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Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression  
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**Submission**  
**Right to Freedom of Opinion and Expression:**  
**Opportunities, Challenges and Threats to Media in the Digital Age**  
**To the Human Rights Council at its 50<sup>th</sup> Session, June 2022**

I am writing this report in support of your forthcoming thematic report to the 50<sup>th</sup> session of the Human Rights Council, addressing the right to freedom of opinion and expression (under the theme “Opportunities, Challenges and Threats to Media in the Digital Age.” My own report is to assist in providing information on the situation in Thailand. I am also writing this report in a number of capacities, first as a concerned Thai national, second as an academic working in the field of politics (and in particular of the media, democratization and human rights in Thailand, so my academic expertise aligns with the issues we are discussing here), third as the founder of the newly established project, called “112WATCH,” with its primary aim to tackle the issue and problem of the Article 112 of the Thai Criminal Code (also known as *lèse-majesté* law) (112WATCH can be found at <https://www.112WATCH.org>), and fourth as an active member of the social media and a social media personality, who has become a direct victim of the Thai state accused of *lèse-majesté* under the current regime of Prime Minister General Prayuth Chan-ocha of Thailand (for my critical opinion of the state institutions in social media), a link back to the Special Rapporteur’s mandate and the subject of the forthcoming report.

In the report attached, I highlight that Thailand is under a non-democratic regime. Therefore, the situation on the press freedom has remained precarious. Admittedly, this report on Thailand has inclined toward being rather negative. The Thai government has shown no sign of its support to promote freedom of the media. Rather, it has continued to exploit state instruments to curb freedom of the media.

I hope that this report will be useful for your evaluation of the situation in Thailand. I will be happy for this report to be publicly available. Should you wish to discuss this issue with me further, please do not hesitate to contact me.

Yours sincerely,



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

## **The Case of Thailand**

**By Pavin Chachavalponpun, PhD  
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- 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?**

In Thailand, a tight grip on the media has been on the rise. Indeed, after the coup of 2014 that overthrew the elected government of Yingluck Shinawatra, Thailand has seen more systematic tactics in curbing freedom of the media via laws and decrees. The intensifying restriction of press freedom in Thailand is a result of both regime change and the rise of militarism in politics. Authoritarian rule in itself does not permit public scrutiny; the role of the media as a watchdog overseeing the government, vital to the functioning of democracy, is largely circumscribed. Furthermore, under authoritarian rule (with Thailand currently being under the government of General Prayuth Chan-ocha who is the coup leader of 2014), differences of opinion with the government are forbidden. Harassment and reform of the media are both used by those in power to control the free flow of information. The only way the media can escape harassment is by promoting the government's policies rather than questioning them.

Reforms introduced include new laws purportedly to promote ethical standards among media professionals. Restrictive laws such as the Computer Crime Act were not reformed. In 2017, the Computer Crime Act defined computer crimes and punishments for computer related and cybercrime that prevents Thais from criticising certain institutions deemed important to national security. Since the 2014 coup, the junta has issued more than 800 orders and announcements, later transforming these into laws, which significantly constrain media freedom. These laws have remained in place. They have set a trend in how the media should operate if it wants to avoid the state's harassment. In addition, in some cases, critical journalists have been openly harassed. Some of them have been summoned to have their "attitude adjusted."

What has happened in Thailand is not unique. Democracy in the Southeast Asian region on the whole has experienced backsliding. There is an emerging trend of illiberalism in Southeast Asia which can also be seen in other parts of the world.

- 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?**

The emergence of digital and social media has been both a boon and a bane. Positively, digital and social media represents a kind of alternative to the traditional/mainstream media dominated by the state. Digital and social media offers alternative information to the users: some of this information is different from that propagated by the state. Moreover, digital and social media contests the way information traditionally flows. Once controlled by the state in a top-down fashion, information today flows upward in a bottom-up manner, diversifying information for a greater benefit of the people. But digital and social media can also be a bane. It can be manipulated by the state. There have been talks about the idea of "sophisticated autocrats" who know how to take advantage from the digital and social media for their self-promotion and for undermining political opponents by spreading fake news, among other tactics, to discredit them.

- 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.**

The toughening stance of the government vis-à-vis media freedom has caused a huge impact on both male and female journalists equally. A prominent example is the case of female journalist Chiranuch Premchaiporn, the editor of *Prachatai*, a web-based alternative media outlet, who in 2015 was found guilty for failing to delete lèse-majesté comments on its now-defunct web forum, lèse-majesté itself being criminalised under the Penal Code. The editor was convicted under Articles 14 and 15 of the 2007 Computer Crime Act for allowing an allegedly offensive comment about the monarchy to remain on the web board for 20 days. In the end, she was sentenced to eight months' imprisonment and a Bt20,000 (US\$630) fine with her jail term suspended for one year. This case set a new standard for the editors of online media outlets, suggesting they must monitor their pages 24 hours a day. Should they find insulting comments about the monarchy, they must delete them immediately.

**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?**

There has been no attempt under the current Thai government to promote media freedom. On the contrary, more legislative and other measures have been put in place to restrict media freedom. The intensifying use of the Computer Crime Act is meant in part to control the media's criticisms against state institutions. Under the direction of the Ministry of Digital Economy and Society, websites critical of the state institutions have been blocked including those belonging to the media. Independent media like Voice TV has been occasionally shut down when it reported news deemed critical of the government.

**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?**

There have been no measures in regard to the support for the public service media.

