

*Human Rights Implementation Centre, University of Bristol- individual UPR
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1. The present document is the individual submission of the Human Rights Implementation Centre (HRIC) for the Universal Periodic Review of Thailand and concerns specifically the obligations of the country under the International Covenant on Civil and Political Rights (ICCPR).
2. Since the military coup of September 2006 in Thailand, the *lèse majesté* law incorporated in Article 112 Thai Criminal Code has been repeatedly used in order to restrict the freedom of expression. This runs contrary to the obligations the country undertook when it became a party to the ICCPR on 29 October 1996.
3. According to Article 112 of the Thai Criminal Code, any word or act which ‘defames, insults, or threatens’ the monarchy is strictly prohibited; any violation of this is punishable with imprisonment of three to fifteen years.¹ This constitutes prohibited restriction of freedom of expression as per Article 19(2) of the ICCPR as it does not meet conditions set out in Article 19 (3) of the ICCPR.
4. According to the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (Special Rapporteur), a permissible restriction on the freedom of expression must fulfil three conditions: it must (a) be provided by law, (b) necessary, and (c) pursue one of the enumerated legitimate aims.²
5. These conditions mirror the conditions set by the Human Rights Committee (HRC) for permissible restrictions imposed in accordance with Article 19 (3) of the ICCPR.³

¹ Art 112 of the Thai Criminal Code read as follows: "Whoever defames, insults or threatens the King, Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years." Wording ion English by www.thailaws.com

² Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/14/23 of 20 April 2010; at para 74

³ Human Rights Committee, Draft General Comment No. 34 (Upon completion of the first reading by the Human Rights Committee), CCPR/C/GC/34/CRP.5 of 25 November 2010; at para 23

6. Consequently, any restrictions imposed upon the freedom of expression must be firstly be provided for by law. The HRC has however clarified that for a norm to be characterised as ‘law’ for the purposes of Article 19(3) of the ICCPR, it must be formulated with sufficient precision to enable an individual to regulate his/ her conduct in accordance with it; it must be made public and may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.⁴
7. This also reflects the approach adopted by the Special Rapporteur who notes that the ‘law imposing restrictions must be accessible, concrete, clear and unambiguously understandable for everyone’.⁵
8. Article 112 of the Criminal Code violates the requirements set by both the HRC and the Special Rapporteur as the provision employs vague language and there are no definitions provided as to what constitutes ‘defamation’ or ‘insult’. Therefore it remains unclear which acts would violate the *lèse majesté* law. Moreover according to the Special Rapporteur, in 2009 the Thai Government promised that its Ministry of Justice would ‘draw up standard operation procedures so that the public knows the boundaries of this law’.⁶ However to the date there is no information in public domain whether such operational procedures have been drawn up.
9. The uncertainty that surrounds the precise content of the prohibition contained in Article 112 of the Criminal Code means that the implementation of the provision is open to abuse. In fact, in November 2009 the Thai Government itself recognized to the Special Rapporteur that ‘that there have been problems with the enforcement of the *lèse-majesté* law, which have led to its abuse’⁷. The Prime Minister has publicly stated that ‘the problem with this law is more with its enforcement over the last few years, where the law has often been abused or too liberally interpreted’.⁸
10. Consequently, the broad formulations adopted in Article 112 of the Criminal Code, coupled with the lack of any further operational guidelines as to the content of the terms employed, breaches the condition required by the HRC and the Special Rapporteur that any restrictions on freedom of expression must be prescribed by law.
11. Furthermore, for a restriction imposed on freedom to expression to meet requirements of Article 19 (3) of the ICCPR, it must pursue one of the two legitimate aims stated in the provision: (a) respect of the rights or reputations

⁴ Human Rights Committee, Draft General Comment No. 34 (Upon completion of the first reading by the Human Rights Committee), CCPR/C/GC/34/CRP.5 of 25 November 2010; at para 26

⁵ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/14/23 of 20 April 2010; at para 79 (d)

⁶ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/14/23/Add.1 of 26 May 2010; at para.2398

⁷ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/14/23/Add.1 of 26 May 2010; at para 2398;

⁸ *Thai Prime Minster's visit to Hong Kong. Question and Answer session.* Answer of the Thai PM to the question of “Le Monde” concerning Lese Majeste. 15 May 2009. Available at: <http://www.hk-thai.com/hkthai/jsp/en/news/news.jsp>

of others; or (b) the protection of national security or of public order (ordre public), or of public health or morals.

