



**“THEY ARE ALWAYS  
WATCHING”**

**RESTRICTING FREEDOM OF EXPRESSION ONLINE IN THAILAND**

**AMNESTY  
INTERNATIONAL**



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# EXECUTIVE SUMMARY

The 2014 military coup marked the beginning of five years of tenacious efforts by the Thai authorities to silence the voices of human rights defenders, activists, journalists and opposition politicians, including online. Many people hoped that the March 2019 elections would mark an end to this campaign of repression, which targeted online critics of the government and the monarchy, and anyone else deemed to have strayed from what the government defined as acceptable.

Yet one year into the premiership of Gen Prayut Chan-O-Cha, Thailand's elected government is showing no signs of loosening its grip on freedom of expression online. Rather than breaking with the established pattern of criminalizing content critical of the authorities, the government is continuing to prosecute people simply for peacefully exercising their right to freedom of expression online and harassing and intimidating online users.

Since the elections of March 2019, the authorities have continued to file criminal charges against individuals who find fault with their performance—whether they criticize the police, the military or the Election Commission of Thailand. People scrutinizing the activities of these government bodies and calling for justice are facing years in prison and huge fines.

In many cases the government has targeted well-known figures with criminal charges to send a message to other online users that it will brook no dissent. This strategy aims to create a climate of fear in order to suppress the posting and sharing of content deemed “false information” about the performance of the government.

One activist told Amnesty International: “That’s part of their strategy—we call it ‘lawfare,’ and it works. It works really well.”

Following the outbreak of COVID-19, Gen Prayut Chan-O-Cha’s decision to declare a state of emergency in March 2020 marked a dramatic increase in the Thai government’s restrictions on freedom of expression and peaceful assembly. Authorities wasted no time in invoking the Emergency Decree on Public Administration in Emergency Situation (2005) – empowering public officials both to censor communications related to COVID-19 that are “false” or might instigate fear among the public. In a 24 March 2020 press conference, Prime Minister Prayut warned of prosecutions for “abuse of social media,” deepening concerns that authorities may file lawsuits against individuals for criticizing the Thai government’s response to the virus.

In recent years, there has been a pause in cases brought against individuals under Thailand’s strict *lèse majesté* law—Article 112 of the Thai Criminal Code—but that has not deterred the government from using other broadly worded laws to stifle online expression deemed injurious to the monarchy. Vague provisions in problematic laws such as the Computer Crime Act and Article 116 of the Thai Criminal Code (sedition) leave the door open for the government to threaten critics with five years and seven years in prison, respectively, while the authorities’ criminalization of defamation provides another avenue for them to stifle voices of dissent.

The prosecutions brought by the government since March 2019 fit into a broader trend of the growing policing of online spaces to repress the right to freedom of expression. In recent months, police have interrogated individuals and forced them to delete content, without producing an arrest warrant or summons when their posts relating to the Thai government and monarchy went viral. Attempts to shape public debate on social media through intimidation and harassment points to a disturbing new trend in the Thai government’s efforts to restrict expression online – one that looks set to accelerate as authorities work to quash criticism of their response to the COVID-19 pandemic.

The inauguration of government-run Anti-Fake News Centers in November 2019 has increased concerns that the Thai government believes itself to be the standard bearer in combatting “fake news” online. While branches of government involved in the centres are working to halt the spread of “false information” in certain priority areas – not least in response to the outbreak of COVID-19 – the targets of hate speech and false information campaigns online have seen no action by authorities to address their complaints. As yet, the government’s efforts to make the internet a safer place have not extended to dissidents.

There are immediate steps that the Thai government can take to reverse these negative trends. Ending the use of criminal laws against peaceful critics—specifically, the Computer Crime Act, and Articles 112, 116, and 326 to 333 of the Thai Criminal Code, as well as the Emergency Decree on Public Administration in Emergency Situation—and amending or repealing laws that restrict the peaceful exercise of the right to freedom of expression online would be an important step. The government should also halt any ongoing criminal proceedings against these individuals. Furthermore, if the government is earnest in its efforts to combat the spread of “fake news,” it should employ credible, independent third parties to fact check online content and end the involvement of the Ministry of Digital Economy and Society in fact-checking operations. Until these reforms are implemented, other governments should continue to urge Thailand to meet its international legal obligations to respect, protect, promote and fulfil the right to freedom of expression including online.

This briefing draws from 18 interviews with human rights defenders, activists, politicians, lawyers and academics conducted between October 2019 and April 2020. Amnesty International has also monitored trial hearings and spoken to lawyers working directly on cases involving online expression, as well as reviewing summons, arrest warrants, Facebook and Twitter posts, photographs, and other documentation collected by local human rights organizations relevant to the events outlined in this briefing. In certain cases, names and other information that could identify people have been withheld for their security. Amnesty International has included the names of other individuals who were interviewed based on their informed consent.

In April 2020, Amnesty International sent a copy of this report to the Royal Government of Thailand and expressed readiness to meet officials to discuss the organization’s findings.

# 1. BACKGROUND

The elections of March 2019 were the first in Thailand since a coup d'état ousted the elected government of Yingluck Shinawatra five years earlier. During the period of military government, the administration led by Gen Prayut Chan-O-Cha stifled the rights to freedom of expression and peaceful assembly, presiding over a dramatic increase in the policing of online spaces and prosecution of human rights defenders, activists, journalists, and opposition politicians. The military authorities also moved to root out content perceived to be critical of the government under the guise of combatting the spread of “false information” and “fake news.”

The May 2014 coup came after months of protests in response to then-Prime Minister Yingluck Shinawatra's attempt to push for a blanket amnesty law for those suspected of being responsible for political violence and alleged corruption since 2004. On 20 May 2014, Gen Prayut announced that the Martial Law Act of 1914 would be enforced throughout Thailand to “preserve law and order.”<sup>1</sup> On 22 May, Prayut carried out the coup, arresting representatives of opposition political groups; promising to restore order and enact political reform, and; placing himself at the head of the National Peace and Order Maintaining Council (NPOMC, which was later renamed the National Council for Peace and Order or NCPO).<sup>2</sup>

At the same time, the army formed a joint committee made up of civil servants from the Ministry for Information and Computer Technology (MICT), the National Broadcasting and Telecommunications Commission (NBTC), and the NPOMC, to coordinate controls on the internet. The military then issued 20 “announcements,” including several that placed sweeping restrictions on the rights to freedom of expression and peaceful assembly, which began a period marked by numerous prosecutions of individuals posting online content critical of the government and monarchy.

Most notably, Announcement 18/2014 required all media workers and online social network operators to refrain from transmitting “false or defamatory messages or messages causing hatred toward the monarchy, the heir-apparent and all members of the royal family”; “news which might be threatening to the national security and defamatory to other persons”; “criticism of the operation of the NPOMC”; “information... on the operations of government agencies”; and “persuasion to gather or assemble in order to oppose officials of the NPOMC and its relevant personnel.”<sup>3</sup>

The restrictions promulgated by the NCPO were in addition to those in existing laws—specifically the Computer-Related Crime Act (2007) (Computer Crime Act), Article 116 of the Thai Criminal Code (sedition), Articles 326 to 333 of the Thai Criminal Code (defamation), and Article 112 of the Thai Criminal Code (lèse majesté)—all of which place severe limits on freedom of expression online. Amendments to the 2007 Computer Crime Act that became effective in May 2017 failed to address concerns that the law provided the government with a slew of broad powers to restrict the right to freedom of expression, censor content, and undertake surveillance operations online.<sup>4</sup> In many cases the government used the Computer Crime Act in

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<sup>1</sup> “Thailand crisis: Army declares martial law,” *BBC*, 20 May 2014, <https://www.bbc.co.uk/news/world-asia-27480845> (accessed 4 December 2019).

<sup>2</sup> “Thailand military seizes power in coup,” *BBC*, 22 May 2014, <https://www.bbc.co.uk/news/world-asia-27517591> (accessed 4 December 2019).

<sup>3</sup> Royal Thai Government, ‘Dissemination of Information and News to the Public Announcement of the National Peace and Order Maintaining Council No. 18/2557’, 22 May 2014. See also Amnesty International, *Thailand: Attitude Adjustment 100 Days Under Martial Law*, September 2014, <https://www.amnesty.org/en/documents/ASA39/011/2014/en/> (accessed 4 December 2019), p. 34; iLaw, “Before-after coup: self-censorship, online media censorship, community radio shutdowns, and other incidents,” 6 January 2015.

<sup>4</sup> Between January and June 2019, Facebook “restricted access to 503 items in Thailand in response to reports from the Ministry of Digital Economy and Society alleging violations of Penal Code Section 112 (lèse-majesté) and Section 14(3) of the Computer Crime Act.” During this time, Facebook received 21 requests from the Government of Thailand relating to

conjunction with other laws to target human rights defenders, activists, journalists and politicians critical of the authorities.

## POLICING FREEDOM OF EXPRESSION ONLINE

The military government initiated a raft of prosecutions under these laws, including for online expression. In April 2016, for example, military personnel in Bangkok and Khon Kaen arrested eight activists in connection with the satirical Facebook page, “We Love Gen Prayut.” The arrests came two weeks after Gen Prayut publicly stated that he had ordered authorities to take legal action against anyone mocking him on social media.<sup>5</sup> Authorities clarified that they understood this to include sharing or pressing “Like” on Facebook pages or other online platforms containing such material. In August 2016, the military prosecutor filed an indictment, charging each of the eight with sedition and with violating the Computer Crime Act.<sup>6</sup> At the time of writing, the trial is ongoing with the defendants released on bail.

