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Thailand's Pathological Constitution

Its Repercussion on Human Rights

AMNART Tangkiriphimarn¹⁾

1. Introduction
2. Constitutional Framework
3. The Repercussion on Human Rights
4. Conclusion

1. Introduction

At the time of this writing in August 2021, clashes between crowd control police and protestors, most of whom are teenagers, have been occurring for weeks at the Din Daeng intersection situated on the protestors' path to Thailand Prime Minister Prayuth Chan-o-cha's residence.²⁾ Crowd control police are using tear gas, water cannons, and rubber bullets to disperse the protestors; constructs of barbed wires and shipping containers to block the road create familiar scenes spotted in many political gatherings opposing the former Army Chief's administration in the past year. Arguing that its objec-

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2) "'Din Daeng Battlefield' When Kids Decide to Reclaim Their Lives Through Confrontation" iLaw (21 August 2021) <<https://www.facebook.com/iLawClub/photos/a.10153394320770551/10165783380715551/>>; 'Ordinary People on "Din Daeng Battlefield" Grudge Fanatic Gas-Through' Voiceonline (22 August 2021) <https://www.voicetv.co.th/read/uTjQc3QIk?fbclid=IwAR29XE_bK4Nuncozfg7MNoOadA3GeecZx83RQllf0Jm-dOHkW_ljYbuz0Y4>

tive was to maintain public security, the police asserted that its use of force was legal and in accordance with international standards.³⁾ To a certain extent, the incident reminds many Thais of the violent military crackdown of the “Red Shirts” protest in 2009.⁴⁾ Despite these two incidents being more than a decade apart, most observers familiar with modern Thai politics would aptly argue that they are very much connected although the political surroundings are somewhat different. While the 2009 Red Shirts protest was the consequence of the 2006 coup d’état by General Sonthi Boonyaratglin during the reign of King Bhumibol (Rama IX), today’s protests, primarily led by young people, result from the 2014 coup d’état led by General Prayuth Chan-o-cha. King Rama IX passed away in October 2016, and now, Thais are living during the reign of King Vajiralongkorn (Rama X).

This paper argues that the political clashes and their associated human rights violations partly result from the current pathological constitution, which was intentionally drafted such that it fundamentally distorts Thailand’s democratic political reality so that the establishment could maintain the status quo. Specifically, the peculiar nature of the prime minister’s appointment process is *inter alia* at the center of the current political turmoil. It significantly marginalizes people’s voices while granting disproportionate power to non-populist organs with no or minimal connection with the people. This condition allows the government to suppress people’s rights and disregard public welfare at will, without fear of losing its grip on power. This paper is separated into two main parts. The first explores Thailand’s current constitutional framework, and the second discusses recent human rights violations by the Thai authorities.

3) ‘Thai Police Face Off Again With Protesters Near PM’s Residence’ Reuters (11 August 2021) <<https://www.reuters.com/world/asia-pacific/thai-police-say-use-force-necessary-protesters-plan-new-rally-2021-08-11/>>

4) Nick Nostitz, ‘Shot at Din Daeng’ New Mandala (6 September 2009) <<https://www.newmandala.org/shot-at-din-daeng/>>

2. Constitutional Framework

The conflict began in May 2013, when the Pheu Thai Party, which was closely connected to Thaksin Shinawatra, arguably the most controversial political figure in modern Thai politics, who was ousted by a coup d'état in September 19, 2006,⁵⁾ submitted its amnesty bill to the Parliament. This amnesty bill originally aimed to acquit ordinary citizens criminally charged for their participation in the Red Shirts demonstrations repeatedly taking place after the 2006 coup. The bill was modified at the last minute to include the pardoning of Thaksin, who had also been prosecuted for corruption by organs specifically established by the junta. The modification was approved by the House of Representatives on November 1, 2013, at approximately 2.30 am. This move abruptly provoked a great public uproar among many Thais, especially those from the middle class residing in Bangkok. Several protests simultaneously took place at various locations. Although then-Prime Minister Yingluck Shinawatra, Thaksin's younger sister, announced on November 7, 2013, that the bill had been withdrawn for good, the public dissatisfaction remained. On November 29, the People's Democratic Reform Committee (PDRC) was instituted to lead the protests, which continued to escalate. Unable to withstand the pressure, Yingluck dissolved the Parliament and called for a general election.⁶⁾

One would have expected that the PDRC would terminate its rally, as people could now cast their votes to choose new members of Parliament, who would in turn select a new prime minister. That, however, was not the case as the PDRC led by Suthep Thaugsuban and other members of the Democrats Party, Thailand's main opposition party, knowing that it would lose the election, announced a new campaign of "reform before election." At that point, the protests had continued for almost six months.

5) See Kevin Hewison, 'Thaksin Shinawatra and the Reshaping of Thai politics' (2010) 16(2) Contemporary Politics 119. Two predecessors of the Pheu Thai Party, Thai Rak Thai and Palang Prachachon, were dissolved by the Constitutional Court on 30 May 2007 and 2 December 2008 respectively.

6) Thitikorn Sungkaew and Attasit Pankaew, 'Blanket Amnesty' <wiki.kpi.ac.th/index.php?title=มติโทษกรรมเหมาเข่ง>

The general election on February 2, 2014, was deliberately obstructed, as the PDRC physically prevented people from voting at polling places.⁷⁾ On March 21, 2014, the Constitutional Court⁸⁾ ruled that the election was unlawful because, given the protests, “it did not take place on the same day across the country.”⁹⁾ Moreover, on May 7, 2014, the Constitutional Court removed Yingluck from the caretaker’s office given her illegal dismissal of the Secretary of the National Security Council in September 2011.¹⁰⁾ As a result, the country was in chaos. As usual in the “Land of Smiles,” the military had no other choice but to intervene to “salvage” the situation.¹¹⁾ On May 22, 2014, Army Chief Prayuth Chan-o-cha, together with other commanders in chief, took over the country under the name of the National Council for Peace and Order (NCPO).¹²⁾ It requested a “not too long” term in order to “return happiness to Thailand.”¹³⁾ A new constitution was instrumental in achieving this goal.

2.1. Constitution Drafting

Two months after the coup, the NCPO enacted the Interim Constitution on July 22, 2014. Sections 32 to 39 stipulate the constitution drafting process. The first Constitutional Drafting Committee (CDC) chaired by Borwornsak Uwanno¹⁴⁾ was estab-

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- 7) ‘Thailand Election Disrupted by Protests’ BBC News (2 February 2014) <<https://www.bbc.com/news/world-asia-26003995>>.
 - 8) For a survey of the Constitutional Court’s politically important decisions, see Khemthong Tonsakulrungruang, ‘Entrenching the Minority: The Constitutional Court in Thailand’s Political Conflict’ (2017) 26(2) Washington International Law Journal 247.
 - 9) Constitutional Court Judgment No. 5/2557 (21 March 2014); ‘Thai Court Rules General Election Invalid’ BBC News (21 March 2014) <<https://www.bbc.com/news/world-asia-26677772>>.
 - 10) Constitutional Court Judgment No. 9/2557 (7 May 2014); ‘Thailand Court Ousts PM Yingluck Shinawatra’ BBC News (7 May 2014) <<https://www.bbc.com/news/world-asia-27292633>>.
 - 11) For those who are unfamiliar with Thai politics, this sentence is intended to be sarcasm.
 - 12) See Claudio Sopranzetti, ‘Thailand’s Relapse: The Implications of the May 2014 Coup’ (2016) 75 (2) The Journal of Asian Studies 299.
 - 13) See Mong Palatino, ‘French Expat Forced to Apologize for Making a Music Video Which Mocks the Thai Junta’ Global Voices (5 July 2019) <<https://globalvoices.org/2019/07/05/french-expat-forced-to-apologize-for-making-a-music-video-which-mocks-the-thai-junta/>>
 - 14) <https://en.wikipedia.org/wiki/Borwornsak_Uwanno>

lished and assigned to carry out the task. The first CDC had 36 members, all appointed by the Chairman of the National Reform Council (NRC),¹⁵⁾ an entity comprising 250 members “recommended” by the NCPO.¹⁶⁾ Of these 36 members, 20 were nominated by the NRC, 15 were equally nominated by the National Legislative Council (NLC),¹⁷⁾ the government and the NCPO, and the Chairman was nominated by the NCPO.¹⁸⁾ The CDC took roughly ten months to draft the constitution, and it was completed on August 22, 2015. For the draft to pass, it required the NRC’s approval.¹⁹⁾ Despite the NCPO’s total control over the process via direct and indirect involvement in the appointment of the CDC’s members and the NRC’s members, the NRC astonishingly voted against the draft (105 yes, 135 no, 7 abstain).²⁰⁾ Borwornsak is reported to have hinted at the reason for such an outcome, stating, “They want to stay longer.”²¹⁾

The second CDC was established one month later, this time with only 21 members. It was chaired by another familiar face, Meechai Ruchuphan.²²⁾ In addition, having been pressed from all sides, the NCPO amended the Interim Constitution (the first one of four total amendments) on July 18, 2015, so that a referendum became a prerequisite of the entry into force of the new constitution.²³⁾ The CDC finalized the new draft on March 29, 2016.

The (amended) second draft subsequently went to referendum. Aside from the

15) Interim Constitution B.E. 2557, section 32. An unofficial translation of the document prepared by the Office of the Council of State can be found at <[http://web.krisdika.go.th/data/outsidedata/outsite21/file/Constitution_of_the_Kingdom_of_Thailand_\(Interim\),B.E._2557_\(2014\).pdf](http://web.krisdika.go.th/data/outsidedata/outsite21/file/Constitution_of_the_Kingdom_of_Thailand_(Interim),B.E._2557_(2014).pdf)>.

16) Interim Constitution B.E. 2557, section 28. Legally speaking, NRC members are appointed by the King at the NCPO’s recommendation.

17) The National Legislative Council acted as the legislative branch under the Interim Constitution. It was originally composed of 220 members, all of whom were appointed by the King at the NCPO’s recommendation. Interim Constitution B.E. 2557, art 6. On 1 September 2016, the number of members was increased to 250. Interim Constitution (3rd Amendment) B.E. 2557, section 6.

18) Interim Constitution B.E. 2557, section 32.

19) Interim Constitution B.E. 2557, section 37.

