

## THAILAND

### Joint UPR Submission to the UN Universal Periodic Review

### 39<sup>th</sup> Session of the UPR Working Group

### Civic Space in Thailand

Submitted on 25 March 2021

#### 1. Introduction

- 1.1. In this submission, [Manushya Foundation](#), [Access Now](#), The Thai CSOs coalition for the UPR (Universal Periodic Review) , and [The Coalition of Innovation for Thai Youth \(CITY\)](#) examine the compliance of the Thai Government with the recommendations received during the 2<sup>nd</sup> UPR cycle of Thailand, particularly in relation to its international human rights obligations to create and maintain a safe and enabling environment for civil society. In this context, we analyse Thailand’s fulfilment of the rights to freedom of association, peaceful assembly, and expression and unwarranted restrictions on human rights defenders (HRDs), the administration of justice and military courts, and National Human Rights Commission of Thailand (NHRCT) since its previous UPR examination and provide a number of specific, action-orientated follow-up recommendations.
- 1.2. During the 2<sup>nd</sup> UPR cycle, The Royal Thai Government received 58 recommendations in regard to civic space. Of these recommendations, 30 were accepted and 28 were noted, with 5 fully implemented, 7 partially implemented and the rest not implemented.
- 1.3. We are deeply concerned with the prosecution of opposition political parties, the crackdown on peaceful protest, restrictions on criticism, control over the media and online information, judicial and extra-judicial harassment of HRDs and journalists, the denial of fair and public trial, and the ineffectiveness of the NHRCT.
- 1.4. This submission indicates the severe restrictions to civic space in the country, in the following manner:

Section 2 examines Thailand’s implementation of UPR recommendations and compliance with international human rights standards concerning freedom of assembly and association.

Section 3 examines Thailand’s implementation of UPR recommendations and compliance with international human rights standards concerning freedom of expression, independence of the media and access to information.

Section 4 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 5 examines Thailand’s implementation of UPR recommendations and compliance with international human rights standards related to the administration of justice and military courts

Section 6 examines Thailand’s implementation of UPR recommendations and compliance with international human rights standards related to the National Human Rights Commission of Thailand (NHRCT)

Section 7 includes recommendations to the Thai government, addressing the challenges and rights violations discussed in the foregoing sections.

An annex of implementation of 2<sup>nd</sup> cycle UPR recommendations related to civic space can be found in Section 9.

## 2. Freedom of peaceful assembly and association

- 2.1. During Thailand’s examination under the 2<sup>nd</sup> UPR cycle, the government received 11 recommendations on the right to freedom of assembly and association. Of the recommendations received, the government accepted two and noted seven. However, the government has failed to take adequate measures to realize any of these recommendations.
- 2.2. The new Constitution in 2017 provides for the right to freedom of peaceful assembly and association. Section 44 of the Constitution upholds the freedom of any person to assemble peacefully which is subject to the security of the State. Section 42 stipulates freedom of association, but it can be restricted for the purpose of public interest, public order or good morals.<sup>1</sup>
- 2.3. However, pro-democracy and political opposition parties, which after the 2019 elections gained a large political support, have been facing continuous challenges in access to funding and resources and operating in the country. The most outstanding case is the disablement of Future Forward Party (FFP), whose founder as well as members have been criminally harassed since the party was formed in March 2018. On 21 February 2020, the Constitutional Court dissolved the FFP for allegedly violating laws by accepting an illegal loan that exceeds the lending limit from its founder and leader and banned 15 executives of the party from politics for ten years.<sup>2</sup> Another recent example after the dissolution of FFP is Move Forward Party, a reincarnation of FFP, which may also face dissolution for “disrupting peace and order” by encouraging and supporting youth-led protests and calling for the abolishment of Article 112 on lèse-majesté of the Criminal Code.<sup>3</sup>
- 2.4. While in December 2018, Article 12 of Head of the NCPO (HNCPO) Order no. 3/2558, which banned political assemblies of five persons upwards,<sup>4</sup> was repealed, the authorities continue to use different legislation to impose restrictions on the rights to free association and assembly. These include the 2015 Public Assembly Act imposes measures to restrict and interfere with public assemblies. It requires anyone seeking to hold a public assembly to notify the authorities at least 24 hours in advance of the time, place, and aim of the assembly under Article 10. Failure to provide such notice is an offense with a possible penalty of up to 10,000 baht. Moreover, the Act also contains vague provisions in relation to applicable restrictions, such as in case actions may cause “disruption and public disorder”. It also excessively limits protest locations by prohibiting all assemblies near many of the locations such as royal palaces and residences, the National Assembly, Government House, and the Thai courts under Articles 7 and 8. The law gives authorities sweeping powers to instruct the organizers to modify or prohibit the assembly if it is deemed to breach the Act. Additionally, the Act provides for liability of organizers and participants under Articles 15 and