In December 2016, student activist Jatupat “Pai” Boonpattaraksa was detained and later convicted for sharing a BBC article on Facebook profiling King Maha Vajiralongkorn.<sup>7</sup> Of the more than 2,600 people who shared the article, only Pai was prosecuted for violating Article 112 of the Thai Penal Code and the Computer Crime Act. Pai was released from jail in May 2019 following a royal pardon after spending 29 months in prison.<sup>8</sup> By May 2017, authorities had arrested more than 100 individuals under Article 112 during the three-year period since the coup.<sup>9</sup>

In April 2017, following calls from the UN Human Rights Committee for the government to end the use of the Computer Crime Act, Article 116 (sedition), and other regulations to suppress the expression of critical and dissenting opinions, the Ministry of Digital Economy and Society—formerly known as the Ministry for Information and Computer Technology (MICT)—issued a letter warning citizens not to follow, contact, or share content from prominent critics Somsak Jeamteerasakul, Pavin Chachavalpongpun and journalist Andrew MacGregor Marshall.<sup>10</sup> The letter noted that those who disseminated their information, directly or indirectly, could be charged with violating the Computer Crime Act.<sup>11</sup>

On 29 April 2017 lawyer Prawet Prapanukul—along with several other activists who shared posts by the three critics, and whom were later released following the public prosecutor’s decision not to indict—was arrested and detained by soldiers, before being brought to a civil court in Bangkok on 3 May, where police filed 10 charges under Article 112, 13 charges under the Computer Crime Act, and three charges of sedition

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24 separate users or accounts. See, Facebook Transparency, Country Overview: Thailand, Content Restrictions, Jan – Jun 2019, <https://transparency.facebook.com/content-restrictions/country/TH> (accessed 14 February 2020); Facebook Transparency, Country Overview: Thailand, Government Data Requests, <https://transparency.facebook.com/government-data-requests/country/TH> (accessed 14 February 2020). Similarly, between July and December 2017 alone, the NCPO sent 141 requests to Google to remove 3,348 items, 97 percent of which were for criticizing the government.

See Google, “Transparency Report,” <https://goo.gl/2UFDzx> (accessed 4 December 2019). See also Amnesty International, “Thailand: Proposed amendments to Computer-Related Crime Act fail to address human rights concerns,” 25 October 2016,

<https://www.amnesty.org/download/Documents/ASA3950402016ENGLISH.pdf> (accessed 4 December 2019).

<sup>5</sup> Human Rights Watch, “Thailand: 8 Charged for Mocking Junta Leader on Facebook,” 9 May 2016, <https://www.hrw.org/news/2016/05/09/thailand-8-charged-mocking-junta-leader-facebook> (accessed 4 December 2019).

<sup>66</sup> Amnesty International, “*They Cannot Keep Us Quiet*”: The criminalization of activists, human rights defenders and others in Thailand, February 2017, <https://www.amnesty.org/download/Documents/ASA3955142017ENGLISH.PDF> (accessed 4 December 2019), p. 12.

<sup>7</sup> Amnesty International, “Urgent Action: Student Activists on Trial By Military Court,” 23 May 2017, <https://www.amnesty.org/download/Documents/ASA3963082017ENGLISH.pdf> (accessed 4 December 2019).

<sup>8</sup> “Thai student activist released on royal pardon,” *BBC*, 10 May 2019, <https://www.bbc.co.uk/news/world-asia-48223866> (accessed 4 December 2019).

<sup>9</sup> International Federation for Human Rights, “Number of post-coup lèse-majesté arrests surges to over 100,” 8 May 2017, <https://www.refworld.org/docid/59145d334.html> (accessed 4 December 2019).

<sup>10</sup> The UN Human Rights Committee was established under the International Covenant on Civil and Political Rights, to which Thailand is a State Party. UN Human Rights Committee (HRC), Concluding observations on the second periodic report of Thailand, 25 April 2017, CCPR/C/THA/CO/2, <https://www.refworld.org/docid/591e9d914.html> (accessed 4 December 2019), pp. 6-7. See Amnesty International, “Thailand: Ban on critics shows brazen determination to silence dissent,” 12 April 2017, <https://www.amnesty.org/en/press-releases/2017/04/thailand-ban-on-critics-shows-brazen-determination-to-silence-dissent/> (accessed 4 December 2019).

<sup>11</sup> Amnesty International, “Thailand: Ban on critics shows brazen determination to silence dissent,” 12 April 2017, <https://www.amnesty.org/en/press-releases/2017/04/thailand-ban-on-critics-shows-brazen-determination-to-silence-dissent/> (accessed 4 December 2019).

against him.<sup>12</sup> On 27 June 2018, the court dropped all charges under Article 112 and the Computer Crime Act without explanation, and convicted Prawet of three counts of sedition. He was released from prison on 26 August 2018.<sup>13</sup>

Following the promulgation of a military-drafted constitution in April 2017, journalist Pravit Rojanaphruk was formally charged with sedition in August 2017 for Facebook posts he authored relating to the constitution; ongoing delays to national elections; the ongoing criminal negligence trial of former Prime Minister Yingluck Shinawatra; and Prime Minister Prayut's handling of flooding in July 2017. He was also charged under the Computer Crime Act for spreading false information online.<sup>14</sup> Although Pravit was released on bail, more than two years later, his case is still under investigation by the police.

While the government sent a clear message to the public by bringing cases against well-known critics, it also worked to police opinions that were being disseminated online. In July 2017, the National Reform Steering Assembly (NRSA) endorsed a set of policies including the establishment of centres to monitor social media in order to determine whether content was "inappropriate."<sup>15</sup> In April 2018, the government's National Reform Plan proposed that these centres "suppress the dissemination of inappropriate or illegal data that affects security in all dimensions."<sup>16</sup> In November 2019, the centres began operations under the official title of "Anti-Fake News Centers."<sup>17</sup>

Both the NCPO and its successor government have also allowed Strategic Litigation against Public Participation (SLAPP) cases to proceed, many of which target human rights defenders involved in exposing abuses.<sup>18</sup> Since 2016, a Thai poultry company has filed 36 criminal and civil cases against 22 defendants for defamation, stemming from defendants' documentation, communication and advocacy in connection with labour rights violations allegedly committed by the company.<sup>19</sup> Thai authorities have continued to investigate and prosecute complaints by the company despite the dismissal of similar charges in July 2018 by the Don Mueang Sub-District Court.<sup>20</sup>

At the same time as it has prosecuted human rights defenders, activists and journalists, the government has also used Article 116 of the Criminal Code (sedition) and the Computer Crime Act to target opposition politicians. In December 2017, Col Burin Thongprapai, the legal officer for the NCPO, filed a complaint with the police accusing Lt Sunisa Lertpakawat—a spokesperson for the Pheu Thai party—of distributing distorted or false information and harming national security in violation of the Computer Crime Act, as well as causing public disaffection with the government in violation of the sedition law, based on her Facebook posts criticizing the government and Gen Prayut personally.<sup>21</sup>

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<sup>12</sup> Amnesty International, "Urgent Action: Lawyer and activists detained for Facebook posts," 10 May 2017, <https://www.amnesty.org/download/Documents/ASA3961952017ENGLISH.pdf> (accessed 4 December 2019); "Thai rights lawyer faces up to 150 years in prison for royal insult," *Reuters*, 4 May 2017, <https://www.telegraph.co.uk/news/2017/05/04/thai-rights-lawyer-faces-150-years-prison-royal-insult/> (accessed 4 December 2019); "Embattled lese majeste lawyer released after 16 months in jail," *Prachatai English*, 27 August 2018, <https://prachatai.com/english/node/7802> (accessed 8 April 2020).

<sup>13</sup> Human Rights Watch, "To Speak Out is Dangerous": *The Criminalization of Peaceful Expression in Thailand*, 24 October 2019, <https://www.hrw.org/report/2019/10/24/speak-out-dangerous/criminalization-peaceful-expression-thailand> (accessed 4 December 2019), pp. 100-01.

<sup>14</sup> Patpicha Tanakasempipat, "Thai journalist accused of sedition says charge creates 'chilling effect'," *Reuters*, 4 August 2017, <https://www.reuters.com/article/us-thailand-rights/thai-journalist-accused-of-sedition-says-charge-creates-chilling-effect-idUSKBN1AK11B> (accessed 4 December 2019).

<sup>15</sup> "Reform body votes for tight social media censorship," *Bangkok Post*, 5 July 2017, <https://www.bangkokpost.com/tech/1281031/reform-body-votes-for-tight-social-media-censorship> (accessed 4 December 2019).

<sup>16</sup> Ratchakitjanubeksa, "Announcement of the Office of the Prime Minister: announcement of the National Reform Plans," 6 April 2018. Taweesak Kerdpoka, "Junta's media reform plan to bring out Mass Media Act by end of 2018," *Prachatai English*, 30 May 2018, <https://prachatai.com/english/node/7760> (accessed 4 December 2019).

<sup>17</sup> See section below, *Harassing and intimidating online users*.

<sup>18</sup> Amnesty International, "Thailand: Oppose Defamation Charges against Human Rights Defenders for Exposing Labour Rights Abuses," 21 February 2020, <https://www.amnesty.org/download/Documents/ASA3918462020ENGLISH.pdf> (accessed 2 March 2020).

<sup>19</sup> International Federation for Human Rights (FIDH), "Thailand: Thammakaset Watch," 13 February 2020, <https://www.fidh.org/en/issues/human-rights-defenders/thailand-thammakaset-watch> (accessed 30 March 2020).

<sup>20</sup> Amnesty International, Joint Letter to Prime Minister Prayuth Chan-o-cha, 14 February 2019, <https://www.amnesty.org/download/Documents/ASA3998672019ENGLISH.pdf> (accessed 2 March 2020).

