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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.

[13 February 2012]

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

Growing threats to political freedom in Thailand

The Asian Legal Resource Centre (ALRC) wishes to bring the growing range of state and vigilante threats to political freedom in Thailand to the attention of the Human Rights Council. These threats have been concentrated around those who both express critical views of the monarchy, as well as those who express concern about these threats. In recent months, academic and human rights defenders who have called for reform of Article 112, the section of the Thai criminal code criminalizing speech about the monarchy, have become the target of ambiguous threats by high-ranking state and military officers in Thailand and explicit death threats by vigilante actors outside the state. While state and military actors have not threatened the lives of academic and human rights defenders calling for reform, the absence of state sanction of those who have explicitly done so, combined with the volatile political climate in Thailand, is a cause for serious concern.

Instead of using regular defamation law, the position of the monarchy within the polity, and the sanctions for the crime of *lèse-majesté* are specifically described within Thai law. Section 8 of the 2007 Constitution notes: “The King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action.” Article 112 of the Criminal Code then prescribes punishments for violations: “Whoever defames, insults or threatens the King, Queen, the Heir-apparent or the Regent, shall be punished (with) imprisonment of three to fifteen years.” The 2007 Computer Crime Act, which has often been used in combination with Article 112, then prescribes penalties of up to five years per count in cases which are judged to have involved the electronic dissemination or hosting of information deemed threatening to national security, of which the institution of the monarchy is identified as a constituent part.

While Article 112 has been law since the last major revision of the Thai Criminal Code in 1957, there has been a dramatic increase in *lèse majesté* cases since the 19 September 2006 coup. Statistics provided by the Office of the Judiciary indicates a sharp rise in charges filed over the last five years, with 33 charges filed in 2005, 30 filed in 2006, 126 filed in 2007, 77 filed in 2008, 164 filed in 2009, to 478 filed in 2010. A lack of public, open information means that the outcomes of all of these charges filed is unknown. Any citizen can bring a complaint of alleged violations of Article 112 to the police, who are then obliged to investigate and decide whether or not to send the case to the prosecutor. The prosecutor then decides whether or not to bring the case to the Criminal Court. Combined with the vagueness of Article 112, these procedures easily lend themselves to abuse. Concerns about Article 112 and the 2007 Computer Crimes Act have been repeatedly raised by Frank La Rue, UN Special Rapporteur on the Right to Freedom of Opinion and Expression as well as by the governments of Spain, Switzerland, Slovenia, Canada, UK, France, Norway, and New Zealand during the Universal Periodic Review of Thailand’s human rights in 2011.

Several recent convictions indicate the severity of penalties that can be meted out under Article 112 and allied laws.

- On 15 March 2011, Mr. Tanthawut Taweewarodomkul was sentenced to 13 years in prison under Article 112 and the 2007 Computer Crimes Act for the alleged crime of posting online content with anti-monarchy messages and for not removing an anti-monarchy comment from a website he managed quickly enough. He reported being forced to confess by the police.
- On 23 November 2011, Mr. Ampon Tangnoppakul was sentenced to 20 years in prison under Article 112 and the 2007 Computer Crimes Act for allegedly sending 4 SMS messages with allegedly anti-monarchy content.

- On 8 December 2011, Mr. Joe Gordon was jailed for 2.5 years under Article 112 and the 2007 Computer Crimes Act for the alleged crime of posting a link to a translation of book published by Yale University Press in 2007 on a website that he managed while living in Colorado, outside Thailand's jurisdiction.
- On 15 December 2011, the 2009 conviction of Ms. Daranee Charnchoengsilpakul was upheld after the Constitutional Court concluded that a closed trial did not violate her basic rights. Her sentence has been reduced from 18 to 15 years, for conviction on three counts of violating Article 112 during 55 minutes of public speech in July 2009.

Within this context, in January 2012, the Khana Nitirat (which means "Law for the People" in Thai), a group of seven law lecturers at Thammasat University (Worachet Pakeerut, Jantajira Iammayura, Thapanan Nipithakul, Teera Suteewarangkurn, Sawatree Suksri, Piyabutr Saengkanokkul, and Poonthep Sirinupong), and the Campaign Committee for the Amendment of Article 112, a coalition of intellectuals, media activists, human rights activists, and others launched a public campaign to amend Article 112. The Khana Nitirat drafted a possible amendment to Article 112, which leaves the position of the monarchy within the Thai polity as it is currently, but aims to reduce the potential for abuse under Article 112 in several significant ways. The proposed amendment would make the punishment for alleged lèse majesté proportionate to the crime, limit who can file a complaint to the Office of His Majesty's Principal Private Secretary rather than any citizen, differentiate sincere and truthful criticism from threats to the monarchy, and categorize violations of Article 112 as about the honour of the monarchy, rather than national security. Under the 2007 Constitution, if at least 10,000 citizens sign in support of a proposed amendment, the Parliament is obliged to examine it. Beginning on 15 January 2012 the Khana Nitirat and the Campaign Committee for the Amendment of Article 112 began a nation-wide campaign to gather signatures.

