Amicus Curiae Brief in the case of the defendant Kowit Phothisan (Black Case Number Aor 192/2569 and Red Case Number Aor 587/2569, Appeal Court Region 2)

I. Introduction

1. Lawyers' Rights Watch Canada (LRWC), founded in 2000, is a Canadian organization of lawyers and other human rights defenders who promote the implementation and enforcement of international law and standards designed to protect the independence and security of human rights defenders around the world. LRWC produces legal analyses of international law and standards relevant to human rights violations against human rights defenders. LRWC has held special consultative status at the United Nations Economic and Social Council since 2005.

2. The International Commission of Jurists (ICJ), composed of 60 eminent judges and lawyers from all regions of the world, works to advance respect for the rule of law and the promotion and protection of human rights globally. The ICJ holds consultative status at the Council of Europe, the United Nations Economic and Social Council, the United Nations Educational, Scientific and Cultural Organization and the African Union. The ICJ also cooperates with various bodies of the Organization of American States and the Inter-Parliamentary Union. Established in 1952, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political, and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

3. LRWC and the ICJ (the interveners) in this brief provide submissions in the context of criminal defamation proceeding (sections 326 and 328 of Thailand's Penal Code) brought by Mr Suchart Chomklin against human rights defender Mr Kowit Phothisan, editor of The Isaan Record, an independent online media outlet based in Khon Kaen, Thailand. Mr Suchart is a politician who served as Minister of Labour between 12 August 2020 and 1 September 2023. When he filed the complaint on 20 February 2026 with the Chonburi Provincial Court, he was acting Deputy Prime Minister and acting Minister of Natural Resources and Environment. He has since been reappointed to both positions, which he continues to hold. He brought the case directly before the Court as a private prosecution, and sought THB 1,000,000 (approx. USD 29,700) in damages and an order which would require Mr Kowit to publish an apology and the judgment on his Facebook page and leave it there for three months. The proceedings arise from posts made in February 2026 on Mr Kowit's public Facebook account, which has approximately 7,000 followers. In them, Mr Kowit shared a post by Ms Hathairat Phaholtap, a journalist with the outlet, who responded to remarks Mr Suchart had made at a press conference on 11 February 2026. Her post referred to reports that more than 4,000 workers from north-eastern Thailand had been deceived into working as wild berry pickers in Finland and Sweden, and had not received the remuneration they were promised. It further noted that the Department of Special Investigation (DSI) had referred to the National Anti-Corruption Commission (NACC) allegations that two minister-level officials, including Mr Suchart, had accepted bribes totalling THB 36 million (approx. USD 1,070,000) from a Finnish berry company, and raised questions about the progress of the NACC's inquiry. Mr Suchart alleged that the posts were defamatory and had damaged his reputation. On 8 June 2026, the Chonburi Provincial Court dismissed the case at the preliminary examination stage. It found no *prima facie* case, because the posts amounted to news reporting and fair comment on matters of public interest. Mr Suchart has nevertheless appealed the dismissal.

4. The interveners submit that the imposition of criminal liability, particularly that entailing harsh penalties such as imprisonment or large fines, on human rights defenders and journalists for reporting on issues of public interest online has a "chilling effect" on the exercise of freedom

of expression, which Thailand is bound to protect pursuant to its international legal obligations. These obligations include those contained in human rights treaties to which Thailand is a party. The objective of the interveners in this brief is to clarify the nature and scope of international legal obligations, particularly relating to the rights of freedom of expression and information.

5. Under the principle of *pacta sunt servanda* and general principles governing the law of treaties, Thailand is bound to apply in good faith all treaties to which it is a party.[1] Furthermore, Thailand may not rely on provisions of its internal law to justify a failure to meet a treaty obligation.[2]

6. The *International Covenant on Civil and Political Rights* (ICCPR) requires States that are parties to it to guarantee and protect a range of human rights, including, under article 19, freedom of expression. Thailand acceded to the ICCPR on 29 October 1996. The United Nations (UN) Human Rights Committee is the supervisory body composed of independent experts established by the ICCPR to review periodic reports of States to assess compliance with the ICCPR and provides the authoritative interpretation concerning the scope and content of specific rights and provisions outlined in the ICCPR. These interpretations are contained in reviews of States Parties' Periodic Reports, jurisprudence on individual communications, and General Comments on specific rights provisions.[3]

7. The responsibility to ensure that the rights contained in the ICCPR are guaranteed, and protected is not limited to the legislative and executive branches of government, but must also effectively be discharged by Thailand's judiciary. In its authoritative General Comment No. 34 on the nature and scope of freedom of expression under the ICCPR, the UN Human Rights Committee has affirmed:

> The obligation to respect freedoms of opinion and expression is binding on every State party as a whole. All branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State party [....] The obligation also requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities.[4]

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[1] United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, Article 26, available at: https://www.refworld.org/docid/3ae6b3a10.html; Human Rights Committee, *General Comment No. 31*: *Nature of the General Legal Obligation on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para.3, available at: https://www.refworld.org/docid/478b26ae2.html ('CCPR/C/21/Rev.1/Add.13').