16, including punishment with a fine of up to 10,000 baht or imprisonment for the breach of vaguely worded “duties”, such as a duty not to cause “unreasonable inconvenience” to any person.<sup>5</sup>

2.5. In February 2020, following the dissolution of FFP, protests were organized exclusively on academic campuses against the government, but later were halted due to the pandemic. In March 2020, under the guise of containing the spread of COVID-19, the government invoked the Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005) (Emergency Decree) to declare a state of emergency and ban public gatherings, which was originally scheduled to last a month but repeatedly renewed.<sup>6</sup> On 18 July 2020, the largest protest movement since the 2014 Thai coup, led by Free Youth, began and gained momentum in October, demanding the dissolution of the Parliament, a new Constitution, an end to the authorities’ harassment of government critics and later the reform of the Thai monarchy. In response, the government in October 2020 declared a more stringent “severe state of emergency” which banned the gathering of more than five people, and arrested at least 87 protesters, before revoking this decree one week later.<sup>7</sup> On 19 November 2020, The Prime Minister announced that the government would enforce “all laws and all articles”, against anti-government protesters.<sup>8</sup> Following the PM’s call, royalists started to scour the internet and report on alleged cases of *lèse majesté*, targeting protesters.<sup>9</sup> After a break during the second wave of the pandemic between December 2020 and January 2021, protesters continued holding rallies since February 2021. As of 28 February 2021, at least 382 people have been charged related to protests, according to Thai Lawyers for Human Rights (TLHR).<sup>10</sup>

2.6. **Unlawful use of violence against ‘unarmed’ pro-democracy protesters**

The government escalated the repression of peaceful assembly by the unlawful use of force against peaceful protesters. On 16 October 2020 and the following days, the police used water cannons, mixed with dye and teargas chemicals, and teargas grenades to disperse unarmed protesters in Bangkok. Another instance occurred on 17 November 2020 when the police fired rubber bullets, tear gas and water cannons, resulting in at least 55 injuries mostly from inhaling teargas and 6 protesters suffering gunshot wounds. The injured included a kindergartener and elementary school students.<sup>11</sup> The police brutality remains continuous in 2021, as seen in the most violent protest on 20 March when police shoot water cannons and rubber bullets while people were about to disperse and even beat a protester until he was unconscious.<sup>12</sup> Reportedly, 33 people were injured including three journalists hit by rubber bullets.<sup>13</sup> The violent crackdown on peaceful assembly breaches the state’s obligations to guarantee the fundamental rights of protest organizers and participants and refrain from using less-lethal weapons to disperse nonviolent demonstrations, as provided in General Comment 37 and OHCHR guidance.<sup>14</sup>

2.7. **Violations of the right to freedom of peaceful assembly & of the right to liberty (arbitrary arrest and detention) of Children & Youth**

During the youth-led pro-democracy protest movement, scores of minors have been arrested and prosecuted for exercising their rights. In December 2020, a 16-year-old protester, facing a charge of *lèse-majesté*, was presented by police to the Juvenile Court with a request for a detention order, before the Court denied the detention order and granted conditional bail.<sup>15</sup> On 20 March 2020, 7 minors were arrested and charged, while the youngest is 14 years old.<sup>16</sup> Since the movement in 2020, at least 24 children have faced serious criminal charges for exercising their rights to freedom of expression and assembly. Some were detained at the Regional 1 Border Police Bureau with limited access to lawyers and family.<sup>17</sup> The arrest and ill-treatment of minors are clearly in violation of Article 15 (1) and Article 37 (b) of the Convention on the Rights of the Child (CRC) which requires states to protect children’s rights to freedom of peaceful assembly and refrain from arbitrary arrest

and detention of children.<sup>18</sup> UN and civil society organizations have repeatedly expressed concerns while the Thai government has shown no sign of ending such abuses.

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

- 3.1. During the 2<sup>nd</sup> UPR cycle, the government received 28 recommendations in regard to freedom of expression and access to information. Of the recommendations received, 13 were accepted and 15 were noted. However, as discussed below, the government has not taken effective measures to implement these recommendations. Of the 28 recommendations on freedom of expression, the government has not implemented any.
- 3.2. The 2017 Constitution stipulates freedom of expression and liberty of communication in Sections 34 and 36. Yet such liberty can be restricted for the purpose of maintaining the State's security, protecting the rights or liberties of other persons, maintaining public order or good morals or protecting people's health. Freedom of media is guaranteed under Section 35 of the Constitution that prohibits "censorship of any news or statements prior to publication in a newspaper or any media unless the State is at war." It also acknowledges the right to access to information under Sections 41 and 59.<sup>19</sup> Despite these provisions, challenges remain in peacefully exercising the rights to freedom of expression and access to information. As of 22 March 2021, 66 lèse-majesté cases filed against 76 pro-democracy activists remain to be determined by the courts.<sup>20</sup>
- 3.3. A series of legal provisions curb freedom of expression. Articles 112 on lèse-majesté, 116 on sedition, and 326 to 333 on slander and libel of the Criminal Code cover the vague and broadly formulated crime of defamation. Article 112, often referred to as Thailand's lèse-majesté law, provides a penalty of up to 15 years' imprisonment for anyone who defames, insults or threatens the monarchy. Article 116 provides a penalty of up to seven years in prison for sedition while under Article 328, defamation committed by means of a document, video, drawing, or "any other means" is punishable by up to two years in prison.<sup>21</sup> Section 9 of the Emergency Decree allows for censorship to impede on freedom of expression and media as it prohibits the sharing of news that is "false or may instigate fear among the people", without providing for the mens rea element of ill-intent.<sup>22</sup>
- 3.4. The government also monitors media content from all media sources under laws curtailing the independence of the press. The Broadcasting and Television Business Act empowers the National Broadcasting and Telecommunications Commission (NBTC) to suspend or revoke the licenses of radio or television operators broadcasting content deemed false, defamatory to the monarchy, harmful to national security, or critical of the government.<sup>23</sup> The draft legislation, the Bill on the Promotion of Media Ethics and Professional Standards, raises concerns over media independence as it would create a national professional media council mandated to issue codes of conduct to journalists and media outlets, rule on complaints and impose fines on a legal media entity or a journalist.<sup>24</sup>
- 3.5. As traditional media outlets have been increasingly and strictly censored by the authorities, criticism of the government or the monarchy and the reporting of news not favoured by the government are deemed as taboos. NBTC temporarily suspended a TV channel, Voice TV, in 2014, 2017, and most recently in February 2019 for reporting critical information about the government.<sup>25</sup> Therefore, Thai publications have been undergoing self-censorship. During the 2020 youth-led pro-democracy movement, many TV stations decided to stop the livestreaming before certain anti-monarchy speakers appeared and only included reports about politicians warning

protesters.<sup>26</sup> Due to the strict media control, Thai people and news outlets are turning to online platforms to exercise their rights to expression and information. This has led to the expansion of the government's crackdown to the internet. In October 2020, an order was enacted under the Emergency Decree to silence four independent media agencies ([VoiceTV](#), [The Standard](#), [Prachatai](#) and [The Reporters](#)) and the youth-led pro-democracy group [Free Youth](#).<sup>27</sup> Consequently, the online media outlet Voice TV was ordered to close down for violating the CCA and the Emergency Decree for covering the pro-democracy protests, though later the order was lifted.<sup>28</sup>

- 3.6. Online criticism of the government or spreading “fake news” is criminalized in the CCA. Amendments to the CCA that took effect in May 2017 give the authorities unlimited power to restrict online speech, block content and pressure service providers to facilitate government censorship. Article 14, which provides for a sentence of up to five years in prison and a fine for offences of “bringing into a computer system a computer data which is distorted or fake in a manner to cause damage to the public, creates panic or harm to public infrastructure, national security, public security or economic security”; and Article 20, which deals with censorship of inappropriate computer data by a screening committee before court approval, are among the most concerning parts of the Act. The provisions are so vaguely worded that it is difficult to understand what can amount to “distorted” or “fake” information. The law also imposes criminal liability on intermediaries for content without requiring criminal intent under Article 15, which creates a strong incentive to censor and cause intermediaries to block or take down material that they fear may be found to violate the law. Further, a criminal defamation provision still exists as Article 16 continues to criminalize the use of images of another person that have been created, edited, or adapted in a way that is likely to impair the reputation of such other person.<sup>29</sup> Please refer to our submission on digital rights.
- 3.7. With authorities exploiting repressive laws, individuals continue to face charges for expressing views critical of the monarchy and government both online and offline.<sup>30</sup> These include a Twitter user called Niranam was arrested in February 2020 for posts about the king and later charged with offenses under CCA. This case is pending now and if found guilty, he can face up to 40 years in prison.<sup>31</sup> In another case, activist Karn Pongphrapan was arrested and charged under the CCA in October 2019 simply for “sharing” a Facebook post referencing the historic downfalls of European monarchies. He is now on bail and awaiting trial.<sup>32</sup> At least 28 people have also been charged under the CCA for social media posts questioning the government's measures to tackle COVID-19.<sup>33</sup> For example, in March 2020, Danai Usama, an artist who had criticized a lack of screening measures for COVID-19 symptoms at the Suvarnabhumi Airport, was arrested and charged under Section 14(2) of CCA. His case is still ongoing.<sup>34</sup>
- 3.8. Access restrictions and content take-downs have been extensively practiced by the authorities to tighten their control over online speech and information. While the exact number of URLs blocked remains unknown, Minister of Department of Digital Economy and Society claimed that 1,887 illegal URLs have been found between 1 September and 29 October 2020.<sup>35</sup> The petition website [change.org](#) was blocked in October 2020 after a petition critical of the monarchy became popular on the platform, and the authorities also requested internet and mobile services providers to block Telegram, a messaging app highly used by youth protesters.<sup>36</sup> The app remains accessible as of date.
- 3.9. Online platforms such as Facebook and Google have also been pressured to comply with demands by the Thai government to remove critical online content deemed as “fake news” or “illegal”. In August 2020, government pressure caused access to the Royalist Marketplace, a Facebook openly discussing the Monarchy, to be restricted within Thailand. In September 2020, for the first time in



Thailand, the authorities used the Computer Crime Act to initiate legal action against Facebook and Twitter for refusing to comply with requests to censor online content. This could subject the companies to large fines for each day of non-compliance. However, some tech companies are resisting these attempts to violate their users' rights, in line with the best practices articulated in the UN Guiding Principles on Business and Human Rights and the sector-specific GNI Principles. Facebook, for example stated that it would legally challenge these take down orders as they 'contravene international human rights law and have a chilling effect on people's ability to express themselves', if the government continued to pursue its legal action against its Thai operations. Twitter has resisted by removing 926 accounts linked to the Royal Thai Army responsible for state-sponsored disinformation.<sup>37</sup>

#### 4. Judicial harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

- 4.1. Under Thailand's previous UPR examination, the government received 11 recommendations on the protection of human rights defenders, journalists, and civil society representatives. Of the recommendations received, 8 were accepted and 3 were noted. However, as examined in this section, the government has failed to effectively operationalize any of these recommendations.
- 4.2. Several laws have been repeatedly used by the State to arrest and prosecute HRDs, including Public Assembly Act, articles on lèse-majesté, sedition, slander and libel of the Criminal Code, the Emergency Decree, and CCA, resulting in a chilling effect on activists. From 2018, the authorities have practically suspended use of lèse-majesté, preferring to use sedition and CCA provisions to persecute critics of the monarchy. From November 2020, however, the lèse-majesté law has again been wielded to target pro-democracy protesters.<sup>38</sup>
- 4.3. A number of prominent HRDs have faced more than one charge of lèse-majesté, sedition, and violating the Emergency Decree and Public Assembly Act, from 2020 to 2021 for their roles as protest leaders. According to TLHR, Parit Chiwarak has been charged with at least 20 cases, Arnon Nampa with 12 cases, Panusaya Sithijirawattanakul with 9 cases, Panupong Jadnok with 8 cases.<sup>39</sup> Four activists, Parit Chiwarak (Penguin), Arnon Nampa, Somyos Prueksakasemsuk and Patiwat Saraiyaem who have been repeatedly denied bail, are now detained and have been awaiting trial for a month.<sup>40</sup> On 22 March 2021, the Criminal Court sentenced Parit to 15-days additional detention for contempt of court after he read a statement criticizing the court's rejection of bail and vowed a hunger strike during a hearing on 15 March.<sup>41</sup>
- 4.4. In addition to government authorities, private companies also file defamation cases under the Criminal Code and CCA against HRDs and journalists for seeking to bring to light rights violations. Since 2016, Thammakaset, a Thai poultry company has brought at least 39 criminal and civil cases against 22 HRDs – including journalists, civil society workers, migrant workers and academics, for sharing allegations of labor rights violations.<sup>42</sup> In 2019, Thammakaset filed a series of criminal defamation suits against at least three women HRDs Angkhana Neelapaijit, Puttanee Kangkun, and Thanaporn Saleephol who posted on Twitter and Facebook expressing support for other HRDs targeted by the company in defamation cases.<sup>43</sup> Another woman HRD Sutharee Wannasiri and migrant worker Nan Win had also been targeted by the company, before their criminal defamation suits were dismissed by the Bangkok Criminal Court in June 2020.<sup>44</sup> In another example, in October 2017, the Electricity Generating Authority of Thailand, a state enterprise, filed a libel suit and a charge of defamation against environmental activist Prasithchai Noonuan. The charges stemmed from Prasithchai's critical Facebook posts of EGAT's plan to build a coal power plant in Krabi Province. The case is still under investigation.<sup>45</sup>

- 4.5. Authorities have also intimidated activists for their activities.<sup>46</sup> For instance, a woman HRD Sommai Harntecha received a visit and intimidation by the police in May 2020, after publicly reading a statement calling for the government to revoke the Emergency Decree.<sup>47</sup> Also in May, Katima Leeja, a Lisu woman HRD was visited by a plain-clothed military officer after she uploaded a video on Facebook criticizing the use of violence by the authority during a land dispute incident and demanding investigation. The police asked about her involvement in land rights and indigenous peoples' rights activities as well as personal information.<sup>48</sup>
- 4.6. Another harmful practice The Government is also state-sponsoring disinformation, harassment and smear campaigns against activists. ISOC's Information Operations (IO) targeted dissenting voices including activists and academics by establishing military-linked social media accounts, which target posts critical of the regime with posts, stories and articles aiming to disqualify and discredit the legitimacy and reputation of the HRDs and civil society organizations.<sup>49</sup> In July 2019, Facebook removed 12 accounts and 10 groups over coordinated inauthentic behavior,<sup>50</sup> and in February 2021, it removed an additional 77 ISOC-related IO accounts: 72 Facebook pages, 18 Facebook groups and 18 Instagram accounts.<sup>51</sup> In October 2020, Twitter banned 926 military-related accounts.<sup>52</sup>
- 4.7. A number of high-profile instances of physical assault, enforced disappearances, and mysterious deaths of pro-democracy activists and HRDs including those based outside of Thailand, in connection with their online and other activities, have demonstrated the risk faced by HRDs. The recent years have seen an increased number of Thai pro-democracy activists in self-exile that are reported to be forcibly disappeared in neighboring countries. In December 2018, three Thai activists who were living in exile in Laos, Surachai Sae Dan, Kraidej Luelert, and Chatchan Buphawan disappeared and after a month, the bodies of Kraidej and Chatchan were found on the shore of the Mekong River at the border between Thailand and Laos evidencing signs of assault.<sup>53</sup> In May 2019, another three antimonarchy activists, Siam Theerawut, Chuchee Chivasut, and Kritsana Thaptha, who face lèse-majesté charges in Thailand disappeared in Vietnam after leaving Laos and their whereabouts remain unknown.<sup>54</sup> Wanchalerm Satsaksit, a Thai exile in Cambodia disappeared on 4 June 2020 after he posted a video criticizing the Thai Prime Minister.<sup>55</sup> Two indigenous HRDs, Porlajee "Billy" Rakchongcharoen and Tatkamol Ob-om were found dead separately in Thailand in 2014 and 2011 while the authorities have yet to hold perpetrators accountable.<sup>56</sup> HRDs are also subjected to physical attacks. Ekkachai Hongkangwan has been assaulted by unidentified individuals at least seven times since January 2018 and Sirawit Seritiwat was similarly violently assaulted twice in June 2019.<sup>57</sup>

## 5. The administration of justice and military courts

- 5.1. During the 2<sup>nd</sup> UPR cycle, the government received 13 recommendations related to military courts and the administration of justice. In general, the government has taken into account some recommendations but still failed to adhere to their human rights obligations.
- 5.2. We welcome positive developments made since the 2<sup>nd</sup> UPR cycle, especially relating to the end of prosecution of civilians in military courts and the transfer of all cases of civilians facing proceedings before military courts to civilians' courts. In September 2016, the junta issued NCPO Order no. 55/2016 to end the military court's trial of civilians for several offences, including offence against the monarchy, offences against national security under Sections 113 and 118 of the Criminal Code, offences against NCPO orders, and the usage and possession of unlicensed firearms, ammunition or explosives.<sup>58</sup> On 9 July 2019, an NCPO order mandated the transfer of all remaining

civilian cases from military court to civilian courts, ending a practice of prosecuting civilians in military courts.<sup>59</sup> However, ISOC still holds the power to summon and detain individuals without a warrant.<sup>60</sup>

- 5.3. The authorities continue denying the rights to fair trial, especially in cases involving “national security”, including lèse-majesté cases. In many cases, hearings and trials are held without public participation. Excessive punishment and harsh sentencing have raised concerns over the rights to fair trial. On 19 January 2021, Anchan Preeleert was sentenced to 87 years’ imprisonment by the Bangkok Criminal Court under the lèse-majesté provision for uploading 29 videos concerning the monarchy, with the term reduced to 43-and-a-half years after she pleaded guilty. Her request for bail pending appeal was denied.<sup>61</sup> In March 2021, four protest leaders have also been denied bail for the fifth time and awaiting trial in detention.<sup>62</sup>
- 5.4. Concerns that the judiciary can be influenced by political motivations are also evident. In February 2020, the Constitutional Court dissolved the popular opposition party FFP in a highly politicized trial. In March 2020, Khanakorn Pianchana, a senior judge in the Yala provincial court of South Thailand committed suicide, after a first failed attempt in October 2019 in protest of alleged political interference in the justice system, after a senior judge forced him to rewrite a judgment in which he had exonerated five Muslim suspects for lack of evidence.<sup>63</sup>

## 6. The National Human Rights Commission of Thailand (NHRCT)

- 6.1. During the 2<sup>nd</sup> UPR cycle, Thailand received 11 recommendations in connection to institutional reforms the country needs to undergo, directly or indirectly, requiring the adoption of concrete steps to bolster the NHRCT and its alignment with the Paris Principles. Although the government accepted all recommendations, it has failed to implement them.
- 6.2. In December 2017, the Organic Act on the NHRCT came into force with the government claiming it was a step towards complying with the Paris Principles. In practice, this Act fails to safeguard basic requirements, such as competence, independence and broad mandate. The Act requires the NHRCT to clarify and address facts when there are incorrect or unfair reports on the human rights situation in the country, which allows the government to pressure the NHRCT to “correct” reports on Thailand by international organizations and NGOs, thus forcing it to align its agenda with the government.<sup>64</sup>
- 6.3. The selection and appointment process of the NHRCT Commissioners failed to be transparent and independent. It included a pool of candidates lacking diversity with poor representation from civil society and candidates chosen from government officials instead of human rights advocates in their independent capacity, with little public consultation in the application, screening, selection, and appointment processes.<sup>65</sup>
- 6.4. The NHRCT is unable to monitor and investigate human rights violations in a timely and effective manner, proven by the failure to take adequate measures to protect human rights in relation to the 2020-2021 pro-democracy movement,<sup>66</sup> and little intervention in cases of HRDs. Moreover, the government rarely pays heed to recommendations by the NHRCT.
- 6.5. NHRCT Commissioners are vulnerable to threats of litigation and continue facing obstacles in effectively carrying out the mandate. A few Commissioners resigned before the end of their tenure due to restrictions under the Organic Act and the hostile work environment. One former





Commissioner, Angkhana Neelapaijit, was targeted by a disciplinary inquiry and threatened with impeachment for carrying out her work in an honest way.<sup>67</sup> She also faces defamation charges filed by Thammakaset for her advocacy against alleged labour rights violations. (see above)

## 7. Recommendations

[Manushya Foundation](#), [Access Now](#), The Thai CSOs coalition for the UPR (Universal Periodic Review) , and [The Coalition of Innovation for Thai Youth \(CITY\)](#) call on the Thai government 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. In light of this, the following specific recommendations are made:

### 7.1. Regarding freedom of peaceful assembly and association

- a. Repeal or otherwise amend the Emergency Decree and the 2015 Public Assembly Act to bring their provisions in line with international human rights law.
- b. Drop charges against and release unconditionally and immediately all individuals including minors detained for merely exercising the right to freedom of association and peaceful assembly ; and provide effective remedy, including compensation, in cases of unlawful denial of the right to freedom of association and peaceful assembly by state authorities.
- c. Remove all undue restrictions on the ability of civil society organizations and political parties to operate freely in line with Thailand’s international legal obligations and best practices articulated by the UN Special Rapporteur on the rights to peaceful assembly and of association.<sup>68</sup>
- d. Protect protesters, including those who are children, from violence and interference by State actors and refrain from dispersing assemblies by using weapons, including less-lethal weapons, in accordance with the Convention on the Rights of the Child (article 15(1) and article 37 (b)), the Human Rights Committee’s General Comment No. 37 on the Right of Peaceful Assembly, and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and UN and other guidance on less-lethal weapons.

### 7.2. Regarding freedom of expression, independence of the media and access to information

- a. Decriminalize defamation by repealing sections 326 to 333 of the Criminal Code and enact a stand-alone anti-SLAPP law to ensure legal protections against Strategic Litigation against Public Participation (SLAPP) aiming at silencing dissents, and protect individuals from judicial harassment by the state and corporations. In the meantime, enforce Sections 161/1 and 165/2 of the Criminal Procedure Code and publish statistics on its use to assess its effectiveness in addressing SLAPP cases.
- b. Repeal or amend laws and regulations that restrict freedom of expression, independent media, and access to information, including Penal Code Articles 112, 116, the Broadcasting and Television Business Act, the draft Bill on the Promotion of Media Ethics and Professional Standards, the Computer Crimes Act – particularly Articles 14, 15, 16 and 20 –and the Emergency Decrees, to bring

them in line with international human rights law. The repeal or amendment process should include effective public consultation.

c. End all legal proceedings against, and investigations into, individuals facing harassment, intimidation, or prosecution initiated by state authorities for expression critical of the government and monarchy; Provide effective remedy, including compensation, in cases of unlawful denial of the rights to freedom of expression and information by state authorities.<sup>69</sup>

d. Refrain from pressuring tech companies, internet service providers or other telecommunications companies to moderate content online in contravention of the rights to free expression and information and ensure their compliance with their responsibilities to respect and protect human rights in line with the UN Guiding Principles on Business and Human Rights.

e. Provide transparent, detailed and regular updates relating to content moderation requests from government authorities to tech companies and internet providers, including takedown orders, in a public and accessible manner, including on legal proceedings or action taken against tech companies and internet providers for failure to comply with such requests.

f. Guarantee access for all persons in Thailand to information, both offline and online, particularly where such information relates to the public interest and impacts upon the individual's right to public participation, including adopting a law to enable the provision of such access.

### 7.3. Regarding the protection of human rights defenders

a. Ensure that HRDs, journalists, civil society members, lawyers and academics are able to carry out their legitimate activities to bring to light human rights violations without fear or undue hindrance, obstruction or legal and administrative harassment in line with Thailand's obligations under the ICCPR and with respect to the UN Declaration on Human Rights Defenders.

b. Repeal or amend legislation and decrees which unwarrantedly restrict the legitimate work of HRDs in line with the UN Declaration Human Rights Defenders.

c. Carry out prompt, thorough, independent, impartial and effective investigations into allegations of enforced disappearance, ill-treatment and torture, and extrajudicial, summary or arbitrary executions of HRDs and activists, with a view to ending impunity for perpetrators of serious human rights violations.<sup>70</sup>

d. Release unconditionally and immediately HRDs detained for their leadership in the protest movement and end all legal proceedings or investigations against them; Provide effective remedy, including compensation, for unlawful violation of their rights to expression, association, peaceful assembly, liberty and security.<sup>71</sup>

### 7.4. Regarding the administration of justice and military courts

a. Ensure that the rights to fair trial are respected and protected, including affording the right of every individual to a fair and public hearing by a competent, independent and impartial tribunal established by law, particularly in cases of public interest such as those relating to lese majeste or apparently politically motivated charges.<sup>72</sup>

b. Ensure the independence of the judiciary, including through instituting and enforcing legal and non-legal mechanisms to ensure the separation of powers, and to restrain executive bodies from interfering in the independent functions of the courts.

#### 7.5. Regarding NHRCT

a. Ensure that NHRCT is guaranteed independence in full compliance with the Paris Principles; Ensure in law and in practice mechanisms to provide the NHRCT with the powers it requires to promptly, adequately and effectively prevent, address and combat cases of violations of human rights and reprisals.

b. Ensure, through legal or other regulatory mechanisms, the composition of the NHRCT and appointment of its members in accordance with a procedure that guarantees adequate and pluralist representation, including of civil society involved in the protection and promotion of human rights.<sup>73</sup>

c. Ensure that NHRCT and their respective members and staff do not face any form of reprisal or intimidation as a result of activities undertaken in accordance with their mandates, including when taking up individual cases or when reporting on serious and systematic human rights violations.<sup>74</sup>

## Endnotes

<sup>1</sup> Thailand's Constitution of 2017, available at:

[https://www.constituteproject.org/constitution/Thailand\\_2017.pdf](https://www.constituteproject.org/constitution/Thailand_2017.pdf)

<sup>2</sup> Future Forward Party, *About Us: The future we aspire to is a future where the ultimate power truly belongs to the people*, available at: <https://en.futureforwardparty.org/about-fwp/future-forward-party>

<sup>3</sup> Bangkok Post, *Move Forward dissolution sought*, 2 February 2021, available at:

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<sup>68</sup> In line with the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association of 17 May 2019 (A/HRC/41/41), and the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association (A/HRC/35/28) of 8 May 2017

<sup>69</sup> In line with recommendations in the Human Rights Committee in Concluding observations on the second periodic report of Thailand (2017)

<sup>70</sup> In line with recommendations in the Human Rights Committee in Concluding observations on the second periodic report of Thailand (2017)

<sup>71</sup> In line with recommendations in the Human Rights Committee in Concluding observations on the second periodic report of Thailand (2017)

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<sup>72</sup> In line with Article 10 of the Universal Declaration of Human Rights and Article 14 (1) of the International Covenant on Civil and Political Rights

<sup>73</sup> In line with the General Assembly resolution on National Human Rights Institutions (2019), and the Paris Principles

<sup>74</sup> In line with the General Assembly resolution on National Human Rights Institutions (2019)