

Submission by: Front Line Defenders – the International Foundation for the Protection of Human Rights Defenders
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Front Line Defenders (www.frontlinedefenders.org) is an international NGO based in Ireland with special consultative status with the Economic and Social Council of the United Nations (ECOSOC). Founded in 2001, Front Line Defenders has particular expertise on the issue of security and protection of human rights defenders and works to promote the implementation of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders) adopted by General Assembly resolution 53/144 of 9 December 1998. In 2018 Front Line Defenders was awarded the UN Prize in the field of human rights.

The following submission has been prepared by Front Line Defenders – The International Foundation for the Protection of Human Rights Defenders based on research carried out by this organisation and information received from independent human rights defenders in Thailand from September 2015 to February 2021, as well as from six missions to Thailand undertaken by Front Line Defenders staff in March, July and November 2017, March and December in 2018, and November 2019.

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Development since the previous UPR Cycle

1. During its last UPR in 2017, Thailand supported all six recommendations made pertaining to human rights defenders. New Zealand, Norway, Luxembourg, Czech Republic, Botswana and Romania called on the state to create and maintain a safe and enabling environment for human rights defenders; ensure investigations into attacks against defenders and that perpetrators are held accountable; and to ensure that human rights defenders in Thailand are treated in accordance with the UN Declaration on Human Rights Defenders¹. In the four years since the review there has been little evidence to suggest that the Thai authorities have made any moves to implement these recommendations.

General situation for Human Rights Defenders

2. Despite hopes fuelled by the general elections held in March 2019, Thailand still remains under the control of elements of the powerful military that led the coup in May 2014, with human rights defenders in the country still subjected to a range of attacks and abuses by state and non-state actors. They include serious human rights violations including the harassment and imprisonment of human rights defenders for their exercise of civil and political rights; solitary confinement of human rights defenders while they are in detention; violence, surveillance and legislative and judicial harassment. HRDs working on civil and political rights, economic, social, and cultural rights, including land and environment rights, are particularly at risk of being targeted.

3. Restrictions on freedoms of expression, association and peaceful assembly remain and prominent human rights defenders have reported being constantly harassed. Self-censorship in relation to government and military officials is widespread, while the authorities continue to exert pressure on the media. Human rights defenders exposing violations related to the military have faced arrest, detention, imprisonment, and torture. Since the re-emergence of the pro-democracy movement in 2020, there has been a notable increase in threats against human rights defenders and pro democracy protestors including portraying them as threats to national security and to the stability of the nation. There was widespread intimidation and reprisals against HRDs who had 'checked-in' at protests sites, taken selfies, or posted about the protests on social media. On 19 October 2020, the Minister of Digital Information announced that more than 300,000 URLs of social media accounts will be investigated for allegedly violating the Emergency Decree announced in March 2020.² To add to this, those who have been protesting for the restoration of democracy and reform the monarchy have been targeted and falsely charged. Other groups of defenders who face serious risk include journalists, land and environmental defenders, women rights defenders, student and youth rights defenders.

4. On 26 March 2020, in an attempt to control the spread of COVID-19, the Thai government announced an Emergency Decree, which included a ban on public gatherings. When the ban was lifted in August, the peaceful protests gained renewed momentum, with protestors calling for restoration of democracy and reform of the institution of the monarchy. A ban on public gatherings was re-imposed in December, citing a rise in the number of cases of COVID-19. During this period, many pro-democracy activists were charged for violating the Emergency Decree in relation to their protests and, after a moratorium of two years, were also charged under section 112 of the criminal code (the lèse-majesté provision).³ On 15 October 2020, a Severe State of Emergency was declared in Bangkok, following a peaceful pro-democracy protest, with the government alleging that the protestors were a threat to public safety and national security. Following the announcement, harsh restrictions were imposed on the freedom of expression and assembly which were not justified by the actions of the protesters.

