

# THE BIG INTERVIEW

**112WATCH** interviews scholar, Phil Saengkrai, a Thai legal expert, on the role of international organisations in tackling the problem with Article 112.

**112WATCH:** As an expert in legal studies, what is your view on Article 112? What are the most troublesome aspects of this Article?

**Phil:** From the perspective of human rights law, there is an inevitable tension between freedom of expression and the *lèse-majesté* provision in the Thai Criminal Code. This tension is difficult to resolve once and for all, not only because there are diametrically opposing views in the Thai society, but also because the law itself does not provide an easy way out. On the one hand, freedom of expression is universally protected. It is fundamentally important for democratic societies, and *lèse-majesté* may create a chilling effect on the exercise of this important right. On the other hand, there are limits to the scope of this freedom. And the exercise of freedom of expression can be lawfully restricted by virtue of domestic legislation. For instance, the International Covenant on Civil and Political Rights (ICCPR) allows states to impose some restrictions that are strictly necessary 'for respect of the rights or reputations of others' or 'for the protection of national security or of public order, or of public health or morals.' I should underline that the restrictions must be *strictly* necessary. As a matter of law, all of these are relatively well established.

The Human Rights Committee, which is an expert body created under the ICCPR to monitor the implementation of treaty obligations, expressed a similar concern. And yet, it didn't go as far as categorically saying that *lèse-majesté* as such violates the ICCPR. This is what it said to every state party to the ICCPR in General Comment No 34: 'the Committee has observed that in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant.'

The question for all of us to consider and discuss is therefore where we should draw the line in our exercise of freedom of expression. I think this is how we should frame this topic when we discuss this topic and the possible legal reform, bearing in mind that freedom of

expression is indispensable for political debates and democratic institutions. Indeed one can go further and argue that all criminal offences related to freedom of expression should be rethought within this frame. We have to discuss all of these with an open mind.

**112WATCH:** You are currently doing your study and conducting your research in Geneva. What is the view of those working at the United Nations, particularly on the human rights situation in Thailand?

**Phil:** It is not easy to generalise the views and voices here, but I think it is safe to say that there are now many crises across the world which are unfolding before our eyes and which are on the top of the agenda of many organs, such as the Human Rights Council or the OHCHR. These are, for instance, the Afghanistan situations after the US withdrew the military, the atrocities in Myanmar after the coup, and, of course, the war in Ukraine with its many implications for other countries. It is unlikely that these will settle down very soon. Compared to these unfolding crises, the human rights situations in Thailand do not seem to attract much attention. For instance, you can skim through the website of the OHCHR, and you will see that there are not many reports or news about Thailand.

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**The United Nations and the member states can certainly play their part. For example, other governments can provide their views in the framework of the Universal Periodic Review. The Special Rapporteur on Freedom of Expression and Opinion can take up this topic or request a visit to Thailand. Other special rapporteurs may also do the same to the extent that their mandates cover this topic, such as the Special Rapporteur on the Situations of Human Rights Defenders, and the Special Rapporteur on the Independence of Judges and Lawyers.**

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**112WATCH:** Can the United Nations play a role in the reform of Article 112?

**Phil:** The United Nations and the member states can certainly play their part. For example, other governments can provide their views in the framework of the Universal Periodic Review. The Special Rapporteur on Freedom of Expression and Opinion can take up this topic or request a visit to Thailand. Other special rapporteurs may also do the same to the extent that their mandates cover this topic, such as the Special Rapporteur on the Situations of Human Rights Defenders, and the Special Rapporteur on the Independence of Judges and Lawyers. Additionally, while they are not strictly 'the United Nations', the expert bodies under human rights treaties to which Thailand is a party can also play an important role. I have in mind in particular the Human Rights Committee under the ICCPR and the Committee on the Rights of the Child under the Convention on the Rights of the Child.

**112WATCH:** If you were to direct the Human Rights Commission in Thailand, what will be your priority and why?

**Phil:** Many major issues immediately came to mind. The dire economic consequences after a series of the COVID-19 measures which affect so many lives will not go away easily. Neither will the migration of those people from Myanmar who have been harshly affected by the military's brutal actions.

But I think I can highlight the following developments for different reasons: the legal reform on same-sex marriage, the civil partnership bill, the anti-torture and anti-enforced disappearance legislation, and the astonishing number of investigations and prosecutions on the basis of the *lèse-majesté* crime and the computer-related crimes. Some of these are a matter of seizing the moment for the Commission to contribute to the human rights protection meaningfully.

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**112WATCH:** How can the Thai society confront the issue of *lèse-majesté*, given that those criticising the high institution continue to be arrested under Article 112?

**Phil:** With an open mind. We have to approach the discussion with an open mind. We have to be ready to genuinely listen to different opinions. And we have to be willing to change our mind. More concretely, we can seek spaces where participants can comfortably debate the topic. We can start, I think, with the parliamentary debates where politicians enjoy some privileges and immunities. Academics, including legal academics, can also contribute to the debates and improve our understanding about the topic in their scholarly work in accordance with the academic protocol. Media have some roles to play too, especially when they report on the student movements. Different parts of the society can move simultaneously and organically without clear coordination.

But you are also right in your question. I cannot say that it will be easy, not least because there are many on-going investigations and prosecutions as we speak. The existence of the *lèse-majesté* provision itself may create a chilling effect on freedom of expression. But the way the provision has been interpreted and applied by relevant authorities so far makes it even more difficult to simply start a conversation. Many legal experts across the country have been continuously pointing out how some charges were filed on the basis of inadequate evidence, how the law was manifestly wrongly interpreted, how the arrest and detention did not fully comply with the procedural law, among many other issues. These have adverse impacts not only on the meaningful discussion about *lèse-majesté*, but also on the Rule of Law more broadly. I can only call on the authorities—the police officers, prosecutors, judges—to scrupulously uphold legal principles and professional standards. They have to be part of the solution.



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