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WATCH

# “To Speak Out is Dangerous”

The Criminalization of Peaceful Expression in Thailand



# **To Speak Out is Dangerous**

## **Criminalization of Peaceful Expression in Thailand**

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## Summary

The constitution provides for freedom of speech, but so far Thais don't actually have it.... If you use the freedom, they charge you. It isn't easy, but it is the price you have to pay.

– Watana Maungsook, opposition politician, Bangkok, October 2017

To speak out is dangerous.

– Sirawit Seritiwat, democracy activist, Bangkok, October 2018

In the 1990s, Thailand earned a reputation as an emerging Southeast Asian democracy that respected freedom of expression. That is no longer the case. The five years since the 2014 military coup have been marked by intense government repression of those viewed as political threats, whether opposition politicians, activists seeking a return to democracy, or online critics of military rule. Starting with the week-long “attitude adjustment” sessions imposed on opponents of the coup, the military junta, called the National Council for Peace and Order (NCPO), sought to intimidate and silence opposition to its rule through harassing criminal charges, abusive prosecutions, arbitrary closure of tv, radio, and internet stations, and censorship of online content.

A new, nominally civilian government, elected in March 2019, should have generated hopes for across-the-board reforms. Instead, a rigged electoral process ensured the re-election of the junta prime minister, Gen. Prayut Chan-ocha, who has shown no signs of relaxing his unrelenting and heavy-handed approach to freedom of expression.

According to documentation by the Thai nongovernmental organization iLaw, at least 929 people have been summoned by the authorities to participate in “attitude adjustment” sessions since the coup, while others deemed a problem have been threatened, harassed, and followed. When intimidation failed, the junta used a combination of criminal laws and new decrees issued under martial law and the 2014 interim constitution to arbitrarily arrest, detain, and prosecute its critics. The government's position was made explicit. On September 10, 2015, Prime Minister Prayut told the media that he would not tolerate criticism of his government: “No one can oppose me. If they still don't learn that, they will be detained again and again.... I might tape their mouths shut, too.”

Prosecutions for sedition, a law rarely used before the coup, skyrocketed, with almost any criticism of military rule or the junta treated as a basis for charges. The authorities brought sedition charges against activists critical of the coup and those calling for elections, lawyers providing legal assistance to peaceful protesters, the administrators of a satirical Facebook page, and opposition politicians disparaging the NCPO's performance. As one of those charged put it, "everything against the NCPO is sedition."

Charges of criminal defamation and "disseminating false information" have been wielded against individuals criticizing the performance of the junta or making allegations of corruption, while private companies have emulated the authorities and aggressively used criminal defamation laws against workers and human rights defenders seeking to raise awareness of labor violations or other abuses by private industry.

Prosecutions under Thailand's draconian *lèse-majesté* law, which prohibits insulting the monarchy, also expanded under the junta, as did court-imposed sentences for such offenses. Between 2014 and April 2018, Thai authorities arrested at least 105 people on *lèse-majesté* charges, mostly for posting or sharing critical commentary online about the monarchy. Some of those charged under *lèse-majesté* for critical Facebook posts were sentenced to decades in prison.

Peaceful protesters have also faced arrest, harassment, and criminal prosecution. Immediately after the coup, the junta ordered a ban on political gatherings of more than five people—a ban that remained in place until December 2018. Hundreds of peaceful protesters have been arrested and charged with violating that ban, with some also charged with violating the 2015 Public Assembly Law, sedition, and other criminal laws.

Under an order issued by the NCPO three days after the coup, those charged with sedition, *lèse-majesté*, or violations of junta orders faced trial in military courts, rather than the civilian criminal courts. "Being in a military court was like a fantasy," said pro-democracy activist Sombat Boongaranong. "I never expected civilians, let alone activists, to end up in military court."

On September 12, 2016, the NCPO transferred jurisdiction over such cases to the civilian courts for any new offenses, but many civilians continued to face trial in military courts for alleged crimes that occurred prior to that order. It was not until July 9, 2019—more than

five years after the coup—that Prayut ordered an end to all prosecutions of civilians in military courts and transferred ongoing cases to the civilian courts. Those convicted in the military courts had no right to appeal their convictions.

## Prosecution of Critics of the Coup and the Military

Prime targets of repression have been those openly critical of the coup, the military, or Prime Minister Prayut. Pravit Rojanaphruk, who immediately after the coup was openly critical of the junta, was summoned for two sessions of “attitude adjustment” by the military. The second time, the authorities interrogated him for six hours before several men in civilian clothes wearing surgical masks over their faces blindfolded him and drove him in a van to an undisclosed location, where he was held for two days. When he continued to speak out, he was charged with multiple counts of sedition and posting false information in violation of the Computer-Related Crime Act. His lawyer has told him he faces up to 34 years in prison.

Activist Sombat Boongarmanong defied the call to appear for “attitude adjustment” after the coup, criticized the coup on social media, and encouraged people to gather and give the three-finger salute featured in the movie *The Hunger Games* to show their opposition to the coup. After 11 days, he was apprehended and detained in an unknown location for nine days before being handed over to the police. He was charged with sedition and faces up to 14 years in prison. On June 3, 2014, the NCPO announced that groups of people who gather and give the three-finger salute would be subject to arrest.

Those using satire to voice their views have also been subject to prosecution. In April 2016, the police arrested eight individuals suspected of being involved in the making and dissemination of a parody Facebook page, “We Love General Prayut.” All eight were charged with sedition and violation of the Computer-Related Crime Act. “It’s not okay the government charged me for making fun of a public figure,” said Tanawat Burunsiri, an administrator of the Facebook page and one of those detained and charged. “Public figures get mocked all the time. Why was I imprisoned? Because I was [a Facebook] admin? As a citizen I can criticize the nation’s leader.”

Those speaking out about military abuses have also faced criminal charges. Naritsarawn Kaewnopparat was charged with criminal defamation and violation of the Computer-

Related Crime Act for social media posts calling for justice for her uncle, a military recruit who was beaten to death at a military camp. Human rights defender Ismae Tae faces criminal defamation charges for telling Thai PBS about the torture he said he had been subjected to by soldiers.

## Prosecution of Opposition Politicians

The crackdown on opposition politicians began immediately after the coup, when almost all of those who had served as ministers under former prime minister Yingluck Shinawatra and the Pheu Thai Party were called in for “attitude adjustment.” Former energy minister Pichai Nariphaphan was brought in for “attitude adjustment” repeatedly during the junta’s first 18 months, with one session held in an abandoned building in an apparent attempt to frighten him. When he continued to speak out about the Thai economy and other pressing public issues, he was summoned on charges of posting false information about the economy in violation of the Computer-Related Crime Act. The case remains pending.

Several other Pheu Thai politicians have been charged for peacefully criticizing the junta. In April 2017, the police charged spokesperson Sunisa Lertpakawat with sedition and violation of the Computer-Related Crime Act based on social media posts critical of the junta. In May 2018, the police charged Pheu Thai politicians Watana Muangsook, Chaturon Chaisang, and Chusak Sirinil with sedition and violation of the order prohibiting political gatherings, after Pheu Thai held a press conference to assess the junta’s performance during the four years since the coup.

Business tycoon Thanathorn Juangroongruangkit found himself facing criminal charges a few months after he formed a new political party in March 2018. The first charges related to a Facebook live event held by his Future Forward Party on June 29, which the police alleged violated the Computer-Related Crime Act. The authorities also threatened to file criminal charges against him for statements critical of the junta that he made on a trip overseas. After his party made a strong showing in the March 24, 2019 elections, the police filed new charges against him relating to statements he made in 2015 in support of student protesters. Since the March election, several other members of the Future Forward Party have been summoned on criminal charges.

## Prosecution of Pro-Democracy Activists

Activists began holding peaceful protests against the coup and calling for democracy within weeks after the junta took power. Both organizers and participants in many of the protests were arrested and charged with violating the ban on political gatherings of more than five people. When protests continued, the police began adding additional charges against the organizers. The 14 students charged with holding a protest at the Democracy Monument in Bangkok on June 25, 2015, were charged with not only violating the ban on political gatherings but also with sedition. “Every time they raise the stakes,” said pro-democracy activist Rangsiman Rome. “They will make the charges more serious. The thing they want is to stop us, but we didn’t stop.”

When the junta proposed a referendum on the NCPO-drafted constitution in 2016, it also put into place a law that made criticism of that referendum a criminal offense. According to iLaw’s Freedom of Expression Documentation Center, at least 64 people were arrested or charged under the Referendum Act for criticizing the proposed constitution or encouraging others to vote “no” in the August 2016 referendum, and at least 131 people were charged under the junta order, HNCPO Order 3/2015, and other laws for participating in activities related to the referendum.

When the junta postponed elections promised for November 2018, a group of activists began holding protests to call for elections, and the police responded with arrests and criminal charges. After a series of pro-democracy protests between January and May 2018, the protest organizers faced multiple charges of sedition and holding political gatherings, along with violating the Public Assembly Act, the Road Traffic Act, and sections 215 and 216 of the Criminal Code. “We asked for elections and got charged with sedition,” said Nuttaa Mahattana, one of the protest organizers.

More than 100 other people were charged under HNCPO order 3/2015 or the Public Assembly Act for participating in the protests, including staff of Thai Lawyers for Human Rights, who were present as observers. While some courts have dismissed the charges of violating the junta order restricting political assemblies, citing to the December 2018 order lifting that restriction, other courts have yet to do so.

## Prosecutions for Lèse-Majesté

After taking power, Prime Minister Prayut made lèse-majesté prosecutions a top priority for his administration and authorities charged more than 100 people with violating that law during the junta's first four years. At the same time, the possible grounds for lèse-majesté prosecutions broadened dramatically. In December 2015, a man was charged with lèse-majesté for making sarcastic comments about the king's dog, and in October 2017, a prominent historian was summoned to face lèse-majesté charges based on classroom comments in 2014 about a 500-year-old battle involving a Thai king.

These charges were not brought by members of the royal family but typically by government or military officials who contended that others' speech or actions offended the monarchy. Under new guidelines issued in February 2018, the attorney general's office must make the final determination whether or not to prosecute a lèse-majesté case.

Patnaree Chankij, the mother of pro-democracy activist Sirawit Seritiwat, was charged with lèse-majesté for making a non-committal response to comments by an activist that were deemed to violate the law. "I wanted to stop the conversation between us but didn't want to give my opinion," she said. "I was trying to end the conversation with something neutral." If convicted, she faces up to 15 years in prison.

Pro-democracy activist Jatupat (Pai) Boonphattharaksa was sentenced to five years in prison in August 2017 for posting on his Facebook page a BBC Thai language profile of Thailand's new monarch, King Maja Vajiralongkorn, also referred to as King Rama 10. His sentence was reduced to two-and-a-half years because he pleaded guilty. The case against Jatupat was triggered by a complaint filed by an army officer from a military unit that had repeatedly arrested him for holding public protests and other peaceful activities urging a return to civilian rule.

Under the new reign of King Rama 10, the authorities have dropped several lèse-majesté cases and use of the law has dropped significantly. However, those critical of the monarchy have still been prosecuted using other laws and the lèse-majesté law remains available for use for political ends in the future.

## Fear and Self-Censorship

“People fear harassment by the authorities at their houses, harassment of their family, and lawsuits,” said activist Nuttaa Mahattana.

While many have continued to speak out despite the risks, the cost has been high, with some activists and politicians facing charges in eight or more cases. As activist Pansak Srithep, who has himself been charged repeatedly for protests, said: “The open space in society has been affected by the repression. Activists have been arrested and charged repeatedly, to the point where it disrupts the rest of their life. Now they have to think of the consequences before agreeing to take action.”

Many others engage in self-censorship. “For the broader circle of people in society, there may be many people who disagree with military rule but don’t want to take any action,” said Pansak. “They give moral support but are too fearful of repercussions to take action themselves.”

Even those who continue to be vocal exercise caution. Pravit Rojanaphruk, a journalist who is facing multiple charges for social media posts, told Human Rights Watch that “those who use their real name on social media feel increasingly vulnerable. There is a chilling effect. I have to exercise more care in what I say since the sedition case.”

Even the Thai media has responded to the crackdown with self-censorship. Said Pravit Rojanaphruk, “You can’t function as a journalist without recognizing the curbs on freedom of the press.”

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After elections in March 2019, the results of which were not announced until May, Thailand’s military government was replaced by an effectively military-appointed civilian government. Coup leader and junta prime minister Gen. Prayut Chan-ocha retained his position as prime minister. Prior to the installation of the new “civilian” government, the NCPO revoked several abusive orders, such as the order authorizing prosecution of civilian sedition cases before military courts. Nevertheless, not only the country’s leadership, but the repressive structure of military rule and the laws used against government critics,

remain in place. So far, the “new” Prayut has done little to demonstrate that he is more attentive to enduring human rights concerns than the “old” Prayut.

The new government retains both the authority and the apparent will to continue to carry out arbitrary arrests and politically motivated prosecutions against anyone deemed to be a threat to the government because of their public statements or other peaceful criticism of those in power. To reverse this course and begin to restore Thailand’s reputation as a rights-respecting democracy, the government should cease using criminal laws against peaceful speech and demonstrations, repeal all junta orders restricting basic rights, and bring Thailand’s laws, policies, and practices in line with international human rights law and standards for the protection of freedom of expression, association, and assembly. Thailand’s friends around the world should not ease pressure on the government until real reforms are in place.

## **Key Recommendations**

### **To the Prime Minister and Government of Thailand**

- Develop a clear plan and short timetable for the repeal or amendment of laws and orders used to violate fundamental human rights. Where legislation is to be amended, consult fully and transparently with civil society groups and the UN special rapporteur on the promotion and protection of freedom of opinion and expression;
- Immediately and unconditionally release any individuals detained, facing charges, or imprisoned for exercising their rights to freedom of expression, association, or assembly; and
- Drop all prosecutions and close all investigations that violate the rights to freedom of expression, association, or assembly.

## Methodology

Research for this report began in July 2017 and continued through September 2019. The report is based on in-person interviews in Bangkok, telephone conversations, and email correspondence, supplemented by an in-depth analysis of Thailand's laws used to restrict freedom of expression and peaceful assembly. The report also draws on police charge sheets, court documents, and news reports concerning criminal proceedings in relevant cases, as well as public statements by government spokespersons and officials.

For this report, Human Rights Watch interviewed 33 lawyers, journalists, students, activists, members of nongovernmental organizations, and individuals prosecuted for speech or assembly and their family members. In-person interviews were conducted in English or in Thai using an interpreter. All of those interviewed were informed of the purpose of the interviews; some declined to be named in the report because of security concerns. No incentives were offered or provided to interviewees.

Whenever possible, we have used official translations of Thai laws and orders. In situations where no "official" English translation exists, we have used translations by reputable organizations or our own translations. While the NCPO orders are identified in Thailand by number and the Buddhist-era calendar year, for purposes of clarity we refer to all NCPO orders using the Gregorian calendar year in which the order was issued.

For legal documents such as police notifications of charges and indictments filed by military or civilian prosecutors, we have used our own translation of the Thai documents, copies of which are in our files.

On October 1, 2019, Human Rights Watch sent a letter to the Foreign Minister of Thailand requesting input from the Thai government. The letter, a copy of which is contained in Appendix I, was sent by fax and email. Human Rights Watch had not received a response at time of publication.

This report is not meant to offer a comprehensive examination of all laws that criminalize peaceful expression, association, or assembly in Thailand. The report instead focuses on laws that have proven to be most prone to misuse. The report also does not set out to offer

a comprehensive review of all cases filed under those laws, but rather focuses on a number of illustrative examples.

# I. Background

Over the past 25 years, Thailand has suffered through a series of political crises and two military coups. On one side of the political equation has been Thaksin Shinawatra, a wealthy businessman who was first elected to office in 2001, and his supporters. On the other side have been those opposed to his role in political life – which has included the Thai military.

## Thailand Under Thaksin Shinawatra

In 2001, the Thai Rak Thai party, led by Thaksin Shinawatra, won a majority of parliamentary seats in the January 6 national election, making Thaksin prime minister.<sup>1</sup> Thaksin remained in power until September 2006, when he was ousted by a coup led by the military.

Thaksin's rule was marred by serious human rights violations, including a deadly “war on drugs” and abusive counter-insurgency operations against ethnic Malay Muslims in the southern border provinces. He used government and private channels to mute Thailand's once vibrant media. The Thai Journalists Association and the Thai Broadcasters Association documented more than 20 cases between 2001 and 2004, in which news editors and journalists were dismissed or transferred, or had their work tampered with to appease the government. Some of them also faced fabricated investigations by the Anti-Money Laundering Office.<sup>2</sup> The authorities arbitrarily used work permits and visa renewals as effective tools for pressuring foreign journalists.<sup>3</sup> Thaksin also filed criminal and civil defamation suits against journalists, media outlets, and media freedom advocates.<sup>4</sup>

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<sup>1</sup> Human Rights Watch, *World Report 2002* (New York: Human Rights Watch, 2002), <http://pantheon.hrw.org/legacy/wr2k2/asia.html>.

<sup>2</sup> Human Rights Watch, “Thailand: P.M. Suits Dropped, But Media Still Under Threat,” news release, December 8, 2005, <https://www.hrw.org/news/2005/12/08/thailand-pm-suits-dropped-media-still-under-threat>.

<sup>3</sup> Human Rights Watch, *World Report 2005* (New York: Human Rights Watch, 2005), <https://www.hrw.org/legacy/wr2k6/pdf/thailand.pdf>

<sup>4</sup> Human Rights Watch, “Thailand: Libel Suit Deepens Assault on the Press,” news release, September 1, 2004, <https://www.hrw.org/news/2004/09/01/thailand-libel-suit-deepens-assault-press>.

Thaksin's Thai Rak Thai party won the election held in February 2005 by a landslide. Human rights continued to decline. The draconian Executive Decree on Government Administration in Emergency Situations, which was put in place by Thaksin in July 2005 and later ratified by parliament, undermined or revoked many key safeguards against human rights violations. The decree gave authorities sweeping powers to declare a state of emergency, arrest and detain suspects, restrict movement and communication, censor the media, and deny access to the Administrative Court and to redress for victims of abuses by government officials and the security forces. While the emergency law was supposedly enacted to address the insurgency in the southern border provinces, there was no geographical limit on where it could be invoked.<sup>5</sup>

## The 2006 Coup

On September 19, 2006, the military overthrew the Thaksin government in a coup, pledging to end political tensions, reform government, and fight corruption. Within hours the Constitution was repealed and key institutions that serve as a check on the executive—including the Parliament, the Senate, and the Constitutional Court—were disbanded. The coup leaders announced on October 20 that they would uphold the principles enshrined in the United Nations Charter, but fundamental rights were nevertheless restricted.<sup>6</sup> Thaksin fled into exile.

Political gatherings of more than five people were banned, with a penalty of six months of imprisonment. Existing political parties were ordered not to conduct any political activities or hold assemblies. Four senior members of the Thaksin administration, as well as a parliamentarian and a pro-Thaksin activist, were taken into military custody for periods ranging from one to ten days. The media was intimidated, with armed soldiers deployed in newsrooms and direct censorship employed.<sup>7</sup>

In the immediate aftermath of the coup, BBC World, CNN, and other international TV news channels were taken off the air, while Thai TV stations showed footage of the royal family

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<sup>5</sup> Human Rights Watch, *World Report 2006* (New York: Human Rights Watch, 2006), <https://www.hrw.org/legacy/wr2k7/>.

<sup>6</sup> Human Rights Watch, *World Report 2007* (New York: Human Rights Watch, 2007), <https://www.hrw.org/world-report/2007/country-chapters/thailand>.

<sup>7</sup> Ibid.

and patriotic songs.<sup>8</sup> The coup leaders called on all journalists to “cover news truthfully and constructively in order to promote unity and reconciliation in the country” and requested that the Ministry of Information and Communication Technology control or block the distribution of information through the internet that could affect the new government’s work. More than 300 community radio stations in Thailand’s northern provinces—Thaksin’s stronghold—were closed down, and 10 anti-coup websites were taken off the internet.<sup>9</sup>

In June 2007, the new Computer-Related Crime Act came into effect. The law provided for a penalty of up to five years in prison for uploading into a computer system “false data” in a manner likely to cause damage to a third party or the public, or any data “related to an offense against the Kingdom’s security.”<sup>10</sup>

In July 2007, the United Front for Democracy Against Dictatorship (UDD) was formed, primarily by Thaksin supporters, to oppose the coup, and began holding rallies against the government. The group later adopted red shirts as their badge, and members of the group are commonly referred to as “Red Shirts.”

During elections held in December 2007, the People Power Party (PPP), the successor to the Thaksin’s Thai Rak Thai party, won just less than an absolute majority. In January 2008, the party formed a coalition government, with Samak Sundaravej as prime minister. Thaksin returned from exile.<sup>11</sup>

Within months, political polarization between pro- and anti-government groups led to protracted protests and occasional deadly clashes; media freedom and freedom of expression were undermined by harassment and interference from both the government and anti-government groups.

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<sup>8</sup> “Thai PM deposed in military coup,” *BBC*, September 20, 2006, <http://news.bbc.co.uk/1/hi/5361512.stm> (accessed May 20, 2019).

<sup>9</sup> Human Rights Watch, *World Report 2007* (New York: Human Rights Watch, 2007), <https://www.hrw.org/world-report/2007/country-chapters/thailand>.

<sup>10</sup> Computer-Related Crime Act 2007, secs. 14(1), 14(2), and 14(3).

<sup>11</sup> Chris Baker and Pasuk Phongpaichit, *A History of Thailand*, 3d ed. (Australia: Cambridge University Press, 2014), p. 272.

## Protests and Violence

Starting on May 25, 2008, the People's Alliance for Democracy (PAD) staged protracted protests in Bangkok and other cities to express opposition to the government. Adopting yellow shirts as their badge to show support for the king of Thailand, the protesters were dubbed "Yellow Shirts."<sup>12</sup> Labeling Prime Minister Samak and his successor, Somchai Wongsawat (Thaksin's brother-in-law), as surrogates for Thaksin, the PAD accused the government of corruption, abuse of power, and being unpatriotic.<sup>13</sup>

Protesters blocked roads and traffic in the capital, in some cases for months at a time. Pro-government groups often violently attacked PAD rallies while police stood by. On August 26, PAD protesters besieged many government buildings in Bangkok, including the National Broadcasting of Thailand (NBT) building and Government House, where the prime minister and cabinet members have their offices. PAD leaders demanded that the military have the right to intervene in politics to check corruption and to protect the monarchy and national sovereignty.

The government obtained injunctions and arrest warrants from the courts against PAD leaders but could not end the siege of Government House. After clashes between police and PAD protesters on August 29, the PAD closed international airports in Thailand's southern provinces and imposed worker strikes on train services across the country.

Violence escalated when the pro-government Democratic Alliance against Dictatorship (DAAD) engaged in street fighting with the PAD on September 2, resulting in one death and more than 40 injuries.<sup>14</sup>

On October 7, thousands of PAD protesters surrounded the parliament in an attempt to block Prime Minister Somchai from delivering a policy statement. To clear the area, police riot units and Border Patrol Police units used tear gas and rubber bullets, in some cases firing tear gas from close range directly at the protesters. PAD protesters responded by firing guns, shooting slingshots, throwing bricks and metal pipes, trying to run over police

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<sup>12</sup> Chris Baker and Pasuk Phongpaichit, *A History of Thailand*, 3d ed. (Australia: Cambridge University Press, 2014), p. 272.

<sup>13</sup> Human Rights Watch, *World Report 2009* (New York: Human Rights Watch, 2009), <https://www.hrw.org/world-report-2009>, p. 316.

<sup>14</sup> Ibid., p. 316.

officers with pickup trucks, and stabbing police with flagpoles. According to the Public Health Ministry, two PAD supporters died and 443 were injured.<sup>15</sup>

Political instability and polarization continued in 2009. Public pledges of the army-backed government of Prime Minister Abhisit Vejjajiva (who succeeded Somchai in December 2008) to give priority to human rights and the restoration of democracy were largely unfulfilled.<sup>16</sup>

The government continued to use the Computer-Related Crimes Act and the charge of lèse-majesté to enforce online censorship and persecute dissidents, particularly those connected with the UDD, by accusing them of promoting anti-monarchy sentiments and posing threats to national security. Critics of the government, such as Giles Ji Ungpakorn, Jakrapob Penkair, and Suchart Nakbangsai fled or were unable to return to the country after being so charged. Chiranuch Premchiaporn, webmaster of online news portal *Prachatai*, was arrested on March 6, 2009, and charged with violating the act because of reader comments on the site in 2008 deemed offensive to the monarchy.<sup>17</sup>

Thai authorities also closed down more than 18,000 websites in 2009, after accusing them of promoting anti-monarchy sentiments and posing threats to national security.

## State of Emergency

From March to May 2010, repeated episodes of political violence involving supporters of Thaksin led to the deaths of at least 90 people and injured more than 2,000.<sup>18</sup> A large majority of the casualties resulted from unnecessary or excessive use of lethal force by soldiers. Elements of the Red Shirts were also responsible for deadly armed attacks against soldiers, police, and civilians.<sup>19</sup>

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<sup>15</sup> Ibid., p. 317.

<sup>16</sup> Human Rights Watch, *World Report 2010* (New York: Human Rights Watch, 2010), <https://www.hrw.org/world-report/2010/country-chapters/thailand>.

<sup>17</sup> Ibid.

<sup>18</sup> Human Rights Watch, “Thailand: No Justice 9 Years After ‘Red Shirt’ Crackdown,” news release, May 18, 2019, <https://www.hrw.org/news/2019/05/18/thailand-no-justice-9-years-after-red-shirt-crackdown>.

<sup>19</sup> Human Rights Watch, *Descent into Chaos: Thailand’s 2010 Red Shirt Protests and the Government Crackdown* (Human Rights Watch: New York, 2011), <https://www.hrw.org/report/2011/05/03/descent-chaos/thailands-2010-red-shirt-protests-and-government-crackdown>.

On April 7, 2010, anti-government Red Shirt protesters stormed Parliament, forcing cabinet ministers and parliamentarians to flee the building. In response, Prime Minister Abhisit declared a state of emergency and created the Center for the Resolution of Emergency Situations (CRES), an ad hoc body made up of civilians and military officers, to handle the crisis and enforce emergency powers.<sup>20</sup>

The decree allowed the CRES to hold suspects without charge for up to 30 days in unofficial places of detention and gave officials effective immunity from prosecution for most acts committed while implementing the decree.

The CRES questioned, arrested, and detained UDD leaders and members who took part in the protests, as well as accused sympathizers. The CRES summoned hundreds of politicians, former officials, businessmen, activists, academics, and radio operators for interrogation; froze individual and corporate bank accounts; and detained some people in military-controlled facilities. The CRES ordered foreign and Thai journalists and volunteer medics to report to the CRES headquarters and substantiate their public statements that they witnessed abuses committed by the security forces.<sup>21</sup>

The CRES used the emergency decree to shut down more than 1,000 websites, a satellite television station, online television channels, publications, and more than 40 community radio stations, most of which were considered to be closely aligned with the UDD.<sup>22</sup>

## Election of Yingluck Shinawatra

Thailand held elections in July 2011, and Yingluck Shinawatra, younger sister of Thaksin, won a landslide victory, offering what was hoped would be political stability in Thailand after several years of political upheaval.<sup>23</sup> She served as prime minister until removed from office in May 2014.

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<sup>20</sup> Human Rights Watch, *World Report 2011* (New York: Human Rights Watch, 2011), <https://www.hrw.org/world-report/2011/country-chapters/thailand>.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Human Rights Watch, *World Report 2012* (New York: Human Rights Watch 2012), <https://www.hrw.org/world-report/2012/country-chapters/thailand>.

Her term in office was marked by conflict over accountability for the 2010 political violence. On September 17, 2012, the independent Truth for Reconciliation Commission of Thailand (TRCT) presented its final report, which blamed both sides for the 2010 violence but indicated that the security forces were responsible for the majority of deaths and injuries. The commission urged the Yingluck government to “address legal violations by all parties through the justice system, which must be fair and impartial.”<sup>24</sup>

Attempts in November 2013 by her government to pass a blanket amnesty for all those responsible for political violence and corruption since 2004 sparked mass protests in Bangkok and other provinces. Suthep Thaugsuban, former secretary-general of the Democrat Party, mobilized the People’s Democratic Reform Committee (PDRC) to occupy major government buildings and business districts in Bangkok for months.<sup>25</sup>

Street battles between PDRC’s supporters, pro-government groups, and the police, as well as militia attacks on PDRC’s protest sites, resulted in at least 28 dead and more than 800 wounded.<sup>26</sup> On May 7, 2014, the Constitutional Court ordered Yingluck and nine ministers removed from office over the controversial transfer of a senior security officer in 2011. Supporters of Yingluck and critics argued that the move was politically motivated and an abuse of judicial power.<sup>27</sup>

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<sup>24</sup> Ibid.

<sup>25</sup> Human Rights Watch, *World Report 2015* (New York: Human Rights Watch, 2015), <https://www.hrw.org/world-report/2015/country-chapters/thailand>.

<sup>26</sup> Ibid.

<sup>27</sup> Kate Hodal, “Thai prime minister Yingluck Shinawatra forced to step down,” *The Guardian*, May 8, 2014, <https://www.theguardian.com/world/2014/may/07/thai-prime-minister-yingluck-shinawatra-steps-down> (accessed May 20, 2019).

## II. Declaration of Martial Law, the Coup, and Elections

On May 20, 2014, General Prayut announced that the Martial Law Act of 1914 would be enforced throughout Thailand to prevent imminent riots arising from what he claimed were increasingly violent political confrontations.<sup>28</sup> On May 22, Prayut staged a coup and arrested representatives of opposing political factions attending military-brokered negotiations at the Army Club in Bangkok.<sup>29</sup> In a statement, he said that he would head a ruling military body—the National Peace and Order Maintaining Council (later renamed the National Council for Peace and Order or NCPO). In a separate statement, Col. Winthai Suvaree said that the constitution was being suspended but that the upper house of parliament and courts would continue to function.<sup>30</sup>

Three days after the coup, the NCPO announced that a range of offenses would be subject to military rather than civilian justice. Offenses now subject to military justice included crimes against the monarchy, including lèse-majesté, crimes against national security as set forth in articles 113-118 of the Criminal Code, and violations or defiance of NCPO orders and announcements.<sup>31</sup>

In the months following the coup, the junta detained more than 300 politicians, activists, journalists, and people that it accused of supporting the deposed government, disrespecting the monarchy, or being involved in anti-coup protests and activities.<sup>32</sup>

The NCPO held people in incommunicado lockup in military camps for “attitude adjustment,” with some held longer than the seven-day limit for administrative detention provided for under martial law. Persons released from military detention were forced to sign an agreement that they would not make political comments, become involved in

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<sup>28</sup> Human Rights Watch, *World Report 2015* (New York: Human Rights Watch, 2015), <https://www.hrw.org/world-report/2015/country-chapters/thailand>.

<sup>29</sup> Ibid.

<sup>30</sup> Kate Hodal, “Thailand army chief confirms military coup and suspends constitution,” *The Guardian*, May 22, 2014, <https://www.theguardian.com/world/2014/may/22/thailand-army-chief-announces-military-coup> (accessed May 12, 2019).

<sup>31</sup> NCPO Order No. 37/2014; NPCO Order No. 38/2014; Announcement No. 50/2014.

<sup>32</sup> Human Rights Watch, *World Report 2015* (New York: Human Rights Watch, 2015), <https://www.hrw.org/world-report/2015/country-chapters/thailand>.

political activities, or travel overseas without the junta's permission. Failure to comply is punishable by a new detention, a sentence of two years in prison, or a fine of 40,000 baht (US\$1,314).

## Restrictions on Speech and Assembly

On the day of the coup, the military issued 20 “announcements,” at least seven of which imposed restrictions on speech and assembly. Announcement 7/2014 banned gatherings of more than five people. Announcement 12/2014 instructed operators of social media networks to censor messages “inciting violence, violation of the law or opposition to the National Peace and Order Maintaining Council (NPOMC)”<sup>33</sup> or else face immediate termination of their services.<sup>34</sup>

Announcement 18/2014 ordered 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,” “persuasion to gather or assemble in order to oppose officials of the NPOMC and its relevant personal,” or “threats to attack or injure any person that might cause public panic or fear.”<sup>35</sup>

A few months later, on July 18, announcement 18/2014 was replaced by a new order empowering the authorities to close any media outlets transmitting any such information. After protests from the Thai Journalists Association, the junta issued an amendment two days later, announcement 103/2014, limiting the ban to criticism that had the “dishonest intention to damage the credibility of the NCPO with false information” and lifting the threat of immediate closure for non-compliance.<sup>36</sup>

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<sup>33</sup> The original name for what became the National Council for Peace and Order (NCPO).

<sup>34</sup> Reporters Without Borders, “Media Hounded by Junta Since 2014 Coup,” report, August 2015, [https://rsf.org/sites/default/files/rapport\\_thailande\\_en.pdf](https://rsf.org/sites/default/files/rapport_thailande_en.pdf).

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

## Interim Constitution

A junta-promulgated interim constitution was given royal assent on July 22, 2014, granting the NCPO broad authority to limit or suppress fundamental human rights, and granting immunity for its actions. Article 44 of the interim constitution gave the NCPO power to give any order deemed necessary for “the benefit of reform in any field and to strengthen public unity and harmony, or for the prevention, disruption or suppression of any act which undermines public peace and order or national security, the Monarchy, national economics or administration of State affairs.” Any such order “is deemed to be legal, constitutional and final.”<sup>37</sup> Article 44 also retroactively validated all orders issued by the NCPO since the date of the coup, stating that “regardless of their legislative, executive or judicial force” they are “deemed to be legal, constitutional and final.” Article 48 of the interim constitution further stated that all acts of the NCPO in relation to the coup, including any acts by people connected to the NCPO, even if the acts were illegal, “shall be exempted from being offenders and shall be exempted from all accountabilities.”<sup>38</sup>

On August 21, 2014, the junta-appointed National Legislative Assembly approved General Prayut as Thailand’s 29th prime minister while permitting him to retain his chairmanship of the NCPO.<sup>39</sup>

## Lifting of Martial Law and Enforcement of HNCPO 3/2015

On March 31, 2015, the NCPO lifted martial law but immediately replaced it with Head of NCPO (HNCPO) order 3/2015, issued by Prayut pursuant to article 44 of the interim constitution. The order authorized certain military officers to “prevent and suppress” offenses including lèse-majesté, sedition, and violations of announcements or orders of the NCPO or the head of the NCPO.<sup>40</sup> To enable them do so, they were granted the power to

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<sup>37</sup> Constitution of Thailand (Interim), July 22, 2014, unofficial translation by the Office of the Council of State, [http://web.krisdika.go.th/data/outsitedata/outsite21/file/Constitution\\_of\\_the\\_Kingdom\\_of\\_Thailand\\_\(Interim\),B.E.\\_2557\\_\(2014\).pdf](http://web.krisdika.go.th/data/outsitedata/outsite21/file/Constitution_of_the_Kingdom_of_Thailand_(Interim),B.E._2557_(2014).pdf)

<sup>38</sup> Ibid.

