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# Right to Freedom of Opinion and Expression: Opportunities, Challenges and Threats to Media in the Digital Age

Country Context: Thailand

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Submission to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ms. Irene Khan, for her Report to the 50th Session of the Human Rights Council (June 2022)

## Submitting Organisations' Contact Details and Organisational Descriptions:

<p><b>Destination Justice (DJ)</b> <a href="https://destinationjustice.org">https://destinationjustice.org</a> <a href="mailto:info@destinationjustice.org">info@destinationjustice.org</a> 11 rue Aimé Collomb 69003 Lyon, France</p>	<p>Established in 2011, Destination Justice (DJ) is an NGO promoting human rights and rule of law, in particular access to justice and access to information. Among other things, DJ has extensively represented, assisted, and reported on persecuted human rights defenders in Southeast Asia and other regions, including before UN bodies. It has also engaged in UPR processes, including most recently that of Thailand's, for which DJ and several of the present submitting organisations filed a submission on human rights defenders and fundamental freedoms.</p>
<p><b>Asia Centre (AC)</b> <a href="https://asiacentre.org">https://asiacentre.org</a> <a href="mailto:contact@asiacentre.org">contact@asiacentre.org</a> 128/183 Phayathai Plaza Bldg Fl. 17, Phayathai Road Thung Phaya Thai, Ratchathewi Bangkok 10400, Thailand</p>	<p>Asia Centre, founded in 2015, is a not-for-profit social enterprise that seeks to create human rights impact in the region. Asia Centre develops evidence-based knowledge toolkits, organises stakeholder capacity building activities and undertakes media and social media advocacy. It is well known for its seminal analysis, "The Universal Periodic Review of Southeast Asia: Civil Society Perspectives" (2018: Palgrave Macmillan, USA).</p>

**Methodology:** This submission is based on primary observation, desk review and analysis from the regional submitting CSOs. In addition, it draws on a 24 March 2021 UPR submission on human rights defenders and fundamental freedoms in Thailand by Destination Justice, the Cross-Cultural Foundation, Duay Jai Group, the Human Rights Lawyer Association, Justice for Peace Foundation, and Asia Centre, which was based on a desk review and informant interviews from human rights defenders, CSOs and journalists (available via OHCHR as [Joint Submission 9](#)).

**Question 1(a) What are the key trends, threats or challenges to the freedom, independence, pluralism and diversity of media and the safety of journalists in your country, region, or globally in your view?**

**A. Crises such as mass protests and Covid-19 have been used as a pretext for the executive to impose emergency regulations that unduly curtail journalistic activity.**

1. The Thai Prime Minister enacted an *Emergency Decree* on 25 March 2020 over the Covid-19 pandemic, which remains in effect, as well as a *Severe Emergency Decree* which applied for five days in October 2020 due to a concentration of pro-democracy protests in Bangkok at the time. Pursuant to these decrees, he has issued 42 ensuing emergency regulations. Several of these have limited the size of assemblies or imposed curfews in the name of public order and health but in a patent attempt to prevent mass civilian pro-democracy protests that have nevertheless persisted for 2.5 years. Such limits go beyond the permissible bounds defined in the *International Covenant on Civil and Political Rights (ICCPR)* to which Thailand is a State Party, notably by failing to explain how participation in each prohibited assembly constitutes a substantial health risk. As such, they violate freedom of assembly and association and freedom of opinion and expression.
2. Moreover, such emergency regulations have unduly impeded journalists' activities. Journalists and citizen journalists have been among 1,244 individuals prosecuted under the *Emergency Decrees* and *Penal Code* sections 215 (an attempt to breach the peace by a group of 10 or more) and 216 (failure to disperse when requested). For example, in February 2021, a journalist from Naewna newspaper was charged for reporting on the riot police's crackdown on protesters at a demonstration at Din Daeng intersection. He faces imprisonment of up to two years. In September 2021, riot police arrested citizen journalists representing Ratsadon News and Free Our Friend at another Din Daeng intersection protest, accusing them of being fake media and violating curfew. Their residences were searched and their electronic equipment seized. During protests, riot police have also reportedly restricted journalists' movements; ordered them to stop reporting police violence and delete photographs; and tried to disperse them violently, hitting them with batons, firing rubber bullets or tear gas at them, and detaining them with zip ties.
3. It should also be noted that Article 17 of the *Emergency Decree* grants immunity to those in power acting in good faith, exempting all ensuing regulations, announcements, and notifications from judicial review. Those adversely affected cannot access remedies except through civil torts. This violates Thailand's ICCPR obligation (discussed in *General Comment 34*) to provide access to effective remedies.

