

# The Impact of COVID-19 on the Rights to Freedom of Expression and Information in Thailand

A Briefing Paper  
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# **The Impact of COVID-19 on the Rights to Freedom of Expression and Information in Thailand**

**A Brief Paper, 20 July 2021**





## ICJ LEGAL BRIEFING

# THE IMPACT OF COVID-19 ON THE RIGHTS TO FREEDOM OF EXPRESSION AND INFORMATION IN THAILAND

20 July 2021<sup>1</sup>

### 1. Background

Since March 2020, Thailand has been under a state of emergency purportedly to contain the COVID-19 pandemic, pursuant to section 5 of the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005) ('Emergency Decree').<sup>2</sup> Section 5 of the Emergency Decree empowers the Prime Minister, with the approval of the Council of Ministers, to declare an "emergency situation".<sup>3</sup>

As part of its response to the pandemic, the Thai authorities have enacted new regulations under section 9 of the Emergency Decree. Several provisions of these regulations are not compliant with Thailand's obligations to respect and ensure the rights to freedom of expression and information. These provisions contain vague and overbroad language and prescribe severe penalties for failure to comply, in contravention of the principles of legality, proportionality and necessity.

The deficiency in these new regulations, in addition to other existing laws that are also non-human rights compliant, have allowed the authorities to systematically unduly restrict the exercise of the rights to freedom of expression and information. These restrictions have been invoked under overly expansive justifications of public health, curbing "false information", "security", "public order" and "good morals", and contain disproportionately criminal punishments.

This briefing paper complements the ICJ's report on *Dictating the Internet: Curtailing Free Expression and Information Online in Thailand*,<sup>4</sup> released in June 2021, and briefing note on *The Implementation of Thailand's Emergency Decree in Response to the COVID-19 Pandemic*

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<sup>1</sup> The information in this briefing is accurate as of 14 July 2021.

<sup>2</sup> The Straits Times, "Thailand to invoke emergency decree as coronavirus cases soar", 24 March 2020, available at: <https://www.straitstimes.com/asia/se-asia/thailand-to-declare-1-month-emergency-on-march-26>; TAT News, "Thailand extends Emergency Decree for eleventh time until 31 May 2021", 31 March 2021, available at: <https://www.tatnews.org/2021/03/thailand-extends-emergency-decree-for-eleventh-time-until-31-may-2021/>. Section 5 of the Emergency Decree empowers the Prime Minister, with the approval of the Council of Ministers, to declare an "emergency situation"; see, ICJ, 'ICJ Legal Briefing: The Implementation of Thailand's Emergency Decree in Response to Protests in 2020', 22 October 2020, at 1, available at: <https://www.icj.org/wp-content/uploads/2020/10/Thailand-Protests-Legal-Briefing-2020-ENG.pdf>.

<sup>3</sup> Section 5, Emergency Decree on the Public Administration in Emergency Situation, B.E. 2548 (2005) ('Emergency Decree'), available at: [http://210.246.148.76/thaiquest/getFileProxy/comment.aspx?url=%2Fdata%2Fdocument%2Fext810%2F810259\\_0001.pdf](http://210.246.148.76/thaiquest/getFileProxy/comment.aspx?url=%2Fdata%2Fdocument%2Fext810%2F810259_0001.pdf).

<sup>4</sup> ICJ, 'Dictating the Internet: Curtailing Free Expression and Information Online in Thailand', 22 June 2021, available at: <https://www.icj.org/thailand-new-icj-report-highlights-intensified-online-restrictions/> ('ICJ 2021 FOE Online Report')

in Thailand,<sup>5</sup> released in July 2021, which explain relevant international laws and standards in more detail.

## 2. Non-Human Rights Compliant Laws

The Thai authorities have systematically invoked a range of laws, new and old, that are incompatible with human rights law and standards to unduly restrict the exercise of the rights to freedom of expression and information in relation to the COVID-19 pandemic.