<sup>39</sup> Human Rights Watch, *World Report 2015* (New York: Human Rights Watch, 2015), <https://www.hrw.org/world-report/2015/country-chapters/thailand>.

<sup>40</sup> A “peace keeping officer” is defined as a military officer with the rank of lieutenant, or midshipman, or pilot officer or above, appointed by the Head of the NCPO to act in accordance with the order. An “assistant peace keeping officer” is defined as a military officer of lower rank than a lieutenant, or midshipman, or pilot officer appointed by the head of the NCPO to act according to the order.

interrogate, arrest, and summon any individual to report to them.<sup>41</sup> These so-called “peacekeeping officers” were also empowered to issue orders prohibiting “any item of news or the sale or distribution of any book or publication or material likely to cause public alarm to which contains false information likely to cause public misunderstanding to the detriment of national security or public order.”<sup>42</sup>

Article 12 of HNCPO order 3/2015 prohibited political gatherings of five or more people without permission of the head of the NCPO or an authorized representative. Violation of this provision is punishable with imprisonment not exceeding six months or a fine not exceeding 10,000 baht (US\$328), or both.<sup>43</sup> Article 12 has been used repeatedly to arrest people holding peaceful demonstrations against the junta and calling for elections.

## Referendum on a New Constitution

The National Reform Council rejected a draft constitution without explanation on September 6, 2015, extending the junta’s rule.<sup>44</sup>

The NCPO drafted a new proposed constitution and announced that it would hold a referendum on August 7, 2016. In preparation for that referendum, the National Legislative Assembly passed an “Organic Act on the Referendum for the Draft Constitution,” which was approved by the king on April 22, 2016.<sup>45</sup> Section 61 of that act essentially made opposition to the referendum a criminal offense.<sup>46</sup> The law was repeatedly used to arrest activists criticizing the draft constitution and those urging people to vote no in the referendum. The draft constitution was ultimately approved by more than 60 percent of those voting in the August referendum.<sup>47</sup>

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<sup>41</sup> iLaw, “Unofficial translation of Thai junta’s order, replacing martial law with Section 44 of interim charter NCPO order 3/2015” *Prachatai*, April 2, 2015, <https://prachatai.com/english/node/4933> (accessed August 9, 2017).

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Human Rights Watch, *World Report 2016* (New York: Human Rights Watch, 2016), <https://www.hrw.org/world-report/2016/country-chapters/thailand>.

<sup>45</sup> Organic Act on the Referendum for the Draft Constitution, unofficial translation, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103544/125829/F1602759526/THA103544%20Eng.pdf>.

<sup>46</sup> See section on “Prosecution for Criticism of Draft Constitution.”

<sup>47</sup> “Thai referendum: Military-written constitution approved,” *BBC*, August 7, 2016, <https://www.bbc.co.uk/news/world-asia-36972396> (accessed May 15, 2019).

A month later, on September 12, 2016, Prayut issued HNCPO order 55/2016, transferring jurisdiction over many types of criminal cases back to the civilian courts for any crimes taking place after the entry into force of the order. Cases concerning offenses committed before September 12, 2016 continued to fall within the jurisdiction of the military courts.<sup>48</sup> Only on July 9, 2019 did Prayut order an end to all prosecutions of civilians in military courts and transfer ongoing cases to the civilian courts.<sup>49</sup>

On April 6, 2017, the new constitution came into effect after receiving the approval of the king.<sup>50</sup>

## Elections

Beginning within months of the coup, Prayut repeatedly promised to hold elections, but then delayed them.<sup>51</sup> The new constitution provided for elections to take place within 19 months—by November 2018—but also established a series of steps that needed to take place before an election could occur.<sup>52</sup> On October 2017, Prayut stated the election would, finally, take place in November 2018.<sup>53</sup> In January 2018, however, the junta-appointed National Legislative Assembly voted to postpone enforcement of an election bill by three months, purportedly to give political parties time to prepare for the election. In the face of growing pressure, Prayut told reporters that February 2019 would be the final election date.<sup>54</sup>

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<sup>48</sup> International Commission of Jurists, “Order of the Head of the National Council for Peace and Order No.55/2559 (2016), unofficial translation, September 12, 2016, [http://www.icj.org/wp-content/uploads/2016/09/Thailand-Unofficial-Translation-Head-of-NCPO-Order-55\\_2559-Advocacy-2016-ENG.pdf](http://www.icj.org/wp-content/uploads/2016/09/Thailand-Unofficial-Translation-Head-of-NCPO-Order-55_2559-Advocacy-2016-ENG.pdf).

<sup>49</sup> HNCPO Order 9/2019, issued July 9, 2019.

<sup>50</sup> Panarat Thepgumpanat and Patpicha Tanakasempipat, “Thai king signs constitution in step toward poll,” *Reuters*, April 6, 2017, <https://www.reuters.com/article/us-thailand-king-constitution/thai-king-signs-constitution-in-step-toward-poll-idUSKBN178oVB> (accessed August 9, 2017).

<sup>51</sup> Pithaya Pookaman, “Thailand’s Forthcoming Election: Real or Mirage?,” *Asia Sentinel*, November 19, 2018, <https://www.asiasentinel.com/politics/thailand-2019-election-delay/> (accessed May 20, 2019).

<sup>52</sup> Constitution of the Kingdom of Thailand (2017), English translation published by the Office of the Council of State, [https://www.constituteproject.org/constitution/Thailand\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Thailand_2017.pdf?lang=en).

<sup>53</sup> “Thailand to hold election in November 2018, prime minister says,” *South China Morning Post*, October 10, 2017, <https://www.scmp.com/news/asia/southeast-asia/article/2114698/thailand-hold-election-november-2018-prime-minister-says> (accessed May 20, 2019).

<sup>54</sup> Sheith Khidhir, “Thailand’s election could get delayed, again,” *The Asean Post*, August 29, 2018, <https://theaseanpost.com/article/thailands-election-could-get-delayed-again> (accessed May 20, 2019).

On December 11, 2018, Prayut issued HNCPO order 22/2018, lifting some of the existing restrictions on political activity.<sup>55</sup> The order repealed, among others, article 12 of HNCPO order 3/2015, which prohibited the gathering of five or more persons for a “political purpose.”<sup>56</sup> However, article 2 of the order clarified that “prosecutions, actions or operations” already in effect under that and other orders being lifted would not be affected.<sup>57</sup> Many other orders and laws restricting freedom of expression remained firmly in place in the run up to the election.

On January 23, 2019, the NCPO announced an election date of March 24, 2019.<sup>58</sup> Over the next two months, the NCPO filed new criminal charges against opposition candidates, successfully moved to dissolve a key opposition party, and took control of the election commission.<sup>59</sup> Despite the ongoing repression, the opposition Pheu Thai and Future Forward parties made strong showings in the election, and both Pheu Thai and the military-backed Phalang Pracharat party sought to form coalitions to reach the 250 seats needed to control the lower house.

Under the military-drafted constitution, however, control of the lower house does not enable a party to name the prime minister, because the members of the Senate also vote to make that determination. Almost the entire 250-person Senate was appointed by the ruling NCPO, ensuring continued de facto military rule. The only exceptions were six seats reserved for the armed forces commanders, the supreme commander, the defense permanent secretary, and the national police chief—all of whom were junta members.<sup>60</sup> Thus, the pro-military parties effectively needed only 126 seats in the 500-seat lower house to return Prayut as prime minister.

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<sup>55</sup> HNCPO order 22/2018 repealed nine specific orders and announcements out of the hundreds issued since the coup. Thai Lawyers for Human Rights, “Legal Observations on Head of the NCPO Order 22/2561,” blog post, December 13, 2018, <https://www.tlhr2014.com/?p=10076&lang=en>.

<sup>56</sup> The partial repeal also led to the unfreezing of bank accounts belonging to certain politicians critical of the junta, and the removal of restrictions on 18 opposition politicians that had prohibited them from leaving the country without permission or engaging in any political activity. “Lifting of political ban ‘partial,’” *The Nation*, December 12, 2018, <http://www.nationmultimedia.com/detail/politics/30360215> (accessed May 15, 2019).

<sup>57</sup> International Commission of Jurists, “Thailand: lifting of the ban on political activities is welcome but more is needed,” December 13, 2018, <https://www.icj.org/thailand-lifting-of-the-ban-on-political-activities-is-welcome-but-more-is-needed/>.

<sup>58</sup> Kocha Olarn and Helen Regan, “Thais to vote in elections nearly five years after military coup,” *CNN*, January 23, 2019, <https://edition.cnn.com/2019/01/23/asia/thailand-election-date-intl/index.html> (accessed January 23, 2019).

<sup>59</sup> Human Rights Watch, “Unending Repression Under Thailand’s Military Junta,” dispatch, May 22, 2019, <https://www.hrw.org/news/2019/05/22/unending-repression-under-thailands-military-junta>.

<sup>60</sup> Human Rights Watch, “Thailand: Structural Flaws Subvert Election,” news release, March 19, 2019, <https://www.hrw.org/news/2019/03/19/thailand-structural-flaws-subvert-election>.

The election commission delayed announcement of the official results for six weeks, during which it sought approval from the Constitutional Court to use an allocation formula for certain seats that would, in effect, reduce the number of seats won by the opposition while giving one seat each to a number of small parties deemed likely to back the military.<sup>61</sup> The official results, announced on May 8, showed Pheu Thai in first place with 136 seats in the lower house. The military-backed party Phalang Pracharat won 115 seats, and Future Forward Party won 80.<sup>62</sup>

On May 23, the Constitutional Court voted to suspend the leader of the Future Forward Party, Thanathorn Juangroongruangkit, from carrying out his duties as a member of parliament because he allegedly still held shares in a media company when he applied to run for office, a violation of section 98(3) of the constitution. Thanathorn denied the charges and said he had sold the shares in January 2019.<sup>63</sup>

On June 6, 2019, Prayut was elected prime minister by a vote of 500 to 244.<sup>64</sup> On July 9, 2019, Prayut issued HNCPO order 9/2019, repealing some of the hundreds of orders issued by the NCPO in the five years since the coup.<sup>65</sup> The order ended the practice of trying civilians in military court for offenses that took place before September 12, 2016 and transferred jurisdiction over all such cases pending in the military courts to the civilian courts.<sup>66</sup> However, Prayut left in place over 140 NCPO orders, including those allowing the

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<sup>61</sup> “Thai election panel asks court to validate formula to decide election result,” *Reuters*, April 11, 2019, <https://www.reuters.com/article/us-thailand-election/thai-election-panel-asks-court-to-validate-formula-to-decide-election-result-idUSKCN1RN1VD> (accessed April 12, 2019).

<sup>62</sup> Hannah Ellis Petersen, “Thai parties cry foul after election results favour military junta,” *The Guardian*, May 8, 2019, <https://www.theguardian.com/world/2019/may/08/thai-parties-cry-foul-after-election-results-favour-military-junta> (accessed May 8, 2019).

<sup>63</sup> Asean Parliamentarians for Human Rights, “Thailand: Regional MPs urge end to judicial harassment of opposition politician,” May 27, 2019, <https://aseanmp.org/2019/05/27/thailand-judicial-harassment-thanathorn/> (accessed June 10, 2019).

<sup>64</sup> Helen Regan and Kocha Olarn, “Thailand’s junta chief elected as country’s next prime minister,” *CNN*, June 6, 2019, <https://edition.cnn.com/2019/06/06/asia/thailand-prime-minister-prayut-intl/index.html> (accessed June 10, 2019).

<sup>65</sup> “Various orders issued by 2014 coup-makers scrapped,” *The Nation*, July 9, 2019, <https://www.nationthailand.com/news/30372673> (accessed July 10, 2019).

<sup>66</sup> “Media bans lifted, military court cases transferred,” *Bangkok Post*, July 9, 2019, <https://www.bangkokpost.com/thailand/politics/1709559/media-bans-lifted-military-court-cases-transferred> (accessed July 9, 2019).

military to detain people for “attitude adjustment” and making it a criminal offense to defy an order of the NCPO.<sup>67</sup>

The junta was formally dissolved on July 17, 2019 to pave the way for the installation of the new “civilian” government, headed by General Prayut.

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<sup>67</sup> Pravit Rojanaphruk, “Wissanu: Gov’t to Retain Attitude Adjustment, but Won’t Detain People,” *Khaosod English*, July 15, 2019, <http://www.khaosodenglish.com/politics/2019/07/15/wissanu-govt-to-retain-attitude-adjustment-but-wont-detain-people/> (accessed July 15, 2019).

### **III. Laws Criminalizing Expression, Association, and Assembly**

In the years since the 2014 coup, Thai military and civilian authorities have used a range of overly broad and vaguely worded laws and decrees to harass, investigate, and arrest people for peacefully expressing their views, meeting with others critical of the authorities, or participating in protests. This section identifies the laws invoked, while subsequent sections examine how they have been used to criminalize the peaceful exercise of basic rights and the ways in which the laws, both as written and as applied, fail to meet international human rights standards.

#### **Laws Restricting Peaceful Speech**

##### *Sedition*

One of the laws most frequently used by the NCPO was sedition. Article 116 of Thailand's Criminal Code provides a penalty of up to seven years in prison for anyone who uses words or writings in order (1) to bring about a change in the laws of the country or the government by the use of force or violence; (2) to raise unrest and disaffection among the people in a manner likely to cause disturbance in the country; or (3) to cause the people to transgress the laws of the country.

The junta aggressively used the sedition provision against critics of the government, political opponents and pro-democracy activists. According to documentation by iLaw, the NCPO charged at least 117 people with sedition between May 2014 and May 2019.<sup>68</sup> Given the possible severity of a sedition conviction, the filing of sedition charges against government critics has a serious chilling effect on critical speech. The sheer breadth of what has been treated as “seditious” speech demonstrates that the law can be and has been used to suppress peaceful speech.

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<sup>68</sup> iLaw, “Latest statistics,” blog post, May 21, 2019, <https://freedom.ilaw.or.th/en/content/latest-statistic>.

### *Computer-Related Crime Act*

The Computer-Related Crime Act, passed in 2007 and amended in 2016, gives the government overly broad powers to restrict free speech, enforce surveillance and censorship, and retaliate against activists, many of whom have been arrested on charges under the law since the coup. Section 14(1) of the law provides a penalty of up to five years in prison and a fine of up to 100,000 baht (US\$3,285) for anyone who puts into a computer system “false” or “distorted” information “in a manner that is likely to cause damage to the public.”<sup>69</sup> Section 14(2) provides the same possible sentence for anyone who puts into a computer system “false computer data in a manner that is likely to damage the national security or cause panic in the public.”<sup>70</sup> The 2016 amendments broadened the provision to cover the input of such information “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.”<sup>71</sup> It is also an offense to forward or share any content that violates article 14 of the law.<sup>72</sup>

The sweeping way in which the Computer-Related Crime Act has been applied demonstrates its potential for abuse. As detailed below, the law has been used against pro-democracy activists, opposition political figures, critics of the government, and a range of ordinary citizens discussing matters of public concern on the internet.

### *Sections 326 to 333 of the Criminal Code: Defamation*

Thailand’s criminal code makes defamation a criminal offense. Section 326 states that “whoever imputes anything to the other person before a third person in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned, is said to commit defamation and shall be punished with imprisonment not exceeding one year or fined not exceeding twenty thousand baht, or both.”<sup>73</sup> If the defamation is committed by means of a document, video, drawing, or any other means, it

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<sup>69</sup> As discussed in the analysis section, the reference to “distorted” information was added in the 2016 amendments, as was a requirement of “ill or fraudulent intent.”

<sup>70</sup> Computer-Related Crime Act 2007 as amended by the Computer-Related Crime Act (No. 2) 2017, unofficial translation by Thai Netizen Network, <https://thainetizen.org/docs/cybercrime-act-2017/> (italics indicate language added by the amendment).

<sup>71</sup> Ibid.

<sup>72</sup> Computer-Related Crime Act (No. 2) 2017, sec. 14(5).

<sup>73</sup> Thailand Criminal Code, sec. 326, <http://library.siam-legal.com/thai-law/criminal-code-defamation-sections-326-333/>.

is punishable by up to two years in prison.<sup>74</sup> Under section 330, truth is a defense to a charge of defamation, but a defendant is not allowed to prove the truth of the statement if “such imputation concerns personal matters, and such proof will not be benefit to the public.”<sup>75</sup>

Criminal defamation charges have been used repeatedly against those highlighting abuses by the military or raising allegations of corruption. Taking advantage of the official assault on free speech, some private companies have also aggressively used criminal defamation charges against human rights defenders and workers seeking to highlight labor or environmental abuses.

### *Constitutional Referendum Act*

On April 2, 2016, the Organic Act on the Referendum for the Draft Constitution came into effect to govern the holding of the planned referendum on the NCPO-drafted constitution. Section 61 of that act essentially criminalized opposition to the referendum, in direct violation of the right of Thai citizens to express their views on a matter of crucial public debate. Section 61(1) made it a criminal offense to “instigate trouble in order to cause disorder in the voting,” with a possible penalty of up to 10 years in prison, a fine of up to 200,000 baht (US\$6,570), and revocation of the right to vote for up to five years.<sup>76</sup> The law went on to specify that “texts, pictures, sound in newspaper, radio, television, electronic media or any other channels that are distorted from the fact or having violent, aggressive, rude, inciting, or threatening characteristics aiming to induce eligible voters [to] refrain from voting or vote in a certain way or abstain from voting” would be considered “instigating trouble” under the law.<sup>77</sup>

The authorities used this law to arrest dozens of activists seeking to highlight their concerns about the draft constitution or to encourage others to vote against it in the referendum.

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<sup>74</sup> Thailand Criminal Code, sec. 328.

<sup>75</sup> Ibid., sec. 330.

<sup>76</sup> Organic Act on the Referendum for the Draft Constitution, <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103544/125829/F1602759526/THA103544%20Eng.pdf> (unofficial English translation), sec. 61(1).

<sup>77</sup> Organic Act on the Referendum for the Draft Constitution, sec. 61.

## *Lèse-Majesté*

Section 112 of the Criminal Code, often referred to as Thailand's lèse-majesté law, provides a penalty of up to 15 years' imprisonment for anyone who "defames, insults or threatens the King, the Queen, the Heir-apparent, or the Regent." Since the 2014 coup, the junta has applied section 112 broadly and prosecuted section 112 cases aggressively. In a media interview on December 9, 2015, Maj. Gen. Wicharn Jodtaeng, chief of the NCPO's Legal Office, said that commenting, sharing, or pressing "Like" on Facebook contents that the authorities consider offensive to the monarchy would also be prosecuted as lèse-majesté.<sup>78</sup>

Thai authorities began interpreting the law increasingly broadly after the coup, with one man charged with lèse-majesté for posts that allegedly insulted the late King Rama 9's dog.<sup>79</sup> Sentences also increased dramatically. According to Thai Lawyers for Human Rights, before the coup, lèse-majesté sentences were generally five years per count, but the military courts hearing the cases during the first years after the coup imposed sentences of 10 years per count unless the defendant pleaded guilty.<sup>80</sup> When combined with the fact that bail is rarely granted in such cases, meaning the defendants are detained during the entire pretrial and trial period, defendants have been put under intense pressure to plead guilty to the charges.

In a directive dated February 21, 2018, the attorney general instructed all public prosecutors to review all pending prosecutions under section 112 and to furnish the office of the attorney general with the police investigation reports in each case. Under the new guidelines, only the attorney general's office can make the final determination whether or not to prosecute a case.<sup>81</sup> While a number of lèse-majesté prosecutions have since been dropped, many of those prosecuted under the law by the junta remain in prison serving long sentences.

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<sup>78</sup> Human Rights Watch, "Thailand: Worker Charged for Insulting King's Dog," press release, December 18, 2015, <https://www.hrw.org/news/2015/12/18/thailand-worker-charged-insulting-kings-dog>.

<sup>79</sup> "Thai man faces jail for insulting king's dog with 'sarcastic' internet post," *The Guardian*, December 15, 2015, <https://www.theguardian.com/world/2015/dec/15/thai-man-faces-jail-insulting-kings-dog-sarcastic-internet-post> (accessed April 10, 2019).

<sup>80</sup> Human Rights Watch interview with staff member of Thai Lawyers for Human Rights, Bangkok, October 10, 2017.

<sup>81</sup> Thai Lawyers for Human Rights, "Changes in Thailand's lèse majesté prosecutions in 2018," blog post, January 15, 2019, <https://www.tlhr2014.com/?p=10431&lang=en>.

## *Contempt of Court*

Thai law sets forth penalties for contempt of court in both the criminal code and the Code of Civil Procedure. Section 30 of the Code of Civil Procedure gives the court the power to issue such orders “as it may think necessary for the maintenance of order within the precincts of the Court and for the fair and speedy carrying out of the trial.” Section 31 of the code sets forth a list of acts that may constitute contempt of court, including refusal to comply with any directions given by the court or behaving “improperly” within the court’s precincts.<sup>82</sup> The court has the power to punish such contempt through expulsion from the court precincts, imposition of a prison term of up to six months, a fine of up to 500 baht (US\$16), or both.<sup>83</sup>

Section 198 of the Criminal Code provides that “whoever, insulting the Court or the judge in the trial or adjudication of the case, or obstructing the trial or adjudication of the Court,” shall be punished with imprisonment of one to seven years or a fine of two thousand to fourteen thousand baht, or both.<sup>84</sup>

The Organic Law on Constitutional Court Procedure, which went into effect in March 2018, also authorizes penalties for contempt of court. The law gives the Constitutional Court power to take action against anyone who comments on its rulings in “bad faith” or using “profanity, sarcasm or vindictiveness”.<sup>85</sup> Violations are punishable by up to one month in prison and a 50,000 (US\$1,642) baht fine.<sup>86</sup>

While there is no doubt that courts can restrict speech where that is necessary for the orderly functioning of the court system,<sup>87</sup> Thailand’s criminal contempt laws have been used to prosecute conduct that cannot be said to have interfered with the functioning of the court.<sup>88</sup>

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<sup>82</sup> Code of Civil Procedure, sec. 31(1), [https://www.imolin.org/doc/amlid/Thailand\\_The%20Civil%20Procedure%20Code.pdf](https://www.imolin.org/doc/amlid/Thailand_The%20Civil%20Procedure%20Code.pdf)

<sup>83</sup> Code of Civil Procedure, sec. 33.

<sup>84</sup> Thailand Criminal Code.

<sup>85</sup> Organic Law on Constitutional Court Procedure 2018, sec. 38.

<sup>86</sup> *Ibid.*, sec. 39.

<sup>87</sup> UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression (One-hundred and second session 2011), UN Doc. CCPR/C/GC/34 (2011), para. 31. It notes that contempt of court proceedings could be warranted in the exercise of the court’s power to maintain orderly proceedings but must not be used to restrict legitimate defense rights.

<sup>88</sup> See sections “Watana Muangsook” and “Prosecution for Protest Outside Courthouse” for examples.

## Laws Restricting Peaceful Assembly

### *HNCPO Order 3/2015*

In terms of sheer number of arrests and prosecutions, the most frequently used laws after the coup were HNCPO order 3/2015 and its predecessor, NCPO announcement 7/2014, both of which prohibited “political gatherings” of more than five people. According to documentation by Thai Lawyers for Human Rights, as of January 2019, the authorities had used these orders to file at least 43 cases against a total of 431 defendants in the period since the coup.<sup>89</sup>

HNCPO order 3/2015, which was issued on April 1, 2015 under article 44 of the interim constitution, consolidated many of the orders issued prior to the lifting of martial law, including the restriction on political gatherings. Section 12 of the order states that “political gatherings of five or more persons shall be punished with imprisonment not exceeding six months or a fine not exceeding ten thousand baht, unless permission has been granted by the Head of the NCPO or an authorized representative.” Section 12 also provides that any case under that provision will be considered closed if the individual agrees to receive, and undergoes, up to seven days of “corrective training.”<sup>90</sup>

Section 12 of HNCPO order 3/2015 has been used extensively against pro-democracy protesters. The restriction on political gatherings has also been used against opposition politicians, academics, and others who have spoken out about Thailand’s political situation since the coup.

On December 11, 2018, the HNCPO issued order 22/2018, which lifted the ban on political gatherings and certain other political activities in advance of the planned elections. Section 1(7) of HNCPO order 22/2018 nullified section 12 of HNCPO order 3/2015. However, section 2 of the order noted that “the nullification of announcements and orders in [section] 1 does not impact the prosecution of cases, proceedings or actions according to

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<sup>89</sup> Thai Lawyers for Human Rights, “The 10 Human Rights Phenomena in 2018,” blog post, January 16, 2019, <https://www.tlhr2014.com/?p=10493&lang=en>.

<sup>90</sup> Order number 3/2558 of the Head of the NCPO on Maintaining Public Order and National Security (iLaw translation).

the announcements and orders which were carried out prior to the nullifications by this order.”<sup>91</sup>

Despite the ambiguous language of section 2, the military courts and the courts of justice have dismissed most pending cases under HNCPO order 3/2015, citing HNCPO order 22/2018.<sup>92</sup> Some cases related to pro-democracy protests calling for a free and fair election in Bangkok and other provinces, however, were still ongoing at time of writing.

### *Public Assembly Act 2015*

Enacted in 2015, the Public Assembly Act requires those wishing to hold a public assembly to notify the authorities at least 24 hours in advance of the time, place, and objective of the assembly. Failure to provide such notice is an offense with a possible penalty of up to 10,000 baht (US\$328).<sup>93</sup> The law also prohibits holding public assemblies within 150 meters of specified royal palaces, courts, Government House or the National Assembly. Violation of those restrictions can be punished with up to six months in prison and a fine of up to 10,000 baht (US\$328).<sup>94</sup>

Sections 15 and 16 impose vaguely worded “duties” on both organizers and participants, including a duty not to cause “unreasonable inconvenience” to any person.<sup>95</sup> Violation of this duty can be punished with a fine of up to 10,000 baht (US\$328).<sup>96</sup>

While invoked with far less frequency than HNCPO order 3/2015, the law has been used as an additional charge against pro-democracy protesters and against environmental activists, and is being increasingly cited since the nullification of HNCPO order 3/2015.<sup>97</sup>

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<sup>91</sup> Thai Lawyers for Human Rights, “Legal Observations on Head of the NCPO Order No. 22/2561,” blog post, December 13, 2018, <https://www.tlhr2014.com/?p=10076&lang=en>.

<sup>92</sup> See, for example, “‘An academic forum is not a military camp’ case dismissed; court rules law no longer exists to charge 5 defendants,” *Prachatai*, December 26, 2018, <https://prachatai.com/english/node/7853> (accessed January 3, 2019).

<sup>93</sup> Public Assembly Act 2015, unofficial translation, <http://lawdrafter.blogspot.com/2015/08/translation-thai-public-assembly-act-of.html>, secs. 10 and 28.

<sup>94</sup> Public Assembly Act 2015, secs. 7 and 27.

<sup>95</sup> *Ibid.*, secs. 15(1) and 16(1).

<sup>96</sup> *Ibid.*, sec. 30.

<sup>97</sup> According to Thai Lawyers for Human Rights, at least 245 people have been charged violating the Public Assembly Act since it came into effect in August 2015. Thai Lawyers for Human Rights, “Five Years under NCPO, isn’t that enough? Recommendations to eliminate the effects of the coup,” blog post, July 18, 2019, <https://www.tlhr2014.com/?p=13035&lang=en>.

## IV. Arbitrary Arrest and Secret Detention

Following the coup, the junta repeatedly used arbitrary arrest and secret detention to intimidate and silence Thais critical of military rule. The NCPO detained hundreds of politicians, activists, journalists, and people accused of supporting the deposed government, disrespecting or offending the monarchy, or being involved in alleged anti-coup activities.<sup>98</sup>

The risk of enforced disappearance, torture, and other ill-treatment significantly increases when detainees are held incommunicado in unofficial military detention. Enforced disappearances are defined under international law as the arrest or detention of a person by state officials or their agents followed by a refusal to acknowledge the deprivation of liberty, or to reveal the person's fate or whereabouts.<sup>99</sup> Enforced disappearances violate a range of fundamental human rights protected under the International Covenant on Civil and Political Rights, to which Thailand is a party.<sup>100</sup> The government's power to detain people for "attitude adjustment" remains in force despite the installation of a "new" government.

The junta typically compelled persons released from military detention to sign an agreement, in violation of their basic rights, not to make political comments, become involved in political activities, or travel overseas without the junta's permission. Failure to comply with the agreement can result in a new detention, a sentence of two years in prison, or a fine of 40,000 baht (US\$1,314).<sup>101</sup>

The experiences of two of those taken for "attitude adjustment" are described below.

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<sup>98</sup> Ibid. The report found that at least 929 individuals had been summoned for attitude adjustment.

<sup>99</sup> International Convention for the Protection of All Persons from Enforced Disappearance, adopted December 20, 2006, G.A. Res. 61/177, entered into force December 23, 2010, art. 2. Thailand signed the convention but has yet to ratify it.

<sup>100</sup> International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* January 3, 1976.

<sup>101</sup> NCPO Order 39/2014.

## Attitude Adjustment: Pravit Rojanaphruk

Pravit Rojanaphruk is a well-known journalist who, at the time of the coup, was writing for *The Nation*. He openly criticized the coup on Twitter and, on the day after the coup, appeared on a variety of international television stations, including BBC and Al Jazeera, to comment on events in Thailand. On May 24, 2015, NCPO announcement 6/2014 was aired announcing that Pravit was to present himself at a specific military camp the following day.<sup>102</sup>

“The summons raised the question—should I flee? Should I resist and not appear? Or should I go?” he said. “As a journalist, I couldn’t flee.”<sup>103</sup> So on May 25, he presented himself at the designated military-run engineering corps camp in Ratchaburi province, where he was held for seven days. He said he was treated “rather well” other than the fact that he could not leave and they took away his phone. “It is the Thai way of telling you not to vocally oppose them again. If you learn the lesson, all will be well. I did not learn the lesson.”<sup>104</sup> Before his release, he was forced to sign an agreement not to participate in or lead an anti-coup movement and to get permission before travelling abroad.

In a speech at the Oslo Freedom Forum on June 8, 2015, Pravit said that, on the day after his release, an army colonel called and asked him to stop tweeting. He said no, but that he would try to tweet less often and “less ferociously.”<sup>105</sup> After his release, he returned to writing for the paper and posting on social media, including posts critical of the junta.

On September 13, 2015, Pravit received a telephone call from an army officer at the 1st Army Region, ordering him to report to the military authority. Representatives of the office of the United Nations High Commissioner for Human Rights and Thai Lawyers for Human Rights accompanied him, but soldiers stopped them when he entered the 1st Army Region headquarters.<sup>106</sup> According to Pravit, he was interrogated for six hours before being blindfolded and driven for an hour and a half in a van by several men in civilian clothes

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<sup>102</sup> Human Rights Watch interview with Pravit Rojanaphruk, Bangkok, October 2017.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> “Pravit Rojanaphruk – ‘Freedom’ Under Thai Military Rule,” video clip, YouTube, June 8, 2015, <https://www.youtube.com/watch?v=9pR2RmIHLOk> (accessed September 10, 2015).

<sup>106</sup> Human Rights Watch, “Thailand: Free Prominent Journalist,” news release, September 15, 2015, <https://www.hrw.org/news/2015/09/15/thailand-free-prominent-journalist>.

wearing surgical masks that covered much of their faces. “The veneer of politeness was on the verge of breaking down,” he told Human Rights Watch.<sup>107</sup> He was taken to a four-by-four-meter cell. Only then was his blindfold removed. The room had little light or fresh air. The air conditioning did not work, and he often felt like he could not breathe. He was kept there for two days and two nights, during which time he had almost no human contact.<sup>108</sup>

On September 14, NCPO spokesman Col. Winthai Suvaree told reporters Pravit was being held for “presenting information that is not in keeping with the [junta] guidelines promoting peace and order.”<sup>109</sup> “They were very upset about a [social media] post that said that ‘To me, General Prayut was no longer a general the day he staged the coup,’” said Pravit.<sup>110</sup>

Finally, around noon on the third day, someone came with forms for him to sign setting forth the conditions of his release. He signed. At the end of the third day he was again blindfolded and driven back to the First Army division headquarters in Bangkok, where a general warned him that the “committee had already concluded it would file charges against me, but they decided to give me a ‘pink card’ instead. The first detention was, in English football terms, a yellow card. This time they gave a pink one instead of a [more serious] red card.”<sup>111</sup>

The day after his release, Pravit resigned from his position at *The Nation*, where he had worked for more than 20 years, to “save the paper from further pressure.”<sup>112</sup> He subsequently began writing for *Khaosod English*.

Under the terms of his release, Pravit was required to seek permission to travel abroad for a period of two years. In May 2016, the NCPO denied him permission to travel to Helsinki to

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<sup>107</sup> Human Rights Watch interview with Pravit Rojanaphruk, Bangkok, October 2017.

<sup>108</sup> Ibid; Pravit Rojanaphruk, “How Thailand’s Military Junta Tried to ‘Adjust My Attitude’ in Detention,” *The Diplomat*, September 23, 2015, <https://thediplomat.com/2015/09/how-thailands-military-junta-tried-to-adjust-my-attitude-in-detention/> (accessed October 10, 2017).

<sup>109</sup> “Thailand journalist detained for ‘attitude adjustment,’” *Straits Times*, September 14, 2015, <https://www.straitstimes.com/asia/se-asia/thailand-journalist-detained-for-attitude-adjustment> (accessed September 26, 2017).

<sup>110</sup> Human Rights Watch interview with Pravit Rojanaphruk, Bangkok, October 2017.

<sup>111</sup> Ibid.

<sup>112</sup> “Thai journalist Pravit Rojanaphruk resigns from Nation newspaper,” *BBC*, September 16, 2015, <https://www.bbc.co.uk/news/world-asia-34266396> (accessed April 11, 2019).

attend a UNESCO-sponsored event for World Press Freedom Day. When asked by ABC News Australia why Pravit was not permitted to travel, an NCPO representative stated that “the NCPO has followed up on him and found that he still keeps posting [online] and attacking the work of the NCPO.... He keeps violating the orders of the NCPO in many ways, so his travel is not approved.”<sup>113</sup>

“It changes the way you look at life,” Pravit told Human Rights Watch. “After my second detention, I appreciated walking because I couldn’t walk for two days. I appreciate seeing the sun, the moon, feeling fresh air.”<sup>114</sup>

### **Attitude Adjustment: Pichai Nariphaphan**

Pheu Thai politician and former energy minister Pichai Nariphaphan was summoned repeatedly for “attitude adjustment” between May 2014 and June 2017. In his view the practice is “very abusive.”<sup>115</sup> The first time he was called in was soon after the coup, when all former ministers were called in. He was held for three days and two nights but said he was well-treated.

