



**Contribution to the Universal Periodic Review Mechanism
12th session of the Working Group of the Universal Periodic Review (UPR)**

**A Joint UPR Submission on the Kingdom of Thailand by the International
Publishers Association (IPA), PEN International (NGOs in Consultative Status with
ECOSOC) & Index on Censorship**

14 March 2011

1. IPA, on behalf of the submitters, welcomes the opportunity provided by the Office of the High Commissioner on Human Rights to comment on the human rights situation in the Kingdom of Thailand. This document provides an overview of the current situation for publishers, writers, and journalists in particular. This joint submission also includes a set of recommendations whose aim is to improve the overall conditions for freedom of expression in the Kingdom of Thailand.

2. Thailand's 2007 Constitution guarantees basic rights and freedom of expression.

3. However, the Thai Constitution includes a *lèse-majesté* clause, section 8¹. In addition, Thailand has a *lèse-majesté* law (Penal Code, Article 112²) under which the King, Queen, the Heir and the Regent are protected. This article fails to define what constitute defamation or insult and has therefore been exploited by politicians and the State, and used to eliminate political opposition. Anyone can actually file a *lèse-majesté* complaint against anyone seen as having defamed the Kingdom's monarch and the Royal Family. This article is also an obstacle for historians and political scientists to conduct studies related to government under the absolute monarchy system (i.e. before 1932).

4. In a welcome move, the 1941 Printing and Publishing Act³, which gave the Police unlimited powers to seize any publication deemed to threaten "public order or public morality", was replaced in December 2007 by the Publishing Registration Act B.E. 2550.

¹ "The King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action".

² "Whoever defames, insults or threatens the King, Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years."

³ Based on the 1941 Printing Act, the printing officer within the Police had the power to ban a book it deemed to constitute a threat to public order. For instance, in October 2007 the printing officer banned Sulak Sivarak's collected essays, *Over half a century of the obstacles to Thai Democracy*. This book was indeed deemed to be a threat to public order.

In April 2007, the Board of Censors demanded that 4 scenes be cut from the movie *Syndromes and a Century* by Aphichatpong Wirasetkun in order for the film to be shown commercially. In 2007-2008, the Ministry of Culture banned more than 50 songs. During the 2008 National Book Fair, the police confiscated 90 titles, all considered to be pornography. Between 1958 and 1973, 350 book titles were banned. The peak was reached after the 6 October 1976 coup. From 1977 until 1980, the Ministry of Interior issued several lists of banned books. Some of them were academic and research works such as *Thai Peasants and Change* by anthropologist Dr. Suthep Sunthornphesat and *Tactics in Solving Poverty in Thailand* by economist Dr. Rangsan Thanaphonphan. Since the 1976 coup, most of the banned books have been pornography books.

5. Under the new law, newspapers issued in the Kingdom must register their publications. Government agencies have no right to consider whether to issue the publisher applicants a license as long as they submit all the required documents stated by the law. However, publishers remain subject to charges of libel or lèse-majesté.

6. All publishers of print and electronic media must be 20 years of age and reside in Thailand. If they have ever been sentenced to imprisonment, they must have been discharged for not less than three years, except for an offence committed through negligence or a petty offence.

7. According to Article 10 of the Publishing Registration Act B.E. 2550, the Head of the Police Department may ban foreign publications that are deemed to be harmful to national security, or fall under the lèse-majesté category.

8. To date, despite the removal of the 1941 Printing and Publishing Act in 2007, the Ministry of Interior's 2 lists of 204 banned books have not been lifted⁴.

9. The 2007 Computer Crimes Act, coming into force in July 2007, provides the authorities with yet another tool to shut down "inappropriate" websites. It prescribes penalties of up to THB 100,000 (approx. US\$3,000) and up to five years' imprisonment for anyone found guilty of online defamation, including lèse-majesté. It is the key legislation used by Thai authorities to limit the free flow of information on the Internet. In particular, the content offences committed via a computer, which are already crimes in the Penal Code (Sections 14-17) are the offences of the Computer Crimes Acts which have created most of the controversy, as the authorities have applied these provisions to block thousands of websites and to prosecute Internet users and ISPs. Section 14 is the most controversial as it includes offences against national security, therefore covering lèse-majesté.

