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## Human Rights Council

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Agenda item 3

**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 (ALRC), 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.

[16 May 2011]

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

## **Thailand: Threats to freedom of expression endanger human rights**

1. Since the 19 September 2006 coup, the Asian Legal Resource Center has observed the growing constriction of freedom of expression in Thailand. Locating and silencing dissident speech perceived to be critical of the institution of the monarchy has become a significant focus of the work of a range of Thai state agencies, including the judiciary, the Royal Thai Army, the Department of Special Investigation (DSI), the Ministry of Interior and the Royal Thai Police; this work has extended to state support of citizen action groups whose purpose is to scrutinize the internet and public space for any perceived instances of *lèse majesté*. Article 112 of the Thai Criminal Code (the *lèse majesté* law) and the more recent Computer Crimes Act of 2007 have been used with increasing frequency to threaten, intimidate, and in some cases, arrest and prosecute a series of dissidents, journalists, and observers of politics. While the use of the law to repress speech has been growing since the 19 September 2006 coup, in the last twelve months, the Thai state has displayed an increased willingness to manipulate, over-use and go beyond the law to silence speech.

2. In this submission, we draw the attention of the Council to two kinds of cases representative of the deeply endangered climate for freedom of expression: overt, targeted criminal prosecution and wide-ranging intimidation and threats through legal and extralegal measures. In both kinds of cases, Article 112, the 2007 Computer Crimes Act, or both have been used directly or the spirit of the laws has been invoked. Article 112 criminalizes any speech or action judged to be against the institution of the monarchy: “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 Crimes Act punishes the importing of “false computer data, in a manner that is likely to cause damage” to a third party or the public or “is likely to damage the country’s security or cause a public panic” with a five-year jail term. The Act gives authorities wide-ranging powers to search the computers of suspected users, as well as to request information from internet service providers about the identities of owners of computers with particular IP addresses. Although the 2007 Computer Crimes Act was initially promulgated as part of Thailand’s compliance as a signatory of the United National Convention on Transnational Organized Crime, it has been increasingly used in combination with Article 112 to target cyber-dissidents as well as ordinary citizens using the internet in Thailand.

3. The ongoing prosecution of Ms. Chiranuch Premchaiporn clearly illustrates the over-use and manipulation of the law to intimidate citizens and silence speech critical of the monarchy and ruling government regime.

(a) Ms. Chiranuch Premchaiporn, editor of the webboard for Prachatai, a progressive online newspaper, is currently on trial in the Criminal Court in Bangkok for alleged violations of both Article 112 and the 2007 Computer Crimes Act. She has been accused of not removing comments deemed offensive to the monarchy quickly enough from the Prachatai webboard. She is being prosecuted for the speech of others, not anything she herself said or wrote. The Asian Legal Resource would further emphasize that Ms. Chiranuch removed the posts in question from the webboard; at the time the alleged posts were made, there were over 2,500 posts being made per day. In other words, Ms. Chiranuch is facing a lengthy jail sentence on the basis of the speed with which she removed the allegedly offensive speech. While Ms. Chiranuch Premchaiporn’s case stands out due to the severity of the sentence she may be facing, there are many other similar cases in which Article 112 and the 2007 Computer Crimes Act are being used to target both those who write dissident speech online and those who, like her, create or moderate space online for citizens to share opinions and ideas.

(b) Her trial began in February 2011 with witness hearings for the prosecution. After only five days of hearings, the court postponed the remainder of her trial until

September and October 2011. If convicted in this case, she faces up to fifty years in prison. Ms. Chiranuch is facing another similar trial in Khon Kaen province for which she was charged in September 2010; no date has been set for the start of the second trial.

(c) In September 2010, the U.N. Special Rapporteur on the situation of human rights defenders, Mrs. Margaret Sekkaggya, addressed the case of Ms. Chiranuch Premchaiporn in a report to the UN Human Rights Council detailing cases transmitted to governments and replies received (A/HRC/16/44/Add. 1). The Special Rapporteur expressed concern over Ms. Chiranuch's case, the criminalization of dissident speech and the severity of possible punishment if she is convicted.

(d) In their replies of October 2010 and February 2011, the Thai government noted that "Thailand, as an open society, upholds the people's right to freedom of speech and expression as guaranteed by the Constitution. The exercise of such rights, however, must bear in mind considerations regarding national stability and social harmony. Views that are disrespectful of the monarchy, or advocate hatred or hostile feelings towards this important national institution, or those which incite hatred or violence are generally unacceptable in the Thai society." The Thai government also noted that the laws under which Ms. Chiranuch was prosecuted are in line with both the Thai Constitution and the International Covenant on Civil and Political Rights (ICCPR), justifying the restriction on certain kinds of speech with reference to the "special duties and responsibilities" stipulated for freedom of expression in the ICCPR. The Thai government further noted that as the case proceedings against Ms. Chiranuch are still ongoing "it is important not to prejudge the decision of the Court at this stage."

