

**ARTICLE 19**



## **#WhatsHappeningInThailand**

Government crackdown on the right to protest

25 October 2020



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## INTRODUCTION

In August, [#WhatsHappeningInThailand](#) began trending on Twitter. The hashtag was pushed by a new generation of Thai activists calling for the world to pay attention to their demands for freedom and democratic reforms. Young Thais also wanted the online community to bear witness to the government's response.

Throughout 2020, a youth-led protest movement has gathered momentum in Thailand. The protesters have repeatedly taken to the streets to demand a new constitution, a new government, and an end to the harassment and intimidation of government critics. Activists have also risked their own safety and liberty by calling for reform of the monarchy, an institution protected by laws carrying severe criminal penalties.

The protesters' complaints about the government's anti-democratic nature have been underscored by the authorities' response to the protests. The government has harassed and obstructed protest organisers at every turn. At least 173 individuals have been charged because of their role in protests this year. Security forces have harassed and intimidated protest organisers and participants, at times visiting them at their homes and schools. The government exploited the COVID-19 pandemic to enact repressive emergency measures, which have been used to charge peaceful protesters and online critics.

In September and October, as tens of thousands of Thais regularly gathered in Bangkok and other provinces, the government escalated its crackdown. Riot police forcefully dispersed protesters with the assistance of water cannons; security forces sought to deny access to protest sites; and authorities shut down transportation networks to prevent crowds from gathering. The government also increasingly attempted to assert control over the narrative surrounding the movement, pressuring social media platforms to block critical content and taking legal action against independent media outlets reporting on the protests.

Despite these attacks on fundamental rights and freedoms, the protest movement continues to grow stronger.

\* \* \*

This briefing describes human rights violations associated with the Thai government's response to the 2020 youth-led protest movement. It reflects developments through 22 October 2020. The briefing draws from media reporting, official documents, and other publicly-available information, as well as the records of Thai Lawyers for Human Rights, which is providing legal representation to many of the individuals facing charges because of their protest activities. It analyses the actions of the Thai authorities against international human rights law and standards and makes recommendations to the government.

## STUDENT PROTEST MOVEMENT

General elections held in March 2019 marked the end of absolute military rule in Thailand. However, political manoeuvring and anti-democratic elements of the military-drafted constitution allowed Prayut Chan-o-cha, the leader of the 2014 military coup, to form a government and retain the post of Prime Minister.

As junta-era restrictions on expression and assembly were lifted, many Thais began to voice their displeasure at a military-backed government they felt was not representative of the will of the people. The sentiments strengthened as the government escalated its attacks on the Future Forward Party, a new pro-democracy party that secured the third most seats in Parliament on the back of strong support from younger voters.

In early 2020, discontent was channelled into a vigorous youth-led protest movement. In January, activists held a ‘Run Against Dictatorship’ in Bangkok which drew more than 10,000 supporters.<sup>1</sup> Runs were also organised in at least 30 provinces. A counter-protest in Bangkok drew a crowd of approximately 3,000. In the lead-up to the run, organisers across the country faced threats and intimidation as authorities obstructed efforts to hold the event.<sup>2</sup> Afterwards, at least 19 participants were charged under the Public Assembly Act and other laws governing the use of public spaces.

In the wake of the Constitutional Court’s dissolution of the Future Forward Party in February 2020, ‘flash mob’ protests erupted at universities and high schools across Thailand.<sup>3</sup> Students organised on short notice via social media, expressing their dismay with the court’s decision and calling attention to the anti-democratic nature of the Prayut-led government. Many gave the ‘three-finger salute’, a gesture derived from the *Hunger Games* film series that has become a pro-democracy symbol in Thailand.

In late March, as the COVID-19 pandemic spread globally, Thailand declared a state of emergency and enacted measures aimed at curbing the spread of the virus.<sup>4</sup> Human rights organisations raised concerns that the broad and vague prohibition on assemblies contained in the Emergency Decree would violate the right to peaceful assembly. ARTICLE 19 warned that prohibitions against the spread of ‘false news’ in relation to the pandemic would illegitimately curb speech and violate the right to freedom of expression.<sup>5</sup> Violations of measures under the Emergency Decree carry a penalty of up to two years imprisonment.

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<sup>1</sup> ‘Thailand “run against dictatorship” draws thousands’, *BBC*, 12 January 2020, available at: <https://www.bbc.com/news/world-asia-51082419>.

<sup>2</sup> ARTICLE 19, ‘Thailand: Stop harassment of “Run Against Dictatorship” organisers’, 10 January 2020, available at: <https://www.article19.org/resources/thailand-stop-harassment-of-run-against-dictatorship-organisers/>.

<sup>3</sup> Hathai Techakitteranun, ‘Thai students rise up in wave of “flash mob” anti-government protests’, *Straits Times*, 27 February 2020, available at: <https://www.straitstimes.com/asia/se-asia/thai-students-rise-up-in-wave-of-flash-mob-anti-government-protests>.

<sup>4</sup> Shawn Chrispin, ‘Prayut declares a Covid-19 emergency in Thailand’, *Asia Times*, 24 March 2020, available at: <https://asiatimes.com/2020/03/prayut-declares-a-covid-19-emergency-in-thailand/>.

<sup>5</sup> ARTICLE 19, ‘Thailand: Emergency measures threaten human rights’, 25 March 2020, available at: <https://www.article19.org/resources/thailand-emergency-measures-threaten-human-rights/>.

These measures were tested in mid-May when demonstrators marked the tenth anniversary of a violent crackdown against the so-called 'Red-Shirts' that left more than 90 people dead.<sup>6</sup> Authorities charged at least nine people under the Emergency Decree.

While the pandemic and emergency measures temporarily subdued protest activities, the movement was re-energized by the disappearance of exiled Thai activist Wanchalearm Satsaksit.<sup>7</sup> The prominent critic, who had been living in Cambodia since 2014, was abducted by armed men in Phnom Penh on 4 June.<sup>8</sup> Neither Cambodia or Thailand have made a good faith effort to robustly investigate the disappearance. Far from a one-off case, his disappearance is the latest in a series of abductions and murders of Thai activists in exile.<sup>9</sup>

On 5 June, the Student Union of Thailand (SUT) organised a protest in the heart of Bangkok condemning the disappearance of Wanchalearm. In response, authorities charged protest organisers Parit Chiwarak, Jutathip Sirikhan, and Panusaya Sithijirawattanakul under the Emergency Decree. An 8 June 2020 demonstration organised in front of the Cambodian embassy in Thailand, during which activists submitted a letter to the embassy requesting an investigation into the disappearance of Wanchalearm Satsaksit, resulted in another ten charges under the Emergency Decree. The next day, students tied white ribbons—symbolising a call for justice—in various locations across Bangkok. Authorities responded by charging activists under the Act on the Maintenance of the Cleanliness and Orderliness of the Country.<sup>10</sup>

On 24 June 2020, several gatherings were organised to commemorate the 1932 Siamese Revolution, which ended absolute monarchy in Thailand. The various gatherings resulted in the charging of at least ten participants under the Emergency Decree and various other laws carrying lesser penalties, including the Act on the Maintenance of the Cleanliness and Orderliness of the Country, the Controlling Public Advertisement by Sound Amplifier Act, the Road Traffic Act, and the Criminal Code. Over the months that followed, as the size of protests grew, authorities would repeatedly use these laws to charge protest organizers and participants.

An 18 July protest calling for the end to military rule drew more than 2,500 people and resulted in charges against at least 31 protesters. The authorities severely escalated the crackdown by charging at least 13 of the activists with sedition under section 116 of the Criminal Code, which carries a maximum sentence of seven years' imprisonment.

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<sup>6</sup> Cod Satrusayang, 'Red shirts to mark ten-year anniversary of crackdown with muted commemorations due to pandemic', *Thai Enquirer*, 18 May 2020, available at: <https://www.thaienquirer.com/13119/red-shirts-to-mark-ten-year-anniversary-of-crackdown-with-muted-commemorations-due-to-pandemic/>.