<sup>21</sup> iLaw, "Lieutenant Jeab: Criticized NCPO on Facebook," case summary, <https://freedom.ilaw.or.th/en/case/811> (accessed 4 December 2019). In August 2017, the NCPO also filed charges against Pheu Thai party politician Pichai Nariyaphan for posting "false information" that could damage the economy on his Facebook page, in violation of the Computer Crime Act. See, "Pichai hops in to hear 'frog' charge," *Bangkok Post*, 5 August 2017,



In June 2018, Thanathorn Juangroongruangkit, leader of the recently formed opposition Future Forward Party, participated in a Facebook live event in which he and two other senior party members criticized the government and alleged that a political party with military ties was recruiting new members from other political parties through bribery and threats to bring criminal charges against them.<sup>22</sup> In August 2018, following a complaint made by the NCPO's legal officer, police charged the three with importing "false information that could harm the country's stability" in violation of the Computer Crime Act.<sup>23</sup> On 1 October 2019, prosecutors decided not to go ahead with the cases against the three Future Forward Party members.<sup>24</sup>

## THE MARCH 2019 ELECTIONS

On 23 January 2019, the NCPO announced that national elections would be held on 24 March. The same day, the Election Commission of Thailand released guidelines that limited political parties' use of social media. Under the guidelines, parties were required to notify the Election Commission of the messages they would post, on which platforms, and for how long, and to refrain from "liking" and sharing content that was deemed defamatory to rival candidates or contained "false information."<sup>25</sup>

The official results of the election were delayed for six weeks following widespread allegations of voter fraud and irregular vote counting, and repeated corrections of the preliminary results by the Election Commission.<sup>26</sup> Following the Election Commission's threat to take legal action against people who shared false information about their work, on 27 March police charged nine people under the Computer Crime Act "for sharing or passing false information" on Facebook claiming that two election commissioners had been sacked and that an estimated 600,000 illegal ballots had been counted.<sup>27</sup> On 6 June 2019, Thailand's joint parliament voted for Gen Prayut, the leader of military-aligned Palang Pracharath Party, to continue as prime minister. Prayut was formally appointed by King Maha Vajiralongkorn on 11 June 2019.<sup>28</sup>

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<https://www.bangkokpost.com/thailand/general/1300179/pichai-hops-in-to-hear-frog-charge> (accessed 4 December 2019).

<sup>22</sup> Human Rights Watch, "To Speak Out is Dangerous": The Criminalization of Peaceful Expression in Thailand, 24 October 2019, <https://www.hrw.org/report/2019/10/24/speak-out-dangerous/criminalization-peaceful-expression-thailand> (accessed 4 December 2019), p. 67.

<sup>23</sup> "Future Forward's Thanathorn charged with Computer Crimes," *Bangkok Post*, 24 August 2018, <https://www.bangkokpost.com/news/politics/1527190/future-forwards-thanathorn-charged-with-computer-crime> (accessed 4 December 2019).

<sup>24</sup> "Computer Crimes charges against FFP boss dropped," *Bangkok Post*, 2 October 2019, <https://www.bangkokpost.com/thailand/general/1762824/computer-crime-charges-against-ffp-boss-dropped> (accessed 4 December 2019).

<sup>25</sup> Teeranai Charuvastra, "In First, Election Rules to Limit Campaigning," *Khaosod English*, 24 January 2019, <http://www.khaosodenglish.com/politics/2019/01/24/in-first-election-rules-to-limit-social-media-campaigning/> (accessed 4 December 2019); "In Thai Election, New 'War Room' Polices Social Media," *Voice of America*, 19 March 2019, <https://www.voanews.com/east-asia-pacific/thai-election-new-war-room-polices-social-media> (accessed 4 December 2019).

<sup>26</sup> Dominic Faulder, "Thai Election Commission takes heat for troubled vote count," *Nikkei Asian Review*, 30 March 2019, <https://asia.nikkei.com/Politics/Thai-election/Thai-Election-Commission-takes-heat-for-troubled-vote-count> (accessed 4 December 2019); Khemthong Tonsakulrungruang, "Thailand's tainted election commission," *New Mandala*, 18 April 2019, <https://www.newmandala.org/thailands-tainted-election-commission/> (accessed 4 December 2019).

<sup>27</sup> "Nine arrested in Thailand for posting election 'fake news'," *Agence France Presse*, 28 March 2019, <https://www.france24.com/en/20190328-nine-arrested-thailand-posting-election-fake-news> (accessed 4 December 2019); Teeranai Charuvastra, "9 Arrested for Sharing Election Hoax News," *Khaosod English*, 28 March 2019, <http://www.khaosodenglish.com/news/crimecourtscalemity/2019/03/28/9-arrested-for-sharing-election-hoax-news/> (accessed 4 December 2019).

<sup>28</sup> In the wake of the result of the vote on June 5, 2019, the Thai freedom of expression organisation iLaw published an analysis arguing that Prayut should not claim to have been "elected." See iLaw, "Ten reasons why 'Prayut' should not claim to an 'elected Prime Minister'," 11 June 2019, <https://ilaw.or.th/node/5292> (accessed 4 December 2019).



## 2. VIOLATIONS OF THE RIGHT TO FREEDOM OF EXPRESSION ONLINE

Restrictions on the right to freedom of expression online by the Palang Pracharath government are similar to those of the previous NCPO military government. Since the March 2019 elections, the government has doubled down on its efforts to silence dissenting voices online using vaguely-worded legislation—such as sedition, under Article 116 of the Thai Criminal Code—and overly broad legislation—such as the Computer Crime Act and Article 328 of the Thai Criminal Code, which criminalizes defamation by publication. While authorities have not brought any new charges under the Criminal Code’s lèse majesté provision (Article 112), prosecutions of individuals criticizing authorities online have continued apace.

These prosecutions fit into a broader pattern of persecution by which the Thai government has increased its policing of online spaces, including through the interrogation of individuals who have posted content related to the government and monarchy, without producing an arrest warrant or summons, and through the failure to remove abusive content against critics of authorities.

### TARGETING CRITICS

***“At first I thought an election might change the situation. But my case happened during the election, so that means that the military in general hasn’t changed their mind. My case shows that my Facebook posting is still being monitored by the army. . . And it can happen again for sure – they will continue to monitor me online.”***

Pinkaew Laungaramsri, a Thai academic who had charges filed against her for Facebook posts<sup>29</sup>

The pattern of silencing voices critical of authorities set in motion under the previous government has continued in the first year of Prayut’s elected premiership. Authorities have continued to file criminal charges

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<sup>29</sup> Amnesty International telephone interview with Pinkaew Laungaramsri, 30 November 2019, Bangkok, Thailand.

against individuals who scrutinize their performance and call for justice – often targeting well-known figures, presumably to send a clear message that dissent can lead to prosecution.

The new government's targeting of its critics began even before they officially took up office. Accusations of voter fraud, multiple errors in vote counting, and the Election Commission's alleged failure to perform its duties more generally led to a backlash on social media in the aftermath of the elections. In March 2019, students from nine universities across Thailand launched an online petition on change.org calling for the impeachment of the Election Commission. Two days after polling closed, the number of online signatures had grown to more than 660,000.<sup>30</sup> At the time of writing, that number stood at over 860,000.<sup>31</sup>

Between 5 April and 7 May 2019, the Election Commission's legal officer filed criminal defamation charges under Article 328 of the Thai Criminal Code against seven individuals who had shared the petition online. If found guilty, the seven could face up to two years in prison and a fine of up to 200,000 Thai Baht (US \$6,123).<sup>32</sup>

Among the seven charged were Nuttaa “Bow” Mahattana, a prominent human rights activist and a former Voice TV news reporter who is also facing charges under Article 116 on four separate counts of sedition after she had called for elections between January and September 2018, and Sirote Klampaiboon, a former reporter at Voice TV and independent political analyst.<sup>33</sup> Commenting on his Facebook page on 5 April 2019, Sirote wrote: “I think it's not appropriate for the ECT (Election Commission of Thailand), as a state agency, to be filing charges against citizens, especially not a charge that could result in a two-year prison term, regardless of who is being sued.”<sup>34</sup>

Nuttaa told Amnesty International that the Election Commission had targeted the seven specifically to stifle criticism of its performance. She explained:

*“First of all, they picked profiles of the well-known people, media and activists, and they also included some of the people who are not well known not to make it look too obvious. They picked seven people and I'm one of the seven due to my profile as an activist who called for the election. Usually when they have any case on us it will be quite big news. By having big news they can create this atmosphere of fear . . . That's part of their strategy—we call it “lawfare,” and it works. It works really well.”<sup>35</sup>*

Another one of the seven who were charged told Amnesty International that the new government's strategy is to create fear among the public as a means of silencing dissent:

*“[They wanted] to make it look like this can happen to anyone. And it worked. All of my friends stopped talking and stopped sharing about it. After they published the news, people stopped engaging with that campaign . . . Since the election people are afraid that they get into your privacy more. People feel that they are keeping an eye on your social media more than before. Everyone is more careful to post anything on Facebook.”<sup>36</sup>*

In the lead-up to the elections, authorities also targeted candidates from opposition political parties to silence online criticism of the government's performance. On 11 February 2019, the Election Commission of Thailand formally disqualified Princess Ubolratana Mahidol, King Maha Vajiralongkorn's sister, from running for prime minister as a candidate for the newly-formed Thai Raksa Chart Party.<sup>37</sup> On 7 March 2019, the

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<sup>30</sup> “Petition to impeach EC hits 660,000 names,” *Bangkok Post*, 26 March 2019, <https://www.bangkokpost.com/thailand/politics/1650964/petition-to-impeach-ec-hits-660-000-names> (accessed 4 December 2019); Dumrongkiet Mala, “Students launch campaign to impeach EC,” *Bangkok Post*, 29 March 2019, <https://www.bangkokpost.com/thailand/general/1652624/students-launch-campaign-to-impeach-ec> (accessed 4 December 2019).

<sup>31</sup> “We Love Thailand” change.org petition, <https://www.change.org/p/%E0%B8%A3%E0%B9%88%E0%B8%A7%E0%B8%A1%E0%B8%81%E0%B8%B1%E0%B8%99%E0%B8%A5%E0%B8%87%E0%B8%8A%E0%B8%B7%E0%B9%88%E0%B8%AD%E0%B8%96%E0%B8%AD%E0%B8%94%E0%B8%96%E0%B8%AD%E0%B8%99-%E0%B8%81%E0%B8%81%E0%B8%95-%E0%B9%82%E0%B8%81%E0%B8%87%E0%B9%80%E0%B8%A5%E0%B8%B7%E0%B8%AD%E0%B8%81%E0%B8%95%E0%B8%B1%E0%B9%89%E0%B8%87> (accessed 4 December 2019).