“After that I kept criticizing and warning that things will get bad with the economy,” he said. “On January 29, 2015, Prayut went on television and called me by name and said I should be called for ‘attitude adjustment.’ The next morning, they called and said they would pick me up.”<sup>116</sup> He was picked up in a van and taken to an infantry division, where a general told him he should keep quiet. He was released the same day.<sup>117</sup>

A few months later, the same general called him to meet for a coffee. Pichai went to an army officer camp to meet him, but was then taken to “a really quiet, isolated, dirty building, with garbage around.” The general came and asked him questions, and then he

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<sup>113</sup> Liam Cochrane, “Thailand bans journalist Pravit Rojanaphruk from travelling to UN event,” *ABC News*, March 31, 2016, <https://www.abc.net.au/news/2016-03-31/thailand-bans-travel-of-outspoken-journalist-pravit/7289214>.

<sup>114</sup> Human Rights Watch interview with Pravit Rojanaphruk, Bangkok, October 2017.

<sup>115</sup> Human Rights Watch interview with Pichai Nariphaphan, Bangkok, October 2018.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

was released.<sup>118</sup> Pichai said that he believes the purpose of taking him to such a location was to scare him.<sup>119</sup>

According to Pichai, the worst experience was in September 2015. On September 9 at 8:05 a.m., Pichai posted a comment on his Facebook page: “Being summoned for ‘attitude adjustment’ again. Soldiers will come to pick me up this morning at 9:30 a.m.” Then, at 9:42 a.m., he posted his photo standing next to two soldiers from the army’s 12th Signal Division (King’s Guard) before they took him away from his house in Bangkok.<sup>120</sup> According to Pichai, “They put me in a van with two military guys and covered my head. I think they wanted to have a psychological effect on me. They wanted to make me feel scared. I did feel scared. I thought, ‘What are they going to do to me? Will they shoot me?’ At one point my blood pressure went very high.”<sup>121</sup>

On September 10, 2015, Prayut told the media that Pichai was detained because of his “expression of opinions that challenge the authorities.... Whether there will be harsh or soft measures [against Pichai], it is my decision.”<sup>122</sup> Col. Winthai Suwaree, spokesperson for the NCPO, said that Pichai was in military custody, but refused to provide any information regarding his whereabouts or status. The junta also refused access to Pichai’s family members and legal counsel.<sup>123</sup> He was held for seven days before being released on September 15.

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<sup>118</sup> Ibid.

<sup>119</sup> iLaw, “#Attitude adjusted? Pichai Nariphaphan: Attitude Adjustment for me is an order to be silent,” September 21, 2018, <https://freedom.ilaw.or.th/en/blog/attitude-adjusted-pichai-nariphaphan-attitude-adjustment-me-order-be-silent> (accessed May 21, 2019).

<sup>120</sup> Human Rights Watch, “Thailand: Dissenting Ex-Minister Secretly Detained,” news release, September 10, 2015, <https://www.hrw.org/news/2015/09/10/thailand-dissenting-ex-minister-secretly-detained>.

<sup>121</sup> Human Rights Watch interview with Pichai Nariphaphan, Bangkok, October 17, 2018.

<sup>122</sup> “Prayut Threatens to Silence Critics Amid Uptick in Detentions,” *Khaosod English*, September 10, 2014, <http://www.khaosodenglish.com/politics/2015/09/10/1441886499/> (accessed May 21, 2019).

<sup>123</sup> Human Rights Watch, “Thailand: Dissenting Ex-Minister Secretly Detained,” news release, September 10, 2015, <https://www.hrw.org/news/2015/09/10/thailand-dissenting-ex-minister-secretly-detained>.

## V. Criminal Cases Against Peaceful Critics of the Thai Authorities

### Prosecution of Critics of the NCPO

The authorities have used many of the laws listed above to arrest, charge, and prosecute individuals who criticized the NCPO or Prime Minister Prayut. Those arrested have often been charged with violation of multiple laws, and many are facing multiple court cases. Some examples are discussed below.

#### *Sombat Boongamanong*

Sombat Boongamanong, a social and pro-democracy activist, has been on trial for sedition since June 2014. Following the coup, Sombat was one of many summoned to present themselves for “attitude adjustment,” but he refused to do so. “It was a matter of principle not to comply because I do not recognize the power of the coup group. They have no authority to summon me, in my view,” he said.<sup>124</sup> He moved to a friend’s house, where he continued posting on social media, criticizing the coup and calling on people to congregate publicly and give the three-finger salute from the movie *Hunger Games*.<sup>125</sup>

After 11 days, the military tracked him down and arrested him. He was blindfolded, put in a vehicle and taken to an unknown location, where he was interrogated by military officers. While he was not physically abused, “the nature of the questioning was intimidating.... By putting me in that house, it was already a threat,” he said.<sup>126</sup> He was detained there for nine days before being handed over to the police.

The police informed him that he was facing charges of sedition and failure to comply with an order issued by the NCPO. According to Sombat, the police alleged that he had committed sedition through three types of social media posts: (1) posts alleging that the NCPO committed treason by suspending the constitution; (2) posts critical of the NCPO

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<sup>124</sup> Human Rights Watch interview with Sombat Boongamanong, Bangkok, October 2017.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

and the coup; and (3) comments stating that he believed it was possible to overthrow the NCPO and suggesting gathering together to show opposition as a means of doing do.<sup>127</sup>

When asked if he called for violence, he said no. “My calls were peaceful,” he said. “I did not incite violence in any way. But the charges say I instigated an uprising and unruly behavior of people in a way that is not provided by the constitution and not in good faith.”<sup>128</sup>



Sombat Boongamanong arriving at the military court in Bangkok, Thailand, June 12, 2014. © 2014 AP Photo/Sakchai Lalit

The police took Sombat to military court and sought pretrial detention. “Being in military court was like a fantasy,” he said. “I never expected civilians, let alone activists, to end up in military court. It was a reminder I was a war prisoner.”<sup>129</sup> He was held in military pretrial detention for 18 days.

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<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

On June 29, 2014, the military prosecutor indicted him on one count of sedition and one count of violating the Computer-Related Crimes Act, citing social media posts made between May 30 and June 4 for each count. Among the statements cited in the prosecutor's indictment as the basis for the sedition charges were the following:

- Opposing a coup makes you a villain. Staging a coup makes you a good person. Life is tiring.
- Anti-coup rally tomorrow will not have loudspeakers. It will not have any leaders. Wear your masks and unleash your actions. Mask party.... An anti-coup rally can't overthrow the NCPO. But it showed that this group of Thai people disagrees with military dictatorship.
- Major event. Raise three fingers. High noon on Sunday June 8. Press like if you agree; press share if you are going to join.<sup>130</sup>

The trial started shortly after he was indicted and was ongoing at time of writing.<sup>131</sup> He has to go to court about once every two months, but nothing moves forward. "It is disruptive, but I can live with it," he said.<sup>132</sup> In his view, the NCPO doesn't really care about the outcome of the case—"it is just to keep me busy."<sup>133</sup>

The charge for failure to comply with an order of the NCPO was handled in civilian court, where he was convicted and ultimately sentenced to pay a fine of 3,000 baht (US\$98) and serve two months in jail, suspended for one year. On August 9, 2017, the Supreme Court affirmed his conviction and sentence.<sup>134</sup>

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<sup>130</sup> *Prosecutor of the Bangkok Military Court vs. Sombat Boongamanong*, Black Case 24 Kor/2557, Bangkok Military Court, July 29, 2014. Copy of unofficial translation on file with Human Rights Watch.

<sup>131</sup> The case will be transferred from the military court to the civilian courts pursuant to HNCPO order 9/2019, which finally ended the practice of trying civilians in military court for offenses that took place before September 12, 2016.

<sup>132</sup> Human Rights Watch interview with Sombat Boongamanong, Bangkok, October 2017.

<sup>133</sup> Human Rights Watch interview with Sombat Boongamanong, Bangkok, October 2018.

<sup>134</sup> Sombat challenged the legality of that charge because NCPO announcement 24/2014, making it an offense to fail to comply with an order of the NCPO, had not yet been issued when he was summoned. The trial court rejected the argument, convicted him and sentenced him to six months in prison, suspended for two years. The Supreme Court affirmed the conviction, holding that the NCPO was sovereign so failure to comply with an NCPO order is a violation of the law. "Court backs suspended jail term for Sombat," *Bangkok Post*, August 10, 2017, <https://www.bangkokpost.com/news/general/1303199/court-backs-suspended-jail-term-for-sombat> (accessed September 17, 2017).

Under the terms of his bail, Sombat is not allowed to leave Thailand without permission. The authorities also froze both his personal and his business bank accounts shortly after the coup.<sup>135</sup> The NCPO did not lift the financial restrictions until December 11, 2018.<sup>136</sup>

Sombat said that his comment style has changed from confrontational to more satirical as a result of the case. “I have to be more cautious with my wording,” he said. “Sometimes I can’t criticize directly so try to draw attention to the issue and let people draw their own conclusions.”<sup>137</sup>

He is facing a second charge of sedition and a charge of violating section 7 of the Public Assembly Act in connection with a pro-democracy protest held in Bangkok on January 27, 2018.<sup>138</sup> He said he did not understand why he was charged with sedition. “I joined with them, but I was not a protest leader. I did not speak into the mic. I was just there to support them,” he said.<sup>139</sup> According to the police notification of charges, the sedition charge against Sombat is based on his giving media interviews at the site of the protest.<sup>140</sup>

### *Pravit Rojanaphruk*

Even after two rounds of “attitude adjustment” in 2014 and 2015, journalist Pravit Rojanaphruk continued to speak out and ultimately found himself facing criminal charges in 2017. “My reading is they got bored dealing with my social media posts and decided to let the ‘law’ take care of me,” Pravit said. “It is an evolution from less direct military intervention to the imposition of the ‘normal’ judicial process being used against government critics and opponents of the regime.”<sup>141</sup>

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<sup>135</sup> NCPO Order No. 26/2014, issued May 27, 2014. This order was finally revoked on December 11, 2018 by HNCPO order 22/2018. International Commission of Jurists and Thai Lawyers for Human Rights, “Thailand: ICJ and TLHR welcome the lifting of the ban on political activities but much more is needed,” joint statement, December 11, 2018, <https://www.icj.org/wp-content/uploads/2018/12/Thailand-Lifting-political-ban-Advocacy-JointStatement-2018-ENG.pdf>.

<sup>136</sup> The lifting of financial restrictions on various individuals was included in HNCPO order 22/2018.

<sup>137</sup> Human Rights Watch interview with Sombat Boongamanong, Bangkok, October 2017.

<sup>138</sup> Wasamon Adjurint, “MBK39 activists freed after court rejects police request,” *The Nation*, February 9, 2018, <http://www.nationmultimedia.com/detail/politics/30338356> (accessed September 25, 2018).

<sup>139</sup> Human Rights Watch interview with Sombat Boongamanong, Bangkok, October 2018.

<sup>140</sup> Police notification of charges, Pathumwan Police Station, February 8, 2018. Copy of unofficial translation on file with Human Rights Watch.

<sup>141</sup> Human Rights Watch interview with Pravit Rojanaphruk, Bangkok, October 2017.



Pravit Rojanaphruk, a veteran journalist, faces sedition and computer crime charges for Facebook commentary critical of Thailand's military junta. © 2017 Pravit Rojanaphruk

On August 8, 2017, Thai police formally notified him that he was facing charges of sedition and disseminating false information online in violation of the Computer-Related Crime Act. The charges are based on a complaint lodged in February 2016.<sup>142</sup> The first set of charges relate to two Facebook posts he wrote on February 16 and 17, 2016, in which he raised critical questions about the military-drafted constitution and Prayut's frequently delayed plans for new elections.<sup>143</sup> According to the police notification of charges, in a Facebook post on February 17, 2016, Pravit listed four questions for Prayut:

- (1) When will there really be free & fair elections?
- (2) When will you stop being a dictator while depending on taxpayers' money without their consent for your salary & perks?

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<sup>142</sup> Pravit Rojanaphruk, "Why Sedition Charges Won't Silence Me," August 19, 2017, <http://www.khaosodenglish.com/opinion/2017/08/19/sedition-charges-wont-silence/> (accessed September 26, 2017).

<sup>143</sup> Committee to Protect Journalists, "Thai columnist Pravit Rojanaphruk charged with two cases of sedition," August 8, 2017, <https://cpj.org/2017/08/thai-columnist-pravit-rojanaphruk-charged-with-two.php>.

(3) When will you apologize to the people for having illegitimately seized power in a coup?

(4) When will you stop fooling yourself & others by telling us through the song which you claim to have written that you are only asking for a little time in power?

In a Facebook post on February 16, responding to a complaint by a representative of the junta that he had posted a photograph showing himself showing his middle finger to the junta-sponsored draft charter, he said “It’s ironic that the very people who tear down the previous 2007 constitution in an act of military coup now want people to treat their own junta-sponsored draft charter (please note it’s still a draft and not participatory) as if it’s a sacred inviolable document.”<sup>144</sup>

Pravit is also facing sedition and Computer-Related Crime Act charges for five Facebook posts critical of Prayut and the junta. The posts were on widely reported news events, including the ongoing criminal trial of former prime minister Yingluck, Prayut’s handling of recent floods, and a soldier’s threat to confiscate a local TV news reporter’s equipment.<sup>145</sup> “There was an Orwellian moment,” he said. “The deputy superintendent who handled the case told me, ‘This is what you get when you don’t stop criticizing the military regime.’ Moments later his boss came in and said, ‘Don’t think this has anything to do with the NCPO.’”<sup>146</sup> He added: “They accused me that I violated the CRCA by inputting false information, but the ‘false’ information is that the military regime is centralized and dictatorial.”<sup>147</sup>

Each of the counts of sedition carries a maximum penalty of seven years in prison. According to Pravit, the police said that he was facing a maximum of 14 years in prison—seven years in each of the two cases—even though the charges relate to seven different posts.<sup>148</sup> In his lawyer’s assessment, he said, he is facing a possible 34 years in prison in

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<sup>144</sup> Police notification of charges, Police Technology Crime Suppression Division, August 8, 2017. Copy of unofficial translation on file with Human Rights Watch.

<sup>145</sup> Committee to Protect Journalists, “Thai columnist Pravit Rojanaphruk charged with two cases of sedition,” August 8, 2017, <https://cpj.org/2017/08/thai-columnist-pravit-rojanaphruk-charged-with-two.php>; Police notification of charges, Police Technology Crime Suppression Division, August 18, 2017. Copy of unofficial translation on file with Human Rights Watch.

<sup>146</sup> Human Rights Watch interview with Pravit Rojanaphruk, Bangkok, October 2017.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

the two cases. “In a way this calculation was a relief, because I had feared I was facing 60 years in prison,” Pravit said.<sup>149</sup>

“I was a little disturbed because I realized ... that there is no precedent for this,” he said.<sup>150</sup> In the four years prior to the NCPO, few people were charged with sedition.<sup>151</sup> “Those calling for the ouster of Yingluck Shinawatra weren’t charged with sedition. Nothing I said came even close to calling for the overthrow of the government, and yet I am charged.”<sup>152</sup>

Pravit has continued posting on Facebook mocking the military government and writing his political opinion column for *Khaosod English*, but the criminal charges have had an impact. “There is a chilling effect,” he said. “I have to exercise more care in what I say since the sedition case.”<sup>153</sup> He thinks his case has also caused a lot of concern among journalists who are not pro-coup. “I am an example of what can happen if they step over the line.”<sup>154</sup>

“I could be acquitted, but so much time and psychological trauma will have occurred,” he said. “You can’t plan in advance for your life. You hope for the best but have to plan for the worst.”<sup>155</sup>

### *Prosecution for “March for Justice”*

Pansak Srithep is a social activist whose 17-year-old son was shot dead by the military during the 2010 crackdown. Since his son’s death, he has been active in seeking justice for the victims of 2010. In the wake of the coup, he and others formed a group they called “Resistant Citizen” to oppose the NCPO. They held their first act of resistance on December

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<sup>149</sup> Human Rights Watch interview with Pravit Rojanaphruk, Bangkok, October 2017. The charge of disseminating false information under the Computer-Related Crime Act carries a maximum of five years in prison for each count, but under Thai law only the charge with the highest penalty is used for sentencing. Thailand Criminal Code, sec. 90 (“When any act is one and the same act violating several provisions of the law having the severest punishment shall be applied to inflict the punishment upon the offender.”).

<sup>150</sup> Human Rights Watch interview with Pravit Rojanaphruk, Bangkok, October 2017.

<sup>151</sup> “Sedition law political tool of the junta: iLaw,” *Prachatai*, August 30, 2017, <https://prachatai.com/english/node/7350> (accessed May 22, 2019).

<sup>152</sup> Human Rights Watch interview with Pravit Rojanaphruk, Bangkok, October 2017.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

31, 2014, with a New Year's countdown at the Democracy Monument. The authorities took no action against him for that gathering.<sup>156</sup>

On February 14, 2015, Pansak, Anon Numpa, Sirawit Seritiwat and Wannakiet Chusuwan gathered in front of the Bangkok Arts and Culture Center to hold an event they called “My Beloved Election.” According to Pansak, “the purpose of the event was to remind people of the importance of elections. After the coup, people might forget.”<sup>157</sup> They staged a mock election, and interacted with those passing by, handing them Valentine's Day cards. The military and police arrested Pansak and his colleagues and detained them overnight. The next day, the police informed them that they faced charges for violating NCPO announcement 7/2014, which banned political gatherings of more than five people.

Pansak was due to appear in court in that case on March 16, 2015—the five-year anniversary of his son's death. He decided to walk from his home outside Bangkok to the police station. According to the prosecutor's indictment in the case, on March 13, he posted on his Facebook page a message saying that “the walk to say that civilians must not be put on trial in military court will begin at Sot Nonthaburi School at 7 a.m. on March 14, 2015,” and included a map of the planned route.<sup>158</sup>

On March 14, Pansak began his walk. After about five kilometers, he was arrested by police and military officers and taken to the police station.<sup>159</sup> He was released later that afternoon. The next day, he began walking once again. This time, he walked from the spot where his son was shot toward Thammasat University. Several people along the route handed him flowers. When he arrived at Thammasat University, three colleagues joined him and went with him to the police station.<sup>160</sup>

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<sup>156</sup> Human Rights Watch interview with Pansak Srithep, Bangkok, October 2017.

<sup>157</sup> Ibid.

<sup>158</sup> *Prosecutor of the Bangkok Military Court vs. Pansak Srithep*, Black Case 174/Kor/2558, Bangkok Military Court, August 1, 2016. Copy of unofficial translation on file with Human Rights Watch.

<sup>159</sup> “Activist nabbed on ‘march for justice’”, *Bangkok Post*, March 14, 2015, <https://www.bangkokpost.com/thailand/politics/496882> (accessed September 2, 2019).

<sup>160</sup> Human Rights Watch interview with Pansak Srithep, Bangkok, October 2017.



Anon Numpa, Sirawit Seritiwat, and Pansak Srithep leave a police station for the military court in Bangkok, March 16, 2015. © 2015 Reuters/Chaiwat Subprasom

The following day, March 16, Bangkok police charged Pansak, Anon, Sirawit, and Wannakiet with violating the ban on political gatherings of more than five people for the “My Beloved Election” event. They were immediately sent to Bangkok Military Court.<sup>161</sup> The case remained pending for almost four years. It was finally dismissed only after section 12 of HNCPO order 3/2015 was revoked by HNCPO order 22/2018.<sup>162</sup>

On March 26, 2015, the police charged Pansak with sedition, violation of section 14 of the Computer-Related Crime Act, and violation of NCPO order 7/2014 in connection with his March for Justice. According to the request for remand filed with the Bangkok Military Court, Pansak “and other accomplices” issued a statement on March 12, 2015 urging the Supreme Court president to put them on trial in the court of justice instead of a military

<sup>161</sup> Human Rights Watch, “Thailand: Drop Charges Against Peaceful Critics,” news release, March 16, 2015, <https://www.hrw.org/2015/03/16/thailand-drop-charges-against-peaceful-critics>; “Military court grants bail to prominent anti-junta activist,” *Prachatai*, March 26, 2015, <https://prachatai.com/english/node/4909> (accessed September 2, 2019).

<sup>162</sup> Email correspondence with staff member of Thai Lawyers for Human Rights, October 1, 2019.

court, and announced that they would launch “an activity called ‘Citizen Walk’ on March 14-16,” urging others to join them.<sup>163</sup>

The remand request alleges that, during his walk on March 15, Pansak “received red roses from three men, who are participants in this assembly. The fifth participant then joined this assembly at the Department of Highways. The sixth participant joined this assembly at Phan Fah Intersection. Preecha Kaewbanphaew gave red roses and food from McDonalds to Pansak. Such actions of the seven accused constituted an anti-coup and anti-government activity.”<sup>164</sup>

The military prosecutor indicted Pansak on June 19, 2015, charging him with sedition, violation of section 14 of the Computer-Related Crime Act, and violation of NCPO order 7/2014.<sup>165</sup> When asked what he thought would happen in this case, Pansak said “I don’t understand why that would be crime, so I don’t know what will happen.”<sup>166</sup>

On October 27, 2015, Preecha Kaewbanphaew, a 77-year-old retired schoolteacher who gave Pansak flowers during his walk, was arrested as he was leaving the country for vacation and charged with sedition and violation of NCPO announcement 7/2014. He was held overnight and released on bail by the military court the following morning.<sup>167</sup>

On May 23, 2016, the Bangkok Military Court sentenced Preecha to six months in prison and a fine of 8,000 baht (US\$262). The court halved the sentence to three months, suspended for one year, because Preecha had pleaded guilty. The court also reduced the fine to 4,000 baht (US\$131).<sup>168</sup>

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<sup>163</sup> Remand Request Number Phor Kor 40/2558, Bangkok Military Court, March 26, 2015. Copy of unofficial translation on file with Human Rights Watch.

<sup>164</sup> Ibid.

<sup>165</sup> *Prosecutor of the Bangkok Military Court vs. Pansak Srithep*, Black Case 174/Kor/2558, Bangkok Military Court, August 1, 2016. Copy of unofficial translation on file with Human Rights Watch.

<sup>166</sup> Human Rights Watch interview with Pansak Srithep, Bangkok, October 2017. At time of writing, the case is still pending and being transferred to the civilian courts pursuant to HNCPO order 9/2019. Email correspondence with staff member of Thai Lawyers for Human Rights, October 1, 2019.

<sup>167</sup> Associated Press, “Retired Thai schoolteacher arrested for giving flowers to protestor” *The Star*, October 27, 2015, <https://thestar.com/news/world/2015/10/27/retired-thai-schoolteacher-arrested-for-giving-flowers-to-protestor.html> (accessed September 2, 2019).

<sup>168</sup> “Elderly teacher gets 3 months for giving flower to anti-junta activist,” *Prachatai*, May 23, 2016, <https://prachatai.com/english/node/6182> (accessed September 2, 2019).

### *Prosecution for Satirical Facebook Page*

Even those using satire to criticize the coup and members of the NCPO have been subjected to arrest and prosecution, including on the instruction of Prayut himself. On April 12, 2016, Prayut said in a media interview that he had ordered Thai authorities to take legal action against anyone involved in efforts to mock him on social media: “I will prosecute them all. They can’t make fun of me.... My legal team already has their eyes on these people. What they do is illegal.” The junta’s legal office and the police also stated that they consider it an offense to share or press “Like” on Facebook pages or other online media containing such parody.<sup>169</sup>

Less than two weeks later, on April 27, 2016, military units carried out nearly simultaneous raids in Bangkok and Khon Kaen and arrested eight people involved in a parody Facebook page called “We Love General Prayut.” According to one of those involved with the page, it was launched in May 2014, as a way of expressing their opposition to the declaration of martial law.<sup>170</sup> The page quickly became very popular, with 70,000 followers and more than 500,000 views of its most popular comments.<sup>171</sup> “Mostly the idea was to pick on him [Prayut] to show how stupid he is,” said one of those involved with the page. “He is always contradicting himself. He was the army chief, but also head of the junta and later became prime minister. He would say one thing as army chief, but then say something else as head of the junta. We would point out the contradictions.”<sup>172</sup>

According to Noppakao Kongsuwan, one of those arrested, the raid of his house by members of the military began violently. “They smashed the fence outside my house and smashed a window with a rifle butt.”<sup>173</sup> He was taken to a car where the police blindfolded him, put a paper bag over his head, and tied his wrists together with a plastic cable. When they removed the blindfold, he said, he was at the central command center of the 11<sup>th</sup> Circle Army Corps.<sup>174</sup>

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<sup>169</sup> Human Rights Watch, “Thailand: 8 Charged for Mocking Junta Leader on Facebook,” news release, May 9, 2016, <https://www.hrw.org/news/2016/05/09/thailand-8-charged-mocking-junta-leader-facebook>.

<sup>170</sup> Human Rights Watch interview with Noppakao Kongsuwan, Bangkok, October 2017.

<sup>171</sup> Ibid.

<sup>172</sup> Human Rights Watch interview with one of the administrators of the Facebook page, Bangkok, October 12, 2017.

<sup>173</sup> Human Rights Watch interview with Noppakao Kongsuwan, Bangkok, October 2017.

<sup>174</sup> Ibid.



Facebook users charged with sedition and computer crimes for mocking Prime Minister Gen. Prayut Chan-ocha online leave the military court in Bangkok, May 10, 2016.

© 2016 REUTERS/Chaiwat Subprasom

The eight people—Noppakao, Natthika Worathaiyawich, Harit Mahaton, Worawit Saksamutnan, Yothin Mangkhangsanga, Tanawat Burunsiri, Supachai Saibut, and Kannasit Tangboonthina—were held and interrogated at the camp until the following day, when they were taken to the Crime Suppression Police, where they were paraded in front of cameras at a press conference.<sup>175</sup> They were then taken to military court where they were charged with sedition and violation of the Computer-Related Crime Act.

The eight were detained for 12 days. When the military sought to detain them for an additional 12 days, the court initially denied bail for all eight suspects, but six were ultimately released on bail of 200,000 baht (US\$6,570).<sup>176</sup> Natthika Worathaiyawich and

<sup>175</sup> Thai Lawyers for Human Rights, “A roundup on 28 April: Eight alleged admins of Facebook pages raided and held in custody at the CSD, Criminal Court to deliver an order on the habeas corpus case at 10.00am on 29 April,” blog post, April 29, 2016, <https://www.tlhr2014.com/?p=2495&lang=en>.

<sup>176</sup> “Six of Facebook 8 released on bail,” *Bangkok Post*, May 10, 2016, <https://www.bangkokpost.com/news/politics/967057/six-of-facebook-8-released-on-bail> (accessed May 22, 2019).

Harit Mahaton, who were also charged with lèse-majesté based on private Facebook chats, were denied bail.<sup>177</sup>

The defendants believe they were targeted because of their ties to the Red Shirt movement. The junta alleged that the Facebook page, which categorized itself as a “comedian” site, was created with funding from the son of deposed prime minister Thaksin Shinawatra to ridicule and discredit Prayut and the Thai government. The government provided no evidence to back its claims of sponsorship, but alleged the Facebook page had generated dissent and unruly behavior among Thai people.<sup>178</sup> While those involved in the case do not deny they are supporters of the Red Shirt movement, they deny that there is any connection between the page and Thaksin.<sup>179</sup>

“The vagueness of how the law is interpreted makes it unclear what we can and cannot do,” said Noppokao Kongsuwan. “More importantly, it depends on who you are in the eyes of the authority. If you are branded a certain type of person, it doesn’t matter what you do—they will come after you.”<sup>180</sup>

The military prosecutor filed an indictment on August 23, 2016, charging each person with one count of sedition and one count of violating the Computer-Related Crime Act, despite the fact that the indictment listed 10 posts from the Facebook page. When asked which of the 10 posts they found most surprising as the basis for a sedition charge, members of the group identified an image showing the heads of Prayut and Prawit Wongsuwan, deputy chairman of the NCPO, in the type of baskets used to “float away” bad things.<sup>181</sup> According

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<sup>177</sup> “Two remaining ‘Facebook 8’ denied bail,” *Bangkok Post*, May 11, 2016, <https://www.bangkokpost.com/news/politics/968593/two-remaining-facebook-8-denied-bail> (accessed May 22, 2019). Natthika and Harit, who were finally released on bail on July 8, 2016, were indicted on lèse-majesté charges by the military prosecutor on August 2, 2016. “Military prosecutor indicts anti-junta critics for lèse majesté,” *Prachatai*, August 3, 2016, <https://prachatai.com/english/node/6427> (accessed May 22, 2019). Natthika fled the country in August 2017 to seek asylum abroad. Pravit Rojanaphruk, “Facing prison for mocking Prayut, woman chooses exile,” *Khaosod English*, January 12, 2018, <http://www.khaosodenglish.com/politics/2018/01/12/thai-woman-made-fun-Prayut-facing-prison-fled/> (accessed January 14, 2018).

<sup>178</sup> Human Rights Watch, “Thailand: 8 Charged for Mocking Junta Leader on Facebook,” news release, May 9, 2016, <https://www.hrw.org/news/2016/05/09/thailand-8-charged-mocking-junta-leader-facebook>.

<sup>179</sup> Human Rights Watch interview with Yothin Mangkangsang, Bangkok, October 2018.

<sup>180</sup> Human Rights Watch interview with Noppokao Kongsuwan, Bangkok, October 2017.

<sup>181</sup> Human Rights Watch interview with members of We Love Prayut, Bangkok, October 2017.

to the prosecution indictment, the image included a caption calling on people to “launch a floating lantern to expel the inauspicious dictatorship on November 20, 2015.”<sup>182</sup>

According to Yothin Mangkhangsanga, the military court began hearing witnesses in November 2017 and, in October 2018 was still on the first witness.<sup>183</sup> The defendants have to appear in court, which is a two to three-hour drive from Bangkok, once a month. Yothin said that having to go to court was a problem with his employer, “but not anymore as I am now unemployed and working freelance.”<sup>184</sup> He said that friends have stopped contacting him as a result of the case. “Friends are afraid that the military government will read their messages and if they are talking to me, it will cause trouble for them,” he said.<sup>185</sup>

Tanawat Burunsiri, another defendant, said the case has had a big impact on his family and on his ability to apply for jobs. “It is not okay if the government charged me for making fun of a public figure,” he said. “Public figures get mocked all the time. Why was I imprisoned?”<sup>186</sup>

### *Prosecution for Satirical Questionnaire*

Veera Somkwamkid, a prominent anti-corruption activist, was arrested for violating the Computer-Related Crime Act for mocking Prime Minister Prayut on Facebook. In March 5, 2017, Veera posted a satirical questionnaire on his Facebook page asking which of the promises in the junta’s theme song, “Returning Happiness to Thailand,” composed by Prayut, had been fulfilled.<sup>187</sup> Most of the 123 participants who answered Veera’s questionnaire responded that “none” of the junta’s pledges had been met.<sup>188</sup>

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<sup>182</sup> *Prosecutor of the Bangkok Military Court vs. Suphachai Saibut, et al.*, Bangkok Military Court, August 23, 2016. Copy of unofficial translation on file with Human Rights Watch.

<sup>183</sup> Human Rights Watch interview with Yothin Mangkhangsang, Bangkok, October 2018. At time of writing the case was still ongoing and being transferred to the civilian courts pursuant to HNCPO order 9/2019.

<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.*

<sup>186</sup> Human Rights Watch interview with Thanat Buransiri, Bangkok, October 2018.

<sup>187</sup> <https://www.facebook.com/181257625305431/photos/pcb.1237278049703378/1237277239703459/?type=3&theater>

<sup>188</sup> Human Rights Watch, “Thailand: Junta Making Mockery a Criminal Offense,” news release, April 18, 2017, <https://www.hrw.org/news/2017/04/18/thailand-junta-making-mockery-criminal-offense>.

“I used a song written by Prayut for satire and asked, ‘Do the people believe in the NCPO?’” Veera said. “At the time there was a poll showing support for the NCPO, and I thought it wasn’t true, so I did my own poll.”<sup>189</sup>

On March 9, 2017 an arrest warrant was filed against him for violating the Computer-Related Crime Act. The Police Technology Crime Suppression Division subsequently accused Veera of misleading the public by reporting false information about the junta’s popularity, in violation of section 14 of the Computer-Related Crime Act.<sup>190</sup> “They said it was false because it was not an academic poll—it was a non-standard poll that made people misunderstand the junta’s popularity,” he said.<sup>191</sup> He was released on bail of 100,000 baht (US\$3,285).

## Prosecution of Critics of the Military

Those raising allegations of torture or other abuses by the military, or of corruption by individual members of the military or NCPO, have also been targeted with criminal charges.

### *Prosecution of Torture Victim for Allegations of Torture by the Military*

In February 2018, the Thai army filed criminal defamation charges against a torture victim for discussing his experience on TV in support of an anti-torture bill.

In 2008, Ismae Tae, then a student in Yala, was arrested under Martial Law and allegedly tortured to extract a confession concerning a national security case. According to Ismae, military interrogators electro-shocked, punched, kicked, and beat him with a stick until he passed out. They also poured water down his nose and mouth to induce the sensation of suffocating. He said the torture was used to force him to confess that he was involved in a separatist insurgency.<sup>192</sup>

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<sup>189</sup> Human Rights Watch interview with Veera Somkwamkid, Bangkok, October 5, 2018.

<sup>190</sup> “Police to arrest political critic for posting anti-junta content online,” *Prachatai*, March 13, 2017, <https://prachatai.com/english/node/6994> (September 25, 2018).

<sup>191</sup> Human Rights Watch interview with Veera Somkwamkid, Bangkok, October 2018.

<sup>192</sup> Human Rights Watch, “Thailand: Drop Cases Against Torture Victim,” news release, February 15, 2018, <https://www.hrw.org/news/2018/02/15/thailand-drop-cases-against-torture-victim>.

On October 19, 2016, the Supreme Administrative Court found Ismae had been “physically assaulted” during detention and detained for nine days—exceeding the limit of seven days permitted under the Martial Law then in effect. The court ordered the Royal Thai Army and the Defense Ministry to pay him 305,000 baht (US\$10,019) for emotional distress and physical injuries suffered.<sup>193</sup>

Ismae, who founded the Patani Human Rights Organization to document torture and mistreatment by the military, discussed his experience of torture on the television show “Policy by People” on the Thai PBS channel on February 5, 2018, and called for Thailand to enact a law against torture by state authorities.<sup>194</sup> On February 14, 2018, the Internal Security Operations Command (ISOC) Region 4 filed defamation charges against him, claiming that his speech defamed the army.<sup>195</sup> The filing of criminal defamation charges against Ismae for speaking about his torture by the government violates his right to freedom of speech.

### *Prosecution for Seeking Justice for Torture*

Naritsarawan Kaewnopparat faced criminal charges for her efforts to seek justice for her uncle, who was tortured to death at a military camp in Narathiwat province.

An internal investigation by the 4th Army Region, responsible for Thailand’s southern provinces, found that soldiers severely tortured Private Wichian of the 151st Battalion of the 3rd Infantry Division on June 1, 2011. The report said that Sub. Lt. Om Malaihom, who had accused Wichian of leaving military training without authorization, ordered at least nine soldiers to strip Wichian down to his underwear and drag him over a rough concrete surface before subjecting him to physical abuse for several hours. Wichian died from his injuries four days later, on June 5. Sub-Lieutenant Om and the other nine soldiers received

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<sup>193</sup> International Commission of Jurists, “Thailand: immediately stop criminal defamation complaint against torture victim,” news release, February 15, 2018, <https://www.icj.org/thailand-immediately-stop-criminal-defamation-complaint-against-torture-victim/>.

