

TYRANNY TRACKER

Monitoring the Global State of Democracy



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1. Introduction

The Tyranny Tracker is a comprehensive qualitative assessment designed to monitor and assess instances of political freedom, tyranny, and human rights abuses in 206 countries and territories globally. The Tracker stems from an activist approach as an accessible and transparent tool for general public awareness and for journalists, policymakers, academics, civil society, human rights advocates and practitioners to gauge regime types in countries.

This literature review and methodology are written with the idea of representing a global framework in which the Tyranny Tracker measurement index from the Human Rights Foundation (HRF) is positioned. A critical viewpoint on this instrument will be represented.

2. Literature Review

This literature review aims to provide a comprehensive overview of how democracy and, consequently, authoritarianism are defined. According to the definitions of democracy, we will explore three pillars based on HRF's methodology when categorising a democracy: electoral competition, freedom of dissent and judicial independence.

2.1 Defining Democracy and Authoritarianism

2.1.1 Democracy

It is generally accepted that democracy is a human construct. As such, it is created and developed according to the needs of different historical periods¹. The definition of democracy is still contested in the academic world. Having failed to find a consensus for a definition, several indices have been proposed and used over the years to measure democracy². The definition can generally be categorised as maximalist or minimalist³. These two categories of definitions come with their limitations. The definitions that classify maximalists are too broad and include some factors not necessarily linked with democracy (for example, property

¹ Alain Supiot, 'Democracy Laid Low by the Market', *Jurisprudence* 9, no. 3 (2 September 2018): 449–60, <https://doi.org/10.1080/20403313.2018.1545734>.

² Boese, V. A. 'How (Not) to Measure Democracy'. *International Area Studies Review* 22, no. 2 (1 June 2019): 95–127. <https://doi.org/10.1177/2233865918815571>.

³ Munck, Gerardo L., and J. Verkuilen. 'Conceptualizing and Measuring Democracy: Evaluating Alternative Indices'. *Comparative Political Studies* 35, no. 1 (1 February 2002): 5–34. <https://doi.org/10.1177/001041400203500101>.

rights⁴). Respectively, the minimalist definitions are too specific, resulting in omitting important values (for example, the legal system⁵) that are decisive in analysing a democracy⁶.

In the case of a maximalist approach, researchers managed to avoid the problem by considering procedural democracy as a definition. The latter is represented in the works of Schumpeter and Przeworski, who define the democratic system as a political regime that establishes competitive elections to express the will of the citizens⁷. Their procedural definition of democracy is complementary to the pluralist approach developed by Dahl earlier, which defines democracy as a government that is continuously accountable to its citizens and holds them politically equal⁸. Dahl's book revolutionised subsequent work by identifying a new framework consisting of eight criteria:

“(1) freedom to form and join organisations, (2) freedom of expression, (3) right to vote, (4) eligibility for public office, (5) right of political leaders to compete for support and right of political leaders to compete for votes, (6) alternative sources of information, (7) free and fair elections, (8) institutions for making government policies depend on votes and other expressions of preference”⁹.

These criteria help explore what conditions and factors influence the process of a regime in becoming more liberal and more inclusive¹⁰. As O'Donnell remarks, the definition is still not exhaustive¹¹. In fact, he believes that democracy has three important components. The first two, which were already studied by Dahl and other authors, relate to the characteristics and

⁴ Gastil, R. D. 'The Comparative Survey of Freedom: Experiences and Suggestions'. *Studies In Comparative International Development* 25, no. 1 (1 March 1990): 25–50. <https://doi.org/10.1007/BF02716904>.

⁵ Møller, J., and S.E. Skaaning. 'Beyond the Radial Delusion: Conceptualizing and Measuring Democracy and Non-Democracy'. *International Political Science Review* 31, no. 3 (2 August 2010): 261–83. <https://doi.org/10.1177/0192512110369522>.

⁶ Munck, Gerardo L., and J. Verkuilen. 'Conceptualizing and Measuring Democracy: Evaluating Alternative Indices'. *Comparative Political Studies* 35, no. 1 (1 February 2002): 5–34. <https://doi.org/10.1177/001041400203500101>.

⁷ Adam Przeworski, *Democracy and Development: Political Institutions and Well-Being in the World, 1950-1990* (Cambridge University Press, 2000).; Schumpeter, Joseph A. *Capitalism, Socialism and Democracy*. New York: Harper Perennial, 1976.

⁸ Dahl, R. A. *Polyarchy: Participation and Opposition*. Yale University Press, 2008.

⁹ Dahl, R. A. *Polyarchy: Participation and Opposition*. Yale University Press, 2008.

¹⁰ Dahl, R. A. *Polyarchy: Participation and Opposition*. Yale University Press, 2008.

¹¹ O'Donnell, G. A. 'Democracy, Law, and Comparative Politics'. *Studies in Comparative International Development* 36, no. 1 (1 March 2001): 7–36. <https://doi.org/10.1007/BF02687583>.

conditions for fair elections, while the third component concerns the legal system that ensures the fulfilment of the first two attributes¹².

The problem of minimalist definitions is still widespread in indices used by academics, unlike maximalist definitions¹³. In this category, we find the definitions of Schumpeter and Przeworski, as their approach evaluates the exclusive election where they only consider electoral competition and not the fairness of elections and the universality of the electorate¹⁴. By defining democracy in a minimalist manner, i.e. by not assessing many criteria concerning the competitiveness of elections, the results will show more countries that are regarded in the grey area which in the HRF definition will be considered as hybrid autocracies¹⁵. Moreover, their procedural approach does not consider gender-based violence that is manifested in several contemporary democratic countries¹⁶. Through these democracies, methods are used, or subjects are voted in, that take away women's rights. This represents a growing concern about the democratic system that fails to guarantee rights to an essential part of the population. As Refle affirms, democracy is multidimensional, and for this reason, if we decide to concentrate only on one approach, we will miss other essential dimensions¹⁷.

In light of these aspects, we can consider the HRF definition of democracy minimalist since it is based on three specific pillars that limit the approach: electoral competition, freedom to dissent, and judicial independence. Democracy is also defined as a “*government by and for the people*”¹⁸, or “*in a democracy, the government exists to serve the people*”¹⁹, or “*contemporary democracy is of the people and, because of this, it should also be for the*

¹² Møller, J., and S.E. Skaaning. ‘Beyond the Radial Delusion: Conceptualizing and Measuring Democracy and Non-Democracy’. *International Political Science Review* 31, no. 3 (2 August 2010): 261–83.

<https://doi.org/10.1177/0192512110369522>; Przeworski, *Democracy and Development.*; Schumpeter, Joseph A. *Capitalism, Socialism and Democracy*. New York: Harper Perennial, 1976.

¹³ Munck, Gerardo L., and J. Verkuilen. ‘Conceptualizing and Measuring Democracy: Evaluating Alternative Indices’. *Comparative Political Studies* 35, no. 1 (1 February 2002): 5–34.

<https://doi.org/10.1177/001041400203500101>.

¹⁴ Przeworski, *Democracy and Development.*; Schumpeter, Joseph A. *Capitalism, Socialism and Democracy*. New York: Harper Perennial, 1976.

¹⁵ Møller, J., and S.E. Skaaning. ‘Beyond the Radial Delusion: Conceptualizing and Measuring Democracy and Non-Democracy’. *International Political Science Review* 31, no. 3 (2 August 2010): 261–83.

<https://doi.org/10.1177/0192512110369522>.

¹⁶ Nitasha Kaul, ‘The Misogyny of Authoritarians in Contemporary Democracies’, *International Studies Review* 23, no. 4 (15 December 2021): 1619–45, <https://doi.org/10.1093/isr/viab028>.

¹⁷ Refle, J.E. ‘Measuring Democracy among Ordinary Citizens—Challenges to Studying Democratic Ideals’. *Frontiers in Political Science* 4 (2022). <https://www.frontiersin.org/articles/10.3389/fpos.2022.934996>.

¹⁸ Lijphart, A. *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*. 2nd ed. Yale University Press, 2012.

https://ebookcentral.proquest.com/lib/graduateinstitute/detail.action?pq_origsite=primo&docID=3421026. (pp. 1)

¹⁹ Gandal, M, and C.E. Finn. ‘Teaching Democracy’. *Institute for Contemporary Studies*, 1995. <https://permanent.access.gpo.gov/lps61550/freedom2.htm>. (pp.3)

people’’²⁰. In all these definitions, the common point is that the people are at the core of democracy's reason for existing.

A further limitation is the Eurocentric/ West-centric approach those theories and definitions of democracy present. Indeed, the latter is often qualified by the experiences and canons of the global north, resulting in the exclusion of knowledge derived from the struggle for democracy that countries with a colonial history have experienced²¹. In fact, Koelble and Lipuma argue that the Euro/American governance model is even inappropriate for postcolonial countries²². The importance of defining democracy is particularly felt by those living in countries affected by the policies of the rich West²³. From this perspective, the HRF definition is particularly limited to a West-centric approach, as it is based on definitions and values considered to be from the global north. Although their definition follows Western ideas, their approach engages the civilian population and experts in the region. This represents an important aspect because, especially for a post-colonial country, civil society is at the heart of decision-making to establish a democracy²⁴. Furthermore, by maintaining a Western view, western governments designate militant groups as terrorist, while the population recognises their authority more than that of the government established by the West²⁵. Therefore, what is considered Western democracy is not necessarily the final and universally right destination of a democratic system²⁶. As Zakaria wrote, *“Just as nations around the world have become comfortable with many variants of capitalism, they could adopt and sustain various forms of democracy”*²⁷.

²⁰ O’Donnell, G. ‘The Quality of Democracy: Why the Rule of Law Matters’. *Journal of Democracy* 15, no. 4 (2004): 32–46.: p.9.

²¹ Brooks, Heidi, Trevor Ngwane, and Carin Runciman. ‘Decolonising and Re-Theorising the Meaning of Democracy: A South African Perspective’. *Sociological Review* 68, no. 1 (1 January 2020): 17–32. <https://doi.org/10.1177/0038026119878097>.

²² Koelble, Thomas A., and Edward Lipuma. ‘Democratizing Democracy: A Postcolonial Critique of Conventional Approaches to the “Measurement of Democracy”’. *Democratization* 15, no. 1 (1 February 2008): 1–28. <https://doi.org/10.1080/13510340701768075>.

²³ Coppedge, Michael, John Gerring, David Altman, Michael Bernhard, Steven Fish, Allen Hicken, Matthew Kroenig, et al. ‘Conceptualizing and Measuring Democracy: A New Approach’. *Perspectives on Politics* 9, no. 2 (June 2011): 247–67. <https://doi.org/10.1017/S1537592711000880>.

²⁴ Coppedge, Michael, John Gerring, David Altman, Michael Bernhard, Steven Fish, Allen Hicken, Matthew Kroenig, et al. ‘Conceptualizing and Measuring Democracy: A New Approach’. *Perspectives on Politics* 9, no. 2 (June 2011): 247–67. <https://doi.org/10.1017/S1537592711000880>.

²⁵ Banerjee, Subhabrata Bobby. ‘Decolonizing Deliberative Democracy: Perspectives from Below’. *Journal of Business Ethics* 181, no. 2 (1 November 2022): 283–99. <https://doi.org/10.1007/s10551-021-04971-5>.

²⁶ Fareed Zakaria, ‘The Rise of Illiberal Democracy’, *Foreign Affairs* 76, no. 6 (1997): 24.

²⁷ Dahl, R. A. *Polyarchy: Participation and Opposition*. Yale University Press, 2008.

2.1.2 Authoritarianism

The origin of authoritarianism finds its roots in multidisciplinary research, encompassing psychology, sociology, anthropology and so on. The Berkeley research group's *Studies in Prejudice* regarding authoritarianism was arguably the original and pioneering research in shaping the concept of authoritarianism²⁸. This research group listed nine traits as a component of authoritarian syndromes or personalities. Having undergone empirical scrutiny, these researchers formulated the well-known F-Scale based on the results. Despite its ideological underpinnings, the scale persists today in aiming to find adequate measurements to authoritarianism.

Building on this groundwork, Altemeyer reduced this F scale of nine facets to only three, designed to measure authoritarianism as a one-dimensional structure²⁹. This concept of Right-Wing Authoritarianism (RWA) focused on these three clusters: authoritarian submission, authoritarian aggression, and conventionalism. By reducing the multifaceted nature of the F-Scale to a more streamlined, one-dimensional structure, Altemeyer contributed to the development of a more focused approach to measuring authoritarianism. Additionally, he characterised the RWA scale as essentially unidimensional, simplifying the intricate landscape of authoritarian traits, yet nonetheless holistic approaches³⁰.

Nevertheless, when attempting to scale and identify authoritarianism, the process becomes complex due to the conceptual challenges arising from the ambiguous space between democratic and non-democratic systems—in other words, the 'grey zone'. Hybrid regimes, a product of this conceptual uncertainty, triggered lively academic debates³¹. Furthermore, the notion that hybrid regimes fit into the 'transitional' process, suggested by Linz, is noteworthy³². In contrast, some scholars analyse that hybrid regimes are not the transitional phase between democracy and authoritarianism but rather a change that begins within these types of authoritarianism. In the broader context, Bunce and Wochik argued that hybrid

²⁸ Horkheimer, Max, Theodor W. Adorno, and Samuel H. Flowerman. *The authoritarian personality: Studies in prejudice*. N.Y.: Wiley, 1964.

²⁹ Altemeyer, B. "The Other 'Authoritarian' Personality," *Advances in Experimental Social Psychology* 30 (1998): 47-91

³⁰ Altemeyer, B. (1996). *The authoritarian specter*. Cambridge, MA: Harvard University Press

³¹ Levitsky, Steven, and Lucan A. Way. "The Rise of Competitive Authoritarianism." *Journal of Democracy* 13, no. 2 (January 1, 2002): 51–65. Ottaway, M. "Democracy Challenged: The Rise of Semi-Authoritarianism." *Foreign Affairs* 82, no. 3 (January 1, 2003): 147. Schedler, A. "The Menu of Manipulation." *Journal of Democracy* 13, no. 2 (January 1, 2002): 36–50.

³² Linz, J. J. (1964). An authoritarian regime: Spain. In E. Allardt & Y. Littunen (Eds.), *Cleavages, ideologies, and party systems: Contributions to comparative political sociology*. Helsinki: Transactions of the Westermarck Society.

regimes themselves can be ambiguous and subject to interpretation³³. Thus, it must be adequately completed, such as Levitsky and Way characterising a specific model of hybrid regime named as ‘competitive authoritarianism’³⁴. If the sole criterion of authoritarianism were the level of competitiveness, though, a continuous measure of competitiveness instead could potentially act as a proxy for assessing the level of democracy.

Interestingly, Schedler has developed “electoral authoritarianism”, which is a specific model of authoritarianism—not a hybrid regime³⁵. Electoral authoritarianism characterises regimes that give an illusion of multi-party democracy yet manipulate elections to render them ineffective. The core objective of this regime remains consistent: the stability of authoritarian rule to be upheld through the institution of electoral manipulation. Furthermore, HRF’s distinction of fully authoritarian regimes consists of not only having denied ‘electoral competition’ but also “basic political freedoms” and an efficient “independent judiciary”. Thus, it can be said that including electoral authoritarianism as a subtype of “fully authoritarian” while also breaking down “hybrid regimes” and “democratic regimes” into specific models serves as a more precise measurement of states. Additionally, electoral authoritarianism serves to include studies of the role of incumbent economic monopoly, which the Tyranny Tracker does not include in its 25 indicators. Yet, it is crucial to analyse an incumbent’s resource advantage for controlling an election, perhaps by considering it as an indicator within “electoral competition”.

Similar to that of hybrid regimes, Linz and Stepan refined the typology of authoritarian regimes by introducing categories such as “post-totalitarianism” and “sultanism” to establish finer distinctions within authoritarianism³⁶. Nevertheless, scholars such as Snyder and Mahoney claim that these distinctions are too “idiosyncratic”, posing challenges in the identification of authoritarian regimes at a global level—a significant notation for our project³⁷. Additionally, Karvonen contends that dictatorships lack civil rights, leading to close monitoring of citizens’ movements within civil society; a perspective of political freedom³⁸.

³³ Bunce V, Wolchik S. 2006. Favorable conditions and electoral revolutions. *J. Democr.* 17(4):5–18

³⁴ Møller, J., and S.E. Skaaning. ‘Beyond the Radial Delusion: Conceptualizing and Measuring Democracy and Non-Democracy’. *International Political Science Review* 31, no. 3 (2 August 2010): 261–83. <https://doi.org/10.1177/0192512110369522>.

³⁵ Schedler, A. “Electoral Authoritarianism: The Dynamics of Unfree Competition.” *Choice Reviews Online* 44, no. 04 (December 1, 2006): p.4-5.

³⁶ Linz, Juan J., and Alfred C. Stepan. 1996. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. Baltimore, MD: Johns Hopkins University Press.

³⁷ Mahoney, J., Snyder, R. Rethinking agency and structure in the study of regime change. *St Comp Int Dev* 34, 3–32 (1999).

³⁸ Karvonen, L. (2008). *Dictatorship: on the political system of freedom*. Stockholm: SNS publishing house.

Building on this, as we already described previously, Dahl further characterised authoritarianism as the violation and infringement of rights and individual freedom³⁹.

In many studies on the concept of authoritarianism, the distinction between autocracy and authority is often blurred⁴⁰. Autocracy and authoritarianism are frequently used interchangeably to describe non-democratic systems. Such a minimalistic definition is equal to Schumpeterian interpretation of the definition of democracy, as mentioned in the previous discussion⁴¹. Related to the topic of vagueness, Arendt made significant contributions to understanding the difference between authoritarianism and totalitarianism⁴². While authoritarian systems require a concentrated power in the hands of a dictator, totalitarian regimes surpass it by penetrating all facets of public and private life to the extent of eroding the concept of “*human rights*”, which people begin to perceive as “*hopeless idealism or fumbling feeble-minded hypocrisy*”⁴³.

In addition, while the electoral system is a key conceptualisation, it may fall short in explaining the complex situations of countries. When using definitions of competitive authoritarianism, for example, it fails to account for elements of inclusive citizen participation in regimes where elections are nonexistent under conditions such as authoritarian deliberation or soft-authoritarianism⁴⁴.

In essence, the study of authoritarian classification is an intricate one with various threads of conceptualisations and identifications. The ongoing evolution of measurement tools and conceptual framework attests to the complexity inherent in the study of authoritarianism.

³⁹ Dahl Robert A. 1989. *Democracy and Its Critics*. New Haven: Yale University Press.

⁴⁰ Tullock, G. (1987). *Autocracy*. Dordrecht: Kluwer Academic Publishers. Linz, Juan J.. *Totalitarian and Authoritarian Regimes*. Boulder, USA: Lynne Rienner Publishers, 2000. Teorell, Jan, and Axel Hadenius. “Pathways from Authoritarianism”. *Journal of Democracy* 18, no. 1 (January 2007): 143-56. Diamond, Larry. “Thinking about Hybrid Regimes.” *Journal of Democracy* 13, no. 2 (January 1, 2002): 21–35. Levitsky, A., &

⁴¹ Alvarez, M., Cheibub, J.A., Limongi, F. *et al.* Classifying political regimes. *St Comp Int Dev* 31, 3–36 (1996). O’donnel, G., A., Schmitter, P., C., *Transitions from Authoritarian Rule: Tentative conclusions about uncertain democracies*, Baltimore/London, Johns Hopkins University Press, 1986.

⁴² Hannah Arendt, ‘The Decline of the Nation-State and the End of the Rights of Man’, (1958), 267–305.

⁴³ Hannah Arendt, ‘The Decline of the Nation-State and the End of the Rights of Man’, (1958), 267–305: p. 269.

⁴⁴ He, Baogang, and Mark E. Warren. “Authoritarian Deliberation: The Deliberative Turn in Chinese Political Development.” *Perspectives on Politics* 9, no. 2 (2011): 269–89. Oksenberg, Michel. *China's Political System: Challenges of the Twenty-First Century*. The China Journal. (2001). 45. 21.

2.2 Three pillars

In this subchapter, we are looking specifically at the three pillars that define democratic or non-democratic states according to the Human Rights Foundation for the Tyranny Tracker project⁴⁵.

2.2.1 Electoral competition

Electoral competition is usually considered a core characteristic of a democracy, but every definition will consider various principles to evaluate it⁴⁶. Merkel looks at the elections from different angles, namely whether they are fair, regular and free⁴⁷. One of the criticisms of Merkel, Schumpeter and Przeworski's definition is that it assumes elections occur fairly, without any institutional oversight⁴⁸. In order to ensure that these concepts are respected, it is also necessary to observe the presence of a “*legal system that sanctions and supports the universalistic and inclusive attribution of these rights and duties*”⁴⁹.

HRF's definition of electoral competition is similar to that of Merkel but more comprehensive as it considers the possibility that even if a country declares an election, it is not guaranteed that it will conduct it in a fair way. This concept is better explained and dealt with in the third pillar concerning judicial independence.

One core question of political research is how to measure political competition. Electoral volatility has been used as a prominent measurement of the intensity of political competition within a given party system. This term, electoral volatility, analyses the degree of change in voting behaviour for different parties or candidates between elections. Pedersen utilises this model with the argument that the increase in political parties' vulnerability contributes to higher levels of competitiveness⁵⁰. Building on this, a research methodology that has not been seen with HRF is the evaluation of individual-level voting. These variables on voting behaviour may encompass factors such as education level, income, socioeconomic status and

⁴⁵ See HRF's full methodology attached for reference.

⁴⁶ Refle, J.E. 'Measuring Democracy among Ordinary Citizens—Challenges to Studying Democratic Ideals'. *Frontiers in Political Science* 4 (2022). <https://www.frontiersin.org/articles/10.3389/fpos.2022.934996>.

⁴⁷ Møller, J., and S.E. Skaaning. 'Beyond the Radial Delusion: Conceptualizing and Measuring Democracy and Non-Democracy'. *International Political Science Review* 31, no. 3 (2 August 2010): 261–83. <https://doi.org/10.1177/0192512110369522>.

⁴⁸ Knutsen, C.H. 'Measuring Effective Democracy'. *International Political Science Review* 31, no. 2 (4 June 2010): 109–28. <https://doi.org/10.1177/0192512110364736>.

⁴⁹ O'Donnell, G. A. 'Democracy, Law, and Comparative Politics'. *Studies in Comparative International Development* 36, no. 1 (1 March 2001): 7–36. <https://doi.org/10.1007/BF02687583>. (pp.18)

⁵⁰ Pedersen, M., N. "The Dynamics of European Party Systems: Changing Patterns of Electoral Volatility." *European Journal of Political Research* 7 (1): 1–26. (1979)

so on. When contesting hybrid regimes, this measurement can be useful as to how specific parties or representatives may get elected. The argument revolves around emphasising the potential to capture the intricate patterns of voter behaviour by analysing the choices made by these voters, which provides insights into the competitiveness of political parties. However, issues may arise as some authoritarian systems could present a facade of democracy with their elections—as explained with electoral authoritarianism—yet regimes often manipulate elections which overlook the availability of political choices. Mounk specifically examines that even within liberal democracies, populism is emerging as a concern⁵¹. Thus, a possible indicator could be to include an analysis of the government’s availability or previous records on public opinion surveys. This analysis of survey results could contribute to monitoring a lack of accountability mechanisms.

2.2.2 Freedom of dissent

On a general level, the very meaning of the concept of freedom of dissent has not been greatly explored. Dawood points out that although the concept of dissenting has been shared, there are two conceptual approaches to its function, that is, the legitimacy-detracting view and the legitimacy-enhancing view⁵². Thus, it can be argued that freedom of dissent diminishes the legitimacy and authority of law. Henderson shares a similar view that interprets dissent as a “*symptom of dysfunction*” that weakens authority through division⁵³. This perspective is rooted in an understanding of objectivity and adherence to the rule of law.

On the contrary, the legitimacy-enhancing view presents dissent as a crucial element, which is significant to take a stance on for this project. The right to dissent is considered “*one of the great and cherished freedoms*” in a state⁵⁴. For one thing, in this view, dissent acts to strengthen and reinforce the majority opinion within the legal and governmental structures. In addition, Wood similarly emphasises that dissent is significant because it holds the majority accountable⁵⁵. The value of dissent is thus tied to the idea of removing any injustices in

⁵¹ Mounk, Yascha. *The People vs. Democracy: Why Our Freedom Is in Danger and How to Save It*. Cambridge, MA and London, England: Harvard University Press, 2018. <https://doi.org/10.4159/9780674984776> Yascha Mounk, ‘The People vs. Democracy: Why Our Freedom Is in Danger and How to Save It’, in *The People vs. Democracy* (Harvard University Press, 2018), <https://doi.org/10.4159/9780674984776>.

⁵² Dawood, Y.. "Democracy and Dissent: Reconsidering the Judicial Review of the Political Sphere." *The Supreme Court Law Review: Osgoode’s Annual Constitutional Cases Conference* 63. (2013).

⁵³ Henderson, T., M, “From Seriatim to Consensus and Back Again: A Theory of Dissent” *Sup. Ct. Rev.* 283, at 283. (2007).

⁵⁴ William J. Brennan, Jr., “In Defense of Dissents” 37 *Hastings L.J.* 427, at 438. (1985).

⁵⁵ Diane P. Wood, “When to Hold, When to Fold, and When to Reshuffle: The Art of Decision Making on a Multi-Member Court”. 100 *Cal. L. Rev.* 1445, at 1445. (2012)

society through participatory parity or democratic participation. Leppanen supports this in his book by suggesting that if dissent were to be perceived as a characteristic against oppressive institutions, it should also be seen as a form of participation in society that is democratically justified⁵⁶.

Various concepts emerge from dissenting theory. For example, scholars Gutman & Thompson frame the question and of dissent and disagreement in a state within the context of deliberative democracy⁵⁷. Larsen and Dees similarly delve into the theory of dissent and its relation to communicative action⁵⁸. It's important to note that the concept of dissent has been used as a secondary relation to other social features, such as rights. However, the scholars mentioned above focus on the freedom of dissent as a primary feature of democratic political theory.

2.2.3 Judicial independence

The third pillar is particularly important since judicial independence is one of the basic traits of the rule of law, and as discussed prior, a necessary organ to assure the process of fair elections⁵⁹. Researchers are often divided into two branches, the first considering elections as the centre of the definition of democracy, and the second where the analysis is made around the legal dimension⁶⁰. As Gandal and Finn underline, having an independent judiciary is fundamental in a democratic government to avoid centralization of political power and, at the same time, allow fair elections through institutional control⁶¹. Moller and Skaaning differentiate four types of *defective democracy* in which one of the democratic principles is violated in each of them⁶². In the third and fourth categories, they address the problem of the rule of law, where they define *illiberal democracy* as a regime without strong executive and legislative control over the judiciary and *delegative democracy* as a government in which legislative and judicial power over the executive is weak.

⁵⁶ Leppänen, J. *A Political Theory of Dissent: Dissent at The Core of Radical Democracy*. University of Helsinki, Department of Political and Economic Studies. (2016)

⁵⁷ Gutmann, A. & Thompson, D. *Democracy and Disagreement* Ethics 108 (3):607-610 (1996).

⁵⁸ Larsen, Ø., & Dees, R., (TRANS.). *The Right to Dissent: Negative Discourse Ethics & Deliberative Democracy in a Divided Globalizing World*. Museum Tusulanum. (2009)

⁵⁹ Hayo, Bernd, and Stefan Voigt. 'Judicial Independence: Why Does de Facto Diverge from de Jure?' *European Journal of Political Economy* 79 (1 September 2023): 102454. <https://doi.org/10.1016/j.ejpoleco.2023.102454>.

⁶⁰ Refle, J.E. 'Measuring Democracy among Ordinary Citizens—Challenges to Studying Democratic Ideals'. *Frontiers in Political Science* 4 (2022). <https://www.frontiersin.org/articles/10.3389/fpos.2022.934996>.

⁶¹ O'Donnell, G. 'The Quality of Democracy: Why the Rule of Law Matters'. *Journal of Democracy* 15, no. 4 (2004): 32–46.

⁶² Møller, J., and S.E. Skaaning. 'Beyond the Radial Delusion: Conceptualizing and Measuring Democracy and Non-Democracy'. *International Political Science Review* 31, no. 3 (2 August 2010): 261–83. <https://doi.org/10.1177/0192512110369522>.

Judicial independence is defined by its formal level of independence (*de jure*) and the level actually realised (*de facto*), which sometimes do not coincide, and that explains the reason why Hayo and Voigt analyse how a difference develops between the two levels⁶³. They discovered that an increase in veto players, better press freedom and a higher level of democracy would bring *de facto* judicial independence towards *de jure* judicial independence⁶⁴. Similarly, Inglehart and Welzel discover that democracies have a lower gap between *de facto* and *de jure* judicial independence because in an effective democracy, normally, the government complies with the constitution differently than in a non-democracy⁶⁵.

2.3 Index Comparison

Additionally to positioning the Tyranny Tracker within the scope of the literature, it should also be comparatively analysed against the other available global indexes. The three main ones that are used globally and which we will compare the Tyranny Tracker to are the Freedom House Index⁶⁶, the Varieties of Democracy Methodology (V-Dem)⁶⁷, and the Democracy Index by the Economist Intelligence Unit⁶⁸ as these are some of the most prominent indexes worldwide used by policymakers, academics, and journalists.

2.3.1 Freedom in the World

The Freedom in the World index⁶⁹ was founded in 1973 within the context of the Cold War, although their methodology has been gradually adapted over the decades. It is currently funded by Google and various American family foundations. It is based on two indices, one assigning a political rights score and the other assigning a civil liberties score, which are then added up to categorise a country as: Free, Partly Free, or Not Free. In total, the political rights

⁶³ Møller, J., and S.E. Skaaning. 'Beyond the Radial Delusion: Conceptualizing and Measuring Democracy and Non-Democracy'. *International Political Science Review* 31, no. 3 (2 August 2010): 261–83. <https://doi.org/10.1177/0192512110369522>.

⁶⁴ Hayo, Bernd, and Stefan Voigt. 'Judicial Independence: Why Does de Facto Diverge from de Jure?' *European Journal of Political Economy* 79 (1 September 2023): 102454. <https://doi.org/10.1016/j.ejpoleco.2023.102454>. (pp.2)

⁶⁵ Inglehart, Ronald, and Christian Welzel. *Modernization, Cultural Change, and Democracy: The Human Development Sequence*. 1st ed. Cambridge University Press, 2001. <https://doi.org/10.1017/CBO9780511790881>.

⁶⁶ Freedom House. 'Global Freedom Status'. Freedom House, 2023. <https://freedomhouse.org/explore-the-map>.

⁶⁷ V-Dem Institute. 'The V-Dem Dataset – V-Dem'. V-Dem, Varieties of Democracy, 2023. <https://v-dem.net/data/the-v-dem-dataset/>.

⁶⁸ Economist Intelligence Unit. 'Democracy Index 2020'. Economist Intelligence Unit, 2023. <https://www.eiu.com/n/campaigns/democracy-index-2020/>.

⁶⁹ Munck, Gerardo L., and J. Verkuilen. 'Conceptualizing and Measuring Democracy: Evaluating Alternative Indices'. *Comparative Political Studies* 35, no. 1 (1 February 2002): 5–34. <https://doi.org/10.1177/001041400203500101>.

score is divided into three subcategories: electoral process, political pluralism and participation, and the operation of the government. The civil rights score is divided into four subcategories: freedom of expression, associational and organisational rights, rule of law, and personal autonomy and individual rights. The Freedom House index differs from the Tyranny Tracker in that the Tyranny Tracker is a broader index, focusing on the nation-state and the judicial process, whereas Freedom House also includes a focus on individual civil liberties, engagement and creation of civil society and freedom of movement in terms of employment, residence, and education for individuals. Dahl's definition of democracy is "a government which is continually responsible to its citizens and views its citizens as political equals" wherein citizens are able to "formulate their preferences" and have them weighed "equally"⁷⁰. Thus, the Tyranny Tracker being used as a tool for measuring authoritarianism lacks a focus on individual rights such as gender equality, freedom of religious choice and expression and other indicators enshrined in the UN Charter, as well as equal minority rights, though it does focus on freedom of dissent, in particular from a journalistic and reporting perspective in section 2 of the methodology⁷¹. Asenbaum notes that "a continuous interrogation of the everyday identity performances can contribute to personal experiences of freedom", meaning that indicators looking at individual and minority rights would demonstrate whether a person felt the positive effects of living in a democracy which includes freedom for all⁷². On the other hand, in Schumpeter's analysis of the measure of democracy, it is argued that "for different individuals and groups, the common good is bound to mean different things", thereby illustrating that a focus on larger groups creates blind spots in the analysis of democracy and that this would be a difficult indicator to implement efficiently⁷³.