1 <https://www.ohchr.org/EN/HRBodies/UPR/Pages/THindex.aspx>

2 <https://www.khaosodenglish.com/politics/2020/10/19/govt-orders-censorship-of-4-media-sites-reports-say/>

3 <https://news.un.org/en/story/2020/12/1080382>

5. There has been an increase in the attacks on free press and speech since the re-emergence of the pro-democracy movement in the country. On 19 October 2020, the licenses of Voice TV, Prachatai, The Reporters, and The Standard, four media outlets covering the protests, were threatened with suspension. The following day, the Criminal Court ordered Voice TV to stop all of its online operations for the station's coverage of a democracy protest in Bangkok on 16 October 2020, which allegedly violated media restrictions under the Emergency Decree on Public Administration in Emergency Situations and the Computer-Related Crime Act⁴.

6. Following the National Human Rights Commission Act of 2017, much of the Commission's independence and autonomy was stripped away, as it was brought under the wing of the government. In August 2019, two Commissioners announced their resignations, based on the lack of independence of the Commission, along with restrictive regulations and a hostile and unsupportive office environment. The Commission had seen resignations by earlier Commissioners on 31 July 2019 as well, due to its non-compliance with the original mandate, and contrary structure to the Paris Principles.

Pro-Democracy movement

7. The right to assembly has not been respected and peaceful protests have been handled with excessive force; numerous human rights defenders have been imprisoned as a result of their organisation of, leadership of or participation in peaceful gatherings and protests. Since February 2020, after long standing dissatisfaction with the political situation in the country and owing to the rising intolerance of the government to opposition voices, student human rights defenders took the lead in organising peaceful protests in the country calling for reform within the government. Momentum of these protests stalled with the onset of the COVID-19 pandemic and the resulting restrictions on gatherings. As a result, the movement gathered pace online with many moving to social media to express their concerns and to advocate for change.

8. As physical protests resumed in the latter half of 2020, human rights defenders were widely targeted for exercising their fundamental right to the freedom of expression. Further, the same defenders have been arrested multiple times on different charges, thereby redirecting their time and resources away from the movement. In November 2020, twelve HRDs who were at the forefront of the democracy protests were issued summons under multiple charges including charges under the *lèse-majesté* law.⁵ The HRDs mentioned in the summons have several cases pending against them, as they were also charged under additional provisions.

Lèse-majesté

9. Thailand has always been intolerant toward any sort of criticism of the monarchy. Articles 110 and 112 of the Criminal Code have been increasingly used against human rights defenders since the beginning of the pro-democracy protests. Article 112 (the *lèse-majesté* provision) of the criminal code prohibits defaming, insulting or threatening the royal family, and carries punishments of up to 15 years in prison if found guilty. Article 110 carries a sentence of 16 years to life imprisonment for those found guilty of committing or attempting to commit an act of violence against the Queen; or a death sentence if such act is likely to endanger the life of the Queen. While the Prime Minister reported in 2019 that no new cases under Article 112 would be prosecuted, various other provisions of the law have since been used to criminalise dissent and legitimate criticism of the monarchy.

10. Since August 2020, as the pro-democracy protests gained traction, Article 112 has been widely used to target protest leaders and human rights defenders, including Parit Chiwarak, Arnon

⁴ <https://www.aljazeera.com/news/2020/10/21/thailand-shuts-down-online-tv-channel-as-protests-continue>

⁵ <https://www.thaipbsworld.com/12-leaders-of-khana-ratsadon-group-to-face-lese-majeste-charges/>

Nampa⁶, Panusaya Sithijirawattanakul who have been charged with at least twenty, twelve and nine cases of lèse-majesté respectively. All three HRDs have been involved in the organising of the peaceful pro-democracy demonstrations. If convicted of these charges, the HRDs face several decades in prison.