<sup>194</sup> “Army sues Deep South human rights defender for exposing torture on TV,” *Prachatai*, February 14, 2018, <https://prachatai.com/english/node/7626> (accessed February 15, 2018).

<sup>195</sup> Ibid. The military subsequently filed a civil defamation case seeking damages of THB10 million against MGR Online news for its online reports about Ismae’s case. Human Rights Watch, “Thailand: Drop Cases Against Torture Victim,” news release, February 15, 2018, <https://www.hrw.org/news/2018/02/15/thailand-drop-cases-against-torture-victim>.

military disciplinary punishment of 30 or fewer days in detention but were never charged for murder or other serious offenses.<sup>196</sup>

In 2016, Naritsarawan posted an account online of what had happened to her uncle and demanded that those responsible be brought to justice. The case was then reported on television and became widely publicized.<sup>197</sup>

An officer in the unit responsible for her uncle's death, Maj. Phuri Pheuksophon, filed charges against her for defamation and violation of the Computer-Related Crime Act. On the morning of July 26, 2016, police arrested Naritsarawan at her office at the Ministry of Human Security and Social Development in Bangkok. She was taken to the Muang Narathiwat police station, where she found that the police had already referred the case to the prosecutor.<sup>198</sup> She was released on bail the following day.

Naritsarawan spent more than two years fighting the charges before they were finally dropped in July 2018.

### *Prosecution of Human Rights Defenders for Allegations of Torture*

In January 2016, the Cross Cultural Foundation, Duay Jai Group and the Patani Human Rights Network issued a report documenting 54 cases in which Thai security personnel allegedly tortured or otherwise ill-treated ethnic Malay Muslim insurgent suspects between 2004 and 2016.<sup>199</sup> Four months later, on May 17, 2016, the military filed a criminal complaint in Yala against three human rights defenders involved in the report— Somchai Homloar, Poernmen Khongkachonkie, and Anchana Heemmina. The complaint accused

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<sup>196</sup> Human Rights Watch, "Thailand: Torture Victim's Outspoken Niece Arrested, news release, July 27, 2016, <https://www.hrw.org/news/2016/07/27/thailand-torture-victims-outspoken-niece-arrested>. Private Wichian's family sued the Ministry of Defense, the army, and the Prime Minister's Office for malfeasance and was awarded 7,000,000 baht (US\$229,960) compensation in February 2014. "No justice for the family of a conscript beaten to death," *Bangkok Post*, November 8, 2015, <https://www.bangkokpost.com/thailand/special-reports/757404/no-justice-for-the-family-of-a-conscript-beaten-to-death> (accessed September 12, 2018).

<sup>197</sup> Human Rights Watch interview with Naritsarawan Kaewnopparat, Bangkok, October 2018.

<sup>198</sup> Ibid.

<sup>199</sup> Cross Cultural Foundation, "Torture and Ill-Treatment in the Deep South Documented in 2014-2016," report, January 2016, <https://voicefromthais.files.wordpress.com/2016/02/torture-report-english-as-of-10-feb-2016-released-version.pdf>.

them of criminal defamation and of disseminating false information online in violation of the Computer-Related Crime Act.<sup>200</sup>

Ten months later, on March 7, 2017, the military announced that it was dropping the charges against the three.<sup>201</sup> The case was formally closed on November 6, 2017.<sup>202</sup> The impact of such cases, however, is to intimidate and discourage human rights defenders from speaking out against military abuses.

### *Prosecution for Allegations of Corruption*

In January 2017, political activist Veera Somkwamkid filed a complaint with the national police chief accusing Police General Srivara Ransibrahmanakul of improperly damming a public canal in Pak Chong district of Nakhon Ratchasima, and included aerial photos of the dam.<sup>203</sup> Srivara filed a criminal defamation complaint against him, and Veera was summoned to the police station. “When I was charged, I had to give fingerprints like I was a criminal,” he said. “I was treated as a criminal for revealing corruption.”<sup>204</sup>

According to Veera, he was charged in both Bangkok and Pak Chong district for the same statement and had to travel back and forth to the two courts for his hearings. “The NCPO wants me to stop my political activities, so they are keeping me busy with court cases,” he said.<sup>205</sup>

On August 19, 2018, he was convicted of defamation and given a 16-month suspended prison term and ordered to do social work for one year.<sup>206</sup> He was also fined 1,000,000 baht (US\$32,851) plus interest. He has appealed his conviction.

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<sup>200</sup> Human Rights Watch, “Thailand: Drop Case Against Rights Defenders,” news release, Jun 8, 2016, <https://www.hrw.org/news/2016/06/08/thailand-drop-case-against-rights-defenders>.

<sup>201</sup> Human Rights Watch, “Thailand: Defamation Cases Dropped Against Activists,” news release, March 8, 2017, <https://www.hrw.org/news/2017/03/07/thailand-defamation-cases-dropped-against-activists>.

<sup>202</sup> Front Line Defenders, “Case History: Pornpen Khongkachonkiet” website update, November 6, 2017, <https://www.frontlinedefenders.org/en/case/case-history-pornpen-khongkachonkiet>.

<sup>203</sup> Human Rights Watch interview with Veera Somkwamkid, Bangkok, October 5, 2018; “Activist Veera given suspended jail term, ordered to do social,” *Thai PBS*, August 19, 2018, <https://www.thaipbsworld.com/activist-veera-given-suspended-jail-term-ordered-to-do-social/> (accessed October 5, 2018).

<sup>204</sup> Human Rights Watch interview with Veera Somkwamkid, Bangkok, October 2018.

<sup>205</sup> Ibid.

<sup>206</sup> “Activist Veera given suspended jail term, ordered to do social,” *Thai PBS*, August 19, 2018, <https://www.thaipbsworld.com/activist-veera-given-suspended-jail-term-ordered-to-do-social/> (accessed October 5, 2018).

### *Prosecution for Academic Conference*

The International Conference on Thai Studies was held at Chiang Mai University on July 15, 18, 2017, drawing approximately 176 participants to a three-day scholarly discussion of issues relating to Thailand.<sup>207</sup> The conference, held annually, is hosted by different universities each year.

Uniformed and plainclothes police officers, none of whom were registered for the conference, attended many of the sessions and photographed participants. In protest, on July 18, some of the participants held a sign up in front of the seminar room that read “an academic forum is not a military camp,” and took a photo.<sup>208</sup>

In August 2017, conference organizer Dr. Chayan Wattanaputi, a translator, and three students who had held up the sign received summons telling them to report to the police for violating HNCPO order 3/2015.<sup>209</sup> When the five reported to the authorities, they were informed that the accusation related to the sign, which was alleged to constitute a political gathering and incitement to violation of public order.<sup>210</sup>

On July 4, 2018, the public prosecutor formally indicted all five individuals on charges of violating HNCPO order 3/2015.<sup>211</sup> The indictment asserted that the five displayed a banner saying “Academic Forum is Not Military Barrack,” and took a picture of the banner “while showing a three-finger salute, which is a political symbol to oppose the government. Their actions caused people to misunderstand that the government and the military restricted

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<sup>207</sup> Thai Lawyers for Human Rights, “‘An academic forum is not a military barrack’ Prosecution of peaceful expression at an academic conference,” blog post, July 31, 2018, <https://www.tlhr2014.com/?p=8288&lang=en>.

<sup>208</sup> Committee of Concerned Scientists, “Five Attendees at 2017 International Conference on Thai Studies Face Trial Monday, August 20<sup>th</sup>,” news release, August 19, 2018, <https://concernedscientists.org/2018/08/five-attendees-at-2017-international-conference-on-thai-studies-face-trial-monday-august-20th/>.

<sup>209</sup> The four additional defendants were Pakawadee Weerapaspong, a translator and writer, doctoral student Chayapoing Samnieng, student Nontawat Machai, and post-graduate student Teeramon Bua-ngum. “Five Thai Studies Conference Attendees Arrested by Junta,” *CityLife Chiang Mai*, August 22, 2017, <https://www.chiangmaicitylife.com/news/five-thai-studies-conference-attendees-arrested-by-junta/> (accessed September 12, 2017).

<sup>210</sup> Ibid; Human Rights Watch, “Thailand: Drop Bogus Charges Against Thai Studies Academics,” news release, August 16, 2017, <https://www.hrw.org/news/2017/08/16/thailand-drop-bogus-charges-against-thai-studies-academics>.

<sup>211</sup> International Commission of Jurists, “Thailand: end prosecution of Chiang Mai academics,” news release, July 4, 2018, <https://www.icj.org/thailand-end-prosecution-of-chiang-mai-academics/>.

rights freedoms of the people, which created a negative perception about the government.”<sup>212</sup>

Before witness testimony on December 12, 2018, the prosecutor asked the court to rule whether or not the case could continue in light of the issuance, on December 11, of HNCPO order 22/2018, which nullified HNCPO Order 3/2015.<sup>213</sup> The court then issued an order to suspend the witness hearings and set a meeting for all parties in the case to hear the ruling on December 25.

The defendants’ lawyers asked that each defendant be allowed to make an oral statement to the court for the record, since the prosecution had already presented nearly all of their evidence, but the defense had not been able to present evidence to demonstrate their innocence, and the court agreed.<sup>214</sup>

Many of the defendants spoke about the intrusive behavior of the police and military during the conference, which included photographing speakers and conference participants and speaking in their mobile phones close to the translators, which interrupted the transmission of the translation to participants’ headsets. They also spoke about the problems that the prosecution had created for them. Nontawat noted that his studies had been affected by his prosecution, as he has frequently had to miss class to attend court.<sup>215</sup>

Dr. Chayan said that he had also faced trouble and hardship. “I have had to report myself to the prosecutor every month, go to court, and have been viewed as a person who violates the orders of the NCPO. This has caused the CMU [Chiang Mai University] administration to develop misunderstandings about me,” he said.<sup>216</sup>

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<sup>212</sup> *Prosecutor of the Chiang Mai District Court vs. Chayan Vaddhanaphuti and other accomplices*, Black Case 6792/2561, Chiang Mai District Court, July 4, 2018. Copy of unofficial translation on file with Human Rights Watch.

<sup>213</sup> Thai Lawyers for Human Rights, “Suspension of Witness Hearings in the “An Academic Conference is Not a Military Barracks” Case,” blog post, December 18, 2018, <https://www.tlhr2014.com/?p=10173&lang=en>.

<sup>214</sup> *Ibid.*

<sup>215</sup> *Ibid.*

<sup>216</sup> *Ibid.*

On December 25, 2018, the court ruled that section 1(7) of HNCPO order 22/2018 revoked section 12 of HNCPO 3/2015, under which the defendants were accused, and dismissed the case, ruling that the actions they undertook were no longer unlawful.<sup>217</sup>

The repercussions from the case continue, however. A number of international academics who signed one of the many petitions in support of the defendants after their arrest have been detained by the Immigration Authorities or questioned by Special Branch when entering or leaving Thailand.<sup>218</sup>

## Prosecution of Opposition Politicians

Criminal laws have also been repeatedly used against opposition politicians for criticizing the NCPO or Prime Minister Prayut.

### *Sunisa Lertpakawat*

Sunisa Lertpakawat, a spokesperson for the opposition Pheu Thai party, is facing multiple charges of sedition and computer-related crimes for social media posts criticizing the NCPO.<sup>219</sup>

On December 6, 2017, the legal officer for the NCPO lodged a complaint with the police, accusing Sunisa of violating the Computer-Related Crime Act and harming national security by distributing distorted or false information through the internet. The junta also accused her of committing sedition, alleging that her Facebook posts were not honest criticisms and caused public disaffection with the government.<sup>220</sup>

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<sup>217</sup> “‘An academic forum is not a military camp’ case dismissed; court rules law no longer exists to charge 5 defendants,” *Prachatai*, December 26, 2018, <https://prachatai.com/english/node/7853> (accessed January 3, 2019).

<sup>218</sup> “Scholar detained at immigration; possible link to Thai Studies Conference case,” *Prachatai*, February 15, 2019, <https://prachatai.com/english/node/7930> (accessed May 7, 2019); Thai Lawyers for Human Rights, “Four international academics detained by Thai Immigration after signing a public statement during the Thai Studies Conference,” blog post, February 25, 2019, <https://www.tlhr2014.com/?p=11115&lang=en>; “U of Malaya lecturer detained at immigration again [Thai Studies Conference connection],” *Prachatai*, August 19, 2019, <https://prachatai.com/english/node/8180> (accessed August 8, 2019).

<sup>219</sup> Human Rights Watch interview with Sunisa Lertpakawat, Bangkok, October 2018.

<sup>220</sup> Human Rights Watch, “Thailand: Politician Faces Baseless Sedition Charges,” news release, December 12, 2017, <https://www.hrw.org/news/2017/12/12/thailand-politician-faces-baseless-sedition-charges>.

The complaint stated that the legal action concerned the following messages on Sunisa's Facebook page:

- November 22, criticizing the junta for failing to provide credible explanations about the death of an army cadet who allegedly died as a result of corporal punishment at the Armed Forces Academies Preparatory School (AFAPS);
- December 3, criticizing the government's budget allocation for allegedly failing to prioritize the public health service and relying on voluntary donations from the public to fill in missing budgetary support for state hospitals; and
- December 4, criticizing Prime Minister Prayut for welcoming a rock music star to the Government House while harshly treating people who suffered from government policies, such as the dispersal of protesters against coal-fired power plant on November 27 in Songkhla province.<sup>221</sup>

When she went to the police station on December 13 to hear the charges, members of the diplomatic community went with her. Afterward, the NCPO then began trying to identify the diplomats who had attended.<sup>222</sup> "I said they [the authorities] should not intimidate the international community that came with me. This is not good. I said it was a shameful act and not good for the country."<sup>223</sup>

On December 20, 2017, Sunisa went to the police station to hear additional sedition and computer-related crime accusations against her based on criticism of Prayut she posted on Facebook in September and October 2017. According to iLaw, the later accusations were reported to the police after Sunisa posted a message on her Facebook account criticizing the first round of charges against her.<sup>224</sup>

Said Sunisa, "I can't avoid giving comment on government malpractice or the military intervention in politics. It has obstructed democratic development in Thailand."<sup>225</sup>

At time of writing, the cases against her were still with the police.

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<sup>221</sup> Ibid.

<sup>222</sup> "Police seek out diplomats who witnessed prosecution of junta critic," *Prachatai, English*, December 19, 2017, <https://prachatai.com/english/node/7518> (accessed April 15, 2019).

<sup>223</sup> Human Rights Watch interview with Sunisa Lertpakawat, Bangkok, October 2018.

<sup>224</sup> iLaw, "Lieutenant Jeab: Criticized NCPO on Facebook," case summary, <https://freedom.ilaw.or.th/en/case/811>.

<sup>225</sup> Human Rights Watch interview with Sunisa Lertpakawat, Bangkok, October 2018.

### *Pichai Naripthaphan*

In addition to facing multiple rounds of “attitude adjustment,” Pheu Thai politician Pichai Naripthaphan has also faced criminal charges filed by the NCPO. In August 2017, he was summoned to the police station on charges of violating the Computer-Related Crime Act.<sup>226</sup> “I was writing on the economy, saying Thailand’s economy was growing slower than others in the area,” he said. “I said it had reached the boiling point, referring to a theory in economics.”<sup>227</sup> After he posted the commentary on his personal Facebook page, he was summoned by the police for posting “false information” that could harm the economy, in violation of the Computer-Related Crime Act. He reported to the police and was fingerprinted and told of the charge against him.<sup>228</sup>

“They said I made it up,” he told Human Rights Watch. “Lots of academics spoke out in support, saying this is a valid academic theory.”<sup>229</sup> The case has yet to be submitted to the public prosecutor.

Pichai expressed his view of the Computer-Related Crime Act: “It is being used for the people who are against the government. It is an abuse of the law to quiet down people that think opposite the government, like me. All my information is backed up by information from the government—this is why the cases don’t proceed.”<sup>230</sup>

### *Prosecution for Pheu Thai Press Conference*

A group of Pheu Thai politicians decided to hold a press conference on May 17, 2018, to give their assessment of the NCPO’s performance in the four years since the 2014 coup. The morning of the scheduled press conference, police came to the party headquarters and warned them that holding a political assembly of five or more people would be in violation of NCPO order 3/2015.<sup>231</sup> After consultation, it was decided that only three people

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<sup>226</sup> “Pheu Thai’s outspoken Pichai summoned by police,” *Thai PBS*, August 1, 2017, <http://englishnews.thaipbs.or.th/pheu-thais-outspoken-pichai-summonsed-by-police/>.

<sup>227</sup> Human Rights Watch interview with Pichai Naripthaphan, Bangkok, October 2018.

<sup>228</sup> “Pichai hops in to hear ‘frog’ charge,” *Bangkok Post*, August 5, 2017, <https://www.bangkokpost.com/news/general/1300179/pichai-hops-in-to-hear-frog-charge> (accessed April 17, 2019).

<sup>229</sup> Human Rights Watch interview with Pichai Naripthaphan, Bangkok, October 2018.

<sup>230</sup> *Ibid.*

<sup>231</sup> Human Rights Watch interview with Chaikasem Nitisiri, Bangkok, October 2018.

—Watana Muangsook, Chaturon Chaisang, and Chusak Sirinil, legal chief of the party—would speak at the press conference.

Noppadon Pattama, who was present, said that the speakers “provided constructive criticism of economic performance, political development and the NCPO’s handling of government affairs. They also called for an election to be held.”<sup>232</sup>

The police summoned the three speakers, along with five others present. On May 21, 2018, they met with the police, who filed charges under the sedition law and HNCPO 3/2015 against the three who spoke, and charges of violating HNCPO 3/2015 against the other five.<sup>233</sup>

Noppadon Pattama was surprised by the charge. “A right-minded politician would never think that the holding of a press conference would be viewed as violating NCPO order 3. It never occurred to me, and I am a lawyer, that this could be considered a violation.”<sup>234</sup> The charge was dropped after the issuance of HNCPO order 22/2018 repealing HNCPO 3/2015.<sup>235</sup>

On October 17, the police sent the case against the three speakers to the prosecutor’s office. On February 19, 2019, the attorney-general’s office stated that it would announce a decision on March 21—three days before the scheduled election.<sup>236</sup> It did not, however, do so. On September 24, 2019, almost a year after receiving the case, the prosecutor finally announced that the charges against the three speakers were being dropped.<sup>237</sup>

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<sup>232</sup> Human Rights Watch interview with Noppadon Pattama, Bangkok, October 2018.

<sup>233</sup> “Thai senior politicians charged with sedition against military,” *Al Jazeera*, May 21, 2018, <https://www.aljazeera.com/news/2018/05/180521090633218.html> (accessed September 15, 2018). The five charged only with violation of NCPO order 3/2015 are Noppadon Pattana, Chaikasem Nitisiri, Wirode Pao-in, Phumtham Wechayachai, and Kittiratt Na-Ranong. “Pheu Thai politicians deny sedition charges for holding a press conference,” *The Nation*, May 21, 2018, <http://www.nationmultimedia.com/detail/politics/30345944> (accessed September 15, 2018).

<sup>234</sup> Human Rights Watch interview with Noppadon Pattama, Bangkok, October 2018.

<sup>235</sup> “Sedition charges against 3 Pheu Thai men dropped,” *Bangkok Post*, September 24, 2019, [https://www.bangkokpost.com/thailand/politics/1757409/sedition-charges-against-3-pheu-thai-men-dropped#cxrecs\\_s](https://www.bangkokpost.com/thailand/politics/1757409/sedition-charges-against-3-pheu-thai-men-dropped#cxrecs_s) (accessed September 24, 2019).

<sup>236</sup> “Sedition charges loom against Chaturon, 2 Pheu Thai men,” *Bangkok Post*, February 19, 2019, <https://www.bangkokpost.com/news/politics/1629162/sedition-charges-loom-against-chaturon-2-pheu-thai-men> (accessed April 17, 2019).

<sup>237</sup> “Sedition charges against 3 Pheu Thai men dropped,” *Bangkok Post*, September 24, 2019, [https://www.bangkokpost.com/thailand/politics/1757409/sedition-charges-against-3-pheu-thai-men-dropped#cxrecs\\_s](https://www.bangkokpost.com/thailand/politics/1757409/sedition-charges-against-3-pheu-thai-men-dropped#cxrecs_s) (accessed September 24, 2019).

## *Watana Muangsook*

Prominent Pheu Thai politician and former commerce minister Watana Muangsook has also been facing multiple criminal charges filed by the NCPO. Commenting on the cases against him, Watana said, “They are trying to get jail terms for me and Chaturon [Chaisang] to block us from running for office. If you are sentenced to even one day in jail, you are disqualified from office for 10 years.”<sup>238</sup>

As is true of many other Pheu Thai politicians, he was summoned for “attitude adjustment” immediately following the coup and held for three days. Before he was released, he had to sign a paper in which he agreed not to join any political movement and not to go abroad without permission.<sup>239</sup>

In March 2016, Watana posted a message on his Facebook profile criticizing Deputy Prime Minister Gen. Prawit Wongsuwan’s stated justifications for surveillance of former prime minister Yingluck Shinawatra. Prawit told the media that the soldiers were dispatched to protect her and they probably took photos of her because she is “attractive.” In response Watana wrote that Prawit was being rude and sexist.<sup>240</sup> The NCPO sent troops to his house and took him to the 11th Army Circle for “attitude adjustment.”<sup>241</sup>

He was subsequently charged with posting “false” information in violation of the Computer-Related Crime Act. Junta spokesman Col. Winthai Suvaree was quoted in the media as stating that “Mr. Watana committed a crime by publicizing misleading information,” and that his Facebook post was “damaging.”<sup>242</sup>

The charge alleged that on March 1 and 2, 2016, Watana posted comments on his Facebook page in which he accused Prayut, Prayut’s deputy and Defense Minister Gen.

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<sup>238</sup> Human Rights Watch interview with Watana Muangsook, Bangkok, October 2017.

<sup>239</sup> Ibid.

<sup>240</sup> “Update: Military files charges against politician criticising deputy junta leader,” *Prachatai*, March 3, 2016, <https://prachatai.com/english/node/5900> (accessed April 12, 2019).

<sup>241</sup> Human Rights Watch interview with Watana Muangsook, Bangkok, October 2017.

<sup>242</sup> Amy Sawitta Lefevre and Aukkarapon Niyomyat, “Thai politician charged after criticizing general’s ‘sexist’ remark,” *Yahoo News*, March 3, 2016, <https://ca.news.yahoo.com/thai-politician-charged-criticizing-generals-sexist-remark-054521947.html> (accessed May 28, 2019).

Prawit Wongsuwan, and the NCPO of not returning power to people and of manipulating laws to avoid facing investigations.<sup>243</sup>

Watana argued that his statement was within his right to freedom of speech under article 19 of the International Covenant on Civil and Political Rights.<sup>244</sup> On October 31, 2016, the Bangkok South Criminal Court dismissed the charge, ruling that what he expressed was honest opinion and not false information.<sup>245</sup> The government did not file an appeal.<sup>246</sup>

In mid-March 2016, Watana made a statement in support of another Pheu Thai member of parliament, who was being held for “attitude adjustment” for saying that, if the constitutional referendum did not pass, the prime minister should resign.<sup>247</sup> On March 27, military officers appeared at his home stating that they wanted to detain him, but he was away.<sup>248</sup> Watana posted on his Facebook page that he would appear at the 11<sup>th</sup> Army Circle at 11 a.m. the following day and there was no need to arrest him.<sup>249</sup> He reported on March 28 and was detained for “attitude adjustment” until March 31.<sup>250</sup>

In April 2016, Watana posted on his Facebook page that he did not agree with the draft constitution, and that people had the right to express their views on the draft. On April 13, he announced that military officers had contacted him to say they would come to his house on April 18 to take him for another attitude adjustment session.<sup>251</sup>

“They sent troops to my house and took me to the 9<sup>th</sup> Infantry Division, near the Burmese border. I argued with them and told them they had no power to hold me in custody

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<sup>243</sup> Tesene Kaengkaew, “Court acquits Watana over Facebook posts about junta,” *The Nation*, November 1, 2016, <http://www.nationmultimedia.com/news/politics/30298837> (accessed September 12, 2017); iLaw, “Watana Muangsook: Computer Crime case on criticising Gen.Prawit,” case update, [https://freedom.ilaw.or.th/en/case/713#progress\\_of\\_case](https://freedom.ilaw.or.th/en/case/713#progress_of_case).

<sup>244</sup> Human Rights Watch interview with Watana Muangsook, Bangkok, October 2017.

<sup>245</sup> Tesene Kaengkaew, “Court acquits Watana over Facebook posts about junta,” *The Nation*, November 1, 2016, <http://www.nationmultimedia.com/news/politics/30298837> (accessed September 12, 2017).

<sup>246</sup> Human Rights Watch interview with Watana Muangsook, Bangkok, October 2017.

<sup>247</sup> Ibid.

<sup>248</sup> “Military threatens to arrest family of Pheu Thai politician,” *Prachathai*, March 28, 2016, <https://prachatai.com/english/node/5976> (accessed September 26, 2017).

<sup>249</sup> Ibid.

<sup>250</sup> Human Rights Watch interview with Watana Muangsook, Bangkok, October 2017.

<sup>251</sup> “Junta critic again to be taken in for military re-education,” *Prachathai*, April 14, 2016, <https://prachatai.com/english/node/6041> (accessed September 26, 2017).

because it wasn't one of the four things the NCPO has put under the jurisdiction of the military courts.”<sup>252</sup>

On April 21, 2016, Watana was charged in military court with violating the terms of the agreement he signed after his initial round of “attitude adjustment” by continuing to engage in political activities.<sup>253</sup> He was released on bail of 800,000 baht (US\$26,281).<sup>254</sup> If convicted, he faces up to two years in prison.

On April 19, 2017, the deputy chief of the Royal Thai Police revealed that the Technology Crime Suppression Division had filed a complaint against Watana under the Computer-Related Crime Act for a post in which he asserted that a plaque commemorating the 1932 revolution, which had mysteriously disappeared, was a “national asset.”<sup>255</sup> The division accused him of posting false information claiming it was a national asset in order to call for people to demand its return, and asserted that the post might also incite chaos.<sup>256</sup> He was indicted in that case in December 2017.<sup>257</sup> On December 14, 2018, the court acquitted him of the charges, stating that his comments were opinions and posed no threat to national security.<sup>258</sup>

In August 2017, Watana was again summoned on new criminal charges relating to Facebook posts condemning the trial of former prime minister Yingluck Shinawatra. He was charged with sedition and publication of false information in violation of the Computer-

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<sup>252</sup> Human Rights Watch interview with Wattana Muangsook, Bangkok, October 2017.

<sup>253</sup> Ibid.; “Detained Pheu Thai politician may face 2 years in prison,” *Prachatai*, April 19, 2016, <https://prachatai.com/english/node/6051> (accessed September 27, 2017).

<sup>254</sup> “Military court frees embattled Pheu Thai politician,” *Prachatai*, April 21, 2016, <https://prachatai.com/english/node/6064> (accessed September 27, 2017).

<sup>255</sup> The plaque, which read “At this place, at the dawn of 24 June 1932, we the People’s Party have given birth to the Constitution for the progress of the nation,” was replaced by a different plaque some time in April 2016.

<sup>256</sup> “Junta critic faces charge over FB post on 1932 Revolution plaque,” *Prachatai*, April 20, 2017, <https://prachatai.com/english/node/7086> (accessed September 27, 2017).

<sup>257</sup> “Watana trial over missing-plaque comments set for next October,” *The Nation*, December 18, 2017, <http://www.nationmultimedia.com/detail/politics/30334246> (accessed April 17, 2019).

<sup>258</sup> “Watana not guilty in 1932 plaque case,” *Bangkok Post*, December 14, 2018, <https://www.bangkokpost.com/news/politics/1594210/watana-not-guilty-in-1932-plaque-case>, (accessed April 17, 2019).

Related Crime Act.<sup>259</sup> He appeared to hear the charges on August 11, 2017.<sup>260</sup> At time of writing, those cases were still with the police.

Watana has also twice been held in contempt of court. The first time he was charged with contempt for sending a Facebook Live message from the court complex saying he was at court. Watana said he did not know that such action is prohibited within the courtroom and that court staff had told him that he could use his mobile phone.<sup>261</sup> He was held in contempt and sentenced to one month in jail, suspended for two years, and a fine of 500 baht (US\$16).

A week later, the court again charged him with contempt. On August 28, Watana went to court to submit a petition to the appeals court on an issue related to his ongoing sedition case. After he submitted the petition, he went to the area in the court precinct where individuals often gave interviews to the media. “Before I did so, I asked the guard, who said yes, this is the place for media interviews.”<sup>262</sup>

After his media interviews, authorities took him and put him in a holding cell in the courthouse. After four hours, he was taken to the court, where an officer accused him of making an appointment with the media via the Line Chat application from the courthouse. Watana told the court that it was the party who had notified the media that he would be there.<sup>263</sup> “They said I violated the rules of the court by making a meeting with the media. I said there was no such rule. They said that even if there wasn’t [such a rule], as a lawyer I should know. Basically, they said I didn’t behave properly in court because I gave media interviews at the place established by the court for media interviews.”<sup>264</sup> He was held in contempt and sentenced to two months in jail, suspended for two years, and a fine of 500 baht (US\$16).<sup>265</sup>

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<sup>259</sup> “Monday review: sedition, prosecution and ... a headlock,” *Prachatai*, August 7, 2017, <https://prachatai.com/english/node/7312> (September 28, 2017).

<sup>260</sup> “Watana appears at TCSD on computer crime charges,” *The Nation*, August 11, 2017, <http://www.nationmultimedia.com/detail/breakingnews/30323497> (accessed May 1, 2019).

<sup>261</sup> “Junta critic gets 1 year suspended jail term for contempt of court,” *Prachatai*, August 22, 2017, <https://prachatai.com/english/node/7337> (accessed May 1, 2019).

<sup>262</sup> Human Rights Watch interview with Watana Muangsook, Bangkok, October 2017.

<sup>263</sup> *Ibid.*

<sup>264</sup> *Ibid.*

<sup>265</sup> “Anti-junta politician faces another jail term for contempt of court,” *Prachatai*, August 29, 2017, <https://prachatai.com/english/node/7349> (accessed May 1, 2019).

As discussed above, Watana also faced charges of sedition and violation of HNCPO 3/2015 in connection with the press conference held by Pheu Thai to mark four years of military rule.

### *Prosecution of Members of Future Forward Party*

Thanathorn Juangroongruangkit, leader of opposition Future Forward Party, has been repeatedly threatened with criminal charges since forming his party in March 2018.

According to Thanathorn, the party held Facebook live events every Friday. During the June 29, 2018 event, they criticized the NCPO, focusing on how a new political party connected to the military was allegedly recruiting members from other parties by using money or threats to bring criminal charges against them. Thanathorn also expressed his opinion that if the NCPO could use the threat of criminal charges, it meant they have power over the judicial system.<sup>266</sup>

In late July, he and the two other party members involved in the program got a summons to appear as witnesses.<sup>267</sup> They responded, and the police wanted to know who had filmed and uploaded the event. All three declined to answer, saying that they would answer any questions during the court process if charged.<sup>268</sup>

Several weeks later, they got a new summons, this time listing them as suspects, charged with importing “false information that could harm the country’s stability.”<sup>269</sup> Col. Burin Thongprapai, the NCPO’s chief legal officer, told the media in July that he filed the charges because in the Facebook live broadcast Thanathorn had made accusations against the junta and twisted facts in a manner that amounted to an attack on Thailand’s justice system.<sup>270</sup>

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<sup>266</sup> Human Rights Watch interview with Thanathorn Juangroongruangkit, Bangkok, October 2018.

<sup>267</sup> “Thai Junta Files Complaint Against Future Forward Party Leader Thanathorn Leading to Computer Crimes Act Investigation,” *Chiang Rai Times*, July 31, 2018, <https://www.chiangraitimes.com/thai-junta-files-complaint-against-future-forward-party-leader-thanathorn-leading-to-computer-crimes-act-investigation.html> (accessed April 17, 2019).

<sup>268</sup> Human Rights Watch interview with Thanathorn Juangroongruangkit, Bangkok, October 18, 2018.

<sup>269</sup> “Future Forward’s Thanathorn charged with computer crime,” *Bangkok Post*, August 24, 2018, <https://www.bangkokpost.com/news/politics/1527190/future-forwards-thanathorn-charged-with-computer-crime> (accessed September 26, 2018).

<sup>270</sup> *Ibid.*

Thanathorn, the Future Forward Party's acting registrar Klaikong Vaidhyakarn, and executive member Jaruwan Sarankaet appeared at the Technology Crime Suppression Bureau on September 17, 2018 and denied the charges against them. Afterward, Thanathorn told reporters that "the Computer-Related Crime Act is used with the objective to silence us, threaten us, to make politics of fear happen in this country."<sup>271</sup>

"They are not deterring us," Thanathorn told Human Rights Watch. "Hundreds of people have been charged before us under this government. It's a joke."<sup>272</sup>

On February 20, 2019, a month before the scheduled election, the police announced that they were sending the case to the prosecutor's office to decide whether to press charges.<sup>273</sup> On February 27, the prosecutor's office announced that it was deferring the decision on whether or not to indict the three politicians on the charges until after the election scheduled for March 24.<sup>274</sup> Two days after the election, the prosecutor announced that he was once again postponing the decision on the charges.<sup>275</sup> If charged and convicted, all three would be automatically disqualified from holding political office under the military-drafted constitution.<sup>276</sup>

The Future Forward Party came in third in the March 24 elections with 6.2 million votes, obtaining 80 seats in Thailand's lower house.<sup>277</sup> In the wake of that election, the judicial harassment of Thanathorn intensified. On April 6, 2019, the police charged Thanathorn with sedition, assisting others who committed a serious crime in violation of section 189 of

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<sup>271</sup> "Leaders of new Thai party charged over Facebook speech," *Al Jazeera*, September 17, 2019, <https://www.aljazeera.com/news/2018/09/leaders-thai-party-charged-facebook-speech-180917135305065.html> (accessed April 17, 2019).

<sup>272</sup> Human Rights Watch interview with Thanathorn Juangroongruangkit, Bangkok, October 2018.

<sup>273</sup> "Police seek to prosecute Thanathorn over junta criticism," *Bangkok Post*, February 20, 2019, <https://www.bangkokpost.com/news/politics/1632150/police-seek-to-prosecute-thanathorn-over-junta-criticism> (accessed April 17, 2019).

<sup>274</sup> "Thai prosecutors say criminal case against a politician will be decided after election," *CNBC*, February 27, 2019, <https://www.cnbc.com/2019/02/27/thai-prosecutors-case-against-politician-to-be-decided-post-election.html> (accessed February 20, 2019).

<sup>275</sup> "Prosecutors postpone Future Forward's cybercrime case," *Khaosod English*, March 26, 2019, <http://www.khaosodenglish.com/featured/2019/03/26/prosecutors-postpone-future-forwards-cybercrime-case/> (accessed March 26, 2019).