**B. Journalists' expressions of views deemed unacceptable by the government have been criminally prosecuted as lese-majesty, sedition, or violations of national security.**

4. Since the 2014 *coup d'état* in Thailand, a number of media and journalists have been charged with lese-majesty (*Penal Code* section 112), sedition (*Penal Code* section 116), and/or charges under the *Computer-Related Crimes Act* (often used as a lese-majesty alternative where the conduct does not fit lese-majesty's definition) in connection with their reporting of views deemed unacceptable by the government, particularly online. These include Thai senior journalist Pravit Rojanaphruk and foreign correspondent Andrew MacGregor Marshall, whose families were also subject to state surveillance and threats, leading Mr. Marshall's, for example, to leave Thailand.
5. In this regard, Thailand has ignored international pressure especially through multiple Universal Periodic Review recommendations not supported by Thailand to abolish or reform such laws and

respect its international law obligations. Instead, prosecutions for lese-majesty and sedition have recommenced after a brief hiatus, while the *Computer-Related Crimes Act* was amended in 2017 to further backslide from international human rights norms, outlawing hosting or sharing data on grounds including national security. The government has since invoked that Act to force Facebook to shut down at least 23 journalists'/activists' websites. It also attempted to do the same in order to shut down four independent news outlets over their protest coverage, but the Criminal Court blocked this.

6. In addition, protesters – including citizen journalists – who have been charged for such serious crimes frequently have bail requests denied by the courts. Furthermore, since 2021, Thai courts have also occasionally provisionally released these individuals while simultaneously imposing onerous bail conditions that prohibit them from exercising fundamental freedoms including of expression, assembly, and association. As Asia Centre and Destination Justice explain in an [op-ed in the Bangkok Post](#), this violates Thailand's international law obligations under the ICCPR.

**C. Administrative directives, policies, and processes have been implemented to further constrain journalists' activities.**

7. On 26 November 2021, the commissioner of the National Broadcasting and Telecommunications Commission (**NBTC**) warned broadcast media that they should no longer report on protesters' calls for monarchic reform. This followed a 10 November 2021 Constitutional Court decision characterising leading protesters' calls for monarchic reform as tantamount to attempted insurrection and ordering them and their "networks" to stop such activities. The NBTC commissioner advised that reporting such activities could be prosecuted as the activities themselves and that outlets should consequently avoid interviewing protest leaders and supporters and present only factual reports about events taking place. More broadly, the legislature is currently considering a code of conduct for the media. The draft bill, which received Cabinet approval this month, proposes the imposition of administrative sanctions such as licence revocations for outlets which violate the "good morals of the public".
8. Since 2021, the government's Public Relations Department has maintained a policy where only media and press agencies with at least 20 staff and a permanent office can register with the department and receive identifying armbands and other essential documents. In turn, the Metropolitan Police Bureau has required press and journalists to show those armbands, press cards, and an authorising letter, to report in the field. This has thus limited citizen journalists' ability to operate and provide alternative sources of information to mainstream media.
9. Similarly, both journalists and citizen journalists have faced significant limitations in reporting on high profile cases involving protesters and activists. The Court of Justice has strictly limited courtroom observation, with only outlets registered under the Information and Public Relations Division permitted to cover cases. Courts have invoked Covid-19 prevention as a basis for prohibiting observation of such high-profile trials, while the Constitutional Court has suggested that the government's critics can be sued for defamation. Where journalists are permitted entry, they have also sometimes been requested to not report sensitive information, mostly related to national security and royal institutions. Moreover, numerous activists including citizen journalists who have attended and peacefully protested inside court hearings or outside courthouses while other activists are being prosecuted for exercising their fundamental freedoms have found themselves prosecuted for contempt of court as a result.
10. In addition, since 2019, Thailand has instituted a policy in the southern Thailand region only – where Muslim separatists are located – requiring residents to re-register their mobile SIM cards with

supplementary biometric data, including fingerprints and facial images. Failure to do so by a certain deadline has resulted in mobile access being disabled. Similarly, Thai authorities in the region also reportedly maintain a policy of collecting Muslim residents' DNA, including without consent, and have installed 8,000 AI-powered surveillance cameras in the region. All such measures encroach upon journalists' and citizen journalists' ability to freely access and disseminate information in that region, in addition to being highly discriminatory.

