2016 that relate to freedom of expression. This report addresses three key threats to expression in Thailand:
 - Restrictions on the right to protest
 - Lèse-majesté proceedings
 - Criminal defamation prosecutions

Restrictions on the right to protest¹

3. During the previous cycle of the UPR, Thailand accepted two general recommendations to ensure the right to peaceful assembly,² while noting eight more specific recommendations to remove undue restrictions or repeal laws that undermine protest.³ However, during the period under review, the Thai government has continued to undermine the right to peacefully assemble.
4. Throughout 2020 and 2021, protesters have repeatedly taken to the streets to demand a new constitution, a new government, and an end to the harassment and intimidation of government critics. Activists have also called for reform of the monarchy, an institution protected by laws carrying severe criminal penalties.
5. The protesters' complaints about the government's anti-democratic nature have been underscored by the authorities' response to the protests. The government has harassed, assaulted, and obstructed protesters at every turn. The government exploited the COVID-19 pandemic to enact repressive emergency measures, which have been used to stifle dissent.
6. The Public Assembly Act is the primary law governing assemblies in Thailand and has been used repeatedly to arrest, charge, and prosecute people exercising their right to protest. The Act is incompatible with international human rights law. Penalties for violating the Act range from fines to up to ten years' imprisonment. At its second UPR, Thailand noted a recommendation that the Public Assembly Act be repealed.⁴ Thai authorities have

¹ The right to protest embodies the exercise of a number of indivisible, interdependent and interconnected human rights, in particular the rights to freedom of expression, peaceful assembly, and association, the right to take part in the conduct of public affairs, the right to freedom of thought, conscience and religion, the right to strike, the right to take part in cultural life, as well as the rights to life, privacy, liberty and security of the person, and the right to freedom from discrimination. ARTICLE 19, 'The Right to Protest: Principles on the protection of human rights in protests', 2016, available at: https://www.article19.org/data/files/medialibrary/38581/Right_to_protest_principles_final.pdf.

² 158.138 (Austria), 158.141 (Costa Rica). See: UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review, Thailand: Addendum (A/HRC/33/16/Add.1)', 7 September 2016, available at: <https://daccess-ods.un.org/TMP/6562839.15042877.html>.

³ 159.50 (Finland), 159.53 (Canada), 159.58 (Switzerland), 159.59 (Germany), 159.60 (Botswana), 159.61 (Italy), 159.62 (Iceland), 159.63 (Brazil).

⁴ Recommendation 159.53 (Canada).

continued to prosecute peaceful protesters under the law, with at least 84 individuals facing charges in 57 cases.⁵

7. In March 2020, as COVID-19 spread globally, Thailand declared a state of emergency.⁶ An emergency regulation imposed a broad and vague ban on assemblies that remained in effect through 31 July.⁷ The regulation was applied in a strict and discriminatory manner against pro-democracy protesters, even as Thailand went several months without recording a domestically transmitted case of COVID-19.⁸ Other mass gatherings took place without arrests,⁹ and royalists faced no repercussions for their assemblies.¹⁰
8. On 15 October 2020, the government announced a 'severe' state of emergency in Bangkok, claiming that the protests threatened national security.¹¹ The government again banned public assemblies and used security forces to crack down on street protests. Claiming that violence had been quelled, the government revoked the 'severe' state of emergency on 22 October.
9. As of February 2021, at least 301 individuals have been charged with breaching the emergency regulations relating to COVID-19 or the 'severe' state of emergency.¹² Violations of emergency regulations carry a maximum penalty of two years' imprisonment.
10. During violent crackdowns, riot police have forcefully dispersed crowds with baton charges and water cannons, at times resulting in injuries to protesters and journalists. Security forces have also sought to deny access to protest sites and authorities have shut down transportation networks to prevent crowds from gathering.
11. The indiscriminate use of rubber bullets in February and March 2021 also raised serious concerns about the safety of journalists¹³ and protesters.¹⁴

⁵ Thai Lawyers for Human Rights, กุมภาพันธ์ 64 : คดีทางการเมืองยังเพิ่มขึ้นต่อเนื่อง ถึง 207 คดี ผู้ถูกกล่าวหากว่า 382 คน, 3 March 2021, available at: <https://tlhr2014.com/archives/26506>.