<sup>276</sup> Constitution of the Kingdom of Thailand, English translation published by the Office of the Council of State, [https://www.constituteproject.org/constitution/Thailand\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Thailand_2017.pdf?lang=en), sec. 101.

<sup>277</sup> Hannah Ellis-Petersen, "Thai parties cry foul after election results favour military junta," *Guardian*, May 8, 2019, <https://www.theguardian.com/world/2019/may/08/thai-parties-cry-foul-after-election-results-favour-military-junta> (accessed May 8, 2019).

the Criminal Code, and participating in an unlawful assembly of more than 10 people in violation of section 215 of the Criminal Code.<sup>278</sup> If convicted, he faces prison terms of up to seven years, two years, and six months respectively.



Thanathorn Juangroongruangkit, leader of the Future Forward Party, flashes a three-finger salute to his supporters as he leaves a police station after hearing a sedition complaint filed by the army, Bangkok, April 6, 2019. © 2019 Reuters/Athit Perawongmetha

The charges relate to a protest that took place in June 2015. According to the NCPO, Thanathorn joined and made commentary in support of the protest and assisted the activists in “fleeing” by sending a van to pick them up.<sup>279</sup> Thanathorn has denied the charges, calling them politically motivated.<sup>280</sup>

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<sup>278</sup> “Thanathorn faces three more charges,” *Bangkok Post*, April 6, 2019, <https://www.bangkokpost.com/news/politics/1657608/thanathorn-faces-three-more-charges> (accessed April 8, 2019).

<sup>279</sup> “FFP Chief on Sedition Rap,” *Bangkok Post*, April 4, 2019, [https://www.bangkokpost.com/news/politics/1656016/FFP-chief-on-sedition-rap#cxrecs\\_s](https://www.bangkokpost.com/news/politics/1656016/FFP-chief-on-sedition-rap#cxrecs_s) (accessed April 4, 2019).

<sup>280</sup> “Thailand: Anti-military party leader faces sedition charges,” *Al Jazeera*, April 6, 2019, <https://www.aljazeera.com/news/2019/04/thailand-anti-military-party-leader-faces-sedition-charges-190406052615231.html> (accessed April 6, 2019).

Since the March 2019 election, the police have also filed charges against the secretary-general of the party, Piyabutr Saengkanokkul, under the Computer-Related Crime Act and for contempt of court. The complaint, filed by NCPO legal officer Col. Burin Thongprapai, is based on a statement Piyabutr read on behalf of the party commenting on the Constitutional Court's decision to dissolve the Thai Raksa Chart Party in March.<sup>281</sup> Piyabutr appeared at the police station on April 17, 2019, where he denied both charges.

## Prosecution of Pro-Democracy Activists, Human Rights Defenders

Individuals holding peaceful protests against the coup, calling for elections, or criticizing the military-drafted constitution have been repeatedly charged under the sedition law, HNCPO 3/2015, the Public Assembly Act, the Referendum Act, and other laws.

### *Prosecutions for Criticism of the Draft Constitution*

Dozens of people who participated in a campaign encouraging people to vote “no” on a referendum on the military-drafted constitution were arrested and prosecuted under the Referendum Act, in violation of their right to freedom of expression, while others faced charges under HNCPO 3/2015 for organizing events to discuss the draft constitution.<sup>282</sup>

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<sup>281</sup> “Future Forward's Piyabutr denies charges,” *Bangkok Post*, April 17, 2019, <https://www.bangkokpost.com/news/politics/1662868/future-forwards-piyabutr-denies-charges> (accessed April 17, 2019). According to Thai media, the statement said efforts have been made over the past 13 years to use the law as a political tool, raising questions about the independence of government bodies as well as the use of the Constitutional Court for political gain, which often leads to further clashes between conflicting parties. “Future Forward's Piyabutr to hear charges Wednesday,” *Bangkok Post*, April 16, 2019.

<https://www.bangkokpost.com/news/politics/1662092/future-forwards-piyabutr-to-hear-charges-wednesday> (accessed April 17, 2019); “NCPO to bring charges against FFP for contempt of court,” *Prachatai*, March 11, 2019, <https://prachatai.com/english/node/7965> (accessed April 17, 2019).

<sup>282</sup> Thai Lawyers for Human Rights, “TLHR's Legal Opinion on Prosecutions of “Referendum Suspects,” blog post, December 23, 2016, <https://www.tlhr2014.com/?p=3095&lang=en>.



Thai activist Nutta Mahattana protests the junta-backed constitution ahead of the August 7, 2016 referendum in Bangkok, June 15, 2016. © 2016 Chaiwat Subprasom/Reuters

### Prosecution for “Talk for Freedom”

On July 31, 2016, members of the New Democracy Movement and New Generation Citizen (“Dao Din”) groups organized a forum at Khon Kaen University entitled “Talk for Freedom.” At the forum, participants discussed their opinions on the draft constitution, the referendum for which was to be held on August 7, 2016.

The police subsequently summoned 11 of those who had been present at the forum.<sup>283</sup> Two of those summoned chose to undergo the military’s “attitude adjustment” in exchange for the prosecution being dropped.<sup>284</sup> The police charged six activists— Jatupat “Pai” Boonphatthararaksa, Chatmongkhon Chanchiawchan, Phanuphong Sithanawanuwat, Chatthai Noi-unsan, Nattaporn Artharn and Narongrit Uppachan—with violating HNCPO order 3/2015. The police also charged two members of the staff of Thai Lawyers for Human

<sup>283</sup> “Police press charges against 11 participants of discussion about 2017 Constitution,” *Prachatai*, July 7, 2017, <https://prachatai.com/english/node/7258> (accessed May 10, 2019).

<sup>284</sup> “Human rights defenders plead not guilty at Khon Kaen military court,” *Prachatai*, December 27, 2017, <https://prachatai.com/english/node/7532> (accessed September 15, 2018).

Rights, Duangthip Khanrit and Neeranuch Neamsub, with violating HNCPO order 3/2015, even though they were at the forum as observers rather than as participants.<sup>285</sup> The final person summoned, activist Rangsiman Rome, refused to report to the police on the grounds that the junta's order was unlawful.<sup>286</sup>

The military prosecutor indicted the eight defendants on October 31, 2017. The indictment stated that, because the suspects read out a statement rejecting the draft charter issued by the Thammasat University law scholars group, and encouraged participants to vote no in the referendum on the draft constitution, the forum constituted a gathering of more than five persons with political purposes, in violation of HNCPO order 3/2015.<sup>287</sup> The military court released seven of the defendants on bail of 10,000 baht (US\$328) each. The eighth defendant, Jatupat Boonphattharaksa, was already serving a prison sentence after pleading guilty to *lèse-majesté* under section 112 of the Thai Criminal Code.<sup>288</sup>

The military court held the first hearing in the case on December 21, 2017. On February 12, 2018, after Rangsiman Rome appeared at the police station in Bangkok to answer charges related to a pro-democracy protest, the police took him to Khon Kaen to hear the charge against him.<sup>289</sup>

On February 4, 2019, the Khon Kaen military court dismissed the case, relying on the nullification of section 12 of HNCPO order 3/2015 by HNCPO order 22/2018.<sup>290</sup>

### **Use of Referendum Act against *Prachatai* Journalist**

On July 10, 2016, Taweesak Kerdpoka, a reporter for the online news site *Prachatai*, travelled with three activists from the New Democracy Movement (NDM)—Pakorn Areekul, Anucha Rungmorakot, and Anan Loked—to Ratchaburi province. According to Taweesak,

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<sup>285</sup> Ibid.

<sup>286</sup> Ibid.

<sup>287</sup> *Prosecutor of the 23<sup>rd</sup> Army Circle vs Jatupat Boonphattharaksa, et al.*, Black Case No. 83/2560, 23<sup>rd</sup> Army Circle Court, October 17, 2016. Copy of unofficial translation on file with Human Rights Watch

<sup>288</sup> Discussed below.

<sup>289</sup> "Rangsiman faces charges from 2016 after weekend protest," *Prachatai*, February 12, 2018, <https://prachatai.com/english/node/7622> (accessed September 15, 2018).

<sup>290</sup> Email correspondence with staff member of Thai Lawyers for Human Rights, October 1, 2019.

the activists were going to support some other activists who had been arrested for a protest about corruption, and he was going to cover the arrests for the news site.<sup>291</sup>

In their car were leaflets and material about the draft constitution and the Vote No campaign. After parking the car, the three activists and Taweesak went to the police station where the detained activists were being held. When they returned to the car, they found police there, who asked them to explain the documents. “Mr. Pakorn explained about the Vote No campaign. He said they had also sent these documents to people in the National Assembly,” said Taweesak. “When the police asked if it was a Vote No document, Pakorn said yes, and the police said it was illegal.”<sup>292</sup>

The police arrested the three activists, and Taweesak Kerdpoka. Taweesak said he repeatedly tried to explain to the officers that he was only a journalist hitching a ride to report the news and had had no part in distributing the documents. He also showed his journalist identification card, but was still arrested.<sup>293</sup>

“The police thought I was not just a journalist but campaigning on the referendum because it was Sunday,” he said.<sup>294</sup> All four were held overnight, then taken to court where they were released on bail of 100,000 baht (US\$3,285).

While Taweesak was still in custody, the police went to the *Prachatai* offices. They returned on July 12 with a warrant to search for and seize anything related to the Vote No campaign.<sup>295</sup> Five plainclothes officers and soldiers searched the office, including Taweesak’s desk, but did not seize anything. “The police thought *Prachatai* was the one producing the material for the campaign,” said Taweesak, “but it is media.”<sup>296</sup>

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<sup>291</sup> Human Rights Watch interview with Taweesak Kerdpoka, Bangkok, October 2018; Human Rights Watch, “Thailand: Activists, Journalist Arrested for Vote-No Campaign,” news release, July 12, 2016, <https://www.hrw.org/news/2016/07/12/thailand-activists-journalist-arrested-vote-no-campaign>.

<sup>292</sup> Human Rights Watch interview with Taweesak Kerdpoka, Bangkok, October 2018.

<sup>293</sup> “Ratchaburi court to rule on case against Prachatai reporter 29 Jan,” *Prachatai*, January 26, 2018, <https://prachatai.com/english/node/7585> (accessed September 26, 2018).

<sup>294</sup> Human Rights Watch interview with Taweesak Kerdpoka, Bangkok, October 2018.

<sup>295</sup> Ibid; “Ratchaburi court to rule on case against Prachatai reporter 29 Jan,” *Prachatai*, January 26, 2018, <https://prachatai.com/english/node/7585> (accessed September 26, 2018).

<sup>296</sup> Human Rights Watch interview with Taweesak Kerdpoka, Bangkok, October 2018.

Taweesak and the three activists were indicted in August 2016. In addition to the charge under the Referendum Act, they were charged with refusing to give fingerprints to the police. “We didn’t do anything wrong, so we didn’t give fingerprints,” Taweesak said.

The trial started in October 2016 and lasted almost 18 months. “I didn’t work well because I had to go to court,” he said. “I was exhausted when I went to the court and listened to the police witnesses. They all supported the police and the junta and blamed me, and it wasn’t true. It was exhausting.”

On January 29, 2018, the court acquitted all four of the Referendum Act charge on the grounds that the police could not prove that the defendants had disseminated the material seized from the car.<sup>297</sup> The judgment did not distinguish between the activists and the journalist. The court convicted all four of refusing to give fingerprints and imposed a fine of 1,000 baht (US\$32), halved because they admitted the offense. The prosecution filed an appeal of the acquittal on July 2, 2018.<sup>298</sup>

“I shouldn’t have been charged because I didn’t do anything,” Taweesak said. “I was just doing my job.”<sup>299</sup>

### *Prosecution of “We Want Elections” Protesters*

In early 2018, after the promised election was repeatedly postponed, a group of activists decided to hold a series of protests. As Rangsiman Rome explained:

They promised we would have elections in November 2018. Around December 2017, it became clear that they would change again. So, when we started this year [2018], we started to think about demonstrations again. We thought if we did not do anything, we would not have elections in 2018. So, from January 27 to May 22, we made a campaign for the election to

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<sup>297</sup> “Student activists, reporter acquitted in referendum case,” *Bangkok Post*, January 29, 2018, <https://www.bangkokpost.com/news/politics/1403982/student-activists-reporter-acquitted-in-referendum-case> (accessed January 30, 2018).

<sup>298</sup> Human Rights Watch interview with staff member of Thai Lawyers for Human Rights, Bangkok, October 2018.

<sup>299</sup> Human Rights Watch interview with Taweesak Kerdpoka, Bangkok, October 2018.

pressure the military government to have the elections they promised to have in this year.<sup>300</sup>

The series of four protests, held in Bangkok between May and June 2018, led to the arrest of over a hundred protesters, many of whom were arrested multiple times.

### “MBK39”

The first protest was held on January 27 on the Bangkok Skywalk, in front of supermarket MBK. Around 100 people attended, calling for the military to lift restrictions on fundamental freedoms and hold the elections as promised.<sup>301</sup> “We tried to pressure the military government to keep the promise they promised to the people,” said Rangsiman Rome. “We tried to launch a statement like ‘if you don’t have election this year, we will make more demonstrations.’”<sup>302</sup>

The authorities charged seven of the most prominent activists involved, including Rangsiman Rome and Nuttaa Mahattana, with sedition and violation of HNCPO order 3/2015.<sup>303</sup> “We asked for elections and got charged with sedition,” Nuttaa told Human Rights Watch.<sup>304</sup> The authorities subsequently also charged Sombat Boongamanong and Veera Somkwamkid with sedition for giving media interviews at the protest site.<sup>305</sup>

The police subsequently charged a total of 39 people (the “MBK39”), including those already facing charges for sedition, with violating HNCPO 3/2015 and article 7 of the Public Assembly Act, which prohibits holding a protest within 150 meters of a royal palace.<sup>306</sup>

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<sup>300</sup> Human Rights Watch interview with Rangsiman Rome, Bangkok, October 2018.

<sup>301</sup> Yukako Ono, “Anti-junta protesters rally in Bangkok demanding elections,” *Nikkei Asian Review*, January 28, 2018, <https://asia.nikkei.com/Politics/Anti-junta-protesters-rally-in-Bangkok-demanding-elections> (accessed September 15, 2018).

<sup>302</sup> Human Rights Watch interview with Rangsiman Rome, Bangkok, October 2018.

<sup>303</sup> Pravit Rojanaphruk, “Junta orders pro-democracy leaders charged with inciting rebellion,” *Khaosod English*, January 30, 2018, <http://www.khaosodenglish.com/politics/2018/01/30/junta-orders-pro-democracy-leaders-charged-inciting-rebellion/> (accessed September 12, 2018). The seven charged with sedition were Sirawit Seritiwat, Nuttaa Mahattana, Rangsiman Rome, Netiwit Chotphatphaisal, Ekachai Hongkangwan, Anon Nampa, and Sukrid Peansuwan. Human Rights Watch, “Thailand: 39 Democracy Activists Charged,” news release, February 2, 2018, <https://www.hrw.org/news/2018/02/02/thailand-39-democracy-activists-charged>.

<sup>304</sup> Human Rights Watch interview with Nuttaa Mahattana, Bangkok, October 2018.

<sup>305</sup> Police notification of charges, Pathumwan Police Station, February 8, 2018.

<sup>306</sup> Pravit Rojanaphruk, “39 activists charged for protesting ‘near palace,’” *Khaosod English*, February 1, 2018, <http://www.khaosodenglish.com/politics/2018/02/01/39-activists-charged-protesting-near-palace/> (accessed September

On November 1, 2018, the prosecutor indicted Rangsiman Rome, Anon Numpa, Ekachai Hongkangwan, Sirawit Seritiwat, Nuttaa Mahattana, Sukrid Peansuwan, and Netiwit Chotphatphaisal for sedition, violation of HNCPO order 3/2015, and violation of article 7 of the Public Assembly Act. On October 22, 2018, Veera Somkwamkid was indicted on the same charges.<sup>307</sup> While the charge under HNCPO order 3/2015 was dismissed after the issuance of HNCPO order 22/2018, the trial on charges of sedition and violation of the Public Assembly Act is ongoing.<sup>308</sup> Charges against the participants have been referred to the public prosecutor for determination whether to issue an indictment.<sup>309</sup>

### **“RDN50”**

On February 10, 2018, pro-democracy activists held another protest calling for elections to be held in November.<sup>310</sup> While the protest was supposed to be at Bangkok’s Democracy Monument, police blocked access to the monument and approximately 400 protesters gathered on Rathchadamnoen Road.<sup>311</sup> On February 15, the police filed complaints against seven people for sedition. The following day, they charged another 43 people with violating HNCPO order 3/2015, and the group became known as RDN50.<sup>312</sup>

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12, 2018); Police notification of charges, Pathumwan Police Station, February 8, 2018. Copy of unofficial translation on file with Human Rights Watch.

<sup>307</sup> Email correspondence with staff member of Thai Lawyers for Human Rights, October 1, 2019.

<sup>308</sup> Ibid.

<sup>309</sup> Ibid.

<sup>310</sup> “Pro-election activists kick off bigger campaign,” *Bangkok Post*, February 10, 2018, <https://www.bangkokpost.com/news/politics/1410402/beginning-of-the-end> (accessed February 12, 2018).

<sup>311</sup> “Bangkok protesters demand end to election delays,” *DW*, February 10, 2018, <https://www.dw.com/en/bangkok-protesters-demand-end-to-election-delays/a-42534107> (accessed May 10, 2019).

<sup>312</sup> Charges against the 43 participants were dropped by Thai authorities after the issuance of HNCPO order 22/2018. “Thailand: Pro-Democracy Activists Acquitted,” news release, September 23, 2019, <https://www.hrw.org/news/2019/09/23/thailand-pro-democracy-activists-acquitted>



A protester raises a placard during a February 10, 2018 protest calling for Thailand's military rulers to hold elections. © 2018 AP Photo

On April 20, 2018, prosecutors formally charged Rangsiman Rome with sedition and violation of HNCPO order 3/2015.<sup>313</sup> On September 27, 2018, prosecutors formally charged Sirawit Seritiwat, Anon Numpa, Chonticha Chaengrew, Sukrid Peansuwan, Nuttaa Mahattana, and Karn Pongphraphapan with sedition and violation of HNCPO order 3/2015.<sup>314</sup>

Rangsiman Rome's indictment states that he and others:

Used a car equipped with loudspeakers, which had banners criticizing DPM Prawit Wongsuwan on the side of the car, to give speech and incite the public to overthrow the government and the NCPO. They demanded an

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<sup>313</sup> *Prosecutor of the Attorney General's Office vs. Rangsiman Rome*, Black Case Aor 1197/2561, Criminal Court, April 20, 2018. Copy of unofficial translation on file with Human Rights Watch.

<sup>314</sup> "Prosecutors charge pro-election activists with sedition," *Bangkok Post*, September 27, 2018, <https://www.bangkokpost.com/news/politics/1547810/prosecutors-charge-pro-election-activists-with-sedition> (accessed September 28, 2018). The case against Rangsiman Rome was combined with the case against the other protest leaders on January 14, 2019.

election to be held in November 2018. They showed three-finger salute at the Democracy Monument and on Ratchadamnoen Road, which was an expression of a political symbol to oppose the government.<sup>315</sup>

The indictment does not allege that the leaders called for violence. Instead, it cites the demand for an election to be held in November 2018. In addition, the indictment states that the defendants “aimed to make people to understand that the government and soldiers have restricted freedom, causing a negative image of the government and inciting division between people with dissenting opinions and the government.”<sup>316</sup> The final basis for the sedition charge is the use of the three-finger salute, which is alleged to be “an expression of a political symbol to oppose the government.”<sup>317</sup>

The activists were released without posting bail but were told that they would face a fine of 200,000 baht (US\$9,855) if they violated the conditions of their release.<sup>318</sup>

On September 20, 2019, the Bangkok Criminal Court acquitted Nuttaa Mahattana, Chonticha Chaengrew, Sirawit Seritiwat, Anon Numpa, Karn Pongphraphapan, and Sukrid Peansuwan of sedition, ruling that they did not incite violence and that their demands for an election were in accordance with the Thai constitution.<sup>319</sup> The court also dismissed the charge under HNCPO 3/2015, finding that, because HNCPO 22/2018 revoked section 12 of that order, the actions of the defendants were no longer an offense.<sup>320</sup>

Rangsiman Rome, now a member of the parliament for the Future Forward party, faces a separate trial on charges of unlawful assembly and sedition, scheduled for June 2020.<sup>321</sup>

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<sup>315</sup> *Prosecutor of the Attorney General's Office vs. Rangsiman Rome*, Black Case Aor 1197/2561, Criminal Court, April 20, 2018. Copy of unofficial translation on file with Human Rights Watch.

<sup>316</sup> *Ibid.*

<sup>317</sup> *Ibid.*

<sup>318</sup> “Prosecutors charge pro-election activists with sedition,” *Bangkok Post*, September 27, 2018, <https://www.bangkokpost.com/news/politics/1547810/prosecutors-charge-pro-election-activists-with-sedition> (accessed September 28, 2018).

<sup>319</sup> “Court acquits ‘democracy six,’” *Bangkok Post*, September 20, 2019, [https://www.bangkokpost.com/thailand/politics/1754684/court-acquits-democracy-six#cxrecs\\_s](https://www.bangkokpost.com/thailand/politics/1754684/court-acquits-democracy-six#cxrecs_s) (accessed September 20, 2019); Human Rights Watch, “Thailand: Pro-Democracy Activists Acquitted,” news release, September 23, 2019, <https://www.hrw.org/news/2019/09/23/thailand-pro-democracy-activists-acquitted>.

<sup>320</sup> Human Rights Watch, “Thailand: Pro-Democracy Activists Acquitted,” news release, September 23, 2019, <https://www.hrw.org/news/2019/09/23/thailand-pro-democracy-activists-acquitted>.

<sup>321</sup> *Ibid.*

## “Army57”

On March 24, 2018, a group of demonstrators marched from Thammasat University to the army headquarters. “We had a statement that the military should stop supporting the NCPO,” said Rangsiman. “If the army stops supporting the NCPO, it is hard for the NCPO to continue. So we went to the army.”<sup>322</sup> The group, made up of more than 300 people, demonstrated peacefully outside the army base for about three hours.<sup>323</sup> “They [the military] did not want us to stay overnight, so we said we would not stay overnight,” said Rangsiman. “We just wanted to express ourselves.”<sup>324</sup>

The police ultimately charged 10 protest leaders with sedition and violation of HNCPO order 3/2015.<sup>325</sup> The police charge sheet asserted that the protest leaders gave speeches “criticizing the government and the NCPO with corruption allegations, abuse of power and complaining about the delay of the election. They encouraged people to protest to remove the government and the NCPO from power.”<sup>326</sup> According to the charge sheet, Rangsiman Rome gave a speech in which he said, “we have three demands – an election by November, dissolution of the NCPO and creating an interim government.”<sup>327</sup>

The police charged an additional 47 people with violation of HNCPO order 3/2015, for a total of 57 people charged by the police in connection with the protest.<sup>328</sup> Forty-four of the participants were formally indicted on May 17, 2018, for violation of HNCPO order 3/2015 and multiple sections of the Public Assembly Act and Road Traffic Act. The indictment states that the individuals participated in a political rally “United Again to Uproot the NCPO,” and that the “purpose of the speeches given at this rally was to call for an election,

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<sup>322</sup> Human Rights Watch interview with Rangsiman Rome, Bangkok, October 2018.

<sup>323</sup> Matthew Tostevin, “Thai protesters demand army stop supporting ruling junta,” *Reuters*, March 24, 2018, <https://www.reuters.com/article/us-thailand-politics/thai-protesters-demand-army-stop-supporting-ruling-junta-idUSKBN1HooJT> (accessed September 27, 2018).

<sup>324</sup> Human Rights Watch interview with Rangsiman Rome, Bangkok, October 2018.

<sup>325</sup> Those charged with sedition are Nuttaa Mahattana, Karn Pongphraphapan, Anon Numpha, Ekachai Hongkangwan, Sirawit Seritiwat, Rangsiman Rome, Chockchai Paiboonratchata, Pakorn Areekul, Thanawat Promjak, and Sripai Nonsee. Thai Lawyers for Human Rights, Summary of sedition charges from pro-democracy protests, [n.d.]. Copy on file with Human Rights Watch.

<sup>326</sup> Police notification of charges, Nang Lueng Police Station, April 30, 2018. Copy of unofficial translation on file with Human Rights Watch.

<sup>327</sup> Ibid.

<sup>328</sup> “57 individuals prosecuted for protesting against military,” *Prachatai*, March 30, 2018, <https://prachatai.com/english/node/7698> (accessed September 27, 2018).

dissolution of the NCPO, and removal of the government from power.”<sup>329</sup> Trial of the case is ongoing.

All 10 protest leaders were indicted for sedition and violation of HNCPO order 3/2015 on March 19, 2019.<sup>330</sup> They were also charged with violations of sections 15, 16, and 18 of the Public Assembly Act, sections 108 and 114 of the Road Traffic Act, and section 4 of the Controlling Public Advertisement by Sound Amplifier Act.<sup>331</sup>

Among the statements cited as the basis for sedition charges were various statements calling for democracy and elections. For example, Chockchai Paiboonratchata is alleged to have said, “Those in power must stop thinking that it will be hard to rule if people are taken care of by a civilian government. Down with dictatorship. Hail democracy. Let’s have an election within this year.”<sup>332</sup> Ekachai’s sedition charge appears to be based on a statement about lighting joss sticks to dispel “evil forces that are dominating our country.... I hope these joss sticks can get rid of all of the evil forces. Then there will be no more delay of the election. We will have the election within this year.”<sup>333</sup> The trial was ongoing at time of writing.

## “UN62”

In May 2018, the group planned a multi-day protest to coincide with the fourth anniversary of the coup. The protest started at Thammasat University on May 21, with the protesters staying overnight in the grounds of the university. In the morning, they found the gate out of the university was locked.<sup>334</sup> “We broke the lock so we could go out,” said Rangsiman.

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<sup>329</sup> *Prosecutor of the Attorney General’s Office vs. Ekachai Hongkangwan*, Black case Aor 765/2562, Criminal Court, March 19, 2019. Copy of unofficial translation on file with Human Rights Watch.

<sup>330</sup> Ibid.

<sup>331</sup> Section 108 of the Road Traffic Act states that, “no person shall march, parade, or walk in procession in the manner obstructing traffic, except: (1) a military or police marching having regulatory controller; (2) any row, parade, or procession permitted by the traffic officer and complies with the condition determined by the traffic officer.” Section 114 states that “no person shall place, set up, extend, or hang anything or act anything whatsoever in the manner obstructing traffic, unless having been permitted in writing by the traffic officer; provided that the traffic officer may give permission only in case of necessity and temporarily permitted.” Road Traffic Act 1979, translation by the Office of the Council of State, [http://web.krisdika.go.th/data/outsitedata/outside21/file/Road\\_Traffic\\_Act\\_BE\\_2522\\_\(1979\).pdf](http://web.krisdika.go.th/data/outsitedata/outside21/file/Road_Traffic_Act_BE_2522_(1979).pdf).

<sup>332</sup> *Prosecutor of the Attorney General’s Office vs. Ekachai Hongkangwan*, Black case Aor 765/2562, Criminal Court, March 19, 2019. Copy of unofficial translation on file with Human Rights Watch.

<sup>333</sup> Ibid.

<sup>334</sup> “Thailand: thousands of police block Bangkok march by 200 protesters on fourth anniversary of coup,” *South China Morning Post*, May 22, 2018, <https://www.scmp.com/news/asia/southeast-asia/article/2147220/thailand-thousands-police-block-bangkok-march-200> (accessed September 27, 2018).

“But many police blocked the road so we could not go out. We had around 600 people, but there were others who wanted to join the event but couldn’t enter because the police blocked them.”<sup>335</sup>



Pro-democracy activist Rome Rangsiman holds up a Thailand flag as anti-government protesters gather to demand that the military government hold a general election by November, in Bangkok, May 22, 2018. © 2018 Reuters/Athit Perawongmetha

A group of about 10 people mobilized outside and marched to the United Nations building, where they were blocked by the police. Nuttaa Mahattana, one of those in the group, negotiated with the police, saying that she would let the police arrest some of the group if they were first allowed to read a statement. The police agreed.<sup>336</sup> “This was the fourth anniversary of the coup, so it [the statement] was about how the country was damaged since the coup, and we demanded that the government call elections, and stop restricting rights via order,” she said. They also called for the NCPO to stop existing and for a

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<sup>335</sup> Human Rights Watch interview with Rangsiman Rome, Bangkok, October 2018.

<sup>336</sup> Human Rights Watch interview with Nuttaa Mahattana, Bangkok, October 2018.

caretaker government until elections.<sup>337</sup> After she finished reading the statement, the police arrested Nuttaa and nine others.<sup>338</sup>

At Thammasat University, there was some violence between people wanting to join the protest and the police. “I tried to stop the situation,” said Rangsiman. “I told the police I would let them arrest me and stop the event if they would let the people leave.”<sup>339</sup> The police arrested Rangsiman, Sirawit, and Piyarat Chongthep.<sup>340</sup>

Those arrested were detained for two nights before being brought before a court on May 24.<sup>341</sup> Police charges include sedition, HNCPO 3/2015, obstructing traffic, and violation of the Public Assembly Law.<sup>342</sup> According to the police notification of charges, the speakers “accused the government and the NCPO of corruption, abuse of power, and complained about the delay of the election. They encouraged people to protest to remove the government and the NCPO from power.”<sup>343</sup>

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<sup>337</sup> Ibid; “Pro-democracy march in Bangkok: Live updates,” *Bangkok Post*, May 22, 2018, <https://www.bangkokpost.com/news/politics/1470629/pro-democracch-in-bangkok-live-updates> (accessed September 15, 2018).

<sup>338</sup> According to the police notification of charges, those arrested outside with Nuttaa were Chonticha Chaengrew, Anon Numpa, Ekachai Hongangwan, Putthaising Pimchan, Khiri Khanthong, Prasong Wangwan, Chockchai Paiboonratchata, Pattaraphol Chantacotr, and Viroj Trongngarmrak.

<sup>339</sup> Human Rights Watch interview with Rangsiman Rome, Bangkok, October 2018.

<sup>340</sup> Panu Wongha-um, “Thai protest leaders surrender as pro-democracy march disperses,” *Reuters*, May 22, 2018, <https://www.reuters.com/article/us-thailand-politics/thai-protest-leaders-surrender-as-pro-democracy-march-disperses-idUSKCN1INo44> (September 15, 2018); Police record of arrest (Rangsiman Rome, Sirawit Seritiwat and Piyarat Chongthep), Chanasongkhram Police Station, May 22, 2018. Copy of unofficial translation on file with Human Rights Watch.

<sup>341</sup> Those arrested were: Rangsiman Rome, Sirawit Seritiwat, Anon Numpa, Chonticha Chaengrew, Nuttaa Mahattana, Ekachai Hongkangwan, Chockchai Paiboonratchata, Khiri Khanthong, Putthaising Pimchan, Viroj Trongngarmrak, Piyarat Chongthep, Viset Sangkhawisit, Nikorn Wittayaphon, and two who wished to remain anonymous. Thai Lawyers for Human Rights, “Thailand’s 4th anniversary of coup sees pro-democracy activists arrested and detained for protesting against postponed elections,” blog post, May 23, 2018, <https://www.tlhr2014.com/?p=7485>.

<sup>342</sup> “Thai police charge anti-junta protesters with sedition,” *Straits Times*, May 24, 2018, <https://www.nst.com.my/world/2018/05/372821/thai-police-charge-anti-junta-protesters-sedition> (accessed September 15, 2018).

<sup>343</sup> Police notification of charges, Chanasongkhram Police Station, June 26, 2019. Copy of unofficial translation on file with Human Rights Watch.



Thai pro-democracy protesters marking the fourth anniversary of the military coup, May 22, 2018.  
© 2018 AP Photo/Sakchai Lalit

The police submitted a request for an additional 12 days of detention, but the court released the defendants on bail of 100,000 baht (US\$3,285) per person on the condition that each not participate in any political assembly that violates the law and causes danger to the public.<sup>344</sup>

“They say because we criticized the government and said the government should get out, and called people out together and called for election, it creates chaos,” said Nuttaa. “We have never called for the overthrow of the government by force.” At least one of those charged with sedition, Ekachai Hongkangwan, said that he did not even speak at the protest. “I said nothing, but was charged with sedition,” he said. Together with the others, he was held for two nights at the police station and interrogated. “They accused me of [sedition, article] 116. I said I said nothing. He [the interrogator] said my action in joining the rally was 116.”<sup>345</sup>

<sup>344</sup> Thai Lawyers for Human Rights, “15 pro-democracy activists released with court’s condition barred from political gathering,” blog post, May 25, 2018, <https://www.tlhr2014.com/?p=7594>.

<sup>345</sup> Human Rights Watch interview with Ekachai Hongkangwan, Bangkok, October 2018.

The police summoned an additional 47 people to appear on June 7. All were charged with violation of HNCPO 3/2015, the Public Assembly Act, and the Road Traffic Act, and six were also charged with sedition, making the total number of people charged with sedition for the protest 21.<sup>346</sup> Among those summoned and charged by the police was Neeranuch Neamsub, a member of the staff of Thai Lawyers for Human Rights, who was present to observe and monitor the demonstration.<sup>347</sup>

On July 6, 2018, the prosecutor filed formal charges against 38 individuals, including Neeranuch Neamsub, for violation of HNCPO order 3/2015, the Public Assembly Act, the Road Traffic Act, and section 215 and 216 of the Criminal Code.<sup>348</sup>

On May 22, 2019, the prosecutor indicted 10 of the “leaders,” charging them with sedition, violation of multiple sections of the Public Assembly Act and the Road Traffic Act, and violation of the Controlling Public Advertisement by Sound Amplifier Act.<sup>349</sup> Trial of both cases is ongoing.

### *Prosecution of Lawyer Representing Activists*

Sirikan Charonensiri, also known as June, is one of the founders of Thai Lawyers for Human Rights, set up in the wake of the 2014 coup to provide legal representation for those

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<sup>346</sup> Section 108 of the Road Traffic Act states that, “no person shall march, parade, or walk in procession in the manner obstructing traffic, except: (1) a military or police marching having regulatory controller; (2) any row, parade, or procession permitted by the traffic officer and complies with the condition determined by the traffic officer.” Section 114 states that “no person shall place, set up, extend, or hang anything or act anything whatsoever in the manner obstructing traffic, unless having been permitted in writing by the traffic officer; provided that the traffic officer may give permission only in case of necessity and temporarily permitted.” Road Traffic Act 1979, translation by the Office of the Council of State, [http://web.krisdika.go.th/data/outsitedata/outsite21/file/Road\\_Traffic\\_Act\\_BE\\_2522\\_\(1979\).pdf](http://web.krisdika.go.th/data/outsitedata/outsite21/file/Road_Traffic_Act_BE_2522_(1979).pdf).

<sup>347</sup> Thai Lawyers for Human Rights, “Military files charges against 47 more of ‘We Want to Vote Movement,’” blog post, June 1, 2018, <https://www.tlhr2014.com/?p=7648>.