### a. Enacting New Non-Human Rights Compliant Laws

Following the announcement of a nationwide state of emergency, the Thai authorities enacted new regulations purportedly in response to the COVID-19 pandemic, pursuant to section 9 of the Emergency Decree. Section 9 of the Emergency Decree permits the Prime Minister to issue Regulations, including to prohibit the:

Section 9(3): “press release, distribution or dissemination of letters, publications or any means of communication containing texts which may instigate fear amongst the people or is intended to distort information which misleads understanding of the emergency situation to the extent of affecting the security of state or public order or good moral of the people”.

In March 2020 and July 2021, Regulation No. 1 and 27 Pursuant to Section 9 of the Emergency Decree (‘Regulation No. 1 and 27’) were issued respectively.<sup>6</sup> The Regulation states, among other things, that it is prohibited to:

- Clause 6 of Regulation No. 1: “present or disseminate news through any media featuring content on the COVID-19 which is false or may instigate fear among the people, or to intentionally distort information which causes misunderstanding of the emergency situation to the extent of affecting public order or the good morals of people”.<sup>7</sup>
- Clause 11 of Regulation No. 27: “distribution or dissemination of letters, publications or any means of communication containing texts which may instigate fear amongst the people or is intended to distort information which misleads understanding of the emergency situation to the extent of affecting the security of state or public order or good moral of the people.”<sup>8</sup>

Notably, Clause 11 of Regulation No. 27 uses the same language as Section 9(3) of the Emergency Decree.

The terms “security”, “public order” and “good morals”, as they are used in the above provisions, are overbroad and vague. They appear flatly in the text of the regulation without a clear delineation of their scope, limit or definition, in contravention of the principle of legality.

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<sup>5</sup> ICJ, ‘Legal Briefing: The Implementation of Thailand’s Emergency Decree in Response to the COVID-19 Pandemic in Thailand’, 15 July 2021, available at: [https://www.icj.org/wp-content/uploads/2021/07/FINAL\\_APP270601\\_TFH\\_Draft\\_COVID\\_19\\_ED\\_LEGAL\\_BRIEFING\\_proofread.pdf](https://www.icj.org/wp-content/uploads/2021/07/FINAL_APP270601_TFH_Draft_COVID_19_ED_LEGAL_BRIEFING_proofread.pdf).

<sup>6</sup> The total of 27 Regulations Pursuant to Section 9 of the Emergency Decree have been enacted. The most recent one was issued on 10 July 2021. Most of the regulations were enacted to amend the emergency measures following changes of circumstances of the pandemic at different points of time. Importantly, many of the regulations contain overly vague language discussed hereinunder.

<sup>7</sup> Clauses 6, Regulation Issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (No. 1), 25 March 2020, available at: <https://www.mfa.go.th/en/content/115867-regulation-issued>.

<sup>8</sup> Clause 11, Regulation Issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (No. 27), 10 July 2021, available at: [https://www.tosh.or.th/covid-19/images/file/2021/T\\_0027.PDF? t=1626054839](https://www.tosh.or.th/covid-19/images/file/2021/T_0027.PDF? t=1626054839)

That any law that serves to restrict human rights must be defined clearly and with definite limitations as to scope is required under the principles of legality and legitimacy in accordance with article 19(3) of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand has acceded.<sup>9</sup> The UN Human Rights Committee has affirmed that laws imposing restrictions on the rights to expression and information must be formulated with enough precision to enable individuals to ascertain and adjust their conduct and not confer unfettered or sweeping discretion to those implementing the laws.<sup>10</sup>

Moreover, these provisions and the manner they are used<sup>11</sup> are inconsistent with the principles of proportionality and necessity.<sup>12</sup> Violating the Regulation may incur imprisonment for a term not exceeding two years or a fine of up to 40,000 baht (approx. USD\$1,283), or both.<sup>13</sup> Regarding Section 9(3) of the Emergency Decree, Clause 6 of Regulation No. 1, and Clause 11 of Regulation No. 27, the ICJ recognizes the necessity to combat the spread of false information online to protect public health during the uncertainty of a pandemic. However, this objective can and must be carried out using less disproportionate and intrusive means than criminal sanctions and/or onerous fines.<sup>14</sup>

These flaws have allowed for a broad scope of disproportionate executive action to be taken in the implementation of the law, as is evident from the cases highlighted below.