**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.**

It is important to reiterate that the current government under General Prayuth Chan-ocha has implemented no policy that would promote the safety of journalists. Rather, following the 2014 coup, the junta summoned a number of journalists for "attitude adjustment". Pravit Rodjanapruk, a well-known journalist from The Nation, was summoned and briefly detained for his critical view of the military. On the part of social media companies, what has remained a trend in Thailand is the weaving of an intimate cooperation between them and the Thai government. The case of the private Facebook Group "Royalist Marketplace" which promotes open discussions of the monarchy, illustrates this point. When the government sought Facebook's help to shut down the group, Facebook complied with the request. I am the creator of the Royalist Marketplace.

Back in 2014, the military government of Prayuth began its war against critical media by issuing orders and announcements to curtail press freedom. Four of these decrees stand out as noteworthy:

- NCPO Announcement No 97/2014 prohibits the media from presenting information that "threatens national security or instigates disorder or conflicts".
- NCPO Announcement No 103/2014 bans criticism of the NCPO that is made in a "dishonest way or aims to discredit it".
- NCPO Order No 3/2015 authorises military officers to enforce bans on media outlets if their content "instigates public fear or causes misunderstanding through distortion which could affect national security or lead to social disorder".

- NCPO Order No 41/2016 empowers the National Broadcasting and Telecommunications Commission to enforce Announcements No 97/2014 and No 103/2014. It states that media outlets in violation risk fines of Bt50,000 to Bt500,000 (US\$1,600-US\$16,000), licence suspension or closure.

These orders and announcements were used to close TV stations critical of the junta and the government, either temporarily or permanently. Among those targeted were *Voice TV*, *Peace TV*, *TV24*, *DMC* and *Fah Hai TV*. Some of these TV stations are linked to the pro-Thaksin Red Shirts, and are thus considered enemies of the state. *Voice TV*, is owned by Thaksin's son, Panthongtae, and has remained a megaphone for Thaksin's party. It had been subject to temporary suspensions several times, even today. The junta also censored news websites by blocking access to them. To avoid being suspended or closed down, the mainstream media has engaged in self-censorship. For example, leading media newspapers, including *Thai Rath* and *Daily News*, never publish any report deemed critical of the army or the monarchy.

Another of the junta's tactics was the control of community radio stations that spread different political views and mobilise support against the coup makers. They were closed down, forcing them to either go underground or to broadcast from outside the country. However, the military government found it more difficult to deal with the urban-based news media, including online media outlets like the *Standard* and the *Matter*, as well as Thailand-based international media, such as the BBC, whose content was sometimes critical of both the junta and the monarchy. The BBC once published a critical biography of the new king, Vajiralongkorn, on the eve of his enthronement. Although the biography is based on facts, it was considered insulting to the king because it reported on his unconventional lifestyle. A young Thai political activist from Khon Kaen, Jatupat Boonpattaraksa, also known as Pai Daodin, was imprisoned for sharing the BBC article on his Facebook page. The arrest conveyed a chilling message to the rest of society not to discuss issues related to the monarchy in public, and this has intimidated citizens into silence on this taboo.

In sum, the harassment of the media has escalated and now includes making threats against the liberty of reporters with the deployment of laws to silence them. The regime often relies on Strategic Litigation Against Public Participation (SLAPP suits). The government also resorts to laws such as Penal Code Article 116 (a sedition-like offence), which prohibits inciting the public through speech, books, or other forms of media. Although cases rarely result in convictions, they are still useful to the government. Those involved in court are forbidden from giving public comment throughout their trial. This creates a vacuum of accountability as the media are unable to continue their work.

In tandem with applying legal tools to limit press freedom, the military government also placed immense pressure on the media through other means. Local journalists and reporters perceived to hold antagonistic views towards the junta can be suspended or expelled due to state pressure on their companies, as in the case of Pravit. The situation for foreign journalists is no less threatening. Foreign media have faced great difficulty, not only in reporting the political role of the junta and the monarchy, but also in making any direct criticism of the gross human right violations perpetrated by the military government. In 2009, the entire board of the Foreign Correspondents Club of Thailand (FCCT) was accused of criticising the monarchy and hence threatened with charges under the *lèse-majesté* law. Threats against foreign journalists range from the possibility of their visas not being renewed to being charged with *lèse-majesté*. The author's discussions with a number of Thailand-based international journalists revealed that the process of visa renewal has become more difficult, strict and time-consuming. To be able to report from within Thailand, foreign journalists have to adopt a cautious approach and take into account the sensitivities of issues related to the monarchy, its defenders and the *lèse-majesté* law. From 2009 to 2022, the situation has not greatly changed. In recent years, the FCCT has been forced to cancel a number of talks. In September 2018, the Thai authorities shut down an FCCT event on Myanmar, stating that it could be used by "third parties" to cause unrest and endanger national security. Earlier, in February 2018, police summoned representatives of the FCCT after an activist was accused of planning an allegedly illegal assembly at the club demanding that a national election be held in November.

Harassment against the foreign press has reached an unprecedented level. In 2010, an Italian photographer, Fabio Polenghi, and a Japanese cameraman, Hiro Muramoto, were killed during the months of violent confrontations between the Red Shirts and the state's security forces. At least seven foreign or local reporters were wounded. Many reporters who covered the demonstrations told the author that they believed they were deliberately targeted. In the cases of Polenghi and Muramoto, the Thai state has never unravelled the mysteries surrounding their deaths. The lack of sufficient investigation strained Thai-Japanese relations, but Tokyo has refrained from public criticism for the sake of bilateral relations. At a meeting at the FCCT in June 2010, foreign journalists expressed their anger at the government for the deaths of their colleagues and demanded an independent probe into the attacks on reporters. They also complained about the widespread allegation that the foreign press was biased. An illustrative incident took place in November 2013 when German journalist Nick Nostitz was assaulted as he reported from within the anti-Yingluck camp in the centre of Bangkok. The anti-Yingluck protesters demanded she step down owing to allegations of her committing corruption. Nick was accused of being sympathetic towards her and the Red Shirts, hence upsetting the pro-establishment protesters in the camp. In 2021, a French social media personality, Yan Marshall, a resident of Bangkok, was deported for his mocking of the government.

