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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 June 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Thailand: Freedom of expression under attack

The Asian Legal Resource Centre (ALRC) wishes to bring the crisis of freedom of expression in Thailand to the attention of the Human Rights Council. This statement is the third on this topic that the ALRC has submitted to the Council since May 2011. During the seventeenth session of the Council in May 2011, the ALRC highlighted the rise in the legal and unofficial use of section 112 of the Criminal Code and the 2007 Computer Crimes Act (CCA) to constrict freedom of expression and intimidate citizens critical of the monarchy (A/HRC/17/NGO/27). In February 2012, the ALRC detailed some of the threats faced both by those who have expressed critical views of the monarchy, both legal and extra-legal, as well as those who have expressed concern about these threats (A/HRC/19/NGO/55).

The ALRC is again raising the freedom of expression to stress the persistence of the threat present, foreground the intensification of the dangers to human rights in Thailand broadly, and to acknowledge the continued courageous actions by citizens to revise or revoke section 112 and the CCA, despite these threats and dangers. As the ALRC has continually stressed, within the context of the political crisis that began with the 19 September 2006 coup and greatly increased with the violence of April-May 2010, the protection of fundamental human rights, including freedom of expression, is essential if there is to be the possibility of successful democratization and widespread access to justice in Thailand.

Section 112 criminalizes criticism of the monarchy and mandates that, "Whoever defames, insults or threatens the King, Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years." Statistics provided by the Office of the Judiciary indicate a sharp rise in lese-majesty charges filed since the 19 September 2006 coup, with 33 charges filed in 2005, 30 filed in 2006, 126 filed in 2007, 77 filed in 2008, 164 filed in 2009, and an extraordinary 478 charges filed in 2010. While statistics released for the first five months of 2011 indicate a reduction in the number of charges filed, information for the second half of 2011 and 2012 to date has not been made available publicly. The failure of the Government of Thailand to provide information itself raises many unanswered questions about the use of the law to diminish space for freedom of expression through the use of secrecy and generating of uncertainty.

Court judgments in cases of individuals charged and prosecuted under a combination of section 112 and the CCA are similarly resistant to scrutiny and ready comprehension. Section 14 of the CCA notes that anyone can be jailed for five years if found to have imported to a computer "false computer data in a manner that it is likely to damage the country's security or cause a public panic... [or] any computer data related with an offence against the Kingdom's security under the Criminal Code." As section 112 also is classed as a crime related to national security, it can be powerfully combined with the CCA to punish dissent, or perceived dissent, carried out via electronic means. Two recent cases, of Mr. Amphon Tangnoppakul and Ms. Chiranuch Premchaiporn, illustrate the dangers to freedom of expression posed by categorizing criticism of the monarchy as a crime against national security and the lacunae in the CCA, which makes it a ready vehicle for enhancing these dangers.

On 8 May 2012, Mr. Amphon Tangnoppakul, a 61-year-old man, was found dead in prison custody. At the time of his death, Amphon was serving a 20-year sentence received upon being convicted of four violations under section 112 and the CCA on 23 November 2011. Amphon was convicted for allegedly sending four SMS messages defaming the Thai queen and insulting the honor of the monarchy. The ALRC has written about Amphon's death and the questions raised by it about the judicial and penal systems in Thailand in a separate submission. In this submission, we concentrate on the legal ambiguities and lacunae in the case that go to the criminalizing of free speech through the use of section 112 and the CCA in Thailand:

- Similar to other court decisions in cases of alleged violations under section 112 and the CCA, the judges in this case had to infer the meaning of the four SMS messages in question (which was imprecise), the alleged intention of the defendant, and speculate on any potential damage caused to the monarchy and national security. At best, the court's interpretation could be described as legally inexact. At worst, it can be described as complete fiction.
- The court's logic in finding the four SMS messages in question criminal rested on an argument about the validity of the information contained within them and on what this might cause readers of the messages to believe. More specifically, the judgment reads that the messages were

"... the import to a computer system of false computer data, that was defamatory, insulting, and threatening to the king, queen, heir-apparent, and regent. [This information] would cause those who saw it to believe that the content of the messages was the truth, which would damage the nation's security. As a result, some of the aforementioned actions of the defendant are likely to damage the honor and reputation of the king, queen, heir-apparent, and regent and to cause them to be insulted and despised. [The defendant acted] With an intention to cause the people to dishonor, fail to venerate, and threaten the king, queen, heir-apparent, and regent."

Throughout the decision the adjective "likely" is used; in other words, damage was not caused by the SMS messages, but was probable in the opinion of the court. The ruling was not one that found the defendant guilty beyond doubt, but rested on a highly uncertain balance of probability.