12. The Thai government argues that the *lèse majesté* is necessary for the Thai national security as the monarchy is one of Thailand's principal institutions under the Constitution⁹ and thus meets the requirements set forth in Article 19(3) of the ICCPR.
13. The HRC however states that when a government is invoking one of the legitimate grounds for imposing a restriction upon the freedom of expression, it must demonstrate 'in specific and individualised fashion the precise nature of the threat and the necessity of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat'.¹⁰
14. Therefore the explanation advanced by the Thai government to the Special Rapporteur whereby an abstract, general situation is described as a danger to the national security, does not meet the requirements set by the HRC. The act in question has to fulfil the condition that the life of the nation is threaten by a particular act of *lèse majesté* and this has to be established in every single case separately before such actions as censorship or bringing charges in accordance with Article 112 can take place.
15. Consequently by failing to determine the necessity in an individual fashion as required by the HRC, Thailand is failing to fulfil the requirement of necessity as prescribed by Article 19(3) of the ICCPR.
16. Moreover, Article 112 of the Thai Criminal Code criminalizes any defamation of the monarchy. However, according to the Special Rapporteur, the requirement of necessity embodied in Article 19(3) of the ICCPR means that any restrictions upon the freedom of expression 'must be kept to the minimum necessary'.¹¹ In fact, the Special Rapporteur has specifically objected to the criminalization of defamation and 'therefore encourages all efforts to decriminalize acts considered to be acts of defamation and to make civil liability proceedings the sole form of redress for complaints of damage to reputation'.¹²
17. Additionally in its reply to the Special Rapporteur the Thai government argued that the necessity for Article 112 in its Criminal Code is justified under Article

⁹ Answer of the Thai Government to an urgent Appeal of the Special Rapporteur, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/14/23/Add.1 of 26 May 2010; at para 2379

¹⁰ Human Rights Committee, Draft General Comment No. 34 (Upon completion of the first reading by the Human Rights Committee), CCPR/C/GC/34/CRP.5 of 25 November 2010; para 36

¹¹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/14/23 of 20 April 2010; at para 77

¹² Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/14/23 of 20 April 2010; at para 83

19 (3) of the ICCPR as ‘freedom of expression does not allow a person to verbally attack, insult or defame anyone, not to mention the Head of State’.¹³

18. The HRC however has clearly stated that public figures, including those exercising the highest political authority such as Heads of State and government, can be legitimately subjected to criticism and political opposition.¹⁴ The Committee has thus concluded that ‘the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties’¹⁵ and imposing limitations upon the exercise of freedom of expression as guaranteed by Article 19 of the ICCPR.
19. The HRC in fact has clearly expressed its concern specifically regarding lèse majesté laws stating ‘laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned’.¹⁶
20. The Special Rapporteur has also made it clear that ‘public figures should tolerate a greater degree of criticism than ordinary citizens’.¹⁷ Furthermore, when examining the reasons behind the permissible restrictions in accordance with Article 19 (3) of the ICCPR, the Special Rapporteur has made it clear that ‘although limitations to the right to freedom of opinion and expression are foreseen in international instruments (...) these limitations were designed in order to protect individuals against direct violations of their rights. These limitations are not intended to suppress the expression of critical views, controversial opinions or politically incorrect statements’.¹⁸
21. Consequently, the HRIC would like to raise the following two issues for the consideration by the UPR:
 - a. Article 112 of the Thai Criminal Code violates obligations that Thailand has undertaken when becoming a party to the ICCPR, Article 19 specifically.
 - b. The lèse majesté law should be either abolished or amended so as to reflect the requirements of Article 19 of the ICCPR are per the practice of the Human Rights Committee and the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression:

¹³ Answer of the Thai Government, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. A/HRC/14/23/Add.1 of 26 May, 2010; at para 2379 (2)

¹⁴ Human Rights Committee, Draft General Comment No. 34 (Upon completion of the first reading by the Human Rights Committee), CCPR/C/GC/34/CRP.5 of 25 November 2010; para 40

¹⁵ Human Rights Committee, Draft General Comment No. 34 (Upon completion of the first reading by the Human Rights Committee), CCPR/C/GC/34/CRP.5 of 25 November 2010; para 40

¹⁶ Human Rights Committee, Draft General Comment No. 34 (Upon completion of the first reading by the Human Rights Committee), CCPR/C/GC/34/CRP.5 of 25 November 2010; para 40

¹⁷ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo. Mission to Azerbaijan. A/HRC/7/14/Add.3 of 19 February 2008; at para 71

¹⁸ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo. A/HRC/7/14 of 28 February 2008; at para 85

- i. Ensure that the legislation in question meets the requisite standards of foreseeability, clarity and legal certainty;
- ii. Ensure that the necessity for imposing restrictions upon freedom of expression are implemented in an individual fashion;
- iii. Decriminalise defamation.

Sincerely yours,

Human Rights Implementation Centre

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