<sup>348</sup> *Prosecutor of the Office of the Special Prosecutor (Dusit District) vs. Sunantharat Muktri and other accomplices, in total 38 defendants*, Black Case Aor 1756/2561. Dusit District Court, July 6, 2018. Copy of unofficial translation on file with Human Rights Watch. Section 215 of the Criminal Code provides that, “Whenever ten persons upwards being assembled together do or threaten to do an act of violence, or do anything to cause a breach of the peace, every such person shall be punished with imprisonment not exceeding six months or fined not exceeding one thousand Baht, or both.” Section 216 states “When the official orders any person assembled to gather so as to commit the offence as prescribed under Section 215 to disperse, such person not to disperse shall be imprisoned not more of three years or fined not more of six thousand Baht, or both.” Thailand Criminal Code, secs. 215 - 216, <http://library.siam-legal.com/thai-law/criminal-code-public-order-sections-209-216/>.

<sup>349</sup> The indictment named Sripai Nonsee, Wanchalerm Kunasen, Thanawat Promjak, Prajin Kruaroj, Sirawit Seritiwat, Ekachai Hongkangwan, Anon Numpa, Nuttaa Mahattana, and Chockchai Paiboonratchata. The prosecutor has indicated an intent to file charges against an additional ten “leaders” of the protest. Email correspondence with staff member of Thai Lawyers for Human Rights, October 1, 2019.

arrested or detained by the NCPO. She is one of several members of Thai Lawyers for Human Rights to face charges from the NCPO for their work.



Sirikan Charoensiri, a human rights lawyer and documentation specialist at Thai Lawyers for Human Rights, was charged with sedition on September 27, 2016. © 2016 Thai Lawyers for Human Rights

The six criminal charges against Sirikan arise from her representation of students from Khon Kaen University, who came to Bangkok in June 2015 to commemorate the one-year anniversary of the coup. Because the students had pending arrest warrants for a previous protest in Khon Kaen, she was worried that they could be arrested while in Bangkok.<sup>350</sup> On June 25, 2016, the Khon Kaen students were with other student activists at a bookstore when they saw plainclothes police officers arriving. They contacted Thai Lawyers for Human Rights, and Sirikan went to give them legal advice.<sup>351</sup>

Afterwards, the students, calling themselves the New Democracy Movement, held a small press conference to declare their “defiance to the laws issued by the National Council for

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<sup>350</sup> Human Rights Watch, “Thailand: Drop Charges Against Student Activists,” news release, June 5, 2015, <https://www.hrw.org/news/2015/06/05/thailand-drop-charges-against-student-activists>.

<sup>351</sup> Human Rights Watch interview with Sirikan Charoensiri, Bangkok, October 2017.

Peace and Order.”<sup>352</sup> The students then marched to Thammasat University to lay a wreath, and on to the Democracy Monument, stopping on the way at the October 14 1973 Memorial. At the Democracy Monument, they held up banners, sang songs, and made speeches declaring their resolution to oppose military rule based on five principles including: (1) democracy, (2) justice, (3) community rights, (4) people’s participation, and (5) nonviolence.<sup>353</sup> Sirikan and colleagues from TLHR and other human rights groups attended the protest as observers.<sup>354</sup>

The following day, she heard that the students were going to be arrested, so drove to the place where they were staying, arriving around noon, and met with her clients in the building. Police and military intelligence officers arrived and arrested 14 students, including the seven from Khon Kaen University.<sup>355</sup> She followed in her car as they were taken to the police station. Once there, she and her colleagues identified themselves as lawyers and met with the students.<sup>356</sup>

After three or four hours, the students were taken to the military court since they were facing charges of sedition and violation of HNCPO order 3/2015. She again followed in her car, together with four other lawyers. At the checkpoint outside the parking lot, they identified themselves as lawyers and were permitted to drive in.<sup>357</sup>

Once inside, they began preparing the paperwork to be appointed as lawyers for the students in the new case. The prison authorities came and said the students would not be permitted to take personal items with them into detention, and the students asked the lawyers to keep their belongings safe for them.<sup>358</sup> The students’ belongings were put in the trunk of Sirikan’s car for safekeeping.

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<sup>352</sup> Thai Lawyers for Human Rights, “Thailand: New Democracy Movement Review of situations 24 – 27 June 2015,” blog post, <https://tlhr2014.wordpress.com/2015/07/01/thailand-new-democracy-movement-review-of-situations-24-27-june-2015/>.

<sup>353</sup> Ibid.

<sup>354</sup> Human Rights Watch interview with Sirikan Charoensiri, Bangkok, October 2017.

<sup>355</sup> Human Rights Watch, “Thailand: Junta Arrests 14 Student Activists,” news release, June 27, 2015, <https://www.hrw.org/news/2015/06/27/thailand-junta-arrests-14-student-activists>. Those arrested were Rangsiman Rome, Wasant Sadesit, Songtham Kaewpanphruek, Payu Boonsopon, Apiwat Suntararak, Rattapol Supasophon, Supachai Pookhlongploy, Apisit Sapnapapha, Panupong Sritananuwat, Suvicha Pitungkorn, Pakorn Areekul, Chatupat Boonyapatraksa, Pornchai Yuanyee, and Chonticha Chaengreo.

<sup>356</sup> Human Rights Watch interview with Sirikan Charoensiri, Bangkok, October 2017.

<sup>357</sup> Ibid.

<sup>358</sup> Ibid.

The court clerk insisted that a maximum of four lawyers represent the 14 students who had been arrested, even though 14 lawyers were there, and students had already signed authorizations with various lawyers. Although Sirikan had been authorized by one of the students from Khon Kaen to represent him, when the lawyers agreed among themselves which four would represent the students, she was not one of the four chosen. All of the lawyers, including Sirikan, sat in the courtroom during the remand hearing.<sup>359</sup>

The detention hearing ended around midnight, with the court ordering 12 days' detention for all of the students. When Sirikan and her colleagues left the court and went to her car, they found Bangkok Metropolitan Police surrounding it. A high-ranking officer said they wanted to search Sirikan's car. She asked if they had a warrant and said there was no basis for a search of her car. After making a phone call, he insisted on a search, saying he would have the car towed to the police station if she refused.<sup>360</sup>

When the tow truck arrived, the driver said it would damage her car to tow it, so the police said they would "guard it" in the parking lot and that she "could be sure they would not search it overnight." The police took some pieces of A4 paper and put one over each door handle with duct tape, and had Sirikan sign her name to each paper. Fearing the police would simply take off the entire piece of paper and search the car if she left, Sirikan and some other lawyers slept in the parking lot.<sup>361</sup>

The following day, she went to the local police station to file a complaint against the officer for malfeasance for impounding her car overnight without basis. The officer at the station refused to accept her complaint. At the same time, she received a phone call from her colleagues indicating that another team of police had come to her car with a court warrant, so she returned to her car.<sup>362</sup>

The warrant authorized the search of her car for "items used in relation to criminal offenses." The police took everything out of her car and seized five phones belonging to the students. "I was most concerned about the files on other cases that were in the car and

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<sup>359</sup> Ibid.

<sup>360</sup> Human Rights Watch interview with Sirikan Charoensiri, Bangkok, October 2017.

<sup>361</sup> Ibid.

<sup>362</sup> Ibid.

the lawyer's laptops, as the students don't keep any information on their phones," she said.<sup>363</sup>

They all went to the police station for the required paperwork documenting the items seized from the car, and while there, Sirikan insisted on filing a complaint for malfeasance. The officer who took the complaint told her "these things will come back to you," which she took as a threat of retaliation.<sup>364</sup>

While the students were in detention, a local police officer in Sirikan's hometown went to her parents' home and asked questions about her. "My mother said it was a friendly visit, but I took it as intimidation," she said.<sup>365</sup>

Months later, in February 2016, she received a summons to appear at the police station on police charges that she had refused to comply with an official. When she went to the station, however, the charges laid against her by the police were "failure to comply with official orders" in violation of section 368 of the Criminal Code, and "concealing evidence" in violation of section 142 of the Criminal Code.<sup>366</sup> While the offense of refusal to comply with an official order carries a maximum sentence of 10 days in prison and a fine of 5,000 baht (US\$164), the charge of concealing evidence carries a maximum sentence of three years imprisonment and a fine of 60,000 baht (US\$1,971).

On May 12, 2016, the police transferred the case to the public prosecutor's office.<sup>367</sup> The prosecution decision was postponed at least 10 times, with each postponement requiring her appearance at the public prosecutor's office.<sup>368</sup> Sirikan was notified on August 27, 2019 that the Attorney-General's office had issued a non-prosecution order in the case on July 26, 2019—more than three years after the case was filed.<sup>369</sup>

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<sup>363</sup> Ibid.

<sup>364</sup> Ibid.

<sup>365</sup> Ibid.

<sup>366</sup> "Thailand: TLHR lawyer Sirikan Charoensiri's case to be transferred to public prosecutor on 12 May 2016," *Prachatai*, May 9, 2016, <https://prachatai.com/english/node/6131> (accessed September 18, 2017).

<sup>367</sup> Ibid.

<sup>368</sup> Lawyers for Lawyers, "One year after receiving the L4L-Award 2017: Sirikan 'June' Charoensiri," news release, June 18, 2018, <https://lawyersforlawyers.org/en/one-year-after-receiving-the-l4l-award-2017-sirikan-june-charoensiri/>.

<sup>369</sup> Lawyers for Lawyers, "Charges dropped against lawyer Sirikan Chaorensiri," news release, September 2, 2019, <https://lawyersforlawyers.org/en/one-case-dropped-against-lawyer-sirikan-charoensiri/>.

In September 2016, Sirikan went to Geneva to attend Thailand's Universal Periodic Review at the UN Human Rights Council. When she returned to Thailand on September 26, her colleagues met her at the airport to report that they had received a second summons for her to appear at the police station on September 27 on charges of sedition and violation of HNCPO order 3/2015.<sup>370</sup> After receiving an extension, she appeared at the station on October 22, 2016, and police filed the charges against her. The police charge sheet accuses her of conspiring with Rangsiman Rome and the other students to commit sedition and violate the order on political gatherings on June 26, 2015. According to the police charge sheet, the seditious statements made at the event included calls for revocation of section 44 of the interim constitution, "NCPO Out," "Give Power Back to the People," and "Down with Dictatorship, Love Live Democracy."<sup>371</sup>

If ultimately indicted for sedition, Sirikan Charoensiri will face up to seven years in prison with a fine.<sup>372</sup>

In August 2017, a few day after she spoke at a public event in Bangkok about the harassment and intimidation of female human rights defenders in Thailand in connection with Thailand's review under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), she received another summons to appear at the police station. When she did so, police laid charges against her under sections 172 and 174 of the Criminal Code for making a false accusation against a public official, based on the malfeasance claim she filed with the police in June 2015.<sup>373</sup> At time of writing that case was still with the police.

The use of criminal laws to arrest a lawyer for their representation of criminal suspects violates article 9 of the International Covenant on Civil and Political Rights.<sup>374</sup> It is also contrary to the UN Basic Principles on the Role of Lawyers, which provide that governments

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<sup>370</sup> Human Rights Watch interview with Sirikan Charoensiri, Bangkok, October 2017.

<sup>371</sup> Police notification of charges, Samranrat Police Station, October 22, 2016. Copy of unofficial translation on file with Human Rights Watch.

<sup>372</sup> If the prosecutor pursues the charges of violation of HNCPO order 3/2015 despite the repeal of the restriction on public gatherings by HNCPO order 22/2018, she will also face up to six months in prison and a fine for that charge.

<sup>373</sup> Human Rights Watch interview with Sirikan Charoensiri, Bangkok, October 9, 2017. Section 172 carries a maximum penalty of up to two years in prison and a fine of up to THB 4000; section 174 carries a maximum penalty of up to five years in prison and a fine of up to THB10,000. Thailand Criminal Code, secs. 172 and 174, <http://library.siam-legal.com/thai-law/criminal-code-public-order-sections-209-216/>.

<sup>374</sup> ICCPR, art. 9(1).

are to ensure that lawyers are able to perform their professional functions without intimidation, hindrance, harassment, or improper interference.<sup>375</sup>

The UN Declaration on Human Rights Defenders affirms the right of everyone to peacefully oppose human rights violations. It prohibits retaliation, threats, and other harassment against anyone who takes peaceful action against human rights violations, both within and beyond the exercise of their professional duties.<sup>376</sup>

### *Prosecution for Protest Outside Courthouse*

On January 10, 2017, a group of students from Khon Kaen University demonstrated outside the courthouse where Jatupat Boonphattharaksa was on trial for lèse-majesté. Activist Sirawit Seritiwat, also known as Ja New, travelled to Khon Kaen to watch the protest.

“It was symbolic activity,” Sirawit said. “The students put a boot on the scale of justice.”<sup>377</sup> The scale was made of wood and had a heavy boot on one side and an empty bucket on the other. The students encouraged people to lay a white rose at the base of the scale to represent the injustice of Jatupat’s case, read a statement and a poem, and sang a song.<sup>378</sup>

Sirawit and six students from Khon Kaen were subsequently summoned to appear in court for contempt for acting “improperly” in the precinct of the court.<sup>379</sup> In their defense, the students asserted that the act did not interfere with court proceedings, court security did not interfere with the activity, and it was not in violation of any clear regulations.<sup>380</sup>

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<sup>375</sup> UN Basic Principles on the Role of Lawyers, adopted by the Eighth United National Congress on the Prevention of Crime and the Treatment of Offenders, Havana, August 27 to September 7, 1990, U.N. Doc. A/CONF.144/28/Rev.1, <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>, para. 16.

<sup>376</sup> UN Declaration on Human Rights Defenders, adopted March 8, 1999, G.A. Res. 53/144, <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>.

<sup>377</sup> Human Rights Watch interview with Sirawit Seritiwat, Bangkok, October 6, 2018.

<sup>378</sup> iLaw Freedom, “Contempt of Court case against activists (Khon kaen Provincial Court),” case report, [https://freedom.ilaw.or.th/en/case/772#progress\\_of\\_case](https://freedom.ilaw.or.th/en/case/772#progress_of_case).

<sup>379</sup> “‘Contempt of court’, or courts showing contempt?,” *Prachatai*, May 9, 2017, <https://prachatai.com/english/node/7131> (accessed May 1, 2019).

<sup>380</sup> iLaw Freedom, “Contempt of Court case against activists (Khon kaen Provincial Court),” case report, [https://freedom.ilaw.or.th/en/case/772#progress\\_of\\_case](https://freedom.ilaw.or.th/en/case/772#progress_of_case).

On November 7, 2017, the court found all seven defendants in contempt of court and sentenced them to six months in prison, suspended for a year, and community service.<sup>381</sup>

### *Prosecution for Calling for Justice for Slain Protesters*

On December 10, 2018, Phayaw Akkahad, whose daughter—a volunteer nurse—was killed by military snipers during the 2010 crackdown, and Pansak Srithep, whose son was killed in the crackdown, gathered with two other activists at the Democracy Monument to demand justice for their children. Phayaw and Pansak were performing a skit about a god of death asking for justice when police intervened and took them to the police station.<sup>382</sup> The police charged Phayaw with violation of the Public Assembly Act.

On July 19, 2019, the court found Phayaw guilty of organizing a public assembly without giving advance notice as required by the Public Assembly Act and fined her 1,000 baht (US\$32). The court ruled that the skit was a public assembly because Phayaw invited people to attend on her Facebook page.<sup>383</sup>

### **Prosecution for Criticism of the Royal Family (Lèse-Majesté)**

Between 2014 and April 2018, the NCPO junta arrested at least 105 people on lèse-majesté (insulting the monarchy) charges under section 112 of the Criminal Code, mostly for posting or sharing critical commentary about the monarchy online.<sup>384</sup>

Some of those charged for critical Facebook posts have been sentenced to decades in prison. For example:

- In June 2017, a man was sentenced to 70 years in prison for 10 counts of lèse-majesté, reduced to 35 years because he admitted the charges. The man, whose last name was withheld from reporting on the case to protect his family

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<sup>381</sup> Ibid.

<sup>382</sup> Teeranai Charuvastra, “Mother of Slain Nurse Charged for Constitution Day Protest,” *Khaosod English*, December 11, 2018, <http://www.khaosodenglish.com/politics/2018/12/11/mother-of-slain-nurse-charged-for-constitution-day-rally/> (accessed December 17, 2018).

<sup>383</sup> Email correspondence with staff member of Thai Lawyers for Human Rights, October 1, 2019.

<sup>384</sup> Human Rights Watch, “Thai Magazine Editor Released After 7 Years,” dispatch, April 30, 2018, <https://www.hrw.org/news/2018/04/30/thai-magazine-editor-released-after-7-years>.

from retaliation, posted photos and videos of the royal family on a Facebook account that purported to belong to a different user.<sup>385</sup>

- In June 2015, Pongsak Sriboonpeng was sentenced to 60 years in prison for six counts of lèse-majesté, with the sentence halved to 30 years after he pleaded guilty.<sup>386</sup>
- Siraphop Kornaroot, a blogger who frequently posted comments critical of the coup and of the military's role in politics, was detained for nearly five years on charges of lèse-majesté before finally being released on bail of 500,000 baht (US\$16,425) on June 12, 2019. On release, he said only three witnesses had testified in his case during the entire time he was in prison.<sup>387</sup> The UN Working Group on Arbitrary Detention adopted a resolution on April 24, 2019 raising concerns about his lengthy detention.<sup>388</sup>

### *Somyot Pruksakasemsuk*

Magazine editor and pro-democracy activist Somyot Pruksakasemsuk served seven years in prison for lèse-majesté charges relating to two satirical articles, published in his magazine *Voice of Thaksin*, which Thai authorities considered to defame the late King Bhumibol Adulyadej. The magazine, which the government banned in 2010, was supportive of the United Front for Democracy against Dictatorship, known as the “Red Shirts.” Somyot was arrested five days after launching a campaign to collect signatures calling for the amendment of section 112. “Our target was to get one million signatures on a proposal to change the law. After this they arrested us,” Somyot said.<sup>389</sup>

Somyot's prosecution may have violated Thailand's Printing Act, which protects editors from being held accountable for the content of others. The two articles for which Somyot

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<sup>385</sup> “Man jailed for 35 years in Thailand for insulting monarchy on Facebook,” *The Guardian*, June 9, 2017, <https://www.theguardian.com/world/2017/jun/09/man-jailed-for-35-years-in-thailand-for-insulting-monarchy-on-facebook> (accessed September 12, 2017).

<sup>386</sup> “Man jailed for 30 years in Thailand for insulting the monarchy on Facebook,” *The Guardian*, August 7, 2015, <https://www.theguardian.com/world/2015/aug/07/man-jailed-for-30-years-in-thailand-for-insulting-the-monarchy-on-facebook> (accessed April 10, 2019).

<sup>387</sup> “Lese majeste suspect bailed after almost 5 years behind bars,” *Bangkok Post*, June 12, 2019, <https://www.bangkokpost.com/thailand/politics/1693832/lese-majeste-suspect-bailed-after-almost-5-years-behind-bars> (accessed July 14, 2019).

<sup>388</sup> UN Working Group on Arbitrary Detention, “Opinion No. 4/2019 concerning Siraphop Kornaroot (Thailand),” A/HRC/WGAD/2019/4, May 30, 2019, [https://www.fidh.org/IMG/pdf/a\\_hrc\\_wgad\\_2019\\_4.pdf](https://www.fidh.org/IMG/pdf/a_hrc_wgad_2019_4.pdf).

<sup>389</sup> Human Rights Watch interview with Somyot Pruksakasemsuk, Bangkok, October 2018.

was charged were written by Jit Pollachan, the pseudonym of Jakrapob Penkair, the exiled former spokesman of former prime minister Thaksin Shinawatra. Jakrapob, then living in Cambodia, has never been charged with any crime for what he wrote.<sup>390</sup> “They wanted me to say the money for the magazine came from Thaksin,” Somyot said. “I said that is not true. *Voice of Thaksin* is a marketing name.”<sup>391</sup>

Somyot was denied bail eight times during the course of his 20-month pretrial detention. “It is difficult to fight a case from in prison,” he said. “You can’t talk to lawyers and collect evidence.”<sup>392</sup> He was compelled to appear in shackles in hearings in four different provinces for the same alleged offense, even though all the witnesses resided in Bangkok. Somyot told Human Rights Watch he had been transported in shackles to witness hearings in Sa Kaeo, Petchabun, Nakorn Sawan, and Songkhla provinces, during which he had to stand up throughout the journeys in an overcrowded truck without access to toilet facilities, aggravating his medical conditions, which include hypertension and gout.<sup>393</sup>

Thai authorities disregarded concerns raised by the UN Working Group on Arbitrary Detention in 2012 that Somyot’s detention was arbitrary and he should be released.<sup>394</sup> Thailand’s Constitutional Court rejected a petition challenging the constitutionality of the lèse-majesté law in October 2012, ruling that acts of lèse-majesté threatened national security.<sup>395</sup>

On January 23, 2013, the Bangkok Criminal Court found Somyot guilty of lèse-majesté offenses and sentenced him to 10 years in prison, with an additional year for an earlier suspended sentence in a defamation case, for a total of 11 years.<sup>396</sup> Somyot appealed and,

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<sup>390</sup> Human Rights Watch, “Thailand: Editor Convicted for Insulting Monarchy,” news release, January 23, 2013, <https://www.hrw.org/news/2013/01/23/thailand-editor-convicted-insulting-monarchy>.

<sup>391</sup> Human Rights Watch interview with Somyot Pruksakasemsuk, Bangkok, October 2018.

<sup>392</sup> Ibid.

<sup>393</sup> Human Rights Watch, “Thailand: Internet Provider Faces Lese Majeste Conviction,” news release, April 23, 2012, <https://www.hrw.org/news/2012/04/23/thailand-internet-provider-faces-lese-majeste-conviction>.

<sup>394</sup> United Nations Working Group on Arbitrary Detention, Communication Addressed to the Government on 15 June, 2012, No. 35/2012 (Thailand), adopted August 30, 2012, <https://www.unwgadatabase.org/un/Document.aspx?id=2851&terms=%28+somyot+%29>.

<sup>395</sup> Freedom House, “Thailand Rules Lese Majeste Law Constitutional, Extends Crackdown on Free Expression,” news release, October 12, 2012, <https://freedomhouse.org/article/thailand-rules-lese-majeste-law-constitutional-extends-crackdown-free-expression>.

<sup>396</sup> Lawyers Rights Watch Canada, “Thailand: Five Years On, International Organizations Renew Call for Release of Somyot Phruksakasemsuk,” letter, April 29, 2016, <https://www.lrwc.org/thailand-five-years-on-international-organizations-renew-call-for-release-of-somyot-phruksakasemsuk-letter/>.

on February 23, 2017, the Supreme Court upheld his conviction, but reduced his sentence for lèse-majesté to six years on the grounds that he did not write the articles, he was advanced in age, and he had already served nearly six years of the original sentence.<sup>397</sup> He was released from prison on April 30, 2018 after serving seven years in prison.<sup>398</sup>

Somyot noted that, had he admitted guilt, his sentence would have been much shorter. “If I accepted the case the first year, I could have been released in two and a half years. Fighting the case meant I spent much more time in prison.”<sup>399</sup> When asked why he chose to fight the case, he said, “I wanted to confirm my belief in freedom. If I accept, I get released quickly but I have to detain myself. I am not guilty, so why should I accept?”<sup>400</sup>

### *Prosecution of Jatupat “Pai” Boonphattharaksa*

In a case that demonstrates both the breadth with which the NCPO interpreted the lèse-majesté law and the selectiveness with which it has been enforced, 25-year-old student activist Jatupat Boonphattharaksa, known as Pai, was charged with lèse-majesté and violation of the Computer-Related Crime Act for posting on his Facebook page a profile of the current king, King Rama 10, published by the BBC Thai language service on December 2, 2016. Thai authorities deemed the article to be critical of the monarchy and blocked it from viewing in Thailand.<sup>401</sup>

Jatupat, a student at Khon Kaen University who is affiliated with the Dao Din Movement and the New Democracy Movement, was arrested on December 3, 2016. According to his father, Wiboon Boonphattharaksa, Jatupat was at the temple when the police came to arrest him. “The soldiers met him at the temple and arrested him and charged him with [article] 112,” he said. “He just shared it [the BBC article] without comment. More than 2000 people shared it, but only Pai was charged.”<sup>402</sup>

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<sup>397</sup> Human Rights Watch, “Thailand: Quash Editor’s Conviction for ‘Insulting Monarchy,’” news release, February 24, 2017, <https://www.hrw.org/news/2017/02/24/thailand-quash-editors-conviction-insulting-monarchy>.

<sup>398</sup> Human Rights Watch, “Thai Magazine Editor Released After 7 Years,” news release, April 30, 2018, <https://www.hrw.org/news/2018/04/30/thai-magazine-editor-released-after-7-years>.

<sup>399</sup> Human Rights Watch interview with Somyot Pruksakasemsuk, Bangkok, October 2018.

<sup>400</sup> Ibid.

<sup>401</sup> Human Rights Watch, “Thailand: Activist Unjustly Jailed for ‘Insulting Monarchy,’” news release, January 22, 2017, <https://www.hrw.org/news/2017/01/22/thailand-activist-unjustly-jailed-insulting-monarchy>

<sup>402</sup> Human Rights Watch interview with Wiboon Boonphattharaksa, Bangkok, October 2018.

Jatupat’s father believes his son was targeted as a result of his pro-democracy activities, including an incident in which he raised the three-finger salute from *Hunger Games* in front of Prime Minister Prayut when Prayut visited Khon Kaen during the first year after the coup.<sup>403</sup> The case against Jatupat was triggered by a complaint filed by an army officer from the 23rd Military Circle in Khon Kaen province. That military unit had previously arrested him multiple times for holding public protests and other peaceful activities to oppose the NCPO junta and demand a transition to democratic civilian rule.<sup>404</sup>



Thai student activists raise the anti-government three-fingered salute while Thai Prime Minister Prayut Chan-ocha speaks in Khon Kaen province, northeast of Bangkok, November 14, 2014.

© 2014 AP Photo/Bangkok Post

“In the story Pai shared is nothing about national security or abuse of the king. But it related to the monarchy so they could use it to charge him,” Wiboon said. “He should not have been charged. Even under this law he did not violate it.”<sup>405</sup>

<sup>403</sup> Ibid; “Five Thai students held for ‘Hunger Games’ salute at PM,” BBC, November 19, 2014, <https://www.bbc.co.uk/news/world-asia-30110280>.

<sup>404</sup> Human Rights Watch, “Thailand: Activist Unjustly Jailed for ‘Insulting Monarchy,’” news release, January 22, 2017, <https://www.hrw.org/news/2017/01/22/thailand-activist-unjustly-jailed-insulting-monarchy>.

<sup>405</sup> Human Rights Watch interview with Wiboon Boonphattharaksa, Bangkok, October 2018.

After his arrest, Jatupat was initially released on 400,000 baht (US\$13,140) bail on December 4, 2016.<sup>406</sup> On December 22, the Khon Kaen provincial court revoked his bail, ruling he had made other Facebook comments satirizing the authorities, and had failed to delete his original post of the king's profile.<sup>407</sup> Thereafter the court repeatedly denied his bail requests.<sup>408</sup>

On February 10, 2017, he was formally charged with violating section 112. He was also charged with violating section 14 of the Computer-Related Crime Act by "importing illegal content."<sup>409</sup> His trial was held in a closed court, though some observers were permitted. On August 15, 2017, Jatupat pled guilty and was sentenced to five years in prison, reduced to two and a half years in recognition of his guilty plea.<sup>410</sup>

"For a long time Pai fought for his case," said his father. "He said he didn't do anything wrong. Finally, he realized that this is a political game ... It is a waste of time if he defends, so he finally accepted the charge."<sup>411</sup> His defense lawyer explained that Jatupat chose to plead guilty because his trial was being held in closed court, preventing him from using the trial to expose injustices in the Thai judicial system.<sup>412</sup>

Jatupat was released from prison on May 10, 2019, six weeks before the end of his sentence, when he received a royal pardon from King Rama 10.<sup>413</sup>

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<sup>406</sup> "Pai Dao Din bailed after lese majeste charge," *Bangkok Post*, December 4, 2016, <https://www.bangkokpost.com/thailand/politics/1151528/pai-dao-din-bailed-after-lese-majeste-charge> (accessed September 12, 2017).

<sup>407</sup> "Bail overturned for Thai student accused of insulting new king under lese majeste law," *ABC News*, December 22, 2016, <https://www.abc.net.au/news/2016-12-27/bail-overturned-for-thai-student-accused-of-insulting-new-king/8150068> (accessed September 12, 2017).

<sup>408</sup> "Scholars, students demand bail for Pai," *Bangkok Post*, January 31, 2017, <https://www.bangkokpost.com/thailand/politics/1189769/scholars-students-demand-bail-for-pai> (accessed September 12, 2017).

<sup>409</sup> "Pai Dao Din formally indicted for lèse majesté," *Prachatai*, February 10, 2017, <https://prachatai.com/english/node/6917> (accessed September 16, 2017).

<sup>410</sup> Pravit Rojanaphruk, "Student activist jailed 2 and a half years for lese majeste," *Khaosod English*, August 15, 2017, <http://www.khaosodenglish.com/politics/2017/08/15/student-activist-jailed-2-half-years-lese-majeste/> (accessed August 16, 2017).

<sup>411</sup> Human Rights Watch interview with Wiboon Boonphattaraksa, Bangkok, October 2018.

<sup>412</sup> "Secret trial: the reason why Pai Dao Din pleaded guilty," *Prachatai*, August 16, 2017, <https://prachatai.com/english/node/7331> (accessed August 30, 2017).

<sup>413</sup> "Thai student activist released on royal pardon," *BBC*, May 10, 2019, <https://www.bbc.co.uk/news/world-asia-48223866> (accessed May 10, 2019).

## *Patnaree Chankij*

The prosecution of Patnaree Chankij highlights the use of the *lèse-majesté* law to punish the families of government critics, a form of collective punishment. Patnaree Chankij is the single mother of four children who makes her living cleaning homes and businesses.<sup>414</sup> One of her children is democracy activist Sirawit Seritiwat, also known as Ja New.

In early 2016, Patnaree received a private message on Facebook from activist Burin Intin that, the police later alleged, contained content that violated the *lèse-majesté* law.<sup>415</sup> She responded to the message with a single word, “*ja*.” When asked what that means, she said it was like “okay” or “whatever,” or like when one says “yes, sir. “I wanted to stop the conversation between us, but didn’t want to give my opinion,” she told Human Rights Watch. “So, I was trying to end the conversation with something neutral.”<sup>416</sup>

On May 6, 2016, the police filed charges against her for *lèse-majesté*.<sup>417</sup> “I went [to the police station] with lots of lawyers and scholars. Everyone was shocked and ready to bail me out,” she said. However, the police told her she could not get bail because the potential sentence under section 112 was so long.

I was shocked. I thought I would stay in prison forever because 112 charges almost all go to prison. I cried out loud. I was concerned about my daughters, who were 15 and 10, and my mother. I am the one who takes care of everyone. ... How can they live if I am in prison?<sup>418</sup>

The police notification of charges accused her of being an accomplice to Burin Intin’s defamatory statements by replying “*ja*,” stating that:

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<sup>414</sup> Human Rights Watch interview with Patnaree Chankij, Bangkok, October 2018.

<sup>415</sup> Burin Intin was sentenced to 22 years and eight months in prison, halved to 11 years 4 months because he pled guilty to violating section 112 in a series of posts, including the one sent to Ms. Chankij, in January 2017. Lucy Pasha-Robinson, “Man Jailed for 11 years for insulting Thai royal family on Facebook,” *The Independent*, January 29, 2017, <https://www.independent.co.uk/news/world/asia/man-jailed-11-years-thailand-insulting-royal-family-monarchy-burin-intin-bangkok-a7551096.html> (accessed June 28, 2019).

<sup>416</sup> Human Rights Watch interview with Patnaree Chankij, Bangkok, October 2018.

<sup>417</sup> “Thai Activist’s Mother Faces Prison Term for One-Word Facebook Reply,” *New York Times*, May 7, 2016, <https://www.nytimes.com/2016/05/08/world/asia/thai-activists-mother-faces-prison-term-for-one-word-facebook-reply.html> (accessed September 15, 2018).

<sup>418</sup> Human Rights Watch interview with Patnaree Chankij, Bangkok, October 2018.

Such a reply implied the acknowledgement and agreement with the alleged posts made by Mr. Burin. ... Had the Facebook user ‘Nuengnuch Chankij’ not agreed with the alleged posts made by Mr. Burin, she would have stopped him from posting the messages or blamed him for doing so. Instead, her reply ‘ja’ simply infers her consent (to the act).<sup>419</sup>

In a statement on May 7, Chakthip Chaijinda, commissioner-general of the Royal Thai Police, warned anti-junta activists that their family members could be prosecuted, just as Sirawit Seritiwat’s mother was being prosecuted.<sup>420</sup> Patnaree was held at the police station for two nights before being released on bail of 500,000 baht (US\$16,425).<sup>421</sup> A month later Chakthip declined to prosecute Patnaree, but the case was sent to the military prosecutor for final determination.<sup>422</sup>

On August 1, 2016, the military prosecutor charged Patnaree in military court with violating section 112.<sup>423</sup>

Since then, Patnaree has had to appear at the military court, which is nearly four hours by bus from her home, twice a month for hearings. “To go to court, I wake up at 5 a.m. to take the bus, and arrive at 9 a.m.,” she said. “Sometimes witnesses testify. Sometimes the witness doesn’t come, and I just sign in and get back on the bus.”<sup>424</sup> Patnaree said on the weeks she must attend court she may be unable to work for the entire week because many of her jobs are week-long contracts: “I am anxious and exhausted from travelling, and concerned about my family. Sometimes I don’t tell my mother when I go to court because she gets anxiety.”<sup>425</sup>

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<sup>419</sup> Thai Lawyers for Human Rights, “Detained mother of pro-democracy activist charged with lèse-majesté,” blog post, May 7, 2016, <https://www.tlhr2014.com/?p=2187>.

<sup>420</sup> “Police to activists: take Ja New’s mom as example,” *Prachatai*, May 9, 2016, <https://prachatai.com/english/node/6129> (accessed June 20, 2019).

<sup>421</sup> Pravit Rojanaphruk, “Anti-junta activist’s mother to be released on bail,” *Khaosod English*, May 8, 2016, <http://www.khaosodenglish.com/politics/2016/05/08/1462690194/> (accessed June 20, 2019).

<sup>422</sup> “Police refuse to prosecute anti-junta activist’s mother for lèse majesté,” *Prachatai*, July 15, 2017, <https://prachatai.com/english/node/6369> (accessed September 12, 2018).

<sup>423</sup> *Prosecutor of the Bangkok Military Court vs. Patnaree Chankij*, Black Case 194/2559, Bangkok Military Court, August 1, 2016. Copy of unofficial translation on file with Human Rights Watch.

<sup>424</sup> Human Rights Watch interview with Patnaree Chankij, Bangkok, October 2018.