Similarly, Freedom House has produced a 'Nations in Transit' index in 1995, which looks at 29 countries in Central Europe and Central Asia⁷⁴. The 7 indicators have some overlap with the Tyranny Tracker, such as looking at the independence of the media, the electoral process, and democratic governance. However, it also observes the enshrining of human rights protections in the constitution, what rights minority ethnic groups have, the treatment of prisoners, as well as compliance with the decisions of the judicial body. It can be argued that

⁷⁰Dahl, R. A. *Polyarchy: Participation and Opposition*. Yale University Press, 2008.

⁷¹ See appendix for HRF methodology in full.

⁷² Hans Asenbaum, 'The Politics of Becoming: Disidentification as Radical Democratic Practice', *European Journal of Social Theory* 24, no. 1 (February 2021): 3–173, <https://doi.org/10.1177/1368431020935781>.

⁷³ Schumpeter, Joseph A. *Capitalism, Socialism and Democracy*. New York: Harper Perennial, 1976, p.251

⁷⁴ Freedom House. 'Nations in Transit Methodology'. Freedom House, 2023. <https://freedomhouse.org/reports/nations-transit/nations-transit-methodology>.

an independent judiciary body may be independent from the government and operate within the bounds of the law, but that law may be one which discriminates against minorities or certain groups, thereby, by some definitions, impacting on the democratic nature of a state. Thus, by “*joining elements which are systems of distinct overarching attributes*”⁷⁵, there is a risk of making assumptions and conflating an independent judiciary with one that is fair to all ethnic groups, minorities, and individuals.

2.3.2 Varieties of Democracy (V-Dem)

The V-Dem Index is one of the most referred to in academic literature we have observed. It aggregates over 30 million data points from 1789 to 2021 for 202 countries and territories globally, has 3,700 country experts from nearly every country in the world making decisions on each country’s case as well as five expert opinions on each country classification⁷⁶. It follows a regime classification defined by Lüthmann et al. as defined by the Regimes of the World programme which has a more maximalist view of democracy as it accounts for more factors⁷⁷. Similarly to the Tyranny Tracker, it places a particular weight on the role of the electoral process when determining how democratic a state is. The main differences lie in that V-Dem is primarily a quantitative measure whereas the Tyranny Tracker is entirely qualitative. V-Dem ranks countries on a graph, including their score, and confidence interval. Based on their research and data, they argue that they are able to assess which features of ‘freedom and rights’ are being impacted. In their 2021 report, they note that in 44 countries, the suppression of civil society has been significantly aggravated. The other most declining indicators include ‘freedom of academic and cultural expression’, ‘freedom from torture’, and ‘CSO (civil society organisation) entry and exit’. If such indicators are so significant to illustrate a country moving from a more ‘democratic’ category closer to HRF’s definition of a ‘hybrid authoritarian’ category, it may indicate that the Tyranny Tracker’s methodology is lacking critical focus on individual rights due to the nation-state focus. Gagnon and Fleuss propose a framework for measuring democracy which focuses on democratic practices not just at the national level but by observing how democracy is practised in ‘social associations’ by “*measuring the quality and extent of democracy in those spaces “below” (i.e. local,*

⁷⁵ Alain Supiot, ‘Democracy Laid Low by the Market’, *Jurisprudence* 9, no. 3 (2 September 2018): 449–60, <https://doi.org/10.1080/20403313.2018.1545734>.

⁷⁶ Gastil, R. D. ‘The Comparative Survey of Freedom: Experiences and Suggestions’. *Studies In Comparative International Development* 25, no. 1 (1 March 1990): 25–50. <https://doi.org/10.1007/BF02716904>.

⁷⁷ Lüthmann, Anna, Marcus Tannenber, and Staffan I. Lindberg. ‘Regimes of the World (RoW): Opening New Avenues for the Comparative Study of Political Regimes’. *Politics and Governance* 6, no. 1 (19 March 2018): 60–77. <https://doi.org/10.17645/pag.v6i1.1214>.

subnational)” as well as the “*extent of democracy adoption by the actors in each of these spaces*”⁷⁸. To do so, they propose to not only observe top-down approaches but also to observe ‘associational spaces of democracy’ such as in workplaces, schools, and families. Flinders and Wood name these as ‘everyday’ or ‘mundane’ actions which contribute to democracy but take place outside political institutions⁷⁹. Thus, sub-indicators and additional parameters looking at the local and ‘mundane’ could be greatly beneficial to encompass a broader view of democracy, which can be compared beyond the national.

2.3.3 Democracy Index (DI)

The DI, created by the Economist Intelligence Unit in 2006, is a comparative and quantitative index with a weighted score on a scale from 0-10 calculated on an overall average rather than providing an answer on individual questions such as with the Tyranny Tracker⁸⁰. It is privately funded and UK-based. The scoring allows for a range of interpretation, comparability, and rankability across democracies globally. These are based on a measure of 60 indicators, grouped into five overall categories⁸¹. The index also includes two intermediary categories: ‘flawed democracy’ and ‘hybrid regime’ whereas the Tyranny Tracker has one named ‘hybrid authoritarian’. Ultimately, the DI also looks at ‘civil liberties’ and ‘political culture’ which is the main differing point to the Tyranny Tracker. Overall, the DI came under criticism for its lack of transparency when publishing its figures. Nevertheless, a commonality of all the indexes is that they follow the principle of an analytical understanding of democracy rather than a normative one, thereby attempting to measure what in fact is happening in a country rather than what democracy should look like.

3. Methodology Review

The purpose of this methodology report is to analyse the approach and methods used by HRF in their annual Tyranny Tracker by the Geneva Graduate Institute’s research team. In the final report, which includes the country research, a further analysis of the methodology will be included once it has been fully implemented.

⁷⁸ Jean-Paul Gagnon and Dannica Fleuss, ‘The Case for Extending Measures of Democracy in the World “Beneath”, “Above”, and “Outside” the National Level’, *Political Geography* 83 (November 2020): 102276, <https://doi.org/10.1016/j.polgeo.2020.102276>, p.2

⁷⁹ F Flinders and M Wood, ‘Nexus Politics: Conceptualizing Everyday Political Engagement’, *Democratic Theory* 5, no. 2 (n.d.): 56–81, p.57

⁸⁰ Møller, J., and S.E. Skaaning. ‘Beyond the Radial Delusion: Conceptualizing and Measuring Democracy and Non-Democracy’. *International Political Science Review* 31, no. 3 (2 August 2010): 261–83. <https://doi.org/10.1177/0192512110369522>.

⁸¹ Laza Kekic, ‘The Economist Intelligence Unit’s Index of Democracy’, *The World in 2007* (Economist Intelligence Unit, n.d.).

3.1 Summary of HRF methodology

HRF utilises a unique methodology that aggregates qualitative data to provide a nuanced and up-to-date assessment of the state of democracy around the world. Research is collated utilising various sources including verified and neutral news media, reports from on-ground NGO's, and other International Organizations' reports. This data is then consolidated through HRF's indicators as elaborated below. The final submissions are reviewed by HRF's team through their internal processes to be published as country reports for public and academic use.

The Human Rights Foundation's Legal and Policy Team developed the methodology and terminology to categorise countries into three regime types surveyed through the lens of three pillars. Each pillar is further measured against a total of 25 qualitative indicators justified by research fellows to gauge the pillar's strength as being either present, weakened, or absent.

HRF identifies the first pillar as the electoral competition pillar and gauges it by levels of how a real and mainstream opposition party can freely compete in elections. They specify that a mainstream political party "*can be measured in terms of vote share, but also in terms of cultural or social importance*"⁸². The second pillar, freedom of dissent, is measured by the media's, civil society's, organisations, and citizens' ability to challenge or criticise the government. The third is the judicial independence pillar which is calculated by the extent to which the judiciary and legal systems act as a check and balance on the regime, mainly in how they handle open opposition or criticism of their or the regime's policies, and if they undermine electoral competition or skew it in the regime's favour. Thereafter the Legal and Policy team categorises the regimes as aforementioned.

A regime is viewed as a democracy if all three pillars are present. However, they allow one of two pillars, either judicial independence, or freedom of dissent being weak in the assumption the other two pillars will act as a system of checks and balances.

Hybrid authoritarian regimes are those where either: all three pillars are weakened; electoral competition and one other pillar is weakened; only electoral competition is weakened; or if both freedom of dissent and judicial independence are weakened. HRF considers hybrid authoritarian regimes as a subtype of an authoritarian regime.

⁸² See HRF's full methodology attached for reference.

Fully authoritarian regimes are defined as regimes that systematically deny citizens participation in free and fair elections and basic political freedoms. All three pillars are absent or electoral competition is absent in fully authoritarian regimes. These regimes control all fundamental freedoms, This regime type also lacks an independent judiciary which checks the regimes repression of basic freedoms.

The 25 indicators aim to reflect circumstances and events that are relevant indicators of authoritarianism. Research fellows find substantive examples of each indicator and argue as to why they fit within each. Each indicator is answered with a ‘Yes’, ‘No’, or ‘Somewhat’ and examples are provided with justifications.

The Geneva Graduate Institute team of four researchers have been divided into teams of two to research the above pillars and indicators for one country per team, thus the output will be for two countries. Each of these indicators will be researched and answered by the research team. The team will utilise HRF’s recommendations for unbiased national and international news sources, reports from on-ground NGOs and civil society, and international organisations reports, along with reviewing judicial orders and any outstanding or recent International Criminal Court of Justice petitions or hearings relevant to the country.

3.2 Limitations

In conclusion, the HRF’s methodology is detailed and thought-through. However, in contrast to the most established indices, it lacks an overall focus on individual rights and liberties, ethnic minority rights, gender rights, and engagement on various issues (not necessarily ones against the regime), and therefore, a purely nation-state oversight may miss some crucial points regarding the individuals living in such a state. Ultimately, as Refle notes and we have noted in the literature review, “*democracy is multidimensional, but what the dimensions are is contested*”⁸³. Democracy is both theorised and practised, though most usefully thought of in practice which lends itself strongly to a qualitative analysis. However, each of the elements of analysis are often contestable and there lies the underlying tension between what one personally views as democracy and what indicators they would actually attribute to it. This is illustrated by the notion of hybridity which HRF aptly addresses with their ‘hybrid authoritarian’ categorisation. Thus, depending on the dimensions chosen, in HRF’s case: electoral competition, freedom of dissent, and judicial independence with a focus on the

⁸³ Refle, J.E. ‘Measuring Democracy among Ordinary Citizens—Challenges to Studying Democratic Ideals’. *Frontiers in Political Science* 4 (2022). <https://www.frontiersin.org/articles/10.3389/fpos.2022.934996>.

nation-state will lead to its own biases and interpretations of democracy, just as all other methodologies share their own strengths and weaknesses depending on the indicators evaluated. As Boese notes, the research and results produced will depend on the ‘research framework’ as every methodology has its own underlying assumptions and different definitions of democracy⁸⁴.

4. Critical Reflections

The purpose of this ARP project was to contribute to the Human Rights Foundation’s Tyranny Tracker wherein they classify each country according to the three pillars of electoral competition, freedom of dissent, and judicial independence discussed above. In teams of two, we undertook research on Thailand and Algeria, which will feed into their official launch in 2025 of the Tyranny Tracker. To do so, we followed HRF’s detailed methodology, answering 25 questions which form indicators according to three main pillars. Additionally, we created a long summary for each country and pillar to make an accessible version of the full document for viewers online. Our final findings were presented to the HRF general and specialised teams on the MENA and Asia-Pacific region on paper at the end of March. The final presentations took place on the 8th of May, 2024. The full reports can be found in an annex to this final document. Accordingly, we have regrouped as a team of four to write a combined and comprehensive critical reflection of the research process, our findings, and any challenges and limitations.

4.1 Data Collection and Analysis

The data collection process for Algeria involved some hurdles. Firstly, especially since the New Media Laws came into effect in 2023 and the constitution was amended in 2020, nearly all media emerging from Algeria itself is extremely censored. The New Media law expands oversight of media activities and undermines the credibility of Algerian journalists, thereby furthering repression and increasing state control over the media. Thus, all media must be approved by the government before it can be released, meaning that criticism from inside the country through media remains limited, although accessible in some forms, especially through social media and online independent blogs or news outlets. Nevertheless, reliable organizations such as Human Rights Watch, Amnesty International, Report without Borders, Article 19 and other investigative NGOs were consulted and used for all three pillars.

⁸⁴ Alain Supiot, ‘Democracy Laid Low by the Market’, *Jurisprudence* 9, no. 3 (2 September 2018): 449–60, <https://doi.org/10.1080/20403313.2018.1545734>.

Secondly, the articles were significantly skewed one way or the other, either from the freedom movements, such as the ones for the self-determination of Kabylie or the government itself. Finding impartial evidence about the state of the elections gained limited coverage globally. A primary media outlet which has followed Algeria closely is some French ones such as France24 or Le Monde as well as Al Jazeera. Because of its clear bias, the government's statements were used only to understand when and how a law was passed. Information about cases of arrested, condemned journalists, and judges or lawyers couldn't be found in the government's outlets. For the third pillar it was particularly difficult answer the different questions, because they were overlapping between them, and the information were difficult to find due to the government that hides the facts.

Similar to that of Algeria, the data collection process for Thailand also faced challenges, with the government repressing media information and articles while restricting foreign observers. The regime has taken various measures to censor and control media, notably through Thai media commissions such as the National Broadcasting and Telecommunications Commission (NBTC). This regulatory institution—responsible for overseeing the country's telecommunications industries—is strongly tied to the Thai military, which effectively serves as a censorship tool for the government. In addition, the Ministry of Digital Economy and Society has also been involved in suspending information, mostly through social media, by suspending the dissemination of certain information. Despite efforts to rely on foreign observers, obstacles persisted. In 2022, the Thai cabinet approved a draft of the Act on Operations of Not-for-Profit Organizations (NPO law), which grants the Thai regime authority over nonprofit groups and activists, including shutting them down and pressing charges. As such, the Thai government restricts heavily foreign sources, which can be seen in the number of foreign observers for elections. While the 2023 general elections showed transparency with a slightly increased number of observers, only one foreign observer was present in 2019, highlighting the difficulty to find sourcing information, especially for pillar one. Furthermore, there are numerous cases of foreign as well as Thai journalists being arrested, indicating minimal political dissent, contributing to the overall difficulty in accessing and finding available data and sources.

4.2 Findings

Algeria has been ruled by the Front Liberal National (FLN) party since the end of the civil war in 2002. The current president is Abdelmajid Tebboune. The FLN was at the forefront of

the War of Independence against the French occupation and, therefore, holds close ties to the military, thereby creating an opaque and skewed electoral process. In 2019, Algeria was significantly marked by the Hirak movement since 2019 when Bouteflika, the previous president for 20 years, announced he would be running for a fifth consecutive term. The Hirak protests were successful in ending Bouteflika's rule, although the FLN, Bouteflika's party, remains in power. Additionally, the Interior Ministry approves parties according to laws it has drafted, meaning that many cannot meaningfully compete.

Media and freedom of dissent are heavily repressed in Algeria. Media, political leaders, civil society leaders, organisations, and regular people are censored, harassed, arrested, or detained if they criticise or challenge the government. The New Media Law passed in 2023 censors all media, as the government now has authority over anything published in all outlets.

Since Algeria's independence in 1962, the military has influenced political affairs, and the latter has influenced judicial power. New antiterrorism and media laws have enabled Algeria to arrest significant opposition leaders or those who criticise the government. Furthermore, the new constitution has allowed the government to ban opposition parties further.

This year is incredibly important as presidential elections will take place in 2024. They were originally scheduled for December 2024, but in March, an early election was announced for September 2024. Therefore, much of this analysis could change or remain the same, making this a crucial year for Algerian politics.

Thus, our research on Algeria concluded that the three pillars were marked with a red X indicating authoritarianism. It was ultimately classified as fully authoritarian. Although there were some internal debates regarding whether the opposition in Algeria had a small but meaningful chance of success of winning, it was concluded from the research the military's power in repressing dissent and arresting members of the opposition was too significant. Furthermore, the FLN is too involved and holds power over the judiciary and electoral process to the extent that, so far, it is impossible to win against them.

The findings for Thailand are as follows. Thailand is a constitutional monarchy wherein the King wields considerable influence over political, judicial, and military affairs, notably as the commander-in-chief of the Royal Thai Army, and the approving authority for Prime Ministers and the judiciary. Following the abolition of the absolute monarchy in 1932, the nation has

undergone the adoption of 20 constitutions, with the latest iteration drafted in 2017 by the 2014-2019 military junta referred to as the National Council for Peace and Order (NCPO).

The nomination of the Prime Minister occurs through the lower house of parliament, known as the House of Representatives, with final approval conferred by the upper house, or the Senate, whose members are appointed by the Royal Thai Army. Past national elections have been marked with disqualification of political figures and the dissolutions of parties, highlighting the enduring influence of the monarchy and military in Thai politics.

Freedom of dissent is significantly curtailed in Thailand. Political campaigns calling for reforms to the monarchy invoke prosecution under the *lèse-majesté* law, the Computer Crime Act, Cybersecurity Act, and other provisions for curtailing freedoms which were emboldened by the 2017 Constitution. Additionally, minority issues and women's rights are areas that the regime has failed to address and represent in politics and governments. Same-sex marriage is also a right that has been continuously rejected by parliament.

Thailand's judiciary is nominally independent, with the king appointing judges based on recommendations from the Judicial Commission, which itself comprises judges approved by him. The 2017 constitution expanded the powers of the Constitutional Court, making it easier to impeach civilian leaders, dissolve political parties, and block legislation. Interpretation of this constitution prioritizes restrictions on freedom of expression and dissent, particularly through the use of *lèse-majesté* and criminal libel laws to silence critics. The Constitution also provided the government with power to intervene "*regardless of its effects on the legislative, executive, or judiciary*" to defend the country against national security threats. Political campaigning against its adoption was forbidden, indicating a lack of input by critics and citizens. Courts have also been accused of obstructing defendants' rights, such as denying access to evidence or legal counsel. These trends, combined, undermine the rule of law and democratic aspirations of the Thai people.

For these reasons, our research classified Thailand as being governed by a fully authoritarian regime. Though Thailand engaged in competitive elections, leading to significant victories for the opposition in parliament, unelected forces such as the Senate, Military, and Courts prevented the leading and popular parties from assuming government. Whenever a political party emerges as a perceived threat to the Thai conservative establishment and its key institutions—namely, the monarchy and the Royal Thai Army—the establishment promptly moves to neutralize the threat.

4.3 Reflections on the Research Process

In this section there will be explained different points of reflection and limitations that we could notice during our research. For each point, our case studies, i.e. Algeria and Thailand, will be used for a more comprehensive explanation.

4.3.1 Lack of consideration of social movements

In the research on Algeria, one of the main factors which led us to determine the country as authoritarian was the widespread repression of the Hirak movement. The Hirak protests began in 2019 and they called for democratic change, for Bouteflika to step down after a 20-year rule, freedom of speech and dissent, and the release of journalists and activists. Although HRF's methodology does consider repression and freedom of dissent as an entire pillar, popular opinion, expressed outside of voting patterns is not widely recognised. HRF's procedural approach does not consider social movements per se, which are an essential part of the concept of freedom to dissent and represent the criticism of the concepts established that define a democracy⁸⁵.

Similarly, workers' unions are not taken into account. They are a serious form of social mobilisation in a country fighting back against exploitative employment practices. Furthermore, unions are generally known for their representation of the interests of the working class and for building and sustaining a political democracy⁸⁶. Although this is a localised facet, employment rules and guidelines are enforceable by a country's government and this remains their responsibility. Trade unions can have a 'democratizing force' as long as they are democratic in their structures. Webb and Webb (1897) analysed British trade unionism from a scientific perspective and concluded that unions were "*a necessary element in the democratic state*"⁸⁷. To them, industrial democracy could be defined as "*a system of industrial relations in which arbitrary and irresponsible power*" that was replaced by one with accountable leaders to their workers while workers were accountable to the community as a whole. Such a process is clearly crucial to democratization. For instance, Regeni, a

⁸⁵ Trantidis, A. 'Is Government Contestability an Integral Part of the Definition of Democracy?' *Politics* 37, no. 1 (1 February 2017): 67–81. <https://doi.org/10.1177/0263395715619635>; Yıldırım, Yavuz. 'The Challenging Definition of Democracy at the Latest Collective Actions'. *Analele Universității Din București. Seria Științe Politice* XIX, no. 1 (2017): 65–76.

⁸⁶ Lucio Baccaro, Chiara Benassi, and Guglielmo Meardi, 'Theoretical and Empirical Links between Trade Unions and Democracy', *Economic and Industrial Democracy* 40, no. 1 (1 February 2019): 3, <https://doi.org/10.1177/0143831X18781714>.

⁸⁷ Sidney Webb and Beatrice Webb, *Industrial Democracy* (London ; New York : Longmans, Green, and Co., 1897), 825, <http://archive.org/details/industrialdemocr02webb>.

young PhD student was investigating the intersection of independent trade unions in the (non)democratization process in Egypt when he was kidnapped, tortured, and brutally killed by the el-Sisi regime. Previously students working on labor rights across Latin America, communist countries, and Africa were also kidnapped and killed⁸⁸. Additionally, notable research has been done in political science to prove this. In 1992, Rueschemeyer, Stephens, and Stephens compared 37 cases from the 19th and 20th century of democratization to illustrate that the working class was the one to most frequently promote full democratic rights⁸⁹. Nevertheless, this is debatable as their analysis did not look at Africa nor Eastern Europe. Some have alternatively argued that labor mobilisation is in fact a product rather than a prerequisite for democracy while others argue that democracy and capitalism cannot occupy the same space. Ultimately though, the weakening of workers unions can be linked to eroding democracy and therefore should be taken into account in analyses of democracies⁹⁰. In the case of Algeria, new unions require government approval which is extremely difficult to achieve. This means many unions are not legal and therefore subject to harassment, arrest, and shutdown by the government. For instance, the Autonomous National Union of Electricity and Gas Workers is qualified as an illegal entity and faced repeated harassment by the authorities. Similarly, Ramzi Derder, a member of the National Federation of Informal Workers was arrested in June 2021 on numerous charges including terrorism for his membership to the union⁹¹. These examples did not fit into HRF's methodology and therefore were left out but they seem to further back up the argument that Algeria is an authoritarian state. However, the globalization of the economy, the advent of multinational corporations have meant that impacts of exploitation on workers may go beyond democratic processes. This means that we may not only have to look at the local and national contexts but also the transnational dynamics at play when evaluating economic democratization. Albeit crucial, it does fall outside of HRF's scope. This links back to the notion of a 'minimalist' definition of democracy discussed in the literature review above. In all these definitions the common point is that the people are at the very core of democracy's reason for existing, and consequently, it is an important limitation not to consider the input legitimacy (derived from the citizens) when measuring it.

⁸⁸ Baccaro, Benassi, and Meardi, 'Theoretical and Empirical Links between Trade Unions and Democracy', 4.

⁸⁹ D Rueschemeyer, EH Stephens, and JD Stephens, *Capitalist Development and Democracy*. (Cambridge: Polity Press, 1992).

⁹⁰ Lucio Baccaro, 'Civil Society Meets the State: Towards Associational Democracy?', *Socio-Economic Review* 4, no. 2 (1 May 2006): 185–208, <https://doi.org/10.1093/SER/mwj031>.

⁹¹ Freedom House, 'Algeria: Freedom in the World 2022 Country Report', Freedom House, 2022, <https://freedomhouse.org/country/algeria/freedom-world/2022>.

4.3.2 Exclusion of the rights of women, minorities, and LGBTQI+ members

At the International Panel on Social Progress in 2016, it was concluded that “*democracy is an ally of the feminist project*”⁹². Spain can be seen as a novel example of a transition from a dictatorial state to a democratic one which reintroduced women’s citizenship rights and created institutions and laws to defend women’s rights⁹³. The Panel notes that a focus on *deep* democracy enable progress towards stronger women’s rights and equality in a country⁹⁴. Simultaneously, they illustrate how Spain’s shift towards neoliberalism, political corruption, and authoritarianism are linked to a process of ‘de-democratization’ which results in the weakening of women’s rights. Thus, Verloo argues that “*the more democracy, the more chances for gender equality; the more gender equality there is, the more chances for democracy*”⁹⁵. Correlations in empirical data have also revealed a significant relationship between women’s education, health, and socio-economic participation to democracy⁹⁶. As democracies allow more freedoms, these simultaneously coincide with freedoms for all and thus this should be analysed in greater detail for a more in depth analysis.

In our research on Algeria, we came across numerous instances of femicide, the exclusion of women and LGBTQI+ members from the rights agenda, and the repression of minorities. In fact, the Algerian penal code presents vague articles regarding the subjugation of women where the existence of the “condition of pardon” means that the woman does not have any legal protection to fight domestic violence⁹⁷. Many algerian’s woman associations try to fight for equal rights and, as we explained above, taking into account also different social movements is essential to measure democracies. During the Hirak protests in 2019, the Algerian authorities repressed very harshly the feminist groups that were in first line, consequently increasing gender-based violence against protestants. The researcher Ismahan

⁹² International Panel on Social Progress, ‘The Challenge of Gender Inequality Chapter 14’, Rethinking Society for the 21st Century, 2016, <https://comment.ipsp.org/chapter/chapter-14-inequality-challenge-democracy>.

⁹³ Maria Bustelo, ‘Three Decades of State Feminism and Gender Equality Policies in Multi-Governed Spain’, *Sex Roles* 74, no. 3 (1 February 2016): 107–20, <https://doi.org/10.1007/s11199-014-0381-9>.

⁹⁴ Charles Tilly, *Democracy* (Cambridge: Cambridge University Press, 2007).

⁹⁵ Mieke Verloo, ‘Episteme, Polity and Inequality Regimes: New Dynamics and Configurations’, *Paper Presented at the ECPR Joint Sessions*, 2017, 36, <https://ecpr.eu/Events/Event/PaperDetails/33835>.

⁹⁶ Aili Mari Tripp, ‘Political Systems and Gender’, in *The Oxford Handbook of Gender and Politics*, ed. Georgina Waylen et al. (Oxford University Press, 2013), 0, <https://doi.org/10.1093/oxfordhb/9780199751457.013.0020>.

⁹⁷ Zwen, ‘Algerian Women, Caught between an Unjust Legal System and an Unforgiving Society’, *Raseef22*, 10 May 2023, <https://raseef22.net/english/article/1093171-algerian-women-caught-between-an-unjust-legal-system-and-an-unforgiving-society>.

Ait Mesaoud underlined the increase of persecutions and defamation campaign against women as well as LGBTQ+ community, and the lack of legal guarantees for the protection of these minorities⁹⁸.

In Thailand's research, too, minority issues and women's rights are areas that the regime has failed to address and represent in politics and governments. Notably, same-sex marriage is also a right that has been continuously rejected by parliament.

However, there were no adequate spaces to categorise these in in HRF's methodology. Given that HRF's methodology is entirely qualitative and not quantitative, these sort of measures are challenging to incorporate and therefore to determine the status of a country on the democratic to authoritarian scale.

4.3.3 Westcentric approach

As noted earlier, the research process for the Tyranny Tracker involves identifying regimes that systematically violate human rights, documenting abuses, and disseminating findings to raise awareness and foster global pressure for change. Our research relied on a mix of primary sources, such as reports from local human rights organizations, and secondary sources, including news articles, academic papers, and international NGO reports. While the project aims to spotlight human rights abuses and promote accountability, a critical reflection reveals a noticeable eurocentric and westcentric bias in its approach.

This bias manifested in several ways, including not fully capturing the nuances of local contexts and may reflect the geopolitical interests of Western powers. In the case of the Thai regime, one blind spot in interpreting local social context was that of the King as a divine monarch. This status of divinity and reverence is one that enables regime officials and backers to uphold views and practices that favour the regime, and prevent the option for any other forms of governance to have ultimate decision-making powers. Another critique of the framing is it tends to portray Western values as the standard-bearers of human rights. This approach inadvertently marginalizes the serious issues within Western nations, such as systemic racism, police brutality, and the erosion of civil liberties, thus creating a skewed perception of global human rights conditions.

⁹⁸ Cairo Institute for Human Rights Studies, 'Algeria: Human Rights Activists Denounce Claims of Algerian UPR Delegation to the United Nations Regarding Human Rights Situation in the Country', 15 November 2022, <https://cihrs.org/algeria-human-rights-activists-denounce-claims-of-algerian-upr-delegation-to-the-united-nations-regarding-human-rights-situation-in-the-country/?lang=en>.

By focusing questions framed from a predominantly Western perspective, the Tyranny Tracker inadvertently promotes selective accountability. This approach risks reinforcing the notion that human rights abuses are primarily a non-Western problem, thereby undermining the universality of human rights. This not only stigmatizes entire regions but also overlooks the resilience and agency of local human rights defenders who work tirelessly to address abuses.

To enhance the fairness and comprehensiveness of the Tyranny Tracker, the HRF could consider incorporating a broader range of questions incorporating local nuances, and by expanding emphasis on local organizations from the countries being studied. Another important aspect could be to engage with non-Western perspectives and philosophies on Human Rights. This would provide a more nuanced understanding of the issues and mitigate the risk of Western-centric bias. This is understandably made difficult with access to local organizations and further translation issues. The methodology could also be improved with including more issues that affect Western democracies as well, such as police brutality, systemic racism, and LGBTQIA+ issues. This would reinforce the universality of human rights and promote a more equitable approach to accountability.

4.3.4 Focus on a national outlook rather than a local one

Ibarra developed the concept of ‘relational democracy’ which “*conceptualizes democracy as a set of relations between citizens and decisionmakers that aims at facilitating a greater convergence between citizens demands and political decision-making*”⁹⁹. *These relations include dynamics of autonomous social mobilization and more stable channels of local participatory democracy, whose limitation would indicate de-democratization*”¹⁰⁰. It is therefore crucial to look at public sentiment and not just freedom of dissent to analyse whether the population are satisfied with their government or not. For instance, in Algeria, a massive country-wide revolution took place known as the Hirak movement discussed above. However, on a more local scale, election boycotts took place in numerous parts of the country such as in Kabylie as they believed the elections were a sham.

⁹⁹ P Ibarra, *Relational Democracy* (Reno: Center for Basque Studies, 2008).

¹⁰⁰ Alba Alonso and Emanuela Lombardo, ‘Gender Equality and De-Democratization Processes: The Case of Spain’, *Politics and Governance* 6, no. 3 (14 September 2018): 79.

4.3.5 Limitations

The questions covered topics specific to the examples they provided, making it challenging to fit relevant information into predefined categories. This led to the research process requiring careful examination of accurate categorisations, complicating the depiction of a situation. In other words, the intricate issues within politics cannot be easily fit into neat boxes, especially when various factors are interrelated. Notably, for Thailand, the current Constitution drafted in 2017 is a significant issue as it was written by the appointed military junta. This Constitution grants the military the power to elect members from the Election Commission and Constitutional Court, which can also be seen through favoritism of pro-regime parties and figures. However, since the methodology documents gives specific answers for each question, the team was instructed to erase the information gathered on the Constitution and its power. Nevertheless, given that the constitution and its flaws have immense influence in Thai politics, it is undeniable that it should be included in the research discussion.

Similarly, there are questions from HRF's methodology evolving around formal aspects, such as the existence of elections, ignoring substantive issues. Von Soest and Grauvogel (2017) claim that the idea that autocracies lack ways to link political decisions to the citizens' desires, and therefore cannot assert legitimacy, may be oversimplifying the situation¹⁰¹. In other words, despite the lack of fair electoral processes, the regime can still claim a level of legitimacy by using the existence of elections, even though it may not reflect the citizens' preferences. Schedler (2006) further supports this by stating that this theory is especially true and worthy of careful examination for electoral authoritarian regimes¹⁰². In the study for Thailand, the first question on electoral competition addressed the presence of national-level elections. While Thailand does hold general elections to determine the government and prime minister, such as in the 2019 and 2023 elections, whether these elections accurately reflect the will of the voters remains a subject of debate. For instance, although the May 2023 Thai general election witnessed one of the highest rates of voter participation with nearly 40 million Thai voters, the existing legal framework fails to fully represent the population. However, the methodology's requirement to simply answer the presence of general-level elections fails to capture the full picture of Thailand's complex political landscape.

¹⁰¹ Christian Von Soest and Julia Grauvogel, 'Identity, Procedures and Performance: How Authoritarian Regimes Legitimize Their Rule', *Contemporary Politics* 23, no. 3 (3 July 2017): 287–305, <https://doi.org/10.1080/13569775.2017.1304319>.

¹⁰² Andreas Schedler, ed., *Electoral Authoritarianism: The Dynamics of Unfree Competition* (Lynne Rienner Publishers, 2006), <https://doi.org/10.1515/9781685857479>.