<sup>7</sup> 'Thais protest against "disappearance" of activist Wanchalearm Satsaksit, snatched by gunmen in Cambodia', *Agence France-Presse and Reuters*, 8 June 2020, available at: <https://www.scmp.com/news/asia/southeast-asia/article/3088101/thais-protest-disappearance-activist-wanchalearm-satsaksit>.

<sup>8</sup> Human Rights Watch, 'Cambodia: Thai Activist Abducted in Phnom Penh', 5 June 2020, available at: <https://www.hrw.org/news/2020/06/05/cambodia-thai-activist-abducted-phnom-penh>.

<sup>9</sup> Human Rights Watch, 'Thailand: Critics Feared "Disappeared"', 9 May 2019, available at: <https://www.hrw.org/news/2019/05/09/thailand-critics-feared-disappeared>.

<sup>10</sup> 'Students arrested over white ribbon campaign for disappeared activist', *Prachatai*, 10 June 2020, available at: <https://prachatai.com/english/node/8577>.

In late July, demonstrations spread across the country and the government extended its crackdown. Authorities charged protesters in Chiang Mai, Chiang Rai, Maha Sarakham, Udon Thani, Khon Kaen, Lampang, and Lamphoon.

At the end of July, the Thai government lifted the ban on assemblies under the Emergency Decree while retaining other measures. Authorities noted that future gatherings would be governed by the Public Assembly Act, a law that is inconsistent with international human rights standards.<sup>11</sup>

During a Harry Potter-themed<sup>12</sup> protest on 3 August, human rights lawyer Arnon Nampa gave a speech that included a powerful call for reform of the monarchy. The speech marked a turning point for the protest movement and the clearest public articulation of demands directed at the monarchy in recent history. Several participants in the protest were charged, and an official in the Prime Minister's office filed a complaint against Arnon under section 112 of the Criminal Code, Thailand's draconian lèse-majesté provision, which carries a maximum penalty of fifteen years imprisonment.<sup>13</sup>

On 10 August, a protest at Thammasat University's Rangsit campus amplified the calls for reform of the monarchy. Panusaya Sithijirawattanakul read out a list of ten demands concerning the monarchy to a crowd of approximately 2,000 people. More charges of sedition and lesser crimes followed. Participation swelled to more than 10,000 people at a 16 August protest at Bangkok's Democracy Monument.<sup>14</sup>

On 19 September 2020, tens of thousands gathered in Bangkok's Sanam Luang, a royal park opposite the Grand Palace. After spending the evening camped out in the park, protesters laid a symbolic plaque that read 'This country belongs to the people and is not the property of the monarch as they have deceived us.'<sup>15</sup> The protesters intended it to stand in for another plaque commemorating the end of absolute monarchy in 1932, which had mysteriously disappeared in 2017. The new plaque was quietly removed the day after the protest.<sup>16</sup> The protest organisers had planned to march to the Government House on 20 September. However, a leaked police memo detailed a containment strategy that would prevent the protesters from reaching the Government House, including plans to deploy water cannons and rubber bullets, if necessary.<sup>17</sup> Instead of marching to Government House, the protesters handed a list of demands to the metropolitan police chief, for delivery to the President of the Privy Council.<sup>18</sup>

On 24 September, at least 500 protesters gathered in front of Parliament asking the Senate and House of Representatives to consider a proposal to amend the constitution.

<sup>11</sup> Thai Lawyers for Human Rights, "Restrictions and Harassments Remain: Public assemblies in January and before the elections", 6 February 2020, available at: <https://www.tlhr2014.com/?p=10794&lang=en>.

<sup>12</sup> The protest drew on Harry Potter's conflict with Lord Voldemort, also known as "He Who Must Not Be Named", a sly reference to the enforced silence around issues relating to the monarchy.

<sup>13</sup> 'Govt official files royal defamation complaint over Harry Potter protest speech', *Prachatai*, 5 August 2020, available at: <https://prachatai.com/english/node/8698>.

<sup>14</sup> 'Thai protests: Thousands gather in Bangkok to demand reforms', *BBC*, 16 August 2020, available at: <https://www.bbc.com/news/world-asia-53798826>.

<sup>15</sup> Patpicha Tanakasempipat, "'Over our hearts': confiscated plaque becomes emblem of Thai democracy push", *Reuters*, 1 October 2020, available at: <https://www.reuters.com/article/idUSKBN26M42Q>.

<sup>16</sup> Ibid.

<sup>17</sup> การรักษาความปลอดภัย ความสงบเรียบร้อยและการจัดการจราจรการชุมนุมสาธารณะ ๑๘ ก.ย.๒๕๖๓.

<sup>18</sup> 'Protesters end rally after submitting "10-point manifesto" to Privy Council', *Thai PBS*, 20 September 2020, available at: <https://www.thaipbsworld.com/protesters-submit-10-point-manifesto-with-privy-council/>.

On 13 October, a close encounter between protesters and the royal motorcade increased tensions significantly. The car carrying the queen and the king's son passed within a few meters of protesters, who pressed against a line of police officers and flashed the three-fingered salute.<sup>19</sup> Three prominent activists were later charged with committing an 'act of violence' against the queen under section 110 of the Criminal Code, a provision that can be punished by death or life imprisonment.<sup>20</sup>

The following day, tens of thousands of protestors gathered at Democracy Monument and marched to the Government House. They planned to camp overnight to ask for the Prime Minister's resignation. At 4am on 15 October 2020, the government announced a 'severe' state of emergency in Bangkok, claiming that the protests threatened national security.<sup>21</sup> The declaration banned gatherings of five or more people and communications that might cause 'fear' or 'misunderstanding', or affect national security, public order, or public morality. Shortly afterwards, approximately 500 crowd control police assembled with riot gear and ordered the protesters to disperse. 30 minutes later, police swept the area, arresting at least 28 people were arrested in relation to the protest.<sup>22</sup>

After the government's declaration, thousands of protesters continued to gather daily in Bangkok and various locations around the country. On the afternoon of 15 October 2020, a crowd estimated at 25,000 or more gathered at the Ratchaprasong intersection in central Bangkok and dispersed at 10pm without incident. The following day, thousands of protesters gathered at Pathumwan intersection after the police blocked access to the Ratchaprasong intersection. In the evening, crowd control police advanced towards the protesters trailed by three water cannon trucks. At approximately 6:50pm, the police announced that the protesters must disperse within three minutes.<sup>23</sup> After three minutes passed, the police shot the water cannons and forcibly cleared protesters from the area.<sup>24</sup> Some of the water shot from the cannon contained blue dye, and police later admitted to lacing water with chemical irritants.<sup>25</sup> Twelve protesters were arrested, with some sent to Region 1 Border Patrol Police base in Pathumthani province.

The crackdown on 15 October sparked a cat-and-mouse game between protesters and authorities. Each day protest organisers asked the public to stand by for the announcement of protest locations in the late afternoon, hoping to allow assemblies to be firmly established before security forces could mobilise. Massive gatherings of thousands of protesters were held at major intersections, landmarks,

<sup>19</sup> Panu Wongcha-um, Panarat Theppumpanat, and Kay Johnson, 'Thai protesters clash with police, call out as king's motorcade passes', *Reuters*, 13 October 2020, available at: <https://www.reuters.com/article/us-thailand-protests-idUSKBN26Y1C7>.

<sup>20</sup> 'Thai police to charge two for violence against queen', *Reuters*, 16 October 2020, available at: <https://www.reuters.com/article/us-thailand-protests-queen-idUSKBN2710SQ>.

<sup>21</sup> ข้อกำหนด ออกตามความในมาตรา ๕ ประกอบมาตรา ๑๑ แห่งพระราชกำหนดการบริหารราชการในสถานการณ์ฉุกเฉิน, 15 October 2020, available at: [http://www.rachakitcha.soc.go.th/DATA/PDF/2563/E/241/T\\_0004.PDF](http://www.rachakitcha.soc.go.th/DATA/PDF/2563/E/241/T_0004.PDF); Human Rights Watch, 'Thailand: Emergency Decree Pretext for Crackdown', 15 October 2020, available at: <https://www.hrw.org/news/2020/10/15/thailand-emergency-decree-pretext-crackdown>.