**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?**

The measures taken by the government can be perceived as highly politicised. In particular, the government has mostly appeared to be protective over state-owned media from public complaints and scrutiny. Meanwhile, media critical of state institutions is often neglected even when it was under attack by the pro-government faction.

**b) The UN Plan of Action on the Safety of Journalists and the Issue of Immunity 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?**

The commitment of Thailand vis-à-vis international organisations like the United Nations has always been doubtful. To make it work in Thailand, I would recommend a more assertive approach from the United Nations in monitoring the situation regarding the media (and female journalists) in Thailand. The problem here is that when Thai journalists are accused of committing lèse-majesté, foreign organisations would almost refrain from intervening in the cases due to internal laws in Thailand and due to its own fear of being dragged into involving in the highest institution in the country.

**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?**

Social media has played a great role in expanding the space for free thoughts. The Thai media has taken full advantage of what social media offers. In fact, a new phenomenon has taken place in Thailand—social media users are playing a new role as broadcasters themselves, often reporting news in real time when there are events taking place. For example, at the height of the Thai protests in 2020-2021, many Thais reported live on their social media platform informing the public of the situation in real time. I would recommend that any measures to defend the safety of journalists could be extended to those using social media for journalistic purposes. Meanwhile, social media companies must understand the political context in Thailand better so that the users would be better protected (by the companies) from the state's harassment.

**7. What policies, procedures or other measures have the media (broadcast, print and digital) sector taken to promote press/media freedom, independence, pluralism, diversity and viability? What has been most successful? What**

**additional measures would you suggest? What steps should the media sector take to promote gender equality?**

Since the government has taken control of the media, it has remained difficult for the media as a whole to initiative any measures against such control. At times, the Thai Journalists Association (TJA) has issued statements condemning the government's interference in the media. The TJA is an independent non-governmental media organisation with an aim to unify and strengthen the free press institution of Thailand. It has striven to (1) solidify media organisations in Thailand to better defend the interest of members of the press; (2) promote honesty, ethics and objectivity in the work of its members; (3) promote journalistic professionalism among its members and other media organisations; and (4) build up relationship and promote collaboration with media professionals and organisations overseas. However, with the lack of support from the public (and even from some segments of the media), the TJA has remained a weak organisation in the face of the state's domination of the media space. Furthermore, it has no clear policy towards promoting gender equality in the media field. In the past two decades, out of ten presidents of the TJA, there were only two women serving in that position.

**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?**

In Thailand, the existing legal frameworks are mostly designed to benefit the state rather than the media. The Office of the Human Rights Commission in Thailand is known to be influenced by the Thai state, causing a deep crisis of human rights especially during which time Thailand has fallen into political conflict. Outside of Thailand, the international human rights legal framework has remained typically "international" and somewhat incongruous with that of inside the country. I would suggest creating a new dialogue on the standardization of human rights legal framework both at the national and international levels. The United Nations needs to demand a more serious commitment from the states to readjust domestic frameworks to be more in line with on the international stage.

**9. The Special Rapporteur would welcome examples of good practice by Governments, companies, the media sector, civil society and other stakeholders, and your recommendations on how best to address the challenges and threats to press/media freedom, independence, diversity, pluralism, and safety of journalists. Please share any relevant documents, reports, news or academic articles that you believe should be considered in the preparation of her report.**

I include herewith my chapter on "Press Freedom Chained in Thailand", in *Press Freedom in Contemporary Asia*, edited by Jeff Kingston and Tina Burrett, (London and New York: Routledge, 2020).

## 15

**PRESS FREEDOM CHAINED  
IN THAILAND***Pavin Chachavalponpun*

The name ‘Thailand’ is proudly translated by Thais as the ‘Land of the Free.’ This translation reflects that Thailand is the only country in Southeast Asia not to have been formally colonized by Western powers. Yet, the concept of freedom is highly contested in the Thai context (McCargo 2003: 15). While the Thai Constitution guarantees freedom of speech, the Thai press is in chains. Thailand has joined a number of countries in Southeast Asia where freedom of the press is being compromised by a myriad of factors, mostly pertaining to the consolidation of the power of the state. The return of authoritarianism in many Southeast Asian states has stirred up concern regarding the lack of press freedom in the region. Attacks against the press have been normalized. This chapter examines the case of Thailand and the current situation of the Thai press. It discusses two important points. First, political leaders, whether they preside over democratic or repressive regimes, have increasingly become threats to press freedom. By discrediting the media, berating journalists and threatening to impose restrictions, these political leaders are driven by the need to protect their interests in the face of the media’s scrutiny. Second, regime change in Thailand in recent decades has affected the state of press freedom. Thailand experienced military coups in 2006 and 2014. The control of the state by the military has exacerbated the dire state of freedom of expression, most evidently through the enactment of a series of laws designed to restrict media freedoms. This chapter examines the legal measures and other tactics utilized by the Thai state against the press. It also investigates the emergence of social media as a platform for competing information and the recent phenomenon of fake news as an instrument to undermine political adversaries.