20) For an analysis of the voting, see <<https://ilaw.or.th/node/3838>>.

21) <https://www.matichon.co.th/columnists/news_884495>.

22) <https://en.wikipedia.org/wiki/Meechai_Ruchuphan>.

23) Interim Constitution B.E. 2557, section 39/1.

central question of whether the draft constitution itself should be approved, the NLC proposed that a supplemental question be asked. The final version of the supplemental question put before the voting read:²⁴⁾

Do you agree that, to make the national reform process continued in accordance with the National Strategic Plan, it should be prescribed in the Interim Chapter that, during the first five years ensuing the establishment of the first Parliament under this Constitution, the convention of the Parliament shall consider and approve a person to be appointed as the Prime Minister?

In short, after a careful deciphering of the text, the upshot of the question was whether the Senate should be entitled to vote on who will be prime minister. To understand the reason behind this move, a brief explanation about the Senate, which together with the House of Representatives constitutes the Parliament, is necessary. Section 269 in the Provisional Chapter of the draft constitution provides for 250 senators in the five-year period from the installation date of the first National Assembly under this Constitution.²⁵⁾ Notwithstanding some differences in their nomination processes, 244 senators were ultimately to be approved by the NCPO. The remaining six senators were to be appointed from the heads of six national security agencies having close ties with the NCPO, i.e., army, navy, air force, supreme military commander, Ministry of Defense, and police. Hence, the Parliament was to comprise 750 members in total: 500 elected members from the House²⁶⁾ and 250 appointed members from the Senate. Should the senators be entitled to vote for prime minister, which is utterly undemocratic given the senators' lack of populist connection, the NCPO would be very much in control of how the nation's highest office be run. In other words, for the democratic coalition's candidate to assume the office, there must be more than 375 members of the

24) This NLC's power was added into the Interim Constitution by its second amendment of 22 March 2016. Interim Constitution B.E. 2557, section 39/1 para 7.

25) In the normal situation, there shall be 200 senators. Constitution B.E. 2560, section 107.

26) Constitution B.E. 2560, section 83.

House who support the candidate, whereas the NCPO camp needs only 126 elected members.

Ultimately, both questions survived the referendum on August 7, 2016: 61% yes and 39% no for the main question and 58% and 42% for the supplemental question.²⁷⁾ The result alone does not tell the whole story, however. Considering how it was held, this referendum was far from fair. In particular, the principle of “free suffrage,” which in essence requires “freedom of voters to form the opinion,” was absent.²⁸⁾ The repressive climate preceding the referendum was especially disturbing, as the junta did not allow the opposition to express and publicly advocate its view, and restrictions were imposed upon public debate.²⁹⁾ For instance, Section 61 of the Organic Act on Referendum for the Draft Constitution B.E. 2559 (2016)³⁰⁾ criminalizes an act of “instigat [ing] trouble in order to cause disorder in the voting,” which was stipulated to include any act of dissemination of information that is “distorted from the fact or having violent, aggressive, rude, inciting, or threatening characteristics aiming to induce eligible voters [to] refrain from voting or vote in a certain way or abstain from voting.” The violation may result in up to 10 years’ imprisonment and a 200,000-baht fine. iLaw, a leading NGO well known for its political and legal data collection and analysis, report-

27) ‘The Election Commission’s Announcement of Election Result: Voting Result’ (10 August 2016) <https://www.ect.go.th/chumphon/ewt_dl_link.php?nid=189>; Ian Bremmer, ‘Here’s What You Need to Know About Thailand’s New Constitution’ Time (11 August 2016) <<https://time.com/4448655/thailand-constitutional-referendum/>>.

28) European Commission for Democracy Through Law, ‘Code of Good Practice for Referendum’ (2007) 8-9, 17-19 <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)008rev-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)008rev-cor-e)>; European Commission for Democracy Through Law, ‘Revised Guidelines on the Holding of Referendums’ (2020) 8-10 <<http://www.cepc.gob.es/docs/default-source/comisionveneciadoc/revised-guidelines-on-the-holding-of-referendums.pdf?sfvrsn=0>>.

29) Jonathan Head, ‘Thai Referendum: Why Thais Backed a Military-Backed Constitution’ BBC News (9 August 2016) <<https://www.bbc.com/news/world-asia-37013950>>; Matthew Wheeler, ‘Constitutional Referendum Cannot Disguise Thailand’s Democratic Deficit’ International Crisis Group (5 August 2016) <<https://www.crisisgroup.org/asia/south-east-asia/thailand/constitutional-referendum-cannot-disguise-thailands-democratic-deficit>>.

30) An unofficial translation of the document can be found at <<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103544/125829/F1602759526/THA103544%20Eng.pdf>>.

ed that there had been at least 195 prosecuted cases concerning the 2016 referendum, 40 of which were charges under Section 61, while others were charges under other provisions of the Organic Act, NCPO orders, and other laws.³¹⁾ Another issue worth addressing is the unbalanced campaign materials distributed by the Election Commission of Thailand (ECT), including the Booklet on Referendum, which summarizes the draft constitution and information concerning the voting procedure on August 7, 2016.³²⁾ They contained only positive things about the draft constitution, many of which are arguably either misleading or exaggerated,³³⁾ e.g., provisions concerning the people's rights and liberty, whereas other controversial issues, such as how important political organs are structured and their origins, were omitted. This fundamentally raised concerns about the ECT's neutrality. The lack of clarity of the supplemental question mentioned above was a further issue.

Following the referendum, a modification to the draft constitution was required to reflect the supplemental question. Despite minor conflict during the review and revision of the modification by the Constitutional Court,³⁴⁾ the process went through. In addition, the NCPO exercised its despotic power under Section 44 of the Interim Constitution³⁵⁾ to amend the draft constitution on two issues (one after the referendum) : the national compulsory education program (June 15, 2016)³⁶⁾ and the role of state on religions (August 22, 2016).³⁷⁾ Given that the latter NCPO's amendment happened

31) 'Table of people prosecuted in cases related to the 2016 referendum' iLaw (2 August 2016) <https://freedom.ilaw.or.th/blog/referendum_charge>.

32) Election Commission of Thailand, 'Booklet on Referendum' (2016) <<https://library.parliament.go.th/sites/default/files/assets/files/give%20%26%20take/main%20page/cdc58-ect/NALT-cdc58-ect-booklet.pdf>>.

33) See 'What are Added and Missing in the Booklet that the Election Commission Deliver to People's Residences?' iLaw (27 July 2016) <<https://www.facebook.com/media/set/?vanity=iLawClub&set=a.10157162927090551>>.

34) Constitutional Court Judgment No. 6/2559 (28 September 2016).

35) See 'Report on the Exercise of Power under Section 44 of the Interim Constitution of Thailand' iLaw (18 November 2015) <<https://ilaw.or.th/node/3938>>.

36) NCPO Order No. 28/2559 (15 June 2016).

37) NCPO Order No. 49/2559 (22 August 2016).

after the referendum, the question of the point of the referendum arises. Despite this, another set of amendments was on its way.³⁸⁾ This time, the issues concerned the monarchy, an institution that has increasingly become the center of many extremely sensitive taboos in Thailand in the past two decades.³⁹⁾

On November 9, 2016, Prayuth presented the final draft constitution to King Vajiralongkorn for his royal assent. Regarding this convention, the last paragraph of Section 37 of the Interim Constitution provides “[i]n the case where the King withholds His Royal Assent to the Draft Constitution and either returns it or does not return it within ninety days, the Draft Constitution shall lapse.” The deadline for the royal signature was February 6, 2017. On January 10, 2017, Prayuth informed the public that the Office of His Majesty’s Principal Private Secretary had notified the government of His Majesty’s “observations” seeking changes on some provisions concerning royal affairs to which Prayuth positively responded.⁴⁰⁾ Three days later, the NLC, within one single day, amended the Interim Constitution (4th Amendment),⁴¹⁾ revising paragraph 11 of Section 39/1 to include the changes to the voted draft constitution.⁴²⁾ The Office of the Council of State was assigned to prepare the new draft.⁴³⁾ In the end, modifications were made to seven provisions concerning 1) the role of customary norms in times of crisis (Section 5) ; 2) the qualification of members of the Privy Council (Section 12) ; 3) the appointment of the Royal Office personnel (Section 15) ; 4)-6) the ap-

38) ‘Six Changes in Constitution’ Bangkok Post (6 April 2017) <<https://www.bangkokpost.com/thailand/general/1228183/six-sections-changed-in-constitution>>.

39) See Panu Wongcha-um and Panarat Thepgumpanat, ‘A Year After Taboo on Thai King Broken, 103 Face Jail for Royal Insult’ Reuters (3 August 2021) <<https://www.reuters.com/world/asia-pacific/year-after-taboo-thai-king-broken-103-face-jail-royal-insult-2021-08-03/>>.

40) ‘Thai PM Says King Seeks Change in Pending Constitution’ AP News (10 January 2017) <<https://apnews.com/article/e95c4851a48443b1ab715524eb1c40f8>>.

41) Interim Constitution B.E. 2557, section 46.

42) ‘Thai Parliament Approves King’s Constitutional Changes Request, Likely Delaying Elections’ Reuters (13 January 2017) <<https://www.reuters.com/article/us-thailand-king-constitution-idUSKBN14X0IF>>.

43) Chaiyawat Surawichai, ‘Amended Constitution after the 7 August Referendum on the King Chapter’ Siamrath (18 January 2017) <<https://siamrath.co.th/n/8046>>.

pointment of the regent when the King is absent (Sections 16-17, 19); and 7) the countersign of the royal command (Section 182).⁴⁴⁾ Prayuth received the revised draft on January 20, 2017, and resubmitted it to King Vajiralongkorn on February 17, 2017. Finally, the Constitution B.E. 2560 (2017) was signed and bestowed by the King on April 6, 2017, which incidentally was also the founding date of the Chakri Dynasty in 1782.⁴⁵⁾

It should also be added that, apart from this exceptional amendment, the junta and its successor also honored other royal requests, including the amendment of the Crown Property Act B.E. 2479 (1936) (now the King Property Act B.E. 2561 (2018)),⁴⁶⁾ the enactment of the Royal Service Administrative Act B.E. 2560 (2017),⁴⁷⁾ and the enactment of the Emergency Decree on the Transfer of Units and Partial Budget of the Royal Thai Army and the Ministry of Defense to the Royal Security Command as Part of the Royal Office B.E. 2562 (2019).⁴⁸⁾ These legislations effectively transferred the

44) 'Comparing Section by Section of the Draft Constitution after the Referendum and the Modified and Enforced Version' BBC News (6 April 2017) <<https://www.bbc.com/thai/thailand-39514040>>.

