



DICTATING THE INTERNET: CURTAILING FREE EXPRESSION AND INFORMATION ONLINE IN THAILAND

EXECUTIVE SUMMARY

In its December 2019 report *Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia*, the International Commission of Jurists (ICJ) drew attention to a range of laws that has been abused by governments across Southeast Asia, including Thailand, to unduly restrict freedom of expression and other human rights in the digital sphere. The ICJ called on the authorities in the region to act to bring these laws and State practices into compliance with international human rights obligations.

The updated information and analysis in the present report show how State authorities in Thailand have continued abusing laws that are already not compliant with human rights law and standards to intensify their restrictions on human rights in the digital sphere, in response to the pro-democracy protests and COVID-19 pandemic. They have pressured technological companies to censor content on their platforms through court-enforced takedown demands and the filing of criminal complaints for failing to comply. Further, they have failed to adequately protect individuals against businesses that abuse legal processes to silence their critics. They have also failed to protect against perpetrators of online “hate speech” that incites discrimination, hostility or violence.

Non-Human Rights Compliant Laws

Thailand retains a number of laws that undermine the rights to freedom of expression, information, association, peaceful assembly, privacy and health. These are non-compliant with Thailand’s international legal obligations, including under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These flawed laws include:

- Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005);
- Articles 112 and 116 of the Criminal Code;
- Criminal defamation provisions under articles 326 to 328 of the Criminal Code;
- Computer-related Crimes Act B.E. 2562 (2019) (CCA);
- Cybersecurity Act B.E. 2562 (2019); and
- Contempt of court provisions, including article 198 of the Criminal Code.

These laws contain vague and overbroad provisions, which facilitate government abuses under overly expansive justifications of “national security”, “public order” and “public health”. The laws prescribe severe penalties inconsistent with the principles of proportionality and necessity, and are frequently applied without independent oversight mechanisms.

Response to Pro-Democracy Protests

The laws have been increasingly applied to arbitrarily restrict online expression and information and other rights, particularly in response to the pro-democracy protests during which the Government declared a “serious emergency situation” in Bangkok between 15 and 22 October 2020.

Blocking online content by social media users: The Thai authorities have sought judicial orders to block online content across various platforms deemed to violate existing laws, such as the CCA and Emergency Decree. The Ministry of Digital Economy and Society (MDES) has regularly filed requests to the courts to remove or restrict content deemed inappropriate from social media platforms, including content criticizing the monarchy.

Prosecution of individual users for social media content: The Thai authorities have prosecuted social media users through numerous criminal complaints and charges, including under articles 112 and 116 of the Criminal Code, section 14 of the CCA and contempt of court provisions. The courts have

also sentenced individuals to severe prison sentences under article 112 for online expression, including a prison sentence of over 43 years.

Suppressing participation in protests: The Thai authorities have attempted to stifle participation in the pro-democracy protests by blocking the messaging application Telegram. The government filed criminal complaints under the CCA and Emergency Decree against at least ten individuals for convincing others to join the protests online, following its warning that this would breach the rules of the state of emergency.

Crackdown on journalists and news outlets for coverage of protests: The authorities have cracked down on journalists and news outlets in the face of the pro-democracy protests, for allegedly violating the CCA and Emergency Decree. At least two journalists were arrested or summoned in connection with their coverage of the protests. On 20 October 2020, the MDES obtained closure orders from the Bangkok Criminal Court to shut down the online platforms of several news platforms for allegedly disseminating “false information” about the protests, but this order was later revoked.

Failure to Protect Free Expression Against Abuse of Judicial Processes

Strategic lawsuits against public participation (SLAPP lawsuits) have persisted against human rights defenders and journalists who have utilized online platforms to share information and opinions on human rights abuses committed by Thammakaset Limited Company, a Thai poultry company.

Inadequacy of current protective framework: The present framework is both inadequate on its face and inadequately implemented, despite Thailand’s obligations to protect against attacks aimed at silencing those exercising their right to freedom of expression. The framework includes articles 161/1 and 165/2 of the Criminal Procedure Code and the power of public prosecutors under the Public Prosecution Organ and Public Prosecutors Act B.E. 2553 (2010).

Continued legal harassment of journalists and human rights defenders: The inadequacy of the present framework is apparent from Thammakaset’s filing of new criminal defamation complaints against at least three human rights defenders in 2020 for their social media posts. Even though there have been several acquittals of human rights defenders charged with criminal defamation in 2020, these human rights defenders have been dragged through lengthy, costly and stressful judicial proceedings for solely exercising their right to freedom of expression online.

Impact of COVID-19

Clampdown on COVID-19 “false information”: The Thai authorities have restricted expression and information online under an overly expansive justification of public health. The Thai authorities have used the unnecessary and disproportionate tactics of arrest and prosecution as a means of managing the spread of “false information” on the pandemic. They have also used the CCA and article 112 of the Criminal Code against individuals expressing criticism of the government’s COVID-19 response by labelling the criticism as “false information”.

Failure to protect against online incitement of discrimination, hostility or violence: The authorities have failed to take effective measures to protect migrants from Myanmar from the amplification of online incitement of discrimination, hostility or violence as a result of the second wave of COVID-19 infections. Thailand does not have a standalone anti-discrimination law, or a specific provision to penalize the incitement of discrimination, hostility or violence or provide targets of such expression with access to an effective remedy. The other legal provisions that may indirectly be used to protect against hate speech are too blunt, lack sufficient precision and have not in any event been used for investigations or prosecutions.

Role of ‘Big Tech’

State compulsion to remove online content: The Thai government has increased its pressure on big tech companies with court-enforced demands to remove content it perceives as impermissible from online platforms. These demands, made pursuant to the CCA, have been ramped up amidst the political unrest in the country. The Thai government has filed legal complaints against the parent companies of Twitter and Facebook in September 2020 under the CCA for missing deadlines to comply fully with court-issued takedown orders of content on their platforms. These developments raise questions of the role that tech companies play, both for being complicit in enabling the Thai

government's online censorship and being targets themselves of the Thai government's undue restrictions of rights online.

Removal of hate speech: In response to the proliferation of online hate speech, it was reported that Facebook removed several posts for violating its hate speech policies, and it is unclear what steps Twitter and YouTube have taken. Tech companies have failed to take steps to counter speech inciting discrimination, hostility or violence online to meet their human rights responsibilities, and ensure that their practices and policies align with human rights law and standards.

Recommendations

The report makes a number of recommendations to the Parliament of Thailand, Thai government, inquiry officials, public prosecutors and other justice sector actors, and tech companies in the communications sector. Detailed recommendations are provided at the end of the report. General recommendations include:

- Repeal or substantially amend criminal law provisions that criminalize or unduly restrict human rights online, and review existing laws or develop legislation to protect against SLAPP lawsuits and the incitement of discrimination, hostility or violence;
- Cease harassment and persecution of all individuals for merely exercising their human rights online;
- Refrain from future charges and drop all existing charges against individuals and social media companies facing prosecution for alleged violations of non-human rights compliant laws, and immediately release all held in pre-trial detention or imprisoned on conviction for such cases; and
- Refrain from restricting or blocking online content unless the decision to block has been undertaken following a full analysis applying international human rights law and standards, and authorized pursuant to an order by an independent and impartial judicial authority.