



Thailand: Immediately repeal emergency regulation that threatens online freedoms

3 August 2021

17 international human rights organizations today denounced the Thai government’s newly announced Regulation No. 29, which empowers the authorities to censor online expression, and investigate and prosecute individuals responsible for communications that may “instigate fear”. The Regulation is the government’s latest attack on the right to freedom of expression and information in Thailand.

The undersigned organizations are concerned that the Regulation seeks to impose unnecessary, disproportionate and arbitrary restrictions in violation of the right to seek, receive and impart information and ideas of all kinds – under the purported guise of combating the COVID-19 pandemic amid a [state of emergency](#).

Regulation No. 29, promulgated on 29 July 2021, repeats language concerning prohibited speech featured in Regulation No. 27 of 10 July 2021, in accordance with section 9(3) of the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (‘Emergency Decree’). The regulations prohibit the release, distribution or dissemination of texts that may “instigate fear” or are “intended to distort information to mislead understanding of the emergency situation to the extent of affecting the security of state or public order or good morals of the people.” Regulation No. 29 additionally grants government authorities new enforcement powers, enhancing their ability to censor online speech and investigate internet users.

This Regulation is incompatible with Thailand’s Constitution and its obligations under the International Covenant on Civil and Political Rights (ICCPR) to respect and protect the right to freedom of expression and information. It also undermines the right to health, as guaranteed by the International Covenant on Economic, Social and Cultural Rights, which

obligates States to ensure access to health-related information, and ensures the right of all people to seek, receive and share information and ideas concerning health issues – particularly in the midst of a pandemic.

The terms “fear”, “security”, “public order” and “good morals” used in the Regulation are vague and overbroad. They are featured without a clear delineation of their scope, limit or definition, in contravention of the principle of legality, as required by the ICCPR.

Moreover, these provisions are inconsistent with the principles of proportionality and necessity. Individuals found to have violated the Regulation by spreading such information may incur imprisonment for a term not exceeding two years or a fine of up to 40,000 baht (approx. US\$1,283), or both.

If communications targeted by the Regulation are made available online, the National Broadcasting and Telecommunication Commission (NBTC) is required to inform internet service providers (ISPs) to identify the IP addresses associated with the communications and immediately suspend services to those addresses. The ISPs are then required to report the details of their findings to the NBTC, which must promptly submit evidence concerning the communication to the police for legal action.

The Regulation requires that the NBTC take action against ISPs who fail to comply with relevant orders, which will be deemed a violation of their operating licenses. The suspension of IP addresses also appears to be overly intrusive. Further, taking punitive action against ISPs who do not comply with NBTC’s demands also appears to be disproportionate and unnecessary, and will have a significant chilling effect on freedom of expression and information.

The powers conferred on the NBTC – a non-judicial body – to demand ISPs to suspend IP addresses are inconsistent with the requirement under international human rights law that content restrictions must be enforced pursuant to an order by an independent and impartial judicial authority, as well as in accordance with the principles of legality, necessity and proportionality and with due process.

While there is a need to combat the spread of COVID-19-related disinformation to protect public health during a pandemic, this objective should be pursued by adopting proportionate measures with a clearly defined legitimate aim in compliance with national constitutional measures, as well as international human rights law. Arbitrary and intrusive means that rely on criminal sanctions, onerous fines and suspension of IP addresses do not meet this threshold.

Regulation No. 29 is the [latest effort by the Thai authorities](#) to unduly muzzle free expression and information online using non-human rights compliant laws and regulations, purportedly to [respond to the COVID-19 pandemic](#). These other regulations and laws include, among others, the Emergency Decree; Regulations No. 1 and 27 pursuant to the Emergency Decree; the Computer-related Crimes Act B.E. 2560 (2017); and *lèse-majesté*, insult and criminal defamation provisions under the Criminal Code.

The Thai authorities have enforced these laws to impose criminal sanctions against individuals they accused of “spreading fake news” and those they have sought to prosecute solely for expressing views critical of the government.