#### b. Existing Non-Human Rights Compliant Laws

The Thai authorities have also invoked existing laws that are not human rights compliant to curtail the rights to freedom of expression and information during the pandemic. The ICJ has documented and analyzed these provisions in previous publications,<sup>15</sup> highlighting their incompatibility with human rights law and standards. These have been reproduced summarily below.

##### (i) *Computer-related Crimes Act B.E. 2560 (2017)*<sup>16</sup>

Section 14 of the Computer-related Crimes Act (CCA) provides for criminal liability for:

<sup>9</sup> Article 19 of the ICCPR provides: "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>10</sup> UN Human Rights Committee, 'General Comment No. 34', CCPR/C/GC/34, para 25 (CCPR/C/GC/34); UN Human Rights Committee, 'General Comment No. 37', CCPR/C/GC/37, para 44.

<sup>11</sup> See: ICJ 2021 FOE Online Report, at 54-56. See also: Thai Lawyers for Human Rights, 'COVID-19 and the Restrictions on Freedom of Expression under the Emergency Decree', June 2021, available at: <https://bit.ly/3jXK0PL>

<sup>12</sup> With regards to the right to freedom of expression, opinion and information, the UN Human Rights Committee has clarified that limitations must not be imposed where protection can be provided through less restrictive measures, while the test of proportionality ensures that limitations are proportionate to their function, not overbroad and are the "least intrusive instrument amongst others to achieve their protective function"; CCPR/C/GC/34, paras 33 to 35.

<sup>13</sup> Clause 15, Regulation No. 1; Clause 11, Regulation No. 27.

<sup>14</sup> ICJ, 'Southeast Asia: States must respect and protect rights in combating misinformation online relating to COVID-19', 1 April 2020, available at: <https://www.icj.org/southeast-asia-states-must-respect-and-protect-rights-in-combating-misinformation-online-relating-to-covid-19/>.

<sup>15</sup> ICJ 2021 FOE Online Report

<sup>16</sup> See ICJ, 'Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia', 2019, at 50 – 51, 116, 146, available at: <https://www.icj.org/southeast-asia-icj-launches-report-on-increasing-restrictions-on-online-speech/> ('ICJ 2019 FOE Online Report'); and ICJ 2021 FOE Online Report, 2021, at 27 – 29, for more details.

- Putting “into a computer system distorted or forged computer data, partially or entirely, or false computer data, in a manner that is likely to cause damage to the public” (Section 14(1));
- The “entering of false computer data” which is “likely to cause damage to the protection of national security, public safety... or cause panic to the public” (Section 14(2)); and
- Any such “false” data entry which is “an offence against the security of the Kingdom or is an offence relating to terrorism” (Section 14(3)).

These crimes are punishable with up to five years’ imprisonment, a fine of up to 100,000 Baht (approx. USD 3,070) or both.<sup>17</sup>

The vagueness of the legal provisions has afforded the Thai government considerable flexibility in cracking down on “false information” about COVID-19, which may include legitimate criticism of the government’s COVID-19 response. The subsections of section 14 do not include a requirement that the alleged false information be entered with malice or ill intent,<sup>18</sup> as required under article 19 of the ICCPR. The UN Human Rights Committee has made clear that States should avoid “penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice”.<sup>19</sup>