10. In October 2008, the Ministry of Information and Communications Technology (MICT) announced plans to build a gateway to block websites with content defaming the royal institution. In August 2009, a police taskforce within MICT was created to monitor websites and identify those posting content that violates the lèse-majesté law. In June 2010, Thailand's Cabinet approved the creation of an online crime agency (the Bureau of Prevention and Eradication of Computer Crime) that will pursue violators of the Kingdom's lèse-majesté law.

11. Between 2007 and 2010, the authorities shut down 74,686 URLs. Out of these, 128 were shut down on defamation or lèse-majesté charges. MICT itself claimed in January 2009 to have blocked 2,300 websites under the lèse-majesté law. The current trend of multiple prosecutions for the same offences (lèse-majesté) is clearly designed to stifle commentary, opinion and dissent. Harassment and intimidation are reported to be routinely employed to dissuade in particular Internet users from freely expressing their views. Some Internet users have even been arrested. Blogger Suvicha Thakor was convicted under the law and sentenced to a 10-year prison term in April 2009. He then applied for royal clemency and was pardoned by King Bhumibol Adulyadej in June 2010.

⁴ www.banprak-nfe.com/webboard/index.php?topic=499.0

Executive Director of independent news website Prachatai, Chiranuch Premchaiporn, was arrested on 24 September 2010 at Bangkok international airport for violation of sections 14 and 15 of the Computer Crimes Act. This is not the first time that she is facing charges of violating the Computer Crimes Act. The trial started on 4 February 2011. She is facing more than 50 years' imprisonment if convicted of charges that she violated the Computer Crimes Act due to her alleged failure to take down comments from the web board that the government claimed were insulting to the monarchy.

12. Two laws (the 2007 Computer Crimes Act and the lèse-majesté law), which can be filed under the Penal Code and Civil and Commercial Codes, can be exploited against any activity that is considered a “threat to national security, public order and public morality”. Overall, there is an abuse of lèse-majesté legislation to stifle freedom of expression.

13. In addition, defamation is a criminal offense in Thailand under the Penal Code, carrying a maximum jail term of two years.

14. As a consequence, the practice of self-censorship has become more and more common among Thai writers, journalists and publishers.

15. The submitters' recommendations to the Thai authorities:

1. Work with local freedom of expression groups and trade associations for a moratorium on lèse-majesté prosecution so that a constructive dialogue can begin on the issue of freedom of expression, freedom to publish and Internet Freedom; In that context, drop the lèse-majesté charges against those already being prosecuted, at the very least provide them with a swift and fair trial;
2. Repeal Article 112 of the Penal Code, or make it explicit that it can be used by the Royal Household only;
3. Amend the 2007 Computer Crimes Act, in particular Sections 14⁵, 15⁶, and 16⁷ so as to avoid the shutting down or blocking of “inappropriate” websites and the arrest, prosecution, and imprisonment of internet users; In particular, drop all mention of “national security” in Section 14;
4. Decriminalize defamation;
5. Lift the ban on the 204 book titles;
6. Stop the blocking of web sites;

⁵ . If any person commits any offence of the following acts shall be subject to imprisonment for not more than five years or a fine of not more than one hundred thousand baht or both: (1) that involves import to a computer system of forged computer data, either in whole or in part, or false computer data, in a manner that is likely to cause damage to that third party or the public; (2) that involves import to a computer system of false computer data in a manner that is likely to damage the country's security or cause a public panic; (3) that involves import to a computer system of any computer data related with an offence against the Kingdom's security under the Criminal Code; (4) that involves import to a computer system of any computer data of a pornographic nature that is publicly accessible; (5) that involves the dissemination or forwarding of computer data already known to be computer data under (1) (2) (3) or (4);

⁶ Any service provider intentionally supporting or consenting to an offence under Section 14 within a computer system under their control shall be subject to the same penalty as that imposed upon a person committing an offence under Section 14.

⁷ Section 16 of the Computer Crimes Act allows prosecutions for defamation committed on the Internet.

7. Amend Article 10 of the 2007 Publishing Registration Act B.E. 2550 so as to limit the foreign publication banning powers of the Head of the Police Department.