



UN Committee on Economic, Social, and Cultural Rights

55th Session: Thailand

Geneva, 4-5 June 2015

Shadow report submitted by FIDH (International Federation for Human Rights)

Abuse of draconian lèse-majesté provisions violates Article 15 of the ICESCR

Thailand's abuse of Article 112 of the Criminal Code violates the country's obligations under the International Covenant on Economic, Social, and Cultural Rights (ICESCR) because it severely curtails the "right of everyone to take part in cultural life." Article 15 of the ICESCR guarantees this right.

Article 112 of Thailand's Criminal Code imposes jail terms for those who defame, insult, or threaten the King, the Queen, the Heir to the throne, or the Regent. Persons found guilty of violating Article 112 face prison terms of three to 15 years for each count.

The overzealous application of Article 112 and the imposition of harsh prison sentences for lèse-majesté violators effectively prevent any public debate about the monarchy.

Criticism of key members of the royal family, and particularly of revered King Bhumibol Adulyadej, is inexorably punished. Authorities have arrested, detained, and imprisoned scores of individuals under Article 112. Anyone making references to many of the issues surrounding the royal family in a way that the authorities deem "inappropriate" faces possible criminal charges for lèse-majesté.

Authorities have systematically blocked websites, banned books, and suppressed any other type of information that made critical reference to the Thai royal family. This atmosphere of fear has resulted in widespread self-censorship.

Restrictions and repression under the pretext of protecting the monarchy have significantly intensified since Thailand's military junta, the National Council for Peace and Order (NCPO), seized power from a democratically-elected government in the 22 May 2014 coup d'état.

This shadow report documents how Thailand's enforcement of Article 112 has resulted in a failure to comply with the country's obligation to respect and protect the right of everyone to participate in cultural life.

Note on methodology: In most lèse-majesté cases documented in this report, FIDH does not provide details of the alleged offense. This is because the inflexible application of Article 112 makes a recounting of lèse-majesté allegations a violation of Article 112 as well.

State report ignores lèse-majesté issue, gov't fails to address restrictions

Thailand's periodic report to the UN Committee on Economic, Social, and Cultural Rights (CESCR) was completed in 2012, 10 years after it was originally due. The report completely ignored the lèse-majesté issue.

In early 2015 the government addressed the lèse majesté issue in response to the CESCR's request for information regarding the compatibility of lèse majesté provisions with Thailand's obligations under the ICESCR. However, the response failed demonstrably to clarify what measures the government had taken to ensure that the enforcement of Article 112 did not restrict the right of everyone to take part in cultural life, to have the necessary freedom for creative activities, and to use the Internet.¹

The government simply claimed that Article 112 was “not aimed at curbing people’s rights to freedom of expression nor the right of everyone to take part in cultural life and to have necessary freedom for creative activities.”² In addition, in a statement that defied reality, the government outrageously declared that Article 112 had “**never** [emphasis added] been used in a manner to restrict legitimate exercise of academic and cultural rights including debates about the monarchy as an institution.”³

Failure to protect and respect the right to participate in cultural life

The deteriorating situation with regard to the right to freedom of opinion and expression, including the right to seek, receive, and impart information and ideas is arguably the overarching obstacle to the enjoyment of the right of everyone to participate in cultural life.

¹UN Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights; Initial and second periodic reports of States parties: Thailand, 10 October 2013, UN Doc. E/C.12/THA/1-2

²International Covenant on Economic, Social and Cultural Rights; Additional information supplementing the combined initial and second periodic reports of Thailand, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fTHA%2fQ%2f1-2%2fAdd.1&Lang=en

³International Covenant on Economic, Social and Cultural Rights; Additional information supplementing the combined initial and second periodic reports of Thailand, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fTHA%2fQ%2f1-2%2fAdd.1&Lang=en

Following the Thai Army's imposition of martial law on 20 May 2014 and the NCPO's seizure of power two days later, the situation with regard to rights associated to the enjoyment of cultural rights dramatically deteriorated.

Immediately after seizing power, the junta shut down 14 Thai TV stations and about 3,000 community radio stations and blocked all international satellite TV transmissions. To this day, many community radio stations remain shut down.

The junta also ordered all media not to interview former government officials, academics, judges or other members of independent organizations "in a way that may create conflict or confusion among the public."

The NCPO quickly moved to silence dissident journalists, arbitrarily detaining two of them. The junta also acted to curb online criticism. On 22 May, the NCPO warned "online social media operators" that they would be shut down and face legal action if they failed to block "illegal information" and anti-junta messages. On 27 May, an official from the Information and Communication Technology (ICT) Ministry said it had blocked 219 websites that were deemed a threat to "national security." On 28 May, the ICT Ministry temporarily blocked Facebook.