In response to this campaign, there has been a backlash from many sectors of the government and armed forces. The elected majority Pheu Thai government has repeatedly indicated that they will not amend Article 112; Deputy Prime Minister Chalerm Yubamrung and many Pheu Thai MPs have indicated that they will not examine the amendment should it enter Parliament. Deputy Prime Minister General Yutthasak Sasiprapa urged the leaders of the campaign to stop before they created division in the country. General Prayuth Chan-ocha, commander-in-chief of the Army, has accused the members of the Khana Nitirat of being un-Thai, suggested that those who want to amend Article 112 should go live abroad, and ominously warned, "If you guys play hard ball, I'll have no choice but to do so, too." General Surasak Roonruangwong, commander-in-chief of the Navy, has suggested that the campaign is detrimental to national security. General Priewpan Damapong, Police commander-in-chief, has made a public statement indicating to the Khana Nitirat and their supporters that they are under close surveillance and will be prosecuted if they commit illegal acts. What is of particular concern is that a proposal to consider amending a law is being treated as though it is a threat to national security, an indication that the drafters of the amendment are not-Thai and do not belong to the polity. These statements by the leaders of different sectors of the security forces should be understood as threats to the political freedom of the members of the Khana Nitirat and their supporters.

Simultaneous to the public statements and threats by state officials against the Khana Nitirat, a wide range of citizens have harassed and made detailed vigilante-style threats against them as well. On 27 January 2012, a group who call themselves "Thais with Patriotic Heart" held a protest against the Khana Nitirat in front of the Faculty of Law at Thammasat University, burned an effigy of Professor Worachet Pakeerut, the leader of the group, and held placards calling for the members of the group to be executed. Since the

launch of the campaign, many anonymous threats against the Khana Nitirat have been posted in the comments on the website of Manager (Phuchadkan) newspaper online, including calls for them to be beheaded and their heads placed on stakes outside the university gates and calls for them to be burned alive with their families outside their homes. While vigorous debate from all points of view enhances democracy and the exercise of human rights, making death threats is outside the purview of vigorous debate.

The implicit and explicit threats from inside and outside the Thai state represent a threat to the rights guaranteed under the International Covenant on Civil and Political Rights, to which Thailand is a State Party, notably article 19, and specifically that,

- “Everyone shall have the right to hold opinions without interference.
- Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - For respect of the rights or reputations of others;
 - For the protection of national security or of public order (ordre public), or of public health or morals.”

The allegations by state security officials that the actions of the Khana Nitirat pose a threat to national security are illegitimate and unsubstantiated. Discussion of a proposed amendment to a law is an ordinary part of exercising one’s civil and political rights. The statements of state security officials, as well as their lack of concern regarding the threats made against the Khana Nitirat, and tacit support of them as indicated by their own statements, therefore represent a failure to protect the rights guaranteed in Article 19.

The Asian Legal Resource Centre therefore wishes to draw the Council’s attention to the specific threats faced currently by the Khana Nitirat, as well as the broader deepening of the crisis surrounding political freedom and freedom of expression signalled by these threats. The Asian Legal Resource Centre calls for the Council to:

- Urge the Government of Thailand, and particularly members of the state security forces, to cease threatening the Khana Nitirat and other citizens who are exercising their civil and political rights.
- Urge the Government of Thailand to show its strong disapproval for the bodily and death threats made against the Khana Nitirat and other citizens who are exercising their civil and political rights.
- Request that the Government of Thailand allow and support the full exercise of political freedom and freedom of expression at this critical time, including taking specific action to protect the members of the Khana Nitirat and others who have been targeted for doing so.

Recalling the recommendations to the Government of Thailand made by Brazil, Canada, France, Hungary, Indonesia, New Zealand, Norway, Slovenia, Spain, Sweden, Switzerland and the United Kingdom, during the Universal Periodic Review concerning the freedom of expression, lèse majesté and/or the 2007 Computer Crimes Act, the Asian Legal Resource Centre urges the government to accept these recommendations and provide information on how it will address these issues as part of the Thai UPR report’s adoption during the

Human Rights Council's 19th session, including by issuing an invitation for the Special Rapporteur on the freedom of expression and opinion to conduct a country visit.

The fact that the government accepted the recommendation made by New Zealand to ensure "positive human rights outcomes in the areas of personal liberty, including freedom of expression and freedom from reprisal and extra judicial punishment," is of particular significance given the current back-sliding that has been detailed above. The aforementioned states that have made relevant UPR recommendations are urged to press the government to accept these and ensure their implementation without delay.