11. Foreign journalists face further immigration-related constraints including entry prohibition and possible deportation. For example, in November 2021, TikToker and long-term Thai resident Yan Marchal was detained at Bangkok's Suvarnabhumi Airport before being deported, as the immigration officer claimed that Mr. Marchal had violated the *Immigration Act* and national security by producing satirical videos criticising Thai authorities including the Prime Minister.

#### **D. Journalists and citizen journalists face state surveillance and intimidation.**

12. State surveillance of journalists and citizen journalists is becoming increasingly commonplace in Thailand, particularly in connection with reporting on pro-democracy protests. This month, for example, at least one independent journalist, two citizen journalists and one reporter from *Voice TV* were subject to regular police surveillance at their residences. Some were questioned about their personal information and movement and asked to avoid protests.
13. The Court of Justice also recently issued a search warrant authorising police to raid the offices of the publishing house Same Sky. The police seized electronic equipment and copies of the controversial book *Monarchy and Thai Society*, which is a collection of key protest leaders' speeches. Although three past efforts to prosecute Same Sky's editor Thanapol Eawsakul for lese-majesty have all been dropped, he and Same Sky have faced ongoing police harassment and intimidation, including a prior police raid in March 2021 when widespread protests were taking place throughout the country. The editor of the Isaan Record, a media outlet in northeast Thailand, has also faced ongoing harassment following its reporting on lese-majesty cases.
14. It is also alleged that journalists may be subject to surveillance by the Immigration Bureau. In August 2021, a leaked document appeared to indicate that the Immigration Bureau allegedly maintains a watchlist of at least 183 individuals who its officials continue to monitor. The leaked watchlist appeared to include journalists such as Pravit Rojanaphruk and to detail names, ID/passport numbers, case status, and travel details. However, the Immigration Bureau has denied the authenticity of the document and the existence of such surveillance techniques.
15. Furthermore, in November 2021, certain activists including journalists were notified of possible hacking attacks on their iPhones. These were reported to have been linked to the wave of Pegasus spyware-related cyber-attacks in late 2021.

#### **Question 1(b) To what extent have these trends, threats and challenges emerged, or have been aggravated, because of the policies and practices of digital and social media platforms?**

16. Social media presents an alternate avenue for abuse of journalists and citizen journalists. As Asia Centre has detailed in its recent report [Media Freedom in Southeast Asia](#), the region's governments, including that of Thailand, have capitalised on the challenges posed by the digital decentralisation of information, including the rise of sensational reportage, disinformation, and the shift to automated journalism. They have used laws to selectively repress the media. Legislation such as the *Computer-Related Crimes Act* focuses on outlawing online forms of expression, and has frequently

been invoked for example in connection with offending posts or shares on social media. In August 2021, the Ministry of Digital Economy and Society issued new *Rules on Retaining Computer Traffic Data of Service Providers*. These oblige a broad range of online service providers, including social media, messaging services, and cloud storage providers, to retain certain kinds of user data for at least 90 days. The data required includes users' identification data, access times, accessed files, and transactions conducted. At the same time, implementation of a new *Personal Data Protection Act* which would impose stricter regulations on data collection and enable users to opt out has been postponed and is currently slated to take effect on 1 June 2022.

17. There have also been widespread reports of online harassment via social media, including state-sponsored harassment campaigns. Social media platforms and the ease with which accounts can be opened on them has reportedly enabled the Thai military to maintain some 50,000 accounts on Twitter and Facebook that it uses to conduct "information operation" (IO) campaigns against activists and human rights defenders including journalists and citizen journalists. Twitter and Facebook have reportedly only shut down some 2% of these accounts thus far.