<sup>22</sup> Thai Lawyers for Human Rights, 'Public Statement on "The Declaration of Severe State of Emergency and Crackdown on Protests"', 15 October 2020, available at: <https://www.tlhr2014.com/?p=22121&lang=en>.

<sup>23</sup> See video, 'ประมวลเหตุการณ์ นาทิสลายการชุมนุม', *Thai Rath*, 16 October 2020, available at: <https://www.thairath.co.th/clip/458375>.

<sup>24</sup> Human Rights Watch, 'Thailand: Water Cannon Used Against Peaceful Activists', 17 October 2020, available at: <https://www.hrw.org/news/2020/10/17/thailand-water-cannon-used-against-peaceful-activists>.

<sup>25</sup> 'อันถึตศรคมิไม่อันตรชย แต่ไม่ผู้สธระไรร-คปท.ใช้กัน', *Daily News*, 17 October 2020, <https://www.dailynews.co.th/crime/801607>.



and universities in Bangkok and around the country. On several days, police officials restricted commuter rail service using powers granted under the Emergency Decree, closing stations or shutting down entire lines in an apparent attempt to respond to—or pre-empt—the plans of protest organisers.<sup>26</sup>

On October 21, thousands of protesters breached several police barricades as they marched from Victory Monument to Government House, where they issued an ultimatum: the Prime Minister must resign within three days or face more protests.<sup>27</sup> The student activist who issued the demand was arrested later in the evening. The following morning, the government unexpectedly repealed the ‘severe’ state of emergency. The government announcement stated, ‘The current violent situation that led to the announcement of the severe situation has eased and became a situation in which government officials and state agencies can enforce the regular laws.’<sup>28</sup> The events of the previous evening cast doubt on the government’s explanation and motives.

According to Thai Lawyers for Human Rights, at least 90 individuals were arrested during protests between 13 and 21 October.<sup>29</sup>

As the size of protests has grown, the government has increasingly attempted to assert control over the narrative surrounding the movement. Authorities used aggressive efforts, including lawsuits, in an attempt to secure the cooperation of Facebook, Twitter, and other social media platforms in censoring online content.<sup>30</sup> The Ministry of Digital Economy and Society sought to block Telegram, a messaging app used by protesters, and announced investigations into more than 300,000 web addresses allegedly containing illegal content.<sup>31</sup> The government also sought to block online broadcasts by independent media outlets.<sup>32</sup>

Activists, protesters, and netizens have faced harassment and intimidation at their homes, schools, and elsewhere.<sup>33</sup> Parit Chiwarak reported that police had visited and searched his residence at Thammasat University. Social media users were pressured to remove posts and sign MOUs stating that they would refrain from making similar posts in the future.<sup>34</sup> In some instances, police officers surveilled protest organisers.<sup>35</sup> In at least one case, a protest was cancelled following intimidation by government officials.

<sup>26</sup> See, for example, คำสั่งหัวหน้าผู้รับผิดชอบในการแก้ไขสถานการณ์ฉุกเฉินที่มีความร้ายแรง ที่ 6 /๒๕๖๓ เรื่อง ห้ามการใช้เส้นทางคมนาคม อาคาร หรือสถานที่, 17 October 2020, available at: [http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/244/T\\_0002.PDF](http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/244/T_0002.PDF).

<sup>27</sup> Patpicha Tanakasempipat and Panarat Thepgumpanat, ‘Thai protesters give PM three days to quit’, 21 October 2020, available at: <https://www.reuters.com/article/us-thailand-protests/thai-protesters-give-pm-three-days-to-quit-idUSKBN276112>.

<sup>28</sup> ประกาศ เรื่อง ยกเลิกประกาศสถานการณ์ฉุกเฉินที่มีความร้ายแรง ในเขตท้องที่กรุงเทพมหานคร ประกาศ ข้อก าหนด และค ำสั่งที่เกี่ยวข้อง, 22 October 2020, available at: [http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/248/T\\_0001.PDF](http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/248/T_0001.PDF).

<sup>29</sup> Thai Lawyers for Human Rights, ‘สถิติผู้ถูกจับกุม-ดำเนินคดี ตั้งแต่การชุมนุม #คณะราษฎร 13 ต.ค.’, 18 October 2020, available at: <https://www.tlhr2014.com/?p=22156>.

<sup>30</sup> See below, ‘Restrictions on online expression’.

<sup>31</sup> Ibid.

<sup>32</sup> See below, ‘Attacks on the media’.

<sup>33</sup> Details of 32 cases of harassment on file with ARTICLE 19. ARTICLE 19 suspects the extent of harassment and intimidation to be much greater than these cases.

<sup>34</sup> Details on file with ARTICLE 19.

<sup>35</sup> ‘Students on alert after rumours of imminent arrest of protest leaders’, *Prachatai*, 13 August 2020, <https://prachatai.com/english/node/8719>.

School authorities have attempted to silence high school student protesters involved in pro-democracy campaigns. Many faced punishments at school, including physical punishment in rare cases. At times, plainclothes police officers were embedded with teachers to monitor the behaviour of students. In some instances, students were threatened with legal action, particularly in relation to content posted online. After the 16 August rally, more than one hundred instances of harassment were reported by students in three days.<sup>36</sup>

According to records compiled by TLHR, as of 21 October, at least 173 individuals had been charged or arrested in relation to their protest activities since the beginning of 2020.<sup>37</sup> ARTICLE 19 and TLHR suspect the actual number of arrests is much higher and will continue to grow in the coming days and weeks. Many protest leaders have been arrested and charged multiple times, and several could face years or decades of imprisonment. Despite the immense pressure faced by protest organisers and participants, the movement continues to gain momentum.

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<sup>36</sup> Thai Lawyers for Human Rights, 'Students making three-finger salute wearing white bows led to 103 reports of harassment in 3 days', 25 August 2020, available at: <https://www.tlhr2014.com/?p=20794&lang=en>.

<sup>37</sup> Records on file with ARTICLE 19.

## INTERNATIONAL LAW AND STANDARDS

The right to protest is closely linked to the right to freedom of expression, and often involves exercise of the rights to freedom of peaceful assembly and of association, the right to take part in the conduct of public affairs, the right to freedom of thought, conscience and religion, and the right to participate in cultural life. Infringements of the right to protest may result in violations of the rights to life, privacy, liberty, and security of a person, as well as the right to non-discrimination.

ARTICLE 19's Right to Protest Principles,<sup>38</sup> which are available in Thai language,<sup>39</sup> elaborate a set of minimum standards for the respect, protection and fulfilment of the right to protest, while promoting a clear recognition of the limited scope of permissible restrictions. The principles are drawn from international human rights standards, including human rights treaties to which Thailand is a party. This briefing draws upon the Right to Protest Principles in addition to international treaty guidance.

These standards are elaborated in the section that follows, which describes human rights violations associated with the Thai government's crackdown on the protest movement.

### The right to peaceful assembly

Article 21 of the ICCPR protects the right to peaceful assembly.<sup>40</sup> It provides that: 'No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.'<sup>41</sup> In General Comment 37, the Human Rights Committee—the body responsible for interpreting and applying the International Covenant on Civil and Political Rights (ICCPR), a treaty to which Thailand is a party—made clear that any restrictions on the right to peaceful assembly must pass the tests of legality, legitimacy, and necessity and proportionality.