⁶ Shawn Chrispin, 'Prayut declares a Covid-19 emergency in Thailand', *Asia Times*, 24 March 2020, available at: <https://asiatimes.com/2020/03/prayut-declares-a-covid-19-emergency-in-thailand/>.

⁷ Ministry of Foreign Affairs of Thailand, Regulation Issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (No. 1) (Unofficial Translation), 29 March 2020, available at: <http://www.mfa.go.th/main/contents/files/news3-20200329-164122-910029.pdf>.

⁸ ARTICLE 19, 'Thailand: Stop using emergency powers to restrict the rights of protesters', 29 June 2020, <https://www.article19.org/resources/thailand-stop-using-emergency-powers-to-restrict-the-rights-of-protesters/>.

⁹ 'กระหึ่ม แฟนลิเวอร์พูลพังงา แห่ฉลองแชมป์ พรีเมียร์ลีกสุดยิ่งใหญ่ (คลิป)', *Thai Rath*, 11 July 2020, available at: <https://www.thairath.co.th/sport/eurofootball/premierleague/1887265>.

¹⁰ Tassanee Vejpongsa, 'Royalists in Thailand rally against pro-democracy protesters', *Associated Press*, 30 July 2020, available at: <https://apnews.com/3d048bacc0a5cccf797f86edba7fd5a0>.

¹¹ ข้อก าหนด ออกค าว มใหม่ าดร ๖ ๘ ประกอบม าดร ๖ ๑๑ แห่งพระร าชก าหนดก ารบริห ารร าชก ารในส ถานก ารณ์ฉุกเฉิน, 15 October 2020, available at: http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/241/T_0004.PDF; Human Rights Watch, 'Thailand: Emergency Decree Pretext for Crackdown', 15 October 2020, available at: <https://www.hrw.org/news/2020/10/15/thailand-emergency-decree-pretext-crackdown>.

¹² Thai Lawyers for Human Rights, 'TLHR Overall Situation in February 2021', 15 March 2021, available at: <https://tlhr2014.com/en/archives/26991>.

¹³ Prachatai, 'Authorities should "take particular care" not to use force on journalists working in protests, says FCCT', 22 March 2021, available at: <https://prachatai.com/english/node/9136>.

¹⁴ 'Thailand protests: scores injured as police clash with pro-democracy activists', *The Guardian*, 21 March 2021, available at: <https://www.theguardian.com/world/2021/mar/21/thailand-protests-scores-injured-as-police-clash-with-pro-democracy-activists>.

12. Since July 2020, authorities have repeatedly charged protest organisers with sedition under Section 116 of the Criminal Code. Those convicted face up to seven years in prison.¹⁵ As of March 2021, at least 49 protesters are facing sedition charges.¹⁶
13. Authorities have used lawsuits and other forms of pressure to try to secure the cooperation of social media platforms in censoring online content connected to the protest movement. In August 2020, the government ordered Facebook to block the hugely popular page 'Royalist Marketplace', which had been set up as a forum to discuss the monarchy.¹⁷ In September, the Ministry of Digital Economy and Society (DES) sought to block Telegram, a messaging app,¹⁸ and announced investigations into more than 300,000 sites allegedly containing illegal content.¹⁹
14. At Thailand's second UPR, eight states asked Thailand to stop intimidating and harassing human rights defenders.²⁰ Nevertheless, activists and protesters continue to face harassment and intimidation.²¹ Protesters, including minors, have reported that they are under surveillance and that police have visited and searched their schools and residences. Police have also confronted protesters to pressure them to remove social media posts about the pro-democracy movement.²²
15. The Thai government has also taken an aggressive stance towards independent media during the protest movement. Police have arrested journalists and confiscated their equipment.²³ In addition, in October 2020, the DES suspended Voice TV, a platform which broadcasted live footage of the protests.²⁴ At Thailand's second UPR, three states recommended that Thailand act to ensure the safety of journalists.²⁵ However, official aggression toward independent media has continued unabated.

¹⁵ Ibid.

¹⁶ Thai Lawyers for Human Rights, 'A month after October 14: three times increases of public assembly cases', 25 November 2020, available at: <https://tlhr2014.com/en/archives/23517>; Daily Sabah, 'Thailand protest leaders denied bail, more charged with sedition, 8 March 2021, available at: <https://www.dailysabah.com/world/asia-pacific/thailand-protest-leaders-denied-bail-more-charged-with-sedition>.