**Question 1(c) Please highlight the gender dimensions of the trends and their consequences for the equality and safety of women journalists as well as media freedom.**

18. Journalists and citizen journalists of all genders face challenges to their freedom and safety in Thailand. However, the CSO Thai Lawyers for Human Rights reports that women journalists in particular have faced intimidation by plainclothes police officers while reporting on protests. In addition, a female journalist working for Voice TV, Suchanee Rungmuanporn, was subject to a strategic lawsuit against public participation and ultimately sentenced to 2 years' imprisonment for reporting on a case of alleged labour exploitation by a poultry company in Thailand. In another example, in April 2021, the Prime Minister berated the female, Thai journalist Kamonthip Aungsakularporn while she was reporting for Japanese newspaper Tokyo Shimbun at a press conference as he took offence to the way she was sitting; she was later barred from attending future Government House press briefings ostensibly for attempting to spread misinformation. In March 2021, she also had riot police threaten her at gunpoint for attempting to report on a protest.

**Question 2. What legislative, administrative, policy, regulatory or other measures have Governments taken to promote press/media freedom, including media independence, pluralism, viability and ownership issues? What has been the impact of these measures? What changes or additional measures would you recommend?**

19. The draft media code of conduct currently being legislated would propose to develop a common standard for media ethics in Thailand, which could in principle help to ensure media freedom and independence, particularly if the Media Profession Council to be appointed to oversee media licencing includes a representative, impartial, and inclusive selection of media professionals. It could also theoretically enable state-run media employees to refuse superiors' orders should media ethics be violated. However, the draft bill currently stresses the need to balance freedom of the press with the "good morals" of the Thai people and with the "role of Thai citizens", and extends to cover not only professional media but also citizen journalists. Taken together, this could lead to even further constraints being imposed on free expression by the press in Thailand. Furthermore, the legislative drafting process has lacked public participation and transparency.

**Question 3. What measures are Governments taking to support public service media? What has been the impact of such measures? What changes or additional measures would you recommend?**

20. The legislation that established the Thai Public Broadcasting Service provides financial support to the service: it empowers the organisation to collect levies from people liable to taxation under the laws on the sale of liquor and tobacco.

**Question 4. What measures have a) Governments b) social media companies c) media companies taken to promote the safety of journalists? What has been the impact of these measures? What more can/should be done and by whom? Please also mention any specific laws or measures to address online violence, threats and harassment and what result they have produced.**

21. **(a) Governments:** The Thai government appears to have taken no efforts to promote journalist safety, using and allowing legal and non-legal measures to restrict freedom of the press and expression by closing TV stations, blocking websites, controlling community radio stations, and harassing media and Internet users. In contrast, the judiciary has made certain, limited efforts: in August 2021, the Civil Court urged the Royal Thai Police to exercise caution to protect and facilitate journalists' access to protests in response to a complaint made by journalists who had been shot with rubber bullets during protests. However, the Civil Court indicated that the riot police may legitimately have recourse to use of less-lethal weapons such as rubber bullets to control protesters, and they accordingly declined to issue a temporary injunction in this regard.
22. **(b) Social media:** Social media efforts to promote the safety of journalists in Thailand have thus far been piecemeal and limited. As noted above, in November 2021, Apple notified certain Thai activists and journalists warning that their iPhones had been targeted by "state-sponsored attackers" and that the devices, including in-built cameras, could potentially be accessed remotely. In October 2020, Twitter shut down 926 army-linked IO accounts, while Facebook shut down 185 such accounts in March 2021. In May 2021, Twitter, in partnership with CSOs Thai Lawyers for Human Rights and iLaw, as well as the Lawyers Council under the Royal Patronage, launched a #ThereIsHelp notification service. This enables Twitter users who search keywords associated with freedom of expression to receive an automatic notification, in Thai, of contact details for organisations that can assist them with freedom of expression issues in Thailand.
23. **(c) Media companies:** Media companies have faced significant state pressure to restrict their journalists' activities. This includes pressure to suspend or expel journalists and editors holding views deemed unacceptable by the government, including journalists Pravit Rojanaphruk and Umesh Pandey. Organisations such as the Foreign Correspondents Club of Thailand have also been threatened with lese-majesty charges and been forced to cancel many planned events.

