

The Third Universal Periodic Review (UPR)

Thailand's third UPR review took place on November 10, 2021 at the Human Rights Council in Geneva as part of the UPR session 39 under the organisation of the troika of Bulgaria, China, and Cote d'Ivoire. In light of the on-going Covid-19 pandemic, the event took place on a remote basis with most delegates participating in the form of pre-recorded or live Zoom videos. The Thai delegation, aside from the permanent representative, participated from Bangkok. The video recording of the UPR is available at: <https://media.un.org/en/asset/k1n/k1nvjctwz>.

The troika's draft report of the proceedings is to be released at 9:00 on November 12, 2021. Thailand is expected to provide an initial indication of which recommendations it will be prepared to accept. However, this indication is not final. The UN will provide Thailand with a more detailed written report, and Thailand will likewise have an opportunity to prepare a more detailed Addendum to that report indicating its final position on recommendations (the deadline for which is unknown). The final UN report on Thailand's third UPR is scheduled to be presented at the next Human Rights Council session between February 28 and March 25, 2022.

Initial Assessment

This assessment is based only on first impressions and what high-level analysis has been possible on the day. Overall, the international community has been surprisingly vocal and forceful about the need for Thailand to strengthen protection for human rights defenders and fundamental freedoms. It must be emphasised that Western government were not alone in voicing concerns on the Thai human rights situations. Some Asian and developing countries also joined the concerns, from Afghanistan, Japan, Mongolia, South Korea, to Timor-Leste.

On the Article 112

The UPR39 on Thailand covers a wide range of human rights issues, namely Article 112 (lèse-majesté law), freedom of expression, freedom of assembly and association, protection of human rights defenders (from harassment, attacks and Strategic Lawsuit Against Public Participations or SLAPPs), enforced disappearances and torture, the role of the National Human Rights Commission and the draft NGO law. **But for this specific report, the focus is on Article 112, as it is relevant to the objective of 112WATCH** in seeking global alliances to push for the reform/abolition of Article 112 in Thailand.

There are 12 countries recommending the modification of Article 112 from various perspectives. They are: Luxembourg, Norway, Sweden, Switzerland, USA, Austria, Belgium, Canada, Denmark, Finland, France, and Germany (names listed in order of their presentation slot).

Overall Position of Thailand

The Thai government pushed back surprisingly hard on all issues relating to human rights defenders and fundamental freedoms during its responses to the interactive dialogue. The first issue it raised was Article 112, followed by freedom of expression. Thailand staunchly defended Article 112 given the monarchy's place as one of the "main pillars of the nation" which was "highly revered by most Thai people." The position of Thailand was in line with the Constitutional Court's verdict on the cases of detention of core protest leaders who called for the reform of the monarchy. The Court said, on the same day as the UPR event, that the monarchy was at the heart of the nation, and that calling for reform was equated to overthrowing the royal institution.

Moreover, Thailand returned to discuss issues of fundamental freedoms several times during its comments, appearing particularly sensitive and defensive on these fronts. From another perspective, however, this may indicate that Thailand cared how it was perceived internationally with regards to these issues. In this sense, despite its pushback, it seemed that continued international advocacy in these regards remains promising.

Interactive Dialogue Round 1 (Iceland to Russian Federation)

Luxembourg

Luxembourg recommended Thailand to guarantee freedom of opinion and expression by amending Articles 112, 116, 326 and 328 of the Criminal Code, as well as the cybercrime law.

Norway

Norway recommended Thailand to review the lèse-majesté law so as to bring it into conformity with international standards and to prevent it from being used to silence opponents.

Thailand's First Round of Comments

The Thai Ministry of Foreign Affairs said, "Lèse-majesté law offers protection against defamation, attacks and threats directed towards the monarch." As such, the national report in paragraph 117 reiterates that it reflects the culture and history of Thailand where the monarchy is one of the main pillars of the nation, highly revered by the majority of Thai people. Its existence is closely linked to safeguarding the key national institutions and national security. In terms of application, not all complaints have resulted in formal charges and prosecution. Given the sensitivity of the issue, law enforcement authorities must perform due diligence and a final decision whether or not to prosecute the cases rests with the Attorney General. Appeals are often invoked and if the accused do not pose a risk of committing further violations of the law, their bail requests would also be granted. Like in many other countries, any review of the law is an issue for the Thai people to decide. Current discussions reflect the functioning of relevant parliamentary and constitutional mechanisms that allow different voices to be heard in the consideration of this very important law."

Interactive Dialogue Round 2 (Senegal to Cambodia)

Sweden

Sweden recommended Thailand to amend Article 112 on royal defamation to bring it into line with Thailand's international human rights standards under the International Covenant on Civil and Political Rights (ICCPR) as a minimum step, and to remove mandatory minimum sentences.

Switzerland

Switzerland recommended Thailand to protect human rights defenders by modifying Article 112 and Article 116 of the Criminal Code to ensure that crimes of lèse-majesté are fully in line with human rights.

The United States of America

The United States recommended Thailand to review and revise laws and regulations that unduly restrict freedom of expression, including online expression, in particular the Computer Crime Act and the 2005 Emergency Decree, and eliminate mandatory minimum sentences for lèse-majesté violations. The US noted that it remained concerned by the extensive use of Article 112 of the Criminal Code and its impact on freedom of expression and civic space in Thailand.

Austria

It recommended Thailand to end arrests and prosecution of children under Article 112 and other articles of public order and respect the Convention on the Rights of the Child.

Belgium

Belgium recommended Thailand to amend Article 112 of the Criminal Code and bring it into line with Article 19 ICCPR.

Canada

Canada recommended Thailand to amend, repeal or restrict the use of legislation that restricts the rights of assembly, association and expression online or in person including Article 112 and the Computer Crime Act.

Interactive Dialogue Round 3 (Chile to Hungary)

Denmark

Denmark recommended Thailand to ensure that the most severe criminal sentences are not applied to children including in the context of Article 112 of the Criminal Code and in line with Article 14 of the Convention on the Rights of the Child.

Finland

Finland recommended Thailand to review the usage of lèse-majesté legislation in its entirety and especially against minors to comply with international standards especially the Convention on the Rights of the Child.

France

France recommended Thailand to guarantee protection of freedom of opinion and expression including by amending Article 112.

Germany

Germany recommended Thailand to review the lèse-majesté law, Computer Crime Law and criminal defamation law.

Champions for Freedom of Expression

There are some other countries, which might or might not recommend the reform of Article 112, but supported the protection of freedom of expression of Thais. Freedom of expression is directly linked to the implementation of Article 112. In Thailand, discussions on the monarchy are largely prohibited, thus affecting the state of freedom of expression. Those countries are: Japan, Latvia, Luxembourg, Malawi, Mexico, Montenegro, New Zealand, Norway, Portugal, Timor-Leste, USA, Australia, Austria, Brazil, Canada, Czech Republic, France and Germany.

Thailand's Voluntary Pledges (Summary)

1. Take steps to revise legislation to be in line with international obligations including the Convention against Torture and the Enforced Disappearances Convention
2. Study possibility to join new conventions including ILO
3. Monitor accepted recommendations and continue considering those that are not
4. Strengthen healthcare coverage
5. Enhance cooperation to end statelessness and access to birth registration and granting of nationality
6. Strengthen human rights education including intensive training for law enforcement on the Minnesota and Istanbul protocols (on investigation and torture)
7. Consider introducing mandatory measures for businesses to conduct human rights due diligence
8. Reaffirm standing invitation to special procedures

This report is written on November 12, 2021.

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