On 27 July 2021, Prime Minister Prayut Chan-o-cha ordered the responsible State agencies via his Facebook page to take legal action against individuals, celebrities, media outlets or owners of popular social media pages for spreading “fake news” about COVID-19 that may cause public confusion.

On 22 July 2021, Danupa "Milli" Kanaterrakul, a rapper, was ordered to pay a 2,000 baht (approx. US\$60) fine after confessing to a charge of "insulting" the Prime Minister online. On 14 July 2021, the Government Pharmaceutical Organization (GPO) submitted complaints of "criminal defamation by means of publication" against Dr. Boon Vanasin, chairperson of Thonburi Healthcare Group, and Loy Chunpongthong, a mathematician, over their separate comments about the procurement of Moderna COVID-19 vaccine.

The Thai authorities should immediately repeal or substantially amend Regulation No. 29 and the aforementioned laws and regulations that do not comply with international human rights standards, and bring these laws and regulations in line with its international legal obligations under the ICCPR.

The Thai authorities should also cease their harassment and persecution of all individuals solely for exercising their rights to free expression and information, and drop existing charges against individuals facing prosecution for alleged violations of these laws.

Background

Regulation No. 29 has been passed pursuant to section 9(3) of the [Emergency Decree](#) on Public Administration B.E. 2548. On 25 March 2020, using powers under the Emergency Decree, the Thai government [declared](#) an "emergency situation" in all areas of Thailand, purportedly to combat the COVID-19 outbreak. Since then, the Thai authorities have enacted new regulations under the Emergency Decree, some of which are not compliant with Thailand's international human rights law obligations to respect and ensure the rights to freedom of expression and information.

Section 9 of the Emergency Decree does not explicitly grant the Prime Minister the power to suspend internet services. In April 2021, the Emergency Decree and a related announcement approved a sweeping transfer of some powers under 31 laws from ministers to the Prime Minister, however, these did not include powers or authority associated with the NBTC.

Article 19 of the ICCPR obliges Thailand to respect and ensure to all individuals under its jurisdiction the right to freedom of expression and information. The UN Human Rights Committee has clarified in General Comment No. 34 that protections for freedom of expression and opinion should extend to "political discourse, commentary... on public affairs, discussion of human rights, journalism...", including through non-verbal means and "electronic and internet-based modes of expression."

The UN Human Rights Committee also recognized that "a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression [and] ...constitutes one of the cornerstones of a democratic society", and this implies "a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion".

While in certain circumstances, a State may restrict freedom of expression, any such restriction must be strictly limited in accordance with the ICCPR. They must meet the requirements of legality, legitimate purpose, necessity, proportionality and non-discrimination.

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has made clear that States should only seek to restrict content pursuant to an order by an independent and impartial judicial authority, and in accordance with due process and standards of legality, necessity and legitimacy. States should also not impose disproportionate sanctions, whether heavy fines or imprisonment, on Internet intermediaries, given their significant chilling effect on freedom of expression.

Section 32 of the Constitution of Thailand protects the right to privacy and forbids the "exploitation" of personal data except when explicitly provided by law and necessary for the public interest. Section 34 of the Constitution provides that a person shall enjoy the liberty to express opinions, make speeches, write, print, publicize and express by other means. Section 35 provides that a media professional shall have liberty in presenting news or expressing opinions in accordance with professional ethics.

Signed:

Access Now

Amnesty International Thailand

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Asian Forum for Human Rights and Development (FORUM-ASIA)

Asian Network for Free Elections (ANFREL)

ASEAN Parliamentarians for Human Rights

Centre for Civil and Political Rights

Civil Rights Defenders

CIVICUS: World Alliance for Citizen Participation

Committee to Protect Journalists

FIDH - International Federation for Human Rights

Human Rights Watch

International Commission of Jurists

Lawyers' Rights Watch Canada

Manushya Foundation

Open Net Association

People's Empowerment Foundation