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Submission by CIVICUS: World Alliance for Citizen Participation

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And

Asia Democracy Network (ADN)

**CIVICUS: World Alliance for Citizen
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1. Introduction

- 1.1 CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has members in more than 180 countries throughout the world.
- 1.2 The Asia Democracy Network (ADN) is a civil society-led multi-stakeholder platform dedicated to defending and promoting democracy in Asia. ADN aims to strengthen solidarity and a collective voice among Asian civil society engaged in democracy, human rights and development at the global, regional, national and local levels.
- 1.3 In this submission, the two organisations examine the Kingdom of Thailand's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Thailand's fulfilment of the rights to the freedoms of association, peaceful assembly and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination. To this end, we assess Thailand's implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of follow-up recommendations.
- 1.4 During the 2nd UPR cycle, the Government of Thailand received 35 recommendations relating to the space for civil society (civic space). Of these recommendations, 10 were accepted and 25 were noted. An evaluation of a range of legal sources and human rights documentation addressed in this submission demonstrates that the Government of Thailand has partially implemented 24 recommendations relating to civic space and failed to implement 11. While the government has taken some steps to repeal regulations instituted following the military coup in 2014, since its last UPR examination in 2016, acute implementation gaps were found with regard to recommendation to repeal restrictive laws related to the freedom of expression and to respect and protect the right to peaceful assembly.
- 1.5 Thailand has faced years of political disputation between the ruling conservatives and the emerging middle class. Following the coup in 2014, the military took power, operating under the name of the National Council for Peace and Order (NCPO). The military then revoked the 2007 Constitution and promulgated an interim constitution that allowed the NCPO chairman General Prayuth Chan-ocha, in his concurrent position as Prime Minister, to wield absolute power to arbitrarily restrict peaceful political activities and the exercise of other human rights without oversight or accountability.¹ A 2017 constitution, promulgated in March 2018, endorsed the

¹ 'Amnesty International Report 2017/18', Amnesty International, <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>.

continuance of this power.²

- 1.6** On 24 March 2019, Thailand held its first national election since the military coup with the military-backed Phalang Pracharath Party and 18 other supporting political parties winning a majority in the lower house and nominating Prayuth Chan-ocha as continuing prime minister. The authorities lifted some 70 decrees that the NCPO had issued, with all others passing automatically into law. Pending civilian cases were to be transferred from military to civilian courts. However, the military retained expanded powers to carry out arbitrary detentions.³
- 1.7** We are deeply concerned by the use of criminal defamation, lèse majesté and other repressive laws against HRDs, civil society activists and journalists as well as harassment, physical attacks and allegations of enforced disappearances of activists.
- 1.8** We are further alarmed by the crackdown on peaceful protests, the arrests and criminalisation of protesters and use of excessive force by the police.
- 1.9** As a result of these issues, civic space in Thailand is currently classified as 'repressed' by the CIVICUS Monitor, indicating the existence of severe civic space restrictions.⁴

- Section 2 of this submission examines Thailand's implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of association.
- Section 3 examines Thailand's implementation of UPR recommendations and compliance with international human rights standards related to the protection of HRDs, civil society activists and journalists.
- Section 4 examines Thailand's implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of expression, independence of the media and access to information.
- Section 5 examines Thailand's implementation of UPR recommendations and compliance with international human rights standards related to the freedom of peaceful assembly.
- Section 6 contains recommendations to address the concerns raised and to advance implementation of recommendations under the 2nd cycle.
- An annex of the implementation of 2nd cycle UPR recommendations related to civic space is in Section 7.

² 'Thailand: Events of 2017', Human Rights Watch, 2018, <https://www.hrw.org/world-report/2018/country-chapters/thailand>.

³ 'Thailand 2019', Amnesty International, <https://www.amnesty.org/en/countries/asia-and-the-pacific/thailand/report-thailand>.

⁴ CIVICUS Monitor: Thailand, <https://monitor.civicus.org/country/Thailand>.

2. Freedom of association

- 2.1** During Thailand's examination under the 2nd UPR cycle, the government received four recommendations on the right to the freedom of association, all of which it only noted. As evidenced below, the government has partially implemented the four recommendations.
- 2.2** Section 42 of the 2017 Constitution of the Kingdom of Thailand upholds the right to the freedom of association, stipulating that "a person shall enjoy the liberty to unite and form an association, co-operative, union, organisation, community, or any other group." However, this freedom may be subject to restrictions prescribed under "the law enacted for the purpose of protecting public interest, for maintaining public order or good morale, or for preventing or eliminating barriers or monopoly."⁵ Despite these commitments to the freedom of association, CSOs operating in Thailand continue to face unwarranted restrictions in law and practice.
- 2.3** Most local civil society groups in Thailand register as foundations or associations. The Civil and Commercial Code governs the registration of associations (Sections 78 to 109) and foundations (Sections 110 to 136).⁶ It contains several provisions that are vague and inconsistent with international law and designates broad authority to the registrar official to accept or reject a foundation's registration and the appointment of board members.
- 2.4** According to the law, the objective of an association cannot be "contrary to the law and public morals or undermine public order and national security." In addition, section 82 of the Civil and Commercial Code emphasises that the registrar official has the power to consider the status and behaviour of the proposed board members of an association. If the status or behaviour of the proposed board members are deemed "inappropriate or unsuitable" for the objective or the operation of an association, the registrar can reject the application of the board members. In one case from November 2018, a Bangkok registrar official denied an application by Netiwit Chotiphathaisan, a young pro-democracy activist, to become a committee member of Amnesty International Thailand, which is registered as an association, citing his "improper demeanour or the lack of qualification to be a member of the committee." The authorities deemed he was not qualified as he was "not fit for the administration of a good association that serves public interest and to set an

⁵ 'Constitution of the Kingdom of Thailand', 2017,

https://www.constitutionalcourt.or.th/occ_en/download/article_20170410173022.pdf.

