



**UNIVERSAL PERIODIC REVIEW
SUBMISSION FOR
THE KINGDOM OF THAILAND**

NGO Submission

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ABOUT HRF

1. The Human Rights Foundation (HRF) is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies. HRF unites people in the common cause of defending human rights and promoting liberal democracy. Our mission is to ensure that freedom is both preserved and promoted around the world.
2. The Human Rights Foundation Center for Law and Democracy (HRF-CLD) is a program of the Human Rights Foundation (HRF). HRF-CLD promotes legal scholarship in the areas of comparative constitutional law and international law, with a focus on international human rights law and international democracy law.

INTRODUCTION

3. This submission was prepared by the Human Rights Foundation (HRF) for the Universal Periodic Review (UPR) of Thailand. In this submission, HRF evaluates Thailand's implementation of recommendations made in the previous UPR and details the restrictions on freedom of expression and political participation.

THAILAND'S POLITICAL BACKGROUND

4. HRF considers Thailand to be a fully authoritarian regime. The country's military exercises significant control over the government which prevents meaningful competition in elections. Opposition candidates are regularly excluded, and basic civil liberties are often violated.
5. In May 2014, General Prayuth Chan-Ocha led a military coup, installed himself as the prime minister of Thailand, and created the National Council for Peace and Order (NCPO).ⁱ The junta established direct military rule over all government decisions, prohibited public gatherings and political activities, and repeatedly refused to hold elections until 2019. The 2019 elections were neither free nor fair and General Prayuth seized a second term in office after six percent of votes in the country were invalidated and anti-junta campaigners were silenced.ⁱⁱ
6. The 2014 military coup marks the 12th coup in Thailand since 1932, an indication of the country's long-term political instability.ⁱⁱⁱ This past year, the military-controlled government continued to suppress dissent, unjustly prosecute pro-democracy activists, ban opposition candidates from electoral competition, and abuse emergency powers during the COVID-19 pandemic to escape its international human rights obligations.

FOLLOW-UP TO THE PREVIOUS REVIEW

7. On May 13, 2016 the Human Rights Council considered and adopted the outcome of the review of Thailand at its 16th meeting. After reviewing the total number of 249 recommendations, the government of Thailand accepted 181 recommendations, accepted 6 at a later stage,^{iv} and noted 62 recommendations.^v
8. Although Thailand accepted a large number of recommendations, it did not accept many of those that suggested better protections of the civil and political rights of its citizens. Thailand noted, instead of accepted, recommendations 159.9, 159.13–159.16, 159.18–159.19, 159.32–159.34, 159.36–159.47, 159.50–159.63.^{vi} The recommendations advised to end the use of arbitrary detention according to human rights obligations under the International Covenant on Civil and Political Rights (ICCPR); eliminate mandatory minimum sentences for lesè-majesté offenses; amend Article 112 of Thailand’s Criminal Code to end prison terms for individuals who exercise freedom of expression; and to end the prosecution of civilians in military courts. Thailand continues to arbitrarily detain its citizens for dissent against the government under its new emergency laws during the COVID-19 pandemic, defamation laws, computer crime laws, and the lesè-majesté provision in the Criminal Code. A lesè-majesté offense still carries a minimum three-year prison sentence, and individuals often receive harsh prison sentences for freedom of expression. However, Thailand ceased the prosecution of civilians in military courts in 2016.^{vii}
9. In 2016, Thailand responded to the recommendations for better civil and political rights claiming that it was still in a political transition after the 2014 coup and needed certain laws that suppress freedom of speech and expression to maintain security.^{viii} Currently, Thailand is using the emergency powers from COVID-19 to abuse laws that suppress freedom of speech and expression under the guise of protecting public health and security.
10. Thailand noted recommendations 159.1-159.8, 159.11, and 159.65, which concerned the ratification of international human rights treaties. Thailand also noted recommendation 159.12 which concerns the implementation of international human rights obligations. Thailand has not ratified or accepted the second optional protocol to the ICCPR, the optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the optional protocol to the Convention on the Rights of Persons with Disabilities, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the International Convention for the Protection of All Persons from Enforced Disappearance.

11. In response, Thailand claimed that, “As of now, our efforts and priorities of the work towards the ratification of additional conventions are given to those that are of our interests, namely the ICPED, OPCAT, ICCPR-OP1, Marrakesh Treaty, and the ILO Convention No. 188 (concerning work in the fishing sector).”^{xix} In regard to its human rights obligations and the recommendation to ensure that national courts enforce international law, Thailand stated that it follows a dualistic legal system in which international treaties are not directly applicable, even though there are several instances in which a national court, in domestic legal cases, referred to international legal instruments.^x

RESTRICTIONS ON FREEDOM OF EXPRESSION

12. Thailand has abused its emergency powers during the COVID-19 crisis to restrict freedom of speech and expression. On March 26, 2020 the Thai government declared a state of emergency to control the spread of COVID-19, allowing the state to enforce mandatory quarantines, censor information that might lead to public panic, and streamline operations for disease prevention.^{xi xii} Under a state of emergency, the Thai government acts through the Emergency Decree on Public Administration in Emergency Situation. The nationwide decree offers the government vast powers to preserve national security by restricting individual liberties.^{xiii} Thailand abuses these emergency powers to unjustly criminalize criticism of the government and silence pro-democracy advocates who participate in protests against the regime.

13. For instance, the emergency declaration^{xiv} from March 2020 punishes individuals who share information regarding COVID-19 that the government arbitrarily deems as “false or capable of causing fear in the public” by up to five years in prison.^{xv} The decree allows the government broad latitude to determine what “false” means and permits government control over media content.^{xvi} The decree also allows prosecution under defamation, the Computer Crime Act^{xvii}, and the *lèse-majesté* provision of Article 112 of the Criminal Code that forbids insults or threats to the royal family.^{xviii} Thailand historically has used these laws to brutally suppress dissent, but the emergency decree expands its use to allow the government to control the narrative of the COVID-19 crisis and exploit a public emergency to further clamp down on any form of dissent, especially online.

14. Thailand’s *lèse-majesté* provision under Article 112 of the Criminal Code punishes anyone who insults or threatens the monarchy with a prison sentence between three and 15 years. The sentences are often larger when used in combination with other defamation laws. In a recent and startling case, a woman named Anchan P., a food seller and former civil servant, was sentenced to 87 years in prison this past January after being convicted under *lèse-majesté* and computer related crimes. Her offense was creating multiple posts with ‘defamatory’ and ‘offensive’ remarks on social media against the monarchy.^{xix} UN

experts and the UN Working Group on Arbitrary Detention have long criticized detention under the lèse-majesté provision of Article 112 as inherently arbitrary and out of step with Thailand's human rights commitments under international law.^{xx}

15. Thailand has also used its emergency powers to deter public demonstrations. On October 15, 2020, Prime minister Gen. Prayut Chan-ocha declared a state of emergency in the capital city of Bangkok shortly after thousands participated in pro-democracy demonstrations against the monarchy and the prime minister's rule.^{xxi} Under the broad state powers granted to the prime minister under the Emergency Decree, he claimed that the demonstrations undermined government measures to control COVID-19, threatened public safety, and caused chaos and disorder in the country.^{xxii xxiii} The declaration banned gatherings of more than five people and forbade any messages that the government decided may harm national security.^{xxiv} Shortly after the announcement, officers used riot gear to forcefully disperse peaceful protestors and arrest 22 activists, three of whom were major leaders in the youth-led movement.^{xxv} In the following days, officers resorted to violent attacks using water cannons with chemical irritants and tear gas against peaceful protestors.^{xxvi}
16. On November 20, 2020, the prime minister also indicated that Article 112 would be used against pro-democracy activists for a wide number of offenses if they continued the demonstrations.^{xxvii} This clear show of force to intimidate freedom of expression is a violation of international human rights standards which cannot be derogated from even during a crisis.^{xxviii}
17. Thailand is a state party to the ICCPR, which requires a state under Article 119 to ensure the right to freedom of expression without interference.^{xxix} Although Article 19 specifies that a state can restrict freedom of expression when it is to respect the rights or reputations of others or for the protection of national security, public order, or public health or morals,^{xxx} the UN Human Rights Committee, which is in charge of the implementation of the ICCPR, has consistently stated that "imprisonment is never an appropriate penalty" for defamation-related offenses.^{xxxi} Moreover, Thailand arbitrarily uses defamation and lèse-majesté laws to suppress dissent and punish democracy activists, using the protection of national security as merely pretext. Both Thailand's arbitrary use of Article 112 of its Criminal Code and its harsh penalty of a minimum three-year detention, is therefore in violation of its obligations under the ICCPR.
18. Although Article 4 of the ICCPR allows states to restrict some liberties during public emergencies, it also states that the restrictions must not be inconsistent with other obligations under international law.^{xxxii} Access to information and freedom of expression are essential, particularly during a public health crisis, as provided under the International Covenant on Economic, Social, and Cultural Rights (ICESCR), to which Thailand is a party.^{xxxiii xxxiv} The Committee in charge of implementing the ICESCR explained in

General Comment No. 14 concerning limits to fundamental rights during public health crises that “restrictions must be in accordance with the law, including international human rights standards, compatible with the nature of the rights protected by the Covenant, in the interest of legitimate aims pursued, and strictly necessary for the promotion of the general welfare in a democratic society.”^{xxxv} UN experts also urge that states should not abuse emergency powers during the COVID-19 crisis to suppress human rights, especially against citizens advocating for their rights against the government.^{xxxvi}

19. Under international law, Thailand’s emergency powers do not allow the government to overhaul the essential right to freedom of expression for the sake of public health during a pandemic. Punishing criticism of the government is not in accordance with international human rights standards that guarantee freedom of expression. Not only are the powers unnecessary for the promotion of general welfare, but they also effectively undermine the general welfare of a society by imprisoning individuals who wish to speak freely and keep the government accountable.

RESTRICTIONS ON POLITICAL PARTICIPATION

20. In a strategic move to silence dissent, Thailand’s authoritarian regime dissolved the Future Forward Party, a leading opposition group critical of military rule. On February 21, 2020, Thailand’s Constitutional Court found that the party was guilty under Section 66 of Thailand’s obscure Political Parties Act for receiving an illegal loan from its leader, Thanathorn Juangroongruangkit.^{xxxvii} Thanathorn denies any wrongdoing and maintains that the loan contract was legal under electoral law.^{xxxviii} The court banned 16 executives of the party, including Thanathorn, from setting up political parties or becoming political party executives for 10 years, effectively excluding it from any major political participation.^{xxxix} Thailand’s formal exclusion of the Future Forward Party is just one example of the junta’s continuous and long-term pattern of unjust restrictions on political participation. In conjunction with the Election Commission, the government has issued various politically-motivated charges against opposition leaders and candidates. These practices violate Thailand’s human rights obligations under Article 25 of the ICCPR regarding participation in public affairs and the right to vote, and further exasperate the country’s precarious political conditions.

21. The Future Forward Party was officially recognized by the Thailand Election Commission in 2018^{xl}, and was established to “make Thai society realize that the return to democracy is the solution to the political crisis and the persistent vicious circle of coups for more than a decade.”^{xli} Its mission was to end the military junta and establish a democracy with respect for human rights and political, social, and economic equality.^{xlii} Their youthful passion for freedom corralled upwards of seven million new voters in the

2019 election and gained 5.3 million votes in their favor.^{xliii}

22. However, the military-controlled government issued an onslaught of attacks to weaken the party and stall its political momentum. For instance, on December 16, 2019, police filed charges against Thanathorn for organizing a peaceful rally against government suppression that attracted more than 10,000 people.^{xliv} He was charged with unlawful public assembly under the Public Assembly Act and the unlawful use of loudspeakers under the Controlling Public Advertisement by Sound Amplifier Act.^{xlv} Both offenses were deemed unlawful because the rights Thanathorn exercised allegedly require government permission, which he failed to acquire.^{xlvi} However, according to UN interpretations of Article 25 of the ICCPR protecting the right to peacefully assemble, citizens are not required to obtain permission to exercise the protected right.^{xlvii xlviii} Thailand's decision to harshly prosecute those who peacefully assemble, particularly the head of a leading opposition party, is a politically-motivated charge that discourages political participation and suppresses dissent.
23. In UN General Comment No. 25 concerning Article 25 of the ICCPR, the Office of the High Commissioner for Human Rights explains that no unreasonable restrictions should be made against citizens exercising freedom of expression, association, or assembly as those are all protected under the freedom to participate in public affairs.^{xlix} Additionally, the state's constitution must assure these protections exist on paper and in practice.¹ Thailand's government fails to fulfill this obligation with its consistent crackdown on dissent that has been allowed to persist as a result of the weak political protections in the military-created constitution.^{li} Thailand must end its arbitrary charges against opposition candidates through the government-controlled Election Commission because it unreasonably restricts participation in public affairs as protected under international law, to which Thailand is obligated.

RECOMMENDATIONS

24. HRF calls on Thailand to:
1. Amend Article 112 and Article 116 of the Thailand Criminal Code, the Computer Crimes Act, and defamation laws in order to stop the criminalization of dissent toward the government or the royal family and end the use of prison sentences for these offenses.
 2. Revise the constitution, which favors the military's authoritarian rule, to expand political freedom in the country.
 3. Drop all politically-motivated charges against opposition parties and activists, and refrain from abusing laws to eliminate political competition and dissent.

4. Adhere to international standards by allowing freedom of expression and access to all information regarding the COVID-19 crisis and drop all charges, and refrain from future charges, against individuals who criticize the government's response to the pandemic.
5. Establish an independent and unbiased election commission that can ensure the integrity of elections and adheres to Article 24 of the ICCPR.
6. Release all prisoners of conscience immediately.

ⁱ Freedom House, *Thailand: Freedom in the World 2020 Country Report*, <https://freedomhouse.org/country/thailand/freedom-world/2020> (last visited Mar. 23, 2021).

ⁱⁱ Hannah Beech & Mukti Suhartono, In Thai Elections, Military Party Takes the Lead, Upending Polls, N.Y. Times (March 24, 2019), <https://www.nytimes.com/2019/03/24/world/thailand-election-results.html>.

ⁱⁱⁱ Adam Taylor & Anup Kaphle, *Thailand's army just announced a coup. Here are 11 other Thai coups since 1932*, Washington Post (May 22, 2014, 7:30 AM), <https://www.washingtonpost.com/news/worldviews/wp/2014/05/20/thailands-army-says-this-definitely-isnt-a-coup-heres-11-times-it-definitely-was/>.

^{iv} Human Rights Council, *Highlights of Thailand's implementation of recommendations and voluntary pledges under the second cycle of the Universal Periodic Review 2016-2018 (Mid-term update)*, para 1.1.

^v Human Rights Council, *Report of the Working Group on the Universal Periodic Review- Thailand (Addendum)*, A/HRC/33/16/Add.1.

^{vi} *Id.*

^{vii} Reuters Staff, *Thai junta will stop prosecuting dissidents in military courts*, Reuters (Sep. 12, 2016, 6:27 AM), <https://www.reuters.com/article/us-thailand-rights-idUSKCN11114T>.

^{viii} A/HRC/33/16/Add.1., para. 17.

^{ix} Human Rights Council, *Compilation Prepared by the Office of the United Nations high Commissioner for Human Rights*, A/HRC/WG.6/25/THA/2.

^x A/HRC/33/16/Add.1., para. 14.

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^{xii} Thailand Emergency Declaration (March 2020), http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/069/T_0010.PDF.

^{xiii} Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005), http://web.krisdika.go.th/data/document/ext810/810259_0001.pdf.

^{xiv} Thailand Emergency Declaration, 2020, http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/069/T_0010.PDF.

^{xv} *Thailand uses Covid-19 to restrict the freedom to inform*, Reporters Without Borders (May 6, 2020), <https://rsf.org/en/news/thailand-uses-COVID-19-restrict-freedom-inform>.

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^{xvii} Computer Crimes Act, B.E. 2550 (2007), <http://thailawforum.com/database1/thailand-computer-crime-law.html>.

^{xviii} *Is Article 112 of Thailand's Criminal Code (Lèse Majesté) violating International Human Rights Law?*, Manushya Foundation (Dec. 22, 2020), <https://www.manushyafoundation.org/post/is-article-112-of-thailand-s-criminal-code-1%C3%A8se-majest%C3%A9-violating-international-human-rights-law>.

^{xix} *Thailand: 87-year prison sentence handed in harshest lèse majesté conviction*, Amnesty International (Jan. 19, 2021), <https://www.amnesty.org/en/latest/news/2021/01/thailand-87-prison-sentence-lese-majeste/>.

^{xx} *UN expert calls for end to lèse-majesté prosecutions amid more arbitrary detentions*, International Federation for Human Rights (Oct. 10, 2017), <https://www.fidh.org/en/region/asia/thailand/un-expert-calls-for-end-to-lese-majeste-prosecutions-amid-more>.

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^{xxiii} *Announcement of the Emergency Decree to manage mobs*, Bangkok Biz News (Oct. 15, 2020), <https://www.bangkokbiznews.com/news/detail/902595>.

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xxviii U.N. General Assembly, *International Covenant on Civil and Political Rights*, art. 19, Dec. 16, 1996, 999 U.N.T.S. 171.

xxix *Supra* note 19.

xxx *Supra* note 28.

xxxi *Supra* note 19.

xxxii *Supra* note 28 at art. 4.

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xlii *Id.*

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xlix UN Human Rights Committee, *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, CCPR/C/21/Rev.1/Add.7 (July 12, 1996), <https://www.refworld.org/docid/453883fc22.html>.

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