[2] Articles 26 and 27 of the Vienna Convention on the Law of Treaties; CCPR/C/21/Rev.1/Add.13, para. 4.

[3] Pursuant to Article 40(4) of the ICCPR, States Parties agreed to establish the UN Human Rights Committee and grant it the power, among others, to formulate general comments as it considers appropriate. Consequently, since it was created, the UN Human Rights Committee has built up a considerable body of interpretative jurisprudence through the review of periodic reports, adjudication of individual communications, and in the form of its General Comments. It is widely accepted that, in the exercise of its judicial functions, judicial bodies should ascribe "great weight" to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty. This principle has been affirmed by the International Court of Justice. See International Court of Justice, *Ahmadou Sadio Diallo Case (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment, 30 November 2010, paras. 66-68, available at: https://www.icj-cij.org/files/case-related/103/103-20101130-JUD-01-00-EN.pdf.

[4] Human Rights Committee, *General comment no. 34, Article 19, Freedoms of opinion and expression*,

8. In addition to its treaty obligations, Thailand is bound to respect norms of customary international law and general principles of law recognized by UN Member States.[5]

II. The right to freedom of expression in international law

9. One of the first resolutions of the UN General Assembly, adopted in its first session in 1946, declared that freedom of expression, which includes freedom to impart and receive information, "is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated."[6]

10. On 10 December 1948, The UN General Assembly adopted the *Universal Declaration of Human Rights* (UDHR) which states in article 19:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

11. The ICCPR obliges Thailand to respect and ensure to all individuals under its jurisdiction the right to freedom of expression and information. 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.

12. All States Parties to the ICCPR have the obligation to ensure that all people subject to their jurisdiction enjoy the rights protected by the treaty, including freedom of expression. Article 2 provides:

> 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
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> 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be

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12 September 2011, CCPR/C/GC/34, para. 7, available at: http://www.refworld.org/docid/4ed34b562.html ('CCPR/C/GC/34'). See also CCPR/C/21/Rev.1/Add.13, para 4.

[5] These are also set out as sources of law in the UN Charter. United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, article 92 and 93,available at: http://www.un.org/en/sections/un-charter/un-charter-full-text/index.html; United Nations, *Statute of the International Court of Justice*, 18 April 1946, Article 38, available at: http://www.refworld.org/docid/3deb4b9c0.html; Vienna Convention on the Law of Treaties, which is generally considered to be customary international law. See Karl Zemanek, *Vienna Convention on the Law of Treaties*, Vienna, 23 May 1969, UN Audiovisual Library of International Law, available at: http://legal.un.org/avl/ha/vclt/vclt.html.

[6] UN General Assembly Resolution 59(I), 14 December 1946, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/59(I).

necessary to give effect to the rights recognized in the present Covenant.

13. The UN Human Rights Committee has clarified in General Comment No. 34 that freedom of expression and opinion are "indispensable conditions" for the advancement of any person or society, as the free exercise of these rights facilitates the evolution and exchange of opinions, in turn enabling "principles of transparency and accountability" crucial for the promotion and protection of human rights.[7] These rights are also interrelated with and indivisible from the enjoyment of other fundamental rights, including the "rights to freedom of assembly and association."[8]

14. In this respect, the Committee has further affirmed that protections for freedom of expression and opinion necessarily extend to "political discourse, commentary… on public affairs, canvassing, discussion of human rights, journalism…," including through non-verbal means and "electronic and internet-based modes of expression."[9] This includes social media.

15. While under certain narrow circumstances, a State may restrict the right to freedom of expression, any such restrictions must be strictly limited in accordance with ICCPR, article 19(3), which provides:

> 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:
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> 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.

16. It is clear from the plain language of article 19 that any restrictions or limitations on the right to exercise freedom of expression must meet the conditions of legality (i.e., be provided by law), have a legitimate purpose, and fulfil the requirements of necessity and proportionality. In General Comment No. 34, the UN Human Rights Committee set out at greater length the operative implications of article 19(3), explaining that any such restriction on freedom of expression must meet a strict test of these four elements:[10]

    a. The restriction imposed must be **provided by law**, which is clear and accessible to everyone;[11] in particular, the law must be "formulated with sufficient precision to enable an individual to regulate his or her conduct" (emphasis added);[12]

    b. The restriction must be proven as **done for one of the recognized legitimate purposes** to protect the rights or reputation of others; and national security or public

[7] CCPR/C/GC/34, paras 2 - 3.