⁶ 'Juristic Persons (Section 78-109): Civil and Commercial Code', Thailand Law Library, <https://library.siam-legal.com/thai-law/civil-and-commercial-code-juristic-persons-sections-78-109>.

example for general public and youth.”⁷

- 2.5** The Ministry of Interior (MOI) has also prescribed the rules and regulations that apply to the establishment of a foundation in Thailand. The MOI’s regulations require a minimum financial investment or assets for the registration of a foundation, which is excessive and can be prohibitive for small CSOs.⁸
- 2.6** The registrar is authorised to withdraw the name of an association from the registration database, which results in the dissolution of an association. It can exercise this authority without judicial oversight (section 102 of the Civil and Commercial Code). Further, a registrar or a public prosecutor can submit a request to dissolve a foundation to the court based on the vague grounds that a foundation has carried out its operations contrary to the law and public morals, or is undermining public order and national security (section 131).⁹
- 2.7** CSOs, pro-democracy groups, student networks and labour groups in Thailand have been subjected to multiple forms of intimidation for carrying out their work, particularly during the NCPO administration (2014-2019). For example, in September 2016, Thai police threatened to arrest two employees of Amnesty International who participated in the launch of a report documenting allegations of torture committed by security forces in Thailand. Amnesty International Thailand was also pressured to cancel the event.¹⁰
- 2.8** State officials often label human rights activists and CSOs in Thailand as ‘radical’, ‘anti-development’, or ‘acting as a foreign agent’. As a form of intimidation, security forces conduct both announced and unannounced visits to the offices of civil society groups, especially those working on civil and political rights. The Thai authorities have also undertaken surveillance of critical local and international CSOs. Several international CSOs have experienced significant delays in renewing their operation

⁷ ‘An explanation about the case that the Bangkok Association Registrar (Director General of Department of Provincial Administration) has refused to allow Mr. Netiwit Chotiphathaisal to sit as a board member of Amnesty International Thailand’, Amnesty International Thailand, 25 September 2019, <https://www.amnesty.or.th/en/latest/news/748>.

⁸ For example, the initial investment requirement for a foundation is at either 250,000 Baht or 500,000 Baht (approx. US\$7,900 and approx. US\$15,800) depending on the objective for which a foundation is being incorporated, whereby part of the investment must be evidenced in cash while another part may be evidenced in the form of assets. For a foundation set up for charitable activities to promote education, sport, religion, disaster prevention, treatment, research, or prevention of HIV/AIDS and drug abuse, or that is established by government agencies, 200,000 Baht (approx. US\$6,300) of cash or investment plus 100,000 Baht (approx. US\$3,200) of cash is required for registration. See Letter No. Mor Thor 0402/ Wor 1548, Ministry of Interior, 19 September 1991; Letter No. Mor Thor 0402/ Wor 2073, Ministry of Interior, 18 December 1991.

⁹ ‘Freedom of association in Thailand: An assessment of the enabling environment for civil society’, CIVICUS, October 2020, https://www.civicus.org/documents/reports-and-publications/eena-reports/thailand-CIVICUS-FOA-assessment_en.pdf.

¹⁰ Ibid.

permits and obtaining work permits for their foreign staff members.¹¹

2.9 In February 2021, it was reported that the authorities are proposing a new law to oversee the formation and operation of CSOs. Civil society groups are concerned about the lack of consultation around this law and the possibility that it could impose new restrictions on their work and access to funding.¹² At the time of writing the draft law has yet to be made public.

2.10 The Labour Relations Act (LRA) and State Enterprise Labour Relations Act (SELRA) are two national laws governing the establishment of trade unions. Thai law restricts the rights to the freedom of association and collective bargaining for many groups of workers. For example, as noted by the UN Human Rights Committee, non-Thai nationals, workers in ‘public organisations’ and educational personnel in private and public universities do not have the right to form trade unions. The Civil Service Act also forbids all public sector workers and civil servants, at any level of government, from organising unions or engaging in collective bargaining. Agricultural workers, seasonal workers and workers in the informal economy, who account for over half of Thailand’s workforce, also have no guaranteed rights to form unions or bargain collectively.¹³

2.11 The authorities have also targeted opposition political parties. In February 2020, the constitutional court dissolved the opposition Future Forward party and banned 16 of its leaders from politics for 10 years for violations of election rules. Many believe they were singled out because they pose a threat to the political establishment’s grip on power. Its members have been constantly targeted by authorities, with more than 30 cases opened against them under a range of laws.¹⁴ The opposition Thai Raksa Chart Party was also dissolved in 2019 by the courts for nominating Princess Ubolratana, the King’s sister, as its candidate for prime minister. Fourteen party members were barred from running in elections, setting up political parties, or becoming political party executives for 10 years.¹⁵

3. Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

¹¹ Ibid.

