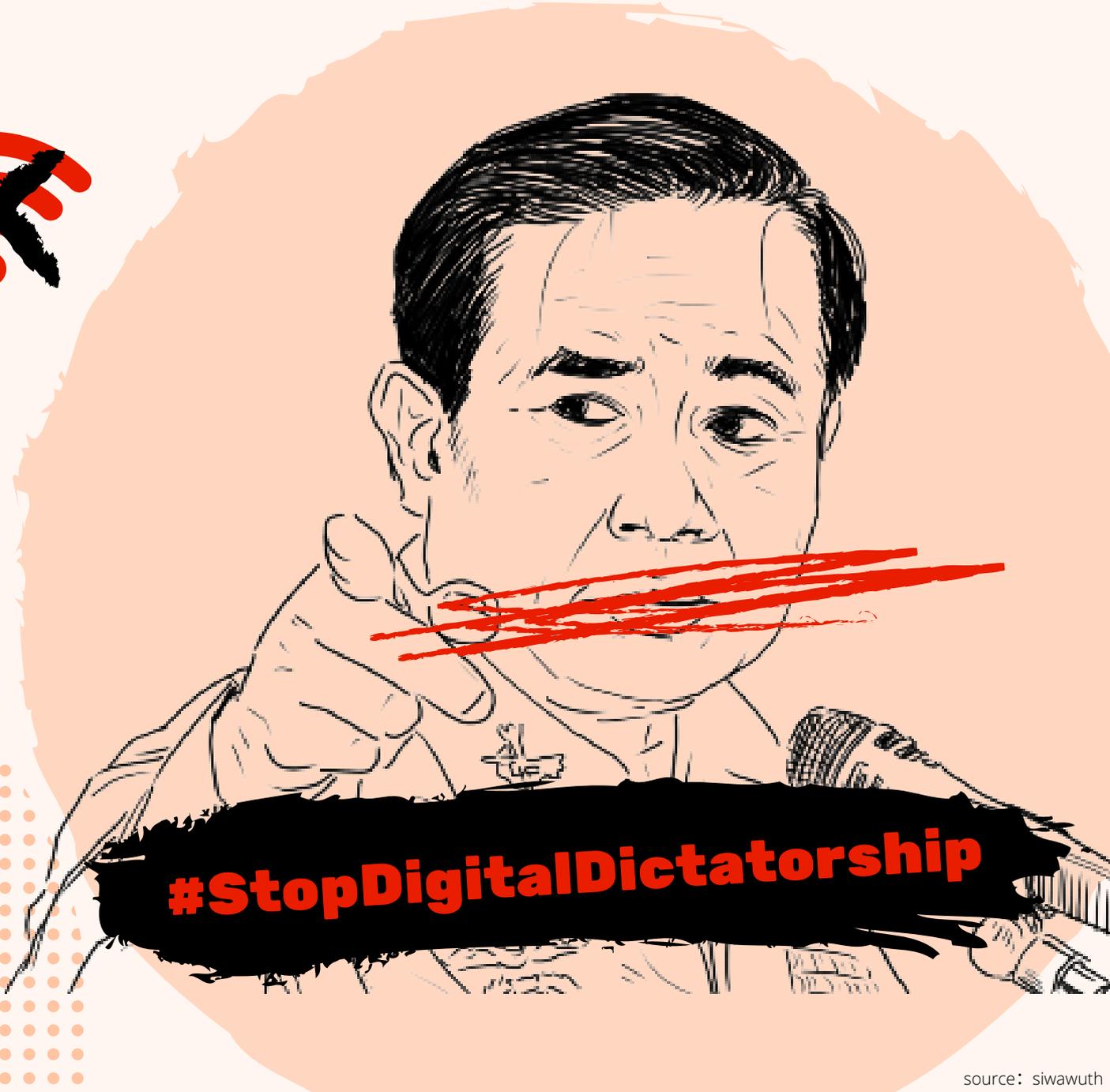


ASEAN Regional Coalition to **#StopDigitalDictatorship**



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JOINT STATEMENT

THAILAND: STOP WEAPONIZING 'COVID-19' TO CENSOR INFORMATION "CAUSING FEAR" AND CRACK DOWN ON MEDIA AND INTERNET SERVICE PROVIDERS