Another limitation factor is the safety and confidentiality of sources. In 2012, the Geneva Centre for Security Sector Governance (DCAF) published a detailed toolkit for trainers in the security sector governance. In particular, this document highlights the lack of knowledge and insufficiency of training of relevant laws and regulations of a country, which may infringe security in sensitive information¹⁰³. Similarly, a report from the United Nations Human Rights Council in 2022 highlighted the significance of maintaining integrity and accuracy of information and reporting, especially in a digital time¹⁰⁴. There are also other human rights organizations that repeatedly express the importance of the role of researchers, especially in other countries¹⁰⁵. Therefore, as graduate student researchers lacking specific training in the security sector from HRF, reporting on a foreign country required caution. When researching pro-democracy activists in Thailand and Algeria, we became increasingly aware of extreme prosecutions, especially to individuals who criticize the monarchy and its regime which is prohibited under the lèse-majesté law. This alarmed the team to use specific names or cases of people's arrest, as well as mentioning the monarch, which are all necessary information to provide sources, particularly under pillar one and two. In addition, foreign journalists are also not safe when working in Thailand, with frequent number of arrests and prosecutions. On an organisational level, foreign observer groups such as Amnesty International have faced heavy pressure and threat to shut down. Therefore, researching Thailand alarmed our group on the confidentiality and careful wording when presenting specific cases or arrests to ensure the safety of individuals, as well as preventing any misinterpretations. Additionally, representing HRF as a legitimate foreign organisation posed a significant challenge in this context.

5. Conclusion

In conclusion, our ARP project aimed to contribute to Human Rights Foundations Tyranny Tracker by researching and classifying Thailand and Algeria based on the pillars of electoral competitions, freedom of dissent, and judicial independence. Through our process of data collection and analysis, we encountered challenges, particularly due to the constraints of the questions from the methodology provided but also due to media censorship and government

¹⁰³ DCAF, 'Media Freedom and Security Sector Governance', n.d., https://www.dcaf.ch/sites/default/files/publications/documents/ENG_Media_Tool3.pdf.

¹⁰⁴ Irene Khan and UN Human Rights Council Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, 'Reinforcing Media Freedom and the Safety of Journalists in the Digital Age :: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Irene Khan', 20 April 2022, <https://digitallibrary.un.org/record/3973716>.

¹⁰⁵ Jean-Christophe Peuch and Mike Stone, 'OSCE SAFETY OF JOURNALISTS GUIDEBOOK', November 2011, <https://www.osce.org/files/f/documents/d/7/85777.pdf> Peuch and Stone.; UNESCO, 'Protecting Journalism Sources in the Digital Age', accessed 20 May 2024, <https://unesdoc.unesco.org/ark:/48223/pf0000248054>.

repression in both countries. Despite some obstacles, we presented our comprehensive findings and classified both nations as fully authoritarian using HRFs methodology. This was evidenced by their systematic suppression of political opposition, media freedom, and judicial independence.

Our reflection on the research process highlighted some other limitations in the methodology as well. The procedural approach overlooked the significance of social movements, labour unions, and certain minority rights. Additionally, the emphasis on the formal aspects of democracy, such as the existence and undertaking of elections, ignored substantive issues such as long-lasting electoral integrity and the influence of forces on election results. Finally, the eurocentric/westcentric approach risks neglecting human rights issues within Western nations, mainly women's rights amongst others highlighted above, and fails to fully incorporate the nuances of local contexts and complexities in non-Western societies. This confinement resulting from not engaging with non-western philosophies of human rights stymies a deeper understanding, and can be enhanced by diversifying sources to include more local perspectives (compared to a national overview) and non-Western philosophies. To enhance fairness of the Tyranny Tracker, the methodology could also include issues pertinent to Western Nations, that may affect their current democratic status.

Overall, the Tyranny Tracker is an indispensable and valuable tool and resource for highlighting human rights abuses globally and keeping regimes under review. By promoting a truly universal commitment to human rights and ensuring a balanced representation of global conditions, the Tracker can become even more effective in fostering global awareness and accountability.

Annexes

For a detailed analysis on Algeria and Thailand regarding how we categorised them as ruled by authoritarian regimes, see Appendix A and Appendix B for a country report submitted to the HRF:

- Appendix A: [Country Report](#) & [Country Summary](#) on Algeria
- Appendix B: [Country Report](#) & [Country Summary](#) on Thailand

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Algeria - Regime Classification

Electoral competition	✗
Freedom of dissent	✗
Judicial independence	✗

Overview

HRF classifies Algeria as ruled by a **fully authoritarian regime**.

Algeria is ruled by the Front Liberal National (FLN) party and has been since the end of the 11-year civil war in 2002. The current president is Abdelmajid Tebboune. The FLN was at the forefront of the War of Independence against the French occupation and, therefore, holds close ties to the military, thereby creating an opaque and skewed electoral process.

In 2019, Bouteflika, the previous president for 20 years, announced he would be running for a fifth consecutive term. The Hirak protests were successful in ending Bouteflika's rule, although the FLN, Bouteflika's party, remains in power. Additionally, the Interior Ministry approves parties according to laws it has drafted, meaning that many are not able to compete meaningfully. Changes to the constitution were made in the wake of Tebboune's 'new Algeria', where he called these new reforms a move towards more democracy. However, in effect, it strengthened the regime's powers under the guise of responding to the people's demands.

Media and freedom of dissent are heavily repressed in Algeria. Media, political leaders, civil society leaders, organisations, and regular people are censored, harassed, arrested or detained if they criticise or challenge the regime. In 2023, they were adopted three new media laws that expanded media activities that fell within the scope of the regime: the organic law on information, the law on the written and electronic press, and the law relating to the audio-visual activity (the Media Laws).

Since Algeria's independence in 1962, the military has influenced political affairs, and the latter has influenced judicial power. To illustrate, the new antiterrorism and media laws of 2020 and 2023 have enabled Algeria to arrest significant opposition leaders or those who criticise the regime, thereby weakening the electoral opposition and civil society through the military's influence. The military's role has been reinforced with the new draft constitution of 2020, where vaguely new laws leave space for interpretation. Consequently, the military is facilitated in intervening in civil and political matters when vital and strategic national interests are perceived as threatened. Furthermore, the new constitution has also allowed the regime to ban further opposition parties, such as by arresting leaders of the MAK and dissolving the LADDH. These new laws followed the Hirak protests, which successfully pressured the regime, followed by this major crackdown on numerous fronts with the new FLN government.

This year is crucial as presidential elections will take place in 2024. They were initially scheduled for December 2024, but in March, an early election was announced for September 2024. Therefore, much of this analysis could change or remain the same, making

this a crucial year for Algerian politics. The main authoritarian facet and particular aspect of Algeria's regime in comparison to other regimes is that the military does not necessarily ensure all the votes go to the FLN but rather that a meaningful opposition can never be created by arresting and intimidating members of political parties, civil society activists, and limiting free media.

Electoral competition

Elections are significantly skewed to the ruling FLN party. However, there is a slight chance that the opposition could win, especially considering the successes of the Hirak movement in getting Bouteflika to resign, although his party is still in power.

For political parties to operate legally in Algeria, they must first be approved by the Interior Ministry and the President. Thus, there is a significant hurdle for opposition parties to even run and form in the first place or to create a true opposition. According to the constitution, parties cannot be formed along ethnic lines or have separatist views, which leads to the disqualification of many parties. For instance, the Islamic Salvation Front (FIS) remains banned and currently, opposition groups such as Islamist groups or those aligned with the Hirak (protest/revolutionary) movement are banned from running.¹ Additionally, political parties that supported the Hirak movement and attempted to create their unified movements had numerous members arrested². Additionally, the elections of current president Tebboune were not largely free and fair. In 2021, the regime petitioned to dissolve the Youth Action Rally, a civil society organization whose president Abdelouab Fersaoui was imprisoned between October 2019 and May 2020 for "harming the integrity of the national territory" after his criticisms of the government policies appeared on Facebook³. On 30 June 2021, the leader of the Democratic and Social Movement, one of the main opposition parties, Fethi Ghares, was charged with "insulting the president of the republic" and "disseminating information that could harm national interest and undermine public order." MDS' activities were suspended by law due to non-compliance with Law 12-04 pertaining to political parties, and their headquarters were forcibly closed⁴. Furthermore, Tebboune has attempted to make some reforms to encourage political participation. The voter turnout for a vote on his revised constitution in 2020 were at an all-time low at 24%⁵ and there was only a 30% turnout for the vote in parliamentary elections. Voter participation, although not an indicator of authoritarianism in and of itself, in this case, was due to the widespread boycott of the

¹ Freedom House, 'Algeria', 2023.

² Arab Center Washington, 'In Algeria, the More Things Change, the More They Stay the Same', Arab Center Washington DC, 26 January 2022,

<https://arabcenterdc.org/resource/in-algeria-the-more-things-change-the-more-they-stay-the-same/>.

³ Human Rights Watch, 'Algeria: Events of 2021', 19 November 2021,

<https://www.hrw.org/world-report/2022/country-chapters/algeria>.

⁴ Peoples Dispatch, 'Algerian Leftist Party Leader Fethi Ghares Arrested on Trumped up Charges', *Peoples Dispatch* (blog), 5 July 2021,

<https://peoplesdispatch.org/2021/07/05/algerian-leftist-party-leader-fethi-ghares-arrested-on-trumped-up-charges/>.

⁵ Al Jazeera, 'Algerians Approve New Constitution after Referendum', Al Jazeera, 13 November 2020,

<https://www.aljazeera.com/news/2020/11/13/algerias-new-constitution-approved-official-results-show>.

regime's actions, which were deemed false and illegitimate. This is significantly tied to the military's close links with the regime.

2019 saw two waves of political mobilization from the Hirak movement. The first occurred on April 2 when Bouteflika resigned and agreed not to run for a 5th term. The second took place on July 4, when elections were eventually cancelled due to the vast boycott, abstention from important political figures, and substantial resistance from voters. Since 2019, President Tebboune of the FLN has run the country despite being elected during a time when many parties and civilians boycotted the elections due to the lack of transparency surrounding the process, the fact that any party associated with the Hirak was barred from running, and the extensive repression of dissidents. The elections were highly boycotted as the Hirak movement continued to call for a full reform of the political system and the ability for candidates to meaningfully compete⁶.

The regime and military also retain close relationships as their soldiers enjoy high salaries, political influence, and large budgets. Some analysts believe this is part of ensuring 'coup-proofing' by keeping the military happy and at bay. Furthermore, the role of defense minister of the army has been a coveted one which the president has kept for himself. Accordingly, Tebboune appointed himself as Minister of Defense once he took on the presidency, thereby elucidating the close link between presidential and military decision-making in Algeria. Bouteflika took power after the Black Decade - the ten-year civil war in the 1990s fought between the military and an Islamic insurgency. It ultimately led to the transition to a civilian government, appointed by the army and led by Bouteflika. Therefore, the ties between the military and the regime remain very close⁷. The army's legacy in politics has allowed its military elite to retain governing positions. For instance, Bouteflika protected military leaders in the 'Black Decade' during the civil wars in the 1990s from international prosecutions while receiving great support for his candidacy from the head of the intelligence services, Mohamed Mediene. Since 2019, President Tebboune of the FLN has run the country despite being elected during a time when many parties and civilians boycotted the elections. Accordingly, Tebboune appointed himself as Minister of Defense once he took on the presidency thereby elucidating the close link between presidential and military decision-making in Algeria⁸. Additionally, the new constitution empowered the military. Article 29 of the new constitution empowers the army. For the first time in history, the army can be deployed outside Algeria for 'peacekeeping missions'. This change has prompted debate and concerns about the military's role in society and how it is developing in relation to the political objectives of the FLN⁹. Additionally, the military has itself brought grave accusations against opposition leaders, such as those of the MAK and Rachad, movements for self-determination within Algeria. In 2020, the Algerian military announced that it would qualify them both as 'terrorist organizations' and for recruiting and training mercenaries to execute terrorist operations on Algerian soil. The military's ability to bring

⁶ Le Monde avec AFP, 'En Algérie, abstention record à l'élection présidentielle contestée', *Le Monde.fr*, 13 December 2019, https://www.lemonde.fr/international/article/2019/12/13/algerie-absention-record-a-l-election-presidentielle-contestee_6022695_3210.html.

⁷ Arab Center Washington, 'In Algeria, the More Things Change, the More They Stay the Same'.

⁸ Abdennour Toumi, 'Algeria's Military Changes and New Doctrine' (Ankara, Turkey, 2020).

⁹ Yasmina Allouche, 'A Breakdown of Algeria's New Constitution', *Middle East Eye*, 29 November 2020, <https://www.middleeasteye.net/news/algeria-new-constitution-breakdown>.

political and legislative accusations forth illustrates the strong ties between the regime and military apparatuses of Algeria.¹⁰

Although the electoral process is significantly skewed in the direction of the FLN, the opposition has an improbable yet slightly realistic chance of winning an election, especially since Bouteflika's resignation. The Hirak movement has been successful in demanding that Bouteflika not run for another term and in criticising the current government, despite the intensive threats they received for doing so. Ultimately, the elections are not a complete sham or façade and are still worthy of close analysis, especially as the upcoming elections arrive in 2024 to see whether Algeria is transitioning out of an era of complete erosion of democracy or will continue to uphold the status quo. Nevertheless, many indicators point to the latter, given the strong influence of the military in breaking down the opposition systematically by using the new antiterrorism legislature and only allowing state-sponsored media to be disseminated.

Freedom of dissent

In 2019, the Hirak protest movement started a new era of censorship from the Algerian regime. First, the protests were highly repressed, with more than 6,507 arrests, summons, and detentions¹¹. Furthermore, the COVID-19 pandemic represented the perfect context for enforcing social isolation and gradually imposing nationwide lockdowns. This gave the Algerian regime the power to implement the right to ban street rallies and go after activists¹². Many significant organisations, such as the RAJ (Rassemblement Actions Jeunesse) and the LADDH (Algerian League for the Defence of Human Rights), have been shut down since then. In June 2022, the administrative court of Algiers dissolved the LADDH¹³. It was the oldest independent human rights organisation in Algeria. Since 2019, both organisations have taken a prominent role in denouncing the crackdown on the Hirak protest movement and in supporting the protests against the government. Members of RAJ and LADDH support the idea that this is the main reason for their accusations¹⁴. Today, the RAJ remains shut down, its website is no longer accessible, and the last post on its Facebook page reports the court's decision to dissolve the organization¹⁵. The LADDH is no longer active, but in response to its dissolution, the organisation decided to set up a committee to safeguard it, known as the CS-LADDH (comité de sauvegarde de la LADDH).

¹⁰ H. Maacha, 'Algérie : Le MAK et Rachad classés comme « organisations terroristes »', 18 May 2021, <https://observalgerie.com/2021/05/18/politique/algerie-le-mak-et-rachad-classes-comme-organisations-terroristes/>.

¹¹ Rachidi, Ilhem. 'Repression in Algeria: Could It End The Hirak Movement?' Carnegie Endowment for International Peace, 29 July 2021. <https://carnegieendowment.org/sada/85060>.

¹² Arab Center Washington. 'In Algeria, the More Things Change, the More They Stay the Same'. Arab Center Washington DC, 26 January 2022. <https://arabcenterdc.org/resource/in-algeria-the-more-things-change-the-more-they-stay-the-same/>.

¹³ 'Algeria: Reverse Decision to Dissolve Leading Human Rights Group | Human Rights Watch', 8 February 2023. <https://www.hrw.org/news/2023/02/08/algeria-reverse-decision-dissolve-leading-human-rights-group>.

¹⁴ 'Algeria: Effort to Dissolve Prominent Civic Association | Human Rights Watch', 11 October 2021. <https://www.hrw.org/news/2021/10/11/algeria-effort-dissolve-prominent-civic-association>.

¹⁵ Facebook. 'RAJ - Algerie'. Accessed 5 May 2024. https://www.facebook.com/RajAlgerie/?locale=fr_FR.

The media coverage is not manipulated directly by the regime. Still, because it manipulates everything else beforehand, even through intimidation and arrests, the resulting media content has already been vetted, controlled and conditioned. In fact, the regime sees the press as a tool for political propaganda¹⁶. In 2023, the Algerian parliament adopted three new media laws that expanded media activities that fell within the scope of the government: the organic law on information, the law on the written and electronic press, and the law relating to audio-visual activity (the Media Laws)¹⁷. Article 2 of the law on audio-visual activity states that the government controls the publication of all news, images and opinions, as well as the spreading of events, messages, and ideas via any media (print, digital or audiovisual) that address the general public or a specific group. It is a pretext to allow the government to censor people publishing any sort of content and to get journalists subject to the penal code¹⁸.

Lastly, the overuse of the 'terrorist' label in Algeria and its expanded definition have allowed the state to arrest, interrogate, and dismantle various members of civil society and organizations under this pretext. Article 2 and Article 87 bis of the Penal Code state that it is considered a terrorist act, any action threatening state security, national unity, and institutional stability, including attempting to gain power or change governance through non-constitutional means and undermining the integrity of the national territory¹⁹. To bring an example, Article 87 bis allows to qualify peaceful critical voices and human rights defenders as terrorists²⁰. They were added to paragraphs 14 and 15, resulting in the following article: "Any act aimed at State security, national unity and the stability and normal functioning of institutions through any action designed to : [...] working or inciting, by whatever means, to gain access to power or to change the system of governance by non-constitutional means [§ 14]; undermining or inciting, by any means whatsoever, the integrity of the national territory [§ 15]"²¹. Such provisions are too vague and broad, and they don't define what is considered as national interest, leaving the provision open to interpretation.

The LADDH and the RAJ have been dismantled, and their members detained with terrorism charges²². Furthermore, Kaddour Chouicha, a university professor, national coordinator of

¹⁶ Malli Ragheb, 'Algeria: New Media Law Tightens Restrictions on Online Content', *SMEX* (blog), 2 October 2023, <https://smex.org/algeria-new-media-law-tightens-restrictions-on-online-content/>.

¹⁷ Article 19. 'Algeria: Mitigate Human Rights Threats of New Media Laws'. ARTICLE 19, 4 April 2024. <https://www.article19.org/resources/algeria-mitigate-human-rights-threats-of-new-media-laws/>.

¹⁸ Malli Ragheb, 'Algeria: New Media Law Tightens Restrictions on Online Content', *SMEX* (blog), 2 October 2023, <https://smex.org/algeria-new-media-law-tightens-restrictions-on-online-content/>.

¹⁹ MENA Rights Group, 'Le Président Algérien Durcit Par Ordonnance La Législation Antiterroriste', accessed 21 April 2024, <https://menarights.org/en/articles/le-president-algerien-durcit-par-ordonnance-la-legislation-antiterroriste>.

²⁰ Marianna Tzabiras, 'Algeria: Government Must Stop Targeting Human Rights Defenders and Amend Repressive Laws', IFEX, 8 September 2022, <https://ifex.org/algeria-government-must-stop-targeting-human-rights-defenders-and-amend-repressive-laws/>.

²¹ MENA Rights Group. 'Le Président Algérien Durcit Par Ordonnance La Législation Antiterroriste'. Accessed 21 April 2024. <https://menarights.org/en/articles/le-president-algerien-durcit-par-ordonnance-la-legislation-antiterroriste>.

²² Arab Center Washington Patricia Karam, 'In Algeria, the More Things Change, the More They Stay the Same', Arab Center Washington DC, 3 October 2023, <https://arabcenterdc.org/resource/in-algeria-the-more-things-change-the-more-they-stay-the-same/>.

the Union of Solidary Higher Education Professors (SESS) and human rights activist, is persecuted by the authorities along with his wife Djamila Loukil, his colleague Said Boudour and other activists because of their criticisms on the regime²³. They are accused of terrorism and enlisted in a subversive organisation²⁴. More than 200 people are currently detained for expressing their fundamental rights, including freedom of expression²⁵.

There is a systematic retaliation from the regime against actors who criticize the regime. The accusations are based on protecting national security, national interest and state institutions and symbols. Thus, freedom of dissent and the media are heavily repressed through laws that crack down on journalists and media outlets while tearing down significant organisations within the Hirak movement and those defending human rights.

Judicial independence

The judicial system is divided into civil and military courts, which use Islamic Law (Shari'a) in civilian courts for social matters. The military courts have jurisdiction over certain issues specific to the armed forces and persons with military status. These decisions are subject to review by the Supreme Court. In times of war, it has jurisdiction over all offences against State security. Usually, the dissidents are charged by the civil or penal tribunal, depending on the charges.

The military's role in the judiciary has been reinforced with the new draft constitution of 2020, where it is stated that the army "defends the vital and strategic interests of the country in accordance with the provisions of the constitution"²⁶. This imprecise definition leaves it open for interpretation, and the military will be facilitated in intervening in civil and political matters when vital and strategic national interests are perceived as threatened.

The Algerian government frequently requests the courts to apprehend opposition political figures and disqualify parties from participating in elections due to their failure to meet legal registration criteria. This suggests a bias in the court's rulings that favors the government, ultimately undermining the integrity of the electoral process. Indeed, the FLN has never truly been checked nor challenged by the courts. This is in part due to the fact that the military, tied to the government, exerts a significant influence over the judiciary. In fact, the FLN has continuously amended the constitution and laws to allow for further skewing of the electoral process in their favour, including the different compositions, funding requirements, stances, and views a party can have. Furthermore, the revision of the Constitution in 2020 has maintained the excessive influence that the executive branch has over the judiciary's

²³ Ibid.

²⁴ Amnesty International, 'Algeria: Stop Using Bogus Terrorism Charges to Prosecute Peaceful Activists and Journalists', Amnesty International, 28 September 2021, <https://www.amnesty.org/en/latest/news/2021/09/algeria-stop-using-bogus-terrorism-charges-to-prosecute-peaceful-activists-and-journalists/>.

²⁵ International Service for Human Rights, 'Human Rights Defender's Story: Kaddour Chouicha from Algeria', ISHR, 14 June 2023, <https://ishr.ch/defender-stories/human-rights-defenders-story-kaddour-chouicha-from-algeria/>.

²⁶ International Commission of Jurists. 'Flawed and Inadequate Algeria's Constitutional Amendment Process', October 2020. <https://www.icj.org/wp-content/uploads/2020/10/Algeria-NewConstitution-Advocacy-Analysis-Brief-2020-ENG.pdf>.

nomination process²⁷. In fact, Article 181 establishes the Supreme Judicial Council (SJC) in charge of safeguarding judicial independence and sanctioning judges, not to mention that the president is also the head of the Supreme Judicial Council²⁸.

Authorities have arrested or prosecuted defence lawyers, independent judges, protesters, dissidents, and members of other political parties after expressing critical opinions on the regime or defending the actors who expressed their fundamental rights²⁹. The charges were related to terrorism, spreading fake news, challenges to national security, and failure to comply with the regime's legislature³⁰. Since 2019, several lawyers and independent judges have been arrested or persecuted for supporting interests differing from those of the regime. After the 6,507 arrests due to the Hiraki protest, 200 lawyers decided to create the Collective for the Defense of Hirak Detainees, but in 2024, they counted only 40³¹. Due to professional restrictions and demonisation on social media, where they are portrayed as traitors by the authorities, clients are afraid of losing their cases if they turn to them. Therefore, many clients have been lost in the process. In 2022, the lawyer Abderraouf Arslane was condemned to three years in prison because he was defending three Hirak militants who were accused of sharing false information and being linked to a terrorist group³². Two other lawyers, Abdelkader Chohra and Yassine Khelifi, were imprisoned based on having shared false information and inciting an unarmed crowd because they had protested the suspected death of an activist in detention³³. Nevertheless, the judge and founder of the "Free Judges Club" union, Saadeddine Marzouk, was dismissed by the High Council of the Judiciary for supporting the Hirak movement and defending judicial independence³⁴.

Moreover, the President has a disproportionate concentration of power that interferes with the executive in judicial affairs. He has the authority to appoint: the head of the Supreme Court (the higher ordinary court), the head of the State Council (the higher administrative

²⁷ CIHRS, 'Algeria: Ahead of Orchestrated Elections, Could Democratic Aspirations Be Smothered Once and for All?', Cairo Institute for Human Rights Studies (CIHRS), 11 June 2021, <https://cihrs.org/algeria-ahead-of-orchestrated-elections-could-democratic-aspirations-be-smothered-once-and-for-all/?lang=en>.

²⁸ CIHRS, 'Algeria Change within Continuity: The 2020 Constitutional Revision'. Cairo Institute for Human Rights Studies (CIHRS), 21 January 2021. <https://cihrs.org/algeria-change-within-continuity-the-2020-constitutional-revision/?lang=en>.

²⁹ 'Universal Periodic Review: How to Address the Current Human Rights Crisis in Algeria? A Civil Society Perspective | MENA Rights Group'. Accessed 11 March 2024.

<https://menarights.org/en/articles/universal-periodic-review-how-address-current-human-rights-crisis-algeria-civil-society>.

³⁰ Amnesty International, 'Human Rights in Algeria'. Accessed 11 March 2024.

<https://www.amnesty.org/en/location/middle-east-and-north-africa/algeria/report-algeria/>.

³¹ SHOAA for Human Rights Organization, 'Lawyers in Danger: The Escalating Targeting of Lawyers and Threats to Judicial Independence in Algeria', 2 February 2024, <https://shoaa.org/the-escalating-targeting-of-lawyers-and-threats-to-judicial-independence-in-algeria/>.

³² Amnesty International, 'Algérie - Rapport annuel 2022', Amnesty International Belgique, 27 March 2023, <https://www.amnesty.be/infos/rapports-annuels/rapport-annuel-2022/rapport-annuel-2022-afrique/article/algerie-rapport-annuel-2022>.

³³ Ibid.

³⁴ CIHRS, 'Algeria: Human Rights Activists Denounce Claims of Algerian UPR Delegation to the United Nations Regarding Human Rights Situation in the Country', Cairo Institute for Human Rights Studies (CIHRS), 15 November 2022, <https://cihrs.org/algeria-human-rights-activists-denounce-claims-of-algerian-upr-delegation-to-the-united-nations-regarding-human-rights-situation-in-the-country/?lang=en>.

court), the head of the Court of Accounts (a body assigned to monitor public property and money), judges, and the head of the Constitutional Court. Nevertheless, the President is still the head of the Supreme Judicial Council and Supreme Chief of the Armed Forces³⁵.

Furthermore, the process of election of the different actors of the judiciary body is not transparent. The Supreme Court comprises of 150 judges appointed by the High Council of Magistracy, an administrative body presided by the President, the Vice-President and several members. Judges are transferred, removed, dismissed or disciplined only if it is based on a reasoned decision from the Supreme Judicial Council³⁶. The latter is composed of: the head of the Supreme Court as a vice president; the head of the State Council; two judges from the Judges' Syndicate; the head of the National Council for Human Rights; 15 judges elected by their colleagues, including from the Supreme Court, the State Council Courts of Appeal and tribunals of first instance; six non-judicial members, selected based on their qualifications, two by the President and four by the Parliament³⁷. Due to the regime's control of the judiciary, cases are always brought to court to be judged, which means that the judgment is biased due to the structure.

We can conclude that the regime controls the judiciary. This leads to a loss of trust in the civilian population in the judicial system. The judiciary does not act as a counterbalance to the actions of the regime but as a tool to repress by harshly and sometimes exaggeratedly punishing those who express criticism of the regime. Journalists, independent media, activists, lawyers and judges are labelled as terrorists or spreaders of fake news and then detained to silence them and prevent other criticisms of the regime through fear. Because of these harsh consequences, it is increasingly difficult to find lawyers willing to take on cases of human rights defenders for fear that they, too, will be targeted or will face other professional repercussions.

³⁵ International Commission of Jurists. 'Flawed and Inadequate Algeria's Constitutional Amendment Process', October 2020. <https://www.icj.org/wp-content/uploads/2020/10/Algeria-NewConstitution-Advocacy-Analysis-Brief-2020-ENG.pdf>.

³⁶ GlobalEDGE. 'Algeria: Government'. GlobalEDGE Michigan State University. Accessed 26 February 2024. <https://globaledge.msu.edu/countries/algeria/government>.

³⁷ International Commission of Jurists. 'Flawed and Inadequate Algeria's Constitutional Amendment Process', October 2020. <https://www.icj.org/wp-content/uploads/2020/10/Algeria-NewConstitution-Advocacy-Analysis-Brief-2020-ENG.pdf>.

Full Report - Algeria

Basic Background

Before assessing the regime type, please provide some background on the internal organization of the state and recent key democratic or authoritarian events

Algeria's head of state is President Abdelmajid Tebboune, who was elected in 2019. The president is elected for a 5-year term and also operates as the Chief of the National Armed Forces, which elucidates the close link the military and the government have at the outset. He appointed his own Prime Minister who was Aimene Benabderahmne, and now is Nadir Larbaoui, after Tebboune made a change to put his loyal cabinet minister in power instead¹. The president also chairs the Council of Ministers as well as the High Security Council. There are two legislative branches in Algeria: the Council of the Nation and the People's National Assembly. The first is the upper chamber containing 144 seats, 48 of which are appointed directly by the President. The latter is the lower chamber with 462 members, elected by the voters for five-year terms. The judicial system is divided into two sections: the civil and military courts, which use Islamic Law (Shari'a) in civilian courts for social matters. The President can appoint and dismiss various judicial actors upon his choosing: the head of the Supreme Court (the higher ordinary court), the head of the State Council (the higher administrative court), the head of the Court of Accounts (a body assigned to monitor public property and money), judges (on all circuits), and the head of the Constitutional Court². The army's legacy in politics has allowed its military elite to retain governing positions. For instance, Bouteflika protected military leaders in the 'Black Decade' during the civil wars in the 1990s from international prosecutions while simultaneously receiving great support for his candidacy from the head of the intelligence services, Mohamed Mediene.

Algeria is ruled by a national government and is not subject to foreign states or non-state actors in terms of subjugating its power. It has also been significantly marked by the *Hirak* movement, which began in 2019 and which now shapes most of the government's dynamics regarding electoral competition and freedom of dissent. For instance, Bouteflika did step down and not run for for a fifth term which was one of the demands of the Hirak movement. Furthermore, the government pretends to address the Hirak movement's demands by creating a 'nouvelle Algérie' (new Algeria) supposedly reformed based on their demands. In 2020, Tebboune announced a referendum on his new constitution on the 1st of November 2020. Nevertheless, this came after his dissolution of parliament and called for new elections. He

¹ AP News, 'Algerian President Names a New Prime Minister Ahead of Elections next Year', *AP News*, 12 November 2023, sec. World News, <https://apnews.com/article/algeria-tebboune-labaoui-benabderahmne-prime-minister-sacked-c037d81e04eaf997fe5e42ea9c240a30>.

² International Commission of Jurists. 'Flawed and Inadequate Algeria's Constitutional Amendment Process', October 2020. <https://www.icj.org/wp-content/uploads/2020/10/Algeria-NewConstitution-Advocacy-Analysis-Brief-2020-ENG.pdf>.

claimed it would permit young people with small funds to run for the first time for elections. Nevertheless, the parliamentary elections were boycotted by the parties of the Hirak movement for being a façade to offset the criticisms they had received. The Algerian League for Human Rights dubbed this a 'referendum of fait accompli'³. It called for democratic change after former president Abdelaziz Bouteflika announced he would run for a fifth consecutive term after ruling for 20 years (1999-2019)⁴. These democratic changes would allow for a meaningful electoral opposition to be created, the release of all human rights activists, journalists, and trade unionists to be released from prison, and for freedom of speech to be legalised and practiced freely. Bouteflika took power after the Black Decade - the ten-year civil war in the 1990s fought between the military and an Islamic insurgency. It ultimately led to the transition to a civilian government, appointed by the army and led by Bouteflika. Therefore, the ties between the military and the government remain very close⁵. Since 2019, President Tebboune of the FLN has run the country despite being elected during a time when many parties and civilians boycotted the elections. Since 2019, President Tebboune of the FLN has run the country despite being elected during a time when many parties and civilians boycotted the elections due to the lack of transparency surrounding the process, the fact that any party associated to the Hirak was barred from running, and the extensive repression of dissidents. Furthermore, the COVID-19 pandemic presented the perfect context for enforcing social isolation and gradually imposing nationwide lockdowns. This gave the Algerian authorities the power to implement the right to ban street rallies and go after activists, forcing Hirak to retreat⁶. The media coverage is not manipulated directly by the government but because it manipulates everything else beforehand, even through intimidation and arrests, this leads to self-censorship in the media.

This year is incredibly important as presidential elections will take place in 2024. They were originally scheduled for December 2024, but in March, an early election was announced for September 2024. Therefore, much of this analysis could change or remain the same, making this a crucial year for Algerian politics. As noted in the state-owned media outlet APS, Tebboune has justified the snap election by announcing a 'return to normality' as Algeria is 'no longer in a state of emergency' and therefore, 'the election agenda has thus been readjusted based on the standard of democracy and return to constitutional and institutional stability'⁷. In reality, snap elections are a way for regimes to weaken the chances of opposition campaigns to build their campaigns and have a meaningful chance to win an election. By taking the electorate and parties by surprise, the FLN further ensure their chances of winning. Political analyses elucidate that across the world, snap elections are a way of turning normal elections, already a 'show', into a 'complete show'.