[8] *Ibid*, para 4.

[9] *Ibid*, para 11-12.

[10] *Ibid*, especially paras. 21-36; See also, UN 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*, 4 June 2012, A/HRC/20/17, para. 64 and 81, available at: http://www.refworld.org/docid/5008134b2.html ('A/HRC/20/17').

[11] A/HRC/20/17.

[12] CCPR/C/GC/34, para 25.

order, public health or morals (emphasis added);[13]

c. The restriction must be proven as **necessary** for one of the recognized legitimate purposes (emphasis added); and

d. The restriction must be proven **as the least restrictive and proportionate means** to achieve the purported aim (emphasis added).[14]

Restrictions on freedom of expression contemplated in article 19(3)(a) "for the respect of rights and reputations of others" may be engaged to justify certain laws and other measures on defamation. Such measures, however, must be narrowly construed and are strictly subject to the tests of necessity and proportionality set out by the Committee.

17. In this regard, the UN Human Rights Committee has assessed whether criminal defamation liability – as opposed to civil liability for defamation – is compatible with the requirements of necessity and proportionality set out in article 19. The Committee affirmed in 2005 that criminal sanctions are not appropriate in cases of defamation, stating that "the use of criminal rather than civil penalties … constitutes a disproportionate means of protecting the reputation of others." [15] The Committee, in General Comment No. 34, called on States parties to decriminalize defamation, and stressed that in any event "**imprisonment is never an appropriate penalty**" for defamation (emphasis added).[16]

18. The UN Special Rapporteur on Freedom of Opinion and Expression, mandated by the UN Human Rights Council to examine and respond to questions relating to freedom of expression,[17] has expressed concern about the potential for criminal defamation laws to be abused, especially when issues affecting the public interest are involved.[18] The Special Rapporteur concluded that: "Sanctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive and impart information; **penal sanctions, in particular imprisonment, should never be applied**" (emphasis added).[19]

19. The UN Human Rights Committee has also clarified that "the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties," and that "all public figures […] are legitimately subject to criticism and political opposition."[20] The Committee has also emphasized that "[a]t least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In

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[13] A/HRC/20/17.

[14] *Ibid*.

[15] UN Human Rights Committee. *Rafael Marques de Morais v. Angola, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005)*, para. 3.9, available at: https://www1.umn.edu/humanrts/undocs/1128-2002.html.

[16] CCPR/C/GC/34, para. 47.

[17] Human Rights Council, *Resolution 34/18: Freedom of opinion and expression: mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 21 March 2017, UN Doc. A/HRC/34/L.27, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/L.27

[18] A/HRC/20/17, paras. 78-88 and 97.

[19] UN Human Rights Council, *Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression*, Abid Hussain, 29 January 1999, UN Doc. E/CN.4/1999/64, para. 28(h) ('E/CN.4/1999/64').

[20] CCPR/C/GC/34, para. 38.

any event, a public interest in the subject matter of the criticism should be recognized as a defence." Thus, a public interest defence must be made available to those against whom a defamation case has been brought, even in the case of statements that are not wholly accurate and made without malice.[21]

III. International human rights analysis of Thailand's *Penal Code* sections 326, 328, 329 and 330 (Crime of Defamation)

20. Thailand's Crime of Defamation, Section 326 and 328 of the *Penal Code*[22] is defined as follows:

> [326] 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.
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> [328] If the offence of defamation be committed by means of publication of a document, drawing, painting, cinematography film, picture or letters made visible by any means, gramophone record or another recording instruments, recording picture or letters, or by broadcasting or spreading picture, or by propagation by any other means, the offender shall be punished with imprisonment not exceeding two years and fined not exceeding two hundred thousand Baht.

21. The *Penal Code* provides defences to the Crime of Defamation, including:

    a. Section 329, which includes defences for statements made for the protection of a legitimate interest or by way of fair comment on any person or thing subjected to public criticism; and

    b. Section 330, which provides for a defence in the case of statements that are both true and for the benefit of the public.