¹² ‘State muzzle for NGOs’, Bangkok Post, 26 February 2021, <https://www.bangkokpost.com/opinion/opinion/2074779/state-muzzle-for-ngos>.

¹³ CIVICUS, October 2020, op. cit.

¹⁴ ‘MPs urge Thai authorities to end attacks on pro-democracy groups’, ASEAN Parliamentarians for Human Rights, 9 November 2020, <https://aseanmp.org/2020/11/09/future-forward-party-dissolved>.

¹⁵ ‘Thailand: Structural Flaws Subvert Election’, Human Rights Watch, 19 March 2019, <https://www.hrw.org/news/2019/03/19/thailand-structural-flaws-subvert-election>.

- 3.1** Under Thailand's previous UPR examination, the government received six recommendations on the protection of HRDs, civil society representatives and journalists. The government committed to several recommendations including to "ensure that human rights defenders in Thailand are treated in accordance with the General Assembly Declaration on Human Rights Defenders" and "that all alleged attacks on human rights defenders are promptly and thoroughly investigated, and that perpetrators are held accountable." All six recommendations were accepted. However, as examined below, the government has only partially implemented these recommendations.
- 3.2** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure the protection of HRDs. However, in spite of this, HRDs, civil society activists and journalists have been criminalised for undertaking their legitimate work.
- 3.3** A number of criminal defamation laws have been used against HRDs, civil society activists and journalists. This includes charges of 'sedition' (section 116 of the Penal Code), a vaguely worded law often used to quash dissent by the authorities, which carries a maximum jail sentence of seven years.¹⁶ During the NCPO's five-year rule, at least 124 people, mostly protest leaders and vocal critics of the NCPO, were charged with sedition.¹⁷ In September 2016, Sirikan Charoensiri, a human rights lawyer, was charged with sedition for being present during a June 2015 protest, which her organisation Thai Lawyers for Human Rights was monitoring.¹⁸ In June 2018, Prawet Prapanukul, a human rights lawyer, was found guilty of sedition and sentenced to 16 months' imprisonment in connection with material he posted on Facebook about Thailand's 1932 revolution, which turned the country from an absolute monarchy into a constitutional one.¹⁹ More recently, sedition charges have been brought against HRDs involved in protests in 2020 calling for democratic reforms.²⁰
- 3.4** The authorities have also used article 112 of the Penal Code (the lèse majesté law) against HRDs. The law prohibits any word or act that "defames, insults, or threatens

¹⁶ Article 116 of the Criminal Code criminalises "actions that aim to change the government, create unrest amongst people or cause people to transgress the law." Prosecutions for sedition, a law rarely used before the coup, have skyrocketed, with almost any criticism of military rule or the junta treated as a basis for charges.

¹⁷ 'As if the NCPO Never Left: Six Years After the Coup and the Persistence of Human Rights Violations', Thai Lawyers For Human Rights, 22/05/2563, <https://tlhr2014.com/en/archives/17808>.

¹⁸ 'Judicial Harassment Against Sirikan Charoensiri', Front Line Defenders, <https://www.frontlinedefenders.org/en/case/judicial-harassment-against-sirikan-charoensiri>.

¹⁹ 'Critics of Military Junta Continue To Be Criminalised', CIVICUS Monitor, 7 September 2018, <https://monitor.civicus.org/updates/2018/09/07/critics-military-junta-continue-be-criminalised>.

²⁰ On 14 and 15 October 2020, five of the protest leaders - Arnon Nampa, Parit 'Penguin' Chiwarak, Prasit Khrutharot, Panusaya 'Rung' Sithijirawattanakul and Nathchanon Pairoj were charged with 'sedition' (article 116 of the Criminal Code). See 'Thailand: Drop charges against peaceful protesters and end restrictions on civic freedoms', CIVICUS, 19 October 2020, <https://www.civicus.org/index.php/media-resources/media-releases/4690-thailand-drop-charges-against-peaceful-protesters-and-end-restrictions-on-civic-freedoms>.

the King, the Queen, the Heir-apparent, or the Regent” and carries up to 15 years of imprisonment for each offence. Pro-democracy activist Jatupat ‘Pai’ Boonphattharaksa was sentenced to five years in prison in August 2017 for posting on his Facebook page a BBC Thai language profile of Thailand’s new monarch, King Maja Vajiralongkorn, also referred to as King Rama 10.²¹ From 2018 the law had been rarely used but in response to mass pro-democracy protests in 2020 there has been an escalation of activists being charged. Since November 2020, the authorities have opened investigations against more than 50 people in relation to alleged lèse-majesté offences. Many of those caught up in these cases have been leaders or participants in the youth-led protest movement.²²