**Threats to press freedom: then and now**

Thailand was once known as a ‘haven of free expression’ and for its reputation as one of the freest media environments in the region. In 1997, Thailand

became the first country in Southeast Asia to institute a freedom of information law (Hays 2014). But the advent of the Thaksin Shinawatra administration in 2001 imperilled press freedom in Thailand. Like any populist leader, Thaksin publicly dismissed the role of the media as a foundation of democratic rule. During the Thaksin era, the Thai media was depicted as the foe of the government, and Thaksin openly displayed his hostility towards the press (Phongpaichit and Baker 2008). He cracked down on critical media sources, ordering investigations of anti-government journalists and media organizations, as well as blaming the media for inaccurately reporting on his war on drugs and aggravating threats from Muslim insurgents in the Deep South. He also used the government's Anti-Money Laundering Office to intimidate reporters. Some foreign journalists were branded as dangers to national security and threatened with expulsion from the country because they reported on the rift between Thaksin and the late King Bhumibol Adulyadej.<sup>1</sup> The *Far Eastern Economic Review* and the *Economist* were occasionally banned. Some local journalists were threatened with defamation lawsuits that could bankrupt them – a practice also frequently seen in Singapore. Moreover, the operation of certain media companies was suspended, such as in the case of the *Siam Rath Weekly* because of its critical reporting on Thaksin's mishandling of the bird flu outbreak in 2003. In 2002, the Nation Multimedia Group stopped covering politics on its 24-hour cable network in protest against a forced shutdown of its radio news programme by the Thaksin government. In 2005, the *Nation* published this scathing indictment:

[The] Thai Journalists Association (TJA) issued a strong statement criticising government hypocrisy, particularly the pledge made by Thaksin at the beginning of his second term that he would respect press freedom and democracy. The TJA is succinct in assessing that the government has failed to keep its promises and has instead been using every trick in the book to meddle with news reporting. The government has even threatened to pull out advertising and buy up shares in media companies. And then there are the expensive defamation lawsuits. The National Press Council of Thailand has also condemned the defamation laws that make criminals of journalists.

(Chongkittavorn 2005)

Backing up this assessment, in 2005, Reporters without Borders ranked Thailand 107th out of 167 countries in its Press Freedom Index (Reporters sans Frontières 2019). A year later, in September 2006, Thaksin was overthrown in a military coup, but his ouster did not improve press freedom (Streckfuss 2014: 116). From 2006–2019, press freedom in Thailand deteriorated under the rising influence of militarism in politics. The country's ranking fell to 153th out of 178 in 2010 – the year that saw the massacre of the pro-Thaksin 'Red Shirts' on the streets of Bangkok, where they were protesting the machinations of the political elite against them.<sup>2</sup> The ranking rose slightly from 2011 to 137th



following the electoral victory of the Pheu Thai Party headed by Thaksin's sister, Yingluck Shinawatra, who reclaimed the premiership for the family, briefly ending military rule. In the 2014 index, Thailand ranked 130th out of 180 nations, but dropped to 140th in 2018 (Reporters sans Frontières 2019). Following a military coup in 2014, Thailand has been ruled by General Prayuth Chan-ocha. Tracking Thailand's press freedom ranking indicates that it suffers most under authoritarian regimes. On 24 March 2019, the military government organized an election, the outcome of which brought Prayuth back into power. But the return of the Prayuth government does not solve the political conflict at home. Hence, nothing guarantees that the situation of the country's press freedom will drastically improve.

The critical turn for press freedom in Thailand occurred in the aftermath of the 2014 coup. Hundreds of people, mostly critics of the old establishment, were harassed. They included politicians, political activists, academics and civil society organizations, as well as reporters and journalists. They were summoned to attend military-instructed sessions to 'adjust' their attitudes. Some were detained in army camps, while others were charged with *lèse-majesté*, the crime of insulting the monarchy. Article 112 of the Thai Criminal Code states that defamatory, insulting or threatening comments about the king, queen and regent are punishable by 3–15 years in prison. Those who refused to be summoned face severe consequences. The junta issued a warrant for their arrest and revoked their passports (Campbell 2014). Some journalists became the victims of the state. The 2014 case of Pravit Rojanaphruk, an outspoken journalist from the *Nation*, demonstrated that freedom of speech was no longer guaranteed by law. He was ordered to attend attitude adjustment sessions conducted by military officers at local Thai army bases. Sometime after he was released from detention at one of these military camps, Pravit was pressured to resign from his job at the *Nation*. Pravit's attitude didn't change, however, as he continued to criticize the National Council for Peace and Order (NCPO), the governing body of the coup makers, for undermining checks and balances, failing to abide by the rule of law, refusing to hold elections and suppressing dissent ('*La Croix*' 2018). The draconian *lèse-majesté* law and the Computer Crime Act are powerful tools of the state in silencing the media. They prescribe harsh sentences for anyone making critical comments of the country's monarchy or the junta.

Apart from Pravit, some other Thai and foreign journalists encountered similar harassment by the junta. The column of outspoken political commentator Voranai Vanijaka was abruptly dropped by the *Bangkok Post* following the 2014 coup. Scottish journalist Andrew Marshall MacGregor is on the wanted list for *lèse-majesté* charges. His book, *A Kingdom in Crisis: Thailand's Struggle for Democracy in the Twenty-First Century*, which examined the interventionist role of the Thai monarchy in politics, was banned in Thailand. He was one of three individuals, alongside academics-turned-exiles Somsak Jeamteerasakul and Pavin Chachavalpongpun (Chachavalpongpun 2014), who were declared *persona non*

grata online. Thais were warned not to follow us on Facebook, click like or share our posts, or face serious consequences, including jail time (Holmes 2017). Recently, the editor of the *Bangkok Post*, Umesh Pandey, was allegedly forced to step down over what he claimed was his anti-junta stance. ‘When asked to tone down [the negative coverage of the regime] I did not budge and was blunt in letting those who make decisions know that I would rather lose my position than bow my head,’ Pandey wrote in a statement (*La Croix* 2018). These cases exemplify how the space for press freedom has shrivelled, and what the consequences are for critical journalists.