45) 'Announcement of the Royal Ceremony of the New Constitution Bestowment on 6 April' BBC News (3 April 2017) <<https://www.bbc.com/thai/thailand-39479523>>. The timing is unlikely a coincident. On superstition and Thai politics, see, e.g., Pasuk Phongpaichit and Chris Baker, 'The Spirits, the Stars, and Thai Politics' (Siam Society, 2 December 2008) <<http://pioneer.netserv.chula.ac.th/~ppasuk/spiritsstarspolitics.pdf>>; Patpicha Tanakasempipat, 'From King's Coronation to Commoners, Astrology in Thailand is Everywhere' Reuters (22 April 2019) <<https://www.reuters.com/article/us-thailand-king-coronation-astrology-idUSKCN1RY06Q>>.

46) 'Thailand's King Given Full Control of Crown Property' Reuters (17 July 2017) <<https://www.reuters.com/article/us-thailand-king-property-idUSKBN1A200X>>; 'Thai King Takes Control of Some \$30bn Crown Assets' BBC News (16 June 2018) <<https://www.bbc.com/news/world-asia-44507590>>; 'Is Crown Property Taxable' Prachatai English (12 February 2021) <<https://prachatai.com/english/node/9068>>.

47) "'The Royal Office' The NCPO Established a Special Entity Lacking Accountability, Harming Democracy" iLaw (19 July 2021) <<https://ilaw.or.th/node/5922>>

48) Teeranai Charuvastra, 'Emergency Order Transfers Army Units to Kings Command' Khaosod English (1 October 2019) <<https://www.khaosodenglish.com/politics/2019/10/01/emergency-order-transfers-army-units-to-kings-command/>>; Teeranai Charuvastra, 'Royal Troops Transfer Looms Over Tomorrow's Parliament Debate' Khaosod English (16 October 2019) <<https://www.khaosodenglish.com/politics/2019/10/16/royal-troops-transfer-looms-over-tomorrows-parliament-debate/>>.

control over the Crown Property and some military personnel to King Vajiralongkorn.

These incidents highlight the enduring close relationship between the monarchy and the military, as the latter usually relies on the former to strengthen its legitimacy,⁴⁹⁾ without an ex post royal endorsement, coup attempts can hardly be accomplished.⁵⁰⁾ Moreover, as long as the junta maintains royal support, its chance of remaining in power would be high regardless of its popularity. The current constitutional framework accentuates this phenomenon, for it would be extremely challenging for the people to overthrow the military-backed government democratically: More than 375 elected members of the House are needed. In short, people's votes do not determine how the government is chosen. As a result, considering this problematic representation structure and the missing democratic accountability, it is unclear how such a government would truly serve the people.⁵¹⁾

2.2. The 2019 Election

Following the entry into force of the Constitution B.E. 2560 (2017), the NLC enacted the Organic Act on Political Party B.E. 2561 (2018) and the Organic Act on the Election of Members of the House of Representatives B.E. 2561 (2018). The ECT then passed additional necessary regulations, and the election was scheduled on March 26, 2019, almost five years after the coup—so much for the junta's promise of not staying too long. The familiar faces—Pheu Thai, Democrats, and Bhumjaithai Parties—all participated in this election. Three new political parties should be mentioned: Palang

49) On an overview of this symbiosis relationship, see Duncan McCargo, 'Network Monarchy and Legitimacy Crises in Thailand' (2005) 18(4) *The Pacific Review* 499; Eugénie Mérieau, 'Thailand's Deep State, Royal Power and the Constitutional Court (1997-2015)' (2016) 46(3) *Journal of Contemporary Asia* 445; Yoshinori Nishizaki, 'Birds of a Feather: Anand Panyarachun, Elite Families and Network Monarchy in Thailand' (2020) 51(1-2) *Journal of Southeast Asian Studies*, 197.

50) One example was the failed coup attempt in September 1985 in which the late King Bhumibol sided with the incumbent government led by the late General Prem Tinsulanonda. '35th Anniversary "Coup d'état," Overthrowing Pa, "No Show" Finally "Treason" Thairath (9 September 2020) <<https://www.thairath.co.th/news/local/1925777>>.

51) See, e.g., Adam Przeworski, Susan C. Stokes, and Bernard Manin (ed), *Democracy, Accountability, and Representation* (Cambridge University Press, 1999) 1-29.

Pracharath, Thai Raksa Chart, and Future Forward Parties. The Palang Pracharath Party (PPP) was specifically created as the junta's alter ego for this election,⁵²⁾ and Thai Raksa Chart (TSC) was established as a branch of Pheu Thai to deal with the new electoral system.⁵³⁾ In an unprecedented move, TSC nominated Princess Ubolratana, King Vajiralongkorn's older sister, as its prime minister candidate.⁵⁴⁾ This nomination resulted in the Constitutional Court's dissolution of the party on March 7, 2019, as the court found that the act undermined the monarchy.⁵⁵⁾

Finally yet importantly, the Future Forward Party (FFP) was considered by many to be a fresh political party whose major supports were from the younger generation.⁵⁶⁾ At first, it "began with leaders," including Thanathorn Jungrungruangkit, Piyabutr Saengkanokkul (a former Thammasat law faculty member, who resigned as an Associate Professor in 2018 at the age of 39), and Pannika Wanich. To people's surprise, likely due to the TSC's dissolution, it did spectacularly well in its first election, winning some 80 seats, and came in behind just two other major parties, Pheu Thai and PPP.⁵⁷⁾ As time went by, FFP increasingly became a threat to the establishment.⁵⁸⁾ Likely due to this, the party had to weather a number of critical political accidents. To name a few, the Constitutional Court in November 2019 disqualified Thanathorn from being an MP,

52) Paul Chambers, 'Thailand's Elected Junta: The Pluralistic Poverty of Phalang Pracharat' (ISEAS, 12 March 2021) <https://www.iseas.edu.sg/wp-content/uploads/2021/02/ISEAS_Perspective_2021_29.pdf>.

53) On the electoral system, see n.63.

54) 'Princess Ubolratana is Candidate for Prime Minister' Bangkok Post (8 February 2019) <<https://www.bangkokpost.com/thailand/politics/1625814/princess-ubolratana-is-candidate-for-prime-minister>>.

55) Constitutional Court Judgment No. 3/2562 (19 March 2019).

56) 'Future Forward Party's Spectacular Rise and Fall' Bangkok Post (30 December 2020) <<https://www.bangkokpost.com/thailand/politics/2043091/future-forward-partys-spectacular-rise-and-fall>>.

57) Khemthong Tonsakulrungruang, Book Review 'Future Forward: The Rise and Fall of a Thai Political Party' (2020) *Journal of Contemporary Asia*.

58) For example, it was the only political party challenging the emergency decree of royal troop transfer in 2019. That was "the first time that lawmakers publicly challenged a legal procedure related to royal affairs." 'Thai Opposition Protests Emergency Troop Transfer to King' Reuters (17 October 2019) <<https://www.reuters.com/article/thailand-king-int-idINKBN1WW122>>.

ruling that he illegally held shares in a media company at the time of the election.⁵⁹⁾ Three months later, the Constitutional Court disbanded the FFP, stating that it was illegal for a political party to receive and use loans to run political activities.⁶⁰⁾ Accordingly, the remaining 50 House members of the dissolved FFP relocated to the Move Forward Party.⁶¹⁾ Meanwhile, Thanathorn, Piyabutr, Pannikar, and other executive members of the FFP were banned from politics for 10 years. Nonetheless, they continued their movement outside the Parliament under the group called Progressive Movement.⁶²⁾

Meanwhile in the next general election, the Constitution B.E. 2560 (2017) adopted the mixed member apportionment system (MMA), which has never been used before in Thailand. As a commentator summarizes, under this electoral system:

Voters were allowed to directly select 350 lawmakers from single-seat constituencies. The ballots that they cast would count as both votes for the candidates in those races and simultaneously votes for those candidates' party in the allocation of party-list seats. The total number of votes that a party received nationwide via this single vote would determine the number of party-list members of parliament allocated to each party. [...] However, parties that already garnered more constituency seats than the number for which this first calculation [(the votes for parties divided by the total number of valid votes)] made them eligible would not be allocated more party-list seats [...] The 150 party-list seats would then be distributed among parties according to the proportion of the votes that they received.⁶³⁾

59) Constitutional Court Judgment No. 14/2562 (20 November 2019).

60) Constitutional Court Judgment No. 21/2563 (28 February 2020).

61) '50 MPs join Move Forward' Bangkok Post (8 March 2020) <<https://www.bangkokpost.com/thailand/politics/1878785/50-mps-join-move-forward>>. Following the dissolution, many MPs fled FFP to join other parties, including Bhumjaithai in particular.

62) <<https://progressivemovement.in.th/>>.

63) Puchada Sirivunnabood, 'Thailand's Puzzling 2019 Election: How the NCPO Junta Has Embedded Itself in Thai Politics' (ISEAS, 29 May 2019) 3 <https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2019_44.pdf>.

As the 2019 result shows, the electoral system disadvantages big parties, as it would be challenging for any party to win an absolute majority in the House. The design thus weakened the government, which would ordinarily be formed by a coalition of several parties. In fact, because of the ECT's questionable ruling, 27 parties entered the House that term.⁶⁴⁾ Moreover, according to many observers, the election process was "cryptic."⁶⁵⁾ For example, the ECT imposed suspicious measures favoring some parties, e.g., redrawing electoral boundaries, randomizing the party number in each constituency (instead of assigning the same number to all candidates from the same party), enforcing rules unfairly, and delaying the official announcement of the election result.⁶⁶⁾ Dirty tricks and fraudulent cases were also reported.⁶⁷⁾

Most importantly, the ECT's calculation of the party-list seats taken by each party took an unreasonably long time (approximately six weeks) and caused controversy when released. In short, it allocated seats to small parties obtaining fewer votes than the threshold. To illustrate, the number of total valid votes are 35,441,920. If one divides it by 500 House seats, the threshold number for each seat would be roughly 70,000 votes. Nonetheless, according to its formula, the ECT announced that those parties obtaining around 30,000 votes would be guaranteed one seat in the House. As such, ten parties obtaining from 33,754 to 68,973 seats were allocated one seat each. On the other hand, some parties, especially the FFP, lost their expected seats.⁶⁸⁾

64) Ibid, 4.

