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Thailand: Proposed amendments to Computer-Related Crime Act fail to address human rights concerns

Bangkok, 25 October 2016

We, the undersigned international human rights organizations, urge Thailand's National Legislative Assembly (NLA) to reject currently proposed amendments to the 2007 Computer-Related Crime Act (CCA) and to instead adopt amendments that would bring the law into line with Thailand's obligations under international law, including its obligation to uphold the rights to freedom of expression, opinion, and privacy.

Prosecutions under the CCA have risen sharply in the past two years. Based on information the Office of the Court of Justice provided to Fortify Rights, there have been 399 prosecutions between January to August 2016 - compared to a total of 321 in 2015, 71 in 2014, 46 in 2013, 13 in 2012, and six in 2011.

The CCA is already used frequently to impermissibly restrict the rights to freedom of expression and opinion and to threaten and punish human rights defenders, government critics, and journalists. According to statistics collected by the Thailand-based advocacy group iLaw, between July 2007 and December 2011, of the 277 criminal cases filed under the CCA only 22% involved offenses concerning conventional computer-related crimes, such as infringements on computer systems. By contrast, 78% of the prosecutions related to the dissemination of allegedly offensive material.

The proposed amendments, if adopted, would exacerbate the CCA's existing flaws rather than resolve them. If approved, the proposed amendments to the CCA threaten to further restrict the enjoyment of fundamental human rights and the peaceful activities of a broad range of individuals, institutions, and business enterprises.

We are particularly concerned about the following aspects of the CCA and the amendments currently being considered by the NLA:

1) Criminal penalties for protected expression by computer users

Proposed amendments to the CCA maintain criminal penalties for violations of the law and fail to rein in unjustified penalties for computer users, including lengthy terms of imprisonment in relation to acts by computer users that would constitute the peaceful exercise of protected freedom of expression under international human rights law and standards.

Article 14(1) of the CCA provides for up to five years' imprisonment or a fine of up to 100,000 Thai Baht (USD 2,800), or both, for uploading "forged" or "false" content "likely to cause damage to a third party of the public." In recent years, the broad and vague language of this provision has been used arbitrarily against journalists, human rights defenders, and other individuals engaged in the important work of informing the public and advocating for human rights protections. Often, penal code charges relating to criminal defamation or insulting the monarchy accompany charges under Article 14(1) of the CCA. Although previous drafts of the

amending legislation significantly narrowed the scope of Article 14(1) with the aim of preventing its use in these types of cases, the NLA has recently indicated that it may retain the broader language of the original law.

Laws that criminalize peaceful expression that is protected under the right to freedom of expression, including criminal defamation laws, are inconsistent with Thailand's obligations under the International Covenant on Civil and Political Rights (ICCPR), to which it is a state party. The UN Human Rights Committee, which monitors state compliance with the ICCPR, has expressed its concern regarding defamation laws that criminalize or are otherwise used to punish a person's exercise of his or her protected right to freedom of expression. It has said that the public interest in a particular subject matter should always be recognized as a defense in any proceedings and also that "at least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice." The Human Rights Committee has emphasized that "imprisonment is never an appropriate penalty" for defamation.

Proposed amendments to Article 14(2) of the CCA would expand its scope to provide for up to five years' imprisonment for anyone found guilty of importing into a computer system "false information which may compromise the maintenance of national security, public security, economic stability, public services, [...] or cause panic in the public." The broadness and vagueness of these terms make this provision susceptible to abuse at the hands of the authorities to repress forms of expression protected under international law.

2) Service provider liability

Proposed amendments to Article 15 of the CCA maintain criminal liability for "service providers." An individual who is considered a service provider could face of up to five years in prison if he or she "cooperates, consents or acquiesces" in the commission of an offense under Article 14. Given that "service provider" is broadly-defined by the CCA to include network providers, internet service providers, web providers, content providers, and online platforms, virtually all Thailand-based telecommunications and internet-related businesses risk incurring the criminal penalties prescribed by the CCA. So long as the scope of offences under Article 14 remains defined or implemented in an overbroad or vague manner inconsistent with international human rights, service provider liability in relation to the same conduct would itself be inconsistent with human rights standards.

3) Right to privacy violated

Proposed amendments to the CCA fail to protect against arbitrary invasions of privacy during investigations involving alleged computer crimes. Article 17 of the ICCPR provides that, "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence" and that, "Everyone has the right to the protection of the law against such interference."

The CCA allows authorities to collect evidence relating to potential violations of the law using a number of different methods, some of which require judicial authorization. However, Article 18 and 19 of the CCA together also allow investigating officials to summon individuals or to compel service providers to provide traffic data or information about individual computer users without court approval. As a result, authorities would be able to obtain information concerning the online activities of users without judicial authorization. To date, proposed amendments to Articles 18 and 19 have not addressed these shortcomings, which could facilitate the arbitrary and targeted application of the CCA against activists, journalists, government critics, and others.

The UN Special Rapporteur on the rights to freedom of expression's 2016 report on the private sector and freedom of expression in the digital age reiterated that "Any demands, requests and other measures to take down digital content or access customer information must be based on validly enacted law, subject to external and independent oversight, and demonstrate a

necessary and proportionate means of achieving one or more aims under article 19 (3) of the International Covenant on Civil and Political Rights.”

4) Censorship facilitated

The CCA unjustifiably restricts the right to freedom of expression by facilitating official censorship of online content.

Under proposed amendments to Article 20, authorities would be able to suppress or remove computer content that contravenes the CCA, violates a criminal law provision, or threatens “national security.” Judicial authorization is required for actions taken under Article 20, but the broad and vague language of the CCA gives authorities wide latitude to suppress online content. This is of particular concern given recent actions by Thai authorities to punish individuals for the protected exercise of their rights to freedom of expression as well as freedoms of association and peaceful assembly among other rights. Moreover, Article 20 does not provide for the expiration of court authorization after a certain period of time.

The harsh criminal penalties meted out by the CCA promote widespread self-censorship, further suppressing the exercise of the right to freedom of expression. In particular, the extension of criminal liability to internet service providers may lead some to proactively censor online content, further restricting expression by computer users in Thailand.

We therefore ask the National Legislative Assembly to uphold Thailand’s obligations under international law by rejecting these proposed amendments, and instead revising the CCA so as to bring it into line with international human rights law, in consultation with civil society and other relevant experts.

Signed:

Amnesty International
FIDH (International Federation for Human Rights)
Fortify Rights
International Commission of Jurists
Lawyers’ Rights Watch Canada