¹⁷ Nick Statt, 'Facebook blocks access to group criticizing Thailand king after government threat', *The Verge*, 24 August 2020, available at: <https://www.theverge.com/2020/8/24/21399940/facebook-thailand-group-remove-kingcriticism-threat-defamatory-free-speech>.

¹⁸ 'Thailand's government wants Telegram blocked. Good luck with that,' *Coconuts Bangkok*, 19 October 2020, available at: <https://coconuts.co/bangkok/news/thailands-government-wants-telegram-blocked-good-luck-withthat/>.

¹⁹ 'พุทธพงษ์ชี้ม็อบฟ้องสื่อลงข่าวผี ฟ้าสี น พรก.ฉุกเฉิน คนใช้โซเชียลโดนด้วย 3 แสนURL', *KhaoSod*, 19 October 2020, available at: https://www.khaosod.co.th/politics/news_5140887.

²⁰ Recommendations 158.120 (Czech Republic); 158.121 (Botswana); 158.122 (Norway); 158.123 (Romania); 159.51 (UK); 159.58 (Switzerland); 158.22 (New Zealand); 158.119 (Luxembourg).

²¹ Details of 32 cases of harassment on file with ARTICLE 19. ARTICLE 19 suspects the extent of harassment and intimidation to be much greater than these cases.

²² Details on file with ARTICLE 19; see also TLHR, 'TLHR Overall Situation in February 2021', 15 March 2021, available at: <https://tlhr2014.com/en/archives/26991>.

²³ International Federation of Journalists, 'Thailand: Reporter arrested while covering protests', 19 October 2020, available at: <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/thailand-reporter-arrested-whilecovering-protests.html>.

²⁴ 'Thai court suspends local online TV amid protests', *Reuters*, 20 October 2020, available at: <https://www.reuters.com/article/thailand-protests-tv-idUSL4N2HB1RA>.

²⁵ Recommendations 158.139 (Netherlands); 158.140 (Austria); 158.121 (Botswana).

16. As of March 2021, at least 382 individuals, including 13 minors, have been charged or arrested in relation to the protests.²⁶ Many protest leaders have been charged multiple times, and several face decades of imprisonment.

17. Recommendations

- Refrain from invoking emergency powers to restrict the right to protest;
- End criminal proceedings against all individuals charged merely for the exercise of the right to protest, and immediately and unconditionally release all those detained on such grounds;
- Refrain from dispersing protests or using weapons, including less-lethal weapons, against protesters except in exceptional circumstances, such as the need to protect protesters or bystanders from violence or imminent harm;
- Reform the Public Assembly Act and other laws imposing restrictions on the time, place, and manner of assemblies to comply with international human rights law; and
- Take steps to ensure the safety of journalists at protests.

Lèse-majesté proceedings

18. Thailand previously received and noted eight recommendations which specifically called for Section 112 of Thailand's Criminal Code to be brought in line with international standards on the right to freedom of expression.²⁷ Nevertheless, in late 2020, authorities began to use Section 112 to investigate and charge individuals for alleged *lèse-majesté* offences after a two-year de facto moratorium on the use of the law. Section 112 has been interpreted in a broad manner in the past and comes with a harsh penalty—each offence carries up to 15 years' imprisonment and a fine.

19. Between November 2020 and March 2021, the Thai police have opened investigations into at least 76 individuals for alleged *lèse-majesté* offences.²⁸ Most of these cases involved individuals associated with the protest movement.

20. Activists Parit Chiwarak and Panusaya Sithijirawattanakul face 12 and six complaints respectively, while human rights lawyer Anon Nampa faces eight.²⁹ Each may face decades in prison if convicted on all counts.³⁰

21. Section 112 has also been deployed against those who criticise the law itself. Police are investigating human rights activist and ARTICLE 19 consultant Pimsiri Petchnamrob for a speech in which she quoted a statement by the UN Special Rapporteur on freedom of expression asserting that *lèse-majesté* laws violate human rights standards.

22. On 20 January 2020, the DES filed complaints under Section 112 and the Computer Crime Act after leader of the now-dissolved Future Forward Party, Thanathorn

²⁶ Thai Lawyers for Human Rights, 'TLHR Overall Situation in February 2021', 15 March 2021, available at: <https://tlhr2014.com/en/archives/26991>.