### Harassment against the media

Harassment of the media, including the detention of journalists and suspension of media operations, were deemed short-term measures. After the 2014 coup, a tight grip on the media has been maintained more systematically via junta laws and decrees. As this chapter argues, the intensifying restriction of press freedom in Thailand is a result of both regime change and the rise of militarism of politics. Authoritarian rule in itself does not permit public scrutiny. The role of the media as a watchdog overseeing the government, vital to the functioning of democracy, is largely circumscribed. Furthermore, under authoritarian rule, differences of opinion with the government are forbidden. The only way the media can escape harassment is by promoting the government’s policies rather than questioning them. Harassment and reform of the media are both used by the junta to control the free flow of information. Reforms included new laws purportedly to promote ethical standards among media professionals. Restrictive laws such as the Computer Crime Act were not reformed. In 2017, the Computer Crime Act defined computer crimes offences and punishments for computer-related and cybercrime that prevents Thais from criticizing certain institutions deemed important to national security. Since the 2014 coup, the NCPO has issued more than 800 orders and announcements, later transforming these into laws, that significantly constrain media freedom (‘Not ‘iLaw’ 2017).

### Legal instruments

The military government of Prayuth began its war against critical media by issuing orders and announcements to curtail press freedom. Four of these decrees stand out as noteworthy (Thavevong 2018):

- NCPO Announcement No 97/2014 prohibits the media from presenting information that ‘threatens national security or instigates disorder or conflicts.’
- NCPO Announcement No 103/2014 bans criticism of the NCPO that is made in a ‘dishonest way or aims to discredit it.’
- NCPO Order No 3/2015 authorizes military officers to enforce bans on media outlets if their content ‘instigates public fear or causes misunderstanding

**234** Pavin Chachavalpongpun

through distortion which could affect national security or lead to social disorder.’

- NCPO Order No 41/2016 empowers the National Broadcasting and Telecommunications Commission to enforce Announcements No 97/2014 and No 103/2014. It states that media outlets in violation risk fines of Bt50,000–Bt500,000 (US\$1,600–\$16,000), licence suspension or closure.

These orders and announcements have been used to close TV stations critical of the junta and the government, either temporarily or permanently. Among those targeted were Voice TV, Peace TV, TV24, DMC and Fah Hai TV (Thavevong 2018). Some of these TV stations are linked to the pro-Thaksin Red Shirts, and are thus considered enemies of the state. Voice TV is owned by Thaksin’s son, Panthongtae, and has remained a megaphone for Thaksin’s party. It has been subject to temporary suspensions several times. The junta has also censored news websites by blocking access to them (Macan-Markar 2017). To avoid being suspended or closed down, the mainstream media engages in self-censorship. For example, leading newspapers, including *Thai Rath* and *Daily News*, never publish any report deemed critical of the army or the monarchy.

Another of the junta’s tactics has been the control of community radio stations that spread different political views and mobilize support against the coup makers. They have been closed down, forcing them to either go underground or to broadcast from outside the country. However, the military government finds it more difficult to deal with the urban-based news media, including online media outlets like the Standard and the Matter, as well as Thailand-based international media, such as the BBC, whose content is sometime critical of both the junta and the monarchy. The BBC once published a critical biography of the new king, Vajiralongkorn, on the eve of his enthronement. Although the biography is based on facts, it was considered insulting to the king because it reported on his unconventional lifestyle. A young Thai political activist from Khon Kaen, Jatupat Boonpattaraksa — also known as Pai Daodin – was imprisoned for sharing the BBC article on his Facebook page (BBC 2016). The arrest conveyed a chilling message to the rest of society not to discuss issues related to the monarchy in public, and this has intimidated citizens into silence on this taboo.

In sum, the harassment of the media has escalated and now includes making threats against the liberty of reporters with the deployment of laws to silence them. The regime often relies on ‘Strategic Litigation Against Public Participation’ (SLAPP). SLAPPs are lawsuits intended to silence critics by burdening them with the cost of a legal defence (‘Human Rights Watch’ 2018). The government also resorts to laws such as Article 116, which prohibits inciting the public through speech, books or other forms of media. Although cases rarely result in convictions, they are still useful to the government. Those involved in court are forbidden from giving public comment throughout their trial. This creates a vacuum of accountability, as the media are unable to continue their work.

### ***Mounting state pressure on foreign journalists***

In tandem with applying legal tools to limit press freedom, the military government has also placed immense pressure on the media through other means. Local journalists and reporters perceived to hold antagonistic views towards the junta can be suspended or expelled due to state pressure on their companies, as in the case of Pravit and Umesh (Charuvastra 2018). The situation for foreign journalists is no less threatening. Foreign media have faced great difficulty, not only in reporting the political role of the junta and the monarchy, but also in making any direct criticism of the gross human right violations perpetrated by the military government. In 2009, the entire board of the Foreign Correspondents Club of Thailand (FCCT) was accused of criticizing the monarchy, and hence threatened with charges under the *lèse-majesté* law. Threats against foreign journalists range from the possibility of their visas not being renewed to being charged with *lèse-majesté*. The author's discussions with a number of Thailand-based international journalists revealed that the process of visa renewal has become more difficult, strict and time-consuming. To be able to report from within Thailand, foreign journalists have to adopt a cautious approach and take into account the sensitivities of issues related to the monarchy, its defenders and the *lèse-majesté* law. From 2009–2019, the situation has not greatly changed. In recent years, the FCCT has been forced to cancel a number of talks. In September 2018, the Thai authorities shut down an FCCT event on Myanmar, stating that it could be used by 'third parties' to cause unrest and endanger national security ('Voice of America' 2018). Earlier, in February 2018, police summoned representatives of the FCCT after an activist was accused of planning an allegedly illegal assembly at the club demanding that a national election be held in November ('The Nation' 2018).