<sup>425</sup> *Ibid.*

The trial has continued. Patnaree thinks the case against her will last several more years. She said the government has identified 17 witnesses, of whom only five testified between the filing of the case in 2016 and October 2018. “It is the worst thing for one woman who was never involved with politics. With the economic crisis I am exhausted from my work,” she said. “If I was an activist or a politician, I would feel guilty, but I am a housewife. Why has this happened to me?”<sup>426</sup>

### *Sulak Sivaraksa*

In one of the most extreme interpretations of the lèse-majesté law, in October 2017, the NCPO brought charges against an 85-year-old scholar for comments he had made in a 2014 lecture about a 16<sup>th</sup> century battle. Sulak Sivaraksa, a prominent historian, questioned the historical accuracy of descriptions of a 16th-century elephant battle between the Thai King Naresuan and the Burmese Crown Prince Mingyi Swa—a battle that is commemorated annually as Thai Armed Forces Day.<sup>427</sup>

“The Thai army is very proud of King Naresuan,” said Sulak. “He supposedly defeated Burma, so they make a big deal of him. I told the students this king may not have been great—they need to look at the facts. ... It was at a lecture at Thammasat University in 2014 on how to get history right. I talked about the difference between history and myth. I told them they need to look at not only the Thai chronicle but also Burmese history about the battle.”<sup>428</sup>

Shortly after he gave the lecture, two former military officials filed a complaint accusing him of committing lèse-majesté.<sup>429</sup>

Three years later, on October 11, 2017, the police filed formal charges against him.<sup>430</sup> He was taken to military court, where he was released on bail of 300,000 baht (US\$9,855).<sup>431</sup>

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<sup>426</sup> Ibid.

<sup>427</sup> Thanyarat Dokson, “Thai scholar may face jail for insulting king who died in 1605,” *The Independent*, October 19, 2017, <https://www.independent.co.uk/news/world/asia/thai-scholar-may-face-jail-for-insulting-king-who-died-in-1605-9804288.html> (accessed October 23, 2017).

<sup>428</sup> Human Rights Watch interview with Sulak Sivaraksa, Bangkok, October 2018.

<sup>429</sup> Ibid.

<sup>430</sup> “Lese majeste indictment proceeds against Sulak for King Naresuan comments,” *The Nation*, October 11, 2017, <https://www.nationmultimedia.com/detail/politics/30328890> (accessed October 12, 2017).

<sup>431</sup> Human Rights Watch interview with Sulak Sivaraksa, Bangkok, October 2018.

A self-professed royalist, he petitioned King Rama 10 for help.<sup>432</sup> On January 17, 2018, the military court announced that it was dropping the charges against him.<sup>433</sup>

When asked about the law, Sulak said:

My opinion of this law is clear. I was invited to speak to Parliament about it before the coup, when there was a Parliament. I told them that if they don't have the guts to abolish the law, they should at least modify it. They should at least get rid of the minimum sentence and reduce the maximum sentence. Right now, anyone can accuse anyone, and the police have to accept the case. There should be screening. The police worry that if they don't take the case, they will be accused of *lèse-majesté*. I said there should be a committee to screen such cases and decide whether any were really worth bringing.<sup>434</sup>

### *Prawet Prapanukul*

Prawet Prapanukul is a prominent human rights lawyer and frequent critic of the monarchy. His prosecution, in which the *lèse-majesté* charges were dropped with no explanation after he spent 14 months in prison, suggests a shift in the treatment of such cases under King Rama 10.

Prawet believes he came to the attention of the authorities after he shared posts by three critics of the junta and the monarchy after the junta issued warnings not to share or like their posts on social media.<sup>435</sup> After that, "they looked back at everything I wrote or posted," he said.<sup>436</sup> On April 29, 2017, soldiers took Prawet to a military camp, where he

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<sup>432</sup> Ibid.

<sup>433</sup> "Thailand drops royal insult charges against elderly historian," *CBS News*, January 17, 2018, <https://www.cbsnews.com/news/thailand-court-royal-insult-charges-elderly-academic-sulak-sivaraksa/> (accessed January 18, 2018).

<sup>434</sup> Human Rights Watch interview with Sulak Sivaraksa, Bangkok, October 2018.

<sup>435</sup> Ibid. In April 2017, a government ministry warned citizens that engaging on the internet with the Thai academics Somsak Jeamteerasakul and Pavin Chachavalpongpun and journalist Andrew MacGregor Marshall could violate the law. The ministry statement said citizens should not follow, contact or share content from the trio on the internet or social media. Oliver Holmes, "Thailand bans online contact with three critics of regime," *Guardian*, April 13, 2017, <https://www.theguardian.com/world/2017/apr/13/thailand-bans-online-sharing-of-articles-by-three-critics-of-regime> (accessed April 14, 2017).

<sup>436</sup> Human Rights Watch interview with Prawet Prapanukul, Bangkok, October 2018.

was held for several days.<sup>437</sup> On May 3, he was brought to a civil court in Bangkok where police filed 10 charges of lèse-majesté, three charges of sedition, and 13 charges under the Computer-Related Crime Act.<sup>438</sup> The military alleged he was behind a group calling on Red Shirts and Yellow Shirts to unite and turn Thailand into a federal republic.<sup>439</sup> He applied for bail, but his application was denied. “I asked for bail because I wanted to release a statement that the court has prejudged my case,” he said.<sup>440</sup>

Trial in his case began on May 8, 2018. Prawet refused to participate in the proceedings and did not put on a defense, asserting that the court was not independent.<sup>441</sup>

On June 27, 2018 the court dropped all of the lèse-majesté and Computer-Related Crime Act charges with no explanation and convicted Prawet of three counts of sedition. He was sentenced to 15 months in prison on the sedition charges and one additional month for refusing to be fingerprinted.<sup>442</sup> He was released on August 26, 2018.<sup>443</sup>

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<sup>437</sup> Human Rights Watch, “Thailand: Rights Lawyer Feared ‘Disappeared’,” news release, May 2, 2017, <https://www.hrw.org/news/2017/05/02/thailand-rights-lawyer-feared-disappeared>.

<sup>438</sup> “Thai rights lawyer faces up to 150 years in prison for royal insult,” *Reuters*, May 4, 2017, <https://www.telegraph.co.uk/news/2017/05/04/thai-rights-lawyer-faces-150-years-prison-royal-insult/> (accessed September 12, 2018).

<sup>439</sup> Teeranai Charuvastra, “Lawyer goes to trial for sedition cleared of lese majeste,” *Khaosod English*, June 27, 2018, <http://www.khaosodenglish.com/politics/2018/06/27/lawyer-goes-to-jail-for-sedition-cleared-of-lese-majeste/> (accessed September 12, 2018).

<sup>440</sup> Human Rights Watch interview with Prawet Prapanukul, Bangkok, October 2018.

<sup>441</sup> Ibid.

<sup>442</sup> Teeranai Charuvastra, “Lawyer goes to trial for sedition cleared of lese majeste,” *Khaosod English*, June 27, 2018, <http://www.khaosodenglish.com/politics/2018/06/27/lawyer-goes-to-jail-for-sedition-cleared-of-lese-majeste/> (accessed September 12, 2018).

<sup>443</sup> “Embattled lèse majesté lawyer released after 16 months in jail,” *Prachatai*, August 26, 2018, <https://prachatai.com/english/node/7802> (accessed August 27, 2018).

## VI. International and Domestic Legal Standards

Thailand is party to core international human rights treaties that promote and protect the fundamental rights to freedom of expression and peaceful assembly. The International Covenant on Civil and Political Rights (ICCPR), which Thailand ratified in 1996, provides that:

- (1) Everyone shall have the right to hold opinions without interference.
- (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- (3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.<sup>444</sup>

The UN Human Rights Committee, the treaty body of independent international experts that provides an authoritative interpretation of the ICCPR, has stressed the importance of freedom of expression in a democracy:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. ... [C]itizens, in particular through the media, should have wide

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<sup>444</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, entered into force March 23, 1976, 999 U.N.T.S. 171, reprinted in 6 ILM 368 (1967), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx> (accessed September 1, 2014). The ICCPR is drawn from the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, adopted December 10, 1948, G.A. Res. 217A (III), 3 UN GAOR, UN Doc. A/810, at 71 (1948), article 19, <http://www.un.org/e/documents/udhr/> (accessed September 1, 2014). The right to freedom of expression is also protected in regional human rights treaties, including the European Convention on Human Rights (article 10), the African Charter on Human and Peoples' Rights (article 9), and the American Convention on Human Rights (article 13), all of which draw upon the UDHR. These treaties and the court judgments deriving from them demonstrate the global acceptance of the rights guaranteed by the UDHR, and provide useful perspectives on the appropriate interpretation of those rights.

access to information and the opportunity to disseminate information and opinions about the activities of elected bodies and their members.<sup>445</sup>

The guarantee of freedom of expression applies to all forms of expression, not only those that fit with majority viewpoints and perspectives, as noted by the European Court of Human Rights in the seminal *Handyside* case:

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man ... [I]t 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. Such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society”.<sup>446</sup>

Under international law, the right to freedom of expression is not absolute. Given the paramount importance of this right in any democratic society, however, the Human Rights Committee has held that any restriction must meet a strict three-part test. Such a restriction must (1) be “provided by law”; (2) be imposed for the purpose of safeguarding respect for the rights or reputations of others, or the protection of national security or of public order (*ordre public*), or of public health or morals; and (3) be necessary to achieve that goal.<sup>447</sup>

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<sup>445</sup> UN Human Rights Committee, *Gauthier v. Canada*, Communication No. 633/1995, U.N. Doc. CCPR/C/ 65/D/633/1995, May 5, 1999, para. 13.4.

<sup>446</sup> European Court of Human Rights, *Handyside v. United Kingdom*, (5493/72) [1976] ECHR 5, December 7, 1976, para.49. See also *R. v. Central Independent Television plc*, [1994] 3 All ER 641 (“Freedom of [speech] means the right to [say] things which the government and judges, however well-motivated, think should not be [said]. It means the right to say things which ‘right-thinking people’ regard as dangerous or irresponsible.”); UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression (One-hundred and second session 2011), UN Doc. CCPR/C/GC/34 (2011), para.11. (“The scope of Article 19(2) of the ICCPR embraces even expression that may be regarded as deeply offensive.”)

<sup>447</sup> UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34 (2011), para. 22. The same three-part test has been applied by, among others, the European Court of Human Rights to cases under article 10 of the ECHR, see, e.g. *Goodwin v. United Kingdom*, [GC] No. 17488/90, 22 EHRR 123 (1996), para. 28-37, and the Canadian Supreme Court to cases under the Canadian Charter of Rights and Freedoms, see, e.g., *R. v. Oakes*, [1986] 1 SCR 103, 138-139.

To be “provided by law,” a norm must be formulated with sufficient precision to enable an individual to regulate their conduct accordingly.<sup>448</sup> The European Court of Human Rights, in the *Sunday Times* case, noted that an individual “must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences that a given action may entail.”<sup>449</sup>

Measures that seek to protect a legitimate interest must be “necessary” to achieve that purpose. This is a strict test: “[The adjective ‘necessary’] is not synonymous with ‘indispensable’, neither has it the flexibility of such expressions as ‘admissible’, ‘ordinary’, ‘useful’, ‘reasonable’ or ‘desirable’. [It] implies the existence of a ‘pressing social need’.”<sup>450</sup>

Finally, any restrictions must be proportional to the aim they are designed to achieve, and restrict freedom of expression as little as possible.<sup>451</sup> As articulated by the UN Human Rights Committee: “[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>452</sup>

Broadly defined provisions, while they may meet the requirement of being “provided by law,” are thus unacceptable if they go beyond what is required to protect a legitimate interest.

On July 14, 2014, Thailand submitted notice that it was suspending adherence to some of its obligations under the ICCPR pursuant to the “derogation” provision of article 4. Included was a derogation from its obligations under article 19 “by the prohibition of broadcasting or publishing certain content, particularly those inciting conflict and alienation in the society, false or provoking messages,” and its obligations under article 21, “by the limitation of political gathering.” The Human Rights Committee found, however, that Thailand’s derogations from articles 19 and 21 (as well as articles 12(1) on freedom of

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<sup>448</sup> UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34 (2011), para.25.

<sup>449</sup> European Court of Human Rights, *Sunday Times v. United Kingdom*, Series A30 (1979) ECHR 1, para.49.

<sup>450</sup> ECHR, *Sunday Times v. United Kingdom*, para. 59.

<sup>451</sup> UN Human Rights Committee, *Ballantyne et al. v. Canada*, Communications Nos. 359/1989 and 385/1989, U.N. Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (1993) (finding restriction on advertising in English not necessary to achieve stated aim of protecting the francophone population of Canada).

<sup>452</sup> UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34 (2011), para. 34.

movement, and 14(5) on the right of appeal) “do not seem to comply with the rationale and the scope” of article 4 and the committee’s General Comment No. 29 (2011) on ICCPR derogations during a state of emergency.<sup>453</sup>

When analyzed according to these standards, a number of the laws and NCPO orders currently in effect in Thailand impose limitations on expression that go beyond the restrictions permitted by international law.

As the former special rapporteur on freedom of expression, Frank La Rue, has noted, much as the right to freedom of expression is a fundamental right, it is also an “enabler” of other rights, “including economic, social and cultural rights, such as the right to education and the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications, as well as civil and political rights, such as the rights to freedom of association and assembly.”<sup>454</sup> Therefore the “arbitrary use of criminal law to sanction legitimate expression constitutes one of the gravest forms of restriction to the right, as it not only creates a ‘chilling effect,’ but also leads to other human rights violations.”<sup>455</sup>

## Constitution of Thailand

For the first two years covered by this report, the junta-promulgated Interim Constitution of 2014 was in force. This constitution contained no protections for freedom of expression or freedom of assembly.

On April 6, 2017, a new constitution drafted by the Constitution Drafting Committee appointed by the junta came into effect.<sup>456</sup> This constitution contains protections for freedom of speech, freedom of the press, and freedom of assembly that largely parallel those contained in the ICCPR.

Thailand’s Constitution of 2017 states in section 34 that:

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<sup>453</sup> UN Human Rights Committee, Concluding Observations on the Second Periodic Review of Thailand, April 25, 2017, UN Doc. CCPR/C/THA/CO/2, para. 5, <https://www.refworld.org/docid/591e9d914.html>.

<sup>454</sup> United Nations Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue,” May 27, 2011, UN Doc. A/HRC/17/27.

<sup>455</sup> Ibid.

<sup>456</sup> Panarat Thepgumpanat and Patpicha Tanakasempipat, “Thai king signs constitution in step toward poll,” *Reuters*, April 6, 2017, <https://www.reuters.com/article/us-thailand-king-constitution/thai-king-signs-constitution-in-step-toward-poll-idUSKBN178oVB> (accessed August 9, 2017).

A person shall enjoy the liberty to express opinions, make speeches, write, print, publicise and express by other means. The restriction of such liberty shall not be imposed, except by virtue of the provisions of law specifically enacted for the purpose of maintaining the security of the State, protecting the rights or liberties of other persons, maintaining public order or good morals, or protecting the health of the people. Academic freedom shall be protected. However, the exercise of such freedom shall not be contrary to the duties of the Thai people or good morals, and shall respect and not obstruct the different views of another person.<sup>457</sup>

Section 35 states that:

A media professional shall have liberty in presenting news or expressing opinions in accordance with professional ethics. The closure of a newspaper or other mass media in deprivation of the liberty under paragraph one shall not be permitted. Censorship by a competent official of any news or statements made by a media professional before the publication in a newspaper or any media shall not be permitted, except during the time when the country is in a state of war.<sup>458</sup>

Section 44 provides that:

A person shall enjoy the liberty to assemble peacefully and without arms. The restriction of such liberty under paragraph one shall not be imposed except by virtue of a provision of law enacted for the purpose of maintaining security of the State, public safety, public order or good morals, or for protecting the rights or liberties of other persons.<sup>459</sup>

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<sup>457</sup> Constitution of the Kingdom of Thailand (2017), sec. 34, English translation published by the Office of the Council of State, [https://www.constituteproject.org/constitution/Thailand\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Thailand_2017.pdf?lang=en).

<sup>458</sup> Constitution of the Kingdom of Thailand (2017), sec. 35.

<sup>459</sup> Ibid., sec. 44.

## VII. Analysis of Thai Laws under International Standards

The Thai laws used by authorities to silence peaceful dissent largely fail to meet international standards for the rights to freedom of speech and assembly on their face, and all have been applied to restrict those rights in violation of international law. A brief analysis of each of the laws is below.

### Section 116 of the Criminal Code: Sedition

The sedition act provides a penalty of up seven years in prison for anyone who uses words or writings in order (1) to bring about a change in the laws of the country or the government by the use of force or violence; (2) to raise unrest and disaffection among the people in a manner likely to cause disturbance in the country; or (3) to cause the people to transgress the laws of the country.

The law is far too broad to meet international free expression standards. While the government can legitimately restrict speech intended to incite violence where there is a real risk that violence will occur, speech that is “likely to cause disturbance” falls short of that standard. Moreover, speech that “raises disaffection” may be the basis of a prosecution under the law apparently without regard to whether that was the speaker’s intent. This effectively permits the imprisonment of people who had no intention of “raising disaffection,” much less of undermining national security or public order.

As the Canadian Supreme Court has stated in striking down a sedition statute very similar to section 116 as a violation of freedom of expression:

There is no modern authority which holds that the mere effect of tending to create discontent or disaffection, but not tending to issue in illegal conduct, constitutes the crime [of sedition], and the reason for this is obvious. Freedom of thought and belief and disagreement in ideas and beliefs, on every conceivable subject, are of the essence of life. The clash of critical discussion on political, social, and religious subjects has too deeply

become the stuff of our daily experience to suggest that mere ill-will as a product of controversy can strike down the latter with illegality.<sup>460</sup>

Section 116 is further flawed in that it fails to formulate the restrictions it imposes on speech “with sufficient precision to enable the citizen to regulate his conduct.”<sup>461</sup> Terms such as “disaffection” and “disturbance” are both vague and subjective. A law that is so vague that individuals do not know what expression may violate it creates an unacceptable chill on free speech because citizens may avoid discussing any subject that they fear might subject them to prosecution. Vague provisions not only do not give sufficient notice to citizens, but also leave the law subject to abuse by authorities who may use them to silence dissent.

Finally, the law is problematic in that it can be and has been used to prosecute those engaging in legitimate protests or criticism of the government. The NCPO has prosecuted as sedition, for example, calling for elections and criticizing Prayut’s performance as prime minister.

As the New Zealand Law Commission stated in recommending the abolition of New Zealand’s sedition laws:

The heart of the case against sedition lies in the protection of freedom of expression, particularly of political expression, and its place in our democracy. People may hold and express strong dissenting views. These may be both unpopular and unreasonable. But such expressions should not be branded as criminal simply because they involve dissent and political opposition to the government and authority.<sup>462</sup>

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<sup>460</sup> Supreme Court of Canada, *Boucher v. The King*, 1951] S.C.R. 265, 288. See also Supreme Court of India, *Kedar Nath v. State of Bihar* (1962) SCR Supl. (2) 769, 809 (finding Indian sedition law must be construed to apply only to “such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence” to prevent conflict with right to freedom of expression under the Indian Constitution).

<sup>461</sup> ECHR, *Sunday Times v. United Kingdom*, para. 49.

<sup>462</sup> New Zealand Law Commission, *Law Commission Reforming the Law of Sedition: Consultation Draft* (October 2006), [http://www.lawcom.govt.nz/sites/default/files/press-releases/2006/10/Publication\\_128\\_343\\_SEDITION%20CONSULTATION%20DRAFT.pdf](http://www.lawcom.govt.nz/sites/default/files/press-releases/2006/10/Publication_128_343_SEDITION%20CONSULTATION%20DRAFT.pdf), at para. 18 (recommending abolition of New Zealand’s sedition law), as has the United Kingdom. See *The Crimes (Repeal of Seditious Offense) Amendment Act of 2007*, <http://www.legislation.govt.nz/act/public/2007/0096/latest/whole.html> and *The Coroners and Justice Act 2009*, chapter, sec. 73, [www.legislation.gov.uk/ukpga/2009/25/section73](http://www.legislation.gov.uk/ukpga/2009/25/section73).

New Zealand and the United Kingdom are among the countries that have abolished their sedition laws in recent years. Thailand should follow their lead.

### *Recommendation to the Thai Government*

- Repeal section 116 in its entirety.

## **Computer-Related Crime Act**

The Computer-Related Crime Act—both before and after the 2016 amendments—contains overly broad provisions that can and have been used to violate the right to freedom of speech.

As originally enacted, section 14(1) of the law provided for a sentence of up to five years in prison and a fine for anyone who “put(s) into a computer system forged computer data, partially or entirely, or false computer data, in a manner that is likely to cause damage to a third party or the public.” This article was frequently used alongside criminal defamation charges to target human rights defenders and others peacefully expressing their views online.

Section 14(2) provided the same possible sentence for anyone who “put into a computer system false computer data in a manner that is likely to damage the national security or cause panic in the public.” It is also an offense to forward or share any content that violates article 14 of the law.<sup>463</sup>

On December 16, 2016, the junta-appointed National Legislative Assembly unanimously adopted amendments to the law despite concerns expressed by civil society groups, businesses, and diplomatic representatives. Before the law was passed, more than 300,000 people signed a petition demanding that the National Legislative Assembly reject the amendments, which they saw as an infringement of privacy and freedom of expression on the internet.<sup>464</sup> The amendments went into effect on May 24, 2017.

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<sup>463</sup> Computer-Related Crime Act (No. 2) 2017, sec. 14(5).

<sup>464</sup> “Stop #CCA. Stop Laws Violating Privacy,” online petition, <https://www.change.org/p/หยุด-พรบคอม-หยุดกฎหมายล้างข้อมูลส่วนบุคคล>

Section 14(1) was amended to add a requirement that the perpetrator act “with ill or fraudulent intent,” to include “distorted” computer information in addition to forged computer data, and to exclude from the provision statements that can be prosecuted as defamation under the Criminal Code.<sup>465</sup> However, section 16 of the amended law continues to criminalize the use of images of another person that have been created, edited, or adapted in a way that “is likely to impair the reputation of such other person or to expose such other person to hatred or contempt.” This is, in effect, a criminal defamation provision. As discussed below, defamation should be solely a civil matter and not subject to criminal sanctions.

The addition of an intent requirement to section 14(1) is a positive step, but the provision remains overly broad. While the government should penalize intentional computer-related forgery when it results in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic,<sup>466</sup> section 14(1) is not limited to forged data but also includes “distorted” or “false” data and applies whenever the data is “likely to cause damage to the public”—a vague and broadly worded standard.

Article 14(2) was amended to expand the bases for prosecution. As amended, it applies to anyone who posts “false” information “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.”<sup>467</sup>

Under international law, restrictions on speech must be necessary to protect the rights or reputation of others, national security or public order or public health or morals.<sup>468</sup> Restricting speech simply because it is “likely to cause damage to the public” is an unjustifiably broad restriction on the right to freedom of expression. “Damage to the public” is not defined in the law, and the very vagueness of the phrase leaves it susceptible to abuse by officials looking for a justification to punish a peaceful critic or

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<sup>465</sup> Computer-Related Crime Act 2007 as amended by the Computer-Related Crime Act (No. 2) 2017, unofficial translation by Thai Netizen Network, <https://thainetizen.org/docs/cybercrime-act-2017/>.

<sup>466</sup> Convention on Cybercrime, [http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/libe/dv/7\\_conv\\_budapest\\_/7\\_conv\\_budapest\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/dv/7_conv_budapest_/7_conv_budapest_en.pdf), article 7.

<sup>467</sup> Computer-Related Crime Act 2007 as amended by the Computer-related Crime Act (No. 2) 2017, unofficial translation by Thai Netizen Network, <https://thainetizen.org/docs/cybercrime-act-2017/>. Italics indicate language added by the amendment.

<sup>468</sup> UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34 (2011), para. 22.

opponent of the government.<sup>469</sup> Similarly, while protecting public order is a legitimate basis for restricting speech under international law, the restriction must be narrowly drawn to restrict speech as little as possible.<sup>470</sup>

Both section 14(1) and 14(2) fail to meet the requirement that any restriction on speech be formulated with sufficient precision to enable an individual to know what speech would violate the law.<sup>471</sup> An individual cannot know what speech is “likely to cause damage to the public” or to “cause panic in the public,” much less what speech will be considered likely to “damage the maintenance of public safety.” The criminalization of “distorted” information is particularly problematic, as what is considered distorted is likely to be subjective, particularly when discussing controversial issues of public concern, including incidents related to serious state-sponsored rights violations, such as the 2003 “war on drugs,” the 2010 violent political confrontations, and abusive counterinsurgency operations in the southern border provinces.

Subsection 14(5) directly abridges freedom of expression by criminalizing the mere dissemination of data. The punishment of such re-dissemination is a sweeping restriction on speech that does not further a legitimate government interest.

As amended, section 15 of the law imposes criminal liability on an internet service provider (ISP) for content without requiring intent on the part of the ISP. Instead, an intermediary can be held liable if they “cooperate, consent or acquiesce” in the perpetration of the offense—a standard that could include simply permitting the posting of material regardless of whether the ISP was aware of the content of the material. The impact of such a provision will be the suppression of protected speech, including comments on political affairs, as intermediaries block or take down material that they fear may be found to be in

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<sup>469</sup> Ibid., para. 25.

<sup>470</sup> The law also has implications for access to information on the internet. Service providers such as social media platforms and access providers will also be required to delete or otherwise prevent the availability of such content following government notification, or they will also be subject to punishment for that content. Computer-Related Crime Act, sec. 15. Furthermore, new provisions under articles 16/1 and 16/2 state that the court can order information that is found to be false and having caused damage to other persons or the public to be removed from the Internet and deleted from computer systems. If these articles are enforced arbitrarily, such actions will have dire consequences on research and reporting on contentious topics of public concern. Under newly amended article 20(3) of the Computer-Related Crime Act, even content online that is not illegal can be banned and ordered to be deleted by the court based on a request from a computer data screening committee, appointed by the minister of digital economy and society, stating that the content is considered to be against public order or good morals of the people.

<sup>471</sup> UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34 (2011), para. 25.

violation of the law. As David Kaye, UN special rapporteur for the promotion and protection of freedom of opinion and expression, has noted, “intermediary liability creates a strong incentive to censor; providers may find it safest not to challenge such regulation but to over-regulate content such that legitimate and lawful expression also ends up restricted.”<sup>472</sup>

### *Recommendations to the Thai Government*

- Amend section 14(1) to limit its application to the input of forged computer data, and only when it results in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic.
- Amend section 14(2) to:
  - require that the “false information” be material and input with malicious intent; and
  - limit the application of the provision to instances in which the false information poses an imminent risk to national security or public safety.
- Repeal section 14(3), which makes it an offense to put into a computer system any computer data which is “an offense about the security of the Kingdom or is an offense about terrorism.”
- Repeal section 14(5), which makes it a criminal offense to share or otherwise disseminate data that violates section 14(1), (2), (3) or (4).
- Repeal section 15, and affirmatively provide that internet service providers and other entities that host third party internet content should not be treated as the publisher of the third-party content. Intermediary liability should be limited to instances in which the ISP or relevant entity has failed to comply with an order of an impartial and competent court finding that the take down of the material at issue is necessary and proportionate to fulfil a legitimate government aim, such as national security or public safety (e.g., child sexual exploitation images or incitement to violence).
- Repeal section 16 to abolish the offense of criminal defamation through use of photographs or other images.

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<sup>472</sup> United Nations Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,” March 30, 2017, UN Doc. A/HRC/35/22, para. 49.

## Sections 326 to 333 of the Criminal Code: Defamation

Thailand's criminal code makes defamation a criminal offense. Section 326 states:

Whoever imputes anything to the other person before a third person in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned, is said to commit defamation and shall be punished with imprisonment not exceeding one year or fined not exceeding twenty thousand Baht, or both.<sup>473</sup>

If the defamation is committed by means of a document, video, drawing or any other means, it is punishable by up to two years in prison.<sup>474</sup> Under section 330, truth is a defense to a charge of defamation, but a defendant is not allowed to prove the truth of the statement if “such imputation concerns personal matters, and such proof will not be benefit to the public.”<sup>475</sup>

Defamation has been defined as making a false statement to a third person that harms another person's reputation.<sup>476</sup> It is increasingly recognized that defamation should be considered a civil matter, not a crime punishable with imprisonment. The UN special rapporteur on the protection and promotion of the right to freedom of opinion and expression has recommended that criminal defamation laws be abolished,<sup>477</sup> as have the special mandates of the United Nations, the Organization for Security and Co-operation in Europe, and the Organization of American States, which have together stated, “Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”<sup>478</sup>

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<sup>473</sup> Thailand Criminal Code, sec.326, <http://library.siam-legal.com/thai-law/criminal-code-defamation-sections-326-333/>.

<sup>474</sup> Thailand Criminal Code, sec. 328.

<sup>475</sup> Ibid., sec. 330.

<sup>476</sup> See, e.g., *Black's Law Dictionary* (9<sup>th</sup> ed., abridged) (St. Paul: Thomson Reuters, 2010), p. 377.

<sup>477</sup> United Nations Human Rights Council, “Report of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue Report,” June 4, 2012, UN Doc. A/HRC/20/17, para. 87.

<sup>478</sup> Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 2002, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=87&IID=1> (accessed June 11, 2014). Similarly, the African Court on Human and Peoples' Rights has held that imposing a custodial sentence for defamation violates both article 9 of the African Charter on Human and Peoples' Rights and the ICCPR. African Court on Human and Peoples' Rights, *Lohe Issa*

Defamation cases involving government officials or public persons are particularly problematic. While government officials and those involved in public affairs are entitled to protect their reputation, including protection against defamation, as individuals who have sought to play a role in public affairs, they need to tolerate a greater degree of scrutiny and criticism than ordinary citizens. This distinction deters those in positions of power from using the law to penalize their critics or those who seek to expose official wrongdoing, and it facilitates public debate about issues of governance and common concern.<sup>479</sup>

### *Recommendations to the Thai Government*

- Repeal sections 326 to 333 of the Criminal Code to eliminate the offense of criminal defamation. Defamation should be solely a civil matter, as recommended by the UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression.
  - Public figures should have to prove that the defendant knew the information was false.
  - Pecuniary rewards should be strictly proportionate to the actual harm caused, and the law should give preference to the use of non-pecuniary remedies, including, for example, apology, rectification, and clarification.

## Constitutional Referendum Act

Section 61 of the Constitutional Referendum Act, which made it a criminal offense to “instigate trouble in order to cause disorder in the voting” and defined “instigating trouble” to include texts, pictures, or other content “that are distorted from the fact or

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*Konate v. Burkina Faso*, Application no. 004/2013, December 5, 2014, <https://www.african-court.org/en/images/documents/Judgment/Konate%20Judgment%20Engl.pdf> (accessed June 17, 2015).

<sup>479</sup> United Nations Human Rights Council, “Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Mr. Frank La Rue,” April 20, 2010, UN Doc. A/HRC/14/23, para. 82 (The protection of reputation of others “must not be used to protect the State and its officials from public opinion or criticism.... [N]o criminal or civil action for defamation should be admissible in respect of a civil servant or the performance of his or her duties.”); UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34 (2011), para. 38 (“[T]he Committee has observed that in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high”); UN Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex, para. 37 (“A limitation to a human right based upon the reputation of others shall not be used to protect the state and its officials from public opinion or criticism.”); Criminal Code of Canada, sec. 310, <http://yourlaws.ca/criminal-code-canada/321> (it is not defamatory libel to publish “fair comments on the public conduct of a person who takes part in public affairs.”).

having violent, aggressive, rude, inciting, or threatening characteristics aiming to induce eligible voters refrain from voting or vote in a certain way or abstain from voting,” was a blatant violation of the rights of all Thai citizens to express their opinions on a topic of intense public interest.

As David Kaye, special rapporteur on freedom of expression, stated:

The idea of a referendum is to allow for full debate followed by public vote, and particularly where the subject is of extraordinary public interest, a wide range of opinions should be encouraged, freely expressed, and open to rigorous debate.... Instead of criminalizing expression on the draft constitution, the Thai government should encourage an open environment for public discourse to ensure an informed participation during the constitutional referendum.<sup>480</sup>

### *Recommendations to the Thai Government*

- While the Constitutional Referendum Act is now moot, any future legislation governing the holding of a referendum or other public election should encourage an open environment for public discourse, and not restrict the ability of Thai citizens to express their views on the issue at hand and attempt to persuade others, if they wish to do so, of the validity of their position.

## **Section 112 of the Criminal Code: Lèse-Majesté**

Thailand’s lèse-majesté law authorizes the imposition of harsh penalties on anyone who “defames, insults or threatens the King, the Queen, the Heir-apparent, or the Regent.” In October 2012, the Constitutional Court ruled that the restrictions on freedom of expression and the criminal penalties for lèse-majesté offenses are constitutional because such offenses are considered as threats to national security.

Frank La Rue, the then-UN special rapporteur on freedom of expression, stated in October 2011, that Thailand’s lèse-majesté laws are “vague and overly broad, and the harsh

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<sup>480</sup> UN Office of the High Commissioner for Human Rights, “UN Expert urges Thailand to ensure free debate ahead of the constitutional referendum,” news release, July 26, 2016, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20302&LangID=E>.

criminal sanctions are neither necessary nor proportionate to protect the monarchy or national security.”<sup>481</sup> He added: “The threat of a long prison sentence and vagueness of what kinds of expression constitute defamation, insult, or threat to the monarchy, encourage self-censorship and stifle important debates on matters of public interest, thus putting in jeopardy the right to freedom of opinion and expression.”<sup>482</sup>

The UN Human Rights Committee, the international expert body that monitors compliance with the International Covenant on Civil and Political Rights (ICCPR), which Thailand has ratified, has stated in a General Comment that laws such as those for *lèse-majesté* “should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned” and that governments “should not prohibit criticism of institutions, such as the army or the administration.”<sup>483</sup>

In addition, the routine refusal to provide bail in *lèse-majesté* cases violates the ICCPR provision that it “shall not be the general rule that persons awaiting trial shall be detained in custody.”<sup>484</sup>

Neither the Thai monarch at the time of the coup, King Rama 9, nor his successor King Rama 10, has ever personally filed *lèse-majesté* charges—they are instead filed by individuals or groups supportive of the monarchy or by the military authorities. The police, public prosecutors, courts, and other state authorities, however, appear reluctant to reject allegations of *lèse-majesté* out of concern that they might be accused of disloyalty to the monarchy.

In a directive dated February 21, 2018, the attorney general instructed all public prosecutors to review all pending prosecutions under section 112 and to furnish the office of the attorney general with the police investigation reports in each case. Under the new

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<sup>481</sup> “Thailand should amend defamation laws to comply with freedom of speech – UN expert,” *UN News*, October 10, 2011, <https://news.un.org/en/story/2011/10/390882-thailand-should-amend-defamation-laws-comply-freedom-speech-un-expert>.

<sup>482</sup> *Ibid.*

<sup>483</sup> UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34 (2011), para. 38.