(ii) *Article 112 of the Criminal Code*<sup>20</sup>

Article 112 of the Criminal Code establishes the offence of *lèse-majesté* in criminalizing “[w]hoever, defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent” with three to fifteen years’ imprisonment”.<sup>21</sup>

The UN Human Rights Committee has stressed that “the imprisonment of persons for exercising their freedom of expression” violates their right to freedom of expression, in failing to comply with the strict requirements of article 19(3) of the ICCPR.<sup>22</sup> This is in line with the Committee’s General Comment No. 34 that provides that all public figures are “legitimately subject to criticism and political opposition”, and “laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned”.<sup>23</sup>

(iii) *Criminal Defamation*<sup>24</sup>

The offence of criminal defamation under sections 326 and 327 of the Criminal Code carries a maximum sentence of one year’s imprisonment, a fine of up to 20,000 Baht (approx. USD 615) or both. Section 328 criminalizes defamation “by means of publication” with up to two years’ imprisonment and a fine of up to 200,000 Baht (approx. USD 6,150).<sup>25</sup>

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<sup>17</sup> English translation of Computer-related Crimes Act B.E. 2560, available at: <https://thainetizen.org/docs/cybercrime-act-2017/>.

<sup>18</sup> ICJ communication with partner.

<sup>19</sup> CCPR/C/GC/34, para. 47, 49.

<sup>20</sup> See ICJ 2019 FOE Online Report, at 62 – 69; and ICJ 2021 FOE Online Report, at 25 – 26, for more details.

<sup>21</sup> English translation of Thai Criminal Code B.E. 2499 (1956), available at: <http://library.siam-legal.com/thai-law/criminal-code-royal-family-sections-107-112/>

<sup>22</sup> UN Human Rights Committee, ‘Concluding observations on the second periodic report of Thailand’, UN Doc. CCPR/C/THA/CO/2, 25 April 2017, paras. 37 – 38 (‘Concluding observations on Thailand’).

<sup>23</sup> CCPR/C/GC/34, para. 38.

<sup>24</sup> See ICJ2019 FOE Online Report, at 50 – 59; and ICJ 2021 FOE Online Report, at 26 – 27, for more details.

<sup>25</sup> English translation of Thai Criminal Code B.E. 2499, available at: <https://www.thailandlawonline.com/laws-in-thailand/thailand-criminal-law-text-translation#326>.



State authorities and businesses have abused these provisions to target persons highlighting human rights violations and abuses.<sup>26</sup> The Human Rights Committee has made clear that criminal penalties will generally not be an appropriate sanction for defamation and imprisonment is always a disproportionate sanction and a violation of article 19 of the ICCPR.<sup>27</sup>

While these criminal defamation provisions have been upheld by Thailand's Bangkok Criminal Court as compatible with Thailand's obligations under the ICCPR,<sup>28</sup> this holding is inconsistent with Thailand's international legal obligations and cannot constitute an excuse for failure to perform them.<sup>29</sup> The UN Human Rights Committee has specifically called on Thailand to consider decriminalizing defamation, noting again that imprisonment and criminal sanctions are a disproportionate means of protecting the reputation of others.<sup>30</sup>

### 3. Restrictions on Freedom of Expression and Information

The Thai government has unduly restricted the rights to freedom of expression and information, especially on online platforms, under the overly broad justification of "public health" and combating the spread of alleged "false information" about the virus. These actions have been undertaken in contravention of Thailand's international legal obligations. Clear guidance from the UN High Commissioner for Human Rights is that everyone "must be allowed to express opinions on vitally important topics of public interest, such as the provision of health care and the handling of the health and socio-economic crisis, and the distribution of relief items".<sup>31</sup>

#### a. Criminal sanctions for spreading "false information"

The Ministry of Digital Economy and Technology (MDES) and the Crime Suppression Division of the Royal Thai Police (RTP) arrested individuals for allegedly sharing "false information" on social media about COVID-19.<sup>32</sup> The arrests were accompanied by warnings from the MDES

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<sup>26</sup> ICJ 2019 FOE Online Report, at 51 and 53; ICJ, 'Thailand: ICJ condemns the use of criminal defamation law to harass Angkhana Neelapaijit', 27 November 2019, available at: <https://www.icj.org/thailand-icj-condemns-the-use-of-criminal-defamation-law-to-harass-angkhana-neelapaijit/>.