Harassment against the foreign press has reached an unprecedented level. In 2010, an Italian photographer, Fabio Polenghi, and a Japanese cameraman, Hiro Muramoto, were killed during the months of violent confrontations between the Red Shirts and the state's security forces. At least seven foreign or local reporters were wounded. Many reporters who covered the demonstrations told the author that they believed they were deliberately targeted. In the cases of Polenghi and Muramoto, the Thai state has never unravelled the mysteries surrounding their deaths. The lack of sufficient investigation strained Thai-Japanese relations, but Tokyo has refrained from public criticism for the sake of bilateral relations ('AFP' 2012). At a meeting at the FCCT in June 2010, foreign journalists expressed their anger at the government for the deaths of their colleagues and demanded an independent probe into the attacks on reporters. They also complained about the widespread allegation that the foreign press was biased. An illustrative incident took place in November 2013 when German journalist Nick Nostitz was assaulted as he reported from within the anti-Yingluck camp in the centre of Bangkok. The anti-Yingluck protesters demanded that Yingluck step down, owing to allegations of her committing corruption. Nostitz was accused of being sympathetic towards her and

the Red Shirts, hence upsetting the pro-establishment protesters in the camp (Farrelly 2013).

### ***Normalization of self-censorship***

Owing to the harsh legal measures, the enormous pressures from the state and the attacks on the lives of journalists, the press community has been compelled to practice self-censorship in order to survive in the era of military rule. The media has been forced to carry out self-censorship in two key domains – one concerning royal affairs, and the other in relation to the junta. Reports on the Thai monarchy, while extensively published in foreign media outside the Thai borders, are non-existent in Thailand. For example, reports on the current king, Vajiralongkorn, strolling in Munich wearing a skinny tank top and displaying temporary Yakuza-style tattoos on his torso attracted international media attention, but was missing from the Thai press as a result of self-censorship (Kentish 2016). Other issues related to the monarchy were also buried from public view, including the king taking over of the wealthy Crown Property Bureau and the mysterious deaths of three men who once worked for him. Typically, cases of *lèse-majesté* have never been reported in the Thai mainstream media. In 2015, the editor of Prachatai, a web-based alternative media outlet, was found guilty for failing to delete *lèse-majesté* comments on its now-defunct web forum. The editor was convicted under Article 12 of the 2007 Computer Crime Act (CCA) for allowing an allegedly offensive comment about the monarchy to remain on the web board for 20 days. In the end, she was sentenced to eight months imprisonment and a Bt20,000 (US\$630) fine, with her jail term suspended for one year (‘Prachatai’ 2015). This case set a new standard for the editors of online media outlets, suggesting they must monitor their pages 24 hours a day. Should they find insulting comments about the monarchy, they must delete them immediately. Other media websites, like the BBC, even forewarned their users to exercise extra care when writing comments about the monarchy. In many ways, the case also deepened the necessity for self-censorship, both for the media and for news consumers.

Self-censorship is mostly detected in cyberspace. David Streckfuss argues that the new digital landscape has both enlarged the space for political speech and transformed what might be defined as criminal speech – meaning that self-censorship has taken on new importance for actors wishing to protect themselves. He explains how digital technologies have affected those wanting to voice criticism of the military government and shows how they must navigate through a weaponized digital landscape that provides the dictatorship with various mechanisms to silence their critics, either directly or via self-censorship (Streckfuss 2019). In other words, digital technologies create new spaces for discussion, but can also restrict the scope for criticism of the state by encouraging self-censorship.

Voluntary self-censorship represents another kind of compliance to state pressure. Some reporters and journalists have chosen to forge ties with the junta, not

only for the sake of avoiding persecution or harassment, but also for personal or professional gain. As part of this practice, journalists avoid criticizing the junta or the monarchy, and refrain from reporting on administrative irregularities or corruption cases. Some have gone further by serving as de facto PR representatives for the junta. For example, a well-known *Bangkok Post* reporter has earned a reputation as an informal spokesperson for the military government due to her close relationship with the army. In return, she has exploited this relationship to enrich herself, by publishing a series of books based on her exclusive interviews with military elites, helping her build a reputation as one of the most knowledgeable reporters on the military ('Manager Online' 2017).

### **Scant public support for press freedom**

The Thai media possesses some distinctive characteristics. The drawn-out political crisis in Thailand, now more than a decade long, has led to a deep polarization between those aligning themselves with the political elites and those in marginalized regions. Often, this deep division is crudely called a colour-coded conflict, between yellow and the red, respectively. The conflict between the yellow and the red has ramifications for the media (McCargo 2017: 4140). Each faction has its supporters in the media. For example, the Yellow Shirts have their own media outlet, the Blue Sky channel. They have also gained solid support from some print media including the *Manager*, the *Thai Post*, *Naew Na* and the *Nation*. Meanwhile, Voice TV, supported by the Red Shirt backers of Thaksin, has maintained its mission to promote Thaksin's political parties and, in the present situation, to criticize the policies of the military government. Leading newspapers, like *Matichon* and *Khaosod*, are known to be sympathetic towards the Red Shirts. Unsurprisingly, Red Shirt-supported media outlets are frequently harassed by the junta. Polarized political ideologies and loyalties mean that harassment against Voice TV, for instance, is cheered by the Yellow Shirts. Public support for press freedom is undermined by these deep factional divisions within Thai society.