- 3.5** The enforcement of martial law in Thailand’s southern border provinces, where there has been an armed conflict since 2004, have put HRDs at risk of arbitrary detention, enforced disappearance and torture or ill-treatment.²³ In February 2018, soldiers arrested Aiman Hadeng, chair of the Justice for Peace Network and a prominent ethnic Malay Muslim human rights activist, at his house in Yala Province’s Muang district during a security raid.²⁴ In August 2018, authorities arrested and detained Burhan Buraheng of the human rights group Jaringan Mangsa Dari Undang-Undang Darurat under martial law provisions, and held him in a military camp without access to a lawyer.²⁵ In December 2019, heavily armed rangers raided HRD Arfan Wattana’s house in the Narathiwat Province of Thailand.²⁶
- 3.6** HRDs have also faced judicial harassment from businesses. A study by Thailand’s Human Rights Lawyers Association highlighted a rise of strategic lawsuits against

²¹ His sentence was reduced to two-and-a-half years because he pleaded guilty. The case against Jatupat was triggered by a complaint filed by an army officer from a military unit that had repeatedly arrested him for holding public protests and other peaceful activities urging a return to civilian rule. See ‘To Speak Out is Dangerous: Criminalization of Peaceful Expression in Thailand’, Human Rights Watch, 24 October 2019, <https://www.hrw.org/report/2019/10/24/speak-out-dangerous/criminalization-peaceful-expression-thailand>.

²² ‘Thailand: Record-breaking lèse-majesté sentence highlights need for legal reform’, Article 19, 21 January 2021, <https://www.article19.org/resources/thailand-record-breaking-lese-majeste-sentence-highlights-need-for-legal-reform>.

²³ The Thai government’s use of the Martial Law Act in southern border provinces has long enabled the military to violate the basic rights of detainees. This law provides military authorities with legal immunity and broad powers to detain individuals without charge in informal places of detention for up to seven days. There is no effective judicial oversight or prompt access to legal counsel and family members. In addition, there is no effective redress since the law bars remedy or compensation to individuals for any damage caused by military actions done in line with martial law powers. Detention can often be further extended for another 30 days, and be renewed without limits under the 2005 Emergency Decree on Public Administration in State of Emergency.

²⁴ ‘Thai Junta Continues Repression Nearly Four Years After Coup’, CIVICUS Monitor, 17 May 2018, <https://monitor.civicus.org/updates/2018/05/17/thai-junta-continues-repression-nearly-four-years-after-coup>.

²⁵ CIVICUS Monitor, 7 September 2018, op. cit.

²⁶ ‘Activists And Opposition Face Judicial Harassment As Emergency Measures In Thailand Raise Concerns’, CIVICUS Monitor, 8 April 2020, <https://monitor.civicus.org/updates/2020/04/08/activists-and-opposition-face-judicial-harassment-emergency-measures-thailand-raise-concerns>.

public participation (SLAPPs) in Thailand.²⁷ One prominent case is around a poultry company, Thammakaset. Since 2018, the company has brought a slew of civil and criminal defamation lawsuits targeting a broad range of individuals including HRDs Puttanee Kangkun, Angkhana Neelapaijit, Sutharee Wannasiri and Nan Win, in what appears to be retaliation for their reporting and comments on labour abuses.²⁸ In January 2020, Suchanee Cloitre, a Thai reporter working for Voice TV, was sentenced to two years' imprisonment after being convicted of defamation for a Twitter post over working conditions in the Thammakaset company.²⁹

3.7 There have also been physical attacks against HRDs. Pro-democracy activist Ekachai Hongkangwan was physically assaulted by five unknown men in August 2018. The incident took place as he was arriving home after filing a complaint with the authorities demanding a probe into an alleged corruption case. A frequent critic of the government, he was attacked nine times between 2018 and 2020.³⁰ In June 2019, a prominent pro-democracy and anti-junta political activist, Sirawith 'Ja New' Seritiwat, was attacked and beaten by five men wearing plainclothes and motorcycle helmets.³¹ Another activist, Anurak 'Ford' Jeantawanich, was attacked on 25 May 2019 by a group of six to eight men, some wearing motorcycle helmets.³² Thai police have yet to arrest any suspects for the violent attacks, raising serious concerns among civil society about possible government involvement.

3.8 Since the May 2014 coup, Thai authorities have also aggressively pursued the apprehension of pro-democracy activists who took refuge in neighbouring countries, demanding that Cambodia, Laos and Vietnam hand over exiled Thai activists. At least

²⁷ The report shows that "since 1997, 212 SLAPP cases have been brought to Thai courts, some for as little as one social media post." According to the report, SLAPPs are often libel cases and in Thailand individuals can face up to two years in prison and 200,000 Baht fine (approx. US\$6,800) if found guilty of publicly damaging the reputation of other persons. See 'Activists, Lawyers And Critics Continue To Face Harassment And Defamation Charges In Thailand', CIVICUS Monitor, 29 November 2019, <https://monitor.civicus.org/updates/2019/11/29/activists-lawyers-and-critics-continue-face-harassment-and-defamation-charges-thailand>.

²⁸ In 2016, the migrant workers had filed a complaint against their former employer Thammakaset Farm 2, a poultry farm, which at the time supplied Thai food giant Betagro. The workers alleged that they had been forced to work 22-hour days without overtime and often slept in chicken sheds. They also said their passports had been confiscated and their freedom restricted. In July 2020, Sutharee Wannasiri and Nan Win were found not guilty of the accusation of defamation. See 'Civil Society Calls For All Restrictions To Be Lifted Ahead Of Elections As Persecution Continues', CIVICUS Monitor, 13 November 2018, <https://monitor.civicus.org/updates/2018/11/13/civil-society-calls-all-restrictions-be-lifted-ahead-elections-persecution-continues>; CIVICUS Monitor, 29 November 2019, op. cit.