<sup>27</sup> CCPR/C/GC/34, para. 47.

<sup>28</sup> ICJ 2019 FOE Online Report, at 51. This was in response to an *amicus curiae* submission made by the ICJ in a preliminary hearing in 2019 of a criminal defamation case by Thammakaset Co. Ltd against human rights defenders. See: ICJ, 'Thailand: ICJ and LRWC submit amicus in criminal defamation proceedings against human rights defenders Nan Win and Sutharee Wannasiri', 25 January 2019, available at: <https://www.icj.org/thailand-icj-and-lrwc-submit-amicus-in-criminal-defamation-proceedings-against-human-rights-defenders-nan-win-and-sutharee-wannasiri/>.

<sup>29</sup> Article 27 of the Vienna Convention on the Law of Treaties (VCLT) provides: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." While Thailand is not a party to the VCLT, its main provisions, including article 27 reflect customary international law, applicable to all States. The VCLT has also been recognized by the Thai courts.

<sup>30</sup> Concluding observations on Thailand, para. 36. See also, 'Statement at the end of visit to Thailand by the United Nations Working Group on Business and Human Rights', 4 April 2018, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22915&LangID=E>.

<sup>31</sup> OHCHR, 'Asia: Bachelet alarmed by clampdown on freedom of expression during COVID-19', 3 June 2020 ('Michelle Bachelet statement on COVID-19, 2020'), available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25920&LangID=E>.

<sup>32</sup> For example, Post Today, 'Arresting Nine People Who Post Fake News and Caused Confusion', 16 April 2020, available at: <https://www.posttoday.com/politic/news/621028> (in Thai); Siamrath, 'Anti-Fake News Center Showed that they Could Suppress those Who Posted Fake News/Distorted Information', 10 September 2020, available at: <https://siamrath.co.th/n/181276> (in Thai); Manager Online, 'Being Charged! A Guy From Chiang Khong Who Posted that He Attended Songkran Celebration was Charged for Both Emergency Decree and Computer-Related Crimes Act', 16 April 2020, available at: <https://mgronline.com/local/detail/9630000039663> (in Thai); and BBC Thai, 'COVID Vaccine: MDES made complaints against Thai PBS journalist for disseminating fake news concerning allergic reactions to COVID vaccine', 12 May 2021, available at: [https://www.bbc.com/thai/thailand-57082921?at\\_medium=custom7&at\\_custom1=%5Bpost+type%5D&at\\_custom4=7252AA4C-B2EF-](https://www.bbc.com/thai/thailand-57082921?at_medium=custom7&at_custom1=%5Bpost+type%5D&at_custom4=7252AA4C-B2EF-)

and its Anti-Fake News Centre that individuals are liable to be fined and imprisoned for such acts under the CCA and Emergency Decree.<sup>33</sup>

As noted above, while combatting the spread of false information online to protect public health during the uncertainty of a pandemic is a legitimate purpose, the principles of necessity and proportionality require that less intrusive means be employed, such as timely, regular and clear rebuttals by the authorities on what they deem to be false information. This would have adequately advanced public health aims, while still respecting the rights to free expression and information. This was reaffirmed by the UN Committee on Economic, Social and Cultural Rights in their statement released in April 2020. The Committee has indicated that information about COVID-19 must be provided by State authorities on a “regular basis, in an accessible format and in all local and indigenous languages”. This is because “accurate and accessible information” is crucial to “reduce the risk of transmission of the virus” and to counter COVID-19-related false information.<sup>34</sup> In a report released in April 2020, in response to the COVID-19 pandemic, the UN Special Rapporteur on Freedom of Expression also highlighted guidance by the WHO on the rights principles underpinning the need to proactively publish “early, transparent and understandable” information towards protecting the right to health.<sup>35</sup>