Putting aside Thailand's colour-coded politics, since the coup of 2014, the Thai state has successfully created a climate of fear. At one level, the climate of fear has been built up to protect the military government. At another level, such fear has become a new reality under the new reign of King Vajiralongkorn (Sopranzetti 2017). While the reign of previous King Bhumibol Adulyadej was firmly underpinned by his unassailable moral authority, the present King Vajiralongkorn is ruling Thailand by fear. In these circumstances, the press on both sides of the Thai political divide have to take extra care when reporting either on the junta or the monarchy. Public fear is demonstrated by a reluctance to openly endorse the anti-junta media and by rejection of media outlets – mainly foreign – that are critical of the monarchy. While critical reports on the Thai monarchy can be accessed freely outside the country, as seen in the *Economist*, *Al Jazeera* or in academic blogs like *New Mandala*, they can be blocked by the Thai state.

The public is extremely careful not to share the content of these publications online. Not only does the problem with press freedom in Thailand derive from the growing culture of self-censorship, but also from a lack of public support for a critical free press.

## Recent developments

The current state of the Thai media is worrying. In this section, some recent developments are explored. Some of these developments may further undermine the freedom of the Thai media. Others offer hope for greater press freedom in a country intermittently ruled by the military. The transfer of power from the military to a civilian administration in 2019 sparked some hope for the Thai media. But as shown in this chapter, not all civilian governments in the past cherished press freedom. Media reform can only flourish under the conditions of general democratization in the country.

### *Fake news*

The fake news phenomenon poses a danger for the Thai press. The Thai state has claimed to be the sole arbiter of truth, while those who challenge their edicts are said to spread “lies.” Meanwhile, in the Thai conflicts, both sides, including their allies in the media, have relied on fabricated “facts” to undermine the credibility or “dehumanize” the other side” (Sombatpoonsiri 2019). While the Computer Crime Act was introduced to detect fake news and to prosecute those disseminating it, the military government has itself engaged in spreading fake news. Long before the implementation of the Computer Crime Act, the military used fake news to identify elements that were supposedly threatening national security. One of the tactics employed by the military was to create an anti-monarchy chart based entirely on false information. Called *Phang Lom Chao* in Thai, this fake anti-monarchy chart accused certain individuals of having an anti-monarchy agenda, considered by many Thais to be the most severe treason (Chachavalpongpun 2011: 1031). In Thai politics, whereby the monarchy is a key fault line, an anti-monarchy accusation could justify a lengthy jail term as well as physical and psychological abuse by the public.

Fake news undermines serious media coverage and makes it more difficult for journalists to cover significant news stories. Sometimes, it is intended to divert public attention from the real issues. It is used to identify and create internal enemies, which remains a useful tactic in a society like Thailand where there is strong adherence to tradition and the status quo. In the period leading up to the 2019 elections, rising politician Thanathorn Jungrungruangkit of the Future Forward Party was consistently accused of disrespecting the monarchy (Chachavalpongpun 2018). In addition, fake news about Thanathorn disparaging Thai traditional values became virulent on the social media. He was accused of, for example, making fun of Thailand’s reputation of being the ‘Land of Smiles’

and of propagating the abolition of *Wai Kru*, an annual ritual in which students pay respect to their teachers ('Thai Post' 2019). The intention was to damage Thanathorn by branding him as an anti-traditionalist, if not anti-monarchist. Conversely, some political figures have popularized the term 'fake news' to describe negative press coverage of themselves. The Prayuth government often dismissed critical reports as fake news, despite the fact that these reports were based on facts.

### *The emerging social media*

As the space for public opinion and political debate has shrunk under military rule, Thais have moved their political discussions to cyberspace. The media, too, have followed this trend of reporting events on social media networks, as the internet plays a growing role in promoting political discussion. The rise in use of social media platforms such as Facebook, Twitter and Instagram has transformed the way information is distributed and shared in Thailand. For the first time, the people can have direct and even equal access to political information from different sources, made possible by emerging social media networks. They can compare content and make decisions based on these various sources, examine the issues from alternative viewpoints and even challenge the information controlled by the military state. Among Thailand's population of 67 million people, 49 million are on Facebook, 12 million are on Twitter and 13.6 million are on Instagram (Leesa-nguansuk 2018). Noting the rise of social media in Thailand, Matthew Phillips, a British scholar, argues: 'The act of going to a ballot box and casting your vote is obviously something that is being regulated through current political discourse. That being said, you cannot really see the current discourse without understanding the role of social media' (Interview, 15 December 2014). Leading politicians, agents of civil society organizations, representative of independent institutions and a large number of academics have turned to social media as their main platform to engage the public (Chachavalpongpun 2014: 59). For instance, both former Prime Ministers Yingluck Shinawatra and Abhisit Vejjajiva actively use Facebook and Twitter to convey their messages. Yingluck's official Facebook page has received more than 6 million 'likes,' while Abhisit's has almost 2.2 million.