- In addition, to interpret under the CCA the sending of a rude SMS message as "the import to a computer system of false computer data" is to stretch the category of "false computer data" beyond the already broad ambit provided by the law. Several pages later in the court decision, "false" is elaborated in political, rather than scientific or legal terms. The judges write that the four SMS messages in question

"... are entirely false because the truth reflected for the people around the country is the king and the queen are full of compassion. They are concerned for every person in the land and perform their royal duties for the benefit and happiness of the Thai citizenry."

While this may be the judges' opinion of the monarchy, to categorize it as truth is an ideological stance inappropriate for an ostensibly independent judiciary to take, and does not constitute any form of grounds for conviction under law. Further, given the increased frequency with which section 112 is being enforced, this statement is difficult to appeal against, either in law or in public debate, without also risking being charged under the law.

- Finally, even if the accused in this case had committed the offences as alleged, the 20-year sentence raises significant concerns about the proportionality of punishment for crimes of defamation in Thailand and speaks manifestly to an imbalance in the law of Thailand as written and as currently enforced between protecting the sovereign and protecting the human rights of people residing in the country.

On 30 May 2012, Ms. Chiranuch Premchaiporn, a 44-year-old human rights defender and webmaster of Prachatai, an independent online news site, was found guilty of one count out of ten alleged charges of violating the CCA. The charges against her in this case stemmed from her alleged failure to remove comments deemed offensive to the monarchy from the Prachatai webboard quickly enough. The prosecution alleged that this indicated her support of and consent to the comments, which constituted a violation under the CCA. She was sentenced to one year in prison and a 30,000 baht fine, which was reduced to a suspended sentence of eight months and a 20,000 baht fine.

- In the decision, the judges responded with an assessment of the appropriate length of time. The decision notes that in nine of the ten comments in question, they were removed within one to eleven days, and that this indicates that Chiranuch did not intentionally support or consent to them. In the instance of the tenth comment, which remained online for twenty days before she removed it, however, the court concluded that this duration indicated “implied consent.”
- Of particular concern to the ALRC was a statement in the ruling that while apparently endorsing freedom of expression in fact does precisely the opposite by imposing on the public the obligation to self-censor or be subject to criminal actions:

“The court acknowledges that freedom of expression is a basic right of citizens that is guaranteed and protected in every Thai Constitution. This is because freedom of thought and expression reflects good governance and the democratization of a given entity or nation. Criticism from the people, both positive and negative, provides an opportunity to improve the nation, given entity, and individuals for the better. But when the defendant opened a channel for the expression of opinions within a computer system, she was the service provider and it was within her control. The defendant had a duty to review the opinions and information that may have impacted the country’s security as well as the liberty of others which deserves similar respect. [with respect to comments found to be damaging] the defendant cannot cite freedom of expression in order to be released from liability.”

This statement, far from being an endorsement of free expression, is a direct attempt of the Court to disavow the right to freedom of expression found both in the Constitution of Thailand and in the ICCPR. The role of the Court and the judiciary in a broad sense should be to aid the development of justice and the rule of law, not aid in its dismemberment.

The ALRC is concerned that the cases of both Amphon Tangnoppakul and Chiranuch Premchaiporn are both indicative of how the judiciary in Thailand is marshaling spare evidence to convict persons of offences under political laws, and in so doing, of its role in eroding institutions and structures that are supposed to guarantee human rights and protect freedom of expression.

The ALRC also wishes to draw the Council’s attention to the courage of human rights activists, media advocates, and citizens in Thailand who continue to call for reform of section 112 despite the growing legal and extrajudicial threats they face. Under the 2007 Constitution, if at least 10,000 citizens sign in support of a proposed amendment to law, then it must be examined by the parliament. On 28 May 2012, the Campaign Committee for the Amendment of Section 112, a coalition of human rights and media activists, writers, artists, and citizens, presented 26,968 signatures in support of an amendment to section 112 limiting its use and reducing the punishment for violations. It is essential that in the coming months, the 26,968 citizens who signed in support of the draft amendment do not experience harassment or other repercussions for doing so.

The Asian Legal Resource Centre expresses solidarity with those persons in Thailand working to have laws aimed at narrowing the freedom of expression revoked or amended, and calls upon the Human Rights Council and also Special Procedures of the Commissioner for Human Rights to contribute to their efforts by urging the Government of Thailand to make the necessary changes to protect this fundamental human right. In this regard, the ALRC calls on the Special Rapporteur on Freedom of Expression to continue to monitor the situation on the ground in Thailand and to request the government to make an official visit to the country at the nearest possible opportunity to meet with concerned persons and produce a report with recommendations to the Government of Thailand for legal and institutional changes to the same end.