Additionally, the lack of transparency in the Anti-Fake News Centre’s decision-making process raises questions of whether the restrictions on online content also serve to stifle protected political expression.<sup>36</sup>

Further, in the midst of a pandemic, where individuals may be prone to react in fear and panic, and spread information without verification but without ill intent, heavy-handed tactics to muzzle expression and information online can have the counterproductive effect of exacerbating panic and fear. In the aforementioned reports, the authorities failed to identify whether false information online was promulgated with ill intent or malice.<sup>37</sup> In this regard, article 19 of the ICCPR requires that there not be legal sanctions against “untrue statements that have been published in error but without malice”.<sup>38</sup>

#### b. Combating “false information” as a pretext to curtail expression and information

The authorities invoked the CCA, and article 112 and 328 of the Criminal Code to prosecute individuals expressing legitimate criticism of the government’s COVID-19 response, under the guise of curbing the spread of false information online. As a group of UN Human Rights Council special procedures experts has emphasized, restrictions “taken to respond to the virus must

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<sup>33</sup> The Thaiger, ‘9 arrested for sharing “fake news” about Covid-19, government handouts’, 6 June 2020 (‘The Thaiger, 6 June 2020’), available at: <https://thethaiger.com/hot-news/crime/9-arrested-for-sharing-fake-news-about-covid-19-government-handouts>.

<sup>34</sup> UN Committee on Economic, Social and Cultural Rights, ‘Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights’, U.N. Doc. E/C.12/2020/1, 7 April 2020, available at: <https://undocs.org/E/C.12/2020/1>. See also: ICJ, ‘Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses’, September 2020, at 104-114, available at: <https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf>

<sup>35</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, ‘Disease pandemics and the freedom of opinion and expression’, UN Doc. No. A/HRC/44/49, 23 April 2020, para 18.

<sup>36</sup> Pattamon Anansaringkarn and Ric Neo, ‘How can state regulations over the online sphere continue to respect the freedom of expression? A case study of contemporary ‘fake news’ regulations in Thailand’, in Information & Communications Technology Law, 11 January 2021, at 15 – 16.

<sup>37</sup> This is, in part, due to “malice” or “ill intent” not being a requirement to prove under section 14 of the CCA: Bangkok Post, 30 January 2020; Bangkok Post, 19 February 2020; The Thaiger, 6 June 2020; The Thaiger, 21 June 2020.

<sup>38</sup> CCPR/C/GC/34, para. 47.

be motivated by legitimate public health goals and should not be used simply to quash dissent”.<sup>39</sup>

For instance, Danai Ussama, an artist from Phuket, was arrested on 23 March 2020 under section 14(2) of the CCA for commenting online about the lack of COVID-19 screening measures at Suvarnabhumi Airport.<sup>40</sup> The UN High Commissioner for Human Rights identified his case as an example of “legitimate issues of public interest related to COVID-19” being targeted, which may create “an atmosphere of self-censorship”.<sup>41</sup> In April 2020, the police threatened to charge the owner of an anonymous investigative Facebook page called “Queen of Spades” with violating the CCA, after she had allegedly posted photos on the group showing persons closely linked to a high-profile politician to be involved with illegally exporting facial masks to buyers in China amidst severe domestic shortage of personal protective equipment.<sup>42</sup> Additionally, the ICJ obtained credible information from a lawyer, according to whom in April 2020 the Thai Red Cross Society, which is administered and funded by the State, filed a criminal defamation complaint under sections 326 and 328 of Thailand’s Criminal Code against a journalist and two social media users, in relation to social media posts questioning the inaction of the provincial Thai Red Cross Society in Phang-nga province during the pandemic. The defendants reportedly “confessed” to the offence and were sentenced to three months of imprisonment, which are suspended for two years, and fined 25,000 THB (USD 765).<sup>43</sup>