<sup>32</sup> Thailand Criminal Code, Article 328, <http://library.siam-legal.com/thai-law/criminal-code-defamation-sections-326-333/> (accessed 4 December 2019).

<sup>33</sup> Amnesty International interview with Nuttaa “Bow” Mahattana, 20 November 2019, Bangkok, Thailand. See Human Rights Watch, “*To Speak Out is Dangerous*”: *The Criminalization of Peaceful Expression in Thailand*, 24 October 2019, <https://www.hrw.org/report/2019/10/24/speak-out-dangerous/criminalization-peaceful-expression-thailand> (accessed 4 December 2019), pp. 75-84.

<sup>34</sup> Facebook post of Sirote Klampaiboon, 5 April 2019, <https://www.facebook.com/photo.php?fbid=10157231874942704&set=a.10151654763872704&type=3&theater> (accessed 4 December 2019).

<sup>35</sup> Amnesty International interview with Nuttaa “Bow” Mahattana, 20 November 2019, Bangkok, Thailand.

<sup>36</sup> Amnesty International interview with accused, 6 December 2019, Bangkok, Thailand.

<sup>37</sup> “Thai election panel disqualifies princess as PM candidate,” *Reuters*, 11 February 2019,

Constitutional Court dissolved the Thai Raksa Chart party, determining that its nomination of Princess Ubolratana was “hostile to the constitutional monarchy” and in breach of the Political Parties Act 2017.<sup>38</sup>

In a subsequent press conference, Secretary General of the Future Forward Party Piyabutr Saengkanokkul criticized the Constitutional Court ruling, questioning the independence of government bodies and the use of the Constitutional Court for political gain.<sup>39</sup> The Future Forward Party later shared a YouTube video of the press conference on its website.<sup>40</sup> On 8 March, the NCPO’s legal officer filed a complaint with the Technology Crime Suppression Division against Piyabutr and several other Future Forward Party staff. He cited Article 198 of the Thai Criminal Code, which criminalizes contempt of court, and Article 14(2) of the Computer Crime Act, which criminalizes inputting false information into a computer system.<sup>41</sup>

Piyabutr told Amnesty International that the case was meant to stop him from speaking out. The Computer Crime Act “has been widely used to stifle freedom of expression in the online space...I don’t think they just want to shut me up now but also for future cases,” he explained.<sup>42</sup> Speaking to the chilling effect of authorities’ use of the Computer Crime Act in the name of protecting national security, Piyabutr said: “Now the threshold is getting lower and lower, there are many things that we are unsure whether we can talk about it...Being under the NCPO for five years also created the feeling among law enforcement officers that they might be able to do anything under the threat of national security so this kind of mindset among officers must be changed.”<sup>43</sup>

On 21 February 2020, Thailand’s Constitutional Court dissolved the Future Forward Party and ruled to prohibit 16 party executives from competing in elections for ten years following a request made by the Election Commission.<sup>44</sup>

Authorities have not only targeted those critical of the Election Commission and Constitutional Court for their online activities in recent months. On 4 June 2019, Capt Serm Suk Pholngam of the Royal Thai Army’s 33<sup>rd</sup> Military Circle filed a complaint at Mae Ping police station claiming that two Facebook posts by Chiang Mai University Asst Prof Pinkaew Laungaramsri and former Red Shirt<sup>45</sup> leader Harnsak Bensripitak had brought false information into a computer system which might cause harm to the general public, in violation of the Computer Crime Act.<sup>46</sup>

The case was based on social media posts relating to a march that took place on 10 January 2019. Organized by the Walk to Vote group in Chiang Mai, the march called on the government to facilitate national elections. The same day, troops from the Royal Thai Army’s 33<sup>rd</sup> Military Circle were collecting donations for victims affected by cyclone Pabuk, which had struck Thailand a week earlier.<sup>47</sup> Pinkaew and Harnsak posted photographs of 33<sup>rd</sup> Military Circle personnel at Wat Gate Muang sub-district, with Pinkaew’s post reading, “Chiang Mai people with military 33<sup>rd</sup> circle. Walk to Vote 5555 good music, nice stage,” and Harnsak’s

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<https://www.reuters.com/article/us-thailand-election/thai-election-panel-disqualifies-princess-as-pm-candidate-idUSKCN1Q000L> (accessed 4 December 2019).

<sup>38</sup> Amnesty International, “Thailand: Decision to Dissolve Political Party Shows Restrictive Environment for Human Rights,” 7 March 2019, <https://www.amnesty.org/en/press-releases/2019/03/thailand-decision-dissolve-political-party-restrictive-environment-human-rights/> (accessed 4 December 2019); “Constitutional court disbands Thai Raksa Chart,” *Bangkok Post*, 7 March 2019, <https://www.bangkokpost.com/thailand/politics/1640796/constitutional-court-disbands-thai-raksa-chart> (accessed 4 December 2019).

<sup>39</sup> “Future Forward’s Piyabutr denies charges,” *Bangkok Post*, 17 April 2019, <https://www.bangkokpost.com/thailand/politics/1662868/future-forwards-piyabutr-denies-charges> (accessed 4 December 2019).

<sup>40</sup> Future Forward Party Official Website, <https://en.futureforwardparty.org/> (accessed 4 December 2019).

<sup>41</sup> “NCPO to bring charges against FFP for contempt of court,” *Prachatai English*, 11 March 2019, <https://prachatai.com/english/node/7965> (accessed 4 December 2019).

<sup>42</sup> Amnesty International interview with Piyabutr Saengkanokkul, 8 December 2019, Bangkok, Thailand.

<sup>43</sup> Amnesty International interview with Piyabutr Saengkanokkul, 8 December 2019, Bangkok, Thailand.

<sup>44</sup> Amnesty International, “Thailand: Authorities must reverse dissolution of opposition Future Forward Party,” 21 February 2020, <https://www.amnesty.org/en/latest/news/2020/02/thailand-authorities-must-reverse-dissolution-of-opposition-future-forward-party/> (accessed 2 March 2020).

<sup>45</sup> The phrase “Red Shirts” was popularized following protests against the government in 2010, during which at least 90 people died and over 2,000 were wounded. The anti-government protesters were led by United Front for Democracy against Dictatorship, who were also known as “Red Shirts.” See Human Rights Watch, *Descent into Chaos: Thailand’s 2010 Red Shirt Protests and the Government Crackdown*, 3 May 2011, <https://www.hrw.org/report/2011/05/03/descent-chaos/thailands-2010-red-shirt-protests-and-government-crackdown> (accessed 7 April 2020).

<sup>46</sup> Police documents seen by Amnesty International.

<sup>47</sup> Thai Lawyers for Human Rights, *Restrictions and Harassments Remain: Public assemblies in January and before the elections*, 6 February 2019, <https://www.thr2014.com/?p=10794&lang=en> (accessed 4 December 2019).

reading, “Thanks the chief of 33<sup>rd</sup> military circle for sending the music band to join the Walk to Vote activity. Our activity was actually quite fun because of your band, thank you.”<sup>48</sup>

Captain Sermsuk Pholngam alleged that people who read Pinkaew’s and Harnsak’s posts would not know the real objective of the 33<sup>rd</sup> Military Circle’s activities and would stop donating to those affected by the cyclone.<sup>49</sup> Although Pinkaew believed that the case against her was weak, she told Amnesty International: *“Even though we all know the case is very silly, even a law academic friend of mine . . . said that it’s a stupid case but we cannot predict how it’s going to end because this justice system is not moving according to rule of law. No one can predict anything.”*<sup>50</sup>

On 29 January 2020, more than a year after the event took place, the case against Professor Pinkaew and Mr. Harnsak was dismissed by the Provincial Police Region 5 Office.<sup>51</sup>

Pinkaew believes that the authorities’ purpose in filing cases for online activities is to stifle efforts that hold them to account: *“This is their strategy. All these cases are SLAPP (Strategic Lawsuit Against Public Participation) cases; all they want is to stop us from doing the activities that we want to do. They have their people who have free time to go file cases against all of us. But we are not people who have free time to do all this. It’s such an unfair thing.”*<sup>52</sup>

The ongoing monitoring of Pinkaew’s social media activities is consistent with the practices of the previous government. On two previous occasions, after the coup in 2014 and again in 2017, the military brought Pinkaew to the barracks of 33<sup>rd</sup> Military Circle in Chiang Mai for interrogation.<sup>53</sup> Her second visit was prompted by the publication of a picture on Pinkaew’s Facebook page that showed her with 10 to 15 other people at Thae Pae Gate in Chiang Mai with their faces to the wall and their hands raised. Pinkaew commented on the Facebook post with the words, “Freedom freedom freedom,” which military personnel claimed was a political statement.<sup>54</sup>

Asked what the Thai government could do to address ongoing restrictions on the right to freedom of expression online, Pinkaew told Amnesty International: *“My recommendation? ...It’s not the job of the military to monitor people’s Facebook.”*<sup>55</sup>

Since the elections of March 2019 authorities have also failed to investigate attacks on human rights defenders and activists and have brought criminal charges against those who criticize them for these failures online.<sup>56</sup> In July 2019, “Suchanan” was arrested along with 13 other people for allegedly posting photos and comments on Facebook accusing police officers of responsibility for attacks on activist Sirawith “Ja New” Seritiwat. The Attorney General filed a complaint against “Suchanan,” claiming that the posts had caused disharmony and could potentially cause serious harm to national security in violation of Article 14 of the Computer Crime Act.<sup>57</sup> Speaking to Amnesty International in November 2019, “Suchanan” said: *“I really want Amnesty International to talk about this at different levels to let people outside Thailand know that we don’t have basic freedoms here. We are silenced by the law and we cannot criticize the government or authorities.”*<sup>58</sup>

On 4 July 2019, following 28 June attacks on human rights activist Ja New by up to four individuals who beat him with baseball bats and left him hospitalized,<sup>59</sup> “Suchanan” allegedly uploaded a photo to Facebook of Pol Gen Chaiwat Ketworchai, deputy chief of the Royal Thai Police Headquarters, claiming that he was a

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<sup>48</sup> Police documents seen by Amnesty International.