<sup>484</sup> ICCPR, article 9(3).

guidelines, only the attorney general's office can make the final determination whether or not to prosecute a case.<sup>485</sup>

### *Recommendations to the Thai Government*

- Amend section 112 to preclude private parties from bringing complaints of lèse-majesté since no private harms have occurred. Doing so will prevent the use of the law for political purposes.
- Abolish the minimum sentence and reduce the maximum sentence for violations of the law.
- Make clear that those charged with lèse-majesté are entitled to bail.
- Undertake a review of all prisoners serving prison sentences for lèse-majesté with a view toward commuting excessively harsh sentences.

## Contempt

The purpose of criminal contempt laws is to prevent interference with the administration of justice. While there is no doubt that courts can restrict speech where that is necessary for the orderly functioning of the court system,<sup>486</sup> Thailand's criminal contempt laws have been used to prosecute conduct that cannot be said to have interfered with the functioning of the court.

### *Civil Procedure Code*

Section 31 of the Civil Procedure Code sets forth a list of acts that may constitute contempt of court, including refusal to comply with any directions given by the court or behaving "improperly" within the court's precincts.<sup>487</sup> The law does not specify what constitutes "improper" conduct, leaving those at the court uncertain of what behavior may result in punishment. Moreover, the vagueness of the term can permit the use of contempt for political ends, even where the supposedly "improper" act does not interfere with the functioning of the court.

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<sup>485</sup> Thai Lawyers for Human Rights, "Changes in Thailand's lèse majesté prosecutions in 2018," blog post, January 15, 2019, <https://www.tlhr2014.com/?p=10431&lang=en>.

<sup>486</sup> UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34 (2011), para. 31 (noting that contempt of court proceedings could be warranted in the exercise of the court's power to maintain orderly proceedings, but must not be used to restrict legitimate defense rights).

<sup>487</sup> Code of Civil Procedure, sec. 31(1).

### *Criminal Code*

Section 198 of Thailand's Criminal Code provides that "whoever, insulting the Court or the judge in the trial or adjudication of the case, or obstructing the trial or adjudication of the Court," shall be punished with imprisonment of one to seven years or a fine of two thousand to fourteen thousand Baht, or both.<sup>488</sup>

### *Organic Law Governing Constitutional Court Procedure*

The military-appointed National Legislative Assembly drafted a new law governing procedure in the country's Constitutional Court, which went into effect in March 2018. The law gives the court power to take action against anyone who comments on its rulings in a "bad faith" or with "profanity, sarcasm or vindictiveness".<sup>489</sup> Violations are punishable by up to one month in prison and a 50,000 baht (US\$1,642) fine.

While no one has yet been held in contempt under the law, the Constitutional Court summoned Associate Professor Kovit Wongsuawat to attend a meeting on August 30, 2019, to discuss an alleged "inappropriate" tweet posted on his Twitter account on August 27, 2019. In his tweet, Kovit commented that the Constitutional Court was "beyond shameless" for accepting a petition about media shareholding by 32 members of Parliament without suspending them.<sup>490</sup> On August 30, Deputy Prime Minister Wissanu Krea-ngam warned that criticism of the Constitutional Court or its verdicts can be considered contempt of court.<sup>491</sup>

Both section 198's prohibition on "insulting" the court and the Organic Law on Constitutional Court Procedure's prohibition on commenting on rulings with "profanity, sarcasm or vindictiveness" are inconsistent with international law, which makes clear that "all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition. ... States parties should not prohibit criticism of institutions, such as the army or the

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<sup>488</sup> Thailand Criminal Code, sec. 198.

<sup>489</sup> Organic Law on Constitutional Court Procedure 2018, sec. 38.

<sup>490</sup> "Constitutional Court calls in lecturer over a tweet," *Prachatai*, August 29, 2019, <https://prachatai.com/english/node/8187> (accessed September 2, 2019).

<sup>491</sup> Teeranai Charuvastra, "Gov't warns public not to criticize constitutional court," *Khaosod English*, August 30, 2019, <https://www.khaosodenglish.com/2019/08/30/govt-warns-public-not-to-criticize-constitutional-court/> (accessed September 2, 2019).

administration.”<sup>492</sup> Other international bodies interpreting freedom of expression, including the Inter-American Commission on Human Rights, have also disfavored laws that penalize criticism of public authorities.<sup>493</sup> The Inter-American Court for Human Rights has specifically held that contempt is not compatible with the Inter-American Convention on Human Rights:

It could be abused as a way to silence ideas and opinions, suppressing debate, which is critical for the effective operation of democratic institutions. Moreover, contempt legislation dissuades people from criticizing for fear of being subject to judicial actions that, in some cases, may bear monetary penalties.<sup>494</sup>

The Organic Law’s prohibition on commenting on rulings in a “dishonest manner” is similarly flawed. The law does not define what constitutes a “dishonest manner,” leaving the law subject to abuse by judges who simply do not like the content of the comment.

### *Recommendations to the Thai Government*

- Amend section 31 of the Civil Procedure Code to eliminate the court’s power to punish individuals for “behaving improperly” on the grounds of the court. Sanctions for contempt should be limited to acts that seriously interfere with the functioning of the court.
- Amend section 198 of the Criminal Code to eliminate the offense of “insulting the court.”
- Amend section 38 of the Organic Law on Constitutional Court Procedures to eliminate the power of the court to punish individuals for commenting on rulings in “bad faith” or with “profanity, sarcasm or vindictiveness”.

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<sup>492</sup> UN Human Rights Committee, General Comment No. 34 UN Doc. CCPR/C/GC/34 (2011).

<sup>493</sup> Inter-American Declaration on Principles of Freedom of Expression, <https://www.cidh.oas.org/declaration.htm>, para. 11 (“Laws that penalize offensive expressions directed at public officials ... restrict freedom of expression and the right to information.”)

<sup>494</sup> “Special Rapporteur for Freedom of Expression Urges the Government of Chile to Abolish the Contempt/“Descacato” Laws,” Organization of American States news release 66/02, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=85&IID=1>, citing to IACHR; Report on the Compatibility of “Descacato” Laws with the American Convention on Human Rights, OEA/Ser. L/V/II.88, doc. 9 rev., 17 February 1995, 197-212.

## HNCPO Order 3/2015

As the UN Human Rights Council has recognized, the ability to exercise the right of peaceful assembly subject only to restrictions permitted under international law is indispensable to the full enjoyment of the right, “particularly where individuals may espouse minority or dissenting views.”<sup>495</sup> The UN special rapporteur on the rights to freedom of assembly and of association has made clear that “freedom is to be considered the rule, and its restriction the exception.”<sup>496</sup>

Section 12 of HNCPO order 3/2015, which prohibited the gathering of five or more people for political purposes from the time it was issued until December 2018, was a clear violation of international law for the protection of freedom of assembly and an infringement on the rights of those arrested and charged.

Restrictions on freedom of assembly need to be narrowly drawn to serve a legitimate purpose and restrict the right as little as possible. A total ban on all political assemblies for four and a half years is disproportionate to any legitimate state interest that might be served.

Similarly, the imposition of criminal penalties on those who held such gatherings is inconsistent with international norms that establish that no one should be held criminally liable for the mere act of organizing or participating in a peaceful assembly.<sup>497</sup>

While section 12 was repealed by HNCPO order 22/2018 on December 11, 2018, section 2 of that order noted that “the nullification of announcements and orders in [section] 1 does not impact the prosecution of cases, proceedings or actions according to the announcements and orders which were carried out prior to the nullifications by this order.”<sup>498</sup>

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<sup>495</sup> UN Human Rights Council, Resolution 15/21, October 6, 2010, UN Doc. A/HRC/RES/15/21, preamble.

<sup>496</sup> Kiai Report, May 21, 2012, UN Doc. A/HRC/20/27, para. 16. See also, Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights, *Guidelines on Freedom of Peaceful Assembly* (“OSCE/ODIHR Guidelines”), 2nd edition, adopted by the Venice Commission on June 4, 2010, <http://www.osce.org/odihr/73405>, Guideline 2.1 (“As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation.”).

<sup>497</sup> United Nations Human Rights Council, “Joint Report of the special rapporteur on the rights of freedom of peaceful assembly and of association and the special rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies,” February 4, 2016, UN Doc. A/HRC/31/66, para. 27.

<sup>498</sup> Thai Lawyers for Human Rights, “Legal Observations on Head of the NCPO Order No. 22/2561,” blog post, December 13, 2018, <https://www.tlhr2014.com/?p=10076&lang=en>.

Despite the ambiguous language of section 2, the military courts and the civilian courts have dismissed most pending cases under HNCPO order 3/2015, citing HNCPO order 22/2018.<sup>499</sup> Courts handling some cases related to pro-democracy protests calling for a free and fair elections, however, either have not ruled on motions to dismiss or have rejected such motions, citing section 2 of HNCPO order 22/2018.

### *Recommendations to the Thai Government*

- Withdraw all pending charges filed under section 12 of HNCPO order 3/2015.

## **Public Assembly Act 2015**

The Public Assembly Act 2015 also fails to meet international standards for protection of the right to freedom of peaceful assembly and is being increasingly used by the authorities to penalize protests since the lifting of NCPO order 3/2015.

### *Excessive Limits on Protest Locations*

The Public Assembly Act effectively prohibits all assemblies near many of the locations that may be targets of a protest. The law not only prohibits all protests within 150 meters of the various royal palaces and residences, the National Assembly, Government House, and the Thai courts, but also prohibits any protest that broadly “hinders access to” the offices of state agencies, embassies or consulates, offices of international organizations, and “other places as notified by the minister.”<sup>500</sup>

International standards provide that the government has an obligation to facilitate peaceful assemblies “within sight and sound” of their intended target.<sup>501</sup> Where the government seeks to impose restrictions on the time, place, or manner of an assembly, the government bears the burden of justifying those restrictions, and the law should provide an avenue for review of the decision.<sup>502</sup>

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<sup>499</sup> See, for example, “‘An academic forum is not a military camp’ case dismissed; court rules law no longer exists to charge 5 defendants,” *Prachatai*, December 26, 2018, <https://prachatai.com/english/node/7853> (accessed January 3, 2019).

<sup>500</sup> Public Assembly Act 2015, translation by Pakorn Nilprapunt, <http://lawdrafter.blogspot.com/2015/08/translation-thai-public-assembly-act-of.html>, sec. 7-8.

<sup>501</sup> United Nations Human Rights Council, “Report of the special rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai,” April 24, 2013, UN Doc. A/HRC/23/39, para. 60.

<sup>502</sup> UNHRC, “Joint Report,” February 4, 2016, UN Doc. A/HRC/31/66, para. 35.

In addition, “[t]ime, place, and manner restrictions should never be used to undermine the message or expressive value of an assembly or to dissuade the exercise of the right to freedom of assembly.”<sup>503</sup> In situations where restrictions are imposed, these should strictly adhere to the principle of proportionality and should aim to facilitate the assembly within “sight and sound” of its object or target audience.<sup>504</sup> While the Public Assembly Act states that a “specific place for public assembly” is to be provided at the National Assembly, Government House, and the courts, and that state agencies “may provide” a specific place for assemblies, any locations so specified must be within sight and sound of the targets of the protesters to meet international scrutiny. Restricting protests to a venue far from the target of the protests and out of public view cannot be justified as a reasonable restriction on freedom of assembly.

### *Notification Requirements*

The right to freedom of assembly is a right and not a privilege, and as such its exercise should not be subject to prior authorization by the authorities.<sup>505</sup> The Public Assembly Act, consistent with international standards, does not formally require permission but only notice of the planned assembly 24 hours in advance.<sup>506</sup> However, the sole purpose of the notice requirement should be to allow the government to facilitate an assembly by, for example, closing roads or redirecting traffic.<sup>507</sup> It should not serve “as a de facto request for authorization or as a basis for content-based regulation.”<sup>508</sup> Some local authorities, however, have “denied” permission for protests where notice has been given, and then charged the participants with illegal assembly.<sup>509</sup>

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<sup>503</sup> Ibid., para. 34.

<sup>504</sup> OSCE/ODIHR Guidelines, para. 101.

<sup>505</sup> UNHRC, “Joint Report,” February 4, 2016, UN Doc. A/HRC/31/66, para. 21. Similarly, the Guidelines on Freedom of Peaceful Assembly drafted by the Organization for Security and Co-operation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR) state that “those wishing to assemble should not be required to obtain permission to do so.” OSCE/ODIHR Guidelines, Guideline 2.1.

<sup>506</sup> UNHRC, “Joint Report,” February 4, 2016, UN Doc. A/HRC/31/66, para. 21.

<sup>507</sup> Ibid; UN Human Rights Committee, Decision, *Kivenmaa v. Finland*, Communication No. 412/1990, UN Doc. CCPR/VC/50/D/412/1990 (June 9, 1994), <https://www.umn.edu/humanrts/undoc/html/vws412.htm> (“The Committee finds that a requirement to notify the police of an intended demonstration in a public place six hours before its commencement may be compatible with the permitted limitations laid down in article 21 of the [ICCPR].”).

<sup>508</sup> UNHRC, “Joint Report,” February 4, 2016, UN Doc. A/HRC/31/66, para. 21.

<sup>509</sup> Sirawit Seritiwt was charged with violating the Public Assembly Act by holding a protest at Nonthaburi Pier on January 11, 2019 to protest postponement of the election. He gave notice of the protest, but the authorities refused to give permission, saying the protest would disrupt traffic on the pier. He was charged on February 9, 2019, with holding an unauthorized assembly. Thai Lawyers for Human Rights, “Ordinary people are still treated as a ‘target’ despite the forthcoming election,” March 22, 2019, <https://www.trlhr2014.com/?p=11481&lang=en>.

The law requires that the notice include, not only the date, time, and location for the planned assembly, but also the “objective” of the assembly.<sup>510</sup> Under rules issued by the prime minister pursuant to the law, the notice must also include information about the applicant, “the purpose of the assembly, activities, details of the event and a list of coordinators.”<sup>511</sup> There is no valid state interest in requiring this level of detail, which in turn infringes on the right to freedom of expression of individuals who participate in the assembly.

Under section 11 of the law, the relevant authorities can order a change in location if, in their view, the protest is inconsistent with the location restrictions in sections 7 and 8 and, if the protesters do not comply, prohibit the protest in its entirety.

Similarly, while the law does provide for an exception to the notice requirements when giving notice 24 hours in advance is not practicable, that exception is limited to an application to extend the time to give notice and the law gives the authorities the power to reject that application.<sup>512</sup> The law should, instead, simply provide an exception to the notice requirement where it is not practicable for the organizers to comply with those requirements due to the need to respond immediately to pressing events.<sup>513</sup>

### *Imposition of Criminal Penalties*

Most problematically, the law allows the dispersal of assemblies and the imposition of criminal penalties for failing to give the required notice, *even if the assembly was peaceful and caused no disruption of public order*.<sup>514</sup>

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<sup>510</sup> Public Assembly Act 2015, sec. 10.

<sup>511</sup> See *ibid.*; Thai Lawyers for Human Rights, “Thailand’s Public Assembly Act 2015: Procedures on Notification of Public Assembly, Authorised Equipments for Crowd Control, and Limitation of Utilizing the Sound Amplification Equipments,” November 6, 2015, <https://tlhr2014.wordpress.com/2015/11/06/thailands-public-assembly-act-015-procedures-on-notification-of-public-assembly-authorised-equipments-for-crowd-control-and-limitation-of-utilizing-the-sound-amplification-equipments/>.

<sup>512</sup> Public Assembly Act 2015, sec. 12.

<sup>513</sup> OSCE/ODIHR Guidelines, para. 97-98; UNHRC, “Joint Report,” February 4, 2016, UN Doc. A/HRC/31/66, para. 23.

<sup>514</sup> UNHRC, “Joint Report,” February 4, 2016, UN Doc. A/HRC/31/66, para. 23 (“Failure to notify the authorities of an assembly does not render an assembly unlawful, and consequently should not be used as a basis for dispersing the assembly. Where there has been a failure to properly notify, organizers, community or political leaders should not be subject to criminal or administration sanctions resulting in imprisonment or fines.”); European Court of Human Rights, *Butka v. Hungary*, (No. 25691/04), Judgment of 17 July 2007, Reports 2007-III, para. 36 (finding the dispersal of a peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of assembly).

The Public Assembly Act authorizes criminal fines of up to 10,000 baht (US\$328) for failing to give notice, failing to request an extension of time to give notice in the case of a spontaneous assembly, marching as part of a protest if that march is not included in the notification, or failing to end the assembly at the time specified in the notice.<sup>515</sup> The law also authorizes a sentence of up to six months in prison or a fine of up to 10,000 baht (US\$328) for holding a protest in one of the many locations specified as off-limits in sections 7 and 8, and authorizes the imposition of fines on participants who violate one of the many “duties” imposed on assembly participants in section 16, including the duty not to cause “unreasonable inconvenience to any person.”<sup>516</sup> All assemblies and protests cause some inconvenience and obstruction of the public. That is not a basis, under international law, to punish the assembly participants.

International standards establish that no one should be held criminally liable for the mere act of organizing or participating in a peaceful assembly.<sup>517</sup> The imposition of criminal penalties on individuals who fail to notify the government of their intent to peacefully assemble is disproportionate to any legitimate state interest that might be served. Similarly, under international standards the failure to give notice should not be used as a basis for dispersing a peaceful assembly.<sup>518</sup>

### *Recommendations to the Thai Government*

- Repeal sections 7 and 8 of the Public Assembly Act 2015 to eliminate the blanket restrictions on holding assemblies at certain locations.
- Amend section 10 of the law to require advance notice of an assembly only if it will involve, for instance, more than 50 people, and of a procession only if it will involve, for instance, more than 10 people. The purpose of the notice

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<sup>515</sup> Public Assembly Act 2015, sec. 28.

<sup>516</sup> *Ibid.*, secs. 27 and 30. The law also allows for the imposition of fines of assembly organizers for failing to supervise the participants and prevent them from obstructing the public. See section 30.

<sup>517</sup> UNHRC, “Joint Report,” February 4, 2016, UN Doc. A/HRC/31/66, para. 27.

<sup>518</sup> United Nations Human Rights Council, “Report of the special rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai,” May 21, 2012, UN Doc. A/HRC/20/27, para. 29 (“Should the organizers fail to notify the authorities, the assembly should not be dissolved automatically and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment.”). See also ECHR, *Ezelin v. France*, (no. 11800/85), Judgment of 26 April 1991, Series A, no. 202, <http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/233813e697620022c1256864005232b7/5b6a81da5bdc1790c1256640004c1a8f> (the imposition of penalties after an assembly is an interference with the right to freely assemble that must be justified under article 11(2) of the ECHR).

requirement should be to allow the authorities to take steps to facilitate the assembly and should not function as a de facto request for authorization.

- Amend section 10 of the law to abolish the requirement that notification include information about the objectives of an assembly.
- Amend the rules issued pursuant to the law to abolish the requirement that notification include the purpose and activities of an assembly.
- Amend section 12 of the law to make an explicit exception to the notice requirement where giving notice 24 hours in advance is not practicable and eliminate the need to apply for an “extension” of the notice deadline.
- Amend section 16(1) to eliminate the duty placed on assembly participants not to obstruct public places or cause “unreasonable inconvenience” to people.
- Repeal section 14 of the law, which declares assemblies that do not meet various restrictions of the law to be “illegal public assemblies.”
- Repeal sections 27 to 33 of the law to abolish the criminal penalties for organizing or participating in a peaceful assembly.

## VII. Recommendations

### To the Government of Thailand

- Repeal all remaining orders issued by the NCPO or Head of the NCPO that restrict the rights to freedom of expression or assembly.
- Repeal the provisions of HNCPO order 3/2558 that authorize the military to search, arrest, interrogate and detain individuals for up to seven days.
- Take steps to provide appropriate redress to civilians whose cases before military courts reached a final verdict. Civilians convicted by military courts should be able to appeal to civilian courts of higher instance.
- Withdraw derogations to the International Covenant on Civil and Political Rights announced in July 2014, relating to prohibitions on broadcasting and publishing (art. 19), and limits on political gatherings (art. 21).
- Amend Thailand's criminal laws to conform to international human rights standards for freedom of expression, association, and peaceful assembly.
- Develop a clear plan and timetable for the repeal or amendment of the laws identified below; where legislation is to be amended, consult fully and transparently with Thai civil society groups and the UN special rapporteur on the promotion and protection of freedom of opinion and expression, leaving ample time for public review and consultation.
- Implement recommendations on the rights to freedom of expression, association and peaceful assembly, among other fundamental rights, made by UN member states to Thailand during its Universal Periodic Review at the UN Human Rights Council in May 2016. Among the recommendations accepted by Thailand at the review were recommendations that the country (1) respect fully press freedom and freedom of expression in accordance with international law; and (2) bring national legislation on freedom of expression in compliance with international law.
- Amend the 2017 National Human Rights Commission of Thailand Act to bring it into compliance with the international Principles Relating to the Status of National Institutions on Human Rights ("The Paris Principles"), thereby enabling that body to play a meaningful role in advancing rights protections, including protections against the types of abuses detailed in this report.
- Seek technical assistance from the Office of the High Commissioner for Human Rights on international human rights standards and ensure proposed legal revisions comply with those standards.

### *Criminal Code Section 116: Sedition*

- Repeal section 116 in its entirety.

### *Computer-Related Crime Act*

- Amend section 14(1) to limit its application to the input of forged computer data, and only when it results in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic.
- Amend section 14(2) to:
  - require that the “false information” be material and input with malicious intent; and
  - limit the application of the provision to instances in which the false information poses an imminent risk to national security or public safety.
- Repeal section 14(3), which makes it an offense to put into a computer system any computer data which is “an offense about the security of the Kingdom or is an offense about terrorism”.
- Repeal section 14(5), which makes it a criminal offense to share or otherwise disseminate data that violates section 14(1), (2), (3) or (4).
- Repeal section 15, and affirmatively provide that internet service providers and other entities that host third party internet content should not be treated as the publisher of the third- party content. Intermediary liability should be limited to instances in which the ISP or relevant entity has failed to comply with an order of an impartial and competent court finding that the take down of the material at issue is necessary and proportionate to fulfil a legitimate government aim, such as national security or public safety (e.g. child sexual exploitation images or incitement to violence).
- Repeal section 16 to abolish the offense of criminal defamation through use of photographs or other images.

### *Criminal Code Sections 326 to 333: Criminal Defamation*

- Repeal sections 326 to 333 of the Criminal Code to eliminate the offense of criminal defamation. Defamation should be solely a civil matter, as recommended by the UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression.
  - Public figures should have to prove that the defendant knew the information was false.

- Pecuniary rewards should be strictly proportionate to the actual harm caused, and the law should give preference to the use of non-pecuniary remedies, including, for example, apology, rectification, and clarification.

### *Section 112 of the Criminal Code: Lèse-Majesté*

- Amend section 112 to preclude private parties from bringing complaints of lèse-majesté, since no private harms have occurred. Doing so will prevent the use of the law for political purposes.
- Abolish the minimum sentence and reduce the maximum sentence for violations of the law.
- Make clear that those charged with lèse-majesté are entitled to bail.
- Undertake a review of all prisoners serving prison sentences for lèse-majesté with a view toward commuting excessively harsh sentences.

### *Contempt*

- Amend section 31 of the Civil Procedure Code to eliminate the court's power to punish individuals for "behaving improperly" on the grounds of the court. Sanctions for contempt should be limited to acts that seriously interfere with the functioning of the court.
- Amend section 198 of the Criminal Code to eliminate the offense of "insulting the court."
- Amend section 38 of the Organic Law on Constitutional Court Procedures to eliminate the power of the court to punish individuals for commenting on rulings in a "bad faith" or with "profanity, sarcasm or vindictiveness".

### *HNCPO order 3/2015*

- Withdraw all pending charges under section 12 of HNCPO order 3/2015.

### *Public Assembly Act*

- Repeal sections 7 and 8 of the law to eliminate the blanket restrictions on holding assemblies at certain locations.
- Amend section 10 of the law to require advance notice of an assembly only if it will involve, for instance, more than 50 people, and of a procession only if it will involve, for instance, more than 10 people. The purpose of the notice

requirement should be to allow the authorities to take steps to facilitate the assembly and should not function as a de facto request for authorization.

- Amend section 10 of the law to abolish the requirement that notification include information about the objectives of an assembly.
- Amend the rules issued pursuant to the law to abolish the requirement that notification include the purpose and activities of an assembly.
- Amend section 12 of the law to make an explicit exception to the notice requirement where giving notice 24 hours in advance is not practicable and eliminate the need to apply for an “extension” of the notice deadline.
- Amend section 16(1) to eliminate the duty placed on assembly participants not to obstruct public places or cause “unreasonable inconvenience” to people.
- Repeal section 14 of the law, which declares assemblies that do not meet various restrictions of the law to be “illegal public assemblies.”
- Repeal sections 27 to 33 of the law to abolish the criminal penalties for organizing or participating in a peaceful assembly.

## **To the Attorney General’s Chambers**

- Drop all pending investigations and charges against those being prosecuted for exercising their rights to freedom of expression and to peaceful assembly.
- Ensure that prosecutors respect and protect human dignity and uphold human rights, and not initiate or continue prosecution when an impartial investigation shows the charge to be unfounded, consistent with the UN Guidelines on the Role of Prosecutors.

## **To the Commissioner-General of Police**

- Direct all police departments to facilitate, not hinder, peaceful assemblies, and appropriately protect the safety of all participants. Persons and groups organizing assemblies or rallies should not be prevented from holding their events within sight and sound of their intended audience.
- Instruct all police departments that a notice to hold an assembly is not a request for permission, and that they cannot “deny” permission and then charge participants with illegal assembly.
- Provide all officers training on international standards on the use of force, including the principles of legality, legitimacy, necessity, and proportionality.

## To the Minister of Foreign Affairs

- Extend a standing invitation to all UN special procedures, and promptly approve requests to visit from all special rapporteurs, working groups, and independent experts.
- Immediately extend an official invitation to the UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression and the UN special rapporteur on the rights of freedom of peaceful assembly and of association.
- Encourage high-level engagement and visits by the UN Office of the High Commissioner for Human Rights to engage with the government on promoting respect for the rights to freedom of expression, association, and assembly, and to offer technical assistance as needed to bring Thailand's law and policy into compliance with international standards.
- Implement recommendations on the rights to freedom of expression, association and peaceful assembly, among other fundamental rights, made by UN member states to Thailand during its Universal Periodic Review at the UN Human Rights Council in November 2015.

## To Concerned Governments

- Publicly and privately urge Thailand to protect the rights to peaceful expression and assembly, including through the reforms detailed in the recommendations above.
- Publicly and privately urge Thailand to fulfill the commitments made at the country's last Universal Periodic Review. Among the recommendations accepted by Thailand at the review were recommendations that the country (1) respect fully press freedom and freedom of expression in accordance with international law; and (2) bring national legislation on freedom of expression in compliance with international law.
- Raise freedom of speech and freedom of assembly concerns outlined in this report during Thailand's next Universal Periodic Review, due in May 2021.
- Offer assistance to train judges at all levels of court in international law on the rights to freedom of expression and assembly, and on the technical aspects of handling cases involving material posted on the internet and social media.
- Provide assistance to human rights groups and other civil society organizations in Thailand working on freedom of expression and media freedom issues.

## **Acknowledgments**

This report was researched and written by Linda Lakhdhir, a legal advisor in the Asia division of Human Rights Watch. The report was edited by Brad Adams, Asia director. James Ross, legal and policy director, and Joseph Saunders, deputy program director, provided legal and program review. Racqueal Legerwood, Asia coordinator, provided editorial and production support. The report was prepared for publication by Fitzroy Hepkins, administrative manager.

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350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300; 917-591-3452

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## Appendix I: Human Rights Watch Letter to Thailand Minister of Foreign Affairs

October 1, 2019

Mr. Don Pramudwinai  
Minister of Foreign Affairs  
Kingdom of Thailand  
Ministry of Foreign Affairs  
Sri Ayudhya Road,  
Bangkok 10400 Thailand

**Re: Human Rights Watch questions on freedom of speech and assembly in Thailand**

Dear Foreign Minister,

I write to request the Thai government's response regarding research Human Rights Watch has conducted on the rights to freedom of expression and peaceful assembly in Thailand. Human Rights Watch plans to release a report on this subject as part of a series of reports on freedom of expression in Asia.

Human Rights Watch is an independent, nongovernmental organization that investigates and reports on violations of international human rights law in more than 100 countries. We produce reports based on our findings to urge action by governments and other stakeholders to address the problems we have identified and to hold accountable those responsible for human rights abuses. Human Rights Watch has worked on human rights issues in Thailand for more than 30 years.

Human Rights Watch is committed to producing material that is evidence-based, accurate, and impartial. For this reason, I am reaching out to provide an opportunity for you and your staff to present your views so that they can be reflected in our report.

Human Rights Watch has analyzed many of the restrictions imposed on speech and assembly in Thailand, focusing on the period between May 2014 and March 2019, and examined how those restrictions have been applied. Based on that analysis, it appears Thailand has imposed restrictions on speech and assembly that exceed those permitted under

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international human rights law and has taken action to penalize those who violate those restrictions. Those typically targeted have been people critical of the National Council for Peace and Order (NCPO) or the monarchy, those speaking out against the military coup, opposition politicians, and activists pressing for elections and a return to democracy in Thailand.

While many of the arrests and prosecutions documented in the report occurred during the period when the NCPO ruled the country, Human Rights Watch has found that many of the laws, orders, and announcements used to suppress peaceful speech and assembly remain on the books, and many continue to be used under the new administration that took office in July 2019.

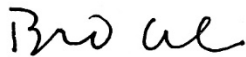
We would appreciate any general comments you may have on the government's respect for the rights to freedom of expression and assembly in Thailand. In addition, we hope that you and appropriate officials can answer the questions below so that the government's views are accurately reflected in our reporting.

We would very much appreciate any information your offices can provide regarding these questions and the issues that they raise. In order to reflect your responses in our report, we would need to receive a reply from you no later than October 16, 2019.

Please do not hesitate to contact me at email: [email redacted] if there are any questions you have about this request.

We thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Adams".

Brad Adams  
Executive Director  
Asia Division

## Questions for the Government of Thailand

### 1. Freedom of Speech

- a. What plans does the new government have to improve protections for the right to freedom of expression in Thailand?
- b. What laws and regulations affecting freedom of expression does the new government believe should be repealed, amended, or enacted to ensure protection of this right is upheld?

### 2. Sedition

- a. How many individuals were arrested for violation of section 116 (sedition) of the Criminal Code between May 2016 and March 2019?
  - i. How many of those individuals have been formally indicted by a military or civilian prosecutor?
  - ii. How many of those cases are still pending in the courts?
- b. Section 116 was used against persons speaking critically of the NCPO and individual members of that body, as well as those who made what could be viewed as insulting comments about individual members of the NCPO. Does the new government consider such speech to be seditious?
- c. The sedition law has also been used against those peacefully calling for elections and a return to democracy. Does the new government consider making peaceful calls for elections to be seditious?
- d. The Bangkok Criminal Court recently acquitted six pro-democracy activists of charges under this law, noting that the defendants did not incite violence and finding that their speech was within the bounds of the Constitution. Does the new government plan to appeal this decision?
  - i. If not, will the government drop all pending sedition charges in which the defendant did not incite violence and the speech was constitutionally protected?

### 3. Criminal Defamation

- a. Sections 326 to 333 of the Criminal Code make defamation a criminal offense. Does the new government believe that defamation should be a criminal, rather than just a civil, offense? We note that the UN special rapporteur on the protection and promotion of the right to freedom of opinion and expression has stated that defamation should never be treated as a criminal offense.

- b. Because criminal defamation complaints can be filed by individuals, the law has been used by public officials, military officers, private businesses, and private individuals to stifle criticism. These often make the government look intolerant of criticism even when they are not involved in the cases. Will the new government act to stop spurious criminal defamation complaints from government officials or from private persons resulting in prosecution?

#### **4. Prosecution of Peaceful Protesters**

- a. The NCPO effectively banned all political gatherings of five or more people for five and a half years through NCPO announcement 7/2014 and section 12 of HNCPO order 3/2015. It arrested more than 400 people for violating those orders. Does the new government believe that it is still lawful to impose such bans? Could they be invoked again?
- b. Since the issuance of NCPO order 22/2018, which repealed section 12 of HNCPO order 3/2015, some courts have dismissed pending charges of violating HNCPO order 3/2015. In at least some cases, however, the prosecutor has opposed such dismissals and argued for the case to proceed. What is the new government's position on the impact of NCPO order 22/2018 on pending cases alleging violation of HNCPO order 3/2015?
- c. A number of lawyers observing peaceful protests were arrested and faced charges that treated them as participants in the protests. Is it the new government's position that observing a protest makes one a participant in that protest? Will the new government move to drop charges against those facing criminal charges who were present as observers?

#### **5. Computer-Related Crime Act**

- a. Section 14(1) and (2) of the Computer-Related Crime Act criminalize the input of "false" or "distorted" data. Specifically, section 14(1) makes it a criminal offense to input false or "distorted" data in a manner that is likely to "cause damage" to a range of broad and vaguely worded interests, including "the public, the maintenance of national security, public safety, national economic security or public infrastructure serving national public interest." Does the new government believe an ordinary citizen can determine what information will be deemed likely to "cause damage" to one of these

vaguely defined interests? If yes, how does an ordinary citizen have access to sufficient information to make such a legal determination?

- b. Individuals using satire, which is a form of opinion, on social media have been accused of inputting “false” information. Will the new government stop treating satire and opinion as something that can be true or false?

## **6. Contempt of Court**

- a. The Organic Law Governing Constitutional Court Procedure empowers the courts to take action against anyone who comments on its rulings in a “dishonest manner” or with “rude, sarcastic or malicious” words or meaning. Under international law judges are not given added protections against criticism for their rulings. What is the justification for imposing such broad restrictions on the public’s ability to comment on decisions of the Constitutional Court?

# “To Speak Out is Dangerous”

## The Criminalization of Peaceful Expression in Thailand

The 2014 military coup in Thailand led to intense government repression of those viewed as political threats, including opposition politicians, activists seeking a return to democracy, and online critics of military rule. Starting with the week-long “attitude adjustment” sessions imposed on coup opponents, the National Council for Peace and Order (NCPO) junta used a combination of existing criminal laws and decrees issued under martial law and the 2014 interim constitution to arbitrarily arrest, detain, and prosecute its critics. Many of those laws and decrees remain in effect and the new government, headed by the junta prime minister, Gen. Prayut Chan-ocha, has shown little sign of relaxing its heavy-handed approach to freedom of expression.

Focusing on the period between the 2014 coup and flawed elections in March 2019, *“To Speak Out is Dangerous”* draws on interviews with individuals prosecuted for exercising their rights to speech or assembly, lawyers, journalists, students, and activists, and examination of police charge sheets, court documents, news reports, and official statements. The report provides an in-depth analysis of the overly broad and vaguely worded laws that the Thai government has most frequently used to violate internationally protected rights to freedom of expression, association, and peaceful assembly.

Human Rights Watch calls on the Thai government to stop using criminal laws against peaceful speech and protest; repeal all remaining NCPO orders restricting basic rights; and bring Thailand’s laws, policies, and practices into conformity with international human rights law and standards for the protection of freedom of expression, association, and assembly.



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