



Thailand v. Dr. Chutima Sidasathian

March 2025

TRIALWATCH FAIRNESS REPORT
A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

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B. ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

TrialWatch is an initiative of the **Clooney Foundation for Justice** that provides free legal aid in defense of free speech. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world.

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EXECUTIVE SUMMARY



Dr. Francesca Farrington, TrialWatch Expert, assigned this trial a grade of “D”:

This case concerns criminal defamation charges against Dr. Chutima Sidasathian, a human rights defender and journalist who uncovered allegations of corruption against public officials, including a mayor in Thailand’s Nakhon Ratchasima Province. While Dr. Sidasathian was ultimately acquitted, she is likely to have suffered both material and immaterial harm as a result of the process of defending herself against criminal defamation proceedings. The use of criminal defamation proceedings to target public interest speech is viewed as excessive by the Human Rights Committee and strongly indicates a violation of Dr Sidasathian’s rights under Article 19 of the ICCPR. Further, Dr. Sidasathian’s request to call and examine witnesses was dissuaded by the judge. That could potentially indicate a violation of Article 14(3) ICCPR. Thailand acceded to the ICCPR in October 1996.

Dr. Sidasathian’s trial further bears hallmarks of a SLAPP (Strategic Lawsuit Against Public Participation), including the targeting of public interest speech, the filing of multiple complaints, and the use of excessive claims (in this case Thailand’s criminal defamation law). SLAPPs are abusive lawsuits or threats of legal action that have the purpose or effect of undermining public participation on matters of public interest. With respect to criminal suits, SLAPPs can be based on a number of different offenses, including criminal defamation, libel, slander, and cybercrimes. Dr. Sidasathian was engaging in a constitutionally protected activity by exercising her free speech rights through her social media posts, and the content of these posts concerned potential public corruption, a topic of legitimate public interest. Further, the Mayor has brought multiple charges against Dr. Sidasathian, which strongly suggests that his goal was to intimidate Dr. Sidasathian and dissuade her from speaking out about the results of her investigation into the misappropriation of the Village Funds. As such, there are strong indications that the case against Dr. Sidasathian constitutes a SLAPP.

The United Nations Development Programme in Thailand noted that “[c]ases of judicial harassment abusing human rights defenders and activists through the form of [SLAPPs] are...increasingly being used to intimidate citizens who are merely exercising their fundamental rights.” A recent TrialWatch report on SLAPPs in Thailand corroborates these findings.

Dr. Chutima Sidasathian (“Dr. Sidasathian”) is an investigative journalist and human rights defender in Thailand. In May 2022, Thanonthorn Kaveekitrattana, the mayor of the sub-

district of Banlang in Thailand's Nakhon Ratchasima Province ("the Mayor"), initiated a criminal defamation lawsuit against Dr. Sidasathian by filing a complaint claiming that three Facebook posts by Dr. Sidasathian had damaged his reputation. The Facebook posts were based on a nine-month investigation conducted by Dr. Sidasathian, a Banlang native, into the so-called Village Funds scandal. Residents of several villages were being sued by the state-owned Government Savings Bank ("GSB") for repayment of alleged loans from Thailand's National Village and Urban Community Fund ("Village Fund"); however, the villagers claimed to have never received the funds. In her investigation, Dr. Sidasathian uncovered allegations of misappropriated funds and other irregularities involving bank officers and public officials who had previously been responsible for managing Village Fund loans—including the Mayor.

In December 2022, the provincial public prosecutor indicted Dr. Sidasathian on three counts of criminal defamation under Sections 326 and 328 of the Thai Criminal Code, one for each of the posts in the Mayor's complaint. Under these provisions, she faced up to six years in prison (two years for each count of criminal defamation) and a fine of up to 600,000 Thai Baht. She was briefly detained and then released after posting bail. At the same time, the Mayor himself was reportedly indicted on charges relating to the misappropriation of monies from the Village Fund — even so, the case against Dr. Sidasathian continued, proceeding to trial in February 2024.

In March 2024, Dr. Sidasathian was acquitted of all charges. However, the acquittal did not undo the harm caused by the two-year pendency of the charges and threat of jail time, nor did it compensate her for the financial costs and other burdens she endured in fighting to retain her freedom. It is noteworthy that the Mayor has, in addition to this case, filed four other complaints against Dr. Sidasathian, which eventually resulted in the issuance of non-prosecution orders, and a further complaint against another villager who carried out an investigation into the Village Fund Scandal, which also resulted in non-prosecution. As of the date of this report, Dr. Sidasathian is still facing one charge of criminal defamation initiated by the Mayor based on other Facebook posts stemming from her reporting on the Village Fund scandal.

The proceedings against Dr. Sidasathian illustrate how Thailand's criminal defamation laws can be abused by those in positions of power to attempt to stifle free discussion of matters of public interest. These laws violate international freedom of expression standards applicable to Thailand, which recommend the decriminalization of defamation, and stipulate that any criminal defamation laws that do remain on the books should allow for a clear public interest defense, should not criminalize 'good faith' reporting on public figures, and should in no circumstances permit imprisonment.

Further, there are insufficient safeguards to ensure that criminal defamation and other offenses, such as violation of local land ordinances and cybercrimes, will not be weaponized as Strategic Lawsuits Against Public Participation ("SLAPPS"): "groundless

legal actions by powerful individuals . . . that seek to intimidate journalists [and others] into abandoning their investigations. . . . [with the aim] not to win the case but to divert time and energy, as a tactic to stifle legitimate criticism.”¹

The National Human Rights Commission of Thailand properly determined that this case against Dr. Sidasathian constitutes a SLAPP.² And yet, while in 2019, Thailand introduced anti-SLAPP amendments, these amendments have been inadequate in preventing the abuse of criminal defamation laws, as Dr. Sidasathian’s ordeal demonstrates, and as TrialWatch has previously documented.³ In particular, the anti-SLAPP laws are broadly ineffective in situations where the public prosecutor takes forward a case initiated by a private party like the Mayor, as for instance one vehicle for early dismissal is only applicable to situations where private parties themselves take the case to trial. Further, Thai law does not allow individuals like Dr. Sidasathian, who successfully defend against criminal defamation charges, to recover costs or damages from a private party, which could serve as a deterrent. Instead, individuals like the Mayor are free to continue filing abusive suits against SLAPP targets.⁴

¹ This is how the European Court of Human Rights, in the case of *OOO Memo v. Russia*, described the Council of Europe Commissioner for Human Rights’ definition of a SLAPP. European Court of Human Rights, *OOO Memo v. Russia*, App. No. 2840/10 (June 15, 2022), para. 23. For an overview of the various definitions of a SLAPP, see Dr. Francesca Farrington, Saovanee Kaewjullakarn, and TrialWatch, *Solving SLAPPs: Identifying and Addressing Gaps in Thailand’s Anti-SLAPP Framework* (Sept. 2024), https://cfj.org/wp-content/uploads/2024/09/Thailand-SLAPPs-Report-Final_September-2024.pdf.

² *Journalist Prevails in Another ‘Slapp’ Case*, Bangkok Post (Mar. 6, 2024), <https://www.bangkokpost.com/thailand/general/2754188/journalist-prevails-in-another-slapp-case>.

³ Dr. Francesca Farrington, Saovanee Kaewjullakarn, and TrialWatch, *Solving SLAPPs: Identifying and Addressing Gaps in Thailand’s Anti-SLAPP Framework* (Sept. 2024), https://cfj.org/wp-content/uploads/2024/09/Thailand-SLAPPs-Report-Final_September-2024.pdf.

⁴ In 2015, the Government of Thailand established the Justice Fund, a government programme that provides financial support or expenses for legal aid, litigation, prosecution, and legal execution and provides protection to persons who are deprived of their rights and liberty. However, the process for accessing the Justice Fund remains complex and appears to some to be arbitrary, leading to the majority of eligible candidates not receiving assistance. See *Thailand: Institutional Protection Mechanisms for HRDS*, FOCUS (Nov. 24, 2021), <https://www.focus-obs.org/documents/thailand-institutional-protection-mechanisms-for-hrds/>.

BACKGROUND



A. POLITICAL & LEGAL BACKGROUND

Over the last decade, numerous journalists and human rights defenders in Thailand have been confronted with criminal defamation charges.⁵ Thailand initially criminalized defamation in 1957, but revised its criminal defamation laws in 1992 to increase penal and monetary penalties, reportedly in an effort to stifle media criticism.⁶ In 2014, the elected Thai government was ousted in a military coup.⁷ The new administration sought to increase the policing of online spaces, prompting Thai authorities to increasingly use the country's criminal defamation laws to suppress freedom of expression.⁸

As reported in 2021, since 2015, over 25,000 criminal defamation cases have been filed in Thailand,⁹ and the number of criminal defamation cases has risen year by year.¹⁰ Indeed Article 19 has reported that in Thailand, “1,730 more [criminal defamation] cases were filed in 2020 than 2015, a 50% increase [in 5 years].”¹¹ In a 2023 report about SLAPPs brought against women and human rights defenders in Thailand, the NGO Protection International concluded that “even though [SLAPPs are] happening globally, the situation in Thailand stands out.”¹² Many of these criminal defamation cases have

⁵ See *To Speak Out Is Dangerous*, Human Rights Watch (Oct. 24, 2019), <https://www.hrw.org/report/2019/10/25/speak-out-dangerous/criminalization-peaceful-expression-thailand>; *Amnesty International Report 2022/23: The State of the World's Human Rights*, Amnesty International (Mar. 27, 2023), at 362, <https://www.amnesty.org/en/documents/pol10/5670/2023/en/>.

⁶ *Impact of Defamation Law on Freedom of Expression in Thailand*, Article 19 (July 2009), at 1, 11, <https://www.article19.org/data/files/pdfs/analysis/thailand-impact-of-defamation-law-on-freedom-of-expression.pdf>.

⁷ *Thailand: “They are Always Watching”: Restricting Freedom of Expression Online in Thailand*, Amnesty International (Apr. 23, 2020), at 6, <https://www.amnesty.org/en/documents/asa39/2157/2020/en/>.

⁸ *Id.* at 4, 6.

⁹ *Thailand: Decriminalise Defamation*, Article 19 (Mar. 31, 2021), <https://www.article19.org/resources/thailand-decriminalise-defamation/>.

¹⁰ *Truth Be Told: Criminal Defamation in Thai Law and the Case for Reform*, Article 19 (Mar. 2021), at 14, https://www.article19.org/wp-content/uploads/2021/03/Thailand_Truth_be_told_decriminalise_defamation-1.pdf.

¹¹ *Id.* at 16.

¹² *Protection International, Silencing Justice: Battling Systematic SLAPP Attacks on Women and Human Rights Defenders in Thailand*, (Aug. 2023), at 3. While this report specifically focused on the heightened risks women and human rights defenders face with respect to SLAPPs, its findings align with those of other organizations that have more broadly assessed the prevalence and nature of SLAPPs in Thailand.

been initiated by powerful individuals and business interests, targeting efforts by journalists and human rights defenders to raise awareness of government corruption, labor rights violations, and human rights abuses.¹³ In fact, TrialWatch’s report examining criminal defamation SLAPPs in Thailand found that “approximately 58 percent of complaints were filed by government officials or politicians.”¹⁴ Further, “41 percent of cases targeted human rights defenders and political activists [and] 28 percent targeted journalists.”¹⁵ As a result, it is difficult for civil society to speak freely and critically without fear of retaliatory criminal defamation charges.¹⁶

Thailand’s Criminal Defamation Laws

Thailand’s criminal defamation laws are found in Sections 326–333 of the Thai Criminal Code.¹⁷ Most relevant to Dr. Sidasathian’s case are Sections 326 and 328. Section 326 defines defamation as “imput[ing] anything” to another person before a third party “in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned.”¹⁸ A violation of Section 326 may result in up to one year of imprisonment and/or a fine of up to 20,000 Baht.¹⁹ Section 328 applies to defamation that was committed via publication of a document, letter, broadcast, or other means.²⁰ Conviction under Section 328 can result in double the time in prison or a fine of up to 200,000 Baht.²¹ While truth is a defense to criminal defamation, a defendant is not allowed

See International Center for Not-For-Profit Law, Protecting Activists from Abusive Litigation: SLAPPs in the Global South and How to Respond, (July 2020), at 18.

¹³ *Truth Be Told: Criminal Defamation in Thai Law and the Case for Reform*, Article 19 (Mar. 2021), at 16–17, https://www.article19.org/wp-content/uploads/2021/03/Thailand_Truth_be_told_decriminalise_defamation-1.pdf.

¹⁴ Dr. Francesca Farrington, Saovanee Kaewjullakarn, and TrialWatch, *Solving SLAPPs: Identifying and Addressing Gaps in Thailand’s Anti-SLAPP Framework* (Sept. 2024), at 27, https://cfj.org/wp-content/uploads/2024/09/Thailand-SLAPPs-Report-Final_September-2024.pdf.

¹⁵ *Id.*

¹⁶ *Truth Be Told: Criminal Defamation in Thai Law and the Case for Reform*, Article 19 (Mar. 2021), at 15, https://www.article19.org/wp-content/uploads/2021/03/Thailand_Truth_be_told_decriminalise_defamation-1.pdf.

¹⁷ Secs. 326-333 of the Thai Criminal Code, <https://library.siam-legal.com/thai-law/criminal-code-defamation-sections-326-333/>.

¹⁸ Sec. 326 of the Thai Criminal Code.

¹⁹ *Id.*

²⁰ Sec. 328 of the Thai Criminal Code.

²¹ *Id.*

to prove the truth of the statement if it regards personal matters and will not benefit the public.²² Thus, in Thailand, even individuals who share truthful information may face jail time and monetary penalties if a court finds that their speech impaired another's reputation.