### The right to freedom of expression

The expressive nature of protests invokes protection under Article 19 of the ICCPR. Article 19(2) of the ICCPR provides that: '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.'<sup>42</sup> The right to freedom of expression may only be limited where such restrictions are related to the legitimate aims enumerated in Article 19(3) of the ICCPR, that is, 'for respect of the rights or reputations of others', or

<sup>38</sup> ARTICLE 19, 'The Right to Protest: Principles on the protection of human rights in protests' (the 'Right to Protest Principles'), 2016, Principle 1.1(a), available at: [https://www.article19.org/data/files/medialibrary/38581/Right\\_to\\_protest\\_principles\\_final.pdf](https://www.article19.org/data/files/medialibrary/38581/Right_to_protest_principles_final.pdf).

<sup>39</sup> สิทธิในการประท้วง: หลักการปกป้องสิทธิมนุษยชน ในการประท้วง, [https://www.article19.org/wp-content/uploads/2016/12/2018.04.30-Right\\_to\\_protest\\_principles-Thai.pdf](https://www.article19.org/wp-content/uploads/2016/12/2018.04.30-Right_to_protest_principles-Thai.pdf).

<sup>40</sup> International Covenant on Civil and Political Rights, 16 December 1966, Treaty Series, vol. 999, p. 171, Article 21.

<sup>41</sup> Ibid.

<sup>42</sup> International Covenant on Civil and Political Rights, Article 19(2).

for ‘the protection of national security or of public order (ordre public), or of public health or morals’.<sup>43</sup> As with peaceful assembly, any restrictions on the right to freedom of expression must be legal, connected to a legitimate aim, and necessary and proportionate to achieving that aim.<sup>44</sup>

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<sup>43</sup> International Covenant on Civil and Political Rights, Article 19(3).

<sup>44</sup> Human Rights Committee, General Comment No. 34, CCPR/C/GC/34, 12 September 2011, Para 22.

## RESTRICTIONS ON THE RIGHT TO PROTEST

The Thai government has utterly failed to respect, protect, and fulfil the right to protest—including the rights to freedom of expression and peaceful assembly—in its response to the 2020 protest movement. Instead of playing the facilitative role envisioned by international human rights law, the government has gone to great lengths to obstruct protests and punish organisers and participants.

For several months during 2020, all of Thailand was under stringent restrictions due to the COVID-19 pandemic. The government used the pandemic as a pretext to restrict freedoms, repeatedly invoking regulations under the Emergency Decree in a manner inconsistent with human rights law, while also piling on spurious charges against protesters. As protests gained strength and increasingly incorporated demands for reform of the monarchy, the government resorted to more severe measures, including the application of sedition charges, the physical obstruction and dispersal of protests, the harassment and surveillance of protesters, and the targeting of independent media. This section assesses the Thai government's response to the protests against the international human rights standards described above.

The failure of the Thai government to uphold the rights of peaceful protesters is particularly pronounced given that their demands focus on democratic reforms and respect for human rights. In its General Comment No. 37 on the right to peaceful assembly, the Human Rights Committee stated:

Given that peaceful assemblies often have expressive functions, and that political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection.<sup>45</sup>

### Emergency Decree

As a result of the outbreak of COVID-19, the Thai government declared an 'emergency situation' under section 5 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) ('Emergency Decree') on 25 March 2020.<sup>46</sup> At the time of writing, the declaration of an 'emergency situation' was in force through 31 October 2020. It is likely to be extended further.

The first regulation issued under section 9 of the Emergency Decree (the 'Regulation')<sup>47</sup> aimed to limit gatherings by enacting a broad and vague ban on assemblies. The Regulation stated that 'it is prohibited to assemble, to carry out activities, or to gather at any place that is crowded, or to commit any act which may cause unrest in areas determined by the Chief Officer responsible for remedying the emergency situation on matters relating to security'. According to section 18 of the Emergency Decree,

<sup>45</sup> Human Rights Committee, General Comment No. 37, CCPR/C/GC/37, 17 September 2020, para. 32.

<sup>46</sup> Ministry of Foreign Affairs of Thailand, Declaration of an Emergency Situation in all areas of the Kingdom of Thailand (Unofficial translation), 26 March 2020, available at: [https://image.mfa.go.th/mfa/0/mkKfL2iULZ/migrate\\_directory/news3-20200329-164122-910029.pdf](https://image.mfa.go.th/mfa/0/mkKfL2iULZ/migrate_directory/news3-20200329-164122-910029.pdf).

<sup>47</sup> Ministry of Foreign Affairs of Thailand, Regulation Issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (No. 1) (Unofficial Translation), 29 March 2020, available at: <http://www.mfa.go.th/main/contents/files/news3-20200329-164122-910029.pdf>.

the violation of a regulation, notification or order issued under section 9 of the Emergency Decree carries a penalty of imprisonment of up to two years, a fine not more than forty-thousand baht, or both.<sup>48</sup>

Another regulation issued under section 9 of the Emergency Decree on 31 July 2020 lifted the ban on assemblies and noted that they would subsequently be governed by the Public Assembly Act.<sup>49</sup> Prior to the lifting of the ban on assemblies on 31 July, at least 67 individuals were charged under the Regulation in relation to their protest activities. Authorities proceeded with these cases even though Thailand did not record a domestically transmitted case of COVID-19 between late May and early September.

In its recently released General Comment 37, the Human Rights Committee provided new guidance on the right to freedom of assembly. The Human Rights Committee specifically addressed the COVID-19 pandemic and explained the extent to which peaceful assembly can be limited during a public health emergency.

The General Comment states that while ‘the protection of “public health” may exceptionally permit restrictions to be imposed, for example, where there is an outbreak of an infectious disease and gatherings are dangerous’, the restrictions must themselves comply with international human rights law.<sup>50</sup> As noted above, any restrictions must be legal, in pursuit of a legitimate aim, and necessary and proportionate to that aim.<sup>51</sup>

In assessing whether a measure is necessary and proportionate to a legitimate aim, consideration should be given to whether the measure in question is the least intrusive means of achieving that aim.<sup>52</sup> While social distancing measures are indeed a key tool in reducing the transmission of COVID-19, a complete ban on assemblies is not necessary to achieving social distance. The Office of the High Commissioner for Human Rights has issued COVID-19-related guidance on issues affecting civic space, and noted that:

States should ensure that the right to hold assemblies and protests can be realized, and only limit the exercise of that right as strictly required to protect public health. Accordingly, States are encouraged to consider how protests may be held consistent with public health needs, for example by incorporating physical distancing.<sup>53</sup>

<sup>48</sup> Council of State, Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005), available at [http://web.krisdika.go.th/data/document/ext810/810259\\_0001.pdf](http://web.krisdika.go.th/data/document/ext810/810259_0001.pdf). TLHR and ARTICLE 19 have raised human rights concerns regarding other aspects of the Regulation, as well. See, Thai Lawyers for Human Rights, Summary of ‘The Legal Opinion on the Declaration of the State of Emergency in Response to COVID-19 Pandemic’, 30 March 2020, available at: <https://tlhr2014.com/?p=16785&lang=en>; ARTICLE 19, ‘Thailand: Emergency measures threaten human rights’, 25 March 2020, available at: <https://www.article19.org/resources/thailand-emergency-measures-threaten-human-rights/>.

<sup>49</sup> ข้อกำหนด ออกตามความในมาตรา ๙ แห่งพระราชกำหนด การบริหารราชการในสถานการณ์ฉุกเฉิน พ.ศ. ๒๕๔๘ (ฉบับที่ ๑๓), available at: [http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/174/T\\_0077.PDF](http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/174/T_0077.PDF).

<sup>50</sup> Human Rights Committee, General Comment No. 37, para. 45.

<sup>51</sup> Ibid. at para 36.

<sup>52</sup> Ibid. at para 40.

<sup>53</sup> Office of the High Commissioner for Human Rights, ‘Civic Space and COVID-19: Guidance’, 4 May 2020, available at: <https://www.ohchr.org/Documents/Issues/CivicSpace/CivicSpaceandCovid.pdf>.

The use of masks and the maintenance of an adequate distance between individuals are just two ways that public health measures can be maintained without wholly eliminating a right to assemble.