On 30 March 2021, the RTP charged opposition politician Thanathorn Juangroongruangkit under article 112 of the Criminal Code, which criminalizes those who defame, insult, or threaten the King, the Queen, the Heir to the throne, or the Regent.<sup>44</sup> This follows from the criminal complaint filed by the MDES in January 2021 over comments Thanathorn made on a 30-minute Facebook Live, titled “Royal Vaccines: Who Wins, Who Loses”, about the government’s vaccine strategy being too reliant on a company owned by the King.<sup>45</sup>

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<sup>39</sup> These include the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while combating terrorism, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the right to physical and mental health, the Special Rapporteur on the right to education, the Special Rapporteur on the right to privacy, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the right to development, the Special Rapporteur on adequate housing, the Special Rapporteur on the human rights to safe drinking water and sanitation, the Independent Expert on human rights and international solidarity, the Independent Expert on the promotion of a democratic and equitable international order, the Special Rapporteur on the Independence of Judges and Lawyers, members of the Working Group on Arbitrary Detention and members of the Working Group on Enforced or Involuntary Disappearances: OHCHR, “COVID-19: States should not abuse emergency measures to suppress human rights – UN experts”, 16 March 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722>.

<sup>40</sup> Prachatai, “Artist arrested for posting “Suvarnabhumi Airport has no screening for Covid-19” while in 14-day self-quarantine after his return from Spain”, 27 March 2020, available at: <https://prachatai.com/english/node/8432>. Danai was released on 24 March 2020 after being held in detention at a police station in Bangkok and Bangkok Criminal Court for 14 hours; TLHR, “The Artist criticized the Govt COVID Screening Measures at Suvarnabhumi Airport Was Released on Bail After 14 Hours in Detention”, 24 March 2020, available at: <https://tlhr2014.com/archives/16645>.

<sup>41</sup> Michelle Bachelet statement on COVID-19, 2020.

<sup>42</sup> Khaosod English, “Investigators Seeking Mask Hoarding Ring Whistleblower”, 10 April 2020, available at: <https://www.khaosodenglish.com/politics/2020/04/10/investigators-seeking-mask-hoarding-ring-whistleblower/>.

<sup>43</sup> ICJ communication with a Thai lawyer. The President of the Thai Red Cross Society is Queen Sirikit the Queen Mother, and the Society is supervised by the Council of Ministers and has its expenses borne by the government.

<sup>44</sup> Reuters, “Thai police charge politician for insulting king over vaccine remarks”, 30 March 2021, available at: <https://www.reuters.com/article/us-thailand-politics-vaccine-idUSKBN2BM0UG>.

<sup>45</sup> King Maha Vajiralongkorn is a majority shareholder in Siam Bioscience. See: Channel News Asia, “Thai government to file royal defamation complaint against opposition figure Thanathorn”, 20 January 2021, available at: <https://www.channelnewsasia.com/news/asia/thai-government-to-file-royal-defamation->

On 14 July 2021, the Government Pharmaceutical Organisation (GPO) submitted complaints with investigator accusing Dr. Boon Vanasin, chairperson of Thonburi Healthcare Group, and Loy Chunpongthong, a mathematician, of “criminal defamation by means of publication” under section 328 of the Criminal Code over their separate comments about the procurement of Moderna COVID-19 vaccine. They alleged that the GPO was reaping profits as the middleperson between the importer and hospitals which ordered the vaccine.<sup>46</sup>

The prosecution contravenes of Thailand’s obligation under article 19 of the ICCPR, and the Human Rights Committee’s affirmation that “public interest in the subject matter of the criticism should be recognized as a defence” to defamation laws.<sup>47</sup>

