

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
Associate Professor, Kyoto University
Founder of 112WATCH**

- 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.