65) Ibid, 2.

66) Siripan Nogsuan Sawasdee, 'Electoral Integrity and the Repercussions of Institutional Manipulations: The 2019 General Election in Thailand' (2020) 5 (1) *Asian Journal of Comparative Politics* 52, 61-62.

67) See Cleve Arguelles and others, 'The 2019 Thai General Election: A Missed Opportunity for Democracy' (ANFREL, 2019) 79-97 <<https://anfrel.org/wp-content/uploads/2019/06/Thai-Report-2nd-edition.pdf>>; Pavin Chachavalpongan and CSI LA, 'Frauds, Irregularities and Dirty Tactics: A Report on Thailand's 2019 Election' (FORSEA, 2019) <<https://forsea.co/fraud-irregularities-and-dirty-tricks-a-report-on-thailands-2019-elections/>>; Khemthong Tonsakulrungruang, 'Thailand's Tainted Election Commission' *New Mandala* (18 April 2019) <<https://www.newmandala.org/thailands-tainted-election-commission/>>; 'The Most Questionable Election in Thai History?' *Prachatai English* (25 March 2019) <<https://prachatai.com/english/node/7993>>.

In the end, all ten small parties benefiting from the ECT's formula unsurprisingly joined the PPP to form the government coalition. The Democrats Party (whose leader boldly announced the party's disapproval of Prayuth Chan-o-cha before the election to draw voters) and the Bhumjaithai Party (whose leader arguably misled the public to believe that the party would not vote for Prayuth to be the prime minister) joined the government. In the Senate, all members (except one acting as the Vice President of the Parliament) voted for Prayuth Chan-o-cha at the parliamentary voting of prime minister on June 5, 2019.⁶⁹⁾ The fact that the Senate rooted for Prayuth heavily influenced how members of the House of Representatives voted, finding it futile to win the majority of the whole Parliament without the Senate's support. Thus, although he was not an MP and had always denied any connection with the PPP, Prayuth maintained his premiership with the support from the PPP and the Senate.⁷⁰⁾

3. The Repercussion on Human Rights

The people's right to express their opinions was heavily circumscribed under the NCPO regime. Arbitrary detention and other measures, judicial or extrajudicial, had been prevalent. Laws, including NCPO Orders,⁷¹⁾ have been systematically enforced by the authorities to suppress dissidents. Officials' illegitimate acts are rarely prosecuted, if at all. Such a lack of accountability creates a culture of impunity, which in turn

68) Election Commission of Thailand, "The Election Commission's Announcement: Election Result of the Party-List Members of the House of Representatives" (8 May 2019) <https://www.ect.go.th/ect_th/download/article/article_20190508184334.pdf>.

69) 'Summary: Prime Minister Voting Result' Workpoint (6 June 2019) <<https://workpointtoday.com/votepm62/>>.

70) See Prajak Kongkirati and Veerayooth Kanchoochat, 'The Prayuth Regime: Embedded Military and Hierarchical Capitalism in Thailand' (2018) 6 (2) *Trans-Regional and -National Studies of Southeast Asia* 279, 284-287.

71) See International Commission of jurists, 'Recommendations for the Repeal or Amendment of Head of the NCPO and NCPO Orders and Announcements' (22 April 2019) <<https://www.icj.org/wp-content/uploads/2019/04/Thailand-civilian-prosecutions-military-courts-Advocacy-Non-legal-submissions-2019-ENG.pdf>>.

leads to endless vicious circles.⁷²⁾ Indeed, these actions under the NCPO regime are incredibly troubling and in themselves worth a thorough examination. They will not, however, be discussed here. Instead, this paper will focus on the current military-backed government's actions thus far that have unlawfully and forcefully interfered with the people's fundamental right to express their opinions. The government's objective here is simple: to do whatever is necessary to satisfy its closed circle of sponsors, who under the existing political and constitutional frameworks effectively control its fate so that the government remains in power. This goal is the government's *raison d'état*. This phenomenon happened because of the pathological nature of the constitution, which essentially neglects individuals' voices. Such *raison d'état* does not only influence how the government treats its opposition but also how it treats the people in general. Its management of the Covid-19 pandemic will be discussed to corroborate this point.

3.1. Policing Ideas

While the primary focus of this paper is on incidents happening after the 2019 election, it is pertinent to consider the overview of the human rights situation following the 2014 coup. On this matter, Thai Lawyers for Human Rights (TLHR), an NGO established two days after the coup to “provide legal and litigation assistance to individuals who had been summoned, arrested, and detained by the military as a result of the 2014 coup,”⁷³⁾ has prepared a useful report titled “Seven Years after the Coup,” which effectively summarizes the situation under the NCPO regime.⁷⁴⁾ During its reign of five years, one month, and twenty-three days (from May 22, 2014 to July 16, 2019⁷⁵⁾),

72) Tyrell Haberkorn, *In plain Sight: Impunity and Human Rights in Thailand* (The University of Wisconsin Press, 2018) xi, 4-8.

73) <<https://tlhr2014.com/en/about-us-2>> accessed 13 September 2021.

74) Thai Lawyers for Human Rights, ‘Seven Years after the Coup: Lawsuits under the NCPO Regime as “Lawfare” (Part 1)’ (28 May 2021) <<https://tlhr2014.com/en/archives/30215>> accessed 13 September 2021 (hereinafter “TLHR, Seven Years after the Coup”); see also Thai Lawyers for Human Rights, ‘Seven Years after the Coup: Lawsuits under the NCPO Regime as “Lawfare” (Part 2)’ (3 June 2021) <<https://tlhr2014.com/en/archives/30479>> accessed 13 September 2021.

apart from its use of extrajudicial methods to suppress its position, the NCPO used laws as one of its primary mechanisms. “Lawfare” (Ni-Ti-Song-Kram) is a term that has increasingly been used by lawyers and political scientists to denote such usage.⁷⁶⁾

As TLHR notes:

[The NCPO] deployed various mechanisms that can be characterized as “quasi-laws” or “quasi-judicial proceedings” as weapons for intensively suppressing the political resistance and activism of dissidents. Wielding these weapons, the NCPO initiated many lawsuits to clamp down on political expression and demonstrations. Several cases remain unresolved up until the present. [T]he actual impacts of such legal charges are not only manifested in the cases’ outcomes but also unfold as part of the legal proceedings and serve as instruments for maintaining governmental and political powers.⁷⁷⁾

In a court submission, Major General Burin Thongprapai, a legal representative of the NCPO, reportedly stated:

[T]he repeated prosecution aims to increase the pressure and impose burdens on activist leaders more than aiming to detain them in prisons. The reason is that [to detain activist leaders in prisons] has resulted in Thai and international human rights groups, academics, and media outlets pressuring the government to release them on bail. This negatively affects the government.⁷⁸⁾

75) 16 July 2019 marks the date on which the NCPO was terminated following the swearing-in ceremony of the government formed after the 2019 election. ‘New cabinet to meet today’ National News Bureau of Thailand (16 July 2019) <<https://thainews.prd.go.th/en/news/detail/TCATG190716141229612>> accessed 13 September 2021.

76) See, e.g., Duncan McCargo, ‘Disruptors’ dilemma? Thailand’s 2020 Gen Z Protests,’ (2020) 53 (2) *Critical Asian Studies* 175, 178, 183; Piyabutr Saengkanokkul, ‘Lawfare’ (17 November 2019) <<https://www.youtube.com/watch?v=P1YVp9a6iac>> accessed 13 September 2021.

77) TLHR, *Seven Years after the Coup*, *supra* note 71.

78) *Ibid.*

The oppression had been routine under the coup government and has continued under the current administration. The prosecution of activists expressing their disagreements with the draft constitution before the 2016 referendum was just one example.⁷⁹⁾ The scheme could not have been successful without the assistance of those involved in judicial proceedings—police, the public prosecution office, and the judiciary. This has inevitably impaired the institutions' integrity and could cause long-lasting damage to the Thai justice system.⁸⁰⁾ Notwithstanding the numerous reports of troubling incidents, this paper will focus only on those associated with the series of demonstrations in Thailand commencing in December 2019, markedly elevated in late 2020, and becoming highly intense in 2021.

To the author's recollection, the very first major gathering after the 2019 election (and actually after the 2014 coup) occurred on December 14, 2019, when the ECT voted to disband the FFP.⁸¹⁾ Many political activities followed, e.g., "Run to Oust the Uncle (Prayuth)" in January 2020.⁸²⁾ After the Constitutional Court's order dissolving the FFP in February 2020, the movement has become more serious. Feeling their representatives were unfairly treated and thus filled with anger, young people took to the streets to demonstrate their dissatisfaction.⁸³⁾ Pop culture has been utilized to convey messages.⁸⁴⁾ For example, a group of young protestors once used Hamtaro, a Japanese

79) See *supra* note 29.

80) See Khemthong Tonsakulrungruang, 'From "Judicialization of Politics" to "Lawfare": The Thai Right-Wing's Never-Ending War' The101 (20 February 2020) <<https://www.the101.world/judicialization-of-politics-and-lawfare/>> accessed 13 September 2021.

81) Caleb Quinley, 'Thousands of Thanathorn Backers Rally Against Thai Establishment' Aljazeera (14 December 2019) <<https://www.aljazeera.com/news/2019/12/14/thousands-of-thanathorn-backers-rally-against-thai-establishment>> accessed 13 September 2021.

82) Forum-Asia, 'Thailand Rising, Resistance and Dissident in the Land of Siamese Smiles' Forum-Asia's Freedom of Expression Series (17 November 2020) <<https://forum-asia.org/hrlaw/foe/th/>> accessed 13 September 2021.

83) Yvette Tan, 'Why a New Generation of Thais are Protesting against the Government' BBC News (1 August 2020) <<https://www.bbc.com/news/world-asia-53589899>> accessed 13 September 2021; According to Mob Data Thailand, in 2020, there were 779 demonstrations in 77 provinces, with the most number in Bangkok at 261 times. <<https://www.mobdatathailand.org/>>.

84) *Ibid*; Forum-Asia, *supra* note 79.

hamster character, to show their disapproval of the government's misuse of taxpayer money.⁸⁵⁾ Most protests were led by students, and many of them occurred on school and university campuses.⁸⁶⁾ While there were several key figures that often appeared and gave speeches at these events, it can be argued that these movements are leaderless.⁸⁷⁾ At first, the protests were peaceful; no major physical clashes between police and protestors were reported. In most instances, legal charges were filed against some protestors following each event.

Arguably, a watershed moment that has changed the course of this movement occurred on the evening of August 3, 2020, when Arnon Nampa, a human rights lawyer,⁸⁸⁾ gave a speech near the Democracy Monument. Dressed in Harry Potter's Gryffindor gown, he publicly addressed the monarchy's role in Thai politics,⁸⁹⁾ an issue that has become taboo (similar to Voldemort—"he who must not be named"—in the famous novel), mainly because of the draconian *lèse-majesté* law prescribed in Section 112 of the Thai Criminal Code.⁹⁰⁾ That this incident was unprecedented in Thailand's

85) 'Japanese Cartoon "Hamtaro" Used by Thai Protesters to Mock Government' Nikkei Asia (27 July 2020) <<https://asia.nikkei.com/Politics/Japanese-cartoon-Hamtaro-used-by-Thai-protesters-to-mock-government>> accessed 13 September 2021.

86) Hathai Techakitteranun, 'Thai Students Rise Up in Wave of "Flash Mob" Anti-Government Protests' The Strait Times (27 February 2020) <<https://www.straitstimes.com/asia/se-asia/thai-students-rise-up-in-wave-of-flash-mob-anti-government-protests>> accessed 13 September 2021; 'School- and University-Students' Flash Mobs: Just a Flash or Actually a Fire' BBC News (28 February 2020) <<https://www.bbc.com/thai/thailand-51640629>> accessed 13 September 2021.

87) Panarat Anamwathana, 'The Difficult Path ahead for Thai Pro-Democracy Protesters' Nikkei Asia (24 March 2021) <<https://asia.nikkei.com/Opinion/The-difficult-path-ahead-for-Thai-pro-democracy-protesters>> accessed 13 September 2021.

88) Laignee Barron, 'Meet the Lawyer Trying to Reform the Thai Monarchy' Time (21 September 2020) <<https://time.com/5890121/thai-king-thailand-monarchy-vajiralongkorn-arnon-nampa/>> accessed 13 September 2021.

89) 'Thailand Protesters Openly Criticise Monarchy in Harry Potter-Themed Rally' The Guardian (4 August 2020) <<https://www.theguardian.com/world/2020/aug/04/thailand-protesters-openly-criticise-monarchy-harry-potter-themed-rally>>

90) See Pavin Chachavalpongpun, 'Royally silenced' (2020) 49 (4) Index on Censorship 23; iLaw, '10 Q&A about Lèse Majesté Law' <<https://freedom.ilaw.or.th/en/freedom-of-expression-101/QA-112>>. Section 112 provides, "Whoever defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years."

modern history is not an overstatement. The bar has thus been raised.

Later, on August 10, 2020, the United Front of Thammasat and Demonstration (UFTD), a student-run political organization,⁹¹⁾ staged a protest at Thammasat University, Rangsit Campus. Things were running as usual until Panusaya Sithijirawat-anakul (also known as “Rung” or Rainbow, her nickname), read the UFTD’s Announcement No. 1. The “Ten Requests” for monarchy reform were proclaimed, including the abolishment of Section 112 and the Crown Property Act, the partial cancellation of the Royal Office, and the amendment of Section 6 of the Constitution, which provides that “[t]he King shall be enthroned in a position of revered worship and shall not be violated.”⁹²⁾ A series of protests directed against the monarchy followed, such as one at the Royal Field (Sanam Luang) next to the Grand Palace and Thammasat University, Tha Prachan Campus, on September 19, 2020 (the 14th anniversary of the 2006 coup)⁹³⁾ and one at the headquarters of Siam Commercial Bank, of which King Vajiralongkorn is the largest shareholder, holding 23.38 percent shares,⁹⁴⁾ on November 25, 2020.⁹⁵⁾ Given their criticisms against the monarchy, regardless of the claims’ substantiation, Arnon, Rung, and other activists have been incessantly cycling in and out of jails ever since.⁹⁶⁾

Prior to the Harry Potter incident, despite its frequent usage following the 2006 coup,⁹⁷⁾ Section 112 had been in hiatus for a few years. According to Prayuth, this was

91) <<https://www.facebook.com/ThammasatUFTD/>> accessed 13 September 2021.

92) ‘The Demonstration at Thammasat Proposes Monarchy Reform’ Prachatai English (11 August 2020) <<https://prachatai.com/english/node/8709>> accessed 13 September 2021.

93) Rebecca Ratcliffe, ‘Thousands Gather in Thailand for Anti-Government Protest’ The Guardian (19 September 2020) <<https://www.theguardian.com/world/2020/sep/19/thousands-gather-in-thailand-for-anti-government-protest-bangkok>> accessed 13 September 2021; Cory Wright, ‘Scenes From Thailand’s Massive Protests Demanding Reform’ The Diplomat (21 September 2020) <<https://thediplomat.com/2020/09/scenes-from-thailands-massive-protests-demanding-reform/>> accessed 13 September 2021.

94) <<https://www.set.or.th/set/companyholder.do?symbol=SCB&ssoPageId=6&language=en&country=US>> accessed 13 September 2021.

95) ‘Anti-Government Rally at SCB Park’ Bangkok Post (25 November 2020) <<https://www.bangkokpost.com/thailand/general/2025407/anti-government-rally-at-scb-park>> accessed 13 September 2021.

because “the King was kind enough to instruct that it should not be used.”⁹⁸⁾ The statement was problematic vis-à-vis Thai law enforcement, and it could be oppositely interpreted when the application of Section 112 returned. After its one-year revival, more than 100 people have been charged with the offense, facing three to fifteen years’ imprisonment per case.⁹⁹⁾ Royalist vigilantes also play a massive part in this prosecution spree, as anyone can file complaints.¹⁰⁰⁾

One should not mistakenly assume that Section 112 is the only or even the most essential tool applied to deter people from expressing their opinions—far from it. Sections 116 (sedition) and 336 (defamation) of the Criminal Code and the Computer-Related Crime Act are among other legislation that the establishment has used to suppress its dissidents.¹⁰¹⁾ Interestingly, in 2020, Prayuth set up a committee “tasked

96) Thai Lawyers for Human Rights, ‘Bail Denied for 2nd Time! Lèse-Majesté case of Arnon, Related to #HarryRally 2, and Eight Pro-Democracy Activists, Related to #2Aug.Rally, Citing no Reasonable Reasons to Change the Order’ (22 August 2021) <<https://tlhr2014.com/en/archives/33825>> accessed 13 September 2021.

97) See David Streckfuss, ‘Freedom and Silencing under the Neo-Absolutist Monarchy Regime in Thailand, 2006–2011’ in Pavin Chachavalpongpun (ed) *Good Coup Gone Bad: Thailand’s Political Development since Thaksin’s Downfall* (Institute of Southeast Asian Studies, 2014) 109–138; David Streckfuss, ‘Lèse-Majesté within Thailand’s Regime of Intimidation’ in Pavin Chachavalpongpun (ed.) *Routledge Handbook of Contemporary Thailand* (Routledge, 2020) 134–144.

98) Erich Parpart and Cod Satrusayang, ‘Prayut said HM King Told Him Not to Use Lese Majeste Laws Against Civilians; Opposition Calls for Its Abolishing’ *Thai Enquirer* (15 June 2020) <<https://www.thaienquirer.com/14457/prayut-said-hm-king-told-him-not-to-use-lese-majeste-laws-against-civilians-opposition-calls-for-its-abolishing/>> accessed 13 September 2021.

99) Thai Lawyers for Human Rights, ‘Human Rights Situation Report July 2021’ (14 August 2021) <<https://tlhr2014.com/en/archives/33425>> accessed 13 September 2021; iLaw, ‘Section 112 Cases Table’ (2 June 2020) <<https://freedom.ilaw.or.th/node/817?fbclid=IwAR2iUYBsnItTlUEgxnDsMF-6SbLPYKQkqDCj6GatwCT9PWdqJraSuJgP-U>>

100) Thai Lawyers for Human Rights, ‘Thailand Help Center for Cyberbullying Victims Threatens Section 112 Prosecution against at Least 62 People’ (28 June 2021) <<https://tlhr2014.com/archives/31324>>.

101) Human Rights Watch, ‘To Speak Out is Dangerous: Criminalization of Peaceful Expression in Thailand’ (24 October 2019) <<https://www.hrw.org/report/2019/10/24/speak-out-dangerous/criminalization-peaceful-expression-thailand>> accessed 13 September 2019.

with monitoring and taking legal action against people who propagate on social media false information about him and his cabinet.” To date, funded by taxpayer’s money, the committee has filed hundreds of defamation complaints under the Criminal Code and offenses under the Computer-Related Crime Act on behalf of the prime minister.¹⁰²⁾

Moreover, due to the Covid-19 pandemic, the government began enforcing the Emergency Decree on Public Administration in Emergency Situation on March 26, 2020, and has extended it 13 times until the end of September 2021.¹⁰³⁾ Under this decree, it has imposed curfews and other restrictions and has used the law as a pretext to stifle dissenting voices.¹⁰⁴⁾ According to TLHR, from March 26, 2020 to March 26, 2021, “at least 373 people in 126 cases have been charged with violating Regulations under the Emergency Decree for participating in political demonstrations.”¹⁰⁵⁾

To a certain extent, the Court of Justice has become a disputing party itself in this conflict. Since July 2020, at least 18 people in 14 cases have been charged with contempt of court for political reasons under Sections 30-33 of the Civil Procedure Code. These charges concern, for example, delivering a speech at a court’s staircase, taking photos inside a trial room, and reading a statement criticizing the court in a trial room.¹⁰⁶⁾ Despite its criminal legal character, as the penalty includes fine and/or imprisonment, the law entitles the court to commence a charge and punish the alleged wrongdoer *proprio motu*. In other cases, the court has repeatedly denied bail to defen-

102) Aekarachh Sattaburuth, ‘Prayut Files Defamation Charges against Rapper’ Bangkok Post (22 July 2021) <<https://www.bangkokpost.com/thailand/general/2153151/prayut-files-defamation-charges-against-rapper>>.

103) ‘State of Emergency Extended for 2 Months’ Bangkok Post (20 July 2021) <<https://www.bangkokpost.com/thailand/general/2151963/state-of-emergency-extended-for-2-months>>.

104) Human Rights Watch, ‘Thailand: Events of 2020’ <<https://www.hrw.org/world-report/2021/country-chapters/thailand>>; Human Rights Watch, ‘Thailand: State of Emergency Extension Unjustified’ (27 May 2020) <<https://www.hrw.org/news/2020/05/27/thailand-state-emergency-extension-unjustified>>.

105) Thai Lawyers for Human Rights, ‘A Year-Long Emergency for Combatting COVID-19: Impacts on Freedom of Association’ (2 April 2021) <<https://tlhr2014.com/en/archives/27882>>.

106) Thai Lawyers for Human Rights, ‘Prosecutions under “Contempt of Court and Insulting the Court” Spike in 2021’ (5 July 2021) <<https://tlhr2014.com/en/archives/31720>>.

dants charged with politically related offenses, especially those concerning Section 112. This has been so even though the constitution guarantees the right to be presumed innocent and Section 108/1 of the Criminal Procedure Code only allows refusal in very limited circumstances.¹⁰⁷⁾ Notably, Chanathip Muanpawong, a judge sitting in some high-profile *lèse-majesté* cases, has frequently been singled out and condemned for his allegedly unjust decisions.¹⁰⁸⁾ On the other hand, in cases where bails are granted, each defendant is always ordered to pay a sum as bail surety.¹⁰⁹⁾

Apart from such lawfare, suppression also occurs in the form of naked power, as the government exercises its force to crack down on protests. In terms of the severity, the situation has noticeably become much more acute after the monarchy became the main target of criticisms. An early forceful crackdown occurred on October 16, 2020¹¹⁰⁾ “when police used water cannons laced with blue dye and tear gas against crowds of mostly high school and college students.”¹¹¹⁾ People were forced to leave the gathering site at the Pathumwan intersection; some fled into Chulalongkorn University Campus to avoid being harmed. After this incident, police blue anti-riot trucks (sometimes filled with chemical irritants) and tear gas launchers appeared at most, if not all, protests. Old shipping containers and barbed wires were regularly used to block crowd movement. More recently, rubber bullets have become the officers’ primary weapons.¹¹²⁾ Unsurprisingly, the police tactic “prompted a shift in once-peaceful move-

107) See ‘The Politics of Bail in Lèse-Majesté Cases’ Prachatai English (3 April 2017) <<https://prachatai.com/english/node/7049>>; Yuda Masayuki, ‘Thailand’s Court Denies Bail to Leading Lese-Majeste Defendants’ Nikkei Asia (9 February 2021) <<https://asia.nikkei.com/Politics/Turbulent-Thailand/Thailand-s-court-denies-bail-to-leading-lese-majeste-defendants>>.

108) ‘Protest Caravan Condemns a Judge for Denying Bail’ Prachatai English (4 May 2021) <<https://prachatai.com/english/node/9220>>.

109) Thai Lawyers for Human Rights, ‘Bail Money for Political Cases related to Rights to Freedom of Expression and Assembly Exceeds 30 Million Baht (One Million USD) ’ (23 July 2021) <<https://tlhr2014.com/en/archives/32566>>.

110) There was another crackdown outside the Government House in the early morning of 15 October 2020.

111) Yuda Masayuki, ‘Thailand’s Crackdown on Protests Turns Violent: Five Things to Know’ Nikkei Asia (18 October 2020) <<https://asia.nikkei.com/Politics/Turbulent-Thailand/Thailand-s-crackdown-on-protests-turns-violent-Five-things-to-know>>.

ments.”¹¹³⁾ To be sure, some protestors do not show up empty-handed; slingshots and firecrackers are their usual weapons. According to “international standards,” however, the author asserts that the police’s use of force has generally been disproportionate and unlawful.¹¹⁴⁾ For example, rubber bullets have been fired indiscriminately and without justification, sometimes from bridges above the protestors;¹¹⁵⁾ several photos and videos have emerged showing the use of rubber bullets at close range;¹¹⁶⁾ on some occasions, media personnel are shot and forced to leave the scenes;¹¹⁷⁾ and the use of live ammunition was reported on August 17, 2021 and is currently under investigation.¹¹⁸⁾

3.2. Neglecting People’s Health

The right to health is expressly recognized in core human rights treaties, including the International Covenant on Economic, Social, and Cultural Rights (ICESCR), to

112) See Amnesty International, “My Face Burned as if on Fire”: Unlawful Use of Force by Thailand’s Police During Public Assemblies’ (July 2021) <<https://www.amnesty.org/en/wp-content/uploads/2021/07/ASA3943562021ENGLISH.pdf>>.

113) Tyler Roney, ‘Thailand’s Protests Are Turning Dangerously Violent’ Foreign Policy (23 August 2021) <<https://foreignpolicy.com/2021/08/23/thailand-protests-violence/>>.

114) ‘111 Law Professors and Lawyers’ Statement Condemning the Police Use of Force Against the People’s Demonstration’ Prachatai (12 August 2021) <<https://prachatai.com/journal/2021/08/94444>>; Office of the High Commissioner, United Nations Human Rights, ‘Guidance on Less-Lethal Weapons in Law Enforcement’ (2020) 25-40 <https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf>; Human Rights Committee, ‘General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21)’ (17 September 2020) <<https://undocs.org/CCPR/C/GC/37>>.

115) ‘Crowd Control Police Firing at Mob from a Bridge over the Din Daeng Intersection’ Thairath (11 August 2021) <<https://www.thairath.co.th/video/news/topnews/hotclip/538262>>.

116) ‘Crowd Control Police Firing Rubber Bullets at a Rider’ Maticchon TV (21 August 2021) <<https://www.youtube.com/watch?v=fmYnTLNFFhc>>; ‘Metropolitan Police Bureau Issues Letter Explaining Photo of Police Holding Gun, Just Aiming’ Thairath (2 August 2021) <<https://www.thairath.co.th/news/crime/2155877>>.

117) ‘Press Groups Condemn Thai Police for Protest Crackdowns’ UCA News (23 March 2021) <<https://www.ucanews.com/news/press-groups-condemn-thai-police-for-protest-crackdowns/91858#>>; ‘Police Create Their Own Definition of Media with the Arrest of 2 Citizen Journalists’ Prachatai English (15 September 2021) <<https://prachatai.com/english/node/9452>>.

118) <<https://prachatai.com/journal/2021/09/95026>>; <<https://www.moveforwardparty.org/parliament/5980/>>

which Thailand is a party. Article 12 of ICESCR provides that, to realize this right, the State Parties shall prevent, treat, and control “epidemic, endemic, occupational and other diseases.” Similarly, the Constitution B.E. 2560 (2017) expressly sanctions the right. Section 47 states that “a person shall have the right to receive public health services,” and Section 55 prescribes that “[t]he State shall ensure that the people receive efficient public health services,” which shall cover “health promotion, control and prevention of diseases, medical treatment and rehabilitation.” That said, having examined its management of the Covid-19 pandemic,¹¹⁹⁾ the author argues that the government has failed to fulfill this obligation because the authorities do not primarily consider the people when making policy decisions. The government’s vaccine management will be the focus of our discussion.

Thailand was the first country in which a Covid-19 case was reported outside China.¹²⁰⁾ The number of reported cases remained low for roughly two months before the first outbreak occurred as a result of the first “super-spreader” incident in early March involving a Thai boxing tournament held at Lumpinee Boxing Stadium run by a military-led committee chaired by the Army Chief.¹²¹⁾ The infection was widespread by the end of March. Following this outbreak, several drastic measures were imposed, including temporary closure of most shops,¹²²⁾ strict surveillance to warrant self-quarantine practices, and most importantly, invocation of Section 5 of the Emergency Decree. This last decision resulted in the centralization of ministerial powers under the prime minis-

119) See Narun Popattanachai, Nopphol Witvorapong, and Nathita Popattanachai, ‘COVID-19 in Thailand’ in Shin Kim (ed) *Covid-19 Response Systems and International Cooperation: Focusing on Korea, Thailand, Indonesia, and the Philippines* (2021).

120) World Health Organization, ‘Thailand: How a Strong Health System Fights a Pandemic’ (September 2020) 2 <<https://www.who.int/publications/m/item/thailand-how-a-strong-health-system-fights-a-pandemic>>.

121) ‘Looking Back at Boxing Crisis after Being Portrayed as the Cause of Covid-19 Outbreak’ Thairath (30 December 2020) <<https://www.thairath.co.th/sport/others/2003033>>.

122) For many commentators, this measure aggravated the situation given that workers from provinces were forced to leave Bangkok and return home. Kraichat Tantrakarnapa, Bhophkrit Bhophdornangkul, and Kanchana Nakhaapakorn, ‘Influencing Factors of COVID-19 Spreading: a Case Study of Thailand’ (2020) *Journal of Public Health* 3-4.

ter, who set up and led the Center for Covid-19 Situation Administration (CCSA), which has full authority to implement any measures it deemed appropriate to control the pandemic. Vested with the Emergency Decree power, the prime minister issued numerous orders (e.g., travel restriction, public gathering prohibition, media censorship, and curfew), any infringements of which led to criminal penalties.¹²³⁾ In 2020, the government effectively took care of the situation, and the international community praised Thailand for its actions.¹²⁴⁾ This achievement would not have been possible without the country's well-organized public health systems following the Universal Coverage Scheme (UCS)¹²⁵⁾ beginning in 2001.¹²⁶⁾ Indeed, the success did not come without costs, given the severe economic impact of such drastic measures. Whereas several socioeconomic measures were also adopted to alleviate the problem,¹²⁷⁾ keeping the number of infectious cases low was considered the government's sole priority, and the people, especially those at lower income levels, suffered tremendously and were far from being adequately cured.¹²⁸⁾

123) Popattanachai, Witvorapong, and Popattanachai, *supra* note 116, 158-166.

124) World Health Organization, *supra* note 117, 2; Hannah Beech, 'No One Knows What Thailand Is Doing Right, But So Far, It's Working' *The New York Times* (16 July 2020).

125) See Siripen Supakankunti and Nopphol Witvorapong, 'The Health Care System in Thailand' in Christian Aspalter, Kenny Teguh Pribadi, and Robin Gauld (eds) *Health Care Systems in Developing Countries in Asia* (2017) 102. (The book's editor notes: "Thailand is one successful story in implementing universal health insurance among developing countries. In 2000, about 25 percent of its population was uninsured, and after the inception of UCS, by 2011, about 98 percent of its population was insured. Developing countries have often observed and studied how policies are rolled out in Thailand. Despite its successful story, common problems with quality, staff, and facilities are still ongoing challenges.")

126) Popattanachai, Witvorapong, and Popattanachai, *supra* note 116, 131. According to a report, Thailand was ranked as having the sixth-best health care system in the world in 2019. 'Thailand's Healthcare Ranked Sixth Best in the World' *Bangkok Post* (9 September 2019) <<https://www.bangkokpost.com/thailand/general/1746289/thailands-healthcare-ranked-sixth-best-in-the-world>>.

127) *Ibid.*, 166-170.

128) See Oxford Policy Management, 'Social Impact Assessment of COVID-19 in Thailand' (July 2020) <<https://www.unicef.org/thailand/reports/social-impact-assessment-covid-19-thailand>>; Tita Sanglee, 'COVID-19: A Catalyst for Rising Inequality in Thailand' *The Diplomat* (19 August 2021) <<https://thediplomat.com/2021/08/covid-19-a-catalyst-for-rising-inequality-in-thailand/>>.

Following the global scientific community's lengthy considerable effort to develop Covid-19 vaccines,¹²⁹⁾ several vaccines such as Pfizer/BioNTech and Moderna received emergency use authorizations in late 2020.¹³⁰⁾ Among those, a viral vector vaccine co-developed by AstraZeneca and the University of Oxford—AZ—was chosen by the government, at the recommendation of its medical counsels, to be the country's primary vaccine. In this regard, the government acted very swiftly. As early as November 27, 2020, at the time when the pandemic was under control, it “signed an advance agreement with AstraZeneca to secure supply of its Covid-19 vaccine and for local production.”¹³¹⁾ Siam Bioscience (SBS), a private pharmaceutical company established in 2009 at King Bhumibol's instruction and now wholly owned by King Vajiralongkorn, was assigned to perform this vital task despite its alleged lack of vaccine-manufacturing experience,¹³²⁾ to which the Ministry of Public Health responded that AstraZeneca chose SBS to be its regional manufacturer.¹³³⁾ In any case, it was reported that Siam Cement Group (SCG), one of the biggest conglomerates in Thailand currently 33.64% owned by King Vajiralongkorn, helped broker the deal, using its long-standing good relationship with Oxford.¹³⁴⁾ Despite its private character, SBS was awarded a 595 million baht grant by the Thai government (in addition to 100 million baht support from

129) Tung Thanh Le and others, 'The COVID-19 Vaccine Development Landscape' (2020) 19 *Nature Reviews Drug Discovery* 305; Yingzhu Li and others, 'A Comprehensive Review of the Global Efforts on COVID-19 Vaccine Development' (2021) 7 *ACS Central Science* 512.

130) Karin Bok and others, 'Accelerated COVID-19 Vaccine Development: Milestones, Lessons, and Prospects' (2021) 54 *Immunity* 1636, 1636-1637.

131) 'Thailand Signs Deal with AstraZeneca for Covid Vaccine' *Bangkok Post* (27 November 2020) <<https://www.bangkokpost.com/thailand/general/2026547/thailand-signs-deal-with-astrazeneca-for-covid-vaccine>>.

132) 'Thailand Defends Royal Company's Role in Vaccine Strategy' *Reuters* (19 January 2021) <<https://www.reuters.com/article/us-health-coronavirus-thailand-idUSKBN29O0VS>>.

133) 'MOH states AstraZeneca Chose Siam Bioscience to Manufacture Vaccines at Cost Price, Dispute Thanathorn's Claim that It Bet on One Horse' *The Standard* (19 January 2021) <<https://thestandard.co/mof-reveals-astrazeneca-choose-siam-bioscience/>>.

134) *Ibid*; British Embassy Bangkok, 'Thailand Joins Forces with AstraZeneca on COVID-19 Vaccine Manufacturing' (12 October 2020) <<https://www.gov.uk/government/news/thailand-joins-forces-with-astrazeneca-on-covid-19-vaccine-manufacturing--2>>.

SCG) to improve its facilities to justify its being chosen.¹³⁵⁾

The government presented this development as a “royal gift.” Notably, Prayuth stated after the signing ceremony on November 27, 2020, that this achievement resulted from the King’s royal grace.¹³⁶⁾ Additionally, several media outlets have dubbed such vaccines to be manufactured “royal vaccines.” Had King Rama IX not established SBS in 2009, Thailand would not have had a plant technologically advanced enough to manufacture vaccines on its own.¹³⁷⁾

Thanathorn Jungrungruangkit, the ex-FFP leader, was among the very first to publicly condemn the government’s vaccination strategy in a 30-minute live stream on January 18, 2021.¹³⁸⁾ His principal criticisms concerned the government’s delay in procuring vaccines and its decision to secure vaccines mainly from one source. In doing so, he compared other countries’ vaccination plans with Thailand’s. At the time, Thailand only had two purchase agreements in place, one with AstraZeneca (26 million doses) and Sinovac (2 million doses). These 26 million AZ doses were part of the total 200 million doses to be manufactured by SBS, with the rest being exported to other ASEAN countries. It later became clear that SBS was merely a contract manufacturer; once the vaccines were manufactured and delivered to AstraZeneca, the distribution would

135) Ibid.

136) ‘COVID-19: Thailand Signs Vaccine Purchase Agreement, Siam Bioscience, a Royal Company, was Involved’ BBC News (27 November 2020) <<https://www.bbc.com/thai/55097716>>.

137) ‘Know Siam Bioscience The Only COVID-19 Vaccine Manufacturer in ASEAN’ PPTV Online (25 November 2020) <<https://www.pptvhd36.com/news/ประเด็นร้อน/137254>>; “Siam Bioscience” Thai Manufacturer “Covid Vaccine” The Only One in ASEAN! Bangkokbiz (12 January 2021) <<https://www.bangkokbiznews.com/news/916124>>; National News Bureau of Thailand, ‘Siam Bioscience Drug Manufacturer “King Rama IX’s Gift” to Be COVID-19 Vaccine Manufacturing Base’ (19 January 2021) <<https://www.facebook.com/Sumnakkaoow.PRD/posts/5621905101168297/>>; Visarut Sinphongphorn, ‘Easily Explained to Know Siam Bioscience Manufacturing COVID-19 Vaccine’ WorkpointTODAY (20 January 2021) <<https://workpointtoday.com/2001-explainer-12/>>.

138) Thanathorn Jungrungruangkit, ‘Royal Vaccine: Who Gains Who Loses’ (18 January 2021) <<https://www.facebook.com/ThailandProgressiveMovement/videos/714409899244690>>; Thanathorn Jungrungruangkit, ‘Royal Vaccine: Who Gains Who Loses’ <<https://progressivemovement.in.th/article/3258/>>.

be exclusively managed by AstraZeneca.¹³⁹⁾ Thanathorn also casted doubt on the appropriateness of selecting SBS as the manufacturing company, given its records of failures, and claimed the deal disproportionately benefited SBS compared to Thai people. It was this last set of comments that led to a *lèse-majesté* charge against Thanathorn.¹⁴⁰⁾ Again, this reiterates the trend of using laws to silence dissidents regardless of their intention. Notably, despite its involvement in state affairs, the monarchy must not be addressed in a negative light. In a related court case, however, the Criminal Court dismissed the Digital Economy and Society Ministry's request to remove Thanathorn's recordings from the internet. The order was in contrast with the court's previous instruction temporarily blocking their access.¹⁴¹⁾

Some other government decisions were also denounced, including its decision not to join the WHO-sponsored COVAX program.¹⁴²⁾ Thanathorn's statement and other critics' observations were not heeded much at the beginning of the Covid-19 pandemic due to the government's ability to curb the number of reported cases. The truth struck in April 2021, however, when the most recent outbreak hit, this time originating from luxury nightclubs in Bangkok.¹⁴³⁾ The number of reported cases quickly skyrocketed; the approximate daily numbers were 5,000 in May and June, 10,000 in July, and 20,000

139) "Madame Pang" Explains Everything on COVID-19 Vaccine Manufactured by Siam Bioscience, Agrees that the Government Should Not Have Bet on One Horse' The Standard (2 June 2021) <<https://thestandard.co/nualphan-siam-bioscience-covid-19-vaccine/>>.

140) Yuda Masayuki, 'Thailand Targets Thanathorn for Questioning King's Vaccine Maker' Nikkei Asia (21 January 2021) <<https://asia.nikkei.com/Politics/Turbulent-Thailand/Thailand-targets-Thanathorn-for-questioning-king-s-vaccine-maker>>; 'Thanathorn Hit with 2 More Lese Majeste Charges' Bangkok Post (20 August 2021) <<https://www.bangkokpost.com/thailand/politics/2167967/thanathorn-hit-with-2-more-lese-majeste-charges>>.

141) 'Court Throws Out Request to Block Thanathorn's Clip' Bangkok Post (8 February 2021) <<https://www.bangkokpost.com/thailand/general/2064655/court-throws-out-request-to-block-thanathorns-clip>>.

142) 'Thailand Defends Decision Not to Join COVAX Vaccine Alliance' VOA (14 February 2021) <https://www.voanews.com/a/east-asia-pacific_thailand-defends-decision-not-join-covax-vaccine-alliance/6202022.html>.

143) Hannah Beech and Muktita Suhartono, 'After Lavish Nights of Clubbing in Bangkok, a Covid Outbreak' The New York Times (5 June 2021) <<https://www.nytimes.com/2021/06/05/world/asia/thailand-covid-clubs.html>>.

in August. As of mid-September 2021, the number of total confirmed cases was roughly 1.5 million, with around 15,000 deaths.¹⁴⁴⁾ The government was thus considerably pressured to expedite its vaccination program, but it did not receive the SBS-manufactured AZ delivery until June 2021. According to its originally published 2021 plan, the country was to receive 26 million AZ doses from its first order in June (six million), July (10 million), and August (10 million), and more than 35 million doses from its subsequent orders from September to December.¹⁴⁵⁾

As a result, the government had to find supplemental vaccines urgently. Unsurprisingly, given the limited global supply, it did not have many options, and the option chosen was Sinovac-CoronaVac (Sinovac), developed by Sinovac Life Sciences, a Chinese company.¹⁴⁶⁾ The Food and Drug Administration of Thailand (FDAT) approved the use of Sinovac on February 22, 2021,¹⁴⁷⁾ even before the WHO's approval in June 2021.¹⁴⁸⁾ Despite the vaccine's low-efficiency rate compared to others in the market and the negative public views toward the vaccine, the government clearly subscribed to the idea that "the best vaccine is the one that you can get the soonest."¹⁴⁹⁾ Interestingly, the people's expressive dissatisfaction with Sinovac led to an unusual diplomatic gesture by the Chinese Embassy, who posted on its Facebook page on September 3, 2021, that this is "an assault to the good intention of China in supporting the Thai

144) Department of Disease Control, 'Corona Virus Disease (COVID-19)' <<https://ddc.moph.go.th/viralpneumonia/eng/index.php>> accessed 19 September 2021.

145) COVID-19 Information Center, 'Thailand's COVID-19 Vaccine Procurement Plan in 2021' (23 February) <<https://www.facebook.com/informationcovid19/photos/a.106142991004034/274898610795137/>>.

146) Jitsiree Thongnoi, 'How China's Sinovac Vaccine Got Caught in the Crossfire of Thailand's Anti-Government Protests' South China Morning Post (12 September 2021) <<https://www.scmp.com/week-asia/health-environment/article/3148080/how-chinas-sinovac-vaccine-got-caught-crossfire>>.

147) 'Thai FDA Approves Moderna Vaccine' Bangkok Post (13 May 2021) <<https://www.bangkokpost.com/thailand/general/2115195/thai-fda-approves-moderna-vaccine>>.

148) World Health Organization, 'Interim Recommendations for Use of the Vaccinated COVID-19 Vaccine, CoronaVac, developed by Sinovac' (1 June 2021) <https://www.who.int/publications/i/item/WHO-2019-nCoV-vaccines-SAGE_recommendation-Sinovac-CoronaVac-2021.1>.

149) Chanathip Chaiyalek, 'The Best Vaccine is...? State's View and People's View' The Standard (21 May 2021) <<https://thestandard.co/best-vaccine-from-government-and-people-perspective/>>.

people's fight against the pandemic."¹⁵⁰⁾

Notably, Sinovac Life Sciences was 15% owned (worth USD 515 million) by Sino Biopharmaceutical, a Hong Kong company controlled by Charoen Phokphand Pharmaceutical Group, which was in turn controlled by Charoen Phokphand Group (CP), the biggest conglomerate in Thailand.¹⁵¹⁾ CP is known to be a very influential business in Thailand,¹⁵²⁾ always maintaining close ties with governments, including the current one.¹⁵³⁾ Nonetheless, it denied any involvement in the government's purchase of Sinovac.¹⁵⁴⁾

It is also worth noting that, even in this crisis, the government, insisting initially that it was the sole vaccine importer,¹⁵⁵⁾ had not made any serious attempt to seek other options, especially the m-RNA vaccines (Pfizer and Moderna), which have frequently been attacked by pro-government supporters alleging their adverse side-effects. It only approved the budget to purchase Pfizer later in August,¹⁵⁶⁾ and people must pay individually to get Moderna.¹⁵⁷⁾ Notwithstanding all the then-restrictions on vaccine im-

150) Chinese Embassy Bangkok 'Objection to Unfounded Allegations against Chinese Vaccine' (3 September 2021) <<https://www.facebook.com/ChineseEmbassyinBangkok/posts/4352763731437065>>; Pravit Rojanaphruk, 'Sinovac: The "Slandered" Vaccine for Thailand' Khaosod English (11 September 2021) <<https://www.khaosodenglish.com/opinion/2021/09/11/sinovac-the-slandered-vaccine-for-thailand/>>.

151) 'China's Sinovac Attracts \$515 to Help Double COVID Vaccine Output' Nikkei Asia (7 December 2020) <<https://asia.nikkei.com/Spotlight/Coronavirus/China-s-Sinovac-attracts-515m-to-help-double-COVID-vaccine-output>>

152) See Thitima Sitthipongpanich, 'The Presence and Formation of Business-Political Connections in Thailand' (2004) 101 *Business Administration Journal* 77. It also has close ties with the Chinese Communist Party. Serichon, 'Opinion: Exploring the Close Ties Between Thailand's CP Group and the Chinese Communist Party' *Thai Enquirer* (27 July 2021) <<https://www.thaienquirer.com/30426/opinion-exploring-the-close-ties-between-thailands-cp-group-and-the-chinese-communist-party/>>.

153) Veerayooth Kanchoochat, Trin Aiyara and Bank Ngamarunchot, 'Sick Tiger: Social Conflict, State-Business Relations and Exclusive Growth in Thailand' (2021) *Journal of Contemporary Asia* 14-15.

154) 'CP Again Denies Link to Sinovac Buy' Bangkok Post (11 July 2021) <<https://www.bangkokpost.com/thailand/general/2146703/cp-again-denies-link-to-sinovac-buy>>.

155) Pichayada Promchertchoo, 'COVID-19 Vaccine Tourism Emerges in Thailand as Demand Grows' *Channel News Asia* (19 May 2021) <<https://www.channelnewsasia.com/asia/thailand-covid-19-vaccine-tourism-emerges-united-states-serbia-1381041>>.

portation, the Chulabhorn Royal Academy, chaired by Princess Chulabhorn (the King's youngest sister), citing its authority under the Chulabhorn Royal Academy Act B.E. 2559 (2016), suddenly announced in the Royal Gazette on May 25, 2021, that it was able to secure Sinopharm as the country's "alternative vaccine."¹⁵⁸⁾ This development even caught the Minister of Public Health off guard.¹⁵⁹⁾ The FDAT approved the use of the vaccine on May 28, 2021,¹⁶⁰⁾ making alternative "royal vaccines" available. Despite this, most people and state or private entities that want vaccines for their personnel must pay to get the vaccine.¹⁶¹⁾

4. Conclusion

Having lost in all general elections since the 2000s, the military and its allies have found a way to cling on to power via Thailand's current pathological constitution with the Senate as one of their instrumental mechanisms. Whereas the authoritarian's reli-

156) 'B9bn Injection for Pfizer Shots' Bangkok Post 18 August 2021 <<https://www.bangkokpost.com/thailand/general/2166799>>.

157) '1.9 Million Doses of Moderna's COVID-19 Vaccine Will Arrive in Thailand in Last Quarter' National News Bureau of Thailand (1 September 2021) <<https://thainews.prd.go.th/en/news/detail/TCATG210901144956197>>.

158) 'Chulabhorn's Announcement on the Provision of Medical and Public Health Services in the COVID-19 Pandemic and Other Emergency Situations' (25 May 2021) <http://www.ratchakitcha.soc.go.th/DATA/PDF/2564/E/112/T_0037.PDF>; Chalida Ekvitthayavechnukul, 'Royal-Backed Thai Institute to Import Chinese Vaccine' AP News (28 May 2021) <<https://apnews.com/article/coronavirus-pandemic-coronavirus-vaccine-government-and-politics-business-health-2169dd1e174a7a53f4125cacc18261d>>; 'Royal Academy Seeks 1 mln Vaccines as Thailand Approves Sinopharm' Reuters (28 May 2021) <<https://www.reuters.com/world/asia-pacific/royal-academy-seeks-1-mln-vaccines-thailand-approves-sinopharm-2021-05-28/>>.

159) Michael E. Miller, 'Thai Princess Approves Chinese Vaccine Imports as Coronavirus Cases, Anger Mount' Washington Post (28 May 2021) <<https://www.washingtonpost.com/world/2021/05/28/thailand-asia-sinopharm-vaccines/>>.

160) 'FDA Approves Use of Sinopharm Vaccine' Bangkok Post (28 May 2021) <<https://www.bangkokpost.com/thailand/general/2123307/fda-approves-use-of-sinopharm-vaccine>>.

161) Hataikarn Trisuwan, 'Sinopharm: FDA Approves, the Chulabhorn Royal Academy Imports the First Batch of 1 Million Doses' BBC News (28 May 2021) <<https://www.bbc.com/thai/thailand-57279097>>.

ance on the Senate is not unprecedented in Thailand, given that the senators are usually appointed rather than elected, this time it is different. Despite their lack of legitimacy stemming from their appointment process being completely manipulated by the junta, not to mention the flaws of the constitutional referendum process, the 250 senators are empowered to *inter alia* vote for the prime minister. This anomaly significantly changes the parliamentary political landscape, as political parties and members of parliaments must take account of this fact when forming a governmental coalition. Indeed, it is fundamentally because of this reason that Democrats and Bhumjaithai joined the military-led PPP to form the government, entitling Prayuth Chan-o-cha to remain in power. Feeling assured that it is fervently backed by undemocratic building blocks, together with its lack of accountability to the people, the government has committed various unlawful actions and inactions without having to be concerned with adverse political, and to a certain extent legal, ramifications. This paper argues that such condition animates and allows the government to use violent and illegal means to suppress its dissidents at will, so long as it can maintain its forceful allies' support by so doing. As demonstrated, the government's approach of dealing with protestors clearly shifted toward more aggressiveness immediately after the protestors started publicly criticizing the monarchy. The current order also affects the government's management of the Covid-19 pandemic. Its misadministration and maladministration of the vaccine program raises doubt as to whether the people's health and safety are truly its priority. In any genuine democratic society, protecting its people from harms is the most vital *raison d'état*. Principally because of the current constitutional framework, this is not the case in Thailand, and its pathological constitution must be amended.