²⁷ 159.52 (Belgium), 159.53 (Canada), 159.55 (Spain), 159.62 (Iceland), 159.59 (Germany), 159.18 (USA), 159.54 (Norway), 159.57 (Latvia).

²⁸ Thai Lawyers for Human Rights, 'สถิติผู้ถูกดำเนินคดีมาตรา 112 “หมิ่นประมาทกษัตริย์” ปี 2563-64' 22 March 2021, available at: <https://tlhr2014.com/archives/23983>.

²⁹ 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>.

³⁰ 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#>.

Juangroongruangkit, criticised the role of Siam Bioscience in producing the AstraZeneca COVID-19 vaccine.³¹ Siam Bioscience is owned by King Vajiralongkorn.³²

23. Among those under investigation under Section 112 are a 16-year-old high school student, a 17-year-old university student,³³ and two junior high students arrested following a protest on 20 March 2020.³⁴

24. In January 2021, the Bangkok Criminal Court sentenced Anchan Preeert, a retired civil servant, to 87 years' imprisonment for social media posts. The court halved the sentence after she acknowledged her guilt.³⁵ The sentence is the longest for a *lèse-majesté* offence in Thai history.

25. In addition to the charges brought by the Thai government against activists, the DES has stated that they plan to pursue legal action against Facebook and Twitter for failing to remove content that violates Section 112.³⁶

26. Recommendation

- Repeal Section 112 of the Criminal Code and immediately and unconditionally release all those currently detained for violations of the provision.

Criminal defamation prosecutions

24. In Thailand, defamation is a criminal offence punishable by custodial sentences. Criminal defamation provisions are unnecessary, susceptible to abuse, and detrimental to the enjoyment of the right to freedom of expression.

25. Section 326 of Thailand's Criminal Code establishes the crime of defamation, which is punishable by up to one year's imprisonment. Defamation by publication, broadcast or other forms of media carries a penalty of two years' imprisonment under Section 328. Individuals who feel that they have been defamed may either report the case to the police or file a complaint directly with the court, giving private parties great power to initiate criminal proceedings against others.

26. Additionally, the 2017 Computer Crime Act (CCA) contains a provision penalising the uploading of 'false computer data' that is likely to harm a third party. While this Act was amended in 2017, the CCA is still used to impose criminal penalties on those exercising their right to freedom of expression.³⁷

³¹ 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>.

³² Ibid.

³³ Rebecca Ratcliffe, 'UN expert urges Thailand to stop targeting protesters with royal insult law', *The Guardian*, 27 December 2020.

³⁴ Thai Lawyers for Human Rights, 'ประมวลสถานการณ์สลายชุมนุม #มีอบ20มีนา กลุ่ม REDEM และแนวร่วมเผชิญทั้งแก๊สน้ำตาและกระสุนยาง ก่อนถูกจับ 32 ราย', 21 March 2020, available at: <https://tlhr2014.com/archives/27222>.

³⁵ 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/>.

³⁶ Bangkok Post, 'Cops to prosecute over "S112" posts', 6 January 2021, available at: <https://www.bangkokpost.com/thailand/politics/2046063/cops-to-prosecute-over-s112-posts>.

³⁷ See Recommendations 159.54 (Norway); 159.55 (Spain); 159.56 (Sweden); 159.62 (Iceland).