**Question 5. a) What measures have Governments taken to investigate and prosecute attacks against journalists, including online violence and harassment against female journalists? What are the barriers to fighting impunity? What changes would you recommend?**

24. The Thai authorities have thus far failed to investigate and prosecute attacks against journalists and citizen journalists which promote opposition views, protecting only state-owned media from public complaints and scrutiny. Meanwhile, the military and police have enjoyed impunity for IO campaigns

and attacks on journalists. Likewise, pro-royalist vigilante groups who have engaged in well-documented harassment and attacks on human rights defenders including journalists have not been prosecuted either. The clear barrier to doing so is a lack of political will.

**Question 5. b) The UN Plan of Action on the Safety of Journalists and the Issue of Impunity will mark its 20th anniversary in 2022. How do you assess its results and what suggestions would you make to improve it? How can it be more relevant to gender concerns and to the threats posed by digital technology?**

25. The Plan of Action on the Safety of Journalists and the Issue of Impunity requires updating to reflect current trends and practices. In particular, it should:
- a. **Expressly include citizen journalists within its mandate.** They play an increasingly important role in societies that curtail fundamental freedoms and journalists' activities.
  - b. **Call upon not only Member States and United Nations organs but also private actors, such as social media companies, to improve protections for technology users.** The Plan should, in particular, urge such actors to reflect on their ethical and moral obligations in such circumstances and to develop more sophisticated, comprehensive, and proactive efforts to ensure user safety.
  - c. **Acknowledge that attacks on journalists and citizen journalists can also be state-sponsored and pressure United Nations Member States to call out such attacks and potentially refer them** for adjudication of state responsibility before the International Court of Justice or individual criminal prosecution before the International Criminal Court, in particular where the state in question may be violating its own international law obligations.

**Question 6. What do you believe has been the impact of digital and social platforms on press/media freedom, independence, viability and safety of journalists? What specific recommendations would you make to a) Governments and b) the companies to address or mitigate the detrimental impact?**

26. Social media platforms have created an enabling environment for journalists as well as citizen journalists to create alternative, accessible, often free, and frequently real-time sources of information, not only on Facebook and Twitter but also through emerging platforms such as TikTok and Clubhouse and messaging applications such as Telegram. This fosters access to information, which may be particularly important in closed and closing societies like Thailand.
27. Sadly, social media is also an enabling environment for harassment and attacks against journalists, including in ways that make it challenging to identify and prosecute perpetrators. Governments must guarantee freedom of expression and end impunity by prosecuting online harassment of journalists and citizen journalists, while as noted above, digital and social technology companies should reflect on their ethical and moral obligations in such circumstances and develop more sophisticated, comprehensive, and proactive efforts to ensure user safety.

**Question 8. Do you see any major gaps in the international human rights legal framework? Are there any specific recommendations that you would suggest to address such gaps or to improve implementation of existing standards?**

**A. International human rights law must more expressly address the legitimate role and necessary safety not only of journalists but also citizen journalists.**

28. Citizen journalists are currently addressed in the *Declaration on Human Rights Defenders* but are not addressed in instruments focused on journalists such as the UN Plan of Action on the Safety of Journalists and the Issue of Impunity. However, the distinction between journalists and citizen journalists is becoming blurred and the importance of citizen journalists is increasing in societies where mainstream media is becoming so restricted that independent information is difficult to obtain through such channels. It is therefore increasingly important to ensure not only that citizen journalists are adequately protected (particularly since the nature of their operation may mean that they lack the protections that may be afforded to professional journalists) but also that international human rights law adequately signals to Member States and the public what protections exist.

**B. International human rights law should clarify expressly that fundamental freedoms remain so even during states of emergency.**

29. The ICCPR has already defined acceptable limitations to fundamental freedoms, while several of the Human Rights Committee's relevant *General Comments* have clarified how and when these limits apply, including during states of emergency. However, it is clear that some Member States such as Thailand may have misconstrued the relevant laws, assuming that declarations of states of emergency enable further derogation from fundamental freedoms than the limits provided under the ICCPR. In fact, those modest limits are comprehensive, with no further restrictions permitted even if states declare an emergency. Nevertheless, in light of Thailand's conduct and similar practices by other states particularly in the face of social crises and the ongoing Covid-19 pandemic, clarification and guidance in this regard should arguably be provided which consolidates the legal position currently dispersed across the ICCPR and various *General Comments*.