Strategic Lawsuits Against Public Participation (SLAPP)

11. Although freedom of expression is a constitutionally guaranteed right in Thailand, its exercise by human rights defenders has been severely hindered by restrictive legislation and the government's control over the media. As part of its commitment to the National Action Plan on Business and Human Rights, the government undertook to assess the effectiveness of anti-SLAPP clauses inserted into articles of the Criminal Procedural Code in 2018. These articles were amended to prevent cases of judicial harassment against human rights defenders. However, these positive amendments have not resulted in fewer instances of SLAPPs being filed against human rights defenders, who continue to be targeted by both corporations as well as government bodies as a result of their exposure of human rights violations

12. Since 2016, the Thammakaset Company Limited has filed at least 37 complaints against 22 human rights defenders.⁷ Most recently, on 23 November 2020, the Bangkok South Criminal Court began its preliminary hearing into the combined case brought against three women human rights defenders Angkhana Neelapaijit, Puttanee Kangkun, and Thanaporn Saleephol.⁸ The case combines four different complaints, which include a total of 28 counts of criminal defamation for 28 postings or re-postings on social media. The posts in question were made by the women human rights defenders to express support for other human rights defenders facing judicial harassment by the company for documenting labour rights abuses. Angkhana Neelapaijit faces a total of two counts, Puttanee Kangkun faces 21 counts, and Thanaporn Saleephol faces five counts.

Land and Environmental Rights Defenders

13. Human rights defenders working on land and environmental rights have been increasingly targeted by business interests and authorities alike. They have been subjected to judicial harassment, violent attacks and even killings. Perpetrators of these crimes often go unpunished as impunity remains widespread. On 20 October 2020, land rights defender Dam Onmuang escaped an attempt on his life after an individual believed to be affiliated with a multinational palm oil company fired a gun at the human rights defender.⁹ The HRD has played a vital role by taking the lead in negotiating in land disputes with palm oil companies and the authorities so as to protect and safeguard his community's guardianship of the land and natural resources.

14. On 25 September 2020, environmental rights defenders of the Khao Lao Yai-Pha Jun Dai forest conservation group were able to successfully reclaim land from a mining project in the Nongbua Lamphu Province. The project had long been impacting the health and environment of the community. This struggle against the mining project, that has lasted over two decades has come with numerous death threats and killings of members of the group. Since August 2020 one of the group's advisors, Lertsak Kumkongsak, has received a number of death threats due to his work in supporting the community.¹⁰

LGBTIQ+ Defenders

6 <https://www.frontlinedefenders.org/en/case/human-rights-lawyer-arnon-nampa-arrested-and-charged>

7 <https://www.business-humanrights.org/en/latest-news/thailand-preliminary-hearing-of-criminal-defamation-case-brought-by-thammakaset-company-limited-against-three-women-hrds/>

8 https://www.frontlinedefenders.org/sites/default/files/thailand_-_ua_-_angkhana_neelapaijit_puttanee_kangkun_and_thanaporn_saleephol_-_24_nov_2020.pdf

9 <https://www.frontlinedefenders.org/en/case/attempted-killing-land-rights-defender-dam-onmuang>

10 <https://www.frontlinedefenders.org/en/case/death-threats-against-environment-rights-defender-lertsak-kumkongsak>

15. While the country's Cabinet approved a bill that would recognise same-sex unions in July 2020, there has been no progress on the issue since. LGBTIQ+ defenders continue to be ostracised and are often the target of gendered attacks. In February 2021, LGBTIQ+ rights defender Nada Chiyajit received violent threats and transphobic messages for providing legal assistance to a trans woman who was being harassed. Hers is just one of case amongst the many, where LGBTIQ+ defenders have been threatened with violence. The pro-democracy movement also saw the coming together of various LGBTIQ+ groups, leading and calling for political reform, gender equality and better representation.

Youth and Student Defenders:

16. In their capacity as organisers and leaders of the pro-democracy protests, many student and youth rights defenders have been subjected to harassment and criminalisation for their role in calling for the dissolution of the parliament, the ending of harassment of critics of the government, and the drafting of a new constitution. University campuses across Bangkok saw students express their protest through flash-mobs and peaceful gatherings. On 25 February 2021, Supriya Jaikaew, a pro-democracy WHRD and administrator of Free Youth student group from Chiang Rai, was charged with lèse-majesté and under Computer Crime Act and subsequently arrested, before being granted bail at around midnight. According to Thai Lawyers for Human Rights, her arrest marked the 60th lèse-majesté case filed against pro-democracy defenders since late November 2020. She joins a large list of student and youth defenders, some as young as sixteen, who have been charged for their peaceful exercise of the freedom of assembly and expression.