22. It is respectfully submitted that the Crime of Defamation as set out in Thailand's *Penal Code* (sections 326, 328, 329 and 330) does not accord with Thailand's international human rights law obligations under articles 14 and 19 of the ICCPR on the following grounds:

    a. The provisions are vague and overbroad, so that reasonable persons cannot know in advance how to regulate their conduct to avoid criminal liability for breaching the law.[23] Such vague and overbroad sections contravene the general principle of legality: The wording of section 326 allows any "imputation" made to a third person to constitute defamation, as long as it is made "in a manner likely to impair" a person's reputation or to cause them to be "hated or scorned." This wording on its face is unclear and imprecise, allowing for an extremely wide range of interpretation as to its scope and meaning;

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[21] CCPR/C/GC/34, para 47.

[22] *Thailand Penal Code*, unofficial English language translation of the *Penal Code* as amended 2011, available at http://library.siam-legal.com/thai-law/criminal-code-defamation-sections-326-333/. Relevant sections of the Penal Code have not been amended since that time. The phrase in Section 326 translated as "imputes anything" is better translated as "makes an imputation" or "makes any imputation."

[23] CCPR/C/GC/34, para 25.

b. The provisions impose disproportionately harsh sanctions by applying criminal sanctions when civil remedies are sufficient: Section 326 and 328 allow for punishment by way of imprisonment, as well as a fine. This threat of incarceration has a far greater chilling effect on freedom of expression than monetary damages;[24]

c. The provisions inappropriately repress and criminalize the legitimate work of human rights defenders, journalists, and others who perform a public interest function in informing the public and advocating for the protection of human rights. The broad drafting of Section 326 allows for the unfettered targeting of individuals or organizations working under a genuine mandate to raise awareness of public interest issues. In addition, such prosecutions are likely to cause serious physical, psychological, emotional, financial, and/or reputational harm to those who share information about matters of public interest. They also impose legal proceedings that are long, complex and expensive, amounting to legal harassment, and in effect imposing a chilling effect on the exercise of free expression. In this connection it should be noted that the Special Rapporteur on Freedom of Opinion and Expression has previously stated that "it is critical to raise the public conscience to ensure that criminal laws are not used (or abused) to stifle public awareness and suppress discussion of matters of general or specific interest;"[25]

d. The provisions risk violating the presumption of innocence (protected under article 14(2) of the ICCPR),[26] if the prosecution is not required to prove all elements of the offence, forcing the defendant to prove innocence. The Special Rapporteur on Freedom of Opinion and Expression stated that "the onus of proof of all elements [of criminal defamation] should be on those claiming to have been defamed rather than on the defendant; **where truth is an issue, the burden of proof should lie with the plaintiff**"[27] (emphasis added). Section 330 should not be interpreted in a manner that places the burden on the defendant to prove the truthfulness of allegedly defamatory statements;

e. Section 330 also fails to establish truth as a defence in accordance with international standards.[28] The UN Special Rapporteur on Freedom of Opinion and Expression has also stated that: "To require truth in the context of publications relating to matters of public interest is excessive; **it should be sufficient if reasonable efforts have been made to ascertain the truth**" (emphasis added).[29]

IV. Thailand's international human rights obligations to protect human rights defenders

23. All persons enjoy the full protection of the ICCPR and other human rights instruments. Of

[24] E/CN.4/1999/64, para. 28.

[25] *Ibid*.

[26] Article 14(2) of the ICCPR. According to the UN Human Rights Committee's General Comment 13: "By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt." UN Human Rights Committee, *General Comment No. 13: Article 14 (Administration of Justice), Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law*, 13 April 1984, para. 7, available at: http://www.refworld.org/docid/453883f90.html

[27] E/CN.4/1999/64, para. 28(f).

[28] The UN Human Rights Committee has stated that all defamation laws should include the defence of truth. CCPR/C/GC/34, para 47.

[29] E/CN.4/1999/64, para. 28(d).

particular importance to the protection of human rights defenders are the guarantees of the right to privacy (article 17); freedom of opinion and expression, including the right to seek, receive and impart information (article 19); freedom of peaceful assembly (article 21); freedom of association (article 22); the right to take part in the conduct of public affairs (article 25); and the right to non-discrimination and equal protection of the law (article 26).

24. In order to better protect these and other rights as they pertain to human rights defenders, States have adopted a number of international human rights instruments recognizing the special role of human rights defenders in the promotion, protection and implementation of international human rights. In particular, the UN *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (Declaration on Human Rights Defenders)[30] affirms the right to engage in human rights education and advocacy and the corollary State duties to ensure the protection of human rights defenders. The *Declaration on Human Rights Defenders* reaffirms standards already enshrined in binding international law, including the ICCPR and the *Charter of the United Nations* as well as the UDHR. The *Declaration on Human Rights Defender*s was adopted in 1999 by consensus of the General Assembly and thus represents a unanimous commitment by all UN member States to its implementation. The Declaration affirms, among other things, that:

    a. "everyone has the right, individually and in association with others, **to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels**" (article 1, emphasis added);

    b. "the State shall take all necessary measures to ensure the protection **by the competent authorities** of everyone, individually and in association with others, against **any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action** as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration" (article 12.2, emphasis added).