Either the aggrieved party themselves or a public prosecutor can file a criminal defamation lawsuit.²³ In turn, a private party can initiate proceedings about an allegedly defamatory statement in two ways: (1) directly with the court, or (2) by filing a complaint with an inquiry officer, who then investigates the matter and submits a recommendation for prosecution to the public prosecutor if they conclude criminal defamation charges should be pursued.²⁴ If a private party files a complaint directly with the court, there is a screening mechanism for SLAPPs described in greater detail below.²⁵ This mechanism, however, has very significant limitations, according to research by TrialWatch.

If a private party submits the case to an inquiry officer, Sections 141 and 142 of Thailand's Criminal Procedure Code provide inquiry officers with the authority to make a recommendation of non-prosecution to public prosecutors if they determine the accused is not an offender or that the accused's actions do not constitute an offense.²⁶ However, inquiry officers may be influenced by the risk of complaints or lawsuits against them by filers, or they may be pressured by supervisors to recommend prosecution.²⁷ Section 143 of the Criminal Procedure Code gives public prosecutors the authority to issue an order

²² Sec. 330 of the Thai Criminal Code.

²³ See Thailand Criminal Procedure Code, Section 28, <https://www.icj.org/wp-content/uploads/2012/12/Thailand-Criminal-Procedure-Code1934-2008-eng.pdf>; see also *Truth Be Told: Criminal Defamation in Thai Law and the Case for Reform*, Article 19 (Mar. 31, 2021), at 12, https://www.article19.org/wp-content/uploads/2021/03/Thailand_Truth_be_told_decriminalise_defamation-1.pdf.

²⁴ See *id.*; *Stages in Criminal Prosecution in Thailand*, Siam Legal, https://www.siam-legal.com/thailand-law-library/legal_library/stages_in_criminal_prosecution_in_thailand.php.

²⁵ *Truth Be Told: Criminal Defamation in Thai Law and the Case for Reform*, Article 19 (Mar. 31, 2021), at 12, https://www.article19.org/wp-content/uploads/2021/03/Thailand_Truth_be_told_decriminalise_defamation-1.pdf/.

²⁶ Thailand Criminal Procedure Code, Sections 141 and 142, <https://www.icj.org/wp-content/uploads/2012/12/Thailand-Criminal-Procedure-Code-1934-2008-eng.pdf>; see also *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*, United Nations Development Programme Thailand (June 27, 2023), at 34, https://www.undp.org/sites/g/files/zskgke326/files/2023-07/eng_slapp_text_30_june_online_final.pdf.

²⁷ *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*, United Nations Development Programme Thailand (June 27, 2023), at 35, https://www.undp.org/sites/g/files/zskgke326/files/2023-07/eng_slapp_text_30_june_online_final.pdf.

of non-prosecution if the accused is not an offender or if prosecution would not be in the public interest.²⁸

Thailand also has a civil cause of action for defamation. Civil defamation is defined as an assertion which is “injurious to the reputation or the credit of another or his earnings or prosperity” and is “contrary to the truth,” provided the individual should have known the truth.²⁹ A defendant found liable for civil defamation can be required to pay compensation to the plaintiff.³⁰ Thus, criminal defamation is not the only remedy available to a Thai plaintiff who believes they have been defamed.

Overview of Strategic Lawsuits Against Public Participation (SLAPPs)

The U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association has described SLAPPs as attempts to “shut down critical speech by intimidating critics into silence and draining their resources, [which in the process] distract and deflect discussions on corporate social responsibility[.]”³¹ Similarly, the European Court of Human Rights has referred to SLAPPs as “groundless legal actions by powerful individuals or companies that seek to intimidate journalists [and others] into abandoning their investigations . . . [with the aim of] divert[ing] time and energy, as a tactic to stifle legitimate criticism.”³² Criminal SLAPPs can be based on a number of different offenses, including defamation, libel, slander, and cybercrimes, although defamation cases are most common.³³ Indicia commonly used to identify SLAPPs include, as described in more

²⁸ Thailand Criminal Procedure Code, Section 143, <https://www.icj.org/wp-content/uploads/2012/12/Thailand-Criminal-Procedure-Code-1934-2008-eng.pdf>; see also *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*, United Nations Development Programme Thailand (June 27, 2023), at 35, https://www.undp.org/sites/g/files/zskgke326/files/2023-07/eng_slapp_text_30_june_online_final.pdf.

²⁹ Sec. 423, Thai Civil and Commercial Code, <https://library.siam-legal.com/thai-law/civil-and-commercial-code-torts-section-420-437/>.

³⁰ *Id.*

³¹ U.N. Special Rapporteur on Freedom of Peaceful Assembly and of Association, *SLAPPs and FoAA Rights: Info Note of the U.N. Special Rapporteur on the Rights to Freedom Assembly and of Association*, U.N. Office of the High Commissioner for Human Rights, at 1, <https://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteSLAPPsFoAA.docx>.

³² Council of Europe Commissioner for Human Rights, Human Rights Comment, *Time to take action against SLAPPs*, (Oct. 27, 2020); see also European Court of Human Rights, *OOO Memo v. Russia*, App. No. 2840/10, (June 15, 2022), para. 23, (referring to the Council of Europe Commissioner for Human Rights’s definition of a SLAPP).

³³ See *Protecting Activists from Abusive Litigation: SLAPPs in the Global South and How to Respond*, International Center for Not-For Profit Law (July 2020), <https://www.icnl.org/wp-content/uploads/SLAPPs-in-the-Global-South-vf.pdf>; *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*, United Nations Development Programme Thailand (June 27, 2023), at 28, <https://www.undp.org/thailand/publications/laws-and->

detail below, targeting constitutionally protected activity such as free speech;³⁴ targeting issues of public interest or concern;³⁵ seeking relief disproportionate to the alleged harm;³⁶ filing a series of similar lawsuits against critics or activists;³⁷ and tactically prolonging a lawsuit.³⁸

Whether a suit constitutes a SLAPP is often based on a plaintiff's intent. Although the nature of a lawsuit may be inferred from certain facts — such as the filer of the lawsuit choosing a jurisdiction far from the target's domicile or suing for excessive damages — proving intent is difficult in many cases. For this reason, certain factors have come to be recognized as indicators of a SLAPP lawsuit:

- **Constitutionally Protected Activity:** SLAPPs often target individuals or groups engaged in constitutionally protected activities, such as free speech, public protests, or petitioning the government.
- **Public Interest or Matters of Public Importance:** SLAPPs frequently involve issues of public interest or concern. The subject matter of the lawsuit is often a topic that has significance beyond the parties involved, such as environmental concerns, consumer safety, human rights, or political discourse.
- **Chilling Effect:** SLAPPs aim to have a chilling effect on public participation. They discourage individuals or organizations from expressing their views or engaging in activism by making them fear legal consequences.

measures-addressing-strategic-lawsuits-against-public-participation-slapps-context-business-and-human-rights.

³⁴ See Shannon Jankowski and Charles Hogle, *SLAPP-ing Back: Recent Legal Challenges to the Application of State Anti-SLAPP Laws*, American Bar Association (Mar. 16, 2022), https://www.americanbar.org/groups/communications_law/publications/communications_lawyer/2022-winter/slapping-back-recent-legal-challenges-the-application-state-antislapp-laws.

³⁵ See *id.*; *Protecting Public Watchdogs across the EU: A Proposal for an EU Anti-SLAPP Law*, Media Defence (2021), at 16, https://www.mediadefence.org/wp-content/uploads/2021/12/Anti_SLAPP_Model_Directive-2-1.pdf.

³⁶ *Protecting Public Watchdogs across the EU: A Proposal for an EU Anti-SLAPP Law*, Media Defence (2021), at 27, 35–36, https://www.mediadefence.org/wp-content/uploads/2021/12/Anti_SLAPP_Model_Directive-2-1.pdf.

³⁷ See *id.* at 35–36.

³⁸ See *id.* at 9.

- Multiple Causes of Action or Jurisdictions: SLAPP filers may bring multiple causes of action or file lawsuits in different jurisdictions, making it burdensome and costly for the defendants to defend themselves.
- Power Imbalance: Another key indicator of a SLAPP is the presence of a power imbalance between the parties such that the SLAPP filer has significantly greater influence and access to resources than the target.

SLAPPs in Thailand

As detailed by the U.N. Special Rapporteur on Freedom of Peaceful Assembly and of Association, “ambiguous” and “elastic” criminal defamation laws provide fertile ground for the filing of SLAPP suits.³⁹ SLAPPs in Thailand have taken many forms, including complaints alleging defamation, false information (targeting the reporting of information on criminal offenses to officials), and “computer crimes” (targeting online expression and information-sharing).⁴⁰ Criminal defamation is, however, the most common form.⁴¹ Frequently, SLAPPs target the online dissemination of information and opinions.⁴²

In Thailand, criminal defamation SLAPPs are filed more often than civil defamation SLAPPs.⁴³ In fact, “[r]eporting from various civil society organizations indicates that up to 90 percent of SLAPPs in Thailand are brought as criminal cases.”⁴⁴ This phenomenon may occur because, as reported by the United Nations Development Programme in Thailand, “[criminal defamation lawsuits] impose more overwhelming burdens and demands on the targets than do civil cases” and are simultaneously “more convenient and less expensive for the filer than civil litigation.”⁴⁵ Because of the serious penalties

³⁹ U.N. Special Rapporteur on Freedom of Peaceful Assembly and of Association, *SLAPPs and FoAA Rights: Info Note of the U.N. Special Rapporteur on the Rights to Freedom Assembly and of Association*, U.N. Office of the High Commissioner for Human Rights, at 1, <https://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteSLAPPsFoAA.docx>.

⁴⁰ *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*, United Nations Development Programme Thailand (June 27, 2023), at 24–27, <https://www.undp.org/thailand/publications/laws-and-measures-addressing-strategic-lawsuits-against-public-participation-slapps-context-business-and-human-rights>.

⁴¹ *Id.* at 28.

⁴² *Id.* at 22.

⁴³ *Id.* at 23.

⁴⁴ Dr. Francesca Farrington, Saovanee Kaewjullakarn, and TrialWatch, *Solving SLAPPs: Identifying and Addressing Gaps in Thailand's Anti-SLAPP Framework* (Sept. 2024), at 15–16, https://cfj.org/wp-content/uploads/2024/09/Thailand-SLAPPs-Report-Final_September-2024.pdf.

⁴⁵ *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*, United Nations Development Programme Thailand (June 27,

associated with criminal defamation, the accused can face high legal defense costs and often need to divert time from their work or other obligations to defend themselves, even if the claims against them are meritless.⁴⁶ Unsurprisingly, SLAPPs have reportedly produced severe psychological stress and caused the accused to withdraw from speaking on controversial matters of public interest,⁴⁷ thus chilling their future speech.

Thailand's government has recognized the problem of SLAPPs. In 2019, Thailand's First National Action Plan on Business and Human Rights identified "human rights defenders" as one of "four key priority areas" and advocated for measures to "help protect [] human rights defenders from being falsely prosecuted."⁴⁸ That year, the legislature amended its laws to create two additional grounds for dismissal of charges that potentially constitute SLAPPs, called the "anti-SLAPP amendments."⁴⁹ Section 161/1 grants the court authority to dismiss criminal defamation cases filed by private parties as soon as they are filed if it appears that "the complainant has filed the lawsuit in bad faith or distorted facts in order to harass or take undue advantage of a defendant, or to procure any advantage to which the complainant is not rightfully entitled to."⁵⁰ However, Section 161/1 does not apply to cases moved forward by public prosecutors (even if initially triggered by a private party).⁵¹

Section 165/2 allows defendants to present evidence in a preliminary hearing (where the court determines whether there is sufficient basis for the case to proceed to trial) to

2023), at 29–30, <https://www.undp.org/thailand/publications/laws-and-measures-addressing-strategic-lawsuits-against-public-participation-slapps-context-business-and-human-rights>.

⁴⁶ *Id.* at 9, 25–26.

⁴⁷ *Id.*

⁴⁸ *Thailand's 1st National Action Plan on Business and Human Rights (2019-2022)*, Ministry of Justice, Rights and Liberties Protection Department (2019), at 21, 106, <https://www.undp.org/thailand/publications/thailands-1st-national-action-plan-business-and-human-rights>.

⁴⁹ *Thailand: ICJ Submits Recommendations to Strengthen Thailand's Anti-SLAPP Law*, International Commission of Jurists (Mar. 20, 2020), <https://www.icj.org/thailand-icj-submits-recommendations-to-strengthen-thailands-anti-slapp-law/>.

⁵⁰ Added by the Criminal Procedure Code Amendment Act (No. 34), B.E. 2562 (2019), https://web.senate.go.th/bill/bk_data/533-6.pdf; See translation in *Re: Concerns on the Existing Legal Frameworks that are Designated to Prevent Strategic Lawsuit Against Public Participation (SLAPP Lawsuits)*, International Commission of Jurists (Mar. 20, 2020), at 4, <https://www.icj.org/wp-content/uploads/2020/03/Thailand-SLAPP-Lawsuits-Letter-2020-ENG.pdf>.

⁵¹ Added by the Criminal Procedure Code Amendment Act (No. 33), B.E. 2562 (2019), https://web.senate.go.th/bill/bk_data/535-6.pdf; See translation in *Re: Concerns on the Existing Legal Frameworks that are Designated to Prevent Strategic Lawsuit Against Public Participation (SLAPP Lawsuits)*, International Commission of Jurists (Mar. 20, 2020), at 7, <https://www.icj.org/wp-content/uploads/2020/03/Thailand-SLAPP-Lawsuits-Letter-2020-ENG.pdf>.

demonstrate that the claims of a private party claimant are meritless.⁵² Previously, defendants were only allowed to raise arguments and introduce evidence in response to the plaintiff's presentation, e.g., by cross-examining the plaintiff's witnesses.⁵³ In contrast, Section 165/2 allows defendants to introduce their own evidence at the preliminary stage so courts have more comprehensive facts when determining whether to dismiss or accept the case for trial.⁵⁴ However, the court is only required "to hold preliminary hearings in cases brought by private parties and can use their discretion to determine whether a preliminary hearing is necessary in a case brought by public prosecutors" – a discretion which "courts rarely exercise."⁵⁵

These anti-SLAPP amendments have not proven effective. A 2023 study by the United Nations Development Programme found that courts have not exercised the powers granted to them pursuant to Section 161/1, despite the efforts by lawyers representing criminal defamation defendants to invoke it.⁵⁶ Further, because courts rarely exercise their discretion to hold preliminary hearings in cases brought by public prosecutors, Section 165/2 is effectively inapplicable to such cases.⁵⁷ TrialWatch has also previously analyzed 36 criminal defamation cases and found that neither 161/1 nor 165/2 effectively

⁵² *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*, United Nations Development Programme Thailand (June 27, 2023), at 17-18, <https://www.undp.org/thailand/publications/laws-and-measures-addressing-strategic-lawsuits-against-public-participation-slapps-context-business-and-human-rights>.