<sup>49</sup> Police documents seen by Amnesty International.

<sup>50</sup> Amnesty International telephone interview with Pinkaew Laungaramsri, 30 November 2019, Bangkok, Thailand. Police documents seen by Amnesty International.

<sup>51</sup> Amnesty International telephone interview with Pinkaew Laungaramsri, 13 February 2020, Bangkok, Thailand.

<sup>52</sup> Amnesty International telephone interview with Pinkaew Laungaramsri, 30 November 2019, Bangkok, Thailand.

<sup>53</sup> Amnesty International telephone interview with Pinkaew Laungaramsri, 30 November 2019, Bangkok, Thailand.

<sup>54</sup> Amnesty International telephone interview with Pinkaew Laungaramsri, 30 November 2019, Bangkok, Thailand.

<sup>55</sup> Amnesty International telephone interview with Pinkaew Laungaramsri, November 30, 2019, Bangkok, Thailand.

<sup>56</sup> Thai Lawyers for Human Rights, *The rise of systematic violence: observations on the attacks against political activists*, 12 June 2019, <https://www.tlhr2014.com/?p=12776&lang=en> (accessed 4 December 2019); Panu Wongcha-um, Panarat Thepumpant, Matthew Tostevin, “Hard right: Political divide deepens in Thailand,” *Reuters*, 5 September 2019, <https://www.reuters.com/article/us-thailand-politics-right-analysis/hard-right-political-divide-deepens-in-thailand-idUSKCN1VQ0JS> (accessed 4 December 2019).

<sup>57</sup> Police documents seen by Amnesty International.

<sup>58</sup> Amnesty International telephone interview with “Suchanan,” 16 November 2019, Bangkok, Thailand.

<sup>59</sup> Amnesty International, “Thai authorities urged to bring to justice attackers of Ja New, Ekachai and Ford,” 28 June 2019, <https://www.amnesty.or.th/en/latest/news/725/> (accessed 4 December 2019). ‘Ja New’ assaulted again, sent to ICU, *Bangkok Post*, 28 June 2019, <https://www.bangkokpost.com/thailand/politics/1703660/ja-new-assaulted-again-sent-to-icu> (accessed 4 December 2019).

mafia leader responsible for harassing democracy activists Ekkachai Hongkangwan, Anurak “Ford” Jeantawanich, and Ja New.<sup>60</sup>

The same night “Suchanan” allegedly posted another photo of Pol Gen Chaiwat Ketworchai and Chief Officer of the Technology Crime Suppression Division Pol Gen Jirapop Puridej. In her post, she called on the latter to address the issue of attacks on activists and claimed that four non-commissioned police officers had helped Pol Gen Chaiwat Ketworchai to attack Ja New, Ekkachai and “Ford.” “Suchanan” allegedly further claimed that Chaiwat was the “left hand” of Deputy Prime Minister Gen Prawit Wongsuwan.<sup>61</sup>

On 22 July 2019, “Suchanan” was arrested and detained, along with 13 other defendants who were accused of sharing the post, at Thung Song Hong police station in Bangkok. While the remaining 13 defendants pleaded guilty to violating Article 14 of the Computer Crime Act, “Suchanan” denied the accusations made against her, and was indicted on 6 September and later released on bail.<sup>62</sup> The next hearings in “Suchanan”’s case are scheduled for September 2020.<sup>63</sup>

Commenting on her case, “Suchanan” said: “*I feel like my rights have been violated and it’s unfair treatment, not only to me but to other people. Whether I did it or not, it’s basic freedom anyway—everyone has the right to express their will.*”<sup>64</sup>

## RESTRICTING EXPRESSION RELATED TO THE MONARCHY

***“Authorities seem to avoid using [Article 112] and use 116 instead . . . This is quite depressing—if we focus attention on 112 people can clearly say the situation is better, fewer 112 cases. But that’s really not true because it’s just being displaced by some other laws. The end result is that people are still being prosecuted for freedom of expression.”***

Sarinee Achavanuntakul, Thai Netizen Network<sup>65</sup>

Despite the pause on cases being filed under Thailand’s strict *lèse majesté* law, the government has continued to prosecute individuals posting content deemed potentially injurious to the monarchy. These prosecutions are typically brought under one of two broadly-worded laws—either the sedition law (Article 116 of the Thai Criminal Code) or a provision of the Computer Crime Act. Indeed, such cases may be filed not only for content that is made public, but also for private messages sent through applications such as LINE messenger.

Article 112 of the Thai Criminal Code, the country’s *lèse majesté* law, provides for up to 15 years’ imprisonment for anyone who “defames, insults or threatens the King, the Queen, the Heir-apparent, or the Regent.”<sup>66</sup> Charges under Article 112 have typically been brought by authorities who view the posting or sharing of critical commentary online as offensive to the monarchy.<sup>67</sup> In February 2018, however, the Attorney General’s office issued a directive stating that it must make the final decision whether to prosecute

<sup>60</sup> Police documents seen by Amnesty International.

<sup>61</sup> Police documents seen by Amnesty International.

<sup>62</sup> Police documents seen by Amnesty International; Amnesty International interview with legal representatives of “Suchanan,” 14 November 2019, Bangkok, Thailand.

<sup>63</sup> Amnesty International trial monitoring, 4 November 2019, Bangkok, Thailand.

<sup>64</sup> Amnesty International telephone interview with “Suchanan,” 16 November 2019, Bangkok, Thailand.

<sup>65</sup> Amnesty International telephone interview, 28 October 2019, Bangkok, Thailand.

<sup>66</sup> Thailand Criminal Code, Article 112, <http://library.siam-legal.com/thai-law/criminal-code-royal-family-sections-107-112/> (accessed 4 December 2019).

<sup>67</sup> Human Rights Watch, “*To Speak Out is Dangerous*”: The Criminalization of Peaceful Expression in Thailand, 24 October 2019, <https://www.hrw.org/report/2019/10/24/speak-out-dangerous/criminalization-peaceful-expression-thailand> (accessed 4 December 2019), p. 91.

cases under Article 112.<sup>68</sup> This procedural hurdle seems to have been effective in stopping cases from being brought under the law; in this regard Thai Lawyers for Human Rights has reported that no new cases were brought under Article 112 over the entire course of 2019.<sup>69</sup>

Yet the authorities have found ready substitutes at hand. Since the elections of March 2019, the authorities have used the Computer Crime Act to bring criminal charges against several individuals whose posts have been deemed to be an “offense about the security of the Kingdom.”<sup>70</sup> In October 2019, for example, a legal representative of the Ministry of Digital Economy and Society filed criminal charges against activist Kaan Pongraphapan under Article 14(3) of the Computer Crime Act for comments he made on Facebook about the demise of past European monarchs.

The prosecution stemmed from a viral social media moment. On 1 October 2019, a royal motorcade in downtown Bangkok disrupted transportation routes and prompted more than 700,000 tweets on Twitter, with many voicing frustration at the traffic caused by the motorcade.<sup>71</sup> In response, Kaan posted comments on Facebook asking, “How do you want to end? Shot like the Russian? Guillotine like France? Exiled like Germany? Referendum like Greece? Or exiled like Laos?”<sup>72</sup>

At around 8 pm on 7 October 2019, officers of the Technology Crime Suppression Division visited Kaan at his home, arresting and detaining him in Chang Wattana police station before charging him for his online post. Kaan posted bail of 100,000 Thai Baht (US \$3,062) the following day.<sup>73</sup>

Minister for Digital Economy and Society and former government spokesman Puttipong Punnakanta made harsh comments about the case, saying: “*We are taking this seriously and this arrest should serve as an example to others, that they should think carefully because it can have criminal consequences.*”<sup>74</sup> Puttipong Punnakanta has previously used his own Facebook page to volunteer “to purge content hurtful to Thais.”<sup>75</sup>

A human rights lawyer drew parallels between Kaan’s and Jatupat “Pai” Boonpattaraksa’s cases, saying: “*It’s a bluff. [They] picked someone who can be a good example for the public. Kan is someone in the spotlight. Just like Pai’s case. They don’t arrest normal people who aren’t activists. To make [Information Operations] effective, it works like advertisement, you need to find someone interesting.*”<sup>76</sup>

The government’s harassment of popular social media users responsible for posting content deemed critical of the monarchy is driving prosecutions throughout Thailand. On 19 February 2020, 20-year-old Twitter user “Niranam” was arrested at his family home in Pattaya district, Chonburi Province and later charged for violating Article 14(3) of the Computer Crime Act as a result of a Twitter post which included a picture of King Maha Vajiralongkorn and a satirical comment.<sup>77</sup>

On the morning of 19 February 2020, around ten uniformed and plainclothes police officers arrived at the family home of “Niranam” and produced a search warrant issued by the Pattaya Provincial Court. Following the search, during which two mobile phones were seized, both “Niranam” and his parents were taken to Pattaya Police Station and interrogated. The police officers did not produce an arrest warrant.

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<sup>68</sup> สมน.อัยการสูงสุด ออกแนวปฏิบัติใหม่ ควบคุม 112 ให้ อสส.พิจารณา, *BBC*, 27 February 2018, <https://www.bbc.com/thai/thailand-43209449> (accessed 4 December 2019).