27. Thailand previously received and noted two recommendations to ensure Articles 326 and 328 are not used to restrict the right to freedom of expression.³⁸ It also noted four further recommendations to ensure the CCA cannot be used to suppress expression.³⁹
28. In response to these recommendations, Thailand has implemented some measures ostensibly aimed at combatting frivolous defamation cases.⁴⁰ In December 2018, the Criminal Procedure Code was amended to include two provisions, Sections 161/1 and 165/2, to protect those acting in the public interest.⁴¹ However, these steps have not prevented the application of criminal charges in a manner that violates fundamental rights.
29. Since 2015, public prosecutors have submitted more than 10,000 cases concerning criminal defamation and the disclosure of confidential information, with the number of cases increasing steadily over the past five years. Statistics provided by the Office of the Judiciary evidence that there were 1,730 more criminal defamation cases filed in 2020 than 2015, a 50% increase.
30. In recent years, companies and powerful individuals have increasingly initiated criminal defamation cases against individuals who have raised concerns about human rights abuses, labour rights violations, corruption, and other matters of public interest. ARTICLE 19 identified 58 such cases involving 116 accused persons that have been initiated since 2014. Although only nine of the cases have resulted in convictions, scores of individuals have been forced to endure lengthy and burdensome investigations and trials.
31. A series of frivolous cases filed by Thammakaset Company Limited underscores the danger posed by criminal defamation proceedings in Thailand.⁴² Since 2016, Thammakaset has launched 39 civil and criminal cases against 23 migrant workers and human rights defenders who have reported on labour rights violations at a poultry farm run by the company. Despite repeated losses in courts—and the determination by a government agency that the company owed workers 1.7 million Thai baht in unpaid wages—Thammakaset has continued to file new cases. Several cases are based entirely on social media activity. To date, only one defendant has been found guilty by a court, and her conviction was overturned on appeal. Nevertheless, the vexatious litigation initiated by Thammakaset has been an expensive distraction and source of stress for key members of Thai civil society.

³⁸ 159.53 (Canada), 159.55 (Spain).

³⁹ 159.54 (Norway); 159.55 (Spain); 159.56 (Sweden); 159.62 (Iceland).

⁴⁰ See Highlights of Thailand's implementation of recommendations and voluntary pledges under the second cycle of the Universal Periodic Review 2015-2018 (Mid-term update), available at:

<https://www.ohchr.org/en/hrbodies/upr/pages/uprimplementation.aspx>; Rights and Liberty Protection Department, Ministry of Justice, Royal Thai Government, 1st National Action Plan on Business and Human Rights (2019-2022), p.105, October 2019, available at:

https://www.th.undp.org/content/dam/thailand/docs/UNDP_TH_National%20Action%20Plan_Eng..pdf.

⁴¹ International Commission of Jurists, 'Thailand: ICJ submits recommendations to strengthen Thailand's Anti-SLAPP Law', March 2020, available at: <https://www.icj.org/thailand-icj-submits-recommendations-to-strengthen-thailands-anti-slapp-law/>.

⁴² ARTICLE 19, 'Thailand: Act to prevent spurious lawsuits against human rights defenders', 12 June 2020, available at: <https://www.article19.org/resources/thailand-act-to-prevent-spurious-lawsuits-against-human-rights-defenders/>.

32. Thailand's criminal defamation provisions fail to comply with international law for three reasons.⁴³ First, they provide for disproportionate penalties. Second, Thailand's defamation laws lack sufficient defences against defamation claims, indicating that they are not sufficiently tailored to the harm they seek to address. Third, Thai law fails to adequately prevent the abuse of defamation laws by the government, corporations, or private individuals.

33. The UN Human Rights Committee has urged states to consider decriminalising defamation and stated that custodial sentences are never an appropriate punishment for defamation.⁴⁴

34. Recommendations

- Repeal Sections 326 – 333 of the Criminal Code;
- Amend the Computer Crimes Act to ensure compliance with international standards relating to the right to freedom of expression, including by removing all criminal penalties for defamation; and
- Review all other laws that address harmful speech, including incitement to discrimination, hostility, or violence, to ensure that they are in line with international human rights standards and that they are not used to undermine freedom of expression.

⁴³ The Human Rights Committee's General Comment No. 34, which elaborates on states' responsibilities under Article 19 of the ICCPR, outlines a three-part test to determine whether a restriction on expression complies with international human rights law. First, the restriction must be provided by law. Second, it must be made in pursuance of one of the purposes laid out in paragraph 3 of Article 19: to protect the rights or reputations of others, national security, public order, public health, or public morals. This is a comprehensive list; no other government interests can justify a restriction of free expression. Third, the restriction must be necessary and proportionate to achieve its protective function. ICCPR Article 19; *Velichkin v. Belarus*, Comm. No. 1022/2001, UN Doc. CCPR/C/85/D/1022/2001 §7.3 (2005); UN Human Rights Committee, General Comment No. 10, Freedom of Expression (Article 19), UN Doc. 29/06/83 para. 4 (1983); Article 19, Johannesburg Principles on National Security, Freedom of Expression, and Access to Information, UN Doc. E/CN.4/1996/39, Principle 1 (1996).

⁴⁴ General Comment No. 34, para. 47.