The ban on assemblies under the Emergency Decree presented serious concerns relating to its 'legality'. A measure fails to meet the 'legality' test when it does not provide ordinary people with sufficient guidance to regulate their behaviour. The Regulation failed to define key terms such as 'assemble', 'carry out activities', or 'gather'. Further, it was so broad as to potentially capture everyday activities. Under the Regulation, 'gathering' at a bus stop in order to use public transportation or 'assembling' at a restaurant could potentially be prohibited. Instead of providing clarity on the specific number of individuals that could convene in various settings, as has been done in other states, the Regulation used extremely broad language allowing it to capture virtually any behaviour, and leaving it open to arbitrary application.

Further, the Regulation has been applied in a discriminatory manner against pro-democracy protesters. Beginning 1 July 2020, all bars and entertainment venues were permitted to re-open.<sup>54</sup> Commuters packed into crowded trains and shoppers returned to malls. During the same period in which it was arresting pro-democracy protesters, the government allowed, and in some cases encouraged, other gatherings. In late July, Liverpool fans across Thailand engaged in parades celebrating the club's English Premier League championship victory, yet no arrests for violating the ban on assemblies were reported.<sup>55</sup> News coverage of the parades showed several individuals gathered without face coverings.<sup>56</sup> Not only were these public gatherings allowed by the government, in some instances they were led by local government officials.<sup>57</sup> In addition to non-political assemblies that have been allowed to move forward, pro-government assemblers have faced no legal action in relation to their assemblies.<sup>58</sup>

The declaration of a 'severe' state of emergency on 15 October suffers from even greater defects when compared to human rights standards. The government sought to justify the declaration on the basis of preserving national security, peace, and order, specifically citing close encounters between protesters and the royal motorcade on 13 and 14 October.<sup>59</sup>

In General Comment 37, the Human Rights Committee stated that '[b]lanket restrictions on peaceful assemblies are presumptively disproportionate,' and that '[r]estrictions on assemblies must... not be used, explicitly or implicitly, to stifle expression of political opposition to a government.'<sup>60</sup> It elaborated on the rare circumstances in which national security, public safety or public order may be invoked to justify a restriction on the right to freedom of assembly. National security may only be invoked 'to

<sup>54</sup> 'Nightlife makes return', *Bangkok Post*, 30 June 2020, available at: <https://www.bangkokpost.com/thailand/general/1942944/nightlife-makes-return>.

<sup>55</sup> 'แฟนลิเวอร์พูลพักรวมตัวร่วมชบวนแห่แชมป์', *Inn News*, 24 July 2020, available at: [https://www.innnews.co.th/regional-news/news\\_730493/](https://www.innnews.co.th/regional-news/news_730493/).

<sup>56</sup> 'กระหึ่ม แฟนลิเวอร์พูลพังงา แห่ฉลองแชมป์พรีเมียร์ลีกสุดยิ่งใหญ่ (คลิป)', *Thai Rath*, 11 July 2020, available at: <https://www.thairath.co.th/sport/eurofootball/premierleague/1887265>.

<sup>57</sup> In the city of Bueng Kan, the parade was led by the sheriff.

<sup>58</sup> Tassanee Vejpongsa, 'Royalists in Thailand rally against pro-democracy protesters', *Associated Press*, 30 July 2020, available at: <https://apnews.com/3d048bacc0a5cccf797f86edba7fd5a0>.

<sup>59</sup> 'Thai government announces emergency decree over protests', *Reuters*, 15 October 2020, available at: <https://www.reuters.com/article/us-thailand-protests-measures-idUSKBN26Z35X>.

<sup>60</sup> Human Rights Committee, General Comment No. 37, para. 38.

preserve the State’s capacity to protect the existence of the nation, its territorial integrity or political independence... This threshold will only exceptionally be met by assemblies that are “peaceful”.<sup>61</sup> Public safety may justify restrictions only when there is ‘a real and significant risk to the... life or security of person... or a similar risk of serious damage to property.’<sup>62</sup> The Committee stated that “public order” refers to the sum of the rules that ensure the proper functioning of society’ and that governments must tolerate peaceful protests even when they are disruptive in nature.<sup>63</sup>

The Human Rights Committee has further emphasized that peaceful assemblies with a political message should enjoy heightened protection,<sup>64</sup> and has highlighted that any restrictions on assembly must be content-neutral.<sup>65</sup>

There is no evidence that the protests—which have been overwhelmingly peaceful—have constituted a threat to others, and certainly not a threat of the magnitude that would justify the severe measures imposed by the government. Rather, protest leaders have repeatedly urged non-violence and respect for public property. It is the government’s aggressive actions beginning on 16 October that have posed the greatest threat to public safety. Moreover, the protesters involved in the 13 October incident neither contacted the royal motorcade nor showed any signs that they intended to use violence or cause harm. Rather, the protesters had already established themselves peacefully at the location before the motorcade departed on its journey,<sup>66</sup> leading many commentators to speculate about why that particular route was chosen.

Finally, the potential penalty of two years imprisonment for gathering in violation of regulations issued under the Emergency Decree is grossly disproportionate to the alleged government objectives in restricting assemblies. The Human Rights Committee explained criminal or administrative sanctions for participants in peaceful assemblies must be ‘must be proportionate, non-discriminatory in nature and must not be based on ambiguous or overbroadly defined offences, or suppress conduct protected under the [ICCPR].’<sup>67</sup>

## Public Assembly Act

The Public Assembly Act, the primary law governing assemblies in Thailand, was enacted in 2015 during military rule. It was the main law used to charge peaceful protesters prior to the invocation of the Emergency Decree in March, and between the lifting of the ban on protests under the Emergency Decree at the end of July and the declaration of a ‘severe’ state of emergency in October.

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<sup>61</sup> Ibid., para. 42.

<sup>62</sup> Ibid., para. 43.

<sup>63</sup> Ibid., para. 44.

<sup>64</sup> ‘Given that peaceful assemblies often have expressive functions, and political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection.’

<sup>65</sup> *Alekseev v. Russian Federation*, European Court of Human Rights, 21 October 2010, para. 9.6.

<sup>66</sup> Thai Lawyers for Human Rights, ‘Public Statement on “The Declaration of Severe State of Emergency and Crackdown on Protests”’, 15 October 2020, available at: <https://www.tlhr2014.com/?p=22121&lang=en>.

<sup>67</sup> Human Rights Committee, General Comment No. 37, para. 67.



Human rights and civil society organisations have raised serious concerns about the Public Assembly Act.<sup>68</sup> The Public Assembly Act requires that protest organisers provide authorities 24 hours' notice prior to planned assemblies and provide various information about the planned assembly, including its objective, date, time, and place.<sup>69</sup> Failure to comply with the notification requirement renders the gathering an 'illegal assembly'.<sup>70</sup> The law prohibits assemblies within 150 meters of courts, Parliament, Government House, the Grand Palace, and other royal residences,<sup>71</sup> and imposes vaguely-defined duties on organisers and participants, including that they not impose 'unreasonable inconvenience' on others.<sup>72</sup> Marches or processions may not be held between 6pm and 6am.<sup>73</sup> Protesters also have a general obligation to comply with the orders of an official 'surveillance officer' under the law.<sup>74</sup> Penalties for violating these obligations range from fines to six months' imprisonment, with more severe offenses, such as disrupting public transportation of telecommunications systems, carrying penalties of up to ten years imprisonment.<sup>75</sup>

In General Comment 37, the Human Rights Committee explicitly stated that failure to comply with notifications requirements should not render an assembly unlawful and does not absolve authorities of their duty to facilitate the assembly.<sup>76</sup> The Committee also asserted that 'spontaneous assemblies' are equally protected under the right to freedom of peaceful assembly.<sup>77</sup> The Committee urged states to avoid establishing perimeters outside public buildings, noting that these are public spaces and should be treated as such.<sup>78</sup> The Committee stated, '[G]iven the typically expressive nature of assemblies, participants must as far as possible be enabled to conduct assemblies within sight and sound of their target audience.'<sup>79</sup> The Committee also raised concerns about time restrictions placed on assemblies.<sup>80</sup> The Public Assembly Act falls far short of these standards.