How have social media contributed to opening up society at a time when the country is under military rule? First, the nature of social media, which is relatively free and unrestrained, decentralizes sources of information, making the controlled Thai media increasingly irrelevant as a news source. Second, social media are increasingly used as stages for political campaigns, seen in the establishment of numerous new political groups with specific agendas and clienteles, such as the New Democracy Movement (NDM) and the Network of Relatives and Victims of the Lèse-majesté Law, as well as serving as key platforms during the election campaigns of 2019. Third, social media reintroduces a participatory element that is fundamental to the process of democratization. Participating



in politics no longer exclusively means going to the polling station or joining street protests – which are illegal in Thailand under the current military rule. But participation and protest can be done online and possibly more effectively. Fourth, social media has become a forum for critical discussions, dealing with contentious issues that are unable to be discussed in the mainstream media. It has provided a useful platform for alternative media, which today offers different information from that provided by the state.

To be sure, the internet is not an entirely safe zone for debate. The military government has sought to censor certain websites that could be destabilizing to its regime. Content critical of the government's performance, involving the monarchy or highlighting human rights violations – such as the Human Rights Watch website – has been blocked in Thailand. But it is impossible for the government to shut down all social media in the country, as it has effectively inserted itself in a domain previously occupied by mainstream media. Undoubtedly, it has played a pivotal role in providing a space for political debate – a much-needed exercise at a time when Thailand has fallen deeply into political crisis. And this role is ever more significant, now that freedom of speech is lacking under military rule.

Finally, a fascinating recent development on social media in Thailand has been the emergence of political arts in the form of cartoons and music. The proliferation of online artworks and music unleashes optimism in regards to freedom of expression in an era of authoritarianism. A popular cartoonist using the pseudonym Khai Maew (cat's testicles) regularly publishes his cartoons satirizing the political situation of the day, mostly to sarcastically condemn the junta (Khai Maew 2019). He has attracted almost ~~355,000~~ followers on Facebook and has organized exhibitions of his artwork both inside and outside the country. Headache Stencil is another artist publishing his works mainly on Instagram. He became known mostly for his artwork on the corruption case against General Pravit Wongsuwan, Deputy Prime Minister in the military government, who was accused of taking bribes in the form of expensive watches. His stencil technique is to reproduce an image or pattern by applying pigment to a surface over an intermediate object, such as his image of a large clock, which appeared on a flyover in Bangkok to publicly expose the corruption case. In the area of music, a pro-democracy group, Rap against Dictatorship, in October 2018, released an online single called 'Prathet Ku Mee,' or 'What My Country's Got,' detailing what went wrong with undemocratic Thailand. The song went viral on YouTube and at the time of writing had reached almost ~~60~~ million views (Rap against Dictatorship 2019). The group used the latest technology to evade government censorship, employing encryption to protect its song on YouTube. Earlier, the deputy national police chief, Srivara Ransibrahmanakul, warned that the video may be breaking the law and the artists were summoned to testify before the NCPO. In an attempt to prevent the video from being lost to censorship, an unknown individual placed 'Rap against Dictatorship' in the Zcoin blockchain using an IPFS link embedded in a transaction on the blockchain. Zcoin is a

privacy coin, which is the first full implementation of the Zerocoin Protocol. As a result, the video now has a permanent and indelible copy in the IPFS link on the Zcpin blockchain at block number 111089 (Hundeyin 2018).

## Conclusion

The Thai press has long struggled to preserve its freedom. When the political atmosphere is democratic, the media celebrates its freedom of speech. But as the case of Thailand has demonstrated, not all democratic regimes are champions of press freedom. The Thaksin administration prioritized protecting its own agenda at the expense of the media. The situation went from bad to worse following regime change in Thailand in 2006, and once again in 2014. In both cases, elected governments were overthrown paving the way for the return of the military in politics. Regime change had a massive impact on press freedom as the resurgence of authoritarianism has undermined freedom of the press. Democratic backsliding has eroded civil liberties, including the freedom of expression

Since the 2014 coup, the junta has issued a number of orders and decrees that restrict press freedom, on top of the existing draconian *lèse-majesté* law and the 2017 Computer Crime Act. These legal measures range from prosecuting journalists critical of the military government or the monarchy to suspending or shutting down media companies on the pretext of national security. In addition to such legal measures, the military government deploys other methods to pressure the press, in particular foreign journalists working in Thailand. These tactics include delays in granting and renewal of visas and even expulsion from the country. The situation has become so dangerous that the media have chosen to practice self-censorship in order to survive under the growing climate of fear. Some reporters go further, acting as propagandists for the military in order to avoid being targets of the state and to reap certain benefits from their relationship with the generals.

The political landscape of Thailand, divided along ideological lines, contributes to a lack of public support for press freedom. The pro-military and pro-monarchy Yellow Shirt camp refuses to stand up for the freedom of media outlets close to its enemies in the Red Shirt faction. The situation has perpetuated discrimination and injustice within the press community as a whole. And as fake news emerges onto the political scene, it has the potential to widen the rift between the two political factions. But there is not just bad news when it comes to press freedom in Thailand. The arrival of social media has opened up a space not only for the media, but also for ordinary Thais to engage in politics in a freer manner, despite the existence of laws restricting free expression. Social media allows Thais to voice their criticisms of the government without having to go to the streets to protest. It also helps redirect the flow of information, from being one way and top-down, to becoming more decentralized and participatory, thus indirectly fostering democracy – at least in cyberspace.

## Notes

- 1 On the throne since 1946, King Bhumibol Adulyadej passed away in October 2016. Bhumibol remains a much revered figure even today.
- 2 Red Shirts are supporters of former Prime Minister Thaksin Shinawatra. The movement first emerged on the political scene in the aftermath of the 2006 coup that overthrew Thaksin. Its initial objective was to protest against the military intervention in politics.

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**244** Pavin Chachavalpongpun

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