³ Yasmina Allouche, 'A Breakdown of Algeria's New Constitution', *Middle East Eye*, 29 November 2020, <https://www.middleeasteye.net/news/algeria-new-constitution-breakdown>.

⁴ Arab Center Washington, 'In Algeria, the More Things Change, the More They Stay the Same', Arab Center Washington DC, 26 January 2022, <https://arabcenterdc.org/resource/in-algeria-the-more-things-change-the-more-they-stay-the-same/>.

⁵ Arab Center Washington.

⁶ Arab Center Washington.

⁷ APS, 'Snap Presidential Election: The Reasons behind This Announcement (APS)', 22 March 2024, <https://www.aps.dz/en/algeria/51523-snap-presidential-election-the-reasons-behind-this-announcement-aps>.

Non-state actors and foreign states

Apart from the domestic government, are other actors, like non-state actors or foreign states, claiming rights to the geographical area or the state?

No.

Pillar 1: Electoral competition

Q.1. Are national-level elections, such as parliamentary or presidential elections, absent in the country?

Yes. Although there are parliamentary and presidential elections, they are not largely free and fair. The president is elected through an absolute majority vote, and he then appoints the prime minister. Their terms last 5 years. The most recent election, in 2019, was won by Abdelmajid Tebboune with 58% of the vote with one of the lowest voter turnouts in history, under 20%⁸. Nevertheless, a low voter turnout does not necessarily indicate an authoritarian feature. Prior to 2019, Bouteflika was president, unfairly holding onto power for 20 years. Prior to 2019, Bouteflika was president, unfairly holding onto power for 20 years when he amended the constitution in 2008 by removing Article 74 from the constitution which limited presidencies for more than two terms. The article was reinstated in 2016 although it did not prevent him from seeking a fifth term which he ultimately could not due to the Hirak protests. Despite a two-term limit being re-added in 2016, Bouteflika attempted to run for a fifth term which sparked immense protests known as the Hirak movement⁹. He then retracted himself, though Tebboune, from the same FLN party, won the elections.

Nevertheless, elections were meant to take place in December 2024, but in March, an early election for September 2024 was announced. Based on previous Algerian politics, this may have been an effort to take the opposition by surprise. Overall, the electoral process lacks accountability as evidenced by the continuation of the FLN's rule through Tebboune, the widespread boycott of the elections which ultimately did not lead to accountability on the part of the ruling party, and the inability for a meaningful opposition to be created.

Q.2. Has the regime unfairly barred a real, mainstream opposition party or candidate from competing in elections, including indirectly through judicial prosecution that leads to disqualification?

⁸ Freedom House, 'Algeria: Freedom in the World 2023 Country Report', Freedom House, 2023, <https://freedomhouse.org/country/algeria/freedom-world/2023>.

⁹ FranceInfo, 'Législatives en Algérie : trois questions sur ces élections organisées sur fond de musellement de la contestation', *Franceinfo*, 12 June 2021, https://www.francetvinfo.fr/monde/afrique/algerie/legislatives-en-algerie-trois-questions-sur-ces-electio-ns-organisees-sur-fond-de-musellement-de-la-contestation_4661219.html.

Yes. A large proportion of the candidates were barred from running by the Constitutional Council for “failure to establish and not to fulfil the essential requirements contained in Articles 139 and 142 of the Organic Law related to the electoral system”¹⁰. 9 appeals were filed to the Independent National Authority for Elections and all were rejected on this basis and therefore, those candidates, who were not named, could not run for election. Furthermore, the Interior Ministry is responsible for approving political parties before they are allowed to operate legally. Thus, there is a significant first hurdle for opposition parties to even run and form in the first place or to create a true opposition. For instance, according to the constitution, parties cannot be formed along ethnic lines or have separatist views. For instance, the Islamic Salvation Front (FIS) remains banned and currently, opposition groups such as Islamist groups or those aligned with the Hirak (protest/revolutionary) movement are banned from running.¹¹ Additionally, political parties that supported the Hirak movement and attempted to create their own unified movements had numerous members arrested¹².

A number of other examples are noteworthy. For instance, in 2021, the Algerian authorities filed judicial complaints and petitioned to dissolve the Socialist Workers Party and the Union for Change and Progress, both belonging to the Forces of Democratic Alternative that supports the Hirak movement on the basis that they had not completed their legal registration requirement. Similarly, in 2021, the government petitioned to dissolve the Youth Action Rally, a civil society organization, whose president Abdelouab Fersaoui was imprisoned between October 2019 and May 2020 for “harming the integrity of the national territory” after his criticisms of the government policies appeared on Facebook¹³. On 30 June 2021, the leader of the Democratic and Social Movement, one of the main opposition parties, Fethi Ghares, was charged with “insulting the president of the republic” and “disseminating information that could harm national interest and undermine public order.” MDS’ activities were suspended by law due to non-compliance with Law 12-04 pertaining to political parties, and their headquarters were forcibly closed¹⁴.

Q.3. Has the regime unfairly and significantly hindered a real, mainstream opposition party or candidate’s electoral campaign?

Yes. Similarly to the above examples, the Algerian government has significantly hindered the main opposition parties’ campaigns using vague legal precedents and antiterrorism laws. A new vague antiterrorism law was used to prosecute members of the opposition from the Rachad group, which includes the Islamic Salvation Front, as well as members from the

¹⁰ November 2019, الإذاعة الجزائرية، ‘المجلس الدستوري يرفض جميع الطعون ويبقي على قائمة السلطة الوطنية للانتخابات’، 9 <https://radioalgerie.dz/news/ar/article/20191109/184049.html>.

¹¹ Freedom House, ‘Algeria’, 2023.

¹² Arab Center Washington, ‘In Algeria, the More Things Change, the More They Stay the Same’, Arab Center Washington DC, 26 January 2022, <https://arabcenterdc.org/resource/in-algeria-the-more-things-change-the-more-they-stay-the-same/>.

¹³ Human Rights Watch, ‘Algeria: Events of 2021’, 19 November 2021, <https://www.hrw.org/world-report/2022/country-chapters/algeria>.

¹⁴ Peoples Dispatch, ‘Algerian Leftist Party Leader Fethi Ghares Arrested on Trumped up Charges’, *Peoples Dispatch* (blog), 5 July 2021, <https://peoplesdispatch.org/2021/07/05/algerian-leftist-party-leader-fethi-ghares-arrested-on-trumped-up-charges/>.

Movement for the Self-Determination of Kabylie (MAK), an organization who boycotted the 2019 elections. Human Rights Groups and Special Rapporteurs to the UN reported this as misuse of legislation and attempts at purposeful uses of vague laws to enact human rights violations¹⁵. Ferhat Mehenni, the founder of the MAK, was sentenced to 20 years in prison for terrorism-related charges in absentia, as he currently holds refugee status in France¹⁶. President Tebboune declared amendments by presidential decrees to the 'already overboard' definition of terrorism which exists in Algeria to include "any act targeting state security, national unity, or the stability and normal functioning of institutions that aims to... work toward or incite, by any means whatsoever, gaining power or changing the system of governance by non-constitutional means." Concerned NGOs such as Human Rights Watch noted that the law would be used to target political opposition groups, which it has, and non-violent protesters.

Q.4. Has the regime engaged in overwhelming voting irregularities or large-scale electoral fraud?

Somewhat. The 2019 elections were scheduled to take place on 18 April 2019 but were moved to 12 December 2019 after the Hirak protests due to Bouteflika's announcement that he would run for a fifth consecutive term. During this time, the 'Autorité nationale indépendante des élections' (ANIE - National Independent Authority on Elections) was created in what was dubbed a response to the Hirak movement's demands to have more oversight and transparency in the electoral process. This replaced the Haute Instance Indépendante de Surveillance des élections (HIISE - High Independent Instance of Election Surveillance). ANIE authorities, including its head, Mohamed Charfi, have argued that ANIE is completely independent of the government and ensured a 'proper' and 'transparent' election in 2019¹⁷. A particular difference between the ANIE and the HIISE is that members may not have adhered to a political party for more than 5 years nor be present in local or parliamentary government functions. Nevertheless, the same law that brings ANIE into effect also stipulates that any attempt or menace that is likely to inhibit the elections allows the government to step in and take any 'appropriate measures' to ensure that elections take place¹⁸. This can be used by the regime as an excuse to step in and seize the appropriate measures for their own means. Ultimately, ANIE reported that more than 360 polling stations had to be closed during the 2019 elections due to looting and disturbances¹⁹. Aside from the boycotts which led to the

¹⁵ Alkarama, 'ALGERIA: UN Experts Call on the Government to Reform Its Anti-Terrorism Legislation', 28 January 2022, <https://www.alkarama.org/en/articles/algeria-un-experts-call-government-reform-its-anti-terrorism-legislation>.

¹⁶ Ashar Al-Awsat, 'Algeria Sentences MAK Leader to 20 Years in Prison', *Al-Awsat*, 18 January 2024, <https://english.aawsat.com/node/4797486>.

¹⁷ Souhila Hammadi, 'Bâclage Des Procédures et Violation de La Constitution: Toute l'actualité Sur Liberte-Algerie.Com', *Bâclage Des Procédures et Violation de La Constitution*, 16 September 2019, <https://web.archive.org/web/20191204222331/https://www.liberte-algerie.com/actualite/baclage-des-procedures-et-violation-de-la-constitution-323995>.

¹⁸ Yacine Babouche, 'Ce que prévoit la loi sur « l'autorité nationale indépendante » des élections', *TSA*, 16 September 2019, sec. Politique, <https://www.tsa-algerie.com/ce-que-prevoit-la-loi-sur-lautorite-nationale-independante-des-elections/>.

¹⁹ Freedom House, 'Algeria: Freedom in the World 2024 Country Report' (Freedom House, 2024), <https://freedomhouse.org/country/algeria/freedom-world/2024>.

non-operation of polling stations by local mayors in Kabylie, it is unclear what the disturbances were. Thus, this could have had an impact electoral competition for people who may have voted for the opposition. Sources provide little information on the matter.

Q.5. Did the regime enjoy such significant and unfair campaign advantages that seriously undermined the real, mainstream opposition's ability to compete?

Yes. The regime enjoys the advantage that the Interior Ministry is responsible for approving political parties while they simultaneously draft the legislation, which must be approved by the president, providing benchmarks which opposition parties must meet to run in the first place. Furthermore, the antiterrorism laws have proven to be a key element in their enjoyment of an unfair campaign advantage as their opponents have had to flee the country or have been imprisoned. For instance, Ferhat Mehenni, head of the MAK was arrested in France after having fled there seeking refuge. The government also enacted new laws to prevent opposition parties from forming or developing. For instance, it became illegal to receive funds from abroad without authorization and any violations would lead to 14 years in prison²⁰. Lastly, despite ANIE reforms, most of the names on the ballot for 2019 were Bouteflika's former ministers, which left questions about its effectiveness in Algerian civil society. The lead-up to the 2019 elections were an incredibly tense time in Algerian history. Bouteflika stepped down after the Hirak protests called for his resignation after 20 years in power. Following this, protests continued as a meaningful opposition was inhibited from forming due to harsh legislations and gatekeeping by the party in power. Ultimately, the 5 candidates who were on the final ballot were: Abdelaziz Belaïd, Ali Benflis, Abdelkader Bengrina, Azzedine Mihoubi et Abdelmajid Tebboune. Each of these men are affiliates or supporters of Bouteflika's. Therefore, the elections were highly boycotted as the Hirak movement continued to call for a full reform of the political system and the ability for candidates to meaningfully compete²¹.

Q.6. Has the regime seriously undermined independent electoral oversight?

Yes. Outside observers were not allowed to enter Algeria to monitor the vote, thereby leading to great suspicion regarding the transparency and legitimacy of the electoral process²². Information about electoral oversight is extremely challenging to find. Furthermore, Algeria does not seem to be a part of any election monitoring bodies nor has it committed or signed on to any international agreements regarding this such as the Global Network of Domestic Election Monitors.

²⁰ Arab Center Washington, 'In Algeria, the More Things Change, the More They Stay the Same', Arab Center Washington DC, 26 January 2022, <https://arabcenterdc.org/resource/in-algeria-the-more-things-change-the-more-they-stay-the-same/>.

²¹ Le Monde avec AFP, 'En Algérie, abstention record à l'élection présidentielle contestée', *Le Monde.fr*, 13 December 2019, https://www.lemonde.fr/international/article/2019/12/13/algerie-absention-record-a-l-election-presidentielle-contestee_6022695_3210.html.

²² Freedom House, 'Global Freedom Status', Freedom House, 2023, <https://freedomhouse.org/explore-the-map>

Q.7. Did the regime take measures to unfairly hold on to power, including by modifying the constitution or electoral laws for this purpose?

Yes. Bouteflika attempted to run for a fifth term without changing the laws but just felt as though they did not apply to him. Tebboune, the current president, is from the same party and is running for a second term at the moment for 2024. President Tebboune's ordinance in 2021 was created to suppress emerging dissent amongst Hirak protestors. As of June 8, 2021, Tebboune's amendment to the penal code brands civil society organisations or members who attempt to change the system of government in "unconstitutional ways" as terrorists²³. Thus, 2021 saw many political leaders of opposition parties jailed on trumped up 'terrorism' and national security charges²⁴.

Q.8. Did the real, mainstream opposition threaten to or ultimately boycott the elections, as a way of protesting the lack of a free and fair electoral competition and denouncing their actual or perceived inability to win under current electoral circumstances?

Yes. The elections were highly boycotted in 2019, which is attributed to the low voter turnout. The motives behind the boycott were the belief that the elections were a sham due to the candidates all being affiliated with the previous president of 20 years, Bouteflika. Furthermore, they demanded a full reform of the political system and the basic rights of true freedom of speech and dissent within Algeria. Thus, as a form of protest and a show of disdain with the current political administration, millions of people boycotted the elections in a hope for change. The boycotts came both from citizens in civil society as well as opposition parties. The Algerian League for Defense of Human Rights (LADDH - an organisation later dissolved by the Algerian government), the Rally for Cultural and Democracy (RCD), the Workers' Party (PT), the Democratic and Social Movement (MDS), the Union for Change and Progress (UCP), the Party for Secularism and Democracy (PLD), the Socialist Forces Front (FFS), and then Democratic Alliance Alternative all boycotted the election²⁵. Furthermore, 56 independent mayors from the Kabylie area attempted to prevent the elections in their municipalities by refusing to organise any logistical aspects of the December 2019 election²⁶.

²³ Ilhem Rachidi, 'Repression in Algeria: Could It End The Hirak Movement?', Carnegie Endowment for International Peace, 29 July 2021, <https://carnegieendowment.org/sada/85060>.

²⁴ Human Rights Watch, 'Algeria'.

²⁵ El Watan, 'Présidentielle Du 12 Décembre: Le Front Du Boycott s'élargit', 30 September 2019, <https://www.elwatan.com/edition/actualite/pld-cette-presidentielle-ne-garantit-pas-le-depart-du-systeme-04-11-2019>.

²⁶ Boukhelifa Zahir, 'Kabylie, Vers Un Boycott Massif Des Élections Du 12 Décembre - Kab-News.Com', 24 September 2019, <https://web.archive.org/web/20191102231750/https://kab-news.com/kabylie-vers-un-boycott-massif-des-elections-du-12-decembre/>.

Q.9. Has the main political party been in power for many years, such as winning three elections in a row, or and won elections with a very high vote share, typically more than 60% (in hybrid authoritarian regimes) or 70% (in fully authoritarian regimes) of the vote?

Yes. The current government is the FLN party, which won 58% of the votes combined. However, the previous president, who was in power for 20 years, also hailed from the FLN party. In Bouteflika's last election, in 2015, he won 81.53% of the vote²⁷. Although Tebboune did not win with an especially high voter share, the continuation of the FLN's party in power combined with their attacks on the opposing political parties points to authoritarian features.

Q.10. Was a democratically-elected government who is governing democratically (i.e. has not yet eroded into a hybrid or a fully authoritarian regime), overthrown through a coup d'état (whether military-led or civilian-led)?

No.

Q.11. Has the military effectively negated electoral results and taken over the government for itself?

No. However, the Algerian military has a longstanding influence on the politics of the country and has continuously shaped politics since Algeria gained independence from the French. The National Liberation Army, the official Algerian army, has been regarded as the military wing of the FLN since the War of Independence²⁸. This close interlinkage between the military and government, each being a subsequent wing of the other, points to its great influence. The Hirak movement called for a "civilian, and not military state", alluding to the fact that the FLN is the political wing of the Algerian military and that they operate closely together²⁹. In fact, the military did serve at the end of the war with France to transition to a government and has remained a key player in these transitions. Additionally, the military has itself brought grave accusations against opposition leader such as those of the MAK and Rachad, movements for self-determination within Algeria. In 2020, the Algerian military announced that it would qualify them both as 'terrorist organizations' and of recruiting and training mercenaries to execute terrorist operations on Algerian soil. The military's ability to bring political and legislative accusations forth illustrates the strong ties between the government and military apparatuses

²⁷ Dania Akkad, 'Bouteflika Wins Fourth Term in Office', *Middle East Eye*, 12 February 2015, <https://www.middleeasteye.net/news/bouteflika-wins-fourth-term-office>.

²⁸ Belkacem Elguettaa, 'The Military's Political Role in the New Algeria - Politics of Military Authoritarianism in North Africa', accessed 17 April 2024, <https://carnegie-mec.org/2021/03/17/military-s-political-role-in-new-algeria-pub-84076>.

²⁹ Arab Center Washington, 'In Algeria, the More Things Change, the More They Stay the Same', 26 January 2022.

of Algeria³⁰. The government and military also retain close relationships as their soldiers enjoy high salaries, political influence, and large budgets. Some analysts believe this is part of ensuring 'coup-proofing' by keeping the military happy and at bay³¹. Furthermore, the role of defense minister of the army has been a coveted one which the president has often kept for himself. Accordingly, Tebboune appointed himself as Minister of Defense once he took on the presidency, thereby elucidating the close link between presidential and military decision-making in Algeria³².

Q.12. Overall, looking at your answers to the previous questions, would you say the national elections are largely free and fair?

No. Based on the previous answers, the elections in Algeria cannot be considered to be largely free and fair for a number of reasons. Firstly, there are significant barriers to the opposing parties to the point where many have been disqualified or hindered through legal prosecution. Thus, the vague legal precedents the regime has set, including the antiterrorism legislation, have led to hurdles in campaigning for the opposition. Additionally, as external observers are not allowed to observe the electoral process, the transparency and legitimacy of Algerian elections have been significantly undermined. Further to this, the regime's control over the approval of political parties allows it to enjoy significant advantages in campaigning and restricts the opposition's activities. The continuation of the FLN's rule, despite Bouteflika stepping down after 20 years, and its close ties to the military in Algeria undermine free and fair elections and illustrate the authoritarian nature of the regime.

Moreover, the elections were highly boycotted across the country by citizens, civil society organisations, and opposition parties, which points to the lack of transparency, accountability and oversight in the electoral process. The regime's modification of the constitution to suppress free speech, dissent, and real opposition is another indicator that the national elections are not largely free and fair.

Q.13. [IF NO] Would you say that electoral competition is significantly skewed in favor of the regime, to the point where the real, mainstream political opposition has a highly unlikely although realistic chance to win?

Yes. President Tebboune is from the FLN, the party that has ruled Algeria for over 20 years now. The approved candidates for the 2019 elections were described as "men on the ballot [who] all have close links with the establishment, and though some of them pushed for

³⁰ H. Maacha, 'Algérie : Le MAK et Rachad classés comme « organisations terroristes »', 18 May 2021,

<https://observalgerie.com/2021/05/18/politique/algerie-le-mak-et-rachad-classes-comme-organisation-s-terroristes/>.

³¹ Sharan Grewal, 'Military Repression and Restraint in Algeria', *American Political Science Review*, 4 July 2023, 1–16, <https://doi.org/10.1017/S0003055423000503>.

³² Abdenmour Toumi, 'Algeria's Military Changes and New Doctrine' (Ankara, Turkey, 2020).

reforms, many still see them as part of an entrenched, unchanging elite³³. The main aim of the Hirak movement was not only for Bouteflika to step down but rather, to remove the power from those who were “all part of the same political establishment” that had ruled Algeria³⁴. This has not changed despite Tebboune declaring his political reforms as part of a ‘nouvelle Algérie’ (new Algeria). Thus, it seems the opposition has a highly unlikely yet realistic chance to win.

Q. 14 [IF NO] Would you say national elections are a sham or a façade, to the point where the real, mainstream political opposition does not have a realistic chance to meaningfully compete and possibly win?

No. Some opposition parties have run and gained some seats. Furthermore, Tebboune won with 58% of the vote, whereas Bouteflika used to win with over 80% of the vote. The election in 2024 will be crucial to evaluate whether the elections, military influence, or general oversight become more transparent and democratic or not. The main authoritarian facet and particular aspect of Algeria’s regime in comparison to other regimes is that the military does not necessarily ensure all the votes go to the FLN but rather that a meaningful opposition can never be created by arresting and intimidating members of political parties, civil society activists, and limiting free media.

In a bid to persuade the Algerian populace that he is building a ‘nouvelle Algérie’ (*new Algeria*), President Tebboune initiated a referendum on his proposed new constitution on the 1st of November 2021 following his dissolution of parliament³⁵. He asserted that this would enable young people and those with limited resources to participate in elections for the first time. During the parliamentary elections in 2021, the FLN lost more than 50 seats in parliament, illustrating a challenge posed by the Hirak movement despite the resistance and barring of opposition candidates by the FLN. Nevertheless, most of the seats gained were by the Democratic National Rally (DNR) party, an ally of the FLN. In the last election, Saïd Salhi, vice-president of the Algerian League for the Defense of Human Rights said: “des résultats, sans surprise, issus d’une élection fermée qui s’est déroulée dans un climat de répression” (“results, without surprise, arising from a closed election which occurred in a repressive climate”)³⁶. Therefore, there is a serious question of whether the opposition will be able to meaningfully compete or even possibly win within such a repressive and challenging climate.

³³ Lamine Chikhi, ‘Algerian Protesters Attack “garbage” Presidential Campaign | Reuters’, Reuters, 17 November 2019, <https://www.reuters.com/article/us-algeria-election-campaign/algerian-protesters-attack-garbage-presidential-campaign-idUSKBN1XR0HS/>. <https://www.reuters.com/article/us-algeria-election-campaign/algerian-protesters-attack-garbage-presidential-campaign-idUSKBN1XR0HS/>.

³⁴ Al Jazeera, ‘Five Candidates to Vie for Algerian Presidency’, Al Jazeera, 3 November 2019, <https://www.aljazeera.com/news/2019/11/3/algeria-presidential-election-five-candidates-announced>.

³⁵ Al Jazeera, ‘Algerians Approve New Constitution after Referendum’, Al Jazeera, 13 November 2020, <https://www.aljazeera.com/news/2020/11/13/algerias-new-constitution-approved-official-results-show>.

³⁶ Le Temps, ‘Algérie: le FLN remporte les législatives anticipées - Le Temps’, 16 June 2021, <https://www.letemps.ch/monde/afrique/algerie-fln-remporte-legislatives-anticipees>.

Pillar 2: Freedom of dissent

Q.1. Has the regime unfairly shut down or taken measures that led to the shut down of a major independent, dissenting organization?

Yes. The authorities have shut down two major key human rights organisations that have existed for more than 30 years: the Youth Action Rally (Rassemblement Actions Jeunesse, or RAJ) and the Algerian League for the Defence of Human Rights (Ligue algérienne pour la défense des droits de l'homme or LADDH). The RAJ was founded in 1992 to promote cultural activities, human rights and the values of citizenship, and it was dissolved by the court in October 2021³⁷. It had been accused of creating chaos and disturbing the public order and of noncompliance with the Law on Association of 2012³⁸. Furthermore, its members have been arrested and prosecuted³⁹. The LADDH, the oldest independent human rights organisation in the country, founded in 1985, was shut down in June 2022 by the administrative court of Algiers. Also, in these cases, the authorities accused the organization of dubious allegations of noncompliance with the Associations Law. However, since 2019, both organisations have taken a prominent role in denouncing the crackdown on the Hirak protest movement and in supporting the protests against the government. Members of RAJ and LADDH support the idea that this is the main reason for their accusations⁴⁰.

Today, the RAJ remains shut down, its website is no longer accessible, and the last post on its Facebook page reports the court's decision to dissolve the organization⁴¹.

The LADDH is no longer active, but in response to its dissolution, the organisation decided to set up a committee to safeguard it, known as the CS-LADDH (comité de sauvegarde de la LADDH). The objectives of the committee are the following: preserve the archives and memory of the LADDH; defend its conception of human rights based on the principle that "human rights are universal and indivisible"; maintain the League's position within the community of human rights associations at regional and international level; do everything possible, at national and international level, to ensure that the LADDH regains its legitimate rights and its place in Algerian civil society⁴².

Q.2. Has the regime heavily manipulated media coverage in its favor?

³⁷ Organisation Mondiale Contre la Torture, 'Algeria: Detainees Must Be Released and Civic Space Opened', OMCT, 4 April 2024, <https://www.omct.org/en/resources/statements/algérie-appel-à-la-libération-des-détenu-es-et-à-louverture-de-lespace-civique>.

³⁸ 'Algeria: Effort to Dissolve Prominent Civic Association | Human Rights Watch', 11 October 2021, <https://www.hrw.org/news/2021/10/11/algeria-effort-dissolve-prominent-civic-association>.

³⁹ Arab Center Washington Patricia Karam, 'In Algeria, the More Things Change, the More They Stay the Same', Arab Center Washington DC, 3 October 2023, <https://arabcenterdc.org/resource/in-algeria-the-more-things-change-the-more-they-stay-the-same/>.

⁴⁰ "Algeria".

⁴¹ Facebook. 'RAJ - Algerie'. Accessed 5 May 2024. https://www.facebook.com/RajAlgerie/?locale=fr_FR.

⁴² Aissa Rahmoune, 'Déclaration : L'engagement En Faveur Des Droits Humains Doit Se Poursuivre - LADDH - Ligue Algérienne Pour La Défense Des Droits de l'Homme', 17 September 2023, <https://www.droits-laddh.org/declaration-l-engagement-en-faveur-des-droits-humains-doit-se-poursuivre.html>.

Yes. The media coverage is not manipulated directly by the government. Still, because it manipulates everything else beforehand, even through intimidation and arrests, the resulting media content has already been vetted, controlled and conditioned. In fact, the Government sees the press as a tool for political propaganda⁴³. In 2023, they adopted three new media laws that expanded media activities that fell within the scope of the government: the organic law on information, the law on the written and electronic press, and the law relating to audio-visual activity (the Media Laws)⁴⁴. Article 2 states that the government controls the publication of all news, images and opinions as well as the spreading of events, messages, and ideas via any media (print, digital or audiovisual) that address the general public or a specific group. It is a pretext to allow the government to censor people publishing any sort of content and to get journalists subject to the penal code⁴⁵. The most famous case is the one of Ihsane El-Kadi, a journalist, director and founder of Interface Médias, which includes Radio M and Maghreb Emergent. On the 29th of December 2022, he was charged by the public prosecutor and then persecuted under Article 95 bis of the Criminal Code⁴⁶. These included receiving funds likely to "undermine state security", receiving foreign funds "for political propaganda purposes", and distributing or selling propaganda with the aim of undermining national interests (this last charge was later dropped)⁴⁷. All these charges are related to his work as a journalist and the criticisms that he raised against the government.

Another case is the one of the journalist Mustapha Bendjamaa, editor-in-chief of the independent Algerian newspaper Le Provincial. He was arrested on February 8, 2023, under the same charges of Article 95 bis of the Criminal Code and under Article 38 of the law on the protection of administrative information and documents for the publication of classified documents⁴⁸. The charges are due to the fact that he helped Amira Bouraoui to escape Algeria after she was condemned in 2021⁴⁹. He was indeed charged under the penal code but not for criticizing the government.

Moreover, the reliability and credibility of Algerian journalists will be undermined because of the consequences they might suffer for their actions. In fact, articles 48,49 and 50 prohibit

⁴³ Malli Ragheb, 'Algeria: New Media Law Tightens Restrictions on Online Content', *SMEX* (blog), 2 October 2023, <https://smex.org/algeria-new-media-law-tightens-restrictions-on-online-content/>.

⁴⁴ Article 19. 'Algeria: Mitigate Human Rights Threats of New Media Laws'. ARTICLE 19, 4 April 2024. <https://www.article19.org/resources/algeria-mitigate-human-rights-threats-of-new-media-laws/>.

⁴⁵ Malli Ragheb, 'Algeria: New Media Law Tightens Restrictions on Online Content', *SMEX* (blog), 2 October 2023, <https://smex.org/algeria-new-media-law-tightens-restrictions-on-online-content/>.

⁴⁶ RSF. '7 ans de prison dont 5 ferme pour Ihsane El Kadi en Algérie : une "condamnation surréaliste"', 18 June 2023. <https://rsf.org/fr/7-ans-de-prison-dont-5-ferme-pour-ihane-el-kadi-en-alg%C3%A9rie-une-condamnation-sur-surr%C3%A9aliste>.

⁴⁷ Amnesty International. 'La condamnation d'un journaliste a été confirmée en appel'. Amnesty International Suisse, 12 March 2024. <https://www.amnesty.ch/fr/participer/crire-des-lettres/actions-urgentes/annees/2023/ua-037-23-algerie>.

⁴⁸ Amnesty International. 'Algérie. La condamnation d'un journaliste illustre une nouvelle fois l'escalade de la répression contre les médias'. Amnesty International, 3 April 2023. <https://www.amnesty.org/fr/latest/news/2023/04/conviction-of-journalist-is-latest-escalation-in-crackdown-on-media/>.

⁴⁹ Ibid.

critics against the heads of foreign governments and punish the media outlets and journalists that work with foreign media without accreditation⁵⁰.

In this new media law, Article 35 directly restricts the freedom of the press and of expression. Furthermore, the Penal Code's article 87bis is written so broadly and vaguely that it allows to qualify peaceful critical voices and human rights defenders as terrorists⁵¹. They were added paragraphs 14 and 15 resulting in the following article: "Any act aimed at State security, national unity and the stability and normal functioning of institutions through any action designed to : [...] working or inciting, by whatever means, to gain access to power or to change the system of governance by non-constitutional means [§ 14]; undermining or inciting, by any means whatsoever, the integrity of the national territory [§ 15]"⁵².

Another worrying provision is the prohibition on the Algerian media's receiving any foreign funding, including direct or indirect material assistance⁵³. This impacts the ability to operate if the outlet is not supported by the government, as finding funds to support it is difficult. Moreover, the Article 4 prohibits Algerians with dual nationalities from establishing media outlets. This law limits the practice of media activities within the country to "people holding Algerian nationality exclusively, legal persons subject to Algerian law whose capital is owned by natural persons holding Algerian nationality exclusively, and legal persons subject to Algerian law whose shareholders or partners hold Algerian nationality exclusively"⁵⁴. Therefore, only people with algerian citizenship can work in the media on the algerian territory and this hinders the work of foreign media.

Q.3. Has the regime seriously intimidated independent, dissenting media, political leaders, civil society leaders, organizations, or regular people, or otherwise seriously and unfairly obstructed their work?

Yes. Regarding independent and dissenting media, even though the Constitution bans the imprisonment of journalists, the Algerian authorities find loopholes in the articles vaguely written to arrest and condemn them⁵⁵. Nevertheless, the New Media Laws, signed in 2023, expands oversight of media activities and undermines the credibility of Algerian journalists, thereby furthering repression and increasing state control over the media⁵⁶. As explained above, articles 48, 49 and 50 impose several prohibitions on media outlets and journalists.

⁵⁰ Ibid.

⁵¹ Marianna Tzabiras, 'Algeria: Government Must Stop Targeting Human Rights Defenders and Amend Repressive Laws', IFEX, 8 September 2022, <https://ifex.org/algeria-government-must-stop-targeting-human-rights-defenders-and-amend-repressive-laws/>.

⁵² MENA Rights Group. 'Le Président Algérien Durcit Par Ordonnance La Législation Antiterroriste'. Accessed 21 April 2024. <https://menarights.org/en/articles/le-president-algerien-durcit-par-ordonnance-la-legislation-antiterroriste>.

⁵³ RSF, 'Algeria's Senate Urged to Reject New Media Law's Draconian Provisions', 13 April 2023, <https://rsf.org/en/algeria-s-senate-urged-reject-new-media-law-s-draconian-provisions>.

⁵⁴ Ismail, Zeinab. 'Algeria: New Media Law Tightens Restrictions on Online Content'. SMEX (blog), 2 October 2023. <https://smex.org/algeria-new-media-law-tightens-restrictions-on-online-content/>.

⁵⁵ Ragheb, 'Algeria'.

⁵⁶ Ibid.

These articles prohibit the Algerian media from receiving any funding or direct and indirect material assistance from any foreign party under penalty of criminal sanctions provided for by law, a fine of up to 2 million dinars and even the confiscation of property involved in the offence⁵⁷. Under another provision, insulting foreign heads of state and diplomats accredited in Algeria would be punishable by a fine of 100,000 to 500,000 dinars⁵⁸.

One example is the shutdown of the offices of the media Radio M and Maghreb Émergent in December 2022 and then their dissolution ordered by the Penal Tribunal of Sidi M'hamed in April 2023⁵⁹. These two media outlets were advocating for independent journalism. Moreover, Ihsane El-Kadi, journalist and the founder of these two independent media outlets, was arrested and then sentenced to seven years in prison for receiving illegal funds from foreign countries⁶⁰. This decision arrives after years of political and judicial harassment⁶¹. As the UN special rapporteur on human rights defenders for Algeria states: because freedom of the press is not guaranteed, civil society reports human rights violations and reports them on social media⁶². But in any case, they take great risks, considering that journalists have been arrested because of their advocacy⁶³.

The political opposition movement Rachad group was labeled in February 2022 by the authorities as a terrorist group because it was considered linked with the Algerian Islamist group⁶⁴. The movement has been asking for good governance since 2007. They labelled the movement to be able to persecute members of the group under article 87bis, which defines terrorism as any action that undermines state security, territorial integrity, or the stability and regular operation of state institutions⁶⁵. Abderrahmane Zitout has been arrested and detained because of the relationship with his brother Mohamed Larbi Zitout, one of the founders of the Rachad movement and of the human rights organization Alkarama that advocates against the violation of human rights in Algeria⁶⁶. The brother was released at the beginning of April 2024 after two years of arbitrary detention based on accusations that had been extorted through

⁵⁷ European Forum for Democracy and Solidarity. 'Algerian New Media Law Tightens State Control', 19 April 2023. <https://europeanforum.net/algerian-new-media-law-tightens-state-control/>.

⁵⁸ Ibid.

⁵⁹ Organisation Mondiale Contre la Torture, 'Algeria'.

⁶⁰ RSF, '7 ans de prison dont 5 ferme pour Ihsane El Kadi en Algérie : une "condamnation surréaliste"', 18 June 2023, <https://rsf.org/fr/7-ans-de-prison-dont-5-ferme-pour-ihsane-el-kadi-en-alg%C3%A9rie-une-condamnation-sur-surr%C3%A9aliste>.

⁶¹ RSF, 'European Parliament Calls on Algeria to Release Journalist Ihsane El Kadi and Respect Press Freedom', 11 May 2023, <https://rsf.org/en/european-parliament-calls-algeria-release-journalist-ihsane-el-kadi-and-respect-press-freedom>.

⁶² Mary Lawlor, 'End-of-Mission Statement – Official Country Visit to Algeria', 5 December 2023, <https://srdefenders.org/end-of-mission-statement-official-country-visit-to-algeria/>.

⁶³ Ibid.

⁶⁴ Abdelkader Cheref, "'They Should All Go.'" Are the Hopes of the Hirak Protest Movement Fading in Algeria?', *DAWN* (blog), 1 March 2022, <https://dawnmena.org/they-should-all-go-are-the-hopes-of-the-hirak-protest-movement-fading-in-algeria/>.

⁶⁵ Amnesty International, 'Algérie: Le frère emprisonné d'un militant observe une grève de la faim: Abderrahmane Zitout', Amnesty International, 20 February 2023, <https://www.amnesty.org/fr/documents/mde28/6455/2023/fr/>.

⁶⁶ Ibid.

torture from the army officer Benhalima Mohamed Azzouz⁶⁷. Another example of obstruction is the arrest of Fethi Gherras, leader of the Democratic and Social Movement (MDS). He was convicted to prison for two years in January 2022 for expressing his dissent against the oppression within the country⁶⁸. Furthermore, the MDS and the Socialist Workers Party (PST), two registered political parties, were suspended indefinitely in January 2022 and February 2023, respectively⁶⁹.

Academics and human rights activists are also prosecuted because they are considered critical voices and charged with terrorism accusations. Kaddour Chouicha, a university professor, national coordinator of the Union of Solidary Higher Education Professors (SESS) and human rights activist, is persecuted by the authorities along with his wife Djamilia Loukil, his colleague Said Boudour and other activists⁷⁰. The accusations are the same as the other actors listed above, considering them as terrorists and enlisted in a subversive organisation⁷¹. More than 200 people are detained at the moment for expressing their fundamental rights, including freedom of expression⁷².

Q.4. Has the regime seriously and unfairly repressed dissenting protests?

Yes. The Hirak movement protest in 2019 started a new era of censorship from the Algerian government. First, the protest was highly repressed, with more than 6,507 arrests, summons, and detentions⁷³. Furthermore, the COVID-19 pandemic represented the perfect context for enforcing social isolation and gradually imposing nationwide lockdowns. This gave the Algerian authorities the power to implement the right to ban street rallies and go after activists, forcing Hirak to retreat⁷⁴. Since the protest in 2019, the government has become more suppressive. As seen before, the Algerian authorities target critical and dissident voices, including demonstrators, journalists or people expressing their opinions on social networks to

⁶⁷ Fondation Alkarama, 'Algérie : Abderrahmane Zitout, Libéré Après Deux Ans de Détention Arbitraire', 4 April 2024, <https://www.alkarama.org/fr/articles/algerie-abderrahmane-zitout-libere-apres-deux-ans-de-detention-arbitraire>.

⁶⁸ Amnesty International, 'Algeria: Authorities Target Political Parties in Their Latest Clampdown', Amnesty International, 9 February 2022, <https://www.amnesty.org/en/latest/news/2022/02/algeria-authorities-target-political-parties-in-their-latest-clampdown/>.

⁶⁹ International Service for Human Rights, 'Human Rights Defender's Story: Kaddour Chouicha from Algeria', ISHR, 14 June 2023, <https://ishr.ch/defender-stories/human-rights-defenders-story-kaddour-chouicha-from-algeria/>.

⁷⁰ Ibid.

⁷¹ Amnesty International, 'Algeria: Stop Using Bogus Terrorism Charges to Prosecute Peaceful Activists and Journalists', Amnesty International, 28 September 2021, <https://www.amnesty.org/en/latest/news/2021/09/algeria-stop-using-bogus-terrorism-charges-to-prosecute-peaceful-activists-and-journalists/>.

⁷² International Service for Human Rights, 'Human Rights Defender's Story: Kaddour Chouicha from Algeria', ISHR, 14 June 2023, <https://ishr.ch/defender-stories/human-rights-defenders-story-kaddour-chouicha-from-algeria/>.

⁷³ Rachidi, Ilhem. 'Repression in Algeria: Could It End The Hirak Movement?' Carnegie Endowment for International Peace, 29 July 2021. <https://carnegieendowment.org/sada/85060>.

⁷⁴ Arab Center Washington. 'In Algeria, the More Things Change, the More They Stay the Same'. Arab Center Washington DC, 26 January 2022. <https://arabcenterdc.org/resource/in-algeria-the-more-things-change-the-more-they-stay-the-same/>.

intimidate them⁷⁵. For this reason, after the Hirak protest five years ago, no movement has grown enough to start a protest in opposition to the government.

Q.5. Has the regime seriously abused vague laws to silence independent, dissenting media, political leaders, civil society leaders, organizations, or regular people?

Yes. On many occasions, journalists, activists or opposition political leaders have been accused and labeled as terrorists under Article 2 and Article 87 bis of the penal code. These two articles state that it is considered a terrorist act, any action that threatens state security, national unity, and institutional stability, including attempting to gain power or change governance through non-constitutional means and undermining the integrity of the national territory⁷⁶. Such provisions are too vague and broad and they don't give a definition of what is considered as national interest, leaving the provision open to interpretation. The authorities are using these provisions to detain or even condemn journalists, human rights defenders and activists. Some examples were reported in question 3. Furthermore, the government use these vague laws to dismantle organizations (e.g. LADDH).

Q.6. Has the regime seriously and unfairly censored dissenting speech?

Yes. During the pandemic, the government introduced repressive provisions in the penal code to convict peaceful citizens, labeling them as terrorists⁷⁷. Journalists or political actors who express their critical opinion on the government and advocate for a non-violent government are arrested or even condemned. Furthermore, in March 2024, the conferences given by the association that defends the rights of the disappeared (SOS Disparus – CFDA) were arbitrarily prevented by the authorities⁷⁸.

Q.7. Has the regime directly (or indirectly through pro-regime individuals or groups that are likely to enjoy impunity) harassed, assaulted or killed dissidents, or attempted to commit these crimes?

⁷⁵ Amnesty International, 'Algérie. Cinq ans après le mouvement de protestation du Hirak, la répression continue sans relâche', Amnesty International, 22 February 2024, <https://www.amnesty.org/fr/latest/news/2024/02/algeria-five-years-after-hirak-protest-movement-repressive-clampdown-continues-unabated/>.

⁷⁶ MENA Rights Group, 'Le Président Algérien Durcit Par Ordonnance La Législation Antiterroriste', accessed 21 April 2024, <https://menarights.org/en/articles/le-president-algerien-durcit-par-ordonnance-la-legislation-antiterroriste>.

⁷⁷ MENA Rights Group, 'En Pleine Pandémie, Le Gouvernement Algérien Durcit La Législation Pénale Au Détriment Des Libertés d'expression et d'association', 20 July 2020, <https://menarights.org/en/articles/en-pleine-pandemie-le-gouvernement-algerien-durcit-la-legislation-penale-au-detriment-des>.

⁷⁸ International Service for Human Rights, 'Algeria: Detainees Must Be Released and Civic Space Opened', ISHR, 4 April 2024, <https://ishr.ch/latest-updates/joint-civil-society-statement-on-algeria-detainees-must-be-released-and-civic-space-opened/>.

Somewhat. The regime has only harassed dissidents; there is no record of assaultings or killings. As the UN special rapporteur on human rights defenders for Algeria underlines, there is much judicial harassment through multiple criminal cases against human rights defenders⁷⁹. The journalist Mustapha Bendjama, before being condemned to two years in jail in August 2023, was harassed by the police for months and also prosecuted several times for his work as a journalist and mostly for his presumed involvement in the escape of the activist Amira Bouraoui in 2021⁸⁰.

Since 2021, the President has, on some occasions, issued pardons and clemency measures for thousands of prisoners and detainees, including almost 260 detainees and prisoners linked to the Hirak movement⁸¹.

Q.8. Has the regime engaged in transnational repression against dissidents abroad, including through surveillance or other forms of intimidation?

Yes. There has been the case of the militant Slimane Bouhafs, who fled the country after being persecuted by the government for his link with the Movement for the self-determination of Kabylia (MAK), which the government consider a terrorist movement⁸². He has been disappeared from Tunisia and reappeared again in prison in Algeria. Another case is the one of Mohamed Benhlima's arrest warrant that was issued while he was seeking asylum in Spain, where he fled after accusing the Algerian army of corruption on social media.⁸³ However, his extradition was done according to the Spanish government without any kind of intimidation or surveillance.

Q.9. Overall, looking at your answers to the previous questions, would you say independent media, political leaders, civil society leaders, organizations, and regular people are largely free to openly criticize or challenge the government?

No. Based on the previous answers, independent media, political leaders, civil society leaders, organisations, and regular people are not free to criticise or challenge the regime. Since the Hirak protest in 2019, the regime has become more oppressive regarding freedom

⁷⁹ Lawlor, 'End-of-Mission Statement – Official Country Visit to Algeria'.

⁸⁰ CIHRS, 'Algeria: Free People Held After Activist Fled', Cairo Institute for Human Rights Studies (CIHRS), 27 June 2023, <https://cihrs.org/algeria-free-people-held-after-activist-fled/?lang=en>.

⁸¹ Amnesty International, 'Algeria: Five Years after Hirak Protest Movement Repressive Clampdown Continues Unabated', Amnesty International, 22 February 2024, <https://www.amnesty.org/en/latest/news/2024/02/algeria-five-years-after-hirak-protest-movement-repressive-clampdown-continues-unabated/>.

⁸² Human Rights Watch, 'Algérie : Libérer un militant ayant obtenu le statut de réfugié en Tunisie', 26 September 2022, <https://www.hrw.org/fr/news/2022/09/26/algerie-liberer-un-militant-ayant-obtenu-le-statut-de-refugie-en-tunisie>.

⁸³ Amnesty International, 'Espagne. Le demandeur d'asile Mohamed Benhlima ne doit pas être expulsé en Algérie', Amnesty International, 15 March 2022, <https://www.amnesty.org/fr/latest/news/2022/03/spain-authorities-must-not-deport-asylum-seeker-mohamed-benhlima-to-algeria/>.

of expression and, consequently, the freedom of dissent. Many journalists are being arrested and condemned very harshly because they express their critical opinions. The government has even dismantled the two major organisations, LADDH and RAJ, and arrested important members of these organisations. The accusations that the government carries on are always related to acts of terrorism. The reason is that the articles that define an act of terrorism are broadly and vaguely written, and so interpreted as convenient for the government. The latter uses intimidation through arrests, violence and condemnation to oppress the critical opinion of the civil society.

Q.10. [IF NO] Would you say that independent media, political leaders, civil society leaders, organizations, and regular people are seriously and unfairly hindered in their ability to openly criticize or challenge the regime?

Yes. The Algerian constitution guarantees the right to expression and assembly, but the answers given above show that the government does not respect these rights. Independent media, civil society leaders, organizations, and regular people are hindered from criticizing the government due to the ambiguous laws regarding freedom of assembly and expression that can be found in the New Media Laws. Furthermore, opposition organizations and political parties are hindered when the government decides to dismantle or block their activities, as has already happened.

Q.11. [IF NO] Would you say that independent media, political leaders, civil society leaders, organizations, political leaders and regular people face overt and systematic retaliation if they openly criticize the regime?

Yes. As seen above, independent media, civil society leaders, regular people, organizations and political leaders who raise concerns about the human rights violations committed by the government or who are expressing critical opinions have been harassed, arrested, arbitrarily detained, and condemned, and the organizations have been dissolved. Furthermore, Algeria's lower chamber of parliament has passed new laws of the penal code that will criminalize even more peaceful speeches and opposition parties⁸⁴. There is a systematic retaliation from the government against actors that criticize the regime. The accusations are based on protecting national security, national interest and state institutions and symbols. For example, the articles 63 bis and 63 bis 1 are defining the penalty of life imprisonment for the act of treason through the leaking of information deemed sensitive to national security, defense, or the economy through social media platforms⁸⁵. Article 96 escalates penalties for disseminating materials considered harmful to the national interest and expands its scope to include audio and video materials⁸⁶. The problem is that there is no precise definition of what constitutes "national security interests", and this raises grave concerns about the potential for arbitrary

⁸⁴ CIHRS, 'Algeria: New Amendments to Penal Code Will Further Entrench Repression', Cairo Institute for Human Rights Studies (CIHRS), 8 April 2024, <https://cihrs.org/algeria-new-amendments-to-penal-code-will-further-entrench-repression/?lang=en>.

⁸⁵ Ibid.

⁸⁶ Ibid.

enforcement against journalists, and activists. Nevertheless, treatment in prison is good, and the government hasn't directly killed any dissident⁸⁷.

Pillar 3: Judicial independence

Q.1. Have courts frequently and unfairly failed to check the regime's attempts to significantly undermine electoral competition or make the electoral process significantly skewed in its favor?

Yes. The Algerian government frequently requests the courts to apprehend opposition political figures and disqualify parties from participating in elections due to their failure to meet legal registration criteria. This suggests a bias in the court's rulings that favors the government, ultimately undermining the integrity of the electoral process. Furthermore, the revision of the Constitution in 2020 has maintained the excessive influence that the executive branch has over the judiciary's nomination process⁸⁸. In fact, Article 181 establishes the Supreme Judicial Council (SJC) in charge of safeguarding judicial independence and sanctioning judges, but the president is also the head of the Supreme Judicial Council⁸⁹.

This control over the judiciary raises concerns about the possibility of bringing electoral appeals. Additionally, it is the Algerian government that makes the rules that opposition candidates must abide by, such as it being illegal to receive funding from abroad or to unify on an ethnic or idealistic basis as a party. These parties are frequently barred or even arrested and prevented from running in the elections.

Q.2. Have courts frequently and unfairly failed to check the regime's attempts to repress criticism or retaliate against those who express open opposition to its most prominent, widely publicized policies?

Yes. Algerian courts have condemned many journalists, human rights defenders, activists, and lawyers after expressing critical opinions on the regime or defending the actors who expressed their fundamental rights. These actors who were linked, even only by showing support, with the Hirak movement have been condemned for harming national security. The arguments for their condemnation are based on articles that are vaguely written and then largely interpretable by the court. Some of the vaguely written articles have been mentioned

⁸⁷ Lawlor, 'End-of-Mission Statement – Official Country Visit to Algeria'.

⁸⁸ CIHRS, 'Algeria: Ahead of Orchestrated Elections, Could Democratic Aspirations Be Smothered Once and for All?', Cairo Institute for Human Rights Studies (CIHRS), 11 June 2021, <https://cihrs.org/algeria-ahead-of-orchestrated-elections-could-democratic-aspirations-be-smothered-once-and-for-all/?lang=en>.

⁸⁹ CIHRS, 'Algeria Change within Continuity: The 2020 Constitutional Revision'. Cairo Institute for Human Rights Studies (CIHRS), 21 January 2021. <https://cihrs.org/algeria-change-within-continuity-the-2020-constitutional-revision/?lang=en>.

above: Article 95 bis of the Criminal Code, Article 2, Article 63 bis and bis 1, Article 87 bis, and Article 96 of the Penal Code.

An example of the judgment failure of the court is the case of five Hirak activists who have been arrested and subjected to trial without the presence of their lawyers for denouncing the sexual violence suffered by the young Protestant Said Chetouane⁹⁰. The dissidents are prosecuted by different tribunal or courts depending on the charges and on the region where they live.

The judiciary body has also suspended the Socialist Workers Party (PST) from its political activities⁹¹. The case is also based on the commitment of the PST to the Hirak movement, representing another case of repression of freedom of expression by the judiciary organ.

Q.3. Have judges who rule contrary to regime interests or who are perceived as a threat to the regime frequently faced regime retaliation?

Yes. Since 2019, several lawyers and independent judges have been arrested or persecuted for supporting interests differing from those of the regime. After the 6,507 arrests due to the Hiraki protest, a group of 200 lawyers decided to create the Collective for the Defense of Hirak Detainees, but in 2024 they counted only 40⁹². Due to professional restrictions and demonisation on social media, where they are portrayed as traitors by the authorities, clients are afraid of losing their cases if they turn to them. Therefore, many clients have been lost in the process. In 2022, the lawyer Abderraouf Arslane was condemned to three years in prison because he was defending three Hirak militants who were accused of sharing false information and being linked to a terrorist group⁹³. Two other lawyers, Abdelkader Chohra and Yassine Khlifi, were imprisoned on the basis of having shared false information and inciting an unarmed crowd because they had protested the suspected death of an activist in detention⁹⁴.

⁹⁰ CIHRS, 'Algeria: Ahead of Orchestrated Elections, Could Democratic Aspirations Be Smothered Once and for All?', Cairo Institute for Human Rights Studies (CIHRS), 11 June 2021, <https://cihrs.org/algeria-ahead-of-orchestrated-elections-could-democratic-aspirations-be-smothered-once-and-for-all/?lang=en>.

⁹¹ Abdelkader Cheref, "They Should All Go." Are the Hopes of the Hirak Protest Movement Fading in Algeria?', *DAWN* (blog), 1 March 2022, <https://dawnmena.org/they-should-all-go-are-the-hopes-of-the-hirak-protest-movement-fading-in-algeria/>.

⁹² SHOAA for Human Rights Organization, 'Lawyers in Danger: The Escalating Targeting of Lawyers and Threats to Judicial Independence in Algeria', 2 February 2024, <https://shoaa.org/the-escalating-targeting-of-lawyers-and-threats-to-judicial-independence-in-algeria/>.

⁹³ Amnesty International, 'Algérie - Rapport annuel 2022', Amnesty International Belgique, 27 March 2023, <https://www.amnesty.be/infos/rapports-annuels/rapport-annuel-2022/rapport-annuel-2022-afrique/article/algerie-rapport-annuel-2022>.

⁹⁴ Ibid.

In addition, the judge, and founder of the “Free Judges Club” union, Saadeddine Marzouk, was dismissed by the High Council of the Judiciary for supporting the Hirak movement and defending judicial independence⁹⁵.

Q.4. Has the regime seriously undermined judicial independence, to the point where cases challenging the regime are no longer brought to the courts or are generally dismissed?

No. The judiciary is heavily influenced and pressured by the executive branch as well as the military⁹⁶. Since Algeria’s independence, the military has influenced political affairs, and the latter has influenced judicial power. Moreover, the President has a disproportionate concentration of power that interferes with the executive in judicial affairs. He has the authority to appoint: the head of the Supreme Court (the higher ordinary court), the head of the State Council (the higher administrative court), the head of the Court of Accounts (a body assigned to monitor public property and money), judges, and the head of the Constitutional Court. Nevertheless, the President is still the head of the Supreme Judicial Council and Supreme Chief of the Armed Forces⁹⁷. Furthermore, the process of election of the different actors of the judiciary body is not transparent.

Judges are transferred, removed, dismissed or disciplined only if it is based on a reasoned decision from the Supreme Judicial Council. The latter is composed of: the head of the Supreme Court as a vice president; the head of the State Council; two judges from the Judges’ Syndicate; the head of the National Council for Human Rights; 15 judges elected by their colleagues, including from the Supreme Court, the State Council Courts of Appeal and tribunals of first instance; six non judicial members, selected based on their qualifications, two by the President and four by the Parliament⁹⁸.

Due to the regime’s control of the judiciary, cases are always brought to court to be judged, but that means that the judgment is biased due to the structure. The case of Judge Saadeddine Marzouk, illustrated above, illustrates this lack of independence from the executive power.

Q.5. Has the regime directed all cases or all politically-sensitive cases to separate, regime-controlled courts, such as regime-controlled military courts or a regime-controlled constitutional tribunal?

⁹⁵ CIHRS, ‘Algeria: Human Rights Activists Denounce Claims of Algerian UPR Delegation to the United Nations Regarding Human Rights Situation in the Country’, Cairo Institute for Human Rights Studies (CIHRS), 15 November 2022, <https://cihrs.org/algeria-human-rights-activists-denounce-claims-of-algerian-upr-delegation-to-the-United-nations-regarding-human-rights-situation-in-the-country/?lang=en>.

⁹⁶ CIHRS, ‘Algeria: Worsening Human Rights Crisis Marks Anniversary of pro-Democracy Hirak Movement’, Cairo Institute for Human Rights Studies (CIHRS), 24 February 2023, <https://cihrs.org/algeria-worsening-human-rights-crisis-marks-anniversary-of-pro-democracy-hirak-movement/?lang=en>.

⁹⁷ International Commission of Jurists. ‘Flawed and Inadequate Algeria’s Constitutional Amendment Process’, October 2020.

<https://www.icj.org/wp-content/uploads/2020/10/Algeria-NewConstitution-Advocacy-Analysis-Brief-2020-ENG.pdf>.

⁹⁸ Ibid.

No. As explained above, the regime influences the judiciary, so it is not necessary to direct the case to another court because it is already under the government's control.

The judicial system is divided into two sections: the civil and military courts, which use Islamic Law (Shari'a) in civilian courts for social matters.

Since Algeria's independence, the military has influenced the political affairs and judicial power. The role of the military has been reinforced with the new draft constitution of 2020, where it is stated that the army "defends the vital and strategic interests of the country in accordance with the constitutional provisions"⁹⁹. This imprecise definition leaves it open for interpretation, and the military will be facilitated in intervening in civil and political matters when vital and strategic national interests are perceived as threatened. The military courts have jurisdiction over certain matters specific to the armed forces and persons with military status. These decisions are subject to review by the Supreme Court. In times of war, it has jurisdiction over all offences against State security. Usually, the dissidents are charged by the civil or penal tribunal, depending on the charges.

Q.6. Have courts frequently and unfairly failed to hold regime officials accountable, particularly for actions that seriously undermine electoral competition or freedom of dissent, or, conversely, are they pressured or incentivized by the regime to hold regime officials accountable to uphold a certain image of regime legitimacy?

No. There haven't been judicial cases where the government actors were held accountable for undermining electoral competition or freedom of dissent. The laws regarding these values are so vaguely written that the government legally legitimizes itself, and it doesn't need to uphold a certain image. Although Former Prime Minister Ahmed Ouyahia and Abdelmalek Sellal, Bouteflika's old political allies, were sentenced for 12 years each, and other eight former ministers were handed sentences of between 2 and 20 years on corruption charges, they are not affiliated with the current regime¹⁰⁰. Thus it cannot be assumed that this counts towards a legitimate effort by the courts under Tebboune to arrest members of his party for undermining electoral competition or freedom of dissent.

Q.7. Overall, looking at your answers to the previous questions, would you say that the judiciary largely serves as a check on the government, especially in its ability to: (a) repress criticism or retaliate against those who express open opposition to its most prominent, widely publicized policies, and/or (b) significantly undermine electoral competition or make the electoral process significantly skewed in its favor?

⁹⁹ International Commission of Jurists. 'Flawed and Inadequate Algeria's Constitutional Amendment Process', October 2020.

<https://www.icj.org/wp-content/uploads/2020/10/Algeria-NewConstitution-Advocacy-Analysis-Brief-2020-ENG.pdf>.

¹⁰⁰ Asharq Al Awsat. 'Ex-Bouteflika Allies Handed Heavy Jail Terms in Algeria Graft Trial'. Accessed 5 May 2024. <https://english.aawsat.com/node/2365356>.

No. The government controls the judiciary. This leads to a loss of trust in the civilian population in the judicial system. From the answers above, we can conclude that it does not act as a counterbalance to the actions of the government but as a tool to repress by harshly and sometimes exaggeratedly punishing those who express criticism of the regime. At the same time, thanks to the vague laws, the judgment is largely open to interpretation by the parties regarding repressing criticism and undermining electoral competition.

Q.8. [IF NO] Would you say the judiciary frequently and unfairly sides with the regime when reviewing challenges to regime policies or interests, especially its policies to (a) repress criticism or retaliate against those who express open opposition to its most prominent, widely publicized policies, and/or (b) significantly undermine electoral competition or make the electoral process significantly skewed in its favor?

Yes. The judiciary legally supports the regime to suppress criticism and undermine electoral competition. Journalists, independent media, activists, lawyers and judges are labeled as terrorists or spreaders of fake news and then detained to silence them and prevent other criticisms of the regime through fear. Because of these harsh consequences, it is increasingly difficult to find lawyers willing to take on cases of human rights defenders for fear that they, too will be targeted or will face other professional repercussions. In terms of political parties and the electoral process, the FLN has never truly been checked nor challenged by the courts. This is in part due to the fact that the military, tied to the government, exerts a significant influence over the judiciary. In fact, the FLN has continuously amended the constitution and laws to allow for further skewing of the electoral process in their favour, including the different compositions, funding requirements, stances, and views a party can have.

Q.9. [IF NO] Would you say the judiciary fails to serve as a check on the regime in a way that allows it (a) to repress criticism or retaliate against those who express open opposition to its most prominent, widely publicized policies, and/or (b) to significantly undermine electoral competition or make the electoral process significantly skewed in its favor?

Yes. The judiciary system is dependent on the regime, and it doesn't have the power to judge the government's actors in issues regarding human rights violations.

Regime classification

Based on your answers to the previous questions, what would you classify the regime as?

Based on the answers to all the previous questions, Algeria can be qualified as a fully authoritarian country. Every pillar, electoral competition, freedom of dissent, and judicial

independence illustrate significant authoritarian features, where each pillar is significantly weakened, despite the regime outwardly depicting itself as fair as their courts, for instance, still accepting cases.

The ruling Front Liberal National (FLN) party has tightly controlled power for over 24 years, and it has been closely tied to the military since the War of Independence against France. The electoral process is not transparent and skewed, with significant repression of media and dissent. The Hirak movement since 2019 has challenged the status quo, leading to Bouteflika's resignation. Still, the FLN remains in power, supported by laws favoring government approval of political parties and heavy censorship, including the New Media Laws of 2023. The freedom of dissent is obstructed and oppressed by the regime. All the voices that try to advocate for a non-violent government and report human rights violations are being silenced through harassment, persecution, and, in certain cases, even harshly condemned. The regime doesn't leave a place for dissent and uses the fear of retaliation to prevent criticisms.

Elections in Algeria are heavily skewed in favor of the FLN, but the opposition, bolstered by the Hirak movement, presents a slim chance of success. The government's close ties to the military ensure its influence over political and judicial affairs, with laws enabling the arrests of opposition leaders and the repression of dissent. The judiciary lacks transparency and accountability, failing to hold government actors responsible for undermining democracy. Despite some signs of resistance, Algeria's future remains uncertain as it navigates between authoritarian control and democratic aspirations.

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Thailand - Regime Classification

Green, orange, or red dots beside each one

Electoral Competition	●
Freedom of Dissent	●
Judicial Independence	●

Overview

The IHEID Tyranny Tracker Team classifies Thailand as ruled by a **fully authoritarian** regime.

The Thai military has long wielded considerable influence over civilian politics. Thailand has experienced periods of both military autocracy and parliamentary democracy since the end of absolute monarchy in 1932. The country has had 12 military coups and transitions between military-backed regimes and civilian governments with 20 Constitutions.

In 2014, General Prayuth Chan-ocha dissolved the government and suspended the constitution, except for acknowledging the King as head of state. This event led to a period of military rule by the National Council for Peace and Order (NCPO). While the 2019 general election technically marked the year of transition from coup leader to head of "civilian regime", the 2017 constitution drafted by the military junta and Prayuth largely chosen by the Senators make it difficult to make this distinction. The 2017 Constitution provided the government with the power to intervene "*regardless of its effects on the legislative, executive, or judiciary*" to defend the country against national security threats.¹ Political campaigning against its adoption was forbidden, indicating a lack of input by critics and citizens.²

Prior to this, Thailand had been operating under the 2007 constitution whose process involved extensive public participation and input, beyond just the political elite. It contained both progressive elements and provisions that maintained the military and monarchy's influence. Under the 2007 version, half of the senate was elected; the other half was appointed. It further created independent oversight bodies like the National Human Rights Commission and National Counter Corruption Commission. However, political campaigning against its adoption was forbidden, indicating a lack of input by critics and citizens³. After the NCPO overthrew the democratically elected government and abrogated the 2007 constitution, the new Constitution undid many democratic reforms established in previous constitutions.

The Royal Thai Army wields significant influence over the appointment of the Prime Minister, despite the democratic process of the elected House of Representatives. The 2017 constitution, drafted by the NCPO junta, gave the military-appointed Senate the power to select the Prime Minister, effectively allowing the military to veto the choice of the democratically-elected lower house. While the House of Representatives is democratically

¹Bureau of Democracy, Human Rights, and Labor, "2022 Country Reports on Human Rights Practices: Thailand" (U.S. Department of State),

<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/thailand/>.

² DW.com. "Thai King Signs Junta's Constitution".

<https://www.dw.com/en/thai-king-signs-military-backed-constitution/a-38320644>.

³ DW.com. "Thai King Signs Junta's Constitution".

<https://www.dw.com/en/thai-king-signs-military-backed-constitution/a-38320644>.

elected, the military's ability to appoint the Senate and influence the selection of the Prime Minister undermines the lower house's ability to ensure an independent and representative leadership. This arrangement enables the military to maintain control over the premiership, even after the majority of votes in general elections goes to opposition parties⁴. The Senate's role in approving the Prime Minister has allowed the military to block candidates it opposes, as seen in 2023 when the Senate refused to endorse the candidate from the Move Forward Party. Past national elections have been marked by the disqualification and the dissolutions of opposition political leaders and parties, highlighting the enduring influence of the monarchy and military in Thai politics.

Freedom of dissent is significantly curtailed in Thailand. Political campaigns calling for reforms to the monarchy invoke heavy prosecution under Article 112 of the Criminal Code also known as *lèse-majesté*, or the royal defamation law, along with the Computer Crime Act, Cybersecurity Act, and other provisions for curtailing freedoms further were emboldened by the 2017 Constitution.

Thailand's judiciary lacks independence, with the king appointing judges based on recommendations from the Judicial Commission, which itself comprises judges approved by him. The 2017 constitution expanded the powers of the Constitutional Court, making it easier to impeach civilian leaders, dissolve political parties, and block legislation. Interpretation of this constitution prioritises restrictions on freedom of expression and dissent, particularly through the use of *lèse-majesté* and criminal libel laws to silence critics. Courts have also been accused of obstructing defendants' rights, such as denying access to evidence or legal counsel. These trends, combined, undermine the rule of law and democratic aspirations of the Thai people.

Electoral competition

●: National elections are a sham to the point where the real, mainstream political opposition does not have a realistic chance to meaningfully compete and possibly win.

Historically, Thailand has had 12 military coups. Notably, there were two military coups in 2006 and 2014 under the regime of both Shinawatra families, Thaksin and Yingluck. In 2006, the Royal Thai Army led by General Sonthi Boonyaratglin launched a coup declaring martial law. The Sonthi-led military junta replaced the Constitutional Court with an appointed military tribunal. Later, Surayud Chulanont, a retired general, was appointed as prime minister, where they published an interim constitution that gave the military junta authority over any given regime. Similarly, the 2014 coup was also led by the Royal Thai Armed Forces where General Prayuth Chan-ocha seized control. This time, the military dissolved the regime and suspended the constitution, except for section 2 of acknowledging the King as head of state, and established the National Council for Peace and Order (NCPO) to govern the country. Prayuth stayed in power until 2023. Following these military coups, Thai politics resulted in the suspension of democratic institutions and manipulation of electoral processes. Furthermore, the Thai military and the monarch have been in a symbiotic relationship, as the junta has often sought royal endorsement for these coups.

The current Constitution was drafted in 2017 by the military junta.⁵ Under this constitution, the prime minister is chosen by a vote of both the Senate and the House of Representatives with 500 elected members. However, the Senate of Thailand—the upper house of the

⁴Mérieau, Eugénie. "Thailand in 2018: Military Dictatorship under Royal Command." *Southeast Asian Affairs*, 2019, 327–40. <https://www.jstor.org/stable/26939702>.

⁵Mérieau, Eugénie. "Thailand in 2018: Military Dictatorship under Royal Command." *Southeast Asian Affairs*, 2019, 327–40. <https://www.jstor.org/stable/26939702>.

parliament—is composed of 250 members, who were all appointed by the royalist military junta in 2019. Moreover, a third of the members have a military or police background.⁶ [Furthermore, at least 376 votes from the combined 500 members from the House and 250 members from the Senate is necessary to form a government in Thailand. This configuration means that even when a party wins the popular vote in elections, a military-dominated parliament may still negate its ability to form government. In addition, the Constitution grants the military the authority to select members for the Election Commission and Constitutional Court⁷. Therefore, the military holds significant influence in Thai politics as well as responsibility for much of the political instabilities in defence of the monarchy and the King.

Notably, the general election held on May 14 of 2023 highlights a significant moment in history, as the Move Forward Party (MFP) won 151 seats, the highest among all parties⁸. The MFP is a progressive party as they advocate for democratic reforms such as reducing the power of the military in Thai politics, or abolishing the *lèse-majesté* law which has suppressed political dissent in the country. The MFP failed to form a government after its Prime Ministerial candidate, Pita Limjaroenrat, failed to secure enough support in the first parliamentary voting on July 13th, mainly blocked by the military-appointed Senate. Additionally, on July 19, the Constitutional Court charged MFP leader Pita Limjaroenrat with election fraud, blocking a second nomination for him. Fueling this loss, Thailand's Constitutional Court ruled in January 2024 that the MFP must cease advocating amending the law on royal defamation. The Pheu Thai Party (PTP)—initially in coalition with the MFP—formed its own coalition with 11 parties, including members of military-aligned groups⁹. This is seen as a strategic move from the PTP, since the coalition led to increasing support and votes from the senate, consequently winning parliament. Although the PTP had asserted its mutual values and understanding with the MFP, the party decided not to pursue and amend the *lèse-majesté* law after election results were announced.

The regime has unfairly barred a real, mainstream opposition party or candidate from competing in elections, including indirectly through judicial prosecution that leads to disqualification. In April 2024, the Constitutional Court accepted a case filed by the Election Commission of Thailand (ECT) seeking the dissolution of the opposition MFP, including 10-year political bans for its leaders, for their campaigns to reform *lèse-majesté* laws.¹⁰ Other popular mandates in the MFP's manifesto sought to overhaul Thailand's social and economic structure, including ending military conscription and curtailing business monopolies. This pattern of judicial intervention and rulings preventing reforms, including 10-year political bans for sixteen of its members,¹¹ mirrors the events leading up to the 2020 dissolution of MFP's predecessor, the Future Forward Party (FFP). The FFP was hit with a series of legal charges, including breaking public assembly law by conducting a flash mob, or seeking to overthrow the monarchy. After the 2019 elections, the Constitutional Court dissolved the FFP on February 21, 2020, and banned 16 of its leaders from politics for ten years. In summary, with the dissolution of these pro-democracy parties such as the MFP and

⁶ Johnson Kay and Clarence Fernandez, eds. "A Third of Thailand's Appointed Senators Linked to Military, Police." Reuters. (May 14, 2019). <https://www.reuters.com/article/idUSKCN1SK12/>.

⁷ "Translation: Constitution of the Kingdom of Thailand" (Constitution Net, n.d.), [https://constitutionnet.org/sites/default/files/2017-05/constitution+of+the+kingdom+of+thailand+\(b.e.+2560+\(2017\)\).pdf](https://constitutionnet.org/sites/default/files/2017-05/constitution+of+the+kingdom+of+thailand+(b.e.+2560+(2017)).pdf).

⁸ Prem Ashvini, "A Guide To Thailand's 2023 Elections," January 16, 2024, <https://blogs.lse.ac.uk/lseupr/2024/01/16/a-guide-to-thailands-2023-elections/>.

⁹ Thai PBS World. "Pheu Thai Breaking with Move Forward to Form Its Own Coalition," (August 3, 2023). <https://www.thaipbsworld.com/pheu-thai-breaks-with-move-forward-coalition/>.

¹⁰ Setboonsarng, Chayut, and Panarat Thepgumpanat. "Setback for Thailand's Move Forward Party as Court Accepts Dissolution Case." Reuters. <https://www.reuters.com/world/asia-pacific/thai-court-accepts-case-seeking-disband-opposition-move-forward-party-2024-04-03/>.

¹¹ Nikkei Asia. "Thailand Court Dissolves Opposition Future Forward." <https://asia.nikkei.com/Politics/Thailand-court-dissolves-opposition-Future-Forward>.

the FFP, there is currently no mainstream and credible opposition to the pro-military parties—in other words, Thai politics is further being militarised.

Thai elections are theoretically competitive, as seen in the 2023 elections with the MFP's victory. However, the military's influence over key institutions, as well as the senate's power have ultimately undermined the effectiveness of these elections.

Freedom of Dissent

●: Independent media, political leaders, civil society leaders, organizations, and regular people are seriously and unfairly hindered in their ability to openly criticize the regime.

Freedom of expression is highly curtailed in Thailand. Protests, dissent, public demonstrations, and political gatherings are subject to regulations, with a high risk of police brutality, arrest, and legal prosecution for being too critical of government or monarchy. The government has routinely held outspoken critics in pretrial detention for months, with courts granting bail with restrictive conditions like house arrest, prohibitions on political activities, and travel restrictions.¹² Several Thai dissidents who fled the country have been forcibly disappeared in neighbouring countries, with no progress in the investigations.^{13,14}

The regime has seriously and unfairly repressed dissenting protests. Political campaigning against the 2017 Constitution was forbidden during the referendum for its adoption¹⁵, indicating a lack of input by critics and citizens. A further 2018 law criminalised criticism of the Constitutional Court with “rude, sarcastic, or threatening words,” shielding the body from accountability¹⁶. In 2021, the Constitutional Court instructed protest groups to stop advocating for reforms to sections of laws or Constitution concerning the monarchy, and said such demands were an “abuse of the rights and freedoms and harmed the state’s security”.¹⁷

The regime has seriously abused vague laws to silence independent, dissenting media, political leaders, civil society leaders, organizations, and regular people. Article 112 of the Thai Criminal Code, also known as the *lèse-majesté* law, is categorised as undemocratic by pro-democracy parties and it places long-standing restrictions on freedom of expression due to its vague wording. The law defines *lèse-majesté* as any act that “defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent”, with a maximum sentence of 15 years in prison for each offense. Between July 2020 and September 2023 at least 1,951 citizens, including children, youth, activists, and journalists have been prosecuted, with at least 268 accused of *lèse-majesté*, the rest for sedition charges under Section 116, and

¹² Human Rights Watch, “Thailand: Events of 2022,” January 12, 2023, <https://www.hrw.org/world-report/2023/country-chapters/thailand>.

¹³ Pornpen Khongkachonkiet, “Thailand’s Escalating Crackdown on Dissent,” The Diplomat, October 28, 2021, <https://thediplomat.com/2021/10/thailands-escalating-crackdown-on-dissent/>.

¹⁴ “Cambodia: Solve Thai Activist’s ‘Disappearance’ | Human Rights Watch,” June 4, 2021, <https://www.hrw.org/news/2021/06/04/cambodia-solve-thai-activists-disappearance>.

¹⁵ “Thai King Signs Junta’s Constitution – DW – 04/06/2017,” dw.com, June 4, 2017, <https://www.dw.com/en/thai-king-signs-military-backed-constitution/a-38320644>.

¹⁶ Johnson Kay and Clarence Fernandez, eds. “A Third of Thailand’s Appointed Senators Linked to Military, Police.” Reuters.. <https://www.reuters.com/article/idUSKCN1SK12/>.

¹⁷ Rebecca Ratcliffe, “Thai Court Rules Calls for Curbs on Monarchy Are ‘Abuse of Freedoms,’” The Guardian, November 10, 2021, <https://www.theguardian.com/world/2021/nov/10/thai-court-rules-calls-for-curbs-on-monarchy-are-abuse-of-freedoms>.

charges against violation of the Emergency Decree¹⁸¹⁹. Many of these individuals are non-activists, booked for sharing or liking content online. In one case, a pro-democracy activist, Mongkol Thirakot, was sentenced under Article 112 to 50 years for social media posts attracting prosecution under that law on his personal social media²⁰, breaking the previous record of 43 years handed against a former civil servant, Anchan Preekert. Anchan had initially been sentenced to 87 years, which was only halved after they pled guilty to posting audio clips on social media, with comments deemed critical of the monarchy²¹.

The regime has manipulated media coverage in its favor. The regime has utilized the lèse-majesté law and the Computer Crimes Act to censor online content and penalize critics of the monarchy. As well as to crack down on independent media outlets like Prachatai, raiding their headquarters and banning their web content in 2014, following which Prachatai changed their stance to be pro-junta. In addition, social media is also heavily monitored by the regime, thirty people were found to have Pegasus spyware, one of the most advanced digital spying techniques, installed on their phones²². Those targeted include at least four members of a prominent youth movement, including Panusaya Sithijirawattanakul, who has been charged with at least 10 lèse-majesté offences, and Arnon Nampa, a human rights lawyer, charged with at least 14 lèse-majesté charges and who was detained for a total of 339 days²³. Other methods include recruiting citizens to monitor online comments and report those deemed inviting prosecution under several laws, including Article 112²⁴²⁵. Furthermore, the regime has set up its own network of pro-regime websites and social media accounts to promote propaganda praising the monarchy and attacking opposition voices. This "PR mission" aims to manipulate public opinion and counter critical narratives about the regime²⁶. Overbroad laws such as the Computer Crime Act and Cybersecurity Act specifically have aided the regime in the suppression of dissent, particularly online²⁷. Historic trends show the regime silencing dissenting media and continuing to do so with digital technologies.

Judicial Independence

¹⁸ "Thai Court Announces Another Harsh Prison Sentence Under Royal Insult Law" The Diplomat, March 15, 2024

<https://thediplomat.com/2024/03/thai-court-announces-another-harsh-prison-sentence-under-royal-insult-law>

¹⁹ Thai Lawyers for Human Rights. "September 2023: The total number of people facing political prosecutions is 1,928 in 1,249 cases.," October 3, 2023. <https://tlhr2014.com/archives/60280>.

²⁰ AFP, "Man Jailed for Record 50 Years for Criticising Thai Monarchy," *The Guardian*, January 18, 2024.

<https://www.theguardian.com/world/2024/jan/18/man-jailed-for-record-50-years-for-criticising-thai-monarchy>.

²¹ Rebecca Ratcliffe, "Woman Jailed for Record 43 Years for Insulting Thai Monarchy," *The Guardian*, January 19, 2021.

<https://www.theguardian.com/world/2021/jan/19/woman-jailed-for-record-43-years-for-insulting-thai-monarchy>.

²² "Thailand: Pegasus Spyware Found on Phones of Dissidents Involved in Mass Protests," Amnesty International, July 18, 2022,

<https://www.amnesty.org/en/latest/news/2022/07/pegasus-thailand-activists-protests/>.

²³ Stephanie Kirchgaessner, "Dozens of Thai Democracy Activists Targeted with Pegasus Phone Spyware," *The Guardian*, July 17, 2022,

<https://www.theguardian.com/world/2022/jul/17/dozens-of-thai-democracy-activists-targeted-with-pegasus-phone-spyware>.

²⁴ MC Galang, "Rap Against Dictatorship To Challenge Thai Government's Block Order Of 'reform' Youtube Video In Court," *Hiphop*, November 3, 2021,

https://hiphopdx.com/en_asia/news/id.65596/title.rap-against-dictatorship-to-challenge-thai-governments-block-order-of-reform-youtube-video-in-court.

²⁵ "Manipulating Civic Space: Cyber Trolling in Thailand and the Philippines,"

<https://www.giga-hamburg.de/en/publications/giga-focus/manipulating-civic-space-cyber-trolling-in-thailand-and-the-philippines>.

²⁶ Global Asia. "Informational Autocrats: The Thai Regime's Manipulation of Online Debate."

https://www.globalasia.org/v16no1/feature/informational-autocratsthe-thai-regimes-manipulation-of-online-debate_pavin-chachavalpongpun.

²⁷ "Thailand Events of 2023," *Human Rights Watch*, September 26, 2023,

<https://www.hrw.org/world-report/2024/country-chapters/thailand>.

●: The judiciary fails to serve as a check on the regime in a way that allows it to repress criticism or undermine electoral competition.

Thailand's Constitutional Court, in particular, has been criticised for its sweeping powers and for making rulings that appear to favour the pro-monarchy and traditionalist regime, including ousting prime ministers from office. Most recently, after the 2023 elections, the Constitutional Court handed down multiple judgments against the MFP. These included the suspension of its prime ministerial candidate, Pita Limjaroenrat, from parliament and a decision not to assess the constitutionality of a July parliamentary vote, which blocked his re-nomination as prime minister. However, in February 2024, it cleared previous allegations against Mr. Limjaroenrat, reinstating him to the lower house. Judicial procedures are often used to delay or circumvent electoral processes by the Thai regime. By then, Srettha Thavisin had been appointed Prime Minister, circumventing the electorate's votes in Mr. Limjaroenrat's favour as the most popular candidate for the position.²⁸ The ongoing efforts to dissolve the MFP and ban its leaders suggest a continued trend of the judiciary being used to undermine democratic opposition and consolidate the military-backed regime's power.

Thailand has four distinct court systems: the Court of Justice, the Administrative Court, military courts, and the Constitutional Court. The Court of Justice is the largest court system and has general jurisdiction over civil and criminal matters. It is organised into three tiers: Courts of First Instance, Courts of Appeal, and the Supreme Court. The Administrative Court system has jurisdiction over disputes between the State/government agencies and private citizens and is composed of two tiers: Administrative Courts of First Instance and the Supreme Administrative Court. Military courts have jurisdiction over disciplinary issues of military officers and disputes between military personnel under military laws. Finally, the Constitutional Court oversees constitutional matters and reviews the legality of bills/laws and verifies the qualifications of Members of Parliament, the Senate, and the Cabinet.²⁹

Thai law allows for judicial independence and impartiality,³⁰ however in practice the judiciary frequently sides with the regime, acting as a "*functional ally of the Royal Thai Army*"³¹. Judicial appointments, promotions, transfers, and removal are finalised by the King upon the recommendation of the Judicial Commission which is chaired by the President of the Supreme Court and mainly composed of the Commissioners elected from judges in all levels of the Courts of Justice, all of whom are approved and appointed by the King.³² This negates any judicial impartiality and independence.

Judicial interpretations of the Constitution stem from a lens that is bereft of concerns for freedom of expression and dissent, especially regarding lèse-majesté laws and criminal libel laws. The systematic use of criminal laws to silence critics and the courts' failure to uphold fundamental rights erode the rule of law and stifle the path to democracy.

Pretrial detention conditions, especially for political activists and those charged under Article 112, are for prolonged periods, and pretrial individuals are denied bail regularly, or offered

²⁸ Tanakasempipat, Patpicha. "Move Forward's Pita Returns to Thai Parliament After Acquittal." TIME, January 25, 2024. <https://time.com/6588391/thailand-pita-parliament-acquittal/>.

²⁹ "The Judicial System in Thailand: An Outlook for a New Century / IDE Asian Law Series No. 6," Institute of Developing Economies, accessed April 22, 2024, <https://www.ide.go.jp/English/Publish/Reports/Als/06.html>.

³⁰ "Thailand Archives | UN Special Rapporteur | United Nations Special Rapporteur on the Independence of Judges and Lawyers." United Nations Special Rapporteur on the Independence of Judges and Lawyers. <https://independence-judges-lawyers.org/country/thailand/>.

³¹ Mériéau, Eugénie. "The Thai Constitutional Court, a Major Threat to Thai Democracy." *International Association of Constitutional Law Blog* (blog). <https://blog-iacl-aidc.org/2019/5/3/the-thai-constitutional-court-a-major-threat-to-thai-democracynbsp>.

³² Court of Justice of Thailand. "Administrative Organization of The Court of Justice." <https://www.coj.go.th/th/content/page/index/id/91997>.

bail under extremely stringent conditions. Some courts also reportedly objected to defendants' requests for evidence, prohibited them from meeting with their lawyers or from having family members or other trusted individuals observe their trial, as well as allegations authorities did not afford defendants their full rights during trials³³.

³³Bureau of Democracy, Human Rights, and Labor, "2022 Country Reports on Human Rights Practices: Thailand" (U.S. Department of State), <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/thailand/>.

Full Report - Thailand

Basic Background

Before assessing the regime type, please provide some background on the internal organization of the state and recent key democratic or authoritarian events

Thailand is a constitutional monarchy, with King Maha Vajiralongkorn as the head of state. The head of government is currently the Prime Minister, with the post held by incumbent Srettha Thavisin since 22 August 2023. Its legislative branch is bicameral, consisting of the House of Representatives and the Senate. The House of Representatives is elected by the people, while the Senate members are appointed by the Royal Thai Army. The judiciary includes multiple high courts, with the Supreme Court of Justice serving as the highest court for most cases. Additionally, there's a Constitutional Court, which oversees constitutional matters.

Thailand has experienced periods of both military autocracy and parliamentary democracy since the end of absolute monarchy in 1932.¹ The country has had 12 military coups and transitions between military-backed regimes and civilian regimes with 20 Constitutions. Recent events include the 2014 coup d'état, which saw the military seize power from a democratically elected regime, leading to a period of military rule by the National Council for Peace and Order (NCPO) until general elections in 2019. The military-drafted 2017 constitution plays a significant role in the 2019 and 2023 elections in terms of not being free and fair.

In the 2019 general elections, the Pheu Thai Party (PTP) won the largest seat number of 136, with the progressive Future Forward Party (FFP) in third place. However, the constitutional court dissolved the FFP on February 21, 2020 and banned 16 of its leaders from politics for 10 years.

The last election in 2023 saw the candidate from the successor of the FFP, the Move Forward Party (MFP), win 151 out of 500 seats, making it the most popular party². Although MFP leader Pita Limjaroenrat was anticipated to assume the role of Thailand's next prime minister, his prospects were derailed by the military-appointed Senate and various challenges, including allegations of election fraud and accusations of violating the lèse-majesté law. Furthermore, in March 2024, the Election Commission of Thailand (ECT) moved the Constitutional Court to dissolve the MFP.

Non-state actors and foreign states

¹ Ellen Ioanes, "Thailand's Democracy Could Still Move Forward — Even without Pita," Vox, July 22, 2023, <https://www.vox.com/world-politics/2023/7/22/23804053/thailand-democracy-pita-prime-minister-prayuth>.

² "Thailand Election: How Move Forward's Upset Win Unfolded," Nikkei Asia, <https://asia.nikkei.com/Spotlight/Most-read-in-2023/Thailand-election-How-Move-Forward-s-upset-win-unfolded>.

Apart from the domestic government, are other actors, like non-state actors or foreign states, claiming rights to the geographical area or the state?

Yes.

There are various small factions of armed non-state actors active in the Southern Thailand Insurgency, primarily situated along the Malaysia-bordering provinces of Pattani, Yala, Narathiwat, and certain parts of Songkhla. These areas were part of an erstwhile independent Malay Sultanate named Patani, until 1909, when they were annexed by Thailand under a treaty with the United Kingdom.³

[IF YES] Does it concern non-state actors or foreign states?

Non-state Actors.

Some major Non-State Actors include Barisan Revolusi Nasional (BRN) and the MARA Patani, which itself represents an umbrella of a number of opposition groups operating in the south of Thailand.

Talks in February 2024 between the Thai regime and BRN were mediated by Malaysia and resulted in an agreement to develop a Joint Comprehensive Plan towards Peace (JCPP), aimed at reducing violence and finding political solutions.⁴ BRN is expected to shift demands from an independent Islamic State to greater autonomy or home rule as part of any settlement.⁵

Pillar 1: Electoral competition

Q.1. Are national-level elections, such as parliamentary or presidential elections, absent in the country?

³ "Political Islam: As Insurgency Drags on in Thailand's Deep South, a New Generation Is Swept up in the Conflict," CNA

<https://www.channelnewsasia.com/asia/thailand-insurgency-deep-south-separatist-political-islam-4214591>.

⁴ "Thailand, BRN Rebels Discuss Easing Tensions Ahead of Ramadan, Songkran," Benar News. <https://www.benarnews.org/english/news/thai/peace-talks-02072024144745.html>.

⁵ "Thailand and Militants in South Poised to Advance Peace Talks," Nikkei Asia. <https://asia.nikkei.com/Politics/Thailand-and-militants-in-south-poised-to-advance-peace-talks>.

No, Thailand holds general elections to determine the regime and the prime minister, with the most recent election taking place on May 14, 2023. In essence, the King, and particularly the military, retain significant influence in Thai politics.

Thailand's parliament comprises 250 appointed senators in the upper house and 500 members in the lower house (House of Representatives). Voters receive two ballots for the lower house: one for the 400 constituencies and one for the 100 part-list members. Furthermore, the prime minister is elected through a combination of both houses, requiring a total of 376 votes. This setup benefits pro-establishment parties, as they garner support from the votes of the 250 military-appointed senators⁶.

The 2023 election marked a significant moment in Thai history, as the progressive MFP won 151 seats, the highest among all parties⁷. With a coalition between the MFP and PTP, Pita Limjaroenrat was expected to become Thailand's next prime minister. However, this was complicated by the Thai Senate, composed of 250 members appointed by the military junta in 2019, with one-third of them having military or police backgrounds⁸. Given the royalist and military-dominated composition of the senate, the MFP was accused of violating the lèse-majesté law before the parliamentary voting on July 13. Consequently, the first parliamentary voting on July 13 left Pita 52 seats short of success. Additionally, on July 19, the Constitutional Court blocked Pita's second nomination by disqualifying him for owning shares in a media company, despite the television station not broadcasting since 2007, blocking his second nomination. The PTP, the runner-up in the election, announced its alliance with pro-military parties to form a government. This move was perceived as strategic by the PTP, as they failed to garner support from the senate during the MFP's campaign. Therefore, the PTP increased its chances of success with the Bhumjaithai, which later proved effective as the current regime is led by the PTP.

Consequently, while elections do occur in Thailand, the King, and consequently the senate, wield significant influence in Thai politics, effectively obstructing parties with dissenting views from the monarch.

Nevertheless, the current unelected Senators will conclude their term in May 2024, with 200 new members to be selected by the Election Commission, a process that warrants close monitoring⁹.

Q.2. Has the regime unfairly barred a real, mainstream opposition party or candidate from competing in elections, including indirectly through judicial prosecution that leads to disqualification?

⁶ Karen Lee and Gregory B. Poling, '2023 Thai Election Results: An Opposition Win but Unclear Path Ahead', 16 May 2023, <https://www.csis.org/analysis/2023-thai-election-results-opposition-win-unclear-path-ahead>.

⁷ Prem Ashvini, 'A Guide To Thailand's 2023 Elections', 16 January 2024, <https://blogs.lse.ac.uk/lseupr/2024/01/16/a-guide-to-thailands-2023-elections/>.

⁸ 'A Third of Thailand's Appointed Senators Linked to Military, Police', 14 May 2019, <https://www.reuters.com/article/idUSKCN1SK12I/>.

⁹ 'Over 210,000 Thais Have Applied to Fill 200 Senate Seats: EC', *The Nation*, 3 March 2024, <https://www.nationthailand.com/blogs/thailand/politics/40036066>.

Yes. There have been incidents involving both mainstream opposition parties and candidates that have been dissolved or disqualified during or after national elections. It is important to note that a political ban results in losing the right to vote, leading to further disenfranchisement¹⁰. Below are examples involving the MFP and its political leaders, the FFP, as well as the Thai Rak Thai (TRT) and People's Power Party (PPP).

Pita Limjaroenrat, a Thai opposition figure and former leader of the MFP, was suspended from parliament from July 2023 to January 2024¹¹. He had been blocked from renomination to become prime minister on July 19, 2023, due to allegations of holding shares in ITV, despite being a company that lost its broadcasting concession in 2007. Members of parliament are prohibited from owning stock in media companies.

While Pita was banned from politics, the Supreme Court also barred current core member of the Progressive Movement, Pannika Wanich, from politics for life for 'ethical breaches' over a Facebook post she made more than a decade ago¹².

Although this occurred after the 2019 elections, the constitutional court dissolved the FFP on February 21, 2020, and banned 16 of its leaders from politics for 10 years. The court ruled that the party violated election rules by accepting a loan from Thanathorn Juangroongruangkit, a billionaire and former leader of the FFP. Moreover, the FFP faced a series of legal charges, including violating the public assembly law by conducting a flash mob and attempting to overthrow the monarchy. Thanathorn was also charged in two other cases, including lèse-majesté and computer crimes¹³. Furthermore, on February 5, 2024, key figures of the FFP, including Pannika, were handed a four-month jail sentence for their involvement in a protest staged in Bangkok in 2019. These figures included FFP leader Thanathorn Juangroongruangkit, Piyabutr Saengkanokkul, Pannika Wanich, Phairatthachot Chantharakhajorn, as well as political activists such as Nuttaa Mahattana, Parit Chiwarak, and Tanawat Wongchai¹⁴.

The dissolution of parties is not a new phenomenon. In May 2007, the constitutional court dissolved the former prime minister Thaksin Shinawatra's TRT party. The court found the party guilty of electoral fraud during the 2006 general election. This dissolution came amidst political turmoil and protests against Thaksin's regime. Later in 2008, the PPP, the successor to TRT, was dissolved for similar reasons of electoral fraud. During this time, political parties supporting Thaksin were the mainstream opposition to royalist parties supportive of the military.

¹⁰ Limited, Bangkok Post Public Company. "FFP Dissolved, Executives Banned for 10 Years." Bangkok Post. Accessed May 7, 2024.

<https://www.bangkokpost.com/thailand/politics/1862769/ffp-dissolved-executives-banned-for-10-years>

¹¹ Tan Hui Yee, 'Thai Court Clears Opposition Figure Pita Limjaroenrat to Return to Parliament', *The Straitstimes*, 24 January 2024, <https://www.straitstimes.com/asia/se-asia/thai-court-clears-opposition-figure-pita-limjaroenrat-to-return-to-parliament>.

¹² Sebastian Strangio, 'Thai Court Bans Progressive Politician From Political Office for Life', *The Diplomat*, 21 September 2023,

<https://thediplomat.com/2023/09/thai-court-bans-progressive-politician-from-political-office-for-life/>.

¹³ 'Banned Thai Opposition Figure Faces New Criminal Charges', *Reuters*, 11 March 2020, <https://www.reuters.com/article/idUSKBN20Y1PUJ>.

¹⁴ 'Suspended Jail Term for Pita, Future Forward Figures over 2019 Rally', *The Nation*, February 2024, <https://www.nationthailand.com/thailand/politics/40035312>.

Q.3. Has the regime unfairly and significantly hindered a real, mainstream opposition party or candidate's electoral campaign?

Yes.

The Election Commission prohibits political parties from mentioning the monarchy in election campaigns and threatens to dissolve and prosecute parties if they do so. For example, Thailand's Election Commission announced on March 12, 2024, its intention to take action in dissolving the MFP, whose campaign included advocating for changes to the lèse-majesté law. If the MFP is dissolved, its leaders will be banned from politics for 10 years, similar to the fate of FFP leaders such as Thanathorn Juangroongruangkit.

On April 28 2024, The EC warned and shut down a website of the Progressive Movement campaign for the Senate Election. This is because the Progressive Movement launched a website called www.senate67.com for potential candidates to introduce themselves before the election, yet was shut down on Friday night by the EC which prohibits politicians that are members of political parties to assist any senator candidates. Due to the current Senate being filled with members of common stance, the campaign was to include awareness and public participation to increase inclusiveness in the upcoming senate election, which is arguably not against any laws .

Q.4. Has the regime engaged in overwhelming voting irregularities or large-scale electoral fraud?

No.

Q.5. Did the regime enjoy such significant and unfair campaign advantages that seriously undermined the real, mainstream opposition's ability to compete?

Somewhat, especially from 2014 to 2019 when Thailand was under the rule of the National Council for Peace and Order (NCPO).

The March 24, 2019 election saw the main opposition party, the FFP, dissolved, as well as the military taking control of the election commission members and levying a number of charges against opposition figures with pro-democracy views. In the case of political activists prosecuted, the 2023 general election also saw a large number of people participating in political assemblies and expressions. Moreover, the military junta enforced censorship during the campaign season. For example, the Thai media commission banned Voice TV from broadcasting since the National Broadcasting and Telecommunications Commission (NBTC) accused the TV channel of airing candidates critical of Thailand's military regime, which was perceived as a threat to national security¹⁵. Since the NCPO came to power in 2014, Voice TV has been targeted for censorship and punishment more than any other TV station in Thailand,

¹⁵ Sunai Phasuk, 'Unending Repression Under Thailand's Military Junta', *Human Rights Watch*, 22 March 2019, <https://www.hrw.org/news/2019/05/22/unending-repression-under-thailands-military-junta>.

according to Human Rights Watch. It should be noted, however, that after the 2023 general election, Voice TV shifted its ideology to being pro-regime.

On a similar note, there are links between the Thai Media Commission and the military. On 7 October 2011, the Royal Proclamation appointed the first 11 members of the National Broadcasting and Telecommunications Commission (NBTC), where 11 of them are affiliated to the military. The NBTC is responsible for overseeing the country's telecommunications industries¹⁶. As for current members, the first five members were Royally Endorsed, and the 6th member was approved by the Senate, who was a former special adviser in the Royal Thai Police¹⁷. Moreover, under NCPO Announcement 103/201, it is prohibited to publish information that is considered to affect national security or public order, thus NBTC was the primary censorship tool for the junta to suspend broadcasts and radio or take stations off air.

An unfair campaign advantage can be seen when the Palang Pracharat Party had a fund-raising dinner on December 19, raising around 20.3 million US dollars. According to Human Rights Watch, the ECT handled this case against the pro-junta party at a slower pace than other progressive parties. No kind of punishment seemed to happen¹⁸.

Q.6. Has the regime seriously undermined independent electoral oversight?

Yes.

The Election Commission of Thailand (ECT) has shown bias against anti-military candidates and parties. Specifically, the current ECT members were chosen by military leaders, and the body itself is ruled by military elites. Members of the ECT serving from 2006 to 2013 were elected by the military junta that took control in 2006¹⁹. In addition, members of the ECT from 2013 to 2018 were selected under the 2007 military-drafted constitution that gave more power to the judges, particularly those opposed to Thaksin Shinawatra, the former prime minister that was popular among voters. By the time the ECT members from 2018 to present were elected, the ECT had been under influence of the old elites for 12 years. In other words, the current Election Commission members are chosen by military leaders that are favourable to the monarch.

Moreover, while the ECT mentioned no objection to foreign organisations wanting to observe the 2019 general election, former Foreign Minister Don Pramudwinai voiced disagreements against foreign observers²⁰. He argued that the election is an internal matter, and that having

¹⁶ *The Nation*. 2011. 'Strong Military Role in NBTC', 5 September 2011.

<https://www.nationthailand.com/business/30164583>.

¹⁷ Tortermvnsana, Komsan. 2022. 'Senate Approves Sixth Member of NBTC.' *Bangkok Post*, 18 August 2022.

<https://www.bangkokpost.com/business/general/2371036/senate-approves-sixth-member-of-nbtc-board>.

¹⁸ 'Thailand: Structural Flaws Subvert Election | Human Rights Watch'. 2019. 19 March 2019.

<https://www.hrw.org/news/2019/03/19/thailand-structural-flaws-subvert-election>.

¹⁹ Petra Desatova and Saowanee T Alexander, 'Election Commissions and Non-Democratic Outcomes:

Thailand's Contentious 2019 Election', *Politics* 43, no. 4 (November 2023): 505–19,

<https://doi.org/10.1177/02633957211000978>.

²⁰ 'Thailand: Structural Flaws Subvert Election', *Human Rights Watch*, 19 March 2019,

<https://www.hrw.org/news/2019/03/19/thailand-structural-flaws-subvert-election>.

foreign observers would imply that Thailand has election issues. Thus, ANFREL was the only international group that received ECT accreditation for overseeing the election. Other foreign governments relied on their foreign diplomatic staff in Thailand. In addition, the P-Net reported that the ECT was slow in giving formal guidelines for election monitoring to political party agents and monitoring groups. If the guidelines are given late, it questions the transparency of electoral processes. The delay does not give agents and monitoring groups sufficient time to prepare, thus may lead to hindering monitoring efforts in the election.

During the 2019 elections, Human Rights Watch reported that the ECT handled complaints made against the pro-military Palang Prachart Party at a slower speed than complaints against progressive parties such as the FFP²¹. Specifically, these cases include financial sponsorship by state agencies and officials for a fund-raising dinner of the Palang Pracharath Party on December 19.

The ECT announced on March 12, 2024 that it will seek to dissolve the MFP²². This is because the Move Forward aims to reform the lèse-majesté law, which is seen as unlawful. The ruling was decided on a unanimous vote, according to the Election Commission. If the MFP is dissolved, its figures will be banned from politics for 10 years—similar to that of the FFP. Since 2006, eight opposition political parties have been disbanded by the ECT.

During the 2019 general elections, former Prime Minister Thaksin Shinawatra criticised the Thai military regime and the Election Commission for manipulating the polls²³. In support of this assertion, the non-governmental election watchdog, Open Forum for Democracy Foundation (P-Net), stated that the election was indeed ‘not fair’. P-Net cited the Election Commission’s failure to make advance preparations, including the absence of voluntary observers to detect electoral fraud at polling stations. Additionally, there was a lack of investigation into claims of vote-buying, which several candidates reportedly relied on, according to the watchdog

Q.7. Did the regime take measures to unfairly hold on to power, including by modifying the constitution or electoral laws for this purpose?

Yes.

The current Constitution was drafted in 2017 and was written by the junta-appointed. All 250 senators were appointed by the military in 2019. Specifically, the Constitution grants the military the power to elect members from the Election Commission and Constitutional Court, which can also be seen through favouritism of pro-regime parties and figures.

²¹ ‘Thailand: Structural Flaws Subvert Election | Human Rights Watch’. 2019. 19 March 2019.
<https://www.hrw.org/news/2019/03/19/thailand-structural-flaws-subvert-election>.

²² Rebecca Ratcliffe, ‘Thailand Election Body Seeks to Dissolve Progressive Party That Won 2023 Vote’, *The Guardian*, 12 March 2024,
<https://www.theguardian.com/world/2024/mar/13/thailand-move-forward-party-could-be-dissolved-progressive-anti-defamation-law>

²³ Regan, Helen. 2019. ‘Thai Election “Not Free and Fair” Says Monitor Group’. *CNN World*, 28 March 2019.
<https://edition.cnn.com/2019/03/26/asia/thailand-election-free-and-fair-intl/index.html>.

Section 204 describes how members of the Constitutional Court are elected as follows: “A person who is elected or selected to hold the position of judge of the Constitutional Court must obtain the approval of the Senate with the votes of not less than one-half of the total number of the existing members of the Senate.”²⁴ Therefore, it can be said that individuals appointed to the Constitutional Court are those endorsed by the military appointed senate, sharing similar ideologies and demonstrating loyalty to the King. For example, during the 2019 election, the Constitutional Court dissolved the Thai Raksachart Party for nominating the King’s sister as prime minister²⁵. In addition, in November 2021, the Constitutional Court stated that any criticism of the monarchy will be deemed as an act of treason²⁶. Prior to the 2023 general election, the Constitutional Court ruled that the country’s former prime minister, Prayuth Chan-ocha, can remain in power until the election²⁷. Prayuth was temporarily suspended as prime minister, for holding office for more than 8 years since 2014. However, the Constitutional Court ruled in favour of Prayuth’s eight-year term to be counted when the Constitution was put into effect in 2017. Despite an opinion poll on August 23 showing nearly two-thirds of the Thai population wanting Prayuth to leave office, the Constitutional Court remained in favour of the former appointed prime minister by junta-backed system

Similarly, Section 222 regards the Election Commission, where members “consists of seven commissioners appointed by the King upon the advice of the Senate”.

Q.8drs Did the real, mainstream opposition threaten to or ultimately boycott the elections, as a way of protesting the lack of a free and fair electoral competition and denouncing their actual or perceived inability to win under current electoral circumstances?

Somewhat.

The 2014 election witnessed clashes between anti-regime and pro-regime demonstrators, resulting in tens of thousands of Thais being unable to vote due to protesters boycotting the vote and preventing ballot casting²⁸. Specifically, the boycott was primarily led by the opposition Democratic Party and supporters of the umbrella group People’s Democratic Reform Committee (PDRC). The PDRC, also known as the People’s Committee for Absolute Democracy with the King as Head of State (PCAD), was pro-military and royalist supporters. The Democratic Party’s leader and former PM Abhisit Vejjajiva announced the boycott after a meeting of party executives, withdrawing the party’s participation in the election. The party’s boycott decision was rather a reflection of the street protests that have

²⁴ ‘Translation: Constitution of the Kingdom of Thailand’ (Constitution Net, n.d.), [https://constitutionnet.org/sites/default/files/2017-05/Constitution+Of+The+Kingdom+Of+Thailand+\(B.E.+2560+\(2017\)\).pdf](https://constitutionnet.org/sites/default/files/2017-05/Constitution+Of+The+Kingdom+Of+Thailand+(B.E.+2560+(2017)).pdf).

²⁵ Yingcheep Atchanont, ‘The 2023 General Election in Thailand: Possible Scenarios’, 9 May 2023, <https://www.boell.de/en/2023/05/09/2023-general-election-thailand-possible-scenarios>.

²⁶ ‘Thailand: Upcoming Election Fundamentally Flawed | Human Rights Watch’, 6 April 2023, <https://www.hrw.org/news/2023/04/06/thailand-upcoming-election-fundamentally-flawed>.

²⁷ ‘Thai Prime Minister Can Stay in Power, Constitutional Court Rules - The New York Times,’ <https://www.nytimes.com/2022/09/30/world/asia/thailand-prime-minister.html>.

²⁸ Kate Hodal, ‘Thai Voters Prevented from Casting Ballot by Anti-Government Protesters’, *The Guardian*, 2 February 2014, <https://www.theguardian.com/world/2014/feb/02/thai-voters-prevented-casting-ballot-anti-government-protesters>.

been taking place in the recent weeks, demanding Shinawatra to stand down. These protests were as large as 150,000-200,000 prior to Abhisit's announcement²⁹.

The boycott was generally due to complaints against the "Thaksin regime", since protesters claim that Yingluck's brother is controlling the regime. But also, protesters claim that Thaksin's influence is corrupt, as they are buying electoral support from the country's urban side. While there are reports stating that the protest included voices of 'inability to win' and those claiming that the Democratic party boycotted knowing they 'could not win', it's not the majority of reason for the protest, thus upon reconsideration, this example may be a grey zone to include in this questions section.

Thaksin had been ousted from office in a military coup in 2006. Within three months of the protest's onset, at least 10 people were killed and 600 injured.

Due to the boycott by the Democratic Party withdrawing from the election, which resulted in the closure of a significant number of polling booths, the Constitutional Court later invalidated the general election. Subsequent to the election, Thailand's political situation further deteriorated, ultimately leading to a military coup on May 22, 2014. The Royal Thai Armed Forces, led by Prayuth Chan-ocha, orchestrated the coup d'état and ousted Yingluck's regime³⁰. This year marked the commencement of Thailand's military rule, which persisted until 2019. However, it should be noted that while 2019 technically marked the year of transition from coup leader to head of "civilian regime", the 2017 constitution drafted by the military junta and Prayuth largely chosen by the Senators make it difficult to make this distinction.

Q.9. Has the main political party been in power for many years, such as winning three elections in a row, or won elections with a very high vote share, typically more than 60% (in hybrid authoritarian regimes) or 70% (in fully authoritarian regimes) of the vote?

No.

However, the following information may be helpful to know that from 2001 to 2006, the TRT to an extent has won elections consecutively.

The TRT party won three consecutive national elections in 2001, 2005 and 2006 under former prime minister Thaksin Shinawatra³¹. This was the first time in Thai history where a political party earned victory from popular voting. TRT's success was mainly due to its policies that

²⁹ WEDEL, JINDA, and GRANT PECK. 2013. 'Thai Opposition Party to Boycott General Election'. *AP News*, 22 December 2013. <https://apnews.com/general-news-ba202772b412451490a2ab53970b9120>.

³⁰Kate Hodal, "Thailand Army Chief Confirms Military Coup and Suspends Constitution," *The Guardian*, May 22, 2014, <https://www.theguardian.com/world/2014/may/22/thailand-army-chief-announces-military-coup>.

³¹ Robert Amsterdam, 'Thailand: The Bangkok Massacres – A Call for Accountability', *Amsterdam & Partners Lip*, 22 July 2010. <https://amsterdamlip.com/white-papers/thailand-the-bangkok-massacres-a-call-for-accountability/>.

included social welfare proposals, rural development initiatives and overall focus on aspects of health, education and energy. In 2005, Thaksin was reelected with the highest mandate that a prime minister has ever received in Thai history, winning 374 out of 500 parliamentary seats.

However, the 2006 military coup began the restoration of military generals and royal advisors, which overthrew Thaksin and led to the dissolution of the TRT. Additionally, the coup led to the ban of the leaders from political participation for five years. Despite facing challenges, it can be said that the consecutive win of the TRT highlights the party's capacity to challenge the longstanding political landscape in Thailand.

Q.10. Was a democratically-elected government who is governing democratically (i.e. has not yet eroded into a hybrid or a fully authoritarian regime), overthrown through a coup d'état (whether military-led or civilian-led)?

Somewhat. Although not completely democratic, two regimes seen as advocates of opposition to the Thai military have been overthrown through a coup d'état. These are the military coups in 2006 and 2014 under the regime of both Shinawatra families, Thaksin and Yingluck.

On September 19, 2006, the Royal Thai Army launched a coup against former prime minister Thaksin Shinawatra, declaring martial law³². Led by General Sonthi Boonyaratglin, he stated that the Thai constitution was revoked, leaving the country divided and corruption as widespread. The Sonthi-led military junta named itself the Council for Democratic Reform under the Constitutional Monarchy (CDRM) and replaced the Constitutional Court with an appointed military tribunal. On October 1, 2006, Surayud Chulanont, a retired general, was appointed as prime minister. Moreover, they published an interim constitution that gave the military junta authority over any given regime. Thaksin was attending the United Nations General Assembly in New York at the time, and was later ousted from the regime.

On May 22, 2014, the Royal Thai Armed Forces, led by General Prayuth Chan-ocha launched a coup d'état against then prime minister Yingluck Shinawatra³³. This is because Prayuth believed the military "*had to restore order*" after six months of political unrest of demonstrators against Yingluck. After seizing control, the military dissolved the regime and suspended the constitution, except for section 2 of acknowledging the King as head of state, and established the National Council for Peace and Order (NCPO) to govern the country. Prayuth stayed in power until 2023.

Q.11. Has the military effectively negated electoral results and taken over the government for itself?

³² Peter Walker, 'Thai Military Claims Control after Coup', *The Guardian*, 19 September 2006, <https://www.theguardian.com/world/2006/sep/19/thailand>.

³³ Greg Botelho, Paula Hancocks, and Kocho Olarn, 'Thai Military Takes over in Coup – Again', 22 May 2014, <https://edition.cnn.com/2014/05/22/world/asia/thailand-martial-law/index.html>.

Somewhat. Although the regime was taken under military rule twice in since 2006, the incident in 2006 under General Sonthi negated electoral results of the winning TRT party, whereas the military take-over in 2014 was not related to election results, but simply during political turmoil. In addition, the aftermath of the 2023 elections also shows the military taking over the regime itself.

As mentioned in question number 10, despite the TRT party under Thaksin Shinawatra winning consecutive elections including the last one in 2006, a military coup overthrew the regime³⁴. Specifically, the coup, organised by commander in chief General Sonthi Boonyaratglin took control of the regime under military rule. On October 1, 2006, Surayud Chulanont, a retired general, was appointed as prime minister, along with a newly published interim Constitution that promises the Thai junta authority and power over the given regime.

In a similar event, on May 22, 2014, the Royal Thai Armed Forces, led by General Prayuth Chan-ocha took control over the Thai regime. However, this coup d'état came during former prime minister Yingluck Shinawatra in office, as protest was escalating against Yingluck's Thaksin-aligned Pheu Thai regime.

Furthermore, as mentioned previously in detail regarding the 2023 elections, the military didn't per se seize control, but it did end up co-opting, aka "buying off," a historically pro-democracy, or at the least centrist, party.

Q.12. Overall, looking at your answers to the previous questions, would you say the national elections are largely free and fair?

No.

Q.13. [IF NO] Would you say that electoral competition is significantly skewed in favor of the regime, to the point where the real, mainstream political opposition has a highly unlikely although realistic chance to win?

No.

Q. 14 [IF NO] Would you say national elections are a sham or a façade, to the point where the real, mainstream political opposition does not have a realistic chance to meaningfully compete and possibly win?

Thailand's path to democracy continues to face challenges, with genuine electoral competition constrained by centralised political power held by the monarchy and the military. Subsequently, the fairness and freeness of Thai national elections raise concerns.

In May 2024, the Senate will dissolve, and 200 new members will be elected. However, these members are elected by the Election Commission, which is selected by the military itself.

³⁴“Why Is Thailand under Military Rule? - BBC News, <https://www.bbc.com/news/world-asia-25149484>.

Moreover, key institutions such as the Election Commission and the Constitutional Court will remain under the influence of the military-appointed senate. Additionally, former Prime Minister Thaksin Shinawatra returned to Thailand in August 2023, where he was jailed for eight years on corruption charges, yet this was reduced to one year by King Maha Vajiralongkorn³⁵. Prior to his return, the PTP reached an agreement with the conservative Bhumjaithai Party to allow its de facto figure Thaksin to return to Thailand with a reduced sentence³⁶. Therefore, it seems that politicians loyal to the monarchy continue to wield influence. Furthermore, with Thaksin's return and influence as the founder of the PTP, along with the possible dissolution of the Move Forward Party, there is speculation about the return of the PTP in Thai politics.

In essence, the issue is that Thailand's democracy remains in transition, with uncertainty surrounding the future of the opposition party's chances of winning. The monarchy and military power continue to wield influence in politics, as evidenced by the King's selection of former Prime Minister and coup leader Prayuth Chan-ocha as a member of his Privy Council in November 2023³⁷. This council comprises army generals or former commanders in the military, who provide advice related to royal duties to the King.

Furthermore, the senate holds significant influence in election results. With 250 appointed senators consisting of military and traditional elites, parties aligned with similar political views have been able to count on their support for receiving votes. This was evident in the 2023 election, where the PTP forged an alliance with 10 other parties, including two linked to the military to establish a regime. Consequently, the coalition was able to garner support from the senate, which the MFP and PTP campaign lacked. Today, the regime is led by the PTP.

Mainstream opposition parties have also faced frequent disqualifications as well as dissolutions by the ECT and the Constitutional Court, reflecting bias against anti-military parties and members. For instance, the dissolution of the FFP in 2020 and the ongoing discussions within the Electoral Commission on disbanding the MFP exemplify this trend. MFP leader Pita Limjaroenrat being suspended from parliament and blocked from a second vote for prime minister, and former FFP spokesperson Pannika Wanich barred for life from politics, are also examples of members from opposition parties being suspended from elections. Such disqualifications have led to subsequent bans against progressive parties that are against the pro-military and monarchical regime, particularly advocating for the reformation of the lèse-majesté law.

Additionally, there is a large concern about the transparency and fairness of the general election process under the ECT. The ECT members have been appointed by the military junta and have shown bias against progressive parties, while being slow in handling cases against

³⁵ 'Thailand's Ex-PM Thaksin Leaves Hospital after Six Months in Detention', *Al Jazeera*, 17 February 2024, <https://www.aljazeera.com/news/2024/2/17/thailands-jailed-ex-pm-thaksin-leaves-police-hospital-witnesses-say>.

³⁶ 'Thailand's New Government Puts a Populist Face on the Country's Discredited Establishment', *EastAsiaForum*, 18 September 2023, <https://eastasiaforum.org/2023/09/18/thailands-new-government-puts-a-populist-face-on-the-countrys-discredited-establishment/>.

³⁷ Patpicha Tanakasempipat, 'Thai King Appoints Former PM Prayuth to His Elite Privy Council', *Bloomberg*, 30 November 2023, <https://www.bloomberg.com/news/articles/2023-11-30/thai-king-appoints-former-pm-prayuth-to-his-elite-privy-council>.

pro-military ones. Moreover, the ECT is not in favor of having foreign observers during elections, which hampers the ability to accurately detect the fairness of the electoral process.

Furthermore, the Constitution drafted in 2017 under the military junta grants the military the authority to elect members from the Election Commission and the Constitutional Court. This presents a concerning situation, where many of the prosecutions and court cases during elections have been ruled by members of either the Election Commission or the Constitutional Court, who often align with and support the King and regime.

Despite the high turnout of nearly 40 million Thai voters in the 2023 general election, the MFP did not win parliament. National elections in Thailand are not free and fair, as the monarchy, particularly the King, wields significant influence in Thai politics, along with the military.

Pillar 2: Freedom of dissent

Q.1. Has the regime unfairly shut down or taken measures that led to the shut down of a major independent, dissenting organization?

No, there are no independent, dissenting organizations that have been completely shut down or have experienced measures that led to a shut-down. However, the Thai regime has threatened to shut down Amnesty International, and approved a draft act on two measures that can hinder organizations from their right to freedom of association.

On 15th February 2022, former Thai Prime Minister Prayuth Chan-ocha's vice minister Seksakol Atthawong announced his intention to launch a petition aimed at expelling Amnesty International from Thailand³⁸. This decision stems from the international human rights group's support for protesters critical of the Thai monarchy. Specifically, the organisation endorsed youth-led protest movements that began in late 2019, advocating for Prayuth's resignation and reforms to reduce the monarchy's political influence. Despite Amnesty Thailand maintaining its presence in the country, Prayuth's office has garnered 1 million signatures to submit the petition to the Ministry of Interior and the National Security Council. It should be noted that there is no latest status of this petition, as the petition itself is a claim made by Seksakol. Amnesty however investigated if this claim of 1 million signatures was true, but I could not find any information since 2022. It is assumed this case faded over time.

In January 2022, the Thai cabinet approved a draft of the Act on Operations of Not-for-Profit Organizations, also known as the NPO law³⁹. According to NGOs and activists, this law would grant the Thai regime significant control and authority over nonprofit groups, including the

³⁸ Peter Zsombor, 'Thai Prime Minister's Aide Spearheads Push to Cancel Amnesty International', *VOA News*, 15 February 2022, <https://www.voanews.com/a/thai-prime-minister-s-aide-spearheads-push-to-cancel-amnesty-international-/6442322.html>.

³⁹ Jack Brook, 'Thailand Seeks Stricter Controls over Nonprofit Groups', *GLOBE*, 1 June 2022, <https://southeastasiaglobe.com/thailand-seeks-stricter-controls-over-nonprofit-groups/>.

power to shut them down and press charges. This measure featured vague and broad regulations prohibiting activities or organisations that may "create division within society", thereby severely limiting their rights to freedom of association under international law.

Q.2. Has the regime heavily manipulated media coverage in its favor?

Somewhat.

Regime officials have pressured media outlets to control the narrative in favour of the regime. For example, TV commentator Nattakorn Devakul shared his experience of having coffee with a general rank officer of the First Army Area Command, in which the officer attempted to influence the show by discouraging inviting certain individuals who may challenge the regime's authority⁴⁰.

Additionally, social media is also being heavily monitored by the regime. For instance, on YouTube, a rap song titled "Reform," inspired by a pro-democracy demonstration, was temporarily blocked by the Thai regime in 2021. According to TLHR, the Ministry of Digital Economy and Society claimed that the content of the rap music constituted a "national security offence" and therefore required YouTube to suspend the dissemination of the information⁴¹.

Moreover, on May 10, 2022, the Ministry of Digital Economy and Society ordered the blocking of access to 42 media pages, including those of YouTube, Twitter, and Facebook, which shared an advertisement mocking the monarchy. These advertisements were observed on an online shopping platform named Lazada⁴². As for the latest update on this case, Lazada themselves removed the advert from their website and took down the tiktok video with a public apology. Additionally, Intersect Design Factory who hired the influencers in the advert that allegedly mocked the monarchy also posted an apology on Facebook. So, it can be assumed that rather than being blocked by the Ministry of Digital Economy, the Ministry ordered the block and so did the company.

Q.3. Has the regime seriously intimidated independent, dissenting media, political leaders, civil society leaders, organizations, or regular people, or otherwise seriously and unfairly obstructed their work?

Yes.

⁴⁰ Steven Feldstein, 'Thailand's Strategy of Control', in *The Rise of Digital Repression*, by Steven Feldstein (Oxford University Press, 2021), 96–133, <https://doi.org/10.1093/oso/9780190057497.003.0004>.

⁴¹ MC Galang, 'rap Against Dictatorship To Challenge Thai Government's Block Order Of "Reform" Youtube Video In Court', *Hiphop*, 3 November 2021, https://hiphopdx.com/en_asia/news/id.65596/title.rap-against-dictatorship-to-challenge-thai-governments-block-order-of-reform-youtube-video-in-court.

⁴² 'Court Urged to Block 42 URLs for Sharing Controversial Lazada Ad', *The Nation*, 10 May 2022, <https://www.nationthailand.com/in-focus/40015416>.

Many individuals are arrested for, especially under the lèse-majesté law. Article 112 of the Thai Criminal Code, also known as the lèse-majesté law, is categorised as undemocratic and has caused limitations on freedom of expression and dissent. United Nations rights experts assert that the lèse-majesté provision violates international human rights law⁴³. The law is stated as follows: “Whoever defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years”⁴⁴. According to TLHR, around 1,938 individuals have been prosecuted for political expression from July 18, 2020, to December 31, 2023, the majority under the lèse-majesté law⁴⁵.

For one thing, journalists have been targeted amidst reporting protests. Therefore, media agencies have reportedly been pressured to self-censor. In February 2024, two Thai journalists were arrested for reporting on the vandalism of a Bangkok temple wall with graffiti, criticising the lèse-majesté law⁴⁶. The Royal Palace police station stated that reporters Nutthaphol Meksobhon from Prachatai media and freelance photographer Natthapon Phanphongsanon were charged with collaborating in vandalising the historical site. However, it was widely reported that Nutthaphol was simply writing a story while Natthapon was recording a video of the incident. The two men were arrested for doing their jobs as journalists, yet the strict rule under the lèse-majesté law has become a tool and measure to hinder political dissent.

Former FFP Thanathorn Juangroongruangkit was also charged with royal defamation under the lèse-majesté law, as well as the Computer Crime Act for his critical comments against the regime’s Covid-19 vaccine procurement plan on Facebook live in 2021⁴⁷. He was later released on bail of 90,000 baht (2,700 USD).

On January 18, 2024, the Thai court sentenced 30-year-old Mongkol Thirakot to 50 years in jail for royal defamation⁴⁸. This is the highest ever sentence to be issued under the lèse-majesté law. Originally, Mongkol was sentenced to 28 years after a post he made in 2021 on Facebook. The judge stated that Mongkol was sentenced by a third due to his cooperative behaviour. Moreover, details on the Facebook comment have not been published.

Q.4. Has the regime seriously and unfairly repressed dissenting protests?

⁴³United Nations Human Rights Council (UNHRC). Thailand: UN experts alarmed by rise in use of lèse-majesté laws. (February 8, 2021). [Press Release].

<https://www.ohchr.org/en/press-releases/2021/02/thailand-un-experts-alarmed-rise-use-lese-majeste-laws>

⁴⁴ Thailand Law Online. “Thailand Penal Code Thai Criminal Law”.

<https://www.thailandlawonline.com/table-of-contents/criminal-law-translation-thailand-penal-code>

⁴⁵“December 2023: A Total of 1,938 People Have Been Politically Prosecuted in 1,264 Cases” (Thai Lawyers for Human Rights (TLHR), December 2023), <https://tlhr2014.com/en/archives/63246>.

⁴⁶ “Two Thai Journalists Arrested for Covering Anti-Monarchist Vandalism of Temple Wall Freed on Bail”, AP News, 13 February 2024,

<https://apnews.com/article/thailand-media-press-freedom-journalists-arrest-9d40075294b56ab7a57955b8989b5836>.

⁴⁷ “Thanathorn Arraigned in Court for Lese Majeste,” Bangkok Post,

<https://www.bangkokpost.com/thailand/politics/2293622/thanathorn-arraigned-in-court-for-lese-majeste>.

⁴⁸ Jonathan Head, ‘Thailand: Man Jailed for 50 Years for Defaming Monarchy’, BBC, 18 January 2024, <https://www.bbc.com/news/world-asia-68020494>.

Yes. Protests during 2020 and 2021 under the regime of former prime minister Prayuth Chan-ocha especially caused major protests.

Under former Prime Minister Prayuth Chan-ocha, thousands of democracy protests took place in Thailand, particularly in 2020 and 2021, according to Human Rights Watch⁴⁹. Specifically, a youth-led uprising became prominent, characterised by its three-finger salute demanding a new democratic constitution with reforms to the monarchy's rule. These protest groups include the Sombat and Nattawut anti-government motorcade protest, the Thammasat student group, the Taluh Fah, the REDEM (Restart Democracy), and the Taluh Gas, among others⁵⁰. The police employed water cannons with dye and tear gas chemicals, as well as tear gas grenades and rubber bullets. Although authorities claim to have adhered to international standards for crowd control, the police have frequently resorted to force against protesters, resulting in serious injuries. For instance, 29-year-old Tanat Thanakitamnuay lost sight in one eye during a demonstration⁵¹.

Moreover, reports indicate that major street protests have diminished in 2022 due to fear of persecution by the Thai regime, and restrictions on assembly, exploiting the Covid-19 pandemic as a pretext⁵².

Q.5. Has the regime seriously abused vague laws to silence independent, dissenting media, political leaders, civil society leaders, organizations, or regular people?

Yes, there are several notable laws that seem vague and used conveniently to prosecute the population. The most broadly abused law is Article 112, or the lèse-majesté law, which is used from silencing individuals to dissolving political parties,

The Thai regime has used a range of repressive laws, out of around 140 laws⁵³, such as the Computer Crimes Act and Article 116 (sedition), to crack down on critical voices and prosecute individuals for their online posts that are deemed critical of the authorities. This crackdown on freedom of expression online has created a "*climate of fear*" designed to silence those with dissenting views, according to Amnesty International.⁵⁴ The government has harassed, intimidated, and prosecuted social media users who criticise the government and monarchy. The regime has also taken measures to censor and control traditional media,

⁴⁹ 'Thailand Events of 2021', *Human Rights Watch*, 24 June 2021, <https://www.hrw.org/world-report/2022/country-chapters/thailand>.

⁵⁰ Pravit Rojanaphruk "Understanding the Various Thai Protest Groups," September 25, 2021, <https://www.khaosodenglish.com/opinion/2021/09/25/understanding-the-various-thai-protest-groups/>.

⁵¹ R May, 'Injured Protester's Family Vows Legal Response', *Bangkok Post*, 20 August 2021, <https://www.bangkokpost.com/learning/easy/2168535/injured-protesters-family-vows-legal-response>.

⁵² Enno Hinz, 'What Happened to Thailand's Protests?', *DW*, 19 May 2022, <https://www.dw.com/en/thailand-what-happened-to-mass-anti-government-protests/a-61861179>.

⁵³ "Thailand: Freedom in the World 2024 Country Report," Freedom House <https://freedomhouse.org/country/thailand/freedom-world/2024>.

⁵⁴ "Thailand: Authorities Using Repressive Laws to Intensify Crackdown on Online Critics," Amnesty International, April 23, 2020, <https://www.amnesty.org/en/latest/news/2020/04/thailand-authorities-using-repressive-laws-to-intensify-crackdown-on-online-critics/>.

including through direct government/military control over broadcast media and the use of economic and political pressure on media outlets.

The Computer Crime Act and Cybersecurity Act, amended in 2016, gave authorities the power to monitor online content and to prosecute individuals that go against the Constitution. In 2023, Thai authorities prosecuted around 258 people who have participated in democracy protests or posts on social media related to the lèse-majesté charge, by using the Computer-Related Crimes Act⁵⁵. These actions are aimed at suppressing dissent by limiting the spread of information, particularly online.

In addition, Article 116 of the Thai Criminal Code, also known as the sedition law carries a penalty of up to seven years in jail for those who force to alter national laws or government, incite conflict or encourage the public to disobey laws⁵⁶. This sedition law remains very broad, which has been used in cases convenient to the government. For example, a Thai court sentenced 30-year-old Mongkol Thirakot to a record of 50 years in jail for royal defamation⁵⁷.

Furthermore, Article 326 to 333 of the Thai Criminal Code is the Criminal Defamation law, which disseminates information that can be damaging to the reputation of another, or to subject an individual to hatred⁵⁸. This law includes a punishment of imprisonment for up to one year and a fine. However, if the communication medium involves documents, drawing or pictures and such, the penalty increases for up to two years and a fine of 2000,000 Baht. Pichai Nariphaphan, Watana Muangsook, and other prominent figures within the PTP have faced charges of sedition and violations of computer crimes legislation for voicing critical perspectives on Thailand's political and economic challenges during the period of military governance.

In September 2023, democracy activist Arnon Nampa was sentenced to four years in prison, for calling for reform of the monarchy in 2020. One MFP lawmaker, Rukchanok Srinork, was sentenced to six years in prison in December 2023 for allegedly insulting the monarchy. She was sentenced to three years under lèse-majesté laws, and three years for breaching the Computer Crimes Act charge⁵⁹. She was booked for two social media posts made on X (formerly Twitter) in 2021, one where she invited people to wear black on the King's birthday and another concerned the monarchy's links to a COVID-19 vaccine production company. Similar cases curtailing freedom of expression are pending against other activists and politicians.

⁵⁵ 'Thailand Events of 2023', *Human Rights Watch*, 26 September 2023, <https://www.hrw.org/world-report/2024/country-chapters/thailand>.

⁵⁶ 'Thailand: Authorities Using Repressive Laws to Intensify Crackdown on Online Critics', *Amnesty International*, 23 April 2020, <https://www.amnesty.org/en/latest/news/2020/04/thailand-authorities-using-repressive-laws-to-intensify-crackdown-on-online-critics/>.

⁵⁷ *The Guardian*. 2024. 'Man Jailed for Record 50 Years for Criticising Thai Monarchy', 18 January 2024. <https://www.theguardian.com/world/2024/jan/18/man-jailed-for-record-50-years-for-criticising-thai-monarchy>.

⁵⁸ 'Thailand: Authorities Using Repressive Laws to Intensify Crackdown on Online Critics', *Amnesty International*, 23 April 2020, <https://www.amnesty.org/en/latest/news/2020/04/thailand-authorities-using-repressive-laws-to-intensify-crackdown-on-online-critics/>.

⁵⁹ <https://thediplomat.com/2023/12/thai-parliamentarian-sentenced-to-6-years-imprisonment-for-insulting-king/>

Moreover, in August 2022, the regime endorsed the 2022-2027 draft of the National Anti-Money Laundering/Countering the Financing of Terrorism Strategy

Furthermore, the Thai state also deployed digital repression techniques during lockdowns to advance its agenda and suppress online protests. For example, Thai authorities compelled Facebook to block a private group called the Royalist Marketplace⁶⁰, critical of the monarchy, which boasted one million members, providing a platform for exercising freedom of speech. Additionally, the Thai government employed social surveillance through agencies such as the Thai police's Thailand Technology Crime Suppression Division (TCSD), which monitors and gathers information on individuals⁶¹.

Q.6. Has the regime seriously and unfairly censored dissenting speech?

Yes.

The regime has taken measures to censor and control speech, especially traditional and social media, including through direct regime control over broadcast media and the use of economic and political pressure on media outlets. Notably in 2016, authorities threatened to arrest the speakers and cancelled an Amnesty International news conference that was set to unveil details on torture by the military and police, demonstrating the regime's pattern of intolerance of criticism.⁶²

The National Broadcasting and Telecommunications Commission (NBTC) functions as a significant instrument of censorship within the regime, wielding extensive authority to suspend television and radio broadcasts or remove stations from airwaves if their content is perceived as divisive or a threat to national security.⁶³

TrueVisions, a prominent Thai cable television service provider, implemented the suspension of broadcasts from major international news networks, including BBC, CNN, Al Jazeera, Bloomberg, and Australia Network. The affected news channels were censored during various news segments and interviews about the 14 May 2023 election.⁶⁴ Previously, Orwan Choodee, a distinguished news anchor, was temporarily relieved from hosting a popular political discourse program in the lead-up to the 2019 elections.⁶⁵

⁶⁰ 'Facebook Blocks Thai Access to Group Critical of Monarchy', *BBC*, 25 August 2020, <https://www.bbc.com/news/world-asia-53899816>.

⁶¹ Steven Feldstein, "Thailand's Strategy of Control," in *The Rise of Digital Repression: How Technology Is Reshaping Power, Politics, and Resistance*, ed. Steven Feldstein (Oxford University Press, 2021), 0, <https://doi.org/10.1093/oso/9780190057497.003.0004>.

⁶² "How Thailand's Military Junta Has Cracked down on Dissent," *Christian Science Monitor*, <https://www.csmonitor.com/World/Asia-Pacific/2016/0928/How-Thailand-s-military-junta-has-cracked-down-on-dissent>.

⁶³ "Thailand: Structural Flaws Subvert Election | Human Rights Watch," March 19, 2019, <https://www.hrw.org/news/2019/03/19/thailand-structural-flaws-subvert-election>.

⁶⁴ "Foreign News Broadcasts about the Thai Election Blocked | Press Freedom - Monitoring in Southeast Asia," <https://pfmsea.org/foreign-news-broadcasts-about-thai-election-blocked>.

⁶⁵ Bangkok Post Public Company Limited, "MCOT Removes TV Host over Students' Vote," *Bangkok Post*, <https://www.bangkokpost.com/thailand/politics/1637962/mcot-removes-tv-host-over-students-vote>.

Censorship of four major independent media outlets and a student activist Facebook page was announced in 2020. Voice TV, The Reporters, The Standard, Prachatai.com and the Free Youth were affected by the order of the NBTC. Later, a court ordered Voice TV, owned by the family of the former Thai Prime Minister Thaksin Shinawatra, off-air.⁶⁶ It should be noted, though, that after the 2023 general election, Voice TV shifted its ideologies to pro-establishment.

Q.7. Has the regime directly (or indirectly through pro-regime individuals or groups that are likely to enjoy impunity) harassed, assaulted or killed dissidents, or attempted to commit these crimes?

Yes.

Systematic harassment of activists and protesters is widespread in Thailand, where they have faced arrest, harassment, physical attacks, and judicial persecution. Many have been denied bail and detained for lengthy periods.

In the case of Karen (ethnic minority) environmental and community activist, Porlajee Rakchongcharoen's 2014 disappearance, he was detained for questioning regarding alleged illegal possession of honey by former chief park ranger Chaiwat Limlikitaksorn and three subordinates. Porlajee had filed a lawsuit against Chaiwat in 2011 for the eviction and burning of Karen homes⁶⁷. DNA analysis confirmed the missing activist's bone fragments inside the national park reservoir. The Criminal Court for Corruption and Misconduct Cases convicted Chaiwat of misconduct but dismissed more serious charges of murder, unlawful detention, corpse concealment, and intimidation. Citing lack of evidence, the remaining three defendants were acquitted of all accusations⁶⁸.

Additionally, thirty people were found to have Pegasus spyware, one of the most advanced digital spying techniques, installed on their phones⁶⁹. Those targeted include at least four members of a prominent youth movement, including Panusaya Sithijirawattanakul, who has been charged with at least 10 lèse-majesté offences, and Arnon Nampa, a human rights lawyer, charged with at least 14 lèse-majesté charges and who was detained for a total of 339 days⁷⁰.

⁶⁶ Joseph O' Connor, "Voice TV Ordered Shut by a Thai Court as Action against Media Outlets Proceeds despite Assurances," Thai Examiner (blog), October 20, 2020, <https://www.thaia Examiner.com/thai-news-foreigners/2020/10/20/voice-tv-ordered-shut-thai-court-government-media-outlets/>

⁶⁷ "Wife Pushes Thai Authorities to Investigate Disappearance of Karen Activist Husband | Prachatai English," August 6, 2015. <https://prachataienglish.com/node/5374>.

⁶⁸ Radio Free Asia. "Thai Court Dismisses Charges over Disappearance of Karen Activist." <https://www.rfa.org/english/news/myanmar/karen-activist-09282023130423.html>.

⁶⁹ "Thailand: Pegasus Spyware Found on Phones of Dissidents Involved in Mass Protests," Amnesty International, July 18, 2022, <https://www.amnesty.org/en/latest/news/2022/07/pegasus-thailand-activists-protests/>.

⁷⁰ Stephanie Kirchgaessner, "Dozens of Thai Democracy Activists Targeted with Pegasus Phone Spyware," The Guardian, July 17, 2022, <https://www.theguardian.com/world/2022/jul/17/dozens-of-thai-democracy-activists-targeted-with-pegasus-phone-spyware>.

The pattern of harassment, surveillance, assault, and judicial persecution under broad and vague laws suggests an environment where dissidents and critics face serious threats and risks.

Q.8. Has the regime engaged in transnational repression against dissidents abroad, including through surveillance or other forms of intimidation?

Yes.

Several Thai activists have disappeared or been killed abroad.

Wanchalearm Satsaksit, a Thai activist, was abducted by armed men from his home in exile in Phnom Penh, Cambodia, in June 2020. Initially, the Cambodian government denied an abduction had occurred and refused to instigate an investigation, citing it as fake news⁷¹. After pressure from Human Rights Watch, Amnesty International, and the UN, the Cambodian authorities launched an investigation. Authorities claim to have completed the investigation in February 2024 and “filed a report” with the Phnom Penh Municipal Court, however the Court failed to inform Mr. Wanchalearm’s lawyers and family members. No details about the report were disclosed⁷².

Activists Chatchan Boonphawal, Kraidet Luelert, and Surachai Danwattananusorn, disappeared from Vientiane, the capital of Laos in 2018. Boonphawal and Luelert’s bodies were found handcuffed, disembowelled, and stuffed with cement on the banks of the Mekong River. Danwattananusorn is still missing. Other cases from Vientiane include the disappearance of Ittipon Sukpaen in 2016, and Wuthipong Kachathamakul in 2017.⁷³ All five used social media to amplify and disseminate their dissent from outside Thailand.

Three other dissidents, Chucheep Chiwasut, Siam Theerawut, and Kritsana Thapthai, were reportedly arrested by Vietnamese authorities and secretly extradited to Thailand.⁷⁴

Though the complicity of the Thai regime has not been overtly linked to these disappearances and killings, the involvement of Thai speakers⁷⁵ in abductions highlights a pattern of transnational repression by regime-linked individuals.

⁷¹ “Rights Group Says Another Thai Dissident Abducted in Southeast Asia.”.

<https://thediplomat.com/2020/06/rights-group-says-another-thai-dissident-abducted-in-southeast-asia/>.

⁷² International Federation for Human Rights. “Cambodia: UN Body Calls for Investigations into the Disappearances of Cambodian Boy and Thai Activist.”.

<https://www.fidh.org/en/region/asia/cambodia/cambodia-un-body-calls-for-investigations-into-the-disappearances-of>.

⁷³ Claudio Sopranzetti, “It’s Time We Listened to the Plight of Thai Dissidents Abroad,” Al Jazeera, <https://www.aljazeera.com/opinions/2019/1/31/its-time-we-listened-to-the-plight-of-thai-dissidents-abroad>.

⁷⁴ Pavin Chachavalpongpun, “Opinion | The Case of Thailand’s Disappearing Dissidents,” The New York Times, October 14, 2019, <https://www.nytimes.com/2019/10/14/opinion/thailand-dissidents-disappearance-murder.html>.

⁷⁵ “Laos/Thailand: Investigate Abduction of Exiled Red Shirt Activist | Human Rights Watch,” August 1, 2017, <https://www.hrw.org/news/2017/08/01/laos/thailand-investigate-abduction-exiled-red-shirt-activist>.

Q.9. Overall, looking at your answers to the previous questions, would you say independent media, political leaders, civil society leaders, organizations, and regular people are largely free to openly criticize or challenge the government?

No.

Due to the overarching nature of lèse-majesté laws and its broad and frequent application, independent media, political leaders, civil society leaders, organizations, and regular people are unable to openly criticize or challenge the government. The rise in vote shares of parties that advocate for reform of the lèse-majesté laws when democratic elections are held highlights a willingness of the populace to challenge the government. However, systematic and structural misuse of the rule of law by authorities prevent changes, and in many cases military coups hinder any political progress towards reforms.

Q.10. [IF NO] Would you say that independent media, political leaders, civil society leaders, organizations, and regular people are seriously and unfairly hindered in their ability to openly criticize or challenge the regime?

Yes.

Independent media, political leaders, civil society leaders, organizations, and regular people in Thailand face significant obstacles in openly criticizing or challenging the government. The frequent application of lèse-majesté laws, along with other repressive measures such as censorship, harassment, and intimidation severely restricts freedom of expression and dissent. The regime's actions extend beyond domestic borders, with instances of transnational repression against dissidents abroad. Despite occasional attempts at reform and public desire for change, the systemic misuse of legal mechanisms and the persistent influence of authoritarian structures impede meaningful progress towards greater freedom and accountability.

Q.11. [IF NO] Would you say that independent media, political leaders, civil society leaders, organizations, political leaders and regular people face overt and systematic retaliation if they openly criticize the regime?

Yes.

As highlighted in several cases ranging from prominent activists to censoring of media outlets, independent media, political leaders, civil society leaders, organizations, political leaders and regular people face overt and systematic retaliation if they openly criticize the regime.

Pillar 3: Judicial independence

Q.1. Have courts frequently and unfairly failed to check the regime's attempts to significantly undermine electoral competition or make the electoral process significantly skewed in its favor?

Yes.

The Thai courts, particularly the Constitutional Court and the Court of Justice, have frequently failed to check the regime's attempts to undermine electoral competition and skew the electoral process in its favor. The Constitutional Court has been accused of judicial activism, using its powers to scrutinize elected governments and protect the constitution and regime values⁷⁶. The court's rulings can be viewed as anti-majoritarian, favoring the military regime over elected politicians. For example, disqualifying and dissolving reform-friendly political opponents and parties, allowing the regime and regime linked parties to maintain power.

In 2020, The Constitutional Court dissolved the Future Forward Party (FFP), a prominent pro-democracy opposition party, and imposed a 10-year political ban on its leaders after finding them guilty of accepting 191.3 million baht from party leader Thanathorn Juangroongruangkit, which violated the Political Parties Act. The court took less than an hour to rule that the money lent was considered "other benefits" under Section 66 of the Act, which limits donations to 10 million baht per donor per year. Of greater significance is the fact that a political ban prohibits the accused from voting, further hindering their participation in the electoral franchise, not just as a nominee but as a common citizen⁷⁷.

In another case, members of the People's Alliance for Democracy, a pro-monarchy group, were acquitted of insurrection charges for their role in shutting down Bangkok's airports in 2008 while demanding the resignation of the PPP led coalition government. While the airports were occupied, the Constitutional Court dissolved three parties of the PPP government coalition in December 2008. The protesters later received acquittals, with only a dozen paying a nominal fine of 20,000 baht for violating the emergency decree and trespassing.⁷⁸ Later in 2011, the Civil Court ordered the leaders of the group to pay 522 million baht, but they were declared bankrupt and had their assets seized as partial payment⁷⁹. This further highlights significant inconsistencies and unfair practices within the Thai judicial system. Despite the disruption causing substantial economic losses estimated at 3 billion baht per day, the court acquitted most of the activists, citing insufficient evidence of insurrection, assault, or illegal detention, and allowing the leaders to continue in political life.

Latterly, the Constitutional Court handed down multiple judgments against the MFP after the 2023 elections. These included the suspension of its prime ministerial candidate, Pita Limjaroenrat from parliament and a decision not to assess the constitutionality of a July

⁷⁶Khemthong Tonsakulrungruang, Entrenching the Minority: The Constitutional Court in Thailand's Political Conflict, 26 Wash. L. Rev. 247 (2017). <https://digitalcommons.law.uw.edu/wilj/vol26/iss2/4>

⁷⁷ Bangkok Post Public Company. "FFP Dissolved, Executives Banned for 10 Years." *Bangkok Post*. <https://www.bangkokpost.com/thailand/politics/1862769/ffp-dissolved-executives-banned-for-10-years>

⁷⁸ Sasinpong, Lynn. "Opinion: Equal Justice Under Law: The Case Against Expedited Parole for Thaksin - Thai Enquirer Current Affairs." *Thai Enquirer*, February 5, 2024.

<https://www.thaienquirer.com/51670/opinion-equal-justice-under-law-the-case-against-expedited-parole-for-thaksin/>

⁷⁹ Bangkok Post Public Company. "2008 Airport Protesters Cleared of Insurrection." *Bangkok Post*. <https://www.bangkokpost.com/thailand/general/2725810/2008-airport-protesters-cleared-of-insurrection>.

parliamentary vote, which blocked his re-nomination as prime minister. However, in February 2024, it cleared previous allegations against Mr. Limjaroenrat, reinstating him to the lower house. By then, the current Prime Minister had been appointed, circumventing the electorate's votes in his favour as the most popular candidate for the position.⁸⁰

Furthermore, in September 2023, Pannika Wanich, elected MP under FFP and then-member of MFP, was banned from political office for life by the Supreme Court for a photo posted online 13 years prior. The Court, and the National Anti-Corruption Commission, ruled that Ms. Wanich violated the ethical standards of a person who holds a political position by failing to remove or block public access to a photo in which she is pointing at a portrait of former King Bhumibol Adulyadej.⁸¹

Most recently, in April 2024, the Constitutional Court accepted a case filed by the Election Commission seeking the dissolution of the opposition MFP, including 10 year political bans for its leaders, for their campaigns, deemed an attempt to undermine the monarchy.⁸²

Q.2. Have courts frequently and unfairly failed to check the regime's attempts to repress criticism or retaliate against those who express open opposition to its most prominent, widely publicized policies?

Yes.

Since July 2020, prosecutions related to the 2020 and 2021 protests have involved at least 1,938 individuals. Among them, at least 268 people were charged with lèse-majesté offenses for criticizing the Thai monarchy. Some individuals have received lengthy sentences, such as one man who was sentenced to 50 years in prison in January for his social media posts.⁸³

In 2020, the Constitutional Court of Thailand ordered the dissolution of the FFP, a critic of the nation's military-backed government. The Constitutional Court ruled Future Forward leader Thanathorn Juangroongruangkit breached financing rules. He and other party leaders were banned from politics for 10 years.

Some individual cases are Jatupat Boonpattaraksa, a lawyer and former student activist, who spent two and a half years in prison until 2019 for sharing a profile of the king from the BBC's Thai-language service on Facebook⁸⁴.

⁸⁰ Tanakasempipat, Patpicha. "Move Forward's Pita Returns to Thai Parliament After Acquittal." TIME, January 25, 2024. <https://time.com/6588391/thailand-pita-parliament-acquittal/>.

⁸¹ "Thai Court Bans Progressive Politician From Political Office for Life," The Diplomat, September 21, 2023, <https://thediplomat.com/2023/09/thai-court-bans-progressive-politician-from-political-office-for-life/>.

⁸² Rebecca Ratcliffe, "Thailand Election Body Seeks to Dissolve Progressive Party That Won 2023 Vote," The Guardian, March 13, 2024, <https://www.theguardian.com/world/2024/mar/13/thailand-move-forward-party-could-be-dissolved-progressive-anti-defamation-law>.

⁸³ "Thai Court Announces Another Harsh Prison Sentence Under Royal Insult Law," The Diplomat, March 15, 2024. <https://thediplomat.com/2024/03/thai-court-announces-another-harsh-prison-sentence-under-royal-insult-law/>.

⁸⁴ Reuters. "Thai Activist Jailed for Two and a Half Years for Posting BBC Article." August 15, 2017. <https://www.reuters.com/article/idUSKCN1AV0Z2/>.

In March 2024, a 26-year-old defendant known only as “Maggie” was handed a 25-year prison sentence by the Southern Bangkok Criminal Court. This verdict was the result of 18 messages concerning the monarchy that Maggie posted on X (formerly Twitter) between December 2022 and October 2023. The court determined that 14 of these messages violated Article 112 of the Thai criminal code, commonly referred to as the lèse-majesté law, as well as the Computer Crime Act. The remaining four messages were found to have breached only the latter law.⁸⁵

The Court, in 2024, again ordered the country’s main opposition MFP to cease all attempts to amend the country’s stringent royal insult law, a centrepiece of its reformist agenda that helped it win the previous year’s election. The Constitutional Court ruled that the party’s campaign violated the charter. The nine-member court said in a unanimous ruling that Move Forward’s push for changes amounted to an attempt to overthrow the constitutional monarchy.⁸⁶

Q.3. Have judges who rule contrary to regime interests, or who are perceived as a threat to the regime, frequently faced regime retaliation?

Yes.

Judges who rule contrary to regime interests or are perceived as a threat to the regime have faced various forms of retaliation. This retaliation can range from professional repercussions, such as transfer or demotion, to more severe measures like harassment, intimidation, or removal from their positions. Judicial authorities, as well as the police, are cautious about interpreting the law liberally, or individually, in ways that might be interpreted as questioning the regime.⁸⁷ The Thai judiciary has historically faced pressure to align with the interests of the ruling regime, particularly concerning cases related to politics, the monarchy, or issues deemed sensitive by the authorities.⁸⁸ As a result, judges who demonstrate independence or challenge the status quo may find themselves targeted by the regime or its supporters.⁸⁹

In 2019, Judge Khanakorn shed light on interference by a senior judge to alter a ruling in a criminal case where he acquitted five individuals detained under special security laws in southern Thailand due to lack of evidence. Subsequently, he shot himself in the chest within a courtroom at Yala Provincial Court, leading to his death in 2020.⁹⁰

⁸⁵ Bangkok Post Public Company Limited, “Trans Woman Gets 25 Years for Lese-Majeste,” Bangkok Post. <https://www.bangkokpost.com/thailand/general/2758718/trans-woman-gets-25-years-for-lese-majeste>

⁸⁶ Bloomberg.com. “Thai Election Winner Faces Crucial Verdict Over Royal Insult Law.” January 30, 2024. <https://www.bloomberg.com/news/articles/2024-01-30/thai-election-winner-faces-crucial-verdict-over-royal-insult-law>.

⁸⁷ Reuters. “Thai Activist Jailed for Two and a Half Years for Posting BBC Article.” August 15, 2017, sec. World. <https://www.reuters.com/article/idUSKCN1AV0Z2/>.

⁸⁸ “Activists Call for International Support amidst Concerns over Thai Judicial Independence,” Prachatai English. <https://prachataienglish.com/node/10649>.

⁸⁹ Johnson, Aaron Micah, “The judicialization of politics : an examination of the Administrative Court of Thailand” (2016). Graduate Research Theses & Dissertations. 5964. <https://huskiecommons.lib.niu.edu/allgraduate-thesesdissertations/5964>

⁹⁰ “Thailand: ICJ Mourns the Passing of Judge Khanakorn Pianchana,” International Commission of Jurists (blog), March 9, 2020, <https://www.icj.org/thailand-icj-mourns-the-passing-of-judge-khanakorn-pianchana/>.

Q.4. Has the regime seriously undermined judicial independence, to the point where cases challenging the regime are no longer brought to the courts or are generally dismissed?

Yes.

Under the 2007 Constitution, the Constitutional Court comprises nine members, serving for nine years, and appointed by the King⁹¹. Similarly, in other courts, each judge is formally approved by the King⁹². All judicial appointments, promotions, transfers, and removal are at the behest and approval of the King, the bias towards being pro-establishment plays a pivotal role in this judicial process.

Cases are presented before the Constitutional Court, which interprets the Constitution with a conservative bias favouring the monarch. The authority of Thailand's courts to oversee political matters are extensive and frequently employed, often resulting in political oversight and interference by the judiciary⁹³. Cases are generally brought to the Constitutional Court to validate the monarchy and uphold laws supporting the regime, with dismissals playing a role for political gains.

Coinciding with the PTP's return to power after it formed a coalition government with the pro-military Palang Pracharath Party and United Thai Nation, Thailand's Supreme Court acquitted former Prime Minister Yingluck Shinawatra in a corruption case.⁹⁴ Ms. Yingluck's brother, former Prime Minister Thaksin Shinawatra, returned from exile after his government was toppled in a coup, to serve a prison sentence which was commuted by the King and was released on parole.⁹⁵ Thaksin's daughter, Paetongtarn Shinawatra, is the leader of the PTP.

Q.5. Has the regime directed all cases or all politically-sensitive cases to separate, regime-controlled courts, such as regime-controlled military courts or a regime-controlled constitutional tribunal?

Yes.

Cases involving political parties in conflict with either the monarchy or the military are directed to the Constitutional Court for adjudication. Some cases have involved the dissolution of

⁹¹ "Wayback Machine Constitutional Court (in Thai)," September 21, 2013.

https://web.archive.org/web/20130921122436/http://www.constitutionalcourt.or.th/index.php?option=com_docman&task=doc_download&qid=865&Itemid=101&lang=th.

⁹² United States Institute of Peace. "Judicial Appointments and Judicial Independence." United States Institute of Peace, January 2009. <https://www.usip.org/sites/default/files/Judicial-Appointments-EN.pdf>.

⁹³ Jonathan Head [@pakhead], "The Powers of Thailand's Courts to Regulate Politics Are Sweeping and Liberally Used. So Many Parties Dissolved, Political Figures Banned, Governments Deposed. It's Endless Political Supervision and Intervention by the Judiciary.," Tweet, Twitter, September 20, 2023, <https://twitter.com/pakhead/status/1704444791080235299>.

⁹⁴ "Thai Court Drops Case against Former PM Yingluck Shinawatra," Al Jazeera.

<https://www.aljazeera.com/news/2024/3/4/thai-court-drops-case-against-former-pm-yingluck-shinawatra>.

⁹⁵ Tommy Walker, "As Thailand's Thaksin Goes Free, Questions about His Political Future Loom," Al Jazeera.

<https://www.aljazeera.com/news/2024/2/19/as-thailands-ex-pm-thaksin-goes-free-questions-about-his-political-future-loom>.

reformist political parties, such as the Thai Raksa Chart Party in 2019⁹⁶ and the Future Forward Party in 2020. There is currently a pending case seeking the dissolution of the Move Forward Party as of May 2024⁹⁷. Constitutional Court cases have led to opposition leaders such as Thanathorn Juangroongruangkit receiving a 10-year political ban, and a lifetime political ban of MFPs (elected under FFP) MP Pannika Wanich. Since all judicial appointments, promotions, transfers, and removal are made by the King, bias towards a pro-establishment plays a pivotal role in this judicial process.⁹⁸

Q.6. Have courts frequently and unfairly failed to hold regime officials accountable, particularly for actions that seriously undermine electoral competition or freedom of dissent, or, conversely, are they pressured or incentivized by the regime to hold regime officials accountable to uphold a certain image of regime legitimacy?

Yes.

Thailand operates under a constitutional monarchy framework, wherein the monarch possesses the ultimate authority to grant pardons to convicted individuals. This power has been used to commute sentences in controversial and politically connected cases. A recent example of this coincides with the PTP's return to power after it formed a coalition government with the pro-military Palang Pracharath Party and United Thai Nation, and Thailand's Supreme Court acquitted former Prime Minister Yingluck Shinawatra in a corruption case.⁹⁹ Ms. Yingluck's brother, former Prime Minister Thaksin Shinawatra, returned from exile after his government was toppled in a coup, to serve a prison sentence which was commuted by the King and was released on parole.¹⁰⁰ Thaksin's daughter, Paetongtarn Shinawatra, is the leader of the PTP.

In a separate incident, Pannika Wanich, a prominent progressive figure in Thai politics, faced a lifetime ban from candidacy in political office for posting a photo thirteen years prior in which she is pointing to the then King's photo during her university graduation. The National Anti-Corruption Commission (NACC) asserted that Wanich's actions in the photo on social media breached the ethical standards expected of public office holders because she failed to remove or block public access to the posts. Consequently, the NACC sought a ruling from the Supreme Court, which ultimately decreed that Wanich's conduct violated the requisite ethical

⁹⁶ 'What's the Role of a Constitutional Court in a Military Dictatorship? On the Dissolution of Thai Raksa Chart'. 2019. *New Mandala* (blog). 5 April 2019.

<https://www.newmandala.org/whats-the-role-of-a-constitutional-court-in-a-military-dictatorship-on-the-dissolution-of-thai-raksa-chart/>

⁹⁷ *Bloomberg.Com*. 2024. 'Thai Court Seeks More Documents in Move Forward Dissolution Plea', 20 March 2024.

<https://www.bloomberg.com/news/articles/2024-03-20/thai-court-seeks-more-documents-in-move-forward-dissolution-plea>

⁹⁸ Court of Justice of Thailand. "Administrative Organization of The Court of Justice."

<https://www.coj.go.th/th/content/page/index/id/91997>.

⁹⁹ "Thai Court Drops Case against Former PM Yingluck Shinawatra," Al Jazeera.

<https://www.aljazeera.com/news/2024/3/4/thai-court-drops-case-against-former-pm-yingluck-shinawatra>.

¹⁰⁰ Tommy Walker, "As Thailand's Thaksin Goes Free, Questions about His Political Future Loom," Al Jazeera.

<https://www.aljazeera.com/news/2024/2/19/as-thailands-ex-pm-thaksin-goes-free-questions-about-his-political-future-loom>.

standards for political officeholders, resulting in a lifetime ban from participating in politics.¹⁰¹ This can be interpreted as an expectation of reverence for the monarchy as a prerequisite for regime officials, including the expectation to “cleanse” one’s past actions in which innocuous actions, such as pointing to a photo, can invoke political bans for failing to uphold a certain image of the regime.

Q.7. Overall, looking at your answers to the previous questions, would you say that the judiciary largely serves as a check on the government, especially in its ability to: (a) repress criticism or retaliate against those who express open opposition to its most prominent, widely publicized policies, and/or (b) significantly undermine electoral competition or make the electoral process significantly skewed in its favor?

No.

Q.8. [IF NO] Would you say the judiciary frequently and unfairly sides with the regime when reviewing challenges to regime policies or interests, especially its policies to (a) repress criticism or retaliate against those who express open opposition to its most prominent, widely publicized policies, and/or (b) significantly undermine electoral competition or make the electoral process significantly skewed in its favor?

No.

Q.9. [IF NO] Would you say the judiciary fails to serve as a check on the regime in a way that allows it (a) to repress criticism or retaliate against those who express open opposition to its most prominent, widely publicized policies, and/or (b) to significantly undermine electoral competition or make the electoral process significantly skewed in its favor?

Thailand's courts, particularly the Constitutional Court, are viewed as a stronghold of the nation's traditional royalist establishment. This establishment has leveraged the courts and ostensibly independent state bodies like the Election Commission and the NACC to deliver contentious judgments aimed at crippling or eliminating political opposition. According to the court, “*Any action that causes the monarchy to lose its above-politics and politically-neutral status is considered an attempt to erode it, cause it to deteriorate, or weaken it.*”¹⁰²

The judiciary frequently and unfairly sides with the regime in reviewing challenges to regime policies and interests. Thailand has a history of moving against pro-democracy parties, politicians, and activists, especially those that win popular elections. MFP’s predecessor, FFP,

¹⁰¹ “Thai Court Bans Progressive Politician From Political Office for Life,” The Diplomat, September 21, 2023, <https://thediplomat.com/2023/09/thai-court-bans-progressive-politician-from-political-office-for-life/>.

¹⁰² “Thai Election Winner Faces Crucial Verdict Over Royal Insult Law,” Bloomberg.Com, January 30, 2024, <https://www.bloomberg.com/news/articles/2024-01-30/thai-election-winner-faces-crucial-verdict-over-royal-insult-law>.

was disbanded in 2020. Its founder, Thanathorn Juangroongruangkit, and other party leaders were banned from politics for 10 years.¹⁰³

The most recent example of the heavy influence over rulings that favour the regime interests is the Constitutional Court's refusal to review the constitutionality of a July 2023 parliamentary vote that prevented Pita Limjaroenrat from renominating himself as prime minister, despite winning the most seats in the 2023 elections.¹⁰⁴ Pita's attempt to secure the Prime Ministerial seat was obstructed by the military-appointed Senate in conjunction with conservative members of the House, despite support from parties such as Pheu Thai, associated with former premier Thaksin Shinawatra. This action, enabled by the Courts rulings, cleared the path for a new coalition led by Pheu Thai, which later allied with various conservative and pro-military factions to appoint Srettha Thavisin as the prime minister. Later, in a 2024 decision, it ordered the MFP to cease its efforts to amend the lèse-majesté law, which the court deemed as an attempt to "subvert the monarchy" and destroy Thailand's political system¹⁰⁵. The court has been considering a petition since April 2024, to dissolve the MFP on the grounds of "high treason".¹⁰⁶ This suggests the judiciary is being used as a tool to suppress political opposition and undermine the democratic process.

Additionally, Thai courts have been complicit in the government's crackdown on dissent and criticism. Judges who have ruled against the regime's interests have faced retaliation, as seen in the case of Judge Khanakorn Pianchana. This pattern of judicial retaliation likely discourages other judges from making rulings that challenge the government's policies or actions, effectively skewing the judicial process in favour of the regime.

Overall, the Thai judiciary has not served as an effective check on the government's ability to repress criticism and undermine electoral competition. Instead, the courts appear to have been co-opted by the military regime to consolidate its power and suppress political opposition, raising serious concerns about the rule of law and the integrity of Thailand's democratic institutions.

Regime classification

Based on your answers to the previous questions, what would you classify the regime as?

¹⁰³ Bloomberg.com. "Thai Election Winner Faces Crucial Verdict Over Royal Insult Law." January 30, 2024. <https://www.bloomberg.com/news/articles/2024-01-30/thai-election-winner-faces-crucial-verdict-over-royal-insult-law>.

¹⁰⁴ "Thai Court to Rule on Former PM Candidate Pita's Lawmaker Status," Bloomberg.Com, January 23, 2024, <https://www.bloomberg.com/news/articles/2024-01-23/thai-court-to-rule-on-former-pm-candidate-pita-s-lawmaker-status>.

¹⁰⁵ "Thai Court Says Move Forward Party Must Stop Trying to Change Royal Defamation Law," <https://thediplomat.com/2024/02/thai-court-says-move-forward-party-must-stop-trying-to-change-royal-defamation-law/>.

¹⁰⁶ "Thailand: Court Ruling Could Subvert Democratic Rule | Human Rights Watch," April 10, 2024, <https://www.hrw.org/news/2024/04/10/thailand-court-ruling-could-subvert-democratic-rule>.

Fully Authoritarian.

Though Thailand engaged in competitive elections, leading to significant victories for the opposition in parliament, unelected forces such as the Senate, Military, and Courts prevent the leading and popular parties from assuming government. Whenever a political party emerges as a perceived threat to the Thai conservative establishment and its key institutions—namely, the monarchy and the Royal Thai Army—the establishment promptly moves to neutralise the threat.

The implementation, utilisation, and endorsement of laws aimed at suppressing dissent and limiting discourse on reforms enable the regime to assert a firm and legally sanctioned control over the political narrative, compelling strict compliance with these laws.

The actions taken against MFP effectively invalidated the votes of 14.4 million Thais (38% of the population).¹⁰⁷ Over the past two decades, Thailand's royalist establishment has disbanded multiple pro-democracy parties.¹⁰⁸

Thailand's classification as fully authoritarian is underscored by the actions of its pro-monarchy establishment, particularly the judiciary, which consistently enforces laws to convict free-speech activists and political reformers, resulting in lengthy jail sentences. The military also plays a significant role in their attempts to destabilise pro-people parties and policies through timely coups and interference. This strict adherence to and interpretation of conservative laws, coupled with military backing, primarily serve the regime's interests in maintaining power and influence.

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¹⁰⁷ “Thai Election Commission Requests Dissolution of Move Forward Party,”

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¹⁰⁸ “Thai Court Disbands Opposition Party, Boosting Army-Backed Ruler,” Bloomberg.Com, February 21, 2020, <https://www.bloomberg.com/news/articles/2020-02-21/thai-court-orders-break-up-of-pro-democracy-opposition-party>.

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