In practice, local authorities have often exercised powers granted by the Public Assembly Act or other laws to prohibit, or place restrictions on, assemblies. Although the Act requires notification of a protest and not permission, in practice, authorities at times have denied permission to hold events. General Comment No. 37 squarely rejects authorisation regimes, noting: 'Having to apply for permission from the authorities undercuts the idea that peaceful assembly is a basic right.'<sup>81</sup>

<sup>68</sup> See, Thai Lawyers for Human Rights, *Restrictions and Harassments Remain: Public assemblies in January and before the elections*, 6 February 2020, available at: <https://www.tlhr2014.com/?p=10794&lang=en>; Human Rights Watch, *To Speak Out is Dangerous: The Criminalization of Peaceful Expression in Thailand*, October 2019, available at: [https://www.hrw.org/sites/default/files/report\\_pdf/thailand1019\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/thailand1019_web.pdf); p.33; International Commission of Jurists, *Thailand: ICJ co-hosts round-table on right to peaceful assembly*, 27 November 2019, available at: <https://www.icj.org/thailand-icj-co-hosts-round-table-on-right-to-peaceful-assembly/>.

<sup>69</sup> Public Assembly Act, 2015, section 10, available at: <https://lawdrafter.blogspot.com/2015/08/translation-thai-public-assembly-act-of.html>.

<sup>70</sup> *Ibid.*, section 14.

<sup>71</sup> *Ibid.*, section 7.

<sup>72</sup> *Ibid.*, section 15 and 16.

<sup>73</sup> *Ibid.*, section 16(8).

<sup>74</sup> *Ibid.*, section 16(9).

<sup>75</sup> *Ibid.*, section 27.

<sup>76</sup> Human Rights Committee, General Comment No. 37, paras. 16 and 71.

<sup>77</sup> *Ibid.*, para. 14.

<sup>78</sup> *Ibid.*, para. 56.

<sup>79</sup> *Ibid.*, para. 22.

<sup>80</sup> *Ibid.*, para. 54.

<sup>81</sup> Human Rights Committee, General Comment No. 37, para. 70.

In the lead-up to the Run Against Dictatorship in January 2020, organisers in at least 15 provinces faced obstruction from local officials.<sup>82</sup> In Phayao province, local officials claimed that protest organisers had failed to fulfil the notification requirements under the Public Assembly Act. In Bangkok, organisers were forced to cancel press conferences in advance of the run and change the location from the symbolic Democracy Monument to a park outside of the city centre. In Chonburi province, authorities ordered protesters not to comment on political matters, cover their faces, or display symbols during the Run Against Dictatorship.

## Other laws restricting protests

Authorities have also improperly used other laws to restrict the manner and place of demonstrations and to prosecute protesters. Protesters have been charged for the illegal use of megaphones, obstructing road traffic, and violating laws on public ‘cleanliness’.

Dozens of protesters have been charged under section 4 of the Controlling Public Advertisement by Sound Amplifier Act, which prohibits the use of an amplifier without permission. Violations are punished by a fine. Authoritative guidance from the Human Rights Committee provides that such a ban on the use of sound amplifiers is impermissible. In General Comment No. 37, the Human Rights Committee stated, ‘Participants should be left to determine whether they want to use equipment such as posters or megaphones or musical instruments or other technical means such as projection equipment to convey their message.’<sup>83</sup>

Similarly, the Road Traffic Act illegitimately restricts the right to peaceful assembly. The Road Traffic Act prohibits marching or parading in a manner that obstructs traffic.<sup>84</sup> Violations are punishable by a fine. The Human Rights Committee has noted that, ‘Peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access, such as public squares and streets.’<sup>85</sup>

Further, spurious charges under the Act on the Maintenance of the Cleanliness and Orderliness of the Country—particularly in response to the tying of white ribbons to structures at various locations across the country—appear primarily aimed at penalising and deterring protesters. Several protesters have been charged under either section 19<sup>86</sup> or 39<sup>87</sup> of the law, resulting in 2,000 THB fines.

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<sup>82</sup> ARTICLE 19, ‘Thailand: Stop harassment of ‘Run Against Dictatorship’ organisers’, 10 January 2020, available at: <https://www.article19.org/resources/thailand-stop-harassment-of-run-against-dictatorship-organisers/>.

<sup>83</sup> Human Rights Committee, General No. 37, para. 58.

<sup>84</sup> Section 108 of the Road Traffic Act states, ‘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’.

<sup>85</sup> Human Rights Committee, General Comment No. 37, para. 55.

<sup>86</sup> Section 19 of the Act on the Maintenance of the Cleanliness and Orderliness of the Country provides, ‘No one shall place, put or pile any object on the road except in the area specified by the local official or the competent official by making an announcement with the approval of the traffic official’.

<sup>87</sup> Section 39 of the Act on the Maintenance of the Cleanliness and Orderliness of the Country provides, ‘No one shall install, dry, place or hang anything in the public place except a letter of permission is acquired from the local official or the competent official or such action is an action of the local administration, other administrations or State enterprise or agency with the power to do so or such placing is temporary. The installation, drying, placing

Charges have also been levelled against protesters under section 214 of the Criminal Code (breach of peace), and other ‘petty offense’ provisions such as sections 368 (refusal to comply with an official order), 385 (obstructing the public way) and 391 (‘violence not amounting to bodily or mental harm to the other person). These sections carry penalties ranging from a fine to six months’ imprisonment.

## Sedition and offences against the monarchy

Since the middle of July, when the pace and scale of protests began to increase significantly, authorities have regularly charged protest organisers and those giving speeches at protests under section 116 of Thailand’s Criminal Code, which establishes the crime of sedition. These charges are further evidence of persecutory targeting of pro-democracy demonstrators and are a clear violation of the right to freedom of expression.

Section 116 of Thailand’s Criminal Code makes it a crime to:

[Make] an appearance to the public by words, writings or any other means which is not an act within the purpose of the Constitution or for expressing an honest opinion or criticism 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 amongst 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.<sup>88</sup>

Those convicted can be imprisoned for up to seven years.<sup>89</sup> To date, at least 23 protesters are facing charges under section 116 of Thailand’s Criminal Code. At least five face more than one count under section 116.

Thailand’s Criminal Code establishes extremely severe penalties for a number of crimes against the monarchy. Section 112, frequently referred to as Thailand’s lèse-majesté provision, provides for up to 15 years’ imprisonment for anyone who ‘defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent’.<sup>90</sup> During the five years of military rule following the 2014 coup, 65 individuals were prosecuted under section 112, a significant increase from previous years.<sup>91</sup> During this period, cases were tried in military courts, which tended to hand down more severe sentences.

Since the 2019 elections, a new trend has emerged, with authorities avoiding charges under section 112, and instead prosecuting those who insult the monarchy for sedition or under the draconian

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or hanging of anything in the public place without a letter of permission from the local official or the competent official or the permission is acquired but there is failure to comply with the rules specified in such permission, the local official or the competent official shall have the power to order a person taking action under paragraph one to remove or dismantle within a specified period of time. If such person neglects, ignores, besides having liability for the offence of disobedience of an order of the official under the Criminal Code, the local official or the competent official shall initiate legal proceedings under this Act’.

<sup>88</sup> Criminal Code, section 116, available at: [https://www.unodc.org/res/cld/document/tha/criminal-code-as-of-2008\\_html/Thailand\\_Criminal\\_Code.pdf](https://www.unodc.org/res/cld/document/tha/criminal-code-as-of-2008_html/Thailand_Criminal_Code.pdf).

<sup>89</sup> Ibid.

<sup>90</sup> Ibid., section 112.

<sup>91</sup> Thai Lawyers for Human Rights, ‘คดีความใต้ยุค คสช.: ฐานข้อมูลคดี 112’, available at: <https://www.thr2014.com/?p=14840>.