Joint Statement

Thailand: Stop Weaponizing 'COVID-19' to Censor Information “Causing Fear” and Crack Down on Media and Internet Service Providers

4 August 2021,

We, Manushya Foundation, Access Now, ALTSEAN-Burma, Cambodian Center for Human Rights (CCHR), the Institute of Policy Research and Advocacy (ELSAM), PEN International, and Southeast Asia Freedom of Expression Network (SAFE net) as the [ASEAN Regional Coalition to #StopDigitalDictatorship](#), stand in solidarity with independent media, civil society and internet service providers in Thailand and call for an immediate repeal of the [Regulation No. 29](#), requiring internet service providers (ISPs) to check the IP addresses of online users who post any news or information that *‘may create fear among the people’* concerning the COVID-19 pandemic and to suspend their internet services. We condemn the administration of Prime Minister Prayut Chan-o-cha’s ongoing digital dictatorship, which threatens online freedoms and hinders independent media from revealing the truth behind [#WhatsHappeningInThailand](#).

We call on the government of Thailand to uphold its international human rights obligations under Article 19 of the [Universal Declaration of Human Rights \(UDHR\)](#), and under Article 19 of the [International Covenant on Civil and Political Rights \(ICCPR\)](#), both of which protect the right to freedom of expression of individuals as well as that of the press, including their right to seek, receive and impart information through the media, including online. We also urge the government to protect human rights in line with [the UN Guiding Principles on Business and Human Rights](#).¹

We denounce the government’s failure to comply with its international human rights obligations and the weaponization of undemocratic regulations, orders and restrictive laws, including [the 2005 Emergency Decree on Public Administration in Emergency Situation \(Emergency Decree\)](#), [the Computer Crime Act \(CCA\)](#), and the royal defamation (*lèse-majesté*) provision under Thailand’s [Criminal Code](#), which grant the authorities sweeping powers to crack down on freedom of information online and suppress critical expression.²

On 29 July 2021, [a new Regulation No. 29](#) was issued under Section 9 of the Emergency Decree, which came into effect the following day. It bans reporting, distribution or dissemination of *“any book, publication, or any other media containing text”* that *“may create fear”* or *“that are intended to spread inaccurate news/information to generate misunderstanding about the emergency situation with adverse impact on national security, public order, or public morality”*. This new regulation is extremely dangerous. While the COVID-19 pandemic continues to be abused as a guise to crack down on online freedoms and Prayut’s ongoing war against ‘fake news’ intensifies, this new regulation now targets any information – even if it is accurate – which may “cause fear”. It also empowers the Office of the National Broadcasting and Telecommunications Commission (NBTC) to instruct ISPs to track IP addresses from which prohibited information has been posted. The ISPs are then required to report findings to the NBTC and to immediately suspend the internet service of end users. This regulation shortens processes for authorities to censor content online by allowing for the blocking of users’ internet access without any independent oversight nor legal accountability. Moreover, relevant information will be forwarded by the NBTC to the police for further legal action, and online users violating the regulation can be prosecuted under Section 18 of the Emergency Decree, which provides for imprisonment of up to two years and/or a fine of up to 40,000 baht. ISPs also risk losing their



operating licenses and could face legal action if they fail to comply with the regulation.³ It should also be noted that the powers granted to the Thai government under this regulation contravene Section 9 of the Emergency Decree which does not confer the government such blanket power to suspend internet services, as observed in [a legal analysis](#) by iLaw. The suspension of communication services, as laid out in Section 11 of the Emergency Decree, shall be invoked only during a ‘Severe State of Emergency’, an exceptional situation which needs a prior formal declaration.⁴ No such declaration has been made at time of writing.

