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Appendix I: Human Rights Watch Letter to Thailand Minister of Foreign Affairs



HRW.org

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October 1, 2019

Mr. Don Pramudwinai
Minister of Foreign Affairs
Kingdom of Thailand
Ministry of Foreign Affairs
Sri Ayudhya Road,
Bangkok 10400 Thailand

Re: Human Rights Watch questions on freedom of speech and assembly in Thailand

Dear Foreign Minister,

I write to request the Thai government's response regarding research Human Rights Watch has conducted on the rights to freedom of expression and peaceful assembly in Thailand. Human Rights Watch plans to release a report on this subject as part of a series of reports on freedom of expression in Asia.

Human Rights Watch is an independent, nongovernmental organization that investigates and reports on violations of international human rights law in more than 100 countries. We produce reports based on our findings to urge action by governments and other stakeholders to address the problems we have identified and to hold accountable those responsible for human rights abuses. Human Rights Watch has worked on human rights issues in Thailand for more than 30 years.

Human Rights Watch is committed to producing material that is evidence-based, accurate, and impartial. For this reason, I am reaching out to provide an opportunity for you and your staff to present your views so that they can be reflected in our report.

Human Rights Watch has analyzed many of the restrictions imposed on speech and assembly in Thailand, focusing on the period between May 2014 and March 2019, and examined how those restrictions have been applied. Based on that analysis, it appears Thailand has imposed restrictions on speech and assembly that exceed those permitted under

international human rights law and has taken action to penalize those who violate those restrictions. Those typically targeted have been people critical of the National Council for Peace and Order (NCPO) or the monarchy, those speaking out against the military coup, opposition politicians, and activists pressing for elections and a return to democracy in Thailand.

While many of the arrests and prosecutions documented in the report occurred during the period when the NCPO ruled the country, Human Rights Watch has found that many of the laws, orders, and announcements used to suppress peaceful speech and assembly remain on the books, and many continue to be used under the new administration that took office in July 2019.

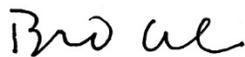
We would appreciate any general comments you may have on the government's respect for the rights to freedom of expression and assembly in Thailand. In addition, we hope that you and appropriate officials can answer the questions below so that the government's views are accurately reflected in our reporting.

We would very much appreciate any information your offices can provide regarding these questions and the issues that they raise. In order to reflect your responses in our report, we would need to receive a reply from you no later than October 16, 2019.

Please do not hesitate to contact me at email: [email redacted] if there are any questions you have about this request.

We thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Brad Adams". The signature is written in a cursive, slightly slanted style.

Brad Adams
Executive Director
Asia Division

Questions for the Government of Thailand

1. Freedom of Speech

- a. What plans does the new government have to improve protections for the right to freedom of expression in Thailand?
- b. What laws and regulations affecting freedom of expression does the new government believe should be repealed, amended, or enacted to ensure protection of this right is upheld?

2. Sedition

- a. How many individuals were arrested for violation of section 116 (sedition) of the Criminal Code between May 2016 and March 2019?
 - i. How many of those individuals have been formally indicted by a military or civilian prosecutor?
 - ii. How many of those cases are still pending in the courts?
- b. Section 116 was used against persons speaking critically of the NCPO and individual members of that body, as well as those who made what could be viewed as insulting comments about individual members of the NCPO. Does the new government consider such speech to be seditious?
- c. The sedition law has also been used against those peacefully calling for elections and a return to democracy. Does the new government consider making peaceful calls for elections to be seditious?
- d. The Bangkok Criminal Court recently acquitted six pro-democracy activists of charges under this law, noting that the defendants did not incite violence and finding that their speech was within the bounds of the Constitution. Does the new government plan to appeal this decision?
 - i. If not, will the government drop all pending sedition charges in which the defendant did not incite violence and the speech was constitutionally protected?

3. Criminal Defamation

- a. Sections 326 to 333 of the Criminal Code make defamation a criminal offense. Does the new government believe that defamation should be a criminal, rather than just a civil, offense? We note that the UN special rapporteur on the protection and promotion of the right to freedom of opinion and expression has stated that defamation should never be treated as a criminal offense.

- b. Because criminal defamation complaints can be filed by individuals, the law has been used by public officials, military officers, private businesses, and private individuals to stifle criticism. These often make the government look intolerant of criticism even when they are not involved in the cases. Will the new government act to stop spurious criminal defamation complaints from government officials or from private persons resulting in prosecution?

4. Prosecution of Peaceful Protesters

- a. The NCPO effectively banned all political gatherings of five or more people for five and a half years through NCPO announcement 7/2014 and section 12 of HNCPO order 3/2015. It arrested more than 400 people for violating those orders. Does the new government believe that it is still lawful to impose such bans? Could they be invoked again?
- b. Since the issuance of NCPO order 22/2018, which repealed section 12 of HNCPO order 3/2015, some courts have dismissed pending charges of violating HNCPO order 3/2015. In at least some cases, however, the prosecutor has opposed such dismissals and argued for the case to proceed. What is the new government's position on the impact of NCPO order 22/2018 on pending cases alleging violation of HNCPO order 3/2015?
- c. A number of lawyers observing peaceful protests were arrested and faced charges that treated them as participants in the protests. Is it the new government's position that observing a protest makes one a participant in that protest? Will the new government move to drop charges against those facing criminal charges who were present as observers?

5. Computer-Related Crime Act

- a. Section 14(1) and (2) of the Computer-Related Crime Act criminalize the input of "false" or "distorted" data. Specifically, section 14(1) makes it a criminal offense to input false or "distorted" data in a manner that is likely to "cause damage" to a range of broad and vaguely worded interests, including "the public, the maintenance of national security, public safety, national economic security or public infrastructure serving national public interest." Does the new government believe an ordinary citizen can determine what information will be deemed likely to "cause damage" to one of these

- vaguely defined interests? If yes, how does an ordinary citizen have access to sufficient information to make such a legal determination?
- b. Individuals using satire, which is a form of opinion, on social media have been accused of inputting “false” information. Will the new government stop treating satire and opinion as something that can be true or false?

6. Contempt of Court

- a. The Organic Law Governing Constitutional Court Procedure empowers the courts to take action against anyone who comments on its rulings in a “dishonest manner” or with “rude, sarcastic or malicious” words or meaning. Under international law judges are not given added protections against criticism for their rulings. What is the justification for imposing such broad restrictions on the public’s ability to comment on decisions of the Constitutional Court?