In its 2015 *Freedom in the World*, Freedom House rated Thailand as 'Not Free' with regard to the situation of civil liberties and political rights - the first time since the 2006 military coup.

In its 2015 *Press Freedom Index*, Reporters Without Borders (RSF) ranked Thailand 134th out of 180 countries surveyed. In 2014, it ranked 130th. In its 2014 survey *Freedom on the Net*, Freedom House rated Thailand as 'Not Free', with a ranking of 51 out of the 65 countries surveyed.

On 1 April, Thailand's ruling junta, the National Council for Peace and Order (NCPO) replaced martial law with Order 3/2015. The order imposed restrictions on freedom of expression similar to those enforced under martial law. Article 5 of Order 3/2015 authorizes the military to issue orders prohibiting "the propagation of news or the sale or distribution of any book publication or any other media which contains [...] information that is "intentionally distorted to cause public misunderstanding that affects national security or public order."

As the CESCR explained in General Comment 21, the right to participate in cultural life is respected and protected when the state party to the ICESCR adopts "specific measures" that allow everyone to enjoy freedom of opinion, freedom of expression, and the right to seek, receive and impart information and ideas of all kinds and forms including art forms"⁴ In addition, in order to be ensured, the right to take part in cultural life requires that the state refrains from interference "with access to cultural goods and services."⁵ Thailand clearly fails to meet these

⁴UN Committee on Economic, Social and Cultural Rights, General comment No. 21, Right of everyone to take part in cultural life (art. 15, Para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), 21 December 2009, UN Doc. E/C.12/GC/21, Paras. 49-50

⁵UN Committee on Economic, Social and Cultural Rights, General comment No. 21, Right of everyone to take part in cultural life (art. 15, Para. 1 (a), of the International Covenant on

criteria, primarily as a result of the enforcement of its draconian lèse-majesté legal provisions. The enforcement of Article 112 has resulted in: ongoing detention and imprisonment of lèse-majesté violators; pervasive online and offline censorship; bans on publications and other material that is deemed to be insulting of the monarchy. All these actions represent clear violations of the country's obligation to respect the right in question.

Number of lèse-majesté detainees soars

Despite the government's claim that the number of lèse-majesté trials “has been kept to the minimum,”⁶ it is apparent that under the NCPO the number of detentions and prosecutions under Article 112 have increased dramatically.

The NCPO has repeatedly declared that the protection of the monarchy and the prosecution of alleged lèse-majesté violators was one of its top priorities.⁷ Since the military coup, at least 47 people have been arrested under Article 112. Fifteen of them have been sentenced to prison terms ranging from three to 25 years. Forty-three people are currently behind bars under Article 112, up from six when the military seized power on 22 May 2014. In the overwhelming majority of cases, individuals tried for alleged violations of Article 112 have, plead guilty to the charges. This should not be construed as an acknowledgment of criminal responsibility. Due to conviction of rates close to 100% in lèse-majesté trials, the guilty plea is a strategic decision that, in most cases, earns lèse-majesté violators a significant reduction in their jail sentence. All 15 individuals sentenced to prison terms under Article 112 since the coup plead guilty to the charges.

Most of the lèse-majesté cases resulting in a prison sentence presented elements related to the right to freedom of expression and to take part in cultural life. In many cases, lèse-majesté charges hit individuals who shared opinions and content related to the monarchy through Facebook. Siraphop Komarut, remains behind bars for writing a poem that alluded to King Bhumibol.

In previous years, there had been several cases of incarcerations on lèse-majesté charges as a result of the publication of material related to the Thai monarchy.

Australian writer Harry Nicolaidis was arrested at one of Bangkok's airports in August 2008 and detained on lèse-majesté charges. Authorities accused Nicolaidis of insulting the Thai royal family in his second book, *Verisimilitude*, a novel that Nicolaidis himself published in Thailand in 2005 and which sold less than a dozen copies. In January 2009, Nicolaidis was sentenced to six years in prison, which the court reduced to three because he pleaded guilty to the

Economic, Social and Cultural Rights), 21 December 2009, UN Doc. E/C.12/GC/21, Para. 6

⁶International Covenant on Economic, Social and Cultural Rights; Additional information supplementing the combined initial and second periodic reports of Thailand, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fTHA%2fQ%2f1-2%2fAdd.1&Lang=en

⁷Khaosod English, Thai Junta to Diplomats: Lese Majeste is 'Cultural Offense', 11 February 2015

charges. Nicolaides was eventually granted a royal pardon and released in February 2009.