25. On 4 April 2025, Thailand joined the consensus resolution adopted by the UN Human Rights Council, entitled *Human rights defenders and new and emerging technologies: protecting human rights defenders, including women human rights defenders, in the digital age.*[31] This Resolution reaffirms "the importance of the Declaration [on Human Rights Defenders] and its full and effective implementation." It recalls that domestic law and its application "should not hinder but enable the work of human rights defenders, including by avoiding any criminalization, stigmatization, impediments, obstructions or restrictions thereof, contrary to the obligations and commitments of States under international law, including human rights law." The Council in the Resolution expressly calls attention to the misuse against defenders of measures "such as defamation and libel laws," and expresses concern at "the rise of strategic lawsuits against public participation," including on matters of public interest. In its operative provisions, the resolution urges States "to create and support a safe, enabling, accessible and inclusive environment online and offline" for human rights defenders.

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[30] UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, available at: http://www.refworld.org/docid/3b00f54c14.html.

[31] UN Human Rights Council, *Human Rights Defenders and New and Emerging Technologies: Protecting Human Rights Defenders, Including Women Human Rights Defenders, in the Digital Age*, A/HRC/RES/58/23, 7 April 2025, available at: https://docs.un.org/en/A/hrc/RES/58/23

V. Submissions

26. It is respectfully submitted that to ensure good-faith adherence to Thailand's international human rights obligations, Thailand's *Penal Code* must be interpreted in ways that ensure conformity with international human rights law, including the ICCPR, and standards as summarized above. It is incumbent on all branches of government, including the judiciary, to ensure respect for these obligations.

27. Criminal sanctions for defamation are to be avoided, as they contravene the right to freedom of expression guaranteed by international human rights law. In particular, no form of imprisonment or detention is permissible under the ICCPR in cases of defamation. Where appropriate, civil remedies constitute the available and proportionate means to achieve the lawful aim of protection of reputation from damaging statements that are false. Civil actions against defamation and any other measures that may chill or otherwise restrict or limit the exercise of freedom of expression must be proportionate and strictly necessary to protect the reputation of others.

28. Laws restricting freedom of expression must not be interpreted or applied in ways that prevent or punish the exercise of the right of human rights defenders to protect the public interest by informing the public about possible human rights violations and advocating for improved protection of internationally protected rights.

29. Where criminal prosecution does nonetheless take place, the presumption of innocence must be carefully guarded, including by ensuring that no criminal conviction occurs without the prosecution proving beyond a reasonable doubt each element of the offence, including proving beyond a reasonable doubt that the defendant failed to make reasonable efforts to ascertain the truth of the statements.

30. It is submitted that the Court should ensure that its interpretation of the law is consistent with the recommendations of the UN Human Rights Committee in its 2017 concluding observations on the second periodic report of Thailand. The Committee expressed concern about "criminal proceedings, especially criminal defamation charges, brought against human rights defenders, activists, journalists and other individuals" and, among other things, recommended that Thailand:

> "should take all measures necessary to guarantee the enjoyment of freedom of opinion and expression in all their forms, in accordance with article 19 of the Covenant. Any restriction should comply with the strict requirements of article 19 (3), as further developed in the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, including the strict tests of necessity and proportionality. It should also consider decriminalizing defamation and, in any case, countenance the application of criminal law only in the most serious of cases, bearing in mind that imprisonment is never an appropriate penalty for defamation. The State party should also refrain from using its criminal provisions […] as tools to suppress the expression of critical and dissenting opinions."[32]

VI. Conclusion

31. For the reasons stated above, this submission respectfully requests that the Court interpret

[32] UN Human Rights Committee, *Concluding Observations on the Second Periodic Report of Thailand*, 25 April 2017, CCPR/C/THA/CO/2, paras. 35-36, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fTHA%2fCO%2f2&Lang=en.

Thailand's laws in ways that ensure conformity with international human rights law. In particular, the interveners submit that no person may be held criminally liable for defamation, and that individuals should be protected from abusive litigation aimed at curtailing the rights to freedom of expression and access to information and other activities of human rights defenders, including journalists reporting on human rights issues. Any actions concerning defamation, including criminal or civil actions, that impede the right to freedom of expression must be deemed unlawful where they do not comply with the strict requirements of legality, legitimate purpose, necessity and proportionality.