<sup>69</sup> Amnesty International interview with Thai Lawyers for Human Rights, 14 November 2019, Bangkok, Thailand. See Thai Lawyers for Human Rights, *Changes in Thailand’s lèse majesté prosecutions in 2018*, 15 January 2019, <https://www.tlhr2014.com/?p=10431&lang=en> (accessed 4 December 2019).

<sup>70</sup> The Computer Crime Act, Article 14(3), translation by Thai Netizen Network, <https://thainetizen.org/docs/cybercrime-act-2017/> (accessed 4 December 2019).

<sup>71</sup> Teeranai Charuvastra, “Netizens Angered By Motorcade Traffic Woes,” *Khaosod English*, 2 October 2019, <http://www.khaosodenglish.com/news/2019/10/02/netizens-angered-by-motorcade-traffic-woes/> (accessed 4 December 2019).

<sup>72</sup> Amnesty International interview with Kaan Pongraphapan, 20 October 2019, Bangkok, Thailand.

<sup>73</sup> Amnesty International interview with human rights lawyer, 28 October 2019, Bangkok, Thailand.

<sup>74</sup> “Thailand arrests man amid #royalmotorcade controversy,” *Reuters*, 8 October 2019, <https://www.reuters.com/article/us-thailand-cyber/thailand-arrests-man-amid-royalmotorcade-controversy-idUSKBN1WN0GE> (accessed 4 December 2019).

<sup>75</sup> Patpicha Tanakasempipat, “Thailand asks tech firms to set up centers against ‘fake news’ in Southeast Asia,” *Reuters*, 19 August 2019, <https://www.reuters.com/article/us-asean-fakenews/thailand-asks-tech-firms-to-set-up-centers-against-fake-news-in-southeast-asia-idUSKCN1V917J> (accessed 4 December 2019).

<sup>76</sup> Amnesty International interview with human rights lawyer, 28 October 2019, Bangkok, Thailand.

<sup>77</sup> Thai Lawyers for Human Rights, “Twitter User named “Niranam\_,” arrested for Computer Crime offence over posts related to Thai monarchy, denied bail as the Court deems it a “serious offence,” 20 February 2020, <https://www.tlhr2014.com/?p=16092&fbclid=IwAR3iXwWLP0KFO4tL9ein-kkqoUsIdhijrRubNYAVyXY7PDvlyy6TkNyg1A&lang=en> (accessed 2 March 2020).



During “Niranam”’s interrogation, police officers produced more than 30 copies of screenshots from his Twitter account, including several that included content related to the monarchy. Officers present also recorded the proceedings of the interrogation with mobile phones. On 20 February 2020, Pol Lt Chonwit Athiphansi of Pattaya Police Station filed a motion to remand “Niranam” in custody during their investigation on the basis that he was a flight risk and citing the high penalty of his offense.<sup>78</sup> After initially being denied bail by the Pattaya Provincial Court on 20 February 2020, “Niranam”’s family later posted bail of 200,000 Thai Baht (US \$6,123) on 24 February, 2020.<sup>79</sup> The preliminary hearing in his case is scheduled for 8 June 2020.<sup>80</sup>

Authorities have also filed charges against individuals posting social media content privately, claiming that they were protecting national security. In January 2019, in response to a complaint filed by the Attorney General, police charged “Malee” under Articles 33, 83, 91, 116 and 209 of the Thai Criminal Code, as well as Article 8 of the Computer Crime Act. They claimed that she had created a criminal organization, instigated members of the organization to rise up against the monarchy and government, and shared a photo to a private group on the LINE messenger application of her holding the flag of a “Thai Federation,” the Organization for a Thai Federation.<sup>81</sup>

On 4 December 2018, “Malee” had travelled to Central World mall in Ubon Ratchathani, where photos were taken of her holding a flag emblazoned with the logo of the Organization for a Thai Federation. “Malee” later shared the photos with friends on the LINE messenger application. On 8 December, around 30 police officers showed up at “Malee”’s home, from where she was taken for interrogation at a nearby police station before being transferred to 22<sup>nd</sup> Military Circle in Warin Chamrap district. “Malee” told Amnesty International, *“I was scared then because I never imagined that one photo would cause a lot of problems. I didn’t post it on Facebook or anywhere, I don’t have Facebook. I just posted it on LINE group.”*<sup>82</sup>

Military personnel detained “Malee” for four days before releasing her, only to arrest her again on 13 December before taking her to 11<sup>th</sup> Military Circle in Bangkok. “Malee” was released on 15 December and was issued with a summons on 16 January 2019.<sup>83</sup> Alluding to the gravity of the case, “Malee” told Amnesty International: *“The officers who brought me back asked me to take photos with them and for my neighbours to be in the photo as witnesses. They said we will show the photo to the King.”*<sup>84</sup> Formal charges were brought on 23 September 2019, and “Malee” was required to pay 600,000 Thai Baht (US \$18,371) bail.<sup>85</sup>

The case against “Malee” is one of 11 brought against alleged members of the Organization for a Thai Federation, in which a total of at least 20 people are facing charges.<sup>86</sup> Authorities have claimed that the group wants to overthrow the monarchy and government; change the regime from constitutional monarchy to a presidential federation; and is trying to convince people to disrupt harmony in the Kingdom which can cause serious harm to national security.<sup>87</sup>

“Malee” is currently the only defendant attending court to face these charges as the whereabouts of the other defendants is unknown. The dangers of being accused of disrespect to the monarchy are well-known,

<sup>78</sup> Thai Lawyers for Human Rights, “Twitter User named “Niranam\_,” arrested for Computer Crime offence over posts related to Thai monarchy, denied bail as the Court deems it a “serious offense,” 20 February 2020, <https://www.tlhr2014.com/?p=16092&fbclid=IwAR3iXwWLPK0KF04tL9ein-kkqoUsDhjrRubNYAVyXY7PDvlyy6TkNyg1A&lang=en> (accessed 2 March 2020).

<sup>79</sup> Amnesty International interview with Thai Lawyers for Human Rights, 6 March 2020, Bangkok, Thailand. Thai Lawyers for Human Rights, “His Parents’ First Smile in Six Days: a record of “Niranam\_” before bail,” 27 February, 2020, [https://www.tlhr2014.com/?p=16216&fbclid=IwAR0ufu5LmV5jbCTpyJpbU3Lb2oO3GrTh\\_ColnFpfm1e6DyekAYkh3bkfofA&lang=en](https://www.tlhr2014.com/?p=16216&fbclid=IwAR0ufu5LmV5jbCTpyJpbU3Lb2oO3GrTh_ColnFpfm1e6DyekAYkh3bkfofA&lang=en) (accessed 2 March 2020).

<sup>80</sup> Amnesty International interview with Thai Lawyers for Human Rights, 7 April 2020, Bangkok, Thailand.

<sup>81</sup> Amnesty International interview with legal representatives of “Malee,” 14 November 2019, Bangkok, Thailand; Under Article 209 of the Thai Criminal Code, the Organization for a Thai Federation qualifies as a “secret society” as it is a group whose “proceedings are secret and whose aim to be unlawful.” See Thai Criminal Code, Article 209, <http://library.siam-legal.com/thai-law/criminal-code-public-order-sections-209-216/> (accessed 4 December 2019).

<sup>82</sup> Amnesty International telephone interview with “Malee,” 16 November 2019, Bangkok, Thailand.

<sup>83</sup> Amnesty International telephone interview with “Malee,” 16 November 2019, Bangkok, Thailand, and Amnesty International interview with legal representatives of “Malee,” 14 November 2019, Bangkok, Thailand.

<sup>84</sup> Amnesty International telephone interview with “Malee,” 16 November 2019, Bangkok, Thailand.

<sup>85</sup> Thai Lawyers for Human Rights, *สั่งฟ้องหญิงสูงวัยอุบลฯ ม.116-สั่งยี่-พ.ร.บ.คอมฯ เหตุสวมเสื้อดำ*, 23 September 2019, <https://www.tlhr2014.com/?p=13883> (accessed 4 December 2019).

<sup>86</sup> Thai Lawyers for Human Rights, *A year of legal actions against the ‘Organization For a Thai Federation: At least 20 charged in eleven cases*, 15 October 2019, <https://www.tlhr2014.com/?p=14073&lang=en> (accessed 4 December 2019).

<sup>87</sup> Police documents seen by Amnesty International.

as several Thai exiles charged with lèse majesté have disappeared and are believed dead.<sup>88</sup> The next hearings in “Malee”’s case are scheduled for September 2020.<sup>89</sup>

Referring to the shift away from using Article 112 to prosecute online speech, a human rights lawyer told Amnesty International: “(Article) 112 hasn’t been used for some time but some people still use this witch hunt strategy to silence people with political opinions. Another issue is that they don’t use (Article) 112 but they use whatever they can related to national security.”<sup>90</sup>

## HARASSING AND INTIMIDATING ONLINE USERS

Authorities use various means to stymie online expression. Besides bringing criminal charges to halt the spread of information relating to the government and monarchy, police have resorted to intimidating social media users whose posts go viral, by interrogating them without producing the requisite legal documentation. At the same time, authorities have done little to police the spread of abusive content directed at critics of the government.

On 1 November 2019 at around 9 am, plainclothes police arrested a student from Thammasat University, Pathum Thani Province, and took her to Klong Luang police station, where 10 officers interrogated her in relation to her previous Twitter posts concerning the government of Thailand and the monarchy, which were subsequently retweeted by 60,000 users.<sup>91</sup> The student was presented with print outs of tweets from October 2019, and was recorded as she answered questions about her online activities for around an hour.<sup>92</sup> The officers warned the student not to speak out about the interrogation, and forced her to sign two documents providing her consent for the questioning and stating that she understood she would face prosecution if she posted similar content in the future.<sup>93</sup> Before deleting her account, the student tweeted: “I want to warn everyone that think before you tweet and retweet. They are people who are always watching.”