Somyot Prueksakasemsuk, a former labor activist and editor of the now-defunct magazine *Voice of Taksin*, was arrested on 30 April 2011 - five days after he launched a petition campaign to collect 10,000 signatures required for a parliamentary review of Article 112. On 23 January 2013, the Bangkok Criminal Court sentenced him to 10 years in prison on two counts of lèse-majesté. Somyot was convicted for allowing the publication of two satirical articles in the 'Voice of Taksin' that were written by someone else and deemed to have insulted the monarchy.

In December 2011, Joe Gordon aka Wichai Commart, a Thai-born US citizen, was sentenced to two-and a half years in prison on lèse-majesté charges. The court reduced the jail term from five years as a result of Gordon's guilty plea. Gordon was convicted of translating excerpts of the banned book *The King never smiles* [see above] from English into Thai and posting them online several years earlier when he lived in the US. Gordon was detained in May 2011 during a visit to Thailand.

Artistic freedom restricted

The imprisonment of two theater activists on lèse-majesté charges clearly illustrates the link between Thailand's abuse of Article 112 and its failure to protect the right to participate in cultural life.

On 23 February 2015, the Bangkok Criminal Court sentenced two members of the now-defunct *Prakai Fai* ['Sparking Fire'] theater group, Pornthip Munkong aka Golf and Patiwat Saraiyaem aka Bank, to two and half years in prison under Article 112.

Golf and Bank were found guilty of lèse-majesté for performing in a political play called *Jao Sao Maa Paa* ['Wolf's bride']. The play was staged at Bangkok's Thammasat University on 13 October 2013 and was part of the commemoration of the 40th anniversary of the 14 October 1973 student uprising against the military dictatorship of Field Marshal Thanom Kittikachorn. The play, which centered on a fictional monarchy, was deemed to have insulted Thailand's King Bhumibol Adulyadej.

Both in their mid-20s, Golf, a social activist, and Bank, a university student, have been detained since their arrest in mid-August 2014. Bank's incarceration forced him to suspend his studies at Khon Kaen University. Prison authorities have imposed severe restrictions on Golf's and Bank's cultural activities. Their books have been confiscated and their communications with visitors are closely monitored.

Other individuals involved in the *Jao Sao Maa Paa* performance fled the country for fear of being arrested under Article 112. They joined scores of students, academics, and artists who left Thailand after the 22 May 2014 military coup. They include: film director Neti Wichiansaen; songwriter and singer Yonok Faiyen

and other members of his band; songwriters and composers Visa Kantap and Pajjit Aksornnarong; former film actor Attachai Anantamaek, and academics Pavin Chachavalpongpun, and Somsak Jeamteerasakul.

In another incident that reflects the NCPO's restrictions on artistic freedom, in January and February 2015, the military repeatedly harassed members of the B-Floor Theatre Group because their show *Bang La Merd* ('District of violations') contained references to Article 112. *Bang La Merd*, a solo theater performance by actress Ornanong Thaisriwong, illustrated rights violations in Thai society, particularly in relation to freedom of expression and the pervasive restrictions under the military junta. On 20 January, military personnel demanded the show organizers seek permission from the authorities to stage the performance. The show was eventually allowed to go on. However, plainclothes military officers were present during most of the 19 nights the performance ran to video record the actors and the audience.

Books, magazines, films, and video games banned

Thailand has routinely banned publications that provided a critical perspective on the Thai King and other members of the royal family.

On 12 November 2014, authorities banned *A Kingdom in crisis*, a book written by British journalist Andrew McGregor Marshall.⁸ The book makes references to the Thai royal family and the issue of King Bhumibol's succession in the context of Thailand's ongoing political crisis. The measure stemmed from the 2007 Publishing Act, which allows police to ban any book that is found to be defaming the King.⁹ Those who possess or distribute the book can face up to three years in jail and a fine of 60,000 baht (US\$1,840). *The King never smiles*, a biography of Thai King Bhumibol Adulyadej written by US freelance journalist Paul Handley and published by Yale University Press in July 2006, remains banned in Thailand.

