

Thailand's Lese Majeste Erodes the Judiciary



Written by Kevin Hewison

WEDNESDAY, 06 FEBRUARY 2013

Like

Send

5 people like this.

Tweet 0

Those 'protecting' the monarchy, are undermining the legal system

Thailand's repeated use of its draconian lese majeste and computer crimes laws to "protect" its monarchy is also causing serious damage to its judicial system.

Since late December, Thai courts have sentenced three more people to jail terms under Article 112 of the Criminal Code (the lese majeste law) and the closely related Computer Crimes Act. All were identified as opponents of the previous government led by Abhisit Vejjajiva and the Democrat Party. Seventeen others are known to have been sentenced under these laws since the 2006 military coup. This sentencing has been ferocious, with some receiving 15 and 20 years. Almost all of those convicted were identified as opponents of the coup and military-backed governments.



Now the judiciary suffers (photo by Cloudcolors)

Before the coup that overthrew Prime Minister Thaksin Shinawatra, the lese majeste law was used relatively infrequently. Spikes in its use have coincided with the right-wing and military governments that litter Thailand's political history.

The period of political conflict associated with the Abhisit government, from late 2008 to mid-2011, saw the lese majeste law used to gag a vociferous Red Shirt opposition media and political movement. The Abhisit government repeatedly proclaimed that its censorship and jailing of political opponents was to prevent republicans bringing down the monarchy. It produced little evidence but the jails were filled with political prisoners.

While the Yingluck Shinawatra government, elected in mid-2011, has reduced the use of this politicized law, cases continue to drag through the courts, with the government's royalist opponents having declared lese majeste reform an attack on the monarchy itself.

Many royalists assert that Article 112 is the foundation of protection for the monarchy and, indeed, for the Thai state itself. This conviction blinds them to the fact that the use of this draconian law and the continuing trials are undermining another institution that is vital for the state: the judiciary.

Historically, while the judiciary has been politically supine, it has not been identified as a politically activist institution. However, that changed when the king intervened following an election shambles in April 2006 to urge the judiciary to sort out the political mess. That mess revolved around royalist agitation for Thaksin's elected government to be thrown out. To be sure, the king had long taken an interest in the judiciary, yet this was a call for a judicial political intervention. Since the military coup, the king has repeatedly urged the judiciary to remain activist.

In the period following the coup, the judiciary was first used to target Thaksin, his family and his parties with myriad legal cases. But it is lese majeste that has become defining for the courts. In order to "protect" the monarchy, and the system of political and economic power associated with it, the judiciary has responded with considerable gusto. Increasingly, though, foreign observers and Thai academics and activists are expressing concern at the bizarre legal calisthenics demonstrated by the courts.

Article 112 declares that anyone who defames, insults or threatens the king, the queen, the crown prince or the regent may be jailed. In two recent cases, one activist was convicted not for what he said at a demonstration, but for what the court decided he really wanted to say before he censored himself by throwing his hand across his mouth.

Another journalist and activist was convicted for publishing a critical account of politics that the court interpreted as being about the king, even though he was not mentioned by the author. The author himself has never been charged even though he is known.

In an earlier case, a sickly old man was sentenced to 20 years for sending allegedly threatening phone messages about the queen. While the prosecution could not prove the accused sent these messages, neither could the accused prove he didn't send them. He was convicted and died in prison.

The list of curious convictions is long. The web master of a popular web board was convicted for not removing allegedly insulting posts "quickly enough" in amongst thousands of posts. An American citizen of Thai ethnicity was convicted for posting Thai translations of an academic book about the king on the web. This was a legal activity in Colorado, but when the man was visiting Thailand, he was jailed.

Decisions that seem to mock the legal process and practice and rules of evidence are damaging for the judiciary. Perhaps most damaging, however, has been the Constitutional Court's decisions when Article 112 has been challenged. These interpretations have been virtually inexplicable in legal terms.

In one case, when a lese majeste trial was conducted in a closed court, clearly in contravention of constitutional guarantees on the right to a public trial, the Constitutional Court managed to conjure a reading that made a closed court legal. When others challenged the law, claiming that it contradicted provisions of freedom of the media and of expression, the same court ruled that protecting the monarchy and the existing system of government overrode these constitutional rights.

Article 112 rides roughshod over other basic rights. Bail is regularly refused for those charged with lese majeste, giving the impression that the defendants are considered guilty before they are convicted. That lese majeste detainees are usually shackled, chained and sometimes caged is further evidence for this conclusion. When lese majeste judgments are criticized, court officials threaten legal action.

In short, Article 112 of the criminal code is allocated a legal position that relegates the nation's basic law to a residual status. When the courts make unashamedly politicized decisions in lese majeste cases, the foundations of the rule of law are undermined. When there is no equality before the law and arbitrary judgments are made, then the legitimacy of the judiciary is called into question. Thailand's judges, by elevating Article 112 above all other laws, are threatening the future of the country's democracy.

(Kevin Hewison is Weldon E. Thornton Distinguished Professor in Asian Studies at the University of North Carolina at Chapel Hill)

Hits: 420

[Email This](#)

[Bookmark](#)

[Set as favorite](#)

Comments (0)

 [Subscribe to this comment's feed](#)

Write comment

Close Window