²⁹ CIVICUS Monitor, 8 April 2020, op. cit.

³⁰ CIVICUS Monitor, 7 September 2018, op. cit.; 'Civil Society Concerned About Physical Attacks And Ongoing Prosecution Of Thai Activists', CIVICUS Monitor, 12 July 2019, <https://monitor.civicus.org/updates/2019/07/12/civil-society-concerned-about-physical-attacks-and-ongoing-prosecution-activists>.

³¹ Ibid.

³² Ibid.

eight exiled pro-democracy activists have disappeared since the 2014 coup.³³ In December 2018, two bodies of anti-government activists “stuffed with concrete” were found along the Mekong River border with Laos.³⁴ Three prominent government critics have gone missing after a secret extradition from Vietnam.³⁵ Wanchalearm Satsaksit, a prominent Thai pro-democracy activist living in exile in Phnom Penh, Cambodia, was abducted in June 2020. The alleged abduction took place just a day after he had posted a video on Facebook criticising Prime Minister Prayut.³⁶

4. Freedom of expression, independence of the media and access to information

- 4.1** Under the 2nd UPR cycle, the government received 19 recommendations relating to the freedom of expression and access to information. For example, the government pledged to “ensure the protection of freedom of opinion and expression” and “condemn and investigate all violence against journalists.” Of the recommendations received, five were accepted and 14 were noted. However, as discussed below, the government has only partially implemented four of these recommendations and has not implemented the other 15.
- 4.2** The Constitution of Thailand states in section 34 that “a person shall enjoy the liberty to express opinions, make speeches, write, print, publicise and express by other means. The restriction of such liberty shall not be imposed, except by virtue of the provisions of law specifically enacted for the purpose of maintaining the security of the State, protecting the rights or liberties of other persons, maintaining public order or good morals, or protecting the health of the people.” However, the freedom of expression is curtailed in both law and practice.
- 4.3** The Computer-Related Crime Act (also known as the Computer Crimes Act or CCA), enacted in 2007 and amended in 2017, gives the authorities the licence to monitor and suppress online content and prosecute individuals for various broadly defined

³³ ‘Ongoing Use Of Repressive Laws, Thai Activist Abducted, Increased Surveillance In The South’, CIVICUS Monitor, 22 July 2020, <https://monitor.civicus.org/updates/2020/07/22/ongoing-use-repressive-laws-thai-activist-abducted-increased-surveillance-south>.

³⁴ They were among dozens of dissidents who fled the country after the coup. DNA tests confirmed that the two bodies were those of Chatcharn Buppawan and Kraidej Luelert. See ‘Media Censored, Activists Silenced And Opposition Weakened Ahead Of Thai Elections’, CIVICUS Monitor, 21 March 2019, <https://monitor.civicus.org/updates/2019/03/21/activists-being-silenced-media-censored-and-opposition-weakened-ahead-thai-elections>.

³⁵ According to Human Rights Watch, in early 2019, Vietnamese authorities reportedly arrested Chucheep Chivasut (known as Uncle Sanam Luang), Kritsana Thapthai (known as Comrade Young Blood) and Siam Theerawut (known as Comrade Khaoneaw Mamuang) for illegal entry and using fake travel documents as they tried to flee persecution from authorities in Thailand. The three were reportedly handed over to Thai authorities on 8th May 2019. See CIVICUS Monitor, 12 July 2019, op. cit.

³⁶ CIVICUS Monitor, 22 July 2020.

violations of the law.³⁷ The authorities have often charged critics under section 14 (2) of the CCA, which prohibits “putting into a computer system false computer data in a manner that is likely to cause panic in the public.” In October 2018, Thai police accused a rap group of defaming the country and threatened to charge them under the CCA.³⁸ In February 2019, the authorities charged Thanathorn Juangroongruangkit and other two leaders of the Future Forward Party over their Facebook commentaries alleging that the junta bribed opposition politicians to join Prime Minister Prayut’s side in the general election. In April 2019, pro-democracy activist Anurak Jeantawanich was charged for his Facebook commentaries accusing the NCPO of manipulating the general election to allow Prayut to hold onto power.³⁹ In March 2020, Danai Ussama was arrested for a Facebook post on the lack of COVID-19 airport screening.⁴⁰

4.4 Outspoken media outlets and reporters often face intimidation and punishment for commentaries critical of the authorities. In May 2018, the National Broadcasting and Telecommunications Commission suspended Peace TV for a month due to its content broadcast that “was considered likely to incite conflict.”⁴¹ Voice TV’s outspoken news talk programmes ‘Tonight Thailand’ and ‘Wake Up News’ were forced off air for 15 days in March 2018 and 30 days in September 2018.⁴² In March 2019, prominent news anchor Orawan Choodee was removed from the political debate programme ‘Election War 19’ on the state-controlled MCOT Channel 9 after she asked questions critical of General Prayut and the NCPO junta. Before the general election in March 2019, stories about Thailand on major international news networks, including Al Jazeera, the BBC and CNN, were cut off by the authorities for many days on the main cable television service provider, True Visions.⁴³

³⁷ In particular, the law provides for a penalty of up to five years in prison and a fine of up to 100,000 Thai Baht (approx. US\$3,000) for anyone who inputs into a computer system: “false” or “distorted” information “in a manner that is likely to cause damage to the public”; “false computer data in a manner that is likely to damage the maintenance of national security, public safety, national economic security or public infrastructure serving national public interest or cause panic in the public”; and “any computer data which is an offense about the security of the Kingdom or is an offense about terrorism.” The forwarding or sharing of any content that violates article 14 is punishable by up to five years in prison and a fine of up to 100,000 Thai Baht (approx. US\$3,000). See “‘They are always watching’ – Restricting freedom of expression online in Thailand”, Amnesty International, 2020, <https://www.amnesty.org/download/Documents/ASA3921572020ENGLISH.pdf>.