Amnesty International spoke with another Twitter user, “Chaloem,” who described a similar case that took place after the March 2019 elections. After posting content relating to the monarchy, which was retweeted by around 50,000 users, “Chaloem” was interrogated for two hours at his place of work by plainclothes police officers.<sup>94</sup> He told Amnesty International that the officers did not produce any documentation to identify themselves, but warned him that senior officials were aware of his online activities. He recalled:

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<sup>88</sup> For example, after fleeing Thailand in 2016, Wutipong “Kotee” Kotkammakun was abducted from his home in Vientiane, Laos, by a group of men in black in July 2017, and has not been seen since. Hannah Ellis-Petersen, “Thai activists accused of insulting monarchy ‘disappear’ in Vietnam,” *The Guardian*, 10 May 2019, <https://www.theguardian.com/world/2019/may/10/thai-activists-accused-of-insulting-monarchy-disappear-in-vietnam> (accessed 4 December 2019). On 8 May 2019, Chuchee Chevasuth, Siam Teerawut, and Kritsana Taphai were allegedly deported from Vietnam to Thailand, although Deputy Prime Minister Prawit Wongsuwan has denied that the defendants were brought from Vietnam. Amnesty International, “Thailand: Confirm safety and whereabouts of three Thai citizens,” 10 May 2019, <https://www.amnesty.org/en/latest/news/2019/05/thailand-confirm-safety-and-whereabouts-of-three-thai-citizens/> (accessed 4 December 2019); Human Rights Watch, “Thailand: Critics Feared ‘Disappeared,’” 9 May 2019, <https://www.hrw.org/news/2019/05/09/thailand-critics-feared-disappeared> (accessed 4 December 2019). See also, “Exile’s parents seek information on his disappearance,” *Associated Press*, 13 May 2019, <https://www.bangkokpost.com/thailand/politics/1676880/exiles-parents-look-for-information-on-his-disappearance> (accessed 4 December 2019). Pavin Chachavalpongpun, “The Case of Thailand’s Disappearing Dissidents,” *New York Times*, 14 October 2019, <https://www.nytimes.com/2019/10/14/opinion/thailand-dissidents-disappearance-murder.html> (accessed 4 December 2019).

<sup>89</sup> Amnesty International interview with legal representatives of “Malee,” 14 November 2019, Bangkok, Thailand.

<sup>90</sup> Amnesty International interview with human rights lawyer, 28 October 2019, Bangkok, Thailand.

<sup>91</sup> Amnesty International interview with Thammasat student, 5 November 2019, Bangkok, Thailand. See also Thai Lawyers for Human Rights, *Officers from unidentified agency holding TU student in custody, threatening her to divulge information after her retweeting a post concerning the monarchy*, 12 November 2019, <https://www.tlhr2014.com/?p=14404&lang=en> (accessed 4 December 2019).

<sup>92</sup> Amnesty International interview with Thammasat student, 5 November 2019, Bangkok, Thailand. See also Andrew MacGregor Marshall Facebook post, 5 November 2019, <https://www.facebook.com/zenjournalist/posts/10157245842251154> (accessed 4 December 2019).

<sup>93</sup> Amnesty International interview with Thammasat student, 5 November 2019, Bangkok, Thailand. See also Andrew MacGregor Marshall Facebook post, 3 November 2019, <https://www.facebook.com/zenjournalist/posts/10157245842251154> (accessed 4 December 2019).

<sup>94</sup> Amnesty International interview with “Chaloem,” 14 November 2019, Bangkok, Thailand.

*"[Staff at my organisation] told me that those guys were police officers but they didn't introduce themselves. All of them were men. They didn't produce a document, they didn't say where they were from and they didn't tell me their names. No documents or anything. And he said, 'Up there know about your tweet.'"*<sup>95</sup>

"Chaloem" was also forced by the officers to delete online content pertaining to the monarchy while they took a video recording without his consent: *"These officers told me that I couldn't tweet about this because I knew that the King's security is the number one priority . . . They told me to delete those tweets. One of them was taking a video throughout the interrogation. They didn't inform me about the video recording. So, when I was deleting the tweets they were also recording the video."*<sup>96</sup> In both cases, police officers failed to produce either an arrest warrant or summons in advance of the questioning, and warned the interviewees not to share information about their experiences.<sup>97</sup> Such tactics by the authorities serve not only to harass and intimidate the individual concerned, but also send a chilling message to other online activists.

## PURSuing "FAKE NEWS"

In November 2019, the Ministry of Digital Economy and Society launched Anti Fake News Centers to monitor online content that supposedly misleads people or broadly affects "peace and order, good morals, and national security."<sup>98</sup> The centres have a Facebook page, LINE messaging group, and website where examples of "fake news" are published.<sup>99</sup>

On 25 March 2020, the Government of Thailand announced its prohibition of the "reporting or spreading of information about COVID-19 which is false and may incur public fear" as part of the Emergency Decree invoked in response to the outbreak of COVID-19.<sup>100</sup> The Emergency Decree empowers public officials to censor these communications and prosecute both those responsible for their dissemination and individuals whose statements are deemed critical of authorities' response to the COVID-19 outbreak, under the Computer Crime Act or the Emergency Decree. These laws provide for up to five years' and two years' imprisonment respectively.<sup>101</sup>

On 16 March, 42-year old artist Danai Ussama – also known as "Zen Wide" – posted on Facebook that upon returning from Spain, neither he nor other passengers from his flight encountered screening for COVID-19 at Bangkok's Suvarnabhumi Airport. On 23 March 2020, Danai was arrested at his art gallery in Phuket following a complaint filed by Airports of Thailand PCL, and later charged under Section 14 (2) of the Computer Crime Act for "putting into a computer system false computer data in a manner that is likely to cause panic in the public."<sup>102</sup> Danai was released on 24 March after posting bail of 100,000 Thai Baht (US \$3,061).<sup>103</sup>

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<sup>95</sup> Amnesty International interview with "Chaloem," 14 November 2019, Bangkok, Thailand.

<sup>96</sup> Amnesty International interview with "Chaloem," 14 November 2019, Bangkok, Thailand.

<sup>97</sup> Amnesty International interview with Thammasat student, 5 November 2019, Bangkok, Thailand, and Amnesty International interview with "Chaloem," 14 November 2019, Bangkok, Thailand. See also Thai Lawyers for Human Rights, *Officers from unidentified agency holding TU student in custody, threatening her to divulge information after her retweeting a post concerning the monarchy*, 12 November 2019, <https://www.tlhr2014.com/?p=14404&lang=en> (accessed 4 December 2019).

<sup>98</sup> Patpicha Tanakasempipat, "Thailand unveils 'anti-fake news' center to police the internet," *Reuters*, 1 November 2019, <https://www.reuters.com/article/us-thailand-fakenews/thailand-unveils-anti-fake-news-center-to-police-the-internet-idUSKBN1XB480> (accessed 4 December 2019); "Thailand's 'fake news' monitoring hub fuels censorship concerns," *Agence France-Presse*, 29 October 2019, <https://www.scmp.com/news/asia/southeast-asia/article/3035400/thailand-launches-fake-news-monitoring-hub-amid-fears-it> (accessed 4 December 2019).

<sup>99</sup> Anti-Fake News Center, <https://www.antifakenewscenter.com/> (accessed 4 December 2019).

<sup>100</sup> Government of Thailand, *Terms of Reference of the Emergency Decree in effect from 26 March 2020*, unofficial translation by Amnesty International.

<sup>101</sup> Amnesty International, "Thai Authorities' Covid-19 Response Must Not Lead to Unwarranted Restrictions on Human Rights and Freedom of Expression," 27 March 2020, <https://www.amnesty.org/download/Documents/ASA3920422020ENGLISH.PDF> (accessed 30 March 2020).

<sup>102</sup> Thai Lawyers for Human Rights, "Artist arrested for posting 'Suvarnabhumi Airport has no screening for Covid-19' while in 14-day self-quarantine after his return from Spain," 24 March 2020, <https://www.tlhr2014.com/?p=16636&fbclid=IwAR1IzqDUCGo1XBF70BuutAoUnvWxQt2Cf0PGPUOI33QGJfEVLec6wvaH76g&lang=en> (accessed 30 March 2020); Human Rights Watch, "Thailand: COVID-19 Clampdown on Free Speech," 25 March 2020, <https://www.hrw.org/news/2020/03/25/thailand-covid-19-clampdown-free-speech> (accessed 30 March 2020).

<sup>103</sup> Amnesty International interview with Thai Lawyers for Human Rights, 7 April 2020, Bangkok, Thailand.

Activists have raised concerns that the involvement of state agencies in Anti Fake News centres could lead to reprisals against individuals reporting false information posted by government representatives. As one explained:

*“If I want to report fake news done by the government agency I would probably pause and say, “Are they going to retaliate against me somehow?” What’s worrying to me about the center is not so much that they’re going to produce fake news or disinformation because I haven’t seen that yet. But is this going to be a way to entrap some dissidents or people who volunteer information in good faith because of a total lack of transparency?”<sup>104</sup>*

Notwithstanding rhetorical commitments by the government to halt the spread of misleading content, activists also told Amnesty International that online users had repeatedly posted “hate speech” and false information targeting them, and that in some cases authorities had failed to take steps to remove the content.<sup>105</sup>

Nuttaa explained that despite visiting police on several occasions to complain, content targeting her remained online: *“For me, all of the complaints are not addressed. Even when I went to complain with my lawyer. I was sitting at the same desk with the police and they were helpful—and they said, “I found them, this one in Nakhon Pathom, this one in Chiang Mai, I got everything. It’s illegal, we have to catch them.” Then nothing happens . . . I filed a lot of complaints but the police never do anything about it.”<sup>106</sup>*

Commenting on the impact of authorities’ failure to address online abuse directed at him and to investigate attacks on human rights defenders, Kaan told Amnesty International: *“During my case people criticize a lot, my lawyer saw the comments from people—he’s afraid some ultra-royalist will assault me if I go alone at night . . . He told me not to leave home unless it’s necessary, and if I do to text family or friends . . . I was afraid to be attacked or to be gotten rid of. I don’t want to be like Ja New or Ekachai. Until now Ekachai or Ja New cannot find the people who attacked them. I’m afraid of that.”<sup>107</sup>*

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<sup>104</sup> Amnesty International telephone interview with Sarinee Achavanuntakul, 28 October 2019, Bangkok, Thailand.