⁵³ At the preliminary hearing, plaintiffs must present at least one witness to demonstrate that the case has a basis for moving to a full trial. See Piyawat Vitooraporn and Anyamani Yimsaard, *An Overview Of Criminal Litigation In Thailand*, (Aug. 30, 2022), <https://www.mondaq.com/trials-appeals-compensation/1225342/an-overview-of-criminal-litigation-in-thailand#:~:text=To%20determine%20whether%20to%20accept%20the%20case%2C%20the,public%20prosecutors%20without%20holding%20investigative%20or%20preliminary%20hearings.%29>.

⁵⁴ *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*, United Nations Development Programme Thailand (June 27, 2023), at 39, <https://www.undp.org/thailand/publications/laws-and-measures-addressing-strategic-lawsuits-against-public-participation-slapps-context-business-and-human-rights>; see also Ministry of Justice, Rights and Liberties Protection Department, *Thailand's 1st National Action Plan on Business and Human Rights (2019-2022)*, (2019), at 106, <https://www.undp.org/thailand/publications/thailands-1st-national-action-plan-business-and-human-rights>.

⁵⁵ Dr. Francesca Farrington, Saovanee Kaewjullakarn, and TrialWatch, *Solving SLAPPs: Identifying and Addressing Gaps in Thailand's Anti-SLAPP Framework* (Sept. 2024), at 5, https://cfj.org/wp-content/uploads/2024/09/Thailand-SLAPPs-Report-Final_September-2024.pdf.

⁵⁶ *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*, United Nations Development Programme Thailand (June 27, 2023), at 38, <https://www.undp.org/thailand/publications/laws-and-measures-addressing-strategic-lawsuits-against-public-participation-slapps-context-business-and-human-rights>.

⁵⁷ *Id.* at 39.

screened out SLAPPs.⁵⁸ In fact, while the anti-SLAPP provision that permits dismissal of cases brought by private parties in bad faith (Section 161/1) was invoked in 32 percent of eligible cases, in not a single case did a court grant a 161/1 petition and dismiss the complaint on that basis.⁵⁹ Further, in none of the cases where Section 165/2 was invoked did the court respond to the defense petition and indeed, in only one of those cases did the court dismiss the lawsuit at a preliminary stage (though not on the basis of Section 165/2).⁶⁰

Thailand's government has recognized, in its Second National Action Plan on Business and Human Rights from 2023, that existing laws “do not specifically guarantee the exercise of fundamental liberties and human rights[;]” “use ambiguous and vague terms[;]” “lack . . . defined operational standards making authorities wary of using their legislative authority[;]” do “not contain any options for authorities to oppose a prosecution order” when litigation is considered [a SLAPP]; and “do not have any screening processes in place . . . to stop-bad faith” SLAPPs.⁶¹

In addition to the anti-SLAPP amendments, there are two other means by which the authorities can screen out SLAPPs. Section 21 of the Public Prosecutor Organization and Public Prosecutors Act B.E. 2553 (2010) permits public prosecutors to recommend an order of non-prosecution to the Office of the Attorney General where the prosecution will not be of interest to the general public, impact national safety or security, or impair a significant State interest.⁶² According to the 2019 National Action Plan, which references Section 21 as a measure to prevent SLAPP lawsuits, Section 21 has helped “empower[] the public prosecutor to consider the case and practice their duties in accordance with the constitution and the law in good faith and justice.”⁶³ However, Section 21 has rarely

⁵⁸ Dr. Francesca Farrington, Saovanee Kaewjullakarn, and TrialWatch, *Solving SLAPPs: Identifying and Addressing Gaps in Thailand's Anti-SLAPP Framework* (Sept. 2024), at 58–63, https://cfj.org/wp-content/uploads/2024/09/Thailand-SLAPPs-Report-Final_September-2024.pdf.

⁵⁹ *Id.* at 58.

⁶⁰ *Id.* at 62.

⁶¹ Ministry of Justice Rights and Liberties Department, (*Unofficial Translation*) *2nd National Action Plan on Business and Human Rights (2023-2027)* (2023), at 151-152. See also (*Draft*) *Second National Action Plan on Business and Human Rights (2023-2027)*, Rights and Liberties Protection Department and the National Institute of Development Administration (July 2022), at 122-123. https://icj2.wpenginepowered.com/wp-content/uploads/2022/08/The-Second-NAP-on-BHR_July-2022-EN.pdf.

⁶² Public Prosecutor Organization and Public Prosecutors Act B.E. 2553, (2010), Sec. 21; *Re: Concerns On The Existing Legal Frameworks That Are Designated To Prevent Strategic Lawsuit Against Public Participation (SLAPP lawsuits)*, International Commission of Jurists (Mar. 20, 2020), at 8.

⁶³ Ministry of Justice, Rights and Liberties Protection Department, *Thailand's 1st National Action Plan on Business and Human Rights (2019-2022)* (2019), at 106, <https://www.undp.org/thailand/publications/thailands-1st-national-action-plan-business-and-human-rights>;

been applied – to SLAPPs or more broadly — in part because “the scope of the term ‘public interest,’ . . . is not clearly defined in the relevant regulations,” making it difficult for prosecutors to dismiss complaints and accusations on this basis prior to trial.⁶⁴

Section 329 of the Thai Criminal Code also provides an avenue for responding to criminal SLAPPs. Under Section 329, “a person, in good faith, [who] expresses any opinion or statement: (1) By way of self-justification or defense, or for the protection of a legitimate interest; (2) In the status of being an official in the exercise of his functions; (3) By way of fair comment on any person or thing subjected to public criticism; or (4) By way of fair report of the open proceeding of any Court or meeting shall not be guilty of defamation.”⁶⁵ Section 329 is technically an exception to the offense of defamation—*i.e.*, it states what does not constitute defamation rather than providing for a defense—such that that inquiry officers and prosecutors could rely on it when considering whether to issue a non-prosecution order based on insufficient evidence of defamation.⁶⁶ However, in practice, Section 329 is used more like a defense to support the acquittal of the accused at trial. Given that SLAPP targets relying on the provision have to “fight[] . . . the case until the end” of the proceedings, Section 329 does not mitigate key harms faced by SLAPP targets, such as the costs of legal defense and travelling to court, the time involved, the psychological impact, and the chilling effect on constitutionally protected activity.⁶⁷

see also Re: Concerns On The Existing Legal Frameworks That Are Designated To Prevent Strategic Lawsuit Against Public Participation (SLAPP lawsuits), International Commission of Jurists (Mar. 20, 2020), at 8, (adding that, “We note that NAP also refers to Article 21 of the Public Prosecution Organ and Public Prosecutors Act B.E. 2553 (2010) as another measure to prevent SLAPP lawsuits.”).

⁶⁴ *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*, United Nations Development Programme Thailand (June 27, 2023), at 37, <https://www.undp.org/thailand/publications/laws-and-measures-addressing-strategic-lawsuits-against-public-participation-slapps-context-business-and-human-rights>. Furthermore, “a public prosecutor whom the [International Court of Justice] consulted also explained that [Section] 21 is in reality difficult to apply because the non-prosecution decision must be rendered only by the Attorney-General, making it a time-consuming process, which does not in any way help minimize undue and negative effect of SLAPP lawsuits.” *See Re: Concerns On The Existing Legal Frameworks That Are Designated To Prevent Strategic Lawsuit Against Public Participation (SLAPP lawsuits)*, International Commission of Jurists (Mar. 20, 2020), at 8.

⁶⁵ Sec. 329 of the Thai Criminal Code, <https://library.siam-legal.com/thai-law/criminal-code-defamation-sections-326-333/>.

⁶⁶ While Section 329 is titled “Good Faith Statement”, Section 330 of the Thai Criminal Code is specifically titled “Truth as a Defense”. *See* Secs. 329-330 of the Thai Criminal Code, <https://library.siam-legal.com/thai-law/criminal-code-defamation-sections-326-333/>.

⁶⁷ *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*, United Nations Development Programme Thailand (June 27, 2023), at 25-26, 43, <https://www.undp.org/thailand/publications/laws-and-measures-addressing-strategic-lawsuits-against-public-participation-slapps-context-business-and-human-rights>.

Notorious Thai Criminal Defamation SLAPPs

The breadth of Thailand's criminal defamation laws and the brazen ways in which powerful Thai individuals and organizations have used them to silence their critics are illustrated by the following two cases. In fact, one of these two cases is a prior SLAPP case against Dr. Sidasathian that also resulted in acquittal, highlighting a pattern of attempts to silence her through SLAPPs.

In 2013, Dr. Sidasathian and Alan Morison, an Australian journalist, faced criminal defamation charges brought by the Royal Thai Navy over their reporting about alleged trafficking of Rohingya migrants.⁶⁸ At the time, Dr. Sidasathian and Mr. Morison ran an online news site, Phuketwan.⁶⁹ In one of their stories, they included a paragraph from a Reuters article which reported that an anonymous trafficker had implicated the Navy in smuggling a Rohingya refugee off of the coast of Thailand.⁷⁰ The Reuters article went on to win a Pulitzer Prize.⁷¹ Nevertheless, Dr. Sidasathian and Mr. Morison were charged with criminal defamation and a violation of the Computer Crimes Act based on their republication of the paragraph; if convicted, they could have faced up to seven years in prison, the maximum penalty under the combined charges.⁷² Numerous human rights organizations and foreign governments criticized these criminal defamation charges.⁷³ The case took two and a half years to resolve, and fighting the case created a large financial burden.⁷⁴ Although Dr. Sidasathian and Mr. Morison were eventually acquitted, they relayed that the case negatively impacted their abilities to work as journalists and caused them considerable distress.⁷⁵

⁶⁸ *The Journalists Sued by the Thai Navy*, BBC (Sept. 1, 2015), <https://www.bbc.com/news/world-asia-34106358>.

⁶⁹ *Id.*

⁷⁰ *Id.*; *Truth Be Told: Criminal Defamation in Thai Law and the Case for Reform*, Article 19 (Mar. 31, 2021), at 14, https://www.article19.org/wp-content/uploads/2021/03/Thailand_Truth_be_told_decriminalise_defamation-1.pdf.

⁷¹ *The Journalists Sued by the Thai Navy*, BBC (Sept. 1, 2015), <https://www.bbc.com/news/world-asia-34106358>.

⁷² *Id.*; Joanna Plucinska, *Australian Editor and Thai Colleague Appear in Court Accused of Defaming the Thai Navy*, Time (July 14, 2015), <https://time.com/3956775/phuketwan-journalist-trial-thailand/>.

⁷³ *The Journalists Sued by the Thai Navy*, BBC (Sept. 1, 2015), <https://www.bbc.com/news/world-asia-34106358>.

⁷⁴ *Phuket Journalists' Ordeal Over*, Bangkok Post (Jan. 16, 2016), <https://www.bangkokpost.com/world/828352/phuket-journalists-ordeal-over>.

⁷⁵ First Interview with Dr. Sidasathian and Alan Morison, (Feb. 27, 2024).

In a high-profile series of cases, Thai poultry company Thammakaset has filed 39 civil and criminal defamation cases against former employees, journalists, and human rights defenders.⁷⁶ Thammakaset filed cases targeting individuals who made accusations of labor abuses at the company's poultry facilities, as well as human rights defenders who made social media posts supporting others who had been targeted by Thammakaset and called for an end to SLAPPs.⁷⁷ In 2017, for instance, former Thammakaset employee and activist Nan Win participated in interviews and posted a video regarding working conditions at the company's poultry farms.⁷⁸ Thammakaset retaliated by filing criminal defamation charges against Win.⁷⁹ Then, after another activist, Sutharee Wannasiri, shared the same video on Twitter detailing Win's labor abuse concerns, Thammakaset filed criminal defamation charges against Wannasiri as well.⁸⁰ Thammakaset also filed criminal defamation charges against a colleague of Wannasiri's who had spoken in defense of her.⁸¹ As of August 2023, Thammakaset had lost all but one of the criminal defamation cases that had been adjudicated, and the single case Thammakaset had won at trial had been overturned on appeal.⁸² Despite these losses over the past six years, Thammakaset continued to file similar criminal defamation claims,⁸³ illustrating the lack

⁷⁶ Dr. Francesca Farrington, Saovanee Kaewjullakarn, and TrialWatch, *Solving SLAPPs: Identifying and Addressing Gaps in Thailand's Anti-SLAPP Framework* (Sept. 2024), at 47, https://cfj.org/wp-content/uploads/2024/09/Thailand-SLAPPs-Report-Final_September-2024.pdf; *2022 Country Reports on Human Rights Practices: Thailand*, U.S. Department of State, at 38, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/thailand/>; *Thammakaset vs. Human Rights Defenders and Workers in Thailand*, International Federation for Human Rights (Mar. 28, 2023), <https://www.fidh.org/en/issues/human-rights-defenders/thailand-thammakaset-watch>.