This regulation came amid a number of recent government actions to combat COVID-19-related “fake news”. On 10 July, [Regulation No. 27](#) under the Emergency Decree was announced and came into force on 12 July, punishing those disseminating information that provokes “fear” or “misunderstanding” or “affects national security or public order or the good morals of the people” with a two-year imprisonment and/or a fine of up to 40,000 baht.⁵ On 27 July, [a Facebook post](#) by the Prime Minister also ordered government agencies and departments to prosecute individuals, including journalists, celebrities and social media administrators, for spreading “fake news” about the COVID-19 pandemic that might cause public confusion during the pandemic.⁶ This public threat came after 25 celebrities, influencers and public figures were investigated for voicing their concerns about Thailand’s worsening COVID-19 crisis and criticizing the government’s poor vaccination plan.⁷ Last month, the 18-year-old rapper, Danupa “Milli” Khanatheerakul was [fined](#) 2,000 baht after criticizing the government’s response to the pandemic on social media.⁸

The lack of clarity as to what constitutes “fake news” or information provoking “fear” and affecting “national security” opens the door to subjective interpretation, allowing authorities to arbitrarily enforce the provisions and target free expression, including legitimate criticisms of the government’s handling of the pandemic and even information that is factually accurate. This is a clear example of the Thai government’s authoritarian attempt to control information online, justifying such interference with illegitimate reasons under international law. This regulation can open a myriad of doors to its being instrumentalized as a weapon against public opinions and media freedom, and is therefore not in compliance with international human rights norms. It clearly undermines the ability of journalists to report freely on matters of public interest, and its disproportionate restrictions on freedom of expression and the free flow of information under the pretext of COVID-19 cannot be justified.

We commend and stand in solidarity with all people speaking truth to power, pushing back against dictatorship and fighting for true democracy in Thailand. Dr. Boon Vanasin, chairman of Thonburi Healthcare Group, responded to a lawsuit report filed against him by the Government Pharmaceutical Organisation (GPO) for his comment about the procurement of Moderna COVID-19 vaccine, by [saying](#) that it was a good opportunity for the truth to be disclosed by the court.⁹ On 2 August 2021, representatives from major Thai news agencies [stood in unity](#) against the new regulation by filing a civil lawsuit against the Prime Minister over the legality, necessity and proportionality of the provisions mandating the suspension of internet services in order to suppress so-called “fake news” or any accurate information creating “fear”. The court has [accepted](#) the petition.¹⁰

We also express our concern over the pressure exercised by authorities on international technology companies and ISPs which are required to facilitate censorship in the digital space. In June 2021, the Ministry of Digital Economy and Society [warned](#) of legal action against Facebook for refusing to comply with court orders to close the accounts of eight individuals who had allegedly posted false information and criticized the monarchy or the government.¹¹ This new regulation is an illustration of the growing digital dictatorship over tech companies in Thailand.



In light of these concerns, the [ASEAN Regional Coalition to #StopDigitalDictatorship](#) calls on the Thai government to:

- Repeal Regulations No. 1, 27, and 29 issued under the Emergency Decree and refrain from curtailing freedom of expression and information and interfering with users' internet access;
- Repeal or amend laws and regulations that restrict freedom of expression and independent media, including but not limited to criminal defamation, lèse-majesté provision under the Criminal Code, the Computer Crime Act and the Emergency Decree, to bring them in line with Articles 19 of the UN Declaration on Human Rights (UDHR) and of the International Covenant on Civil and Political Rights (ICCPR);
- Refrain from broadly applying and interpreting criminal provisions under the Emergency Decree to punish legitimate expression and media by using the COVID-19 pandemic as a weak and unjustified excuse;
- Refrain from requiring or pressuring technology companies, internet service providers or other telecommunications companies to moderate or remove online content, track users' IP addresses or suspend internet services, in contravention of the rights to free expression and information and privacy, and to ensure their compliance with their responsibilities to respect human rights in line with the UN Guiding Principles on Business and Human Rights (UNGPs);
- End all legal proceedings against individuals facing investigation, charges or prosecution initiated by State authorities for engaging in legitimate activities protected by international human rights law;
- Strengthen protection of journalists or media professionals who expose governmental shortcomings or failures or who merely report on COVID-19-related news in line with the UN Declaration on Human Rights Defenders; and
- Ensure measures to combat disinformation and misinformation are in line with international human rights obligations and the rule of law.