Also banned is *The devil's discus*, an investigative book into the mysterious circumstances surrounding the death of King Ananda Mahidol (Bhumibol's elder brother) in June 1946. The book was written by British-South African author Rayne Kruger and was originally published by Cassell & Co. in 1964. The Thai government banned the book as soon as it was published and barred Kruger from entering Thailand. A Thai language translation of the book was officially banned in May 2006.¹⁰

The English-language weekly magazine *Economist* decided not to distribute its print issues in Thailand at least six times between December 2008 and January 2015 because they contained articles about members of the Thai royal family.¹¹

⁸Prachatai, Thai police ban Andrew Marshall's book on Thai monarchy, 12 November 2014

⁹Prachatai, Thai police ban Andrew Marshall's book on Thai monarchy, 12 November 2014

¹⁰Royal Gazette (in Thai) 123 (Special 73 ง): 31. June 27, 2006

¹¹The *Economist* decided not to distribute its print issues in Thailand for the weeks of 6 December 2008, 24 January 2009, 20 March 2010, 12 May 2012, 16 November 2013, 31 January 2015;

Writers also face the risk of *lèse-majesté* as a result of complaints brought by private citizens. In October 2014, a former Democrat Party MP filed a *lèse-majesté* complaint against American journalist Tom Plate over the book *Conversations with Thaksin*. The MP alleged that some parts of the book, in which Plate interviewed former Thai Prime Minister Thaksin Shinawatra, defamed the monarchy.¹² No details are available regarding the current status of the investigation.

In December 1999, Thailand also banned a film that allegedly insulted a Thai monarch who reigned in the late 19th century. Thai authorities banned the film *Anna and the King*, which narrates the story of British schoolteacher Anna Leonowens at the court of King Mongkut (Rama IV), because they said it distorted facts and offered an inaccurate and insulting portrayal of the King.

Thailand even targeted a video game for containing material that was considered offensive of the monarchy. In August 2014, the Ministry of Culture invoked the 2008 Film and Video Act to ban *Tropico 5*, a simulation game that allows players to create their own forms of government on a remote island.¹³ Authorities believed the game could have affected national security and the country's dignity because it allowed players to freely name the country and its leader or king.¹⁴

Lèse-majesté pursuit goes online

In its follow-up to the CESCR's adoption of the list of issues, the Thai government claimed “censorship of inappropriate content online is carried out in a very restrictive manner.” However, this claim is contradicted by the relentless and wide-ranging campaign that authorities have conducted since the coup to censor online content that is considered to be offensive of the monarchy.

In December 2014, the Information and Communication Technology Minister said that the Ministry had blocked about 1,200 websites that allegedly defamed the monarchy since the coup.¹⁵

Guardian, The Economist pulled from sale in Thailand after criticizing monarch, 9 December 2008; BBC, Thailand bans Economist magazine, 26 January 2009; VOA, Economist Magazine Halts Distribution In Thailand Over Royal Story, 18 March 2010; Economist not distributed (again), 11 May 2012, available at <https://thaipoliticalprisoners.wordpress.com/2012/05/11/economist-not-distributed-again/>; Economist, The Economist print edition not being distributed in Thailand this week, 15 November 2013; Prachatai, Economist not published in Thailand due to lese majeste, 30 January 2015

¹²Prachatai, 'Conversation with Thaksin' book sued for lese majeste, 5 October 2014; Bangkok Post, Thaksin and book face LM charge, 4 Oct 2014

¹³Prachatai, 'Conversation with Thaksin' book sued for lese majeste, 5 October 2014; Bangkok Post, Thaksin and book face LM charge, 4 Oct 2014

¹⁴Nation, Banned game found offensive to monarchy, 6 August 2014

¹⁵Prachatai, Thai authority boasts blocking 1,200 alleged *lèse majesté* websites, 17 December 2014

Between 5 January and 10 March 2015, the government's Technology Crime Suppression Division (TCSD) blocked an additional 510 URLs (including pages from Facebook, YouTube, blogs, and web boards) because their content was deemed to violate Article 112.¹⁶

The website of the British tabloid Daily Mail has been blocked by the junta since 25 May 2014 when the website posted a video of the Thai Crown Prince and his then-wife.

In February 2015, the Secretary-General of Thailand's National Broadcasting and Telecommunications Commission (NBTC), said NBTC had asked Facebook, YouTube, and messenger application Line to remove content critical of the Thai monarchy.¹⁷

In an effort to increase the effectiveness of their monitoring capabilities, Thai governments have increasingly resorted to private citizens to track online lèse-majesté content. In July 2014, the Ministry of Information and Communications Technology (MICT) announced it would expand its existing 'cyber scout network'. The ministry planned to hold seminars to train more than 500 'cyber scouts' on how to monitor and report websites to the authorities. The cyber scout project was launched in 2011 and created a network of more than 380 cyber scouts from different educational institutions across the country.¹⁸

The NCPO also stepped up efforts aimed at legalizing pervasive controls over electronic communications. In early January, the NCPO approved a draft Cyber Security Bill. The proposed legislation envisions the establishment of a government-run committee responsible for detecting and responding to online threats to national security and stability.¹⁹ The committee would have the authority to access information on personal computers, mobile phones, and other electronic devices without a court order.²⁰ The bill has been introduced in the junta-appointed National Legislative Assembly (NLA). NCPO head General Prayuth Chan-ocha indicated that one of the objectives of the Cyber Security Bill was to crackdown on online lèse-majesté content.²¹