³⁸ The music video song ‘Prathet Ku Me’ (‘What My Country Has Got’) by Rap Against Dictatorship, which was uploaded to YouTube, shows different individuals rap about social and political issues, especially those surrounding military coups. The backdrop in the video displayed scenes of the 1976 massacre of pro-democracy student protesters by security forces. The video garnered over 21 million views in just seven days and the hashtag #MyCountryGot went viral, generating a debate on issues facing the country. See CIVICUS Monitor, 13 November 2018, op. cit.

³⁹ ‘Thailand: Events of 2019’, Human Rights Watch, 2020, <https://www.hrw.org/world-report/2020/country-chapters/thailand>.

⁴⁰ CIVICUS Monitor, 8 April 2020, op. cit.

⁴¹ CIVICUS Monitor, 17 May 2018, op. cit.

⁴² ‘Thailand: Events of 2018’, Human Rights Watch, 2019, <https://www.hrw.org/world-report/2019/country-chapters/thailand>.

⁴³ ‘Thailand: Events of 2019’, Human Rights Watch, op. cit.

- 4.5** In October 2020, around mass pro-democracy protests, the police issued several warnings against news reports and social media commentary critical of the monarchy, the government and the political situation in the country. It was deemed illegal to livestream pro-democracy protests or post selfies at a protest site. International news reporting on Thailand, such as by the BBC World Service, was blocked on True Visions.⁴⁴
- 4.6** Academics and politicians have also been silenced. In July 2017, five academics were summoned after the 13th International Conference on Thai Studies was held. The authorities alleged that issues deemed critical of the ruling military junta were discussed during the conference.⁴⁵ In May 2018, three politicians from the Pheu Thai party, Chaturon Chaisang, Watana Muangsook and Chusak Sirini, were charged with sedition for holding a press conference that criticised the military junta.⁴⁶
- 4.7** In February 2019, the National Legislative Assembly of Thailand passed a bill on cybersecurity. The bill gives authorities the right to bypass court orders in “critical” situations. It also allows state officials to seize, search, infiltrate and make copies of computers, computer systems and information in computers without a court warrant if an appointed committee deems there to be a high-level security threat. Relevant courts can later be informed of such actions. Activists fear this will allow the government sweeping access to people's personal information.⁴⁷
- 4.8** Using the draconian 2005 Emergency Decree on Public Administration in Emergency Situation, a state of emergency was declared on 24 March 2020 in response to the COVID-19 pandemic.⁴⁸ The decree grants officials immunity from prosecution for any human rights violations they commit during the emergency. Following this, the Thai authorities attempted to shut down criticism from the media, healthcare workers and the public about their response to the pandemic. The authorities also issued a list of prohibitions under the state of emergency, including vague and broad restrictions on the freedom of expression and media freedom that

⁴⁴ ‘Authorities Escalate Crackdown On The Youth-Led Protest Movement In Thailand’, CIVICUS Monitor, 30 October 2020, <https://monitor.civicus.org/updates/2020/10/30/authorities-escalate-crackdown-youth-led-protest-movement-thailand>.

⁴⁵ ‘Intimidation, Prosecution And Detention: Closing Spaces For Dissent In Thailand’, CIVICUS Monitor, 29 September 2017, <https://monitor.civicus.org/updates/2017/09/29/intimidation-prosecution-and-detention-closing-spaces-dissent-thailand>.

⁴⁶ CIVICUS Monitor, 7 September 2018, op. cit.

⁴⁷ CIVICUS Monitor, 21 March 2019, op. cit.

⁴⁸ The 2005 Emergency Decree does not comply with all the human rights guaranteed under the Thai Constitution and its international human rights obligations, including under the International Covenant on Civil and Political Rights, to which Thailand is a party. These rights include, among others, the rights to liberty and freedom from arbitrary detention, and freedoms of expression, assembly and movement.

could be enforced by prosecution.⁴⁹

- 4.9** To allow for the right to information, the Official Information Act was approved in July 1997 and went into effect in December 1997. The Act allows citizens to demand official information from a state agency. However, the law does not provide detailed guidance on the procedures and necessary steps to be taken by those making the request to demand access to information. The law is also extremely vague with regard to setting the deadlines and rules on extensions. It only stipulates that the body must respond within a “reasonable time”.⁵⁰

5. Freedom of peaceful assembly

- 5.1** During Thailand’s examination under the 2nd UPR cycle, the government received six recommendations on the right to the freedom of peaceful assembly. Among other recommendations, the government committed to “guarantee and respect the right to freedom of assembly” and to “remove undue restrictions on freedom of assembly.” Of the recommendations received, only one was accepted and was partially implemented. The other five were not implemented.
- 5.2** Section 44 of the 2017 Thailand Constitution states that “a person shall enjoy the liberty to assemble peacefully and without arms. The restriction of such liberty under paragraph one shall not be imposed except by virtue of a provision of law enacted for the purpose of maintaining security of the State, public safety, public order or good morals, or for protecting the rights or liberties of other persons.”⁵¹ However, in policy and practice this right has been restricted and the police have used excessive and disproportionate force to disperse peaceful protests.
- 5.3** When the NCPO was in power (2014-2019), article 12 of NCPO order 3/2015 prohibited political gatherings of five or more people without permission of the head of the NCPO or an authorised representative. Violation of this provision was punishable with imprisonment not exceeding six months or a fine not exceeding 10,000 baht (approx. US\$325), or both. It was used repeatedly to arrest people holding peaceful demonstrations against the junta and calling for elections.⁵²
- 5.4** Enacted in 2015, the Public Assembly Act requires those wishing to hold a public assembly to notify the authorities at least 24 hours in advance of the time, place and

⁴⁹ ‘Thailand: State of Emergency Extension Unjustified’, Human Rights Watch, 27 May 2020, <https://www.hrw.org/news/2020/05/27/thailand-state-emergency-extension-unjustified>.

⁵⁰ ‘The Right to Information in Thailand’, Article 19, 15 October 2015, <https://www.article19.org/resources/the-right-to-information-in-thailand>.

⁵¹ ‘Constitution of the Kingdom of Thailand’, op. cit.

⁵² On 11 December 2018, the NCPO issued order 22/2018, which lifted the ban on political gatherings and certain other political activities in advance of the planned elections. Section 1(7) of NCPO order 22/2018 nullified section 12 of NCPO order 3/2015. However, section 2 of the order noted that “the nullification of announcements and orders in [section] 1 does not impact the prosecution of cases, proceedings or actions according to the announcements and orders which were carried out prior to the nullifications by this order.” See Human Rights Watch, 24 October 2019, op. cit.

objective of the assembly. Failure to provide such notice is an offence with a possible penalty of up to 10,000 baht (approx. US\$325). The law also prohibits holding public assemblies within 150 meters of specified royal palaces, courts, Government House, or the National Assembly. Violation of those restrictions can be punished with up to six months in prison and a fine of up to 10,000 baht (approx. US\$325). Sections 15 and 16 impose vaguely worded “duties” on both protest organisers and participants, including a duty not to cause “unreasonable inconvenience” to any person. The law has been used as an additional charge against protesters and is being increasingly cited since the nullification of NCPO order 3/2015.⁵³

- 5.5** In recent years, numerous pro-democracy protests have been targeted by the authorities. In May 2018, on the fourth anniversary of the military coup in Thailand, hundreds of pro-democracy activists participated in a peaceful protest in Bangkok calling for an end to military rule. Fifteen activists were arrested on the day of the protest and subsequently charged with various offences including Article 12 of NCPO order 3/2015 and the Public Assembly Act.⁵⁴ In September 2018, prosecutors charged six pro-election activists who rallied on Ratchadamnoen Avenue in February 2018 with sedition and violating Article 12 of NCPO order 3/2015.⁵⁵ On 2 February 2019, five people were arrested for demonstrating outside Government House calling for Prime Minister Prayut’s resignation. Two students, Parit Chiwarak from Thammasat University and Tanawat Wongchai from Chulalongkorn University, were charged with violating the 2015 Public Assembly Act, for failing to give the police 24 hours’ advance notice of their protest.⁵⁶
- 5.6** Since the beginning of 2020, a youth-led protest movement has gathered and marched to demand the dissolution of Thailand’s military-backed government, the drafting of a new constitution and an end to the harassment of activists and government critics. The movement has increasingly articulated demands for reform of the monarchy, a development without precedent in recent Thai history. In response to the protests, on 15 October 2020, the authorities declared a “severe state of emergency”, banning gatherings of five people or more in the capital.
- 5.7** In the crackdown on protesters at least 90 people were arrested between 13 and 21 October 2020 and peaceful protests were dispersed, in some instances with excessive force. Authorities also physically blocked access to protest sites and shut down transportation networks. The majority of individuals arrested have been charged with breaches of the “severe state of emergency”, but some also face charges of sedition and charges under the CCA. Young Thai students who were involved in protests reported that police officers went into schools to intimidate

⁵³ Ibid.