Legal Policy and framework

17. Human rights defenders in Thailand are not specifically protected by any laws, policies or practices. Several laws have been widely used to criminalise and intimidate human rights defenders including Articles 110 and 112 of the Criminal Code relating to lèse-majesté; Article 116 of the Criminal Code that relates to sedition; Article 14 of the Computer Crimes Act; Criminal defamation under sections 326 of the Criminal Code; and the Public Assembly Act.

18. Article 116 of the Criminal Code, relating to sedition, has been used extensively, most recently to target defenders engaged in the pro-democracy movement. Article 116 prescribes a jail terms of up to seven years for those found guilty of incitement or expressing any criticism of laws or the government by the use of coercion or violence. This has led to severe restrictions in peoples' right to express their discontent with the government without the fear of being arrested for the same. On 22 May 2018, fifteen human rights defenders including Arnon Nampa, Rangsiman Rome, Sirawith Seritiwat, Chonticha Jaengrew and Piyarat Chongthep, were arrested and charged with sedition for their participation in a peaceful demonstration calling on the military junta to hold free and fair general elections.¹¹

19. Free speech is also targeted under laws relating to criminal defamation and Article 14 of the Computer Crimes Act, with its overly broad language being used to stifle all forms of online dissent. The law targets human rights defenders who are critical of the government and monarchy. Those found guilty under the law face a heavy fine or up to five years in prison, or both. Article 14 and Article 116 of the Criminal Code were widely used to judicially harass defenders during the temporary suspension of the use of the lèse-majesté.

20. The Public Assembly Act restricts freedom of assembly and expression in ways that are not in compliance with international human rights standards. The provisions contained within the Act pertaining to the organising and the manner in which peaceful processions may take place, are extremely vague and open to interpretation, thereby allowing it to be extensively used to stifle dissent and criticisms against the government. It has been used by authorities to interfere

¹¹ <https://www.frontlinedefenders.org/en/case/arrest-15-hrds-demanding-free-and-fair-elections-2>

with public demonstrations by discouraging their organisation, shutting venues that are protest locations, and heavily monitoring protest activities. Before the enactment of the Emergency Decree in March 2020, the Public Assembly Act was commonly used to target gatherings and protests.

Recommendations

21. Front Line Defenders calls upon the member states of the UN Human Rights Council to urge the government of Thailand to prioritise the protection of human rights defenders and in doing so to:

- 1. Fully guarantee the exercise of the right to freedom of peaceful assembly, and ensure that public events and gatherings organised by human rights groups are not disrupted;**
- 2. Review all laws and regulations that are not in compliance with international human rights standards, including the Public Assembly Act and Computer Crimes Act with a view to ensuring their full compliance with international human rights law and that they are not used against the legitimate work carried out by HRDs;**
- 3. Repeal section 112 of the Criminal code, immediately and unconditionally release all those currently detained under this section and immediately cease all investigations under section 112 of the Criminal Code;**
- 4. Cease judicial harassment of HRDs and ensure that all HRDs are able to carry out their legitimate human rights activities free from arbitrary arrest and judicial harassment;**
- 5. Accept and fully implement the UPR recommendations on HRDs in a transparent and participatory manner with full involvement of HRDs at all levels;**
- 6. Ensure that HRDs are given adequate protection through domestic mechanisms and allowed to conduct their work without hindrance, intimidation or harassment.**
- 7. Repeal section 112 of the Criminal Code, the existing criminal defamation laws, and review anti-SLAPP clauses for their effective implementation.**
- 8. Ratify and ensure full respect of the Optional Protocol of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, and the UN Declaration on Human Rights Defenders, including in particular the right to freedom of expression, association and assembly.**