Computer Crime Act.<sup>92</sup> Many of those targeted with sedition charges in 2020 have been protesters who have directly addressed the role of the monarchy in Thailand.

As described above, three prominent activists have also been charged with committing an act of violence against the queen under section 110 of the Criminal Code, a crime which carries a maximum penalty of death or life imprisonment.<sup>93</sup>

The contours of Thailand's legal framework, as well as the historical precedent set by the routine imprisonment of royal critics, have inevitably had a chilling effect on the freedom of expression of protesters in Thailand. In this context, the forceful demands being directed towards the monarchy during recent protests are remarkable. Nevertheless, the threat of legal action against individuals merely for expressing opinions about the monarchy will continue to be a major impediment to the exercise of the rights to freedom of expression and freedom of assembly in Thailand.

General Comment No. 34 clarifies that speech of a political nature enjoys heightened protection. The Human Rights Committee emphasised 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'.<sup>94</sup> The Committee further warned against *lèse-majesté* provisions and admonished that, 'states parties should not prohibit criticism of institutions, such as the army or the administration'.<sup>95</sup>

## Obstruction of protests and use of force

As the protest movement has grown in Thailand, the government has increasingly relied on physical force to prevent protesters from exercising their right to freedom of peaceful assembly. While the threat of force was used to influence protest activities in past months, more recently, the government has used police forces to physically block access to protest sites and to disperse assemblies after they have formed. The police blockade of Ratchaprasong intersection on 16 October, followed by the forceful dispersal of protesters at Pathumwan intersection that evening are prime examples.

In General Comment No. 37, the Human Rights Committee stated that states have a duty 'not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification'.<sup>96</sup> Rather, states should actively facilitate protests, including by blocking streets or redirecting traffic to enable safe access to the area by protester.<sup>97</sup> Dispersal of protests should only be used in exceptional

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<sup>92</sup> See 'Restrictions on online expression', below.

<sup>93</sup> Criminal Code, section 110. 'Whoever commits an act of violence against the Queen or Her liberty, the Heir-apparent or His liberty, or the Regent or his/her liberty, shall be punished with imprisonment for life or imprisonment of sixteen to twenty years. Whoever attempts to commit such offence shall be liable to the same punishment. If such act is likely to endanger the life of the Queen, the Heir-apparent or the Regent, the offender, shall be punished with death or imprisonment for life. Whoever makes preparations for committing an act of violence against the Queen or Her liberty, the Heir-apparent or His liberty, or the Regent or his/her liberty, or does any act to assist in keeping secret any intention to commit such offence, shall be punished with imprisonment of twelve to twenty years.'

<sup>94</sup> Human Rights Committee, General Comment No. 34, para. 38.

<sup>95</sup> Ibid.

<sup>96</sup> Human Rights Committee, General Comment No. 37, para. 23.

<sup>97</sup> Human Rights Committee, General Comment No. 37, para. 24.

circumstances, such as when ‘the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence’.<sup>98</sup> The government has not proffered any justification along these lines, nor have there been any reports suggesting that violence was imminent during protests.

The clearance of protest sites has been accomplished through the use of force in violation of international human rights law and law enforcement standards. At Pathumwan on 16 October, armed riot police gave a dispersal order only three minutes before beginning the forceful clearance of the area. They subsequently used water cannons against the protesters, at one point shooting water that contained unknown chemical irritants.

The Human Rights Committee has emphasised that force must be used only as a matter of last resort, after exhausting other avenues for resolving a conflict.<sup>99</sup> The Committee has also warned that less-lethal weapons, including tear gas and water cannons, are inherently indiscriminate and dangerous and should be used with care only in exceptional circumstances.<sup>100</sup> The *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*<sup>101</sup> and *UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*<sup>102</sup> echo these warnings. The *Guidance* specifies that water cannons, tear gas or chemical irritants should only be used after law enforcement personnel have sought to ‘identify and isolate any violent individuals separately from the main assembly’, and when used should be aimed as specifically as possible at violent individuals or groups.<sup>103</sup> At Pathumwan, water cannons were applied indiscriminately against peaceful protesters, with minimal warning. More fundamentally, the government has not asserted any legitimate reason for dispersing the protest.

The Thai government has violated the rights of protesters and others by disrupting commuter rail service to obstruct protests. The Human Rights Committee stated that, ‘Restrictions on people’s ability to travel... in order to participate in assemblies, marches and other moving assemblies may violate their freedom of movement.’<sup>104</sup> The government’s willingness to shut down transportation networks—impacting both protesters and commuters alike—is further evidence that officials are merely using the disruption of traffic as a pretext for the arbitrary targeting of pro-democracy protesters.

## Harassment, intimidation and obstruction of protesters

In response to the various campaign actions since the beginning of 2020, protesters have faced a variety of forms of harassment, intimidation, and obstruction. International human rights law requires that any restrictions on the right ‘should be guided by the objective of facilitating the right’.<sup>105</sup>

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<sup>98</sup> Ibid., para. 85.

<sup>99</sup> Ibid., para. 78.

<sup>100</sup> Ibid., para. 87.

<sup>101</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at: <https://www.un.org/ruleoflaw/files/BASICP-3.PDF>.

<sup>102</sup> United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, Geneva, August 2019, available at: <https://www.geneva-academy.ch/joomlatools-files/docman-files/UN%20Guidance%20on%20Less%20Lethal%20Weapons.pdf>.

<sup>103</sup> Ibid., paras. 6.3.3 and 6.3.4.

<sup>104</sup> Human Rights Committee, General Comment No. 37, para. 99.

<sup>105</sup> Human Rights Committee, General Comment No. 37, para. 36.

Instead, as the protest movement has strengthened, student participants and protest organisers have faced surveillance, threats, and harassment from authorities. Most of the harassment appears aimed at coercing protesters to either refrain from future protests or to stop posting critical content online. In multiple cases, individuals were coerced to sign MOUs stating that they would discontinue online protest activities during visits to their homes by security officers. Bail conditions for detained protesters often included requirements that they not participate in further protests. These actions violate the rights of protesters and netizens. The Human Rights Committee has specifically stated that authorities may not require these kinds of pledges or commitments.<sup>106</sup>

## Restrictions on online expression

The right to protest applies both offline and online.<sup>107</sup> However, the Thai government has taken drastic steps to stifle dissent in online spaces and control online discourse relating the protest movement.

The Computer Crime Act has been one of the key tools that the Thai government has used to restrict online speech and punish critics who post online speech. Section 14 of the Computer Crime Act prohibits, among other acts, importing to a computer system ‘false computer data’ in a manner that is likely to damage the country’s security or cause public panic. Violations of this provision carry a penalty of up to five years’ imprisonment, a fine of up to 100,000 baht, or both. Human rights organisations, including ARTICLE 19, have highlighted the law’s incompatibility with international human rights law, raising concerns about its vague and overbroad restrictions on expression and highlighting its use to silence government critics and human rights defenders.<sup>108</sup>

In 2020, Thai authorities have used the Computer Crime Act to charge individuals criticising the government,<sup>109</sup> discussing the institution of the monarchy,<sup>110</sup> and coordinating virtual participation in protests.<sup>111</sup> As described above, the Computer Crime Act is one of the laws that has increasingly been used to punish *lèse-majesté* offenses as section 112 has fallen out of favour with authorities.

As the protest movement gained strength, the Thai government turned to more drastic measures to assert control over online expression. In August, the government ordered Facebook to block the hugely popular page ‘Royalist Marketplace’, which had been set up in April 2020 as a forum for open discussion about the monarchy in Thailand.<sup>112</sup> Facebook complied with the order, stating that it had determined it was ‘compelled’ to do so, but later initiated a lawsuit against the government seeking to overturn the

<sup>106</sup> Ibid, para. 66.

<sup>107</sup> Human Rights Committee, General Comment No. 34, para. 6; Human Rights Committee, General Comment No. 37, para. 6.