The broad-brush approach taken by the authorities has resulted in the deterrence of important information flows, meaningful debate and legitimate comment on government policy in relation to COVID-19. This not only contravenes Thailand’s obligation to respect and protect the right to freedom of expression and information, but also the right to health. The Committee on Economic, Social and Cultural Rights has underscored the immediate obligation to refrain from censoring, withholding or intentionally misrepresenting health-related information, and preventing people’s participation in all health-related matters.<sup>48</sup>

#### 4. Recommendations

In light of the above-mentioned concerns, the ICJ recommends relevant Thai authorities to:

1. Ensure open communication on online and offline mass media platforms from government to promote access to current and accurate health information in the context of COVID-19;
2. Cease harassment and persecution, including through the use of the criminal law, of all individuals solely for exercising their rights to free expression and information, through the abuse of laws and administrative regulations;
3. Drop all charges, issue non-prosecution orders, and refrain from further charges, particularly at the very inception of any such lawsuit, against any individual facing prosecution for alleged violation of laws that are non-human rights compliant on their face or which have been applied in a non-human rights compliant manner;

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[complaint-against-opposition-figure-thanathorn-14002118](https://www.khaosodenglish.com/politics/2021/01/21/thanathorn-claps-back-at-lese-majeste-accusation-court-denies-bail-in-historic-112-case/). In response, the former Future Forward Party leader has stated that the public has “every right to question the government’s efforts to secure a coronavirus vaccine through a company owned by the palace”; Khaosod English, “Thanathorn Claps Back at Lese Majeste Accusation, Bail Denied in Historic 112 Case”, 21 January 2021, available at: <https://www.khaosodenglish.com/politics/2021/01/21/thanathorn-claps-back-at-lese-majeste-accusation-court-denies-bail-in-historic-112-case/>. Separately, a complaint for violation of Article 112 of the Criminal Code was also made by representatives of Prime Minister against a Thai singer for criticizing the government’s vaccine procurement plan by making reference to ‘the boss’, whom they thought were intended to insult the high institution. Bangkok Post, ‘PM’s men go after Suthipong again’, 14 May 2021, available at: <https://www.bangkokpost.com/thailand/general/2115267/pms-men-go-after-suthipong-again>

<sup>46</sup> Bangkok Post, ‘GPO sues THG chairman over Moderna vaccine comments’, 14 July 2021, available at: <https://www.bangkokpost.com/thailand/general/2148683/gpo-sues-thg-chairman-over-moderna-vaccine-comments>. Additionally, on 10 July 2021, a complaint was filed by a controversial Thai virologist Prof. Dr. Yong Poovorawan accusing a Thai man of criminal defamation by means of publication, and possibly CCA, for allegedly adding, to the Thai language Wikipedia entry for Dr. Yong Poovorawan’s profile, a claim that he is the “Sinovac salesman for the Prayut Chan-o-cha administration”. See: Thai PBS, ‘Man faces charges for adding ‘Sinovac salesman’ to Thai virologist’s Wikipedia entry’, 14 July 2021, available at: <https://www.thaipbsworld.com/man-faces-charges-for-adding-sinovac-salesman-to-thai-virologists-wikipedia-entry/>

<sup>47</sup> CCPR/C/GC/34, para. 47.

<sup>48</sup> Committee on Economic, Social and Cultural Rights, ‘CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)’, E/C.12/2000/4, 11 August 2000, para. 34, available at: <https://www.refworld.org/pdfid/4538838d0.pdf>

4. Repeal or substantially amend criminal law provisions that serve to criminalize or unduly restrict the rights to freedom of expression and information and other rights, including the Emergency Decree, articles 112, 326, 327 and 328 of the Criminal Code; and section 14 of the CCA;
5. Ensure and facilitate equal access to adequate, effective and prompt remedy and reparation for all individuals who have had their rights violated by State action in contravention to their exercise of human rights, particularly the right to freedom of expression and information in the context of COVID-19 restrictions.



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