For more recommendations on how to protect freedom of expression while combating disinformation during the COVID-19 pandemic, in line with international human rights law, please refer to Access Now's 2020 report [Fighting misinformation and defending free expression during COVID-19: recommendations for states](#).¹²

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Annex – Unofficial Translation of the Regulation 29 issued under the 2005 Emergency Decree

- Unofficial English Translation by Manushya Foundation -

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Vol. 138, Special Part 170 Royal Thai Government Gazette July 29, 2021
(Unofficial Translation)

Regulation

Issued under the Royal Act

Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005)

(No. 29)

Pursuant to the Declaration of an Emergency Situation in all areas of the Kingdom of Thailand from March 26, 2020, and the extension of the aforementioned State of Emergency Declaration for the 13th time until September 30, 2021;

Given that there has been a general dissemination of false information that **may create fear among the people or inaccurate news/information** to generate misunderstanding or confusion among the people, or misconduct by the people, to the point of causing damages or aggravating the situation, affecting national security, violating other people’s rights, or affecting public order, public morality, or the healthcare of citizens through various media platforms, especially the Internet, which has exacerbated the severity of the emergency situation, it is necessary to introduce measures regulating the right to or freedom of expression such that the right or freedom is exercised in a reasonable, truthful, and accountable manner for the peace and harmony of society as a whole in this emergency situation in compliance with the framework laid out in the Constitution of the Kingdom of Thailand.

By virtue of Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005), the Prime Minister hereby issues a Regulation as follows:



1. No person shall report news, distribute or disseminate any book, publication, or any other media containing text that may create fear among the people or that are intended to spread inaccurate news/information to generate misunderstanding about the emergency situation with adverse impact on national security, public order, or public morality in the areas where a state of emergency has been declared.

2. In case there is a dissemination of text or news on the internet as prescribed in Clause 1, the Office of the National Broadcasting and Telecommunications Commission (Office of NBTC) will notify the Internet Service Providers in accordance with the laws on the organization assigning radio frequency and regulating broadcasting, television broadcasting, and telecommunications businesses, and require the Internet Service Providers to track the IP addresses where the aforementioned text or news originates from. In the case that the IP address is serviced by the Internet Service Provider, that Internet Service Provider shall inform the Office of NBTC of the details as prescribed by the Office of NTBC and immediately suspend the internet service rendered to that address.

The Office of NBTC shall promptly submit the details of its findings pursuant to Clause 1 to the Royal Thai Police for further legal action.

The Internet Service Providers who fail to comply with Clause 1 will be considered to have breached the requirements contained in their licenses to provide internet services, and the Office of NBTC shall take legal action accordingly.

This Regulation shall come into effect from 30 July B.E. 2564 (2021).

Issued on 29 July B.E. 2564 (2021)

General Prayut Chan-o-cha

Prime Minister



Endnotes

- 1 International Covenant on Civil and Political Rights, (1976), available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; Universal Declaration of Human Rights, (1948), available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>; OHCHR, *Guiding principles on business and human rights: implementing the United Nations "Protect, Respect and Remedy" framework*, (2011), available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.
- 2 Section 9 of the Emergency Decree on Public Administration in Emergency Situations prohibits “the press release, distribution or dissemination of letters, publications or any means of communication containing texts which may instigate fear amongst the people or is intended to distort information which misleads understanding of the emergency situation to the extent of affecting the security of state or public order or good moral of the people both in the area or locality where an emergency situation has been declared or the entire Kingdom.” The Computer Crime Act imposes charges on a person who circulates “false information” via online means under Section 14. Article 112 of the Criminal Code, often referred to as Thailand’s lèse-majesté law, provides a penalty of up to 15 years’ imprisonment for anyone who “defames, insults or threatens the King, the Queen, the Heir-apparent, or the Regent.” See The Royal Thai Government Gazette, *the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005)*, (2005), available at: http://web.krisdika.go.th/data/document/ext810/810259_0001.pdf; Computer Crime Act B.E. 2560, (2017), available at: http://web.krisdika.go.th/data/document/ext809/809777_0001.pdf; Criminal Code, available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=82844
- 3 The Royal Thai Government Gazette, *Regulation No. 29 issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005)*, (29 July 2021), available at: http://www.ratchakitcha.soc.go.th/DATA/PDF/2564/E/170/T_0001.PDF. See also Manushya’s Unofficial Translation of the Regulation provided as an Annex.
- 4 See iLaw’s analysis here: iLaw, *Facebook post*, (29 July 2021), available at: <https://www.facebook.com/iLawClub/photos/a.10150540436460551/10165707106090551/>
- 5 The Royal Thai Government Gazette, *Regulation No. 27 issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005)*, (10 July 2021), available at: http://www.ratchakitcha.soc.go.th/DATA/PDF/2564/E/154/T_0001.PDF?fbclid=IwAR3nFSaWyVzOzZW1M-bw2ctsK77uO0ng92LgNxr8cQJvEOla49kW7u5OpY
- 6 ประยุทธ์ จันทร์โอชา Prayut Chan-o-cha, เรียง พี่น้องประชาชนทุกท่าน, Facebook, (27 July 2021), available at: https://www.facebook.com/prayutofficial/posts/1148544958974451?_tn_ =K-R
- 7 According to the deputy Metropolitan Police Bureau (MPB) commissioner, at least 25 celebrities and influencers have been investigated for criticisms over the government’s handling of the pandemic. See also: Bangkok Post, *Celebs face charges for anti-govt comments*, (24 July 2021), available at: <https://www.bangkokpost.com/thailand/general/2153899/celebs-face-charges-for-anti-govt-comments>
- 8 Bangkok Post, *Prayut files defamation charges against rapper*, (22 July 2021), available at: <https://www.bangkokpost.com/thailand/general/2153151/prayut-files-defamation-charges-against-rapper>
- 9 Thai Enquirer, *GPO to sue Thonburi Hospital Group chairman for criticisms over Moderna purchase*, (14 July 2021), available at: <https://www.thaienquirer.com/29840/gpo-to-sue-thonburi-hospital-group-chairman-for-criticisms-over-moderna-purchase/>; See also: Bangkok Post, *GPO sues THG chairman over Moderna vaccine comments*, (14 July 2021), available at: <https://www.bangkokpost.com/thailand/general/2148683/gpo-sues-thg-chairman-over-moderna-vaccine-comments>
- 10 Bangkok Post, *Court accepts petition against internet blocking*, (2 August 2021), available at: <https://www.bangkokpost.com/thailand/general/2158731>; BBC, ศาลแพ่งนัดไต่สวนคำร้องขอคุ้มครองชั่วคราว 6 ส.ค. นี้ หลัง ภาคประชาชน-สื่อ 12 องค์กร ยื่นฟ้องศาลกรณี ประยุทธ์ ออกข้อกำหนดควบคุมสื่อไม่ชอบด้วยกฎหมาย-ขัดรัฐธรรมนูญ, (2 August 2021), available at: <https://www.bbc.com/thai/thailand-58053739>
- 11 Bangkok Post, *Chaiwut threatens to sue Facebook*, (25 June 2021), available at: <https://www.bangkokpost.com/thailand/general/2138027/chaiwut-threatens-to-sue-facebook>
- 12 Access Now, *Fighting misinformation and defending free expression during COVID-19: recommendations for states*, (April 2020), available at: <https://www.accessnow.org/cms/assets/uploads/2020/04/Fighting-misinformation-and-defending-free-expression-during-COVID-19-recommendations-for-states-1.pdf>