⁷⁷ *2022 Country Reports on Human Rights Practices: Thailand*, U.S. Department of State, at 38, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/thailand/>; *Thammakaset vs. Human Rights Defenders and Workers in Thailand*, International Federation for Human Rights (Mar. 28, 2023), <https://www.fidh.org/en/issues/human-rights-defenders/thailand-thammakaset-watch>.

⁷⁸ *Thailand: Oppose Defamation Charges Against Human Rights Defenders for Exposing Labour Abuses*, Amnesty International (Feb. 21, 2020), at 1, <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA3918462020ENGLISH.pdf>.

⁷⁹ *Id.*

⁸⁰ *Id.*; Sui-Lee Wee, *They Spoke Up for Free Speech. Now They Are Being Sued for Defamation*, N.Y. Times (June 9, 2023), <https://www.nytimes.com/2023/06/09/world/asia/thailand-defamation-lawsuits.html>.

⁸¹ Sui-Lee Wee, *They Spoke Up for Free Speech. Now They Are Being Sued for Defamation*, N.Y. Times (June 9, 2023), <https://www.nytimes.com/2023/06/09/world/asia/thailand-defamation-lawsuits.html>.

⁸² Jonathan Head, *Thammakaset: Thai Poultry Farmer Loses his 36th Defamation Suit*, BBC (Aug. 29, 2023), <https://www.bbc.com/news/world-asia-66643591>.

⁸³ *Thailand: Decriminalise Defamation, Article 19* (Mar. 31, 2021), <https://www.article19.org/resources/thailand-decriminalise-defamation/>; *Thammakaset vs. Human Rights Defenders and Workers in Thailand*, International Federation for Human Rights (Mar. 28, 2023), <https://www.fidh.org/en/issues/human-rights-defenders/thailand-thammakaset-watch>.

of effective screening processes for clear-cut SLAPPs and the lack of a deterrent for filing such lawsuits.

B. THE MAYOR'S CRIMINAL DEFAMATION CLAIMS AGAINST DR. SIDASATHIAN AND DR. SIDASATHIAN'S ACQUITTAL

In March 2024, Dr. Sidasathian was acquitted of the criminal defamation charges brought by public prosecutors after the Mayor of the sub-district of Banlang in Thailand's Nakhon Ratchasima Province filed complaints about three of her Facebook posts concerning the Village Fund scandal.⁸⁴

The events that led to these charges began in 2021, when Dr. Sidasathian visited her hometown in Nakhon Ratchasima Province.⁸⁵ Local villagers, primarily impoverished farmers, told her that they were being sued by the Government Savings Bank (GSB) for repayment of certain Village Fund loans from the state-run GSB, even though the villagers had not received the loaned funds in question.⁸⁶ Specifically, numerous villagers faced civil actions brought by the GSB to recover the alleged debts.⁸⁷ Dr. Sidasathian investigated the situation over a nine-month period.⁸⁸ She was told that Thanonthorn Kaveekitrattana, who was the current mayor and former manager of the Banlang Subdistrict Community Financial Institution (the entity responsible for managing the Village Fund loans), misappropriated the Village Fund loans and had received 1 million Baht of the funds, which had been deposited in his personal account.⁸⁹

In mid-2021, Dr. Sidasathian began posting the information she had learned on Facebook, and she also reported her findings to several authorities, leading to an investigation of the allegations through the establishment of a Thai working committee,

⁸⁴ Alan Morison, *Chutima Verdict Exposes 'Vicious' Thai Defamation Laws*, Asia Times (Mar. 6, 2024), <https://asiatimes.com/2024/03/chutima-verdict-exposes-vicious-thai-defamation-laws/>.

⁸⁵ Day Two Trial Monitor Notes (Feb. 7, 2024); *Thailand: Drop All Criminal Defamation Charges Against Dr. Sidasathian*, Article 19 (Feb. 2, 2024), <https://www.article19.org/resources/thailand-drop-all-criminal-defamation-charges-against-dr-chutima-sidasathian/>.

⁸⁶ *Id.*; First Interview with Dr. Sidasathian and Alan Morison (Feb. 27, 2024); *Thailand: Drop All Criminal Defamation Charges Against Dr. Sidasathian*, Article 19 (Feb. 2, 2024), <https://www.article19.org/resources/thailand-drop-all-criminal-defamation-charges-against-dr-chutima-sidasathian/>.

⁸⁷ First Interview with Dr. Sidasathian and Alan Morison, (Feb. 27, 2024).

⁸⁸ *Id.*

⁸⁹ Day Two Trial Monitor Notes, (Feb. 7, 2024); Day One Trial Monitor Notes (Feb. 6, 2024).

the National Office of Village Fund and Urban Communities, in 2022.⁹⁰ Meanwhile, the GSB undertook its own internal investigation, and concluded that the villagers had received only 12 million of the 45 million Baht allegedly loaned to them.⁹¹

Dr. Sidasathian indicated that the purpose of her Facebook posts was to communicate with the villagers and to organize and empower them.⁹² Dr. Sidasathian said that she wanted to explain to the villagers, in layman terms, what she had learned, while also providing avenues for affected villagers to secure redress.⁹³ In a Facebook post, dated February 20, 2022, Dr. Sidasathian wrote:

Uncle Too has been the prime minister since 2014 totally ruining the country. The same goes to the mayor of Banlang Sub-district (2012), who managed Banlang municipality so extremely terribly killing villagers and their offspring alive, destroying the education system, the bureaucratic system, the administrative system, the patronage system, the economy, the moral system, everything. (Many people still cannot see it through and are still so crazy about him as if he was a god). Next time, Banlang citizens, at least vote for people who truly have public conscience and are knowledgeable. Don't put those incompetent cronies on the job, be it the mayor, deputy mayor, etc. Temporary employee against vote buying.⁹⁴

⁹⁰ Day Two Trial Monitor Notes, (Feb. 7, 2024); *Thailand: Judicial Harassment Against Community Rights and Anti-Corruption Activist Chutima Sidasathian*, FIDH (Jan. 3, 2024), <https://www.fidh.org/en/issues/human-rights-defenders/thailand-judicial-harassment-against-community-rights-and-anti>; Second Interview with Dr. Sidasathian and Alan Morison (May 23, 2024); Timeline Provided by Dr. Sidasathian. Over the past few years, Dr. Sidasathian has submitted her finding to Thailand's National Anti-Corruption Commission ("NACC"), the Office of the Ombudsman, the Department of Special Investigation ("DSI"), and the National Human Rights Commission of Thailand ("NHRCT"). The District Chief Officer, who looked into the situation at the request of NACC, issued a general finding of no *criminal* activity. DSI stated that there was not enough evidence to conclude there had been criminal activity; however, they claimed that, if the villagers provided more evidence, they would continue to investigate. The Ombudsman investigation has not yet concluded.

⁹¹ *Thailand: Judicial Harassment Against Community Rights and Anti-corruption Activist Chutima Sidasathian*, FIDH (Jan. 3, 2024), <https://www.fidh.org/en/issues/human-rights-defenders/thailand-judicial-harassment-against-community-rights-and-anti>.

⁹² First Interview with Dr. Sidasathian and Alan Morison, (Feb. 27, 2024); Day Two Trial Monitor Notes, (Feb. 7, 2024).

⁹³ First Interview with Dr. Sidasathian and Alan Morison, (Feb. 27, 2024).

⁹⁴ Police Report (July 15, 2022) (Unofficial English translation). The current mayor is the son of the previous mayor. The current mayor had been managing the Banlang Subdistrict Community Financial Institution in 2012 prior to becoming mayor in 2013.

In mentioning Uncle Too, Dr. Sidasathian was referencing Thailand's ex-Prime Minister Prayut Chan-o-cha, who held office from 2014 to 2023, not the Mayor.⁹⁵ Moreover, she indicated that the "Mayor Sub-district (2012)" refers to the previous Banlang mayor who held office in 2012, not his successor who initiated the criminal defamation charges against Dr. Sidasathian. Dr. Sidasathian testified in court that her "message was focused and aimed [at] generat[ing] public awareness about the necessity to elect and choose candidate[s] with good moral[s] and ethics to work on behalf of the general public," not intended to criticize—or even refer to, for that matter—the Mayor.⁹⁶

In a subsequent Facebook post, dated April 11, 2022, Dr. Sidasathian re-posted texts and images from the Mayor's Facebook account, which said:

No matter how difficult or challenging it is, I am not afraid of making dreams come true for the next generation with the blood of the roadmakers. 11 April 2022, the team of executives and its strongmen launched the bridge to Krokhoi-Mueangkao, the Nongjaeng-Donyao Road, and surveyed the landscape around the roads in our Sub-district and the progress of the construction of the spillway.⁹⁷

In Dr. Sidasathian's own post she added:

These Facebook posts are nothing but a narrative. It is the blood of the villagers, not the roadmakers. Idiot. How did you come up with such a narrative? With the blood of roadmakers. Did someone die? Do these roadmakers work for free? The government does not pay them? Or has the budget already been stolen by someone? Don't underestimate Banlang people so much, using such narratives and rhetoric. We do eat rice, ok? Don't be nice to those who are not nice to us. Civil servants can work without a mayor.⁹⁸

According to Dr. Sidasathian's testimony, she intended her second post to raise questions with respect to the infrastructure development referenced in the Mayor's post, which was

⁹⁵ The Final Judgement (Mar. 6, 2024); Jonathan Head, *Prayuth Chan-ocha: Thailand Coup Leader Departs the Stage*, BBC (July 12, 2023), <https://www.bbc.com/news/world-asia-66172300>.

⁹⁶ Day Two Trial Monitor Notes, (Feb. 7, 2024).

⁹⁷ Police Report (July 15, 2022) (Unofficial English translation).

⁹⁸ Police Report (July 15, 2022) (Unofficial English translation).

a matter of public concern.⁹⁹ Dr. Sidasathian also pointed out that her comments were general, rather than aimed at any specific individual.¹⁰⁰

In a third post, dated April 21, 2022, Dr. Sidasathian wrote:

The money path of the 16 village funds in Banlang Sub-district and the money in the three accounts of Government Savings Bank Non-Thai Branch used to give loans to members of the Institution under the supervision of the Government Savings Bank Non-Thai Branch, is very obvious. If the Government Savings Bank, the Banlang Sub-district mayor, the presidents from the first to the present of the Institution are sincere and transparent and are brave enough to take the responsibility for the mistakes, which have caused an immense damage, at least it would lessen the sufferings endured, albeit a fraction thereof. At least it is better than pretending not to know anything, even though they do. At least it would show that you still have the human in you. Particularly, the villagers who know nothing. Next thing they know, they received court warrants. They paid the money, but no receipt was given to them. Now the villagers have lost trust. They were asked to stop paying (there is not a lot remaining in the village). Actually, they are willing to pay the outstanding amount, if the receipt is provided and the principal and the interest must be deducted according to the amount paid. They should not remain the same after the payment). The bank only focused on reaching the target. They would exploit every opportunity to do so. The bank and the Institution are aware of this fact, but it seems like everyone wants to push the burden towards the villagers. The Government Savings Bank is fully aware that the Institution is the representative of the village funds to take out loans and manage it. However, the bank decided to sue the village funds and the village funds committee, and allow the Institution to be free. Would we want that? The Government Savings Bank is the one going to the villages to promote it and the one regulating the Institution. The committee admitted that they had signed the documents. Villagers just obey the court orders and tried to find money to pay it, even though they had not used one single Baht from those funds.¹⁰¹

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Police Report (July 15, 2022) (Unofficial English translation).

Dr. Sidasathian testified that the intent of her third post was to urge the Mayor, in his official capacity, to address the villagers' debt crisis and motivate the relevant government agencies to investigate the misappropriation of the Village Funds.¹⁰²

On May 27, 2022, the Mayor went to the local police station and submitted a complaint to the inquiry officer requesting that criminal defamation charges be asserted against Dr. Sidasathian under Sections 326 and 328 of the Thai Criminal Code.¹⁰³ The Mayor's complaint was based on the three Facebook posts set out above, which the Mayor alleged were defamatory of him.¹⁰⁴ Also during this time frame, lawsuits brought by several villagers, involving both civil and criminal charges, were filed against the Mayor for his alleged involvement in the Village Fund scandal.¹⁰⁵

Dr. Sidasathian received a summons from the local police to answer the Mayor's criminal defamation complaint.¹⁰⁶ When Dr. Sidasathian went to the police station, the police initially did not know which of her Facebook posts had been alleged to be criminally defamatory by the Mayor.¹⁰⁷ Dr. Sidasathian requested that the police provide this information before she gave her statement, and the police agreed to do so.¹⁰⁸ Dr. Sidasathian again received a summons from the local police, this time indicating which Facebook posts were the basis of the Mayor's complaint.¹⁰⁹ She then provided a statement denying all three criminal defamation charges in July 2022.¹¹⁰ In September 2022, the police submitted a report to the Public Prosecutor of Nakhon Ratchasima Province ("the Public Prosecutor") recommending that criminal defamation charges be brought against her.¹¹¹

¹⁰² Day Two Trial Monitor Notes, (Feb. 7, 2024).

¹⁰³ Day One Trial Monitor Notes, (Feb. 6, 2024); Indictment (Dec. 21, 2022); Timeline Provided by Dr. Sidasathian.

¹⁰⁴ Indictment (Dec. 21, 2022).

¹⁰⁵ See e.g., Complaint, *Village Fund of Baan Noi Moo 5 Ballang Sub-district v. Mr. Saman Uea-santiah et. al.*, (June 6, 2022).

¹⁰⁶ Day One Trial Monitor Notes, (Feb. 6, 2024); Second Interview with Dr. Sidasathian and Alan Morison, (May 23, 2024).

¹⁰⁷ Second Interview with Dr. Sidasathian and Alan Morison, (May 23, 2024).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*; Police Report (July 15, 2022); Timeline Provided by Dr. Sidasathian.

¹¹¹ Second Interview with Dr. Sidasathian and Alan Morison, (May 23, 2024); Timeline Provided by Dr. Sidasathian.