Restrictions inconsistent with Thailand's obligations under the ICESCR

¹⁶Bangkok Post, Lese majeste fight goes online, 16 March 2015

¹⁷Straits Times, Thailand agency defends mass cyber surveillance, 12 February 2015

¹⁸MCOT, Thai ICT Ministry to expand Cyber Scout project, 22 July 2014

¹⁹Khaosod English, Thai Internet Freedom Threatened by Junta's New Bill, NGO Warns, 22 January 2015

²⁰Committee to Protect Journalists, Cyber security bill threatens media freedom in Thailand, 22 January 2015

²¹Prachatai, Junta leader admits controversial digital economy bills target lese majeste, 22 January 2015

With regard to the limitations to the right to take part in cultural life, in its General Comment 21, the CESCR says that states cannot invoke “cultural diversity” to infringe upon human rights guaranteed by international law, nor to limit their scope.²² However, numerous Thai officials have repeatedly claimed that strict enforcement of harsh *lèse-majesté* legislation in Thailand is necessary due to the 'unique character' of the Thai monarchy.²³

The CESCR also underscores that the limitation to the right in question must be “proportionate” and that the “least restrictive measures” must be taken when several types of limitations may be imposed.²⁴ It is apparent that Thailand fails to meet both criteria with regard to the impact of Article 112 on the enjoyment of the right to everyone to participate in cultural life. Harsh prison sentences, pervasive censorship, and curbs on the free flow of ideas and information cannot be considered as “proportionate” and “least restrictive measures”. In addition, under NCPO rules, *lèse-majesté* offenses fall under the same category as offenses against the security of the state and offenses under the laws on firearms, ammunition, explosives, fireworks, and artificial weapons. *Lèse-majesté* offenses currently fall under the jurisdiction of military courts, thus considerably reducing guarantees of fair trial.

Finally, according to the CESCR, Thailand should prove that such “regressive measures” taken in relation to the right of everyone to take part in cultural life are justified.²⁵ However, Thailand has consistently failed to explain why such regressive measures are necessary, apart from vague assertions equating *lèse-majesté* to offenses that affect the morale of the public and amount to national security threats.

Recommendations to the government:

- Promote a free, open, and informed public debate on the reform of Article 112.
- Amend Article 112 of the Criminal Code to remove potential jail time.

²²UN Committee on Economic, Social and Cultural Rights, General comment No. 21, Right of everyone to take part in cultural life (art. 15, Para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), 21 December 2009, UN Doc. E/C.12/GC/21, Para. 18

²³For some examples of statements by Thai officials, please see: Straits Times, Thailand agency defends mass cyber surveillance, 12 February 2015; Khaosod English, Thai Junta to Diplomats: Lese Majeste is 'Cultural Offense', 11 February 2015; “*Lèse-majesté*”: A distinctive Character of Thai Democracy amidst the Global Democratic Movement, 27 July 2014; available at: <http://www.thailandtoday.in.th/monarchy/elibrary/article200>

²⁴UN Committee on Economic, Social and Cultural Rights, General comment No. 21, Right of everyone to take part in cultural life (art. 15, Para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), 21 December 2009, UN Doc. E/C.12/GC/21, Para. 19

²⁵UN Committee on Economic, Social and Cultural Rights, General comment No. 21, Right of everyone to take part in cultural life (art. 15, Para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), 21 December 2009, UN Doc. E/C.12/GC/21, Para. 46

- Reserve the power to file complaints under Article 112 to the Bureau of the Royal Household.
- Ensure that protection of the monarchy does not impinge on the rights to freedom of opinion and expression.
- Immediately and unconditionally release Pornthip Munkong aka Golf, Patiwat Saraiyaem aka Bank, and all other individuals imprisoned under Article 112 for the mere exercise of their fundamental rights to the freedom of opinion and expression.
- End prosecutions under Article 112 of individuals who are merely exercising their fundamental rights to freedom of opinion and expression.
- Cease all acts of harassment against artists, students, and academics in Thailand and in exile.
- Lift the ban on publications and all other cultural material to ensure a free flow of ideas and information.
- Amend the Cyber Security Bill to ensure that any surveillance of electronic communications is subject to judicial oversight.
- Ensure that restrictions on the right to participate in cultural life are compatible with Thailand's obligations under international treaties to which it is a state party.
- Sign and ratify the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights.