

DARK AGES

Violations of cultural rights under Thailand's lèse-majesté law

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,



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Cover photo: Pornthip Munkong (left) and Patiwat Saraiyaem (right), sentenced to two and half years in prison under Article 112 for performing in a political play. © Thanapol Eawsakul

Acronyms

CESCR = Committee on Economic, Social and Cultural Rights

ICESCR = International Covenant on Economic, Social and Cultural Rights

MICT = Ministry of Information and Communication Technology

NBTC = National Broadcasting and Telecommunications Commission

NCPO = National Council for Peace and Order

NLA = National Legislative Assembly

RSF = Reporters Without Borders

TCSD = Technology Crime Suppression Division

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

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

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

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

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

Authorities have systematically blocked websites, banned books, and suppressed any other type of information that is considered critical of the Thai royal family. The atmosphere of fear created by this overzealous intervention has resulted in widespread self-censorship.

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

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

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

** This briefing paper is an updated version of the shadow report submitted by FIDH to the 55th Session of the UN Committee on Economic, Social and Cultural Rights (CESCR), Geneva, 4-5 June 2015.*

State report ignores lèse-majesté issue, government fails to address restrictions

Thailand's periodic report to the UN Committee on Economic, Social and Cultural Rights (CESCR) was completed in 2012, 10 years after it was originally due. Despite the increase in prosecutions under Article 112 since the previous military coup in 2006, Thailand's report completely ignored the lèse-majesté issue.

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

The government simply claimed that Article 112 was “not aimed at curbing people's rights to freedom of expression nor the right of everyone to take part in cultural life and to have necessary freedom for creative activities.”² In addition, the government outrageously declared that Article 112 had “**never** [emphasis added] been used in a manner to restrict legitimate exercise of academic and cultural rights including debates about the monarchy as an institution.”³ This report provides substantial evidence that the opposite is true. The combination of government censorship, self-censorship, and harsh prison sentences for lèse-majesté violators has created an environment in which the Thai monarchy is completely shielded from any meaningful discourse or scrutiny.

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

2. UN Committee on Economic, Social and Cultural Rights, 55th session, List of issues in relation to the combined initial and second periodic report of Thailand | Replies of Thailand to the list of issues, 1 April 2015, UN Doc. E/C.12/THA/Q/1-2/Add.1, Para. 144, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fTHA%2fQ%2f1-2%2fAdd.1&Lang=en

3. UN Committee on Economic, Social and Cultural Rights, 55th session, List of issues in relation to the combined initial and second periodic report of Thailand | Replies of Thailand to the list of issues, 1 April 2015, UN Doc. E/C.12/THA/Q/1-2/Add.1, Para. 145, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fTHA%2fQ%2f1-2%2fAdd.1&Lang=en

Thailand fails to protect and respect the right to participate in cultural life

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

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

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

The junta banned news reports as well as the distribution and sale of publications that "could cause social division and unrest."⁴ The junta also ordered all media not to interview former government officials, academics, judges or other members of independent organizations "in a way that may create conflict or confusion among the public."⁵

The NCPO quickly moved to silence dissident journalists, arbitrarily detaining three of them. The junta also acted to curb online criticism. On 22 May 2014, the NCPO warned "online social media operators" that they would be shut down and face legal action if they failed to block "illegal information" and anti-junta messages. On 27 May 2014, an official from the Ministry of Information and Communication Technology (MICT) said it had blocked 219 websites that were deemed a threat to "national security." On 28 May 2014, the MICT temporarily blocked Facebook.

Soldiers force organizers to cancel land reform seminar in November 2014 in Bangkok © Prachatai



Since the 22 May 2014 coup, military authorities ordered the cancellation of at least 13 public events related to human rights and democracy. Events included: a film festival; a film screening; academic seminars and panel discussions; a human rights report launch; and civil society's forums on land-related issues. In addition, in the weeks after the coup, the junta summoned and detained numerous academics at military bases in several locations around the country.

On 1 April 2015, the NCPO replaced martial law with Order 3/2015. The order imposed restrictions on freedom of expression similar to those enforced under martial law. Article 5 of Order 3/2015 authorizes the military to issue orders prohibiting "the propagation of news or the sale of distribution of any book publication or any other media which contains [...] information

4. National Peace and Order Maintaining Council Announcement No. 4/2557

5. National Peace and Order Maintaining Council Announcement No. 14/2557

that is intentionally distorted to cause public misunderstanding that affects national security or public order.”

International indexes compiled by independent organizations unanimously reflected the sharp deterioration of the situation concerning freedom of expression in Thailand since the military coup. In its 2015 *Freedom in the World*, Freedom House rated Thailand as ‘Not Free’ with regard to the situation of civil liberties and political rights - the first time since the 2006 coup. In its 2015 *Press Freedom Index*, Reporters Without Borders (RSF) ranked Thailand 134th out of 180 countries surveyed. In 2014, it ranked 130th. In its 2014 survey *Freedom on the Net*, Freedom House rated Thailand as ‘Not Free’, with a ranking of 51 out of the 65 countries surveyed. In its 2015 *Freedom of the Press*, Freedom House ranked Thailand 166th out of 199 countries surveyed. In 2014 it ranked 141st out of 197. Thailand’s score in the 2015 *Freedom of the Press*, 75, is the country’s worst since Freedom House began using quantitative scores in 1994.

As the CESCR explained in its General Comment 21, the right to participate in cultural life is respected and protected when the state party to the ICESCR adopts “specific measures” that allow everyone to enjoy freedom of opinion, freedom of expression, and the right to seek, receive and impart information and ideas of all kinds and forms including art forms.⁶ In addition, in order to be ensured, the right to take part in cultural life requires that the state refrains from interference “with access to cultural goods and services.”⁷

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

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

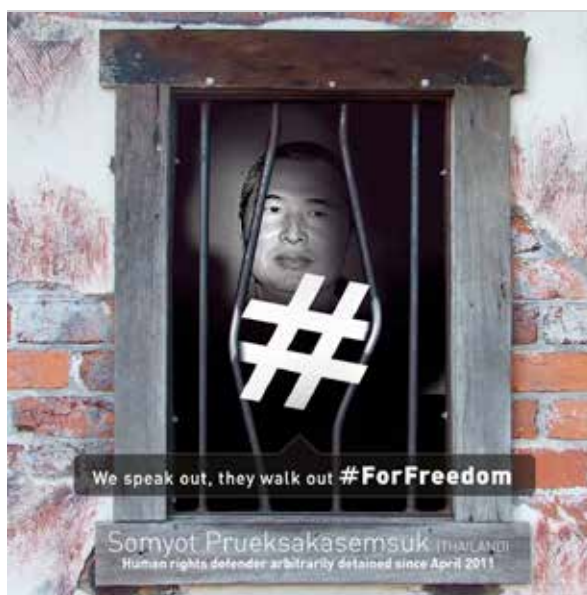
7. UN Committee on Economic, Social and Cultural Rights, General comment No. 21, Right of everyone to take part in cultural life (art. 15, Para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), 21 December 2009, UN Doc. E/C.12/GC/21, Para. 6

Number of lèse-majesté detainees soars

Despite the government's claim that the number of lèse-majesté trials "has been kept to the minimum,"⁸ it is apparent that under the NCPO the number of detentions and prosecutions under Article 112 have increased dramatically. The NCPO has repeatedly declared that the protection of the monarchy and the prosecution of alleged lèse-majesté violators was one of its top priorities.⁹ Authorities declared they would target lèse-majesté suspects beyond Thailand's national borders. On 21 March 2015, junta-appointed Minister of Justice Gen Paiboon Koomchaya said the military-backed government would seek the extradition of 30 Thais living in exile who have been charged under Article 112.¹⁰

Since the military coup, at least 47 people have been arrested under Article 112. Sixteen of them have been sentenced to prison terms ranging from one to 50 years, for a combined total of 155 years. All 16 individuals sentenced to prison terms under Article 112 since the coup pleaded guilty to the charges. This should not be construed as an acknowledgment of criminal responsibility. Due to conviction of rates close to 100% in lèse-majesté trials, a guilty plea is a strategic decision that, in most cases, earns lèse-majesté violators a significant reduction in their jail sentence. Forty-three people are currently behind bars under Article 112, up from six when the military seized power on 22 May 2014. In only five cases court officials have granted bail to lèse-majesté detainees who await trial.

Thirteen of the 16 post-2014 coup lèse-majesté cases resulting in a prison sentence presented elements related to the right to freedom of expression and to take part in cultural life. In many cases, lèse-majesté charges hit individuals who shared opinions and content related to the monarchy through Facebook. One lèse-majesté suspect, Siraphop Komarut, has been detained since June 2014 and remains behind bars awaiting trial for writing a poem that alluded to King Bhumibol.



In previous years, there had been several cases of lèse-majesté charges and incarcerations stemming from the publication of material related to the Thai monarchy.

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

Former editor
Somyot
Prueksakasemsuk,
jailed under Article
112 © FIDH

8. UN Committee on Economic, Social and Cultural Rights, 55th session, List of issues in relation to the combined initial and second periodic report of Thailand | Replies of Thailand to the list of issues, 1 April 2015, UN Doc. E/C.12/THA/Q/1-2/Add.1, Para. 145, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolon=E%2fC.12%2fTHA%2fQ%2f1-2%2fAdd.1&Lang=en

9. Khaosod English, *Prayuth Vows Tougher Crackdown On Anti-Monarchists*, 11 September 2014; Khaosod English, *Thai Junta to Diplomats: Lese Majeste is 'Cultural Offense'*, 11 February 2015

10. Khaosod English, *Thai Govt Seeking Extradition of 30 Lese Majeste Suspects*, 23 March 2015

articles in the *Voice of Thaksin* that were written by someone else and deemed to have insulted the monarchy. On 19 September 2014, the Court of Appeals upheld the Bangkok Criminal Court's lèse-majesté conviction of Somyot. Displaying a total lack of respect for due process, the court failed to inform Somyot and his lawyer that the hearing would take place on that day. Somyot remains detained at Bangkok's Remand Prison pending his appeal to the Supreme Court. Court officials have denied Somyot's requests for bail 16 times - the last time on 18 November 2014.

On 8 December 2011, the Bangkok Criminal Court sentenced Joe Gordon aka Lerpong Wichaikhammat, a Thai-born US citizen, to two-and a half years in prison on lèse-majesté charges. The court reduced the jail term from five years as a result of Gordon's guilty plea. Gordon was convicted of translating excerpts of the banned book *The King never smiles* [see below: *Books, magazines, films, and video games banned*] from English into Thai and posting them online several years earlier when he lived in the US. Gordon was detained in May 2011 during a visit to Thailand.

On 20 January 2009, police in Bangkok informed political scientist Giles Ungpakorn that they had charged him under Article 112 in relation to eight paragraphs of his book *A coup for the rich*, which were deemed to be insulting the monarchy.¹¹ The book had been published by Workers Democracy Publishers in January 2007. In early February 2009, Giles fled the country because he believed he could not receive a fair trial. He remains in exile in the UK.

On 19 January 2009, the Bangkok Criminal Court sentenced Australian writer Harry Nicolaidis to six years in prison on lèse-majesté charges. His jail term was reduced to three years because he pleaded guilty to the charges. The court found Nicolaidis guilty of insulting the Thai royal family in his book, *Verisimilitude*, a novel that Nicolaidis himself published in Thailand in 2005 and which sold less than a dozen copies. Nicolaidis was arrested at Bangkok's Suvarnabhumi Airport on 31 August 2008. He was eventually granted a royal pardon and released on 20 February 2009.

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

11. Links.org, *Thailand: Activist Giles Ji Ungpakorn charged with 'insulting' monarchy*, 20 January 2009

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

Artistic freedom restricted

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



Courtroom sketch
of the lèse-majesté
trial of Pornthip
Munkong and Patiwat
Saraiyaem © iLaw

On 23 February 2015, the Bangkok Criminal Court sentenced two members of the now-defunct *Prakai Fai* ['Sparking Fire'] theater group, Pornthip Munkong aka Golf and Patiwat Saraiyaem aka Bank, to two and half years in prison under Article 112. Golf and Bank were found guilty of lèse-majesté for performing in a political play called *Jao Sao Maa Paa* ['Wolf's bride']. The play was staged at Bangkok's Thammasat University on 13 October 2013 and was part of the commemoration of the 40th anniversary of the 14 October 1973 student uprising against the military dictatorship of Field Marshal Thanom Kittikachorn. The play, which centered on a fictional monarchy, was deemed to have insulted King Bhumibol.

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

Other individuals involved in the *Jao Sao Maa Paa* performance fled the country for fear of being arrested under Article 112. They joined scores of students, academics, and artists who left Thailand after the 22 May 2014 military coup. Those who fled include: film director Neti Wichiansaen; songwriter and singer Yonok Faiyen and other members of his band; songwriters and composers Visa Kantap and Pajjit Aksornnarong; former film actor Attachai Anantamaek, and academic Somsak Jeamteerasakul.



Soldiers inspect
location of the
theater performance
Bang La Merd ©
B-Floor Theatre
Group

In another incident that reflects the NCPO's restrictions on artistic freedom, in January and February 2015, the military repeatedly harassed members of the *B-Floor Theatre Group* because their show *Bang La Merd* ['District of violations'] contained references to Article 112. *Bang La Merd*, a solo theater performance by actress Ornanong Thaisriwong, illustrated rights violations in Thai society, particularly in relation to freedom of expression and the pervasive restrictions under the military junta.

On 20 January, military personnel demanded the show organizers seek permission from the authorities to stage the performance. The show was eventually allowed to go on. However, plainclothes military officers were present during most of the 19 nights the performance ran to video record the actors and the audience.

Books, magazines, films, and video games banned

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

On 12 November 2014, authorities banned *A Kingdom in crisis*, a book written by British journalist Andrew McGregor Marshall.¹³ The book makes references to the Thai royal family and the issue of King Bhumibol's succession in the context of Thailand's ongoing political crisis. The measure stemmed from the 2007 Publishing Act, which allows police to ban any book that is found to be defaming the King.¹⁴ Those who possess or distribute the book can face up to three years in jail and a fine of 60,000 baht (US\$1,840).

The King never smiles, a biography of King Bhumibol written by US freelance journalist Paul Handley and published by Yale University Press in July 2006, remains banned in Thailand.

Also banned is *The devil's discus*, an investigative book into the mysterious circumstances surrounding the death of King Ananda Mahidol (Bhumibol's elder brother) in June 1946. The book was written by British-South African author Rayne Kruger and was originally published by Cassell & Co. in 1964. The Thai government banned the book as soon as it was published and barred Kruger from entering Thailand. A Thai language translation of the book was officially banned in May 2006.¹⁵

The English-language weekly magazine *Economist* decided not to distribute its print issues in Thailand at least six times between December 2008 and January 2015 because they contained articles about members of the Thai royal family.¹⁶ In August 2014, the publisher of the *Matichon Weekly* decided to halt distribution of the magazine's issue for the week of 15-21 August over possible lèse-majesté content.¹⁷



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

Economist magazine halts distribution
© Economist

Thailand even targeted a video game for containing material that was considered offensive to the monarchy. In August 2014, the Ministry of Culture invoked the 2008 Film and Video Act to ban *Tropico 5*, a simulation game that allows players to create their own forms of government on a remote island.¹⁸ Authorities believed the game could have affected national security and the country's dignity because it allowed players to freely name the country and its leader or king.¹⁹

13. Prachatai, *Thai police ban Andrew Marshall's book on Thai monarchy*, 12 November 2014

14. Prachatai, *Thai police ban Andrew Marshall's book on Thai monarchy*, 12 November 2014

15. Royal Gazette (in Thai) 123 (Special 73): 31. 27 June 2006

16. The Economist decided not to distribute its print issues in Thailand for the weeks of 6 December 2008, 24 January 2009, 20 March 2010, 12 May 2012, 16 November 2013, 31 January 2015; Guardian, *The Economist pulled from sale in Thailand after criticizing monarch*, 9 December 2008; BBC, *Thailand bans Economist magazine*, 26 January 2009; VOA, *Economist Magazine Halts Distribution In Thailand Over Royal Story*, 18 March 2010; Economist not distributed (again), 11 May 2012, available at <https://thaipoliticalprisoners.wordpress.com/2012/05/11/economist-not-distributed-again/>; Economist, *The Economist print edition not being distributed in Thailand this week*, 15 November 2013; Prachatai, *Economist not published in Thailand due to lese majeste*, 30 January 2015

17. Prachatai, *Matichon Weekly stops distribution for fear of lèse majesté*, 15 August 2014

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

19. Nation, *Banned game found offensive to monarchy*, 6 August 2014

Lèse-majesté pursuit goes online

In its follow-up to the CESCR's adoption of the list of issues, the Thai government claimed that "censorship of inappropriate content online is carried out in a very restrictive manner."²⁰ However, this claim is contradicted by the relentless and wide-ranging campaign that authorities have conducted to censor online content that is considered to be offensive of the monarchy. This trend has continued under the NCPO.

On 16 December 2014, Information and Communication Technology Minister Pornchai Rujiprapa said that the Ministry had blocked about 1,200 websites that allegedly defamed the monarchy since the coup.²¹

Between 5 January and 10 March 2015, the government's Technology Crime Suppression Division (TCSD) blocked an additional 510 URLs (including pages from Facebook, YouTube, blogs, and web boards) because their content was deemed to violate Article 112.²² On 24 April 2015, police said they shut down 25,069 websites that allegedly disseminated lèse-majesté content.²³ The website of the British tabloid *Daily Mail* has been blocked by the junta since 25 May 2014 over content deemed offensive to the monarchy.



Daily Mail website
blocked © MICT

In February 2015, the Secretary-General of Thailand's National Broadcasting and Telecommunications Commission (NBTC), said NBTC had asked Facebook, YouTube, and messenger application Line to remove content critical of the Thai monarchy.²⁴

In an effort to increase the effectiveness of their monitoring capabilities, past and present Thai governments have increasingly resorted to private citizens to track online lèse-majesté content. In July 2014, the MICT announced it would expand its existing 'cyber scout network'. The ministry planned to hold seminars to train more than 500 'cyber scouts' on how to monitor and report websites to the

authorities. The cyber scout project was launched in 2011 and created a network of more than 380 cyber scouts from different educational institutions across the country.²⁵

The NCPO also stepped up efforts aimed at legalizing pervasive controls over electronic communications. In early January 2015, the NCPO approved a draft Cyber Security Bill. The proposed legislation envisions the establishment of a government-run committee responsible for detecting and responding to online threats to national security and stability.²⁶ The committee would have the authority to access information on personal computers, mobile phones, and other electronic devices without a court order.²⁷ The bill will have to be discussed and acted upon by the junta-appointed National Legislative Assembly (NLA). NCPO head General Prayuth Chan-ocha indicated that one of the objectives of the Cyber Security Bill was to crackdown on online lèse-majesté content.²⁸

20. UN Committee on Economic, Social and Cultural Rights, 55th session, List of issues in relation to the combined initial and second periodic report of Thailand | Replies of Thailand to the list of issues, 1 April 2015, UN Doc. E/C.12/THA/Q/1-2/Add.1, Para. 147, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fTHA%2fQ%2f1-2%2fAdd.1&Lang=en

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

22. Bangkok Post, *Lèse majeste fight goes online*, 16 March 2015

23. Prachatai, *Thai police say more than 200 lèse majesté cases closed in 6 months*, 26 April 2015

24. Straits Times, *Thailand agency defends mass cyber surveillance*, 12 February 2015

25. MCOT, *Thai ICT Ministry to expand Cyber Scout project*, 22 July 2014

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

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

28. Prachatai, *Junta leader admits controversial digital economy bills target lese majeste*, 22 January 2015

Restrictions inconsistent with Thailand's obligations under the ICESCR

With regard to the limitations to the right to take part in cultural life, in its General Comment 21, the CESCR says that states cannot invoke “cultural diversity” to infringe upon human rights guaranteed by international law, nor to limit their scope.²⁹ However, numerous Thai officials have repeatedly claimed that strict enforcement of harsh *lèse-majesté* legislation in Thailand is necessary due to the unique character of the Thai monarchy.³⁰

The CESCR also underscores that the limitation to the right in question must be “proportionate” and that the “least restrictive measures” must be taken when several types of limitations may be imposed.³¹ It is apparent that Thailand fails to meet both criteria with regard to the impact of Article 112 on the enjoyment of the right to everyone to participate in cultural life. Harsh prison sentences, pervasive censorship, and curbs on the free flow of ideas and information cannot be considered as “proportionate” and “least restrictive measures”. In addition, under NCPO Order 3/2015, *lèse-majesté* offenses fall under the same category as offenses against the security of the state and offenses under the laws on firearms, ammunition, explosives, fireworks, and artificial weapons. *Lèse-majesté* offenses currently fall under the jurisdiction of military courts, thus considerably reducing guarantees of fair trial.³²

Finally, according to the CESCR, Thailand should prove that such “regressive measures” taken in relation to the right of everyone to take part in cultural life are justified.³³ However, Thailand has consistently failed to explain why such regressive measures are necessary, apart from vague assertions equating *lèse-majesté* to offenses that affect the morale of the public and amount to national security threats.

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

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

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

32. Prachatai, *All crimes involving alleged lese majeste, sedition subjected to Military Court: Thai Coup makers*, 25 May 2014

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

Recommendations to the government

- Promote a free, open, and informed public debate on the reform of Article 112.
- Amend Article 112 of the Criminal Code to remove prison terms for offenses stemming from the legitimate exercise of the right to freedom of opinion and expression.
- Reserve the sole power to file complaints under Article 112 to the Bureau of the Royal Household.
- Ensure that protection of the monarchy does not impinge on the right to freedom of opinion and expression.
- Lift the ban on publications and all other cultural material related to the Thai monarchy to ensure a free flow of ideas and information.
- End censorship of all print and online material that contains information related to the Thai monarchy.
- Immediately and unconditionally release Pornthip Munkong aka Golf, Patiwat Saraiyaem aka Bank, and all other individuals imprisoned under Article 112 for the mere exercise of their fundamental right to freedom of opinion and expression.
- End prosecutions under Article 112 of individuals who are merely exercising their fundamental right to freedom of opinion and expression.
- End military trials of civilians accused of lèse-majesté.
- Cease all acts of harassment against artists, students, and academics in Thailand and in exile.
- Amend the Cyber Security Bill to ensure that any surveillance of electronic communications is subject to judicial oversight.
- Ensure that restrictions on the right to participate in cultural life are compatible with Thailand's obligations under international treaties to which it is a state party.
- Extend a standing invitation to the UN Special Rapporteur in the field of cultural rights, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the UN Working Group on Arbitrary Detention.
- Sign and ratify the Optional Protocol to the ICESCR.

Establishing the facts

investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society

training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level

Mobilising the international community

permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

Informing and reporting

mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.



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FIDH represents 178 human rights organisations on 5 continents



inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

fidh

Find information concerning FIDH's 178 member organisations on www.fidh.org