The Public Prosecutor issued an indictment in December 2022, charging Dr. Sidasathian with three counts of defamation, one for each of her three Facebook posts.¹¹² In the indictment, the Public Prosecutor quoted specific text from each of these posts.¹¹³ The Prosecutor alleged that Dr. Sidasathian’s first post suggested that the Banlang people had chosen to elect a “bad person” who bought votes and, thus, was defamatory to the Mayor who the Prosecutor claimed had run a fair election with no evidence of vote buying.¹¹⁴ With respect to the second post, the Prosecutor alleged that the post was defamatory because it suggested the Mayor “is a person who is bad, corrupt, and unreliable, misuses the public budget for personal purposes, and failed to pay wages to the workers.”¹¹⁵ In coming to this conclusion, the Prosecutor pointed to various community projects that the Mayor had supposedly spear-headed.¹¹⁶ Finally, the Prosecutor found the third post defamatory because it suggested “that the victim, who used to be the chair of the Banlang Sub-district Community Financial Institution from 1 October 2011 to 20 December 2012, had failed in supervising the village funds leading to immense damages.”¹¹⁷ The Prosecutor concluded that this was defamatory by claiming that “no one was adversely affected by his supervision or whatsoever.”¹¹⁸

Thereafter, Dr. Sidasathian received a court summons, and she was briefly detained.¹¹⁹ Dr. Sidasathian was able to post bail of 30,000 Baht, and was released.¹²⁰

In January 2023, a judge led a mediation between the Mayor and Dr. Sidasathian about the Mayor’s allegations against Dr. Sidasathian.¹²¹ In the mediation, the Mayor reportedly demanded compensation of 100,000 Baht as well as apologies from Dr. Sidasathian.¹²² According to Dr. Sidasathian, the judge warned her during the mediation that if she did

¹¹² Indictment (Dec. 21, 2022).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Second Interview with Dr. Sidasathian and Alan Morison, (May 23, 2024).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

not accept the Mayor's demands, she was at risk of a jail sentence.¹²³ Despite the judge's warning, Dr. Sidasathian rejected the Mayor's demands.¹²⁴

On February 21, 2023, Dr. Sidasathian provided a preliminary statement denying the Mayor's allegations, asserting that her intent was not to damage the Mayor's, or anyone else's, reputation but rather to call on the Mayor to work proactively with the villagers to address their concerns regarding their alleged indebtedness to the Village Fund.¹²⁵ Dr. Sidasathian explained that she considered her posts to be a form of expression made in good faith to promote the public interest on behalf of the villagers.¹²⁶ She emphasized that her posts were not motivated by personal matters but were intended as fair criticism.¹²⁷ As such, she concluded that the criminal defamation complaint levied against her was "[SLAPPs] targeting [Dr. Sidasathian] in order to restrict her opinions on community issues, her public participation, and her expression."¹²⁸

In July 2023, one of the villages engaged in litigation with the Mayor received a ruling requiring the Mayor to pay certain damages to the villagers.¹²⁹ Several months later, the Village Fund scandal and Dr. Sidasathian's reporting on the matter led Thailand's Ministry of Justice to create a Special Commission of Investigation (the "Commission").¹³⁰ The Commission consists of 18 representatives from five governmental entities; they have been asked to investigate the alleged misconduct involving the Village Fund loans.¹³¹ There is no reported deadline for the Commission to announce the results of its investigation and at the time of this report being published it is still ongoing.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Dr. Sidasathian's Pre-Trial Statement (Feb. 21, 2023).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Timeline Provided by Dr. Sidasathian; Verdict, *Village Fund of Sa Ta Ke, Moo 8, 1st*, by Mr. Pichit Rodmueang, *et al.* (Aug. 24, 2023).

¹³⁰ *Thailand: Judicial Harassment Against Community Rights and Anti-Corruption Activist Chutima Sidasathian*, FIDH (Jan. 3, 2024), <https://www.fidh.org/en/issues/human-rights-defenders/thailand-judicial-harassment-against-community-rights-and-anti>.

¹³¹ Alan Morison Email (May 1, 2024).

One year after Dr. Sidasathian provided her preliminary statement, a two-day trial took place in February 2024.¹³² The prosecution presented three witnesses: the Mayor; the local police captain, who testified about his investigation into the Mayor’s allegations with respect to Dr. Sidasathian’s three Facebook posts; and a farmer, who expressed his view that the Facebook posts referred to the Mayor and were an attempt to destroy his credibility in the public’s eyes.¹³³ At trial, the farmer testified that, as a resident of the Banlang sub-district, he was aware of the Mayor’s identity given his position of power in the region, suggesting that the farmer did not have a direct relationship with the Mayor and that his testimony reflected his personal opinion based on his perception of the Mayor as a public figure.¹³⁴

Dr. Sidasathian testified about her connection to the Banlang region of Thailand and provided background on her investigation into the Village Fund scandal.¹³⁵ She also provided testimony on her Facebook posts asserting that the posts were not defamatory because 1) she had no specific intent to refer to the Mayor in the first or second posts; and 2) she intended for her third post to simply motivate the Mayor, in his official capacity, to address the villager’s alleged debt, thus promoting the public interest.¹³⁶ A former member of one of the Village Fund committees also testified for the defense, providing his interpretation that Dr. Sidasathian’s Facebook posts were not defamatory because 1) the first post did not refer to the Mayor, 2) the second post was a general question, with no reference to a specific individual, and 3) the third post was a demand to address the villager’s debt caused by the Village Fund scandal.¹³⁷

Notably, Dr. Sidasathian’s request to call and examine witnesses was met with skepticism from the judge.¹³⁸ According to the Trial Monitor, the judge stated that Dr. Sidasathian should not submit any background evidence regarding the Village Fund scandal, on the basis that such testimony was “irrelevant” because the Mayor was “not an affected party of the [V]illage [F]und.”¹³⁹ Dr. Sidasathian, on the other hand, had wanted to submit this evidence in support of her defense that her posts addressed the facts of the Village Fund

¹³² Day One Trial Monitor Notes, (Feb. 6, 2024); Day Two Trial Monitor Notes, (Feb. 7, 2024).

¹³³ *Id.*; Day Two Trial Monitor Notes, (Feb. 7, 2024).

¹³⁴ Day One Trial Monitor Notes, (Feb. 6, 2024).

¹³⁵ Day Two Trial Monitor Notes, (Feb. 7, 2024).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Day One Trial Monitor Notes, (Feb. 6, 2024).

¹³⁹ Day One Trial Monitor Notes, (Feb. 6, 2024).

scandal, which were a matter of public concern.¹⁴⁰ Apparently dissuaded by the judge's comments and potentially in deference to the judge, her lawyer declined to call these witnesses. This may indicate a violation of Article 14(3) of the International Covenant on Civil and Political Rights ("ICCPR"), which guarantees accused persons have the right "to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."¹⁴¹ Thailand acceded to the ICCPR in October 1996.

Dr. Sidasathian was able to provide some limited information about the Village Fund scandal in her own testimony, both briefly describing her investigation into the Village Fund scandal and the National Office of Village Fund and Urban Communities' subsequent investigation.¹⁴² Dr. Sidasathian's witness also briefly touched on the Village Fund scandal, describing how the villagers were deceived into taking loans from the bank, and how Dr. Sidasathian provided support to these affected communities.¹⁴³

The Court issued a verdict in favor of Dr. Sidasathian on March 6, 2024.¹⁴⁴ On March 16, 2024, the Court's full judgment was published; it stated that the first two Facebook posts did not refer to the Mayor and, thus, were not defamatory.¹⁴⁵ The Court further held that, although the third post referred to the Mayor, it was not defamatory because it only criticized his management of the Village Funds and did not assert that he is a "bad person."¹⁴⁶

In acquitting Dr. Sidasathian, the judge examined the text of each Facebook post and explained why it did not constitute criminal defamation. Specifically, the judge found that the first Facebook post was a "general message" that broadly criticized the performance of unnamed governmental authorities, did not refer to the Mayor directly, and encouraged locals in the Banlang sub-district to vote for knowledgeable candidates, rather than "sell" their votes in future elections.¹⁴⁷ The judge stated that the second Facebook post did not "refer to and accuse" the Mayor in such a way that could incite "insult and hatred" towards

¹⁴⁰ First Interview with Dr. Sidasathian and Alan Morison, (Feb. 27, 2024).

¹⁴¹ United Nations International Covenant on Civil and Political Rights, (Mar. 23, 1976), 14668 U.N.T.S. 172, (hereinafter "ICCPR"), Article 14.

¹⁴² Day Two Trial Monitor Notes, (Feb. 7, 2024).

¹⁴³ *Id.*

¹⁴⁴ The Final Judgement (Mar. 6, 2024); Alan Morison Email (May 1, 2024).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

him.¹⁴⁸ Finally, the judge determined that although the third Facebook post referred to the Mayor directly, the post was intended to “criticize general management” failures that led to the Village Fund scandal, rather than to express “any message which could be reasonably regarded as an accusation that [the Mayor] is a bad person, as [he] argued.”¹⁴⁹ Based on this textual analysis of Dr. Sidasathian’s Facebook posts, the judge concluded that the posts did not constitute criminal defamation.

The Public Prosecutor had 30 days to appeal the Court’s decision in Dr. Sidasathian’s favor. The 30-days appeal period has been extended twice so far and Court has not given any date by which the prosecution must definitively make a decision.¹⁵⁰

C. THE MAYOR HAS CONTINUED HIS CRIMINAL DEFAMATION CAMPAIGN AGAINST DOCTOR SIDASATHIAN

The complaint discussed in this report is one of five complaints the Mayor has filed against Dr. Sidasathian, all stemming from her Facebook posts criticizing the local government and raising awareness on matters relevant to the public interest. Although Dr. Sidasathian was acquitted in the first case in March 2024, the other four cases had remained pending. It was only after her lawyer submitted written arguments asserting the lack of merit in these cases that prosecutors issued non-prosecution orders for three of the cases. However, Dr. Sidasathian must still face one remaining case, with trial dates scheduled in September 2025.

In addition to filing criminal defamation complaints against Dr. Sidasathian, the Mayor also filed a criminal defamation complaint against Pasinee Kemmalung, a villager who called for an investigation into the Village Fund scandal and posted a copy of an “Acknowledgement of Debt Agreement” signed by the Mayor on Facebook.¹⁵¹ Over six months after the complaint was filed on July 12, 2023, the Public Prosecutor issued an order of non-prosecution, finding that “the alleged texts are a confirmation of facts” that

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ The Final Judgement, (Mar. 6, 2024).

¹⁵¹ Record of Surrender/Accusation, *Pol. Maj. Surat Sangkarat (Inquiry Officer) to. Ms. Pasinee Kemmalung*, (July 16, 2023). While this “agreement” appears to acknowledge that the Mayor will pay back the debt to the village fund, it does not explicitly state that he misappropriated the funds.

“do not contain words considered as defamation in a way that would ... expose him to hatred and scorn whatsoever.”¹⁵²

¹⁵² Notification of non-indictment order, Ref: The Investigation Report of the Case No. 202/2566 dated 1 December 2023, (Jan. 24, 2024).

METHODOLOGY



A. THE MONITORING PHASE

The Clooney Foundation for Justice (“CFJ”) deployed a monitor to observe the trial of Dr. Sidasathian in-person before the Court. The monitor observed and took detailed notes on the hearings held on February 6 and February 7, 2024, as well as the announcement of the verdict on March 6, 2024. The monitor did not face any impediments in accessing the courtroom or monitoring the trial.

B. THE ASSESSMENT PHASE

To determine a grade for Dr. Sidasathian’s trial, TrialWatch Expert Dr. Francesca Farrington analyzed the case history and trial proceedings within the context of international human rights standards on the right to freedom of expression and a fair trial, as well as the underlying political and legal context in Thailand. Although the trial resulted in a just verdict for Dr. Sidasathian, the decision to proceed with the charges against her and the exclusion of relevant testimony during the trial contravened international human rights standards, as set forth in Thailand’s treaty obligations under the ICCPR. **Thus, Dr. Farrington has given Dr. Sidasathian’s trial a grade of D.**

Thailand’s criminal defamation laws are incompatible with international standards. The decision to proceed with criminal defamation charges against Dr. Sidasathian strongly indicates an attempt to curtail her freedom of expression, violating Article 19 of the ICCPR. The National Human Rights Commission of Thailand properly determined that this case constitutes a SLAPP.¹⁵³ And both the prosecutor’s and the Court’s respective decisions to allow the case to go forward to trial show the shortcomings of the current anti-SLAPP framework.

The Court’s comments dissuading testimony on the village fund issue indicates a potential violation of Dr Sidasathian’s fair trial rights as guaranteed by Article 14(3)(e) of the ICCPR. The Court’s statements on the relevance of the proposed witnesses’ testimony strongly deterred Dr. Sidasathian’s lawyer from calling these witnesses, thus preventing her from presenting complete testimony on the Village Fund scandal herself, even though these facts are central to evaluating the veracity and the public interest nature of her Facebook posts.

¹⁵³ *Journalist Prevails in Another ‘Slapp’ Case*, Bangkok Post (Mar. 6, 2024), <https://www.bangkokpost.com/thailand/general/2754188/journalist-prevails-in-another-slapp-case>.

ANALYSIS



A. APPLICABLE LAW

This report draws upon the ICCPR,¹⁵⁴ and jurisprudence from the United Nations Human Rights Committee (the “U.N. Human Rights Committee” or the “Committee”), which is the supervisory body tasked with monitoring implementation of the ICCPR. The ICCPR requires States that have ratified the treaty to guarantee and protect a range of human rights, including the right to freedom of expression and the right to a fair trial. Thailand acceded to the ICCPR in October 1996.¹⁵⁵

Applicable International Standards to Freedom of Expression

The Universal Declaration of Human Rights affirmed that “the right to freedom of opinion and expression ... includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹⁵⁶

Article 19 of the ICCPR is predicated on the notion that the right to freedom of expression is a cornerstone of every free and democratic society and is a prerequisite for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights and the rule of law.¹⁵⁷ Implicit in Article 19 is the recognition that the free exchange of ideas and information is necessary for the fulfilment and enjoyment of all other Covenant rights.¹⁵⁸

Under Article 19 of the ICCPR, the right to freedom of expression may be exercised through all types of media, and freedom of expression applies to any kind of medium over which speech is conveyed — a key focus of human rights jurisprudence in the digital age. As the former U.N. Special Rapporteur on the Promotion and Protection of the Right to

¹⁵⁴ United Nations International Covenant on Civil and Political Rights, (Mar. 23, 1976), 14668 U.N.T.S. 172, Article 19.

¹⁵⁵ See United Nations Treaty Collection, Chapter IV, Human Rights, Status as of Oct. 11, 2024 at https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind.

¹⁵⁶ U.N. General Assembly, Universal Declaration of Human Rights, (Dec. 10, 1948) (hereinafter “UDHR”), Article 19.

¹⁵⁷ UN Human Rights Committee, General Comment No.34, Article 19, Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011), (hereinafter “UN General Comment No. 34”), paras. 2-3.

¹⁵⁸ UN General Comment No. 34, paras. 2-3; 13. See also William A Schabas, *U.N. International Covenant on Civil and Political Rights: Nowak’s CCPR Commentary* (3rd edn NP Engel 2019), at 551.

Freedom of Opinion and Expression explained, there is “widespread consensus among global legal bodies and experts that the same rules that apply to offline speech apply to sources of information and ideas on the internet.”¹⁵⁹

Further, the U.N. Human Rights Committee has emphasized Article 19 protects the right to engage in “political discourse, commentary on one’s own and on public affairs ... discussion of human rights, [and] journalism.”¹⁶⁰ The Committee has also stressed that “the value placed by the [ICCPR] upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.”¹⁶¹

The right to freedom of expression may only be restricted in limited circumstances. Namely, Article 19(3) of the ICCPR specifies that restrictions on the right to freedom of expression must be “provided by law and . . . necessary: (a) For respect of the rights or reputations of others; [or] (b) For the protection of national security or of public order (ordre public), or of public health or morals.”¹⁶² The Committee has explained that Article 19(3) requires that any justifiable restriction on freedom of expression must satisfy all three of the following criteria:

1. be provided by law (the principle of legality);
2. be imposed only for one of the grounds set out in Article 19(3); and
3. conform to the strict tests of necessity and proportionality.¹⁶³

Taken together, the three elements of this test aim to ensure that legislation and enforcement of criminal laws balance an individual’s right to freedom of expression and a sovereign State’s interest in protecting legitimate objectives.¹⁶⁴

¹⁵⁹ Amicus of David Kaye to the Regional Trial Court, *People of the Philippines v. Reynaldo Santos Jr., and others*, Criminal Case No. R-MNL-19-01141-CR (June 2020), at 11, <https://freedex.org/wp-content/blogs.dir/2015/files/2020/06/Kaye-Amicus-09June20-converted.pdf>. See also ICCPR, art. 19 (free expression includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”).

¹⁶⁰ See U.N. Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/21/Rev.1/Add/7, (July 21, 2011), para. 11.

¹⁶¹ *Id.* at para. 34.

¹⁶² ICCPR, Article 19(3).

¹⁶³ UN General Comment No. 34, para. 22.

¹⁶⁴ U.N. Human Rights Committee, *Kim v. Republic of Korea*, U.N. Doc. CCPR/C/64/D/574/1994 (Nov. 20, 1998), para. 12.2.

In order to comply with the principle of legality, legislation must be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly . . . [and] may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”¹⁶⁵ The U.N. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (the “U.N. Special Rapporteur on Freedom of Expression”) has further noted that any restriction on speech “must be provided by laws that are precise, public and transparent; it must avoid providing authorities with unbounded discretion.”¹⁶⁶

The legitimacy requirement means that a State may not impose restrictions on speech for other than the enumerated reasons. As the Human Rights Committee has explained, “[r]estrictions are not allowed on grounds not specified in paragraph 3.”¹⁶⁷

Complying with the necessity principle requires States to “demonstrate that the restriction imposes the least burden on the exercise of the right and actually protects, or is likely to protect, the legitimate State interest at issue.”¹⁶⁸ When adopting “restrictive legislation” or pursuing the “restriction of specific expression,” “States may not merely assert necessity but must demonstrate it.”¹⁶⁹

To comply with the proportionality principle, a law that restricts freedom of expression must be the “least intrusive instrument amongst those which might achieve their protective function.”¹⁷⁰ Any restriction must be “proportionate to the interest to be protected.”¹⁷¹ According to the U.N. Special Rapporteur on Freedom of Expression, criminal penalties for speech should only be imposed for the gravest of offenses, such as child pornography, incitement to terrorism, public incitement to genocide, and advocacy

¹⁶⁵ UN General Comment No. 34, para. 25.

¹⁶⁶ U.N. General Assembly, *Report of the Special Rapporteur on the Promotion and Protection of Freedom of Expression*, U.N. Doc. A/74/486 (Oct. 9, 2019), para. 6(a).

¹⁶⁷ UN General Comment No. 34, para. 22.

¹⁶⁸ U.N. General Assembly, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/UN HRC/38/35 (Apr. 6, 2018), para. 7; see also UN General Comment No. 34, para. 35.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*, para. 34.

¹⁷¹ *Id.*

for national, racial, or religious hatred.¹⁷² Criminalization of lesser offenses “exert[s] a significant chilling effect on the right to freedom of expression.”¹⁷³

Notably, a State’s discretion to restrict freedom of expression to protect the rights and reputation of others is limited where the person alleging a breach of privacy is one whose activities attract legitimate public interest.¹⁷⁴ In such cases, substantive laws and penalties for breaches of reputational rights should account for the public interest in scrutinizing the behavior of persons and entities exercising public power.¹⁷⁵ The Committee has also emphasized that “all public figures . . . are legitimately subject to criticism and political opposition,”¹⁷⁶ and “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.”¹⁷⁷

Based on the principles of necessity and proportionality, the Committee has urged “states parties [to] consider [] decriminalization” of defamation¹⁷⁸ and has further stated that imprisonment is never an appropriate penalty for defamation.¹⁷⁹ The Committee notes that criminal defamation charges are intimidatory and have a chilling effect on freedom of expression, and the application of criminal law “should only be countenanced in the most serious of cases and *imprisonment is never an appropriate penalty*” (*emphasis added*).¹⁸⁰ This view is reflected in a plethora of international resolutions and reports,¹⁸¹ as well as

¹⁷² U.N. General Assembly, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/66/290 (Aug. 10, 2011), paras. 40, 81.

¹⁷³ *Id.*, paras. 40, 83.

¹⁷⁴ UN General Comment No. 34, para. 28; see *Couderac and Hachette Filipacchi Associés v France*, European Court of Human Rights, Application no. 40454/07 (Nov. 10, 2015).

¹⁷⁵ UN General Comment No. 34, para. 47.

¹⁷⁶ *Freedom of Expression and New Media*, U.N. Human Rights: Office of the High Commissioner (Sept. 1, 2011), <https://www.ohchr.org/en/stories/2011/08/freedom-expression-and-new-media>.

¹⁷⁷ UN General Comment No. 34, para. 38.

¹⁷⁸ UN General Comment No. 34, para. 47.

¹⁷⁹ *Id.* (“States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.”).

¹⁸⁰ UN General Comment No. 34, para. 47.

¹⁸¹ For discussion and links to primary sources see UNESCO, *The “Misuse” of the Judicial System to Attack Freedom of Expression*, CI-2022/WTR/4, 4-7
<unesdoc.unesco.org/ark:/48223/pf0000383832/PDF/383832eng.pdf.multi.

decisions of the Committee,¹⁸² and the judgments of regional courts, which note that the criminalization of speech should be a last resort to be deployed only in extreme cases of interference with other fundamental rights.¹⁸³

Regional human rights courts broadly agree: the European Court of Human Rights has often held that imprisonment is a disproportionate penalty for defamation claims, and the African Court on Human and Peoples' Rights has noted that "[a]part from serious and very exceptional circumstances for example, incitement to international crimes," freedom of expression and speech "cannot be sanctioned" by custodial penalties.¹⁸⁴

Thailand's Criminal Defamation Laws on Their Face Fall Short of International Standards

Sections 326 and 328 of the Thai Criminal Code – Thailand's criminal defamation laws – violate, in certain respects, the requirement of legality and violate the requirement of necessity and proportionality. Section 326 states that defamation is committed when a person "imputes anything to the other person before a third person in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned"¹⁸⁵ whereas Section 328 extends such an imputation to a variety of mediums through which it may be made.¹⁸⁶ As mentioned earlier, both Sections also carry significant prison sentences; Section 326 can result in up to one year of imprisonment and/or a fine of up to 20,000 Baht, while Section 328 can lead to double the prison time and fine of 200,000 Baht.

¹⁸² *Rafael Marques de Morais v. Angola*, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005); *Alexander Adonis v. The Philippines*, Communication No. 1815/2008, U.N. Doc. CCPR/C/103/D/1815/2008/Rev.1 (2012).

¹⁸³ See e.g. *Lohé Issa Konaté v. The Republic of Burkina Faso*, African Court on Human and Peoples' Rights, Application No. 004/2013 (Dec. 5, 2014); *Usón Ramírez vs Venezuela*, Inter-Am Ct HR, Serie C No 207 (Nov. 20, 2009); *Cumpana and Mazare v Romania*, European Court of Human Rights, Application No 33348/96 (Dec. 17, 2004).

¹⁸⁴ *Lohé Issa Konaté v. The Republic of Burkina Faso*, African Court of Human and People's Rights, App. No. 004/2013 (Dec. 5, 2014), para. 165.

¹⁸⁵ Sec. 326 of the Thai Criminal Code, <https://library.siam-legal.com/thai-law/criminal-code-defamation-sections-326-333/>.

¹⁸⁶ See Sec. 328 of the Thai Criminal Code ("*publication of a document, drawing, painting, cinematography film, picture or letters made visible by any means, gramophone record or another recording instruments, recording picture or letters, or by broadcasting or spreading picture, or by propagation by any other means, the offender shall be punished with imprisonment not exceeding two years and fined not exceeding two hundred thousand Baht.*"), <https://library.siam-legal.com/thai-law/criminal-code-defamation-sections-326-333/>.

Aspects of sections 326 and 328 of the Thai Criminal Code appear to fall foul of the principle of legality because, at times, the statutory language is vague and imprecise, making it difficult for individuals to know if their speech would be considered unlawful. More specifically, the term “to expose such other person to be hated or scorned” is subjective and broad.¹⁸⁷ This aspect of Section 326 has been the subject of criticism because the wording allows for an extremely wide range of interpretation as to its scope and meaning.¹⁸⁸ The broad language used in this aspect of Section 326 confers undue discretion on those charged with its execution, allowing the authorities and private entities to determine what constitutes defamation without clear principles or limitations.

Sections 326 and 328 appear to offend the necessity and proportionality requirements because the protection of the reputation of others could be achieved in ways that do not unduly restrict freedom of expression, and a restriction must be “least intrusive amongst those which might active their protective function.”¹⁸⁹ For example, civil defamation penalties would be sufficient to protect the reputation of citizens without imposing the chilling effect of the threat of incarceration. The U.N. Special Rapporteur on Freedom of Expression and the Rapporteur’s counterparts in the Organization of American States (“OAS”) and Organization for Security and Cooperation in Europe (“OSCE”) have stated “criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”

Section 329 of the Thai Criminal Code sets out an exception to criminal defamation and provides that: “a person, in good faith, [who] expresses any opinion or statement: (1) By way of justification, self-defense or safeguarding his or her legitimate interests; (2) As being an official in the exercise of his or her duty; (3) By way of fair comment on any person or anything which shall be deemed as common public criticism; or (4) By way of fair report of the open proceedings of any Court or meeting, shall not be guilty of defamation.” This provision is technically an exception to the offense of defamation—i.e., it states what does not constitute defamation rather than providing for a defense, meaning that inquiry officers and prosecutors could rely on it when considering whether a non-

¹⁸⁷ Lawyers’ Rights Watch Canada and International Commission of Jurists, *Amicus Brief in the Case of the Defendant Mr. Pratch Rujivanarom (Black Case Number Aor. 1097/2564)*, pg. 6, https://www.icj.org/wp-content/uploads/2023/02/Final_English_Amicus_Pracht.pdf.

¹⁸⁸ Lawyers’ Rights Watch Canada and International Commission of Jurists, *Amicus Brief in the Case of the Defendant Mr. Pratch Rujivanarom (Black Case Number Aor. 1097/2564)*, pg. 6, https://www.icj.org/wp-content/uploads/2023/02/Final_English_Amicus_Pracht.pdf.

¹⁸⁹ UN General Comment No. 34, para. 34.

prosecution order based on insufficient evidence of defamation is warranted.¹⁹⁰ However, the authorities have tended to treat Section 329 more like a defense, using it to acquit accused at trial.

Dr Sidasathian has consistently maintained that her comments were made in good faith and by way of fair comment as common public criticism. However, as detailed further below, prosecutors failed to screen out Dr Sidasathian's case as an exception to defamation. Dr Sidasathian's case also highlights further deficiencies with the defenses available for those accused of criminal defamation. For instance, it is not clear what 'common public criticism' means. More concerning, as the provision is typically used as a defense, SLAPP targets relying on the provision thus have to "fight[] ... the case until the end" of the proceedings.¹⁹¹ As such, section 329 (as presently used) does not mitigate key harms faced by SLAPP targets, such as the costs of legal defense and travelling to court, the time investment, the psychological impact, and the chilling effect.¹⁹²

Thailand's criminal defamation law is also inconsistent with international standards because the defense of truth is not available in all cases, and it does not include a clear public interest defense. The UN Human Rights Committee has held the defense of truth should be available in all cases under penal defamation laws.¹⁹³ The Committee has also stressed that "a public interest in the subject matter . . . should be recognized as a defense."¹⁹⁴

As TrialWatch has recommended on previous occasions, ideally, Thailand should, in line with international human rights law, either decriminalize defamation or amend its criminal defamation law to provide a clear exception/defense for public interest speech, provide clear and separate defenses for public interest speech and truth, or at a minimum not

¹⁹⁰ Notably, while Section 329 is titled "Good Faith Statement", Section 330 of the Criminal Code is specifically titled "Truth as a Defense". See Thailand Criminal Code, Sections 329-330, <https://library.siam-legal.com/thai-law/criminal-code-defamation-sections-326-333/>.

¹⁹¹ United Nations Development Programme in Thailand, *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*, (2023), pg. 25.

¹⁹² *Id.*

¹⁹³ UN General Comment No. 34, para. 47; Amal Clooney and David Neuberger, *Freedom of Speech in International Law*, Oxford University Press (2024), at. 114.

¹⁹⁴ UN General Comment No. 34, para. 47.

subject defendants to custodial sentences, in particular those engaging in public interest speech.¹⁹⁵

B. ANALYSIS OF THE TRIAL

The Use of Criminal Defamation Laws Indicates a Violation of Article 19 ICCPR

Dr. Sidasathian’s social media posts fall within the bounds of protected speech. Dr. Sidasathian’s posts concerned accusations of corruption and the misappropriation of public funds – these topics were and continue to be a matter of public interest and therefore warranted heightened levels of protection.

Subjecting Dr. Sidasathian to criminal defamation proceedings that carry custodial penalties as a result of her engagement in public interest speech strongly indicates a violation of her Article 19 rights. As mentioned above, criminal defamation charges are intimidatory and have a chilling effect on freedom of expression, and the application of criminal law “should only be countenanced in the most serious of cases and *imprisonment is never an appropriate penalty*” (emphasis added).¹⁹⁶

The Human Rights Committee has further stated that “[a]t 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.” And in the Inter-American Court, claims of defamation of public figures require a showing of “actual malice.”¹⁹⁷ In addition, as noted above, Thai law has a number of deficiencies with regards the defenses available to those accused of criminal defamation.

The Trial Bears the Hallmarks of a SLAPP

As discussed earlier, SLAPPs are abusive lawsuits or threats of legal action that have the purpose or effect of undermining public participation on matters of public interest. There are strong indications that the criminal defamation charges against Dr. Sidasathian were a SLAPP. Dr. Sidasathian was engaging in a constitutionally protected activity by

¹⁹⁵ Dr. Francesca Farrington, Saovanee Kaewjullakarn, and TrialWatch, *Solving SLAPPs: Identifying and Addressing Gaps in Thailand's Anti-SLAPP Framework* (Sept. 2024), https://cfj.org/wp-content/uploads/2024/09/Thailand-SLAPPs-Report-Final_September-2024.pdf.

¹⁹⁶ General Comment No. 34, para. 47.

¹⁹⁷ *Kimel v. Argentina*, Inter-Am. Ct. H.R., Series C No. 177 (May 2, 2008), para. 43.

exercising her free speech rights through her social media posts, and the content of these posts concerned potential public corruption, a topic of legitimate public interest. Further, the fact that the Mayor brought multiple charges against Dr. Sidasathian for similar conduct strongly suggests that his goal was to intimidate Dr. Sidasathian and dissuade her from speaking out about the results of her investigation into the misappropriation of the Village Funds. The goal of a SLAPP suit is also to drain the resources and cause anguish to the accused person rather than actually winning; Dr. Sidasathian despite being acquitted in the case had to face roughly two years fighting it, and despite having three other complaints dismissed for non-prosecution is still facing another charge.

In fact, in December 2023, the National Human Rights Commission of Thailand issued a report affirming that the charges against Dr. Sidasathian addressed in this report were a SLAPP and recommending that they be dismissed.¹⁹⁸

Failure of anti-SLAPP Safeguards

There are provisions that empower inquiry officers and prosecutors to dispose of SLAPPs at an early stage, which could have been used in Dr. Sidasathian's case. Sections 141 and 142 of Thailand's Criminal Procedure Code provide inquiry officers with the authority to submit a recommendation of non-prosecution to public prosecutors if they determine the accused is not an offender or that the accused's actions do not constitute an offense. Section 143 of the Criminal Procedure Code gives public prosecutors the authority to issue an order of non-prosecution if the accused is not an offender or if prosecution would not be in the public interest. Section 21 of the Public Prosecutor Organization and Public Prosecutors Act B.E. 2553 (2010) permits public prosecutors to recommend an order of non-prosecution to the Office of the Attorney General where the prosecution will not be of interest to the general public, impact national safety or security, or impair a significant State interest. As Section 329 of the Thai Criminal Code sets out an exception (rather than defense) to the offense of defamation, the prosecutor or inquiry officer could have issued an order of non-prosecution in recognition that the accused was not an offender, their actions did not constitute an offense, and that the prosecution would not be in the public interest.

Relatedly, the UN's *Guidelines on the Role of Prosecutors* requires prosecutors to "perform their duties fairly" which includes declining to prosecute a case "when an impartial investigation shows the charge to be unfounded."¹⁹⁹ Further, prosecutors are

¹⁹⁸ Report No. 137/2566, *Freedom of Expression Case - Allegations that Human Rights Defenders Face Strategic Lawsuit Against Public Participation (SLAPPs) Involving the Community Financial Institution of Banlang District*, Petitioner Miss Chutima Sidasathian.

¹⁹⁹ United Nations Office of the High Commissioner for Human Rights, *United Nations Guidelines on the Role of Prosecutors* (1990), para. 14, <https://www.ohchr.org/sites/default/files/prosecutors.pdf>.

required to “protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances [..].”²⁰⁰ Likewise, the International Association of Prosecutors’ (IAP) *Standards of Professional Responsibility and Statement on the Essential Duties and Rights of Prosecutors* (Standards) requires prosecutors to uphold the public interest,²⁰¹ and to respect, protect and uphold the universal concept of human dignity and human rights.²⁰² The Standards further require prosecutors not to prosecute “beyond what is indicated by the evidence.”²⁰³ Both the UN Guidelines²⁰⁴ and the IAP Standards²⁰⁵ mention the need to, in accordance with local law, divert cases away from the criminal justice system.

In this regard, it is worth noting that civil defamation laws are available in Thailand, yet Dr Sidasathian’s case was not diverted. While there was a mediation process, Dr Sidasathian reported that she was warned that if she did not accept the Mayor’s demands, she was at risk of jail.

In summary, in the present case, the inquiry officer and prosecutor failed to identify the complaint as a SLAPP. As a result, Dr Sidasathian was subjected to a two-year ordeal with the threat of jail time. Non-prosecution orders were, however, issued in three of the additional cases brought against Dr Sidasathian after receiving written submissions from Dr Sidasathian’s lawyer. One case is still pending against Dr Sidasathian.

²⁰⁰ United Nations Office of the High Commissioner for Human Rights, *United Nations Guidelines on the Role of Prosecutors* (1990), para. 13(b), <https://www.ohchr.org/sites/default/files/prosecutors.pdf>.

²⁰¹ *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (1999), para. 1(g), [https://www.iap-association.org/getattachment/Resources-Documentation/IAP-Standards-\(1\)/English.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Documentation/IAP-Standards-(1)/English.pdf.aspx).

²⁰² *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (1999), para. 1(h), [https://www.iap-association.org/getattachment/Resources-Documentation/IAP-Standards-\(1\)/English.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Documentation/IAP-Standards-(1)/English.pdf.aspx).

²⁰³ *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (1999), para. 4.2(e), [https://www.iap-association.org/getattachment/Resources-Documentation/IAP-Standards-\(1\)/English.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Documentation/IAP-Standards-(1)/English.pdf.aspx).

²⁰⁴ United Nations Office of the High Commissioner for Human Rights, *United Nations Guidelines on the Role of Prosecutors* (1990), paras. 18-19, <https://www.ohchr.org/sites/default/files/prosecutors.pdf>.

²⁰⁵ *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (1999), para 4.3(h), [https://www.iap-association.org/getattachment/Resources-Documentation/IAP-Standards-\(1\)/English.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Documentation/IAP-Standards-(1)/English.pdf.aspx).

Furthermore, as noted above, the Thai government has added certain “anti-SLAPP” provisions in the Thai Criminal Procedure Code.²⁰⁶ As mentioned above, the applicability and scope of these provisions depends on how a particular criminal defamation case came before the court.²⁰⁷

For instance, Sections 161/1 and 165/2, were enacted following Thailand’s First National Action Plan on Business and Human Rights in 2019:²⁰⁸ Section 161/1 grants the court authority to dismiss criminal defamation cases filed by private parties as soon as they are filed²⁰⁹ while Section 165/2 permits the target of SLAPP lawsuits to present evidence in a preliminary hearing to show that the case lacks merit.²¹⁰

²⁰⁶ *Re: Concerns on the Existing Legal Frameworks that are Designated to Prevent Strategic Lawsuit Against Public Participation (SLAPP Lawsuits)*, International Commission of Jurists (Mar. 20, 2020), at 1, <https://www.icj.org/wp-content/uploads/2020/03/Thailand-SLAPP-Lawsuits-Letter-2020-ENG.pdf>.

²⁰⁷ As discussed above, case can be initiated in two ways: (1) a private plaintiff can lodge a complaint or accusation with an inquiry officer, who can elevate the case to the public prosecutor; or (2) a plaintiff can file the suit directly with the court.

²⁰⁸ *Thailand’s 1st National Action Plan on Business and Human Rights*, United Nations Development Programme in Thailand (Jan. 22, 2020), at 105–106, <https://www.undp.org/thailand/publications/thailands-1st-national-action-plan-business-and-human-rights>.

²⁰⁹ Section 161/1 states: “In a case filed by a private complainant, if it appears to the court—or through examination of evidence called at trial—that the complainant has filed the lawsuit in bad faith or distorted facts in order to harass or take undue advantage of a defendant, or to procure any advantage to which the complainant is not rightfully entitled to, the court shall order dismissal of the case, and forbid the complainant to refile such case again. The filing of a lawsuit in bad faith as stated in paragraph one includes incidents where the complainant intentionally violated a final court’s orders or judgments in another criminal case without providing any appropriate reason.” *Re: Concerns on the Existing Legal Frameworks that are Designated to Prevent Strategic Lawsuit Against Public Participation (SLAPP Lawsuits)*, International Commission of Jurists (Mar. 20, 2020), at 4, <https://www.icj.org/wp-content/uploads/2020/03/Thailand-SLAPP-Lawsuits-Letter-2020-ENG.pdf>.

²¹⁰ During a preliminary hearing (preliminary hearings take place approximately eight to twelve weeks after a complaint is filed) the defendant may submit to the court a significant fact or law which may bring the court to the conclusion that the case before it lacks merit, and may include in the submission as persons, documents or materials to substantiate the defendant’s claims provided in the submission. In such case, the court may call such persons, documents or materials to provide evidence in its deliberation of the case as necessary and appropriate, and the complainant and the defendant may examine this evidence with the consent of the court. Approximately one month after the preliminary hearing, a court decides whether to accept or dismiss the case. See Baker McKenzie, *In Review: Court Procedure in Thailand*, Lexology (Feb. 17, 2022), [38](https://www.lexology.com/library/detail.aspx?g=e2956fbc-8149-4a18-a796-f1984ed3bb6b#:~:text=Approximately%20eight%20to%2010%20weeks,to%20testify%20before%20the%20court; Guide to Criminal Prosecution in Thailand, Ake & Associates, https://www.golawphuket.com/penal-en/prosecution/; Re: Concerns on the Existing Legal Frameworks that are Designated to Prevent Strategic Lawsuit Against Public Participation (SLAPP Lawsuits), International Commission of Jurists (Mar. 20, 2020), at 4, https://www.icj.org/wp-content/uploads/2020/03/Thailand-SLAPP-Lawsuits-Letter-2020-ENG.pdf.</p></div><div data-bbox=)

In Dr. Sidasathian’s case, both “anti-SLAPP” provisions failed. Section 161/1 failed because it only applies to criminal cases filed by private plaintiffs, and the court cannot dismiss cases brought by public prosecutors, even when they are brought in bad faith or based on misrepresented facts.²¹¹ Similarly, Section 165/2 failed because a preliminary hearing is not required in cases where the public prosecutor is the plaintiff,²¹² and one was not held in this case. If such a hearing had been held, then Dr. Sidasathian would have had the opportunity to demonstrate that the Mayor’s complaint was a SLAPP with grounds for dismissal prior to trial. Dr. Sidasathian faces one pending charge, the preliminary hearing for which is scheduled on January 27, 2024 – the court has the opportunity to exercise its *discretion* and hold a hearing under 165/2.

Such failure of the Court to exercise its discretion despite the presence of “anti-SLAPP” provisions is in line with observations made by the United Nations Development Programme in Thailand:

Although the law allows the court to exercise discretion in the preliminary hearing, the court often does not undertake investigation of the lawsuit, because this would duplicate the prosecutor’s earlier work in investigating and issuing an order on the case. As a result, a SLAPP that comes to court through this channel may not undergo an additional tier of screening (i.e. by the court) to bring the case to an end during the preliminary hearing. The court is more likely to rely on the screening that the prosecutor already conducted, and thus would regrettably skip this step where the defendant is asked to present facts and evidence during the preliminary hearing.²¹³

Indications of a violation of Article 14(3) ICCPR

For the most part, Dr. Sidasathian’s trial complied with the applicable international legal standards for fair trials. However, there was one potential exception: the limitations that appear to have been placed on Dr. Sidasathian’s right to call and examine witnesses could indicate a violation of the principle of equal arms. This principle, which is outlined

²¹¹ *Re: Concerns on the Existing Legal Frameworks that are Designated to Prevent Strategic Lawsuit Against Public Participation (SLAPP Lawsuits)*, International Commission of Jurists (Mar. 20, 2020), at 7, <https://www.icj.org/wp-content/uploads/2020/03/Thailand-SLAPP-Lawsuits-Letter-2020-ENG.pdf>.

²¹² *Laws and Measures Addressing Strategic Lawsuits Against Public Participation (SLAPPs) in the Context of Business and Human Rights*, United Nations Development Programme in Thailand (June 27, 2023), at 17, <https://www.undp.org/thailand/publications/laws-and-measures-addressing-strategic-lawsuits-against-public-participation-slapps-context-business-and-human-rights>.

²¹³ *Id.* at 39.

in Article 14(1) of the ICCPR, requires “that each side be given the opportunity to contest all the arguments and evidence adduced by the other party.”²¹⁴

The U.N. Human Rights Committee has found violations of Article 14(1) when courts deny defense requests to summon witnesses without good cause.²¹⁵ Article 14(3)(e) of the ICCPR is an extension of this principle, granting defendants the right “to obtain the attendance and examination of witnesses on [their] behalf under the same conditions as witnesses against [them].”²¹⁶ Article 14(3)(e) does not establish an absolute right to call and examine witnesses; rather, it provides for the calling of relevant witnesses²¹⁷ if proposed in a timely manner and in compliance with procedural requirements.²¹⁸ The provision has been described by the Human Rights Committee as “an application of the principle of equality of arms.”²¹⁹ The Court’s statements that the testimony on the Village Fund scandal was irrelevant dissuaded Dr Sidasathian’s lawyer from calling witnesses, and may amount to a violation of Article 14(3)(e) of the ICCPR.

In *Allaberdiev v. Uzbekistan*, the U.N. Human Rights Committee found a breach of Article 14(3)(e) where the accused was convicted of drug-related offenses. In that case, defense counsel requested to call individuals involved with the investigation and individuals whom the accused alleged had planted the drugs. Although these witnesses were central to the defense theory that the case was fabricated, the court rejected the request, deeming the proposed testimony irrelevant.²²⁰ The European Court of Human Rights has relatedly found that while it is not the Court’s function to express an opinion on the relevance of the evidence produced, failure to justify a refusal to examine or call a witness can amount

²¹⁴ U.N. Human Rights Committee, *General Comment No. 32*, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007), para. 13.

²¹⁵ See U.N. Human Rights Committee, *Evrezov et al. v. Belarus*, U.N. Doc. CCPR/C/112/D/1999/2010 (Nov. 25, 2014), para. 8.9; U.N. Human Rights Committee, *Khomidova v. Tajikistan*, U.N. Doc. CCPR/C/81/D/1117/2002 (Aug. 25, 2004), para. 6.5.

²¹⁶ ICCPR, Article 14(3)(e).

²¹⁷ U.N. Human Rights Committee, *Saidov v. Tajikistan*, U.N. Doc. CCPR/C/122/D/2680/2015 (Sept. 20, 2018), para. 9.6.

²¹⁸ U.N. Human Rights Committee, *Johnson v. Spain*, U.N. Doc. CCPR/C/86/D/1102/2002 (Apr. 26, 2006), para. 6.5; U.N. Human Rights Committee, *General Comment No. 32*, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007), para. 39.

²¹⁹ U.N. Human Rights Committee, *General Comment No. 32*, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007), para. 39.

²²⁰ Human Rights Committee, *Sirozhiddin Allaberdiev v. Uzbekistan*, UN Doc. CCPR/C/119/D/2555/2015 (May 18, 2017), paras. 2.1–2.2, 8.8-8.9

to a limitation of defense rights that is incompatible with the guarantees of a fair trial.²²¹ While the Court's statements fall short of an outright limitation on Dr. Sidasathian's right to call witnesses, the Court's statements dissuaded her lawyers from calling witnesses, and had the practical effect of limiting her ability to launch a complete defense.

At Dr. Sidasathian's trial, the Court discouraged the defense from calling four fact witnesses on the subject of the Village Fund scandal. The defense had planned to call these witnesses, who faced claims to return loaned funds they never had received, to provide context for Dr. Sidasathian's Facebook posts and support her defenses of truth and fair comment on matters of public interest.²²² The Court said that the Village Fund scandal issues were not relevant to the criminal defamation charges.²²³ However, the witnesses' testimony would have gone to the heart of Dr. Sidasathian's defense: they would have shown that her posts were based on facts that were of considerable public concern. In addition to excluding the testimony of the four villagers, the Court's statements also limited Dr. Sidasathian herself from providing complete testimony about her own investigation of the Village Funds scandal. The Court's reluctance to hear testimony relevant to Dr. Sidasathian's defense, both from witnesses and Dr. Sidasathian herself, indicates a possible violation of Article 14(3)(e).

²²¹ European Court of Human Rights, Guide on Article 6: Right to a Fair Trial (2014), at 48, <https://rm.coe.int/1680304c4e>. See also European Court of Human Rights, *Popov v. Russia*, Application No. 268530/4, (July 13, 2006) para. 188; European Court of Human Rights, *Bocos-Cuesta v. the Netherlands*, Application No. 54789/00, (Nov. 10, 2005), para. 72; European Court of Human Rights, *Wierzbicki v. Poland*, Application No. 24541/94, (June 18, 2002), para. 45; and European Court of Human Rights, *Vidal v. Belgium*, Application No. 12351/86, (Apr. 22, 1992), para. 34.

²²² First Interview with Dr. Sidasathian and Alan Morison, (Feb. 27, 2024).

²²³ *Id.*

CONCLUSION AND GRADE



There are strong indications that Dr. Sidasathian’s trial constitutes an attempt, by the Mayor, to suppress her public participation on matters of public interest. It is particularly concerning that Dr. Sidasathian continues to be subjected to criminal defamation proceedings relating to the exercise of her free expression rights. Criminal defamation charges are excessive, intimidatory and have a chilling effect on freedom of expression, and “should only be countenanced in the most serious of cases and *imprisonment is never an appropriate penalty*” (*emphasis added*).²²⁴

Dr. Sidasathian’s trial was, on the whole, fair. However, the judge’s statements that testimony related to the Village Fund scandal was “irrelevant” indicates a potential violation of Article 14(3)(e) of the ICCPR. Further, the continued filing of criminal complaints against Dr. Sidasathian should be monitored to ensure that a violation of Article 14(7) does not occur.

While Dr. Sidasathian was acquitted, it should be recalled that SLAPPs are not aimed at rendering a judgment in favor of the pursuer but have the effect of transforming the process of defending an action into a punishment. Therefore, the circumstances of Dr. Sidasathian’s case, as a whole, strongly suggest a misuse of the prosecutorial and judicial process by the Mayor to suppress Dr. Sidasathian’s free expression rights.

As of the date of this report, Dr. Sidasathian is facing one other criminal defamation charge, which is also related to her commentary on the Village Funds issue. This charge will be tried in Nakhon Ratchasima Provincial Court. In light of the strong indications that these charges were brought as a SLAPP, Nakhon Ratchasima Provincial Court should dismiss these charges.

GRADE:

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²²⁴ UN General Comment No. 34, para. 47.

RECOMMENDATIONS



The prosecution of Dr. Sidasathian also demonstrates that existing anti-SLAPP mechanisms are insufficient to protect human rights defenders from abusive lawsuits, in line with previous findings by TrialWatch.

The Thai Ministry of Justice released its draft Second National Action Plan on Business and Human Rights (2023-2027) in 2023. In it, the Thai government acknowledged that “a large number of representatives of civil society and human rights defenders consider [] the enforcement of” recently enacted anti-SLAPP provisions “as insufficient to terminate” SLAPPs.²²⁵ In particular, the draft noted that existing laws “do not explicitly protect the exercising of human rights and fundamental liberties,” “use ambiguous and vague terms,” “do not come with clear operational guidelines, so officials are reluctant to exercise statutory powers,” do “not contain any mechanisms for officials to refuse a prosecution order when litigation is considered [a SLAPP],” and “do not have any screening processes to prevent bad faith” SLAPPs.²²⁶

This case lends credence to these concerns.

To comply with its obligations under international law to protect freedom of expression, we respectfully recommend that Thailand implement the following reforms, which were previously advanced by TrialWatch and Dr. Farrington in September 2024²²⁷:

1. introduce robust anti-SLAAP measures that apply to cases brought by both private parties and public prosecutors;
2. provide a clear definition of “public interest,” “public participation” and “abusive proceedings”²²⁸;

²²⁵ (Draft) *Second National Action Plan on Business and Human Rights (2023-2027)*, Rights and Liberties Protection Department and the National Institute of Development Administration (May 2022), at 122–123, https://icj2.wpenginepowered.com/wp-content/uploads/2022/08/The-Second-NAP-on-BHR_July-2022-EN.pdf.

²²⁶ *Id.*

²²⁷ Dr. Francesca Farrington, Saovanee Kaewjullakarn, and TrialWatch, *Solving SLAPPs: Identifying and Addressing Gaps in Thailand's Anti-SLAPP Framework* (Sept. 2024), https://cfj.org/wp-content/uploads/2024/09/Thailand-SLAPPs-Report-Final_September-2024.pdf.

²²⁸ An “act of public participation” means any expression or expressive act carried out on a matter of public interest, and any preparatory, supporting or assisting action directly linked thereto. This includes but is not limited to complaints, petitions, participation in public hearings, academic research, journalism and whistleblowing activities concerned with matters of societal importance, administrative or judicial claims, protests, and demonstrations. “Abusive proceedings” means court proceedings brought in relation to an act of public participation that have some features of an abuse of process. Such features may include but are

3. empower courts to dismiss abusive proceedings at an early stage and through an accelerated hearing on application of the defendant or on their own initiative;
4. empower courts to order a stay of the main proceedings while the question of dismissal is being heard;
5. require preliminary hearing on dismissal to occur within three months of filing, unless an extension is deemed necessary. Similarly, the question of dismissal should be decided within a maximum six months of filing, unless an extension is deemed necessary;
6. place the burden on the claimant to prove during the preliminary hearing that the case is likely to proceed at trial and does not constitute an abusive court proceeding (as clearly defined in the legislation);
7. provide for cost shifting mechanisms including damages, costs, and, where appropriate, dissuasive penalties;
8. require courts to provide reasons for and publicize their decision on the motion.

In order to minimize plaintiffs' ability to circumvent anti-SLAPP protections and strengthen the effectiveness of these provisions, the Thai Criminal Procedure Code should also be amended to establish a single set of consistent criteria for inquiry officers, public prosecutors, and courts to identify and dismiss at an early stage and through an accelerated process, SLAAPs across all stages of legal proceedings.

not limited to: The scope of the claim, including whether there is a real risk it will deter acts of public participation beyond the issues in dispute; the excessive or unreasonable nature of the claim, or part of it, including but not limited to remedies sought by the claimant; any disproportion between the resources deployed by the claimant and the likely legitimate benefit of the proceedings to the claimant if the claim succeeds; the claimant's litigation conduct, including but not limited to the choice of jurisdiction, the use of dilatory strategies, excessive disclosure requests, or the use of aggressive pre-action legal threats; any failure to provide answers to good faith requests for pre-publication comment or clarification; the seriousness of the alleged wrong, and the extent of the previous publication; the history of litigation between the parties and previous actions filed by the claimant against his party or others against acts of public participation; any refusal without reasonable excuse to resolve the claim through alternative dispute resolution; tangential or simultaneous acts in other forums to silence or intimidate the defendant or related parties; and any feature that suggests the lawsuit has been brought with the purpose of intimidating, harassing, or otherwise forcing the defendant into silence. A "matter of public interest" is defined as an issue that affects the public to such an extent that it may legitimately take an interest in it. See UK Anti-SLAPP Coalition, *Model Anti-SLAPP Law*, <http://antislapp.uk/wp-content/uploads/2023/05/Model-UK-ANti-SLAPP-Law-Final-Version.docx.pdf>; Council of Europe, *Recommendation CM/Rec(2024) 2 of the Committee of Ministers to Member States on Countering the use of Strategic Lawsuits against Public Participation (SLAPPs)*, (Apr. 4, 2024), <http://rm.coe.int/0900001680af2850>.

Further, Thailand should enact the following measures to impose costs for such abuse of its criminal justice system:

- amend the Criminal Procedure Code to create a new default, by which filers are required to indemnify SLAPP targets for total litigation and other associated costs where a case is dismissed by a court as a SLAPP. The benefits of establishing such an indemnification provision, which would not require targets to file a separate lawsuit, would be twofold: (1) adverse consequences will deter filers from filing SLAPPs; and (2) indemnification will help alleviate some of the burdens on targets. Where the dismissed suit is filed by public prosecutors, compensation must come from the State, potentially from a specific fund developed for this purpose.
- amend the Criminal Procedure Code so that courts can award punitive damages when dismissing cases as SLAPPs. In line with practices in other jurisdictions, this should not require the filing of a separate claim, so as to alleviate the burden on SLAPP filers, and would be within the court's discretion as part of its decision dismissing the case.
- take steps to protect prosecutors and investigating officers from undue influence or pressure. As described above, prosecutors and inquiry officers in Thailand may fail to exercise their power to suggest a non-prosecution order due to the fear of retaliatory legal action. In this regard, paragraph 4 of the UN's *Guidelines on the Role of Prosecutors* requires States to ensure "that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability."²²⁹

It is imperative Thailand take steps to ensure that journalists and human rights defenders such as Dr. Sidasathian are not subjected to a campaign of legal harassment and intimidation and ensure that their rights are protected.

²²⁹ United Nations Office of the High Commissioner for Human Rights, *United Nations Guidelines on the Role of Prosecutors* (1990), <https://www.ohchr.org/sites/default/files/prosecutors.pdf>.