<sup>108</sup> ARTICLE 19, Thailand: Computer Crime Act: Legal Analysis, January 2017, available at: <https://www.article19.org/data/files/medialibrary/38615/Analysis-Thailand-Computer-Crime-Act-31-Jan-17.pdf>.

<sup>109</sup> ARTICLE 19, ‘Thailand: Drop charges against artist Danai Usama’, 20 July 2020, <https://www.article19.org/resources/thailand-drop-charges-against-artist-danai-usama/>.

<sup>110</sup> ‘Twitter user gets more charges over royal criticism’, *Khaosod English*, 10 June 2020, available at: <https://www.khaosodenglish.com/news/crimecourtscalamity/2020/06/10/twitter-user-gets-more-charges-over-royal-criticism/>.

<sup>111</sup> ‘Protest leader Panusaya arrested at hotel room’, *The Nation*, 15 October 2020, available at: <https://www.nationthailand.com/news/30396238>.

<sup>112</sup> Nick Statt, ‘Facebook blocks access to group criticizing Thailand king after government threat’, *The Verge*, 24 August 2020, available at: <https://www.theverge.com/2020/8/24/21399940/facebook-thailand-group-remove-king-criticism-threat-defamatory-free-speech>.

order.<sup>113</sup> Other platforms, including Twitter, Tinder, and TikTok, appear to have complied with at least some requests from the Royal Thai Government. Several Tinder users have reported being banned from the platform for sharing pro-democracy content, such as a link to the movement's ten demands.<sup>114</sup> In September, the Thai government lodged a complaint against Facebook and Twitter after the companies failed to comply with a takedown order.<sup>115</sup> The same month, the Technology Crime Suppression Division sought to block more than 2,000 websites and social media pages that included 'inappropriate content that could harm the country's security' including 'content that harassed the monarch'.<sup>116</sup> In October, the Ministry of Digital Economy and Society reportedly tried to force internet service providers and mobile operators to block Telegram, a secure messaging app activists were using to organise protests.<sup>117</sup> The Ministry also announced that it was investigating 300,000 web addresses that purportedly violate the emergency decree.<sup>118</sup>

## Attacks on the media

The media is essential to the enjoyment of the rights to freedom of expression and peaceful assembly. Journalists play a key role in informing the public about protesters' actions and demands, alerting protesters and the public about security threats, and ensuring accountability for government officials and others. In General Comment 37, the Human Rights Committee stressed that governments have obligations to towards the media in the context of assemblies, asserting that journalists must be protected, not face reprisals or harassment, and not have their equipment confiscated or damaged.<sup>119</sup>

The Thai government has taken an aggressive stance towards independent media during the protest movement. During the crackdown on protesters at Pathumwan on 16 October, police arrested Prachatai journalist Kitti Pantapak while recorded a live report at the scene of the protest.<sup>120</sup> During his arrest, police confiscated the journalist's camera and mobile phone. He was subsequently released after paying a 300 baht fine for disobeying an order by public officials and thereby violating section 368 of the Criminal Code.

<sup>113</sup> Hanna Beech, 'Facebook Plans Legal Action After Thailand Tells It to Mute Critics', *New York Times*, 25 August 2020, available at: <https://www.nytimes.com/2020/08/25/world/asia/thailand-facebook-monarchy.html>.

<sup>114</sup> Daria Impiombato & Tracy Beattie, 'Tinder Is the Latest Social Media Battleground in Thai Protests', 2 October 2020, available at: <https://foreignpolicy.com/2020/10/02/tinder-is-the-latest-social-media-battleground-in-thai-protests/>.

<sup>115</sup> Patpicha Tanakasempipat and Panarat Thepgumpanat, 'Thailand takes first legal action against Facebook, Twitter over content', *Reuters*, 24 September 2020, available at: <https://www.reuters.com/article/thailand-internet-idUSL3N2GL1HX>.

<sup>116</sup> Apornrath Phoonphongphiphat, 'Thailand to block 2,000 websites ahead of pro-democracy protests', *Nikkei Asia*, 18 September 2020, available at: <https://asia.nikkei.com/Politics/Turbulent-Thailand/Thailand-to-block-2-000-websites-ahead-of-pro-democracy-protests>.

<sup>117</sup> 'Thailand's government wants Telegram blocked. Good luck with that,' *Coconuts Bangkok*, 19 October 2020, available at: <https://coconuts.co/bangkok/news/thailands-government-wants-telegram-blocked-good-luck-with-that/>.

<sup>118</sup> 'พุทธิพงษ์ อิมพ์ฟ้องสื่อ ลงข่าวฝ่าฝืน พรก.ฉุกเฉิน คนใช้โซเชียล โดนด้วย 3 แสน URL', *KhaoSod*, 19 October 2020, available at: [https://www.khaosod.co.th/politics/news\\_5140887](https://www.khaosod.co.th/politics/news_5140887).

<sup>119</sup> Human Rights Committee, General Comment No. 37, para. 30.

<sup>120</sup> International Federation of Journalists, 'Thailand: Reporter arrested while covering protests', 19 October 2020, <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/thailand-reporter-arrested-while-covering-protests.html>.

On 19 October, media reported on a police document containing orders to initiate an investigation of four independent news outlets as well as Free Youth, a student group coordinating the protests.<sup>121</sup> The following day a spokesperson for the ministry announced that online broadcast of Voice TV would be suspended as a result of violations of the emergency measures.<sup>122</sup> Voice TV, which is one of the primary platforms broadcasting from the protests, had previously had its broadcast licenses suspended, but had an extremely large viewership on Facebook and other online platforms.

The Thai government's actions suggest an attempt to prevent positive portrayals of the protesters and their demands. These efforts violate the rights to freedom of expression and peaceful assembly and threaten the Thai public's access to information about the protest movement.

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<sup>121</sup> 'Police in Thailand to investigate media over protests coverage', Al Jazeera, 19 October, available at: <https://www.aljazeera.com/news/2020/10/19/police-in-thailand-to-investigate-media-over-protests-coverage>.

<sup>122</sup> 'Thai court suspends local online TV amid protests', Reuters, 20 October 2020, available at: <https://www.reuters.com/article/thailand-protests-tv-idUSL4N2HB1RA>.



## RECOMMENDATIONS

ARTICLE 19 and TLHR call on the Thailand government to:

- Immediately lift the 'severe' state of emergency imposed under the Emergency Decree and refrain from invoking the Emergency Decree to restrict the right to protest, including the rights to freedom of expression and peaceful assembly;
- End criminal proceedings against all individuals charged merely for the exercise of the right to protest, and immediately and unconditionally release all those detained on those grounds;
- Order all government authorities not to initiate criminal proceedings against individuals because of their participation in protests or expression of opinions about the government or monarchy;
- Reform the Public Assembly Act and other laws imposing restrictions on the time, place, and manner of assemblies to comply with international human rights law;
- Reform the Criminal Code to comply with international human rights law, including by repealing section 112, concerning insults to the monarchy, and section 116, which establishes the crime of sedition;
- Actively facilitate the exercise of the right to freedom of peaceful assembly, including by helping to secure protest locations and ensuring the safety of protesters;
- Refrain from dispersing protests or using weapons, including less-lethal weapons, against protesters except in exceptional circumstances, such as the need to protect protesters or bystanders from violence or imminent harm;
- Train all law enforcement personnel involved in the policing of protests on international standards relating to freedom of assembly, the use of force, and the use of less-lethal weapons;
- Refrain from disrupting the operation of transportation systems except as necessary to prevent imminent and serious harm to persons or property;
- End all efforts to censor online content, including by rescinding orders given to social media platforms and internet service providers to block content, accounts, or websites;
- Rescind orders and end legal proceedings intended to prevent independent media outlets from reporting on protests and the demands of protesters; and
- Take steps to ensure accountability for rights violations associated with the government's crackdown on the protest movement and to ensure that those whose rights have been violated enjoy the right to an effective remedy.