<sup>105</sup> Amnesty International interview with Nuttaa ‘Bow’ Mahattana, 20 November 2019, Bangkok, Thailand and Amnesty International interview with Kaan Pongpraphapan, 20 October 2019, Bangkok, Thailand.

<sup>106</sup> Amnesty International interview with Nuttaa ‘Bow’ Mahattana, 20 November 2019, Bangkok, Thailand.

<sup>107</sup> Amnesty International interview with Kaan Pongpraphapan, 20 October 2019, Bangkok, Thailand.

# 3. LAWS USED TO RESTRICT ONLINE EXPRESSION

The elected government of Thailand has followed its predecessor's example by using several vaguely-worded laws to stifle the right to freedom of expression online. While prosecutions of online users under Article 112 of the Thai Criminal Code (the lèse majesté law) have decreased in recent years, the following laws provide the framework for the ongoing criminalization of online expression in Thailand.

## COMPUTER-RELATED CRIME ACT

The Computer-Related Crime Act (Computer Crime Act), enacted in 2007 and amended in 2017, gives authorities license to monitor and suppress online content and to prosecute individuals for various broadly defined violations of the law.

In particular, the law provides for a penalty of up to five years in prison and a fine of up to 100,000 Thai Baht (US \$3,061) for anyone who inputs into a computer system: “false” or “distorted” information “in a manner that is likely to cause damage to the public”;<sup>108</sup> “false computer data in a manner that is likely to damage the maintenance of national security, public safety, national economic security or public infrastructure serving national public interest or cause panic in the public,” and;<sup>109</sup> “any computer data which is an offense about the security of the Kingdom or is an offense about terrorism.”<sup>110</sup> Forwarding or sharing of any content that violates Article 14 is punishable by up to five years in prison and a fine of up to 100,000 Thai Baht (US \$3,061).<sup>111</sup>

## SEDITION

Article 116 of the Thai Criminal Code provides for a penalty of up to seven years' imprisonment for anyone who uses words, writings or other acts to: “bring about a change in the Laws of the Country by the use of

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<sup>108</sup> The Computer Crime Act, Article 14(1), translation by Thai Netizen Network, <https://thainetizen.org/docs/cybercrime-act-2017/> (accessed 4 December 2019).

<sup>109</sup> The Computer Crime Act, Article 14(2), translation by Thai Netizen Network, <https://thainetizen.org/docs/cybercrime-act-2017/> (accessed 4 December 2019).

<sup>110</sup> The Computer Crime Act, Article 14(2), translation by Thai Netizen Network, <https://thainetizen.org/docs/cybercrime-act-2017/> (accessed 4 December 2019).

<sup>111</sup> The Computer Crime Act, Article 14(2), translation by Thai Netizen Network, <https://thainetizen.org/docs/cybercrime-act-2017/> (accessed 4 December 2019).

force or violence”; “raise unrest and disaffection amongst the people in a manner likely to cause disturbance in the country”; or “cause the people to transgress the laws of the Country.”<sup>112</sup>

## CRIMINAL DEFAMATION

Articles 326 to 333 of the Thai Criminal Code describe the crime of defamation, which involves the imputation of information “likely to impair the reputation [of another] or to expose such other person to be hated or scorned.”<sup>113</sup>

The penalty for criminal defamation is up to one year imprisonment and a fine, unless the means of communication is a “document, drawing, painting, cinematography film, picture or letters,” in which case the penalty is up to two years’ imprisonment and a fine of up to 200,000 Thai Baht (US \$6,123).<sup>114</sup>

## EMERGENCY DECREE ON PUBLIC ADMINISTRATION IN EMERGENCY SITUATION

The Emergency Decree on Public Administration in Emergency Situation, initially enacted in 2005 and invoked from 26 March 2020 in response to the COVID-19 pandemic, gives authorities license to restrict freedom of expression and a number of other human rights for violating vaguely worded provisions in the law.

Under Article 9 of the 2005 Emergency Decree, authorities are empowered to censor information which “might instigate fear amongst the public or that is intentionally distorted.”<sup>115</sup> Article 9 further authorizes the Prime Minister to prohibit a “gathering of people or any act of instigating disorder.” In addition, measures issued by power of the Decree further prohibit the dissemination of information relating to COVID-19 that authorities deem “false,” as well as the ability “to assemble, to carry out activities, or to gather at any place that is crowded, or to commit any act which may cause unrest.”<sup>116</sup> Officials can charge individuals under the Computer Crime Act, or under the Emergency Decree itself, which provides for up to two years’ imprisonment and/or a fine of up to 40,000 Thai Baht (US \$1,225).<sup>117</sup>

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<sup>112</sup> Thai Criminal Code, Article 116, <http://library.siam-legal.com/thai-law/criminal-code-offense-internal-security-sections-113-118/> (accessed 4 December 2019).

<sup>113</sup> Thai Criminal Code, Article 326, <http://library.siam-legal.com/thai-law/criminal-code-defamation-sections-326-333/> (accessed 4 December 2019).

<sup>114</sup> Thai Criminal Code, Article 328, <http://library.siam-legal.com/thai-law/criminal-code-defamation-sections-326-333/> (accessed 4 December 2019).

<sup>115</sup> Amnesty International, “Thai Authorities’ Covid-19 Response Must Not Lead to Unwarranted Restrictions on Human Rights and Freedom of Expression,” 27 March 2020, <https://www.amnesty.org/download/Documents/ASA3920422020ENGLISH.PDF> (accessed 30 March 2020).

<sup>116</sup> (Unofficial Translation) Regulation Issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (No. 1), <http://www.mfa.go.th/main/contents/files/news3-20200329-164122-910029.pdf> (accessed 8 April 2020).

<sup>117</sup> Amnesty International, “Thai Authorities’ Covid-19 Response Must Not Lead to Unwarranted Restrictions on Human Rights and Freedom of Expression,” 27 March 2020, <https://www.amnesty.org/download/Documents/ASA3920422020ENGLISH.PDF> (accessed 30 March 2020).

# 4. CONCLUSION AND RECOMMENDATIONS

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted that States are increasingly targeting content specifically on online platforms, using broadly worded restrictive laws to suppress legitimate discourse.<sup>118</sup> Five years of military rule and the accompanying rollback of human rights protections have cemented Thailand's position as one of them, and the government's response to the COVID-19 pandemic so far suggests that these restrictions will tighten further.

The right to freedom of expression 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 the State or any sector of the population. As the UN Human Rights Committee, the body established to oversee the implementation of the International Covenant on Civil and Political Rights, has stated: "[R]estrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected."<sup>119</sup>

Decisive and comprehensive action is needed to undo this legacy and to prevent further restrictions under the guise of responding to the COVID-19 pandemic. With the following recommendations, Amnesty International calls on the Thai government to institute a wide-ranging set of reforms. We note that, as a state party to the International Covenant on Civil and Political Rights, Thailand has made significant international commitments to respect the right to freedom of expression, including online expression. Much more needs to be done, however, to ensure these commitments are implemented.

## TO THE THAI GOVERNMENT

- Fully and effectively respect, protect, promote and fulfil the right to freedom of expression including online;
- Drop all criminal proceedings against human rights defenders, activists, journalists, political figures, and others who have been targeted solely for the peaceful exercise of their right to freedom of expression, and ensure that those already detained are immediately and unconditionally released;
- Stop initiating criminal proceedings against individuals for the peaceful exercise of their human rights, including the right to freedom of expression online;
- End the involvement of the Ministry of Digital Economy and Society in Anti-Fake News Centres and in fact checking operations, and establish an impartial, objective, balanced and independent third-party body to verify factual claims that have the potential to cause harm;

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<sup>118</sup> See report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 6 April 2018, A/HRC/38/35 <https://undocs.org/en/A/HRC/38/35> (accessed 14 February 2020).

<sup>119</sup> UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34 (2011), para. 34.

- Create a safe and enabling environment for online users to peacefully exercise their human rights including their right to freedom of expression without intimidation, harassment, arrest or prosecution.

## TO THE NATIONAL ASSEMBLY

- Amend or repeal laws that restrict or criminalize the peaceful exercise of the right to freedom of expression online, in order to ensure that they meet Thailand's international human rights obligations, including:
  - The Computer-Related Crime Act
  - Article 116 (sedition) of the Thai Criminal Code
  - Articles 326 to 333 (defamation) of the Thai Criminal Code, and
  - Emergency Decree on Public Administration in Emergency Situation.
- Develop a timetable/benchmarks for the repeal or amendment of these laws in consultation with Thai civil society as well as relevant UN bodies, providing an adequate timeframe for public review and consultation.

## TO OTHER GOVERNMENTS

- Urge the Thai authorities to drop criminal prosecutions of human rights defenders, activists, journalists, political figures, and others who have been targeted solely for peacefully exercising their right to freedom of expression. Call on them to amend or repeal laws that restrict the right to freedom of expression online.



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# **“THEY ARE ALWAYS WATCHING”**

## **RESTRICTIONS ON FREEDOM OF EXPRESSION ONLINE IN THAILAND**

Authorities in Thailand are excessively restricting freedom of expression online. Rather than breaking with the established pattern of criminalizing content critical of the authorities, the government is continuing to prosecute people simply for peacefully exercising their right to freedom of expression online and harassing and intimidating online users.

Since the elections of March 2019, the authorities have continued to file criminal charges against individuals who find fault with their performance—whether they criticize the police, the military or the Election Commission of Thailand. People scrutinizing the activities of these government bodies and calling for justice are facing years in prison and huge fines.