4. The issue of "special duties and responsibilities" vis-à-vis freedom of speech is complicated by the fact that Ms. Chiranuch Premchaiporn was not the author of the speech in question. In their response to the Special Rapporteur, the Thai government has failed to address the very basic question of why this case is being prosecuted in the first place. It is particularly troubling that the Thai government would cite the provision of "special duties and responsibilities" vis-à-vis freedom of expression in the ICCPR as a reason to criminally prosecute a web editor for not removing questionable webboard posts quickly enough. This indicates an interpretation of the ICCPR by the Thai government that attempts to manipulate the provisions of the covenant to justify actions that are clearly in contradiction with both the spirit of the law and Thailand's obligations as a state party. Article 19 of the ICCPR is explicit that restrictions to freedom of expression are only permitted when necessity is clearly present; necessity has not been clearly demonstrated in this case.

5. In addition to the formal case proceedings against Ms. Chiranuch Premchaiporn for alleged violations of Article 112 of the Thai Criminal Code and the 2007 Computer Crimes Act, during the last year, the Asian Legal Resource Center has observed an increase in wide-ranging intimidation and threats against freedom of expression through legal and extralegal measures. This has included cases in which individuals have been criminally charged as well as those in which it has been intimated that they might be charged. In particular, the cases of Dr. Somsak Jeamteerasakul and Mr. Somyos Preuksakasemsuk indicate the development of an ominous trend in the expansion from constriction of freedom of expression to constriction of freedom of thought.

(a) On 7 April 2011, General Prayuth Chan-ocha, the commander of the army, directly criticized and derided Dr. Somsak Jeamteerasakul, a well-known historian at Thammasat University in Bangkok, describing him as "a mentally ill academic" who "is intent on overthrowing the institution" of the monarchy. In the current highly polarized political situation in Thailand, where ultra-conservative forces are using the symbolic power of the king and royal institutions to advance a new authoritarian project, these statements from the head of the army are not only inappropriate but also are extraordinarily dangerous. While the police have not yet charged Somsak with any offence, according to various sources, some kind of investigation is underway against him. At the same time, he has been threatened extralegally. Unknown men have come on motorcycles to nearby his

house, and he has been receiving harassing telephone calls, which in Thailand constitute early warning signals of impending violence if the target does not stop whatever he or she is doing.

(b) On 30 April 2011, Mr. Somyos Preuksakasemsuk, labour activist and editor of the opposition-aligned *Red Power* magazine, was arrested on charges of alleged violating Article 112. While the official charges cited an article allegedly damaging to the monarchy in *Red Power*, in a letter written from jail on 2 May 2011, Mr. Somyos suggested that his arrest may have instead resulted from his work educating people about the dangers of Article 112 and collecting signatures for a petition to repeal the law. Indicating the likelihood of this possibility, and the signaling the political nature of his arrest, the arrest warrant was issued on 12 February 2011, over two months before the arrest was carried out. Notably, Mr. Somyos was also targeted one year ago by the state and arbitrarily detained for several weeks in April-May 2010 after the ad-hoc military-police-civilian Center for the Resolution of the Emergency Situation (CRES) accused him of being part of a plan to topple the monarchy.

6. The targeting of Dr. Somsak Jeamteerasakul, both by General Prayuth Chan-ocha and unidentified figures, rather than bringing formal criminal charges against him indicates a blurring of the boundary between the legal and the extrajudicial in Thailand. What makes this an ominous development for both freedom of expression and the broader atmosphere for human rights in Thailand is that while a criminal case can be challenged by the accused in court, harassment and extrajudicial threats cannot be directly countered. The arrest of Mr. Somyos Preuksakasemsuk, seemingly for actions beyond those for which he was formally charged, similarly indicates a weakening of the rule of law in Thailand.

7. Increased arrests, charges, and convictions under both Article 112 and the 2007 Computer Crimes Act and related extralegal harassment and intimidation represent a grave threat to freedom of expression in Thailand. As Thailand attempts to undergo a process of national reconciliation in the aftermath of the violence of April and May 2010, this latest constriction of speech and threat to human rights is of particular concern. Without the free and unobstructed flow of information, neither human rights nor the rule of law can be strengthened in Thailand. Without respect for human rights and the rule of law, the process of national reconciliation will also fall short of fostering accountability for violence.

8. All three of the cases discussed in this submission point to a significant tension between the enforcement of Article 112 of the Thai Criminal Code and the 2007 Computer Crimes Act, and Thailand's obligations to protect freedom of speech which are enshrined in both the International Convention for Civil and Political Rights and the 2007 Constitution. The Asian Legal Resource Center finds the Thai government's citation of the "special duties and responsibilities" which accompany freedom of expression inadequate. In particular, the ALRC urges the Thai government to be cautious about labeling every instance of dissident speech dangerous to the monarchy or national security.

9. The ALRC urges the Special Rapporteur on the freedom of opinion and expression to raise the above issues with the Thai government. More widely, the ALRC urges the Special Rapporteur to conduct a study to evaluate the quantity, timeliness and quality of the Thai government responses to the mandate's interventions and recommendations –similar to the study carried out by the Special Rapporteur on torture– and urges the Human Rights Council to make the required resources available for this.