⁵⁴ CIVICUS Monitor, 7 September 2018, *op. cit.*

⁵⁵ CIVICUS Monitor, 13 November 2018, *op. cit.*

⁵⁶ CIVICUS Monitor, 21 March 2019, *op. cit.*

students by taking photos and questioning children who participated in rallies.⁵⁷ Since November 2020, the authorities have also deployed article 112 of the Penal Code (lèse-majesté) against pro-democracy protesters.⁵⁸

- 5.8** The authorities have also attempted to block the pro-democracy protesters from marching, including by putting up barriers and barbed wire. Among incidences of excessive force, on 17 November 2020, during a protest outside parliament, police crowd control units used water cannon laced with purple dye and an apparent teargas chemical, as well as teargas and pepper spray grenades, to forcibly disperse thousands of protesters, including students, some of whom were children.⁵⁹

6. Recommendations to the Government of Thailand

CIVICUS and ADN call on the Government of Thailand to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In the light of this, the following specific recommendations are made:

16.1 Freedom of association

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit the right to association.
- Review and amend the Civil and Commercial Code (Sections 78 to 109) to guarantee that undue restrictions on the freedom of association are removed, in compliance with International Covenant on Civil and Political Rights (ICCPR) articles 21 and 22. Consult meaningfully with civil society in any review of these laws and regulations.
- Revise the Ministerial Regulations on Registration of Foundation and Association so as to minimise the costs required to register a foundation and

⁵⁷ 'Thai Authorities Use Excessive Force, Lese-Majeste Laws To Clamp Down On Pro-Democracy Protests', CIVICUS Monitor, 2 December 2020, <https://monitor.civicus.org/updates/2020/12/02/thai-authorities-use-excessive-force-lese-majeste-laws-clamp-down-pro-democracy-protests>.

⁵⁸ Ibid.

⁵⁹ Ibid.

facilitate a registration procedure that can be easily accessed by people from excluded groups.

- Ensure that processes to draft any new laws to oversee the formation and operation of CSOs include meaningful consultation with CSOs and HRDs and are consistent with international law and standards related to the freedom of association.
- Revise existing national labour laws, including the LRA and SERLA, to guarantee the rights of all workers to effective and autonomous trade unions.
- Halt all forms of politically motivated harassment of the political opposition, including the use of criminal charges, threats, surveillance and disinformation, reverse the dissolution of political parties and ensure parliamentarians are able to fulfil their mandate effectively without fear of reprisals.

16.2 Protection of human rights defenders

- Provide HRDs, civil society members and journalists with a safe and secure environment in which they can carry out their work. Conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation against them and bring the perpetrators of such offences to justice.
- Ensure that HRDs are able to carry out their legitimate activities without fear or undue hindrance, obstruction, or legal and administrative harassment.
- Initiate a consolidated process of repeal or amendment of legalisation that unwarrantedly restricts the legitimate work of HRDs, in line with the UN Declaration on Human Rights Defenders.
- Specifically, repeal or review article 112 (lèse-majesté) and article 116 (sedition) of the Penal Code to bring it in line with the ICCPR, UN Human Rights Committee General Comment No. 34 and the UN Declaration on Human Rights Defenders.
- Protect CSOs and HRDs that seek to engage in public interest issues from retaliation, judicial harassment and interference, including through SLAPP lawsuits, and ensure that public prosecutors and inquiry officers are able to exercise their ordinary powers to dismiss cases that fall under the scope of SLAPP lawsuits.
- Drop all criminal proceedings against HRDs, activists, journalists, political figures and others who have been targeted solely for the peaceful exercise of

their right to the freedoms of expression and peaceful assembly and ensure that those already detained are immediately and unconditionally released.

- End impunity in the southern border provinces by promptly, impartially and efficiently investigating all complaints and other reports of physical attacks or enforced disappearances of HRDs, and where sufficient admissible evidence is found, prosecute suspected perpetrators, irrespective of rank or status.
- Expeditiously enact a law on the prevention and suppression of torture and enforced disappearances.

16.3 Freedom of expression and independence of the media

- Ensure the freedom of expression and media freedom by all bringing national legislation into line with international standards.
- Specifically, review and amend the Computer Crime Act and Cybersecurity law to ensure that these laws are in line with best practices and international standards in the area of the freedom of expression.
- Reform all criminal defamation legislation, in particular articles 326 to 328 of the Penal Code, to bring it into conformity with article 19 of the ICCPR.
- Ensure that journalists can work freely and without fear of criminalisation or reprisals for expressing critical opinions or covering topics that the government may deem sensitive.
- Repeal or amend provisions of the 2005 Emergency Decree to ensure its compliance with Thailand's international legal obligations.

6.4 Freedom of peaceful assembly

- Adopt best practices on the freedom of peaceful assembly, as put forward by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.
- Amend the Public Assembly Act in order to guarantee fully the right to the freedom of peaceful assembly.
- Refrain from imposing detentions on individuals who are exercising their rights to peaceful assembly and who do not present a serious risk to national security or public safety.

- Unconditionally and immediately release all protesters detained for exercising their right to the freedom of peaceful assembly and drop all charges against them.
- Immediately and impartially investigate all instances of excessive force committed by security forces while policing protests.
- Review and, if necessary, update existing human rights training for police and security forces, with the assistance of independent CSOs, to foster the more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.

6.5 Access to UN Special Procedures mandate holders

- The Government should facilitate official visits from the following UN Special Procedures mandate holders: 1) Special Rapporteur on the situation of human rights in Thailand; 2) Special Rapporteur on the situation of human rights defenders; 3) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and 4) Special Rapporteur on the rights to freedom of peaceful assembly and of association.

6.6 State engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with CSOs on all issues mentioned above and enable the more effective involvement of civil society in the preparation of law and policy.
- Include CSOs in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society on the implementation of UPR recommendations, including by holding periodical comprehensive consultations with a diverse range of civil society.
- Incorporate the results of this UPR into action plans for the promotion and protection of all human rights, taking into account the proposals of civil society, and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.