



# General Assembly

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## Human Rights Council

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Human rights situations that require the Council's attention

### **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]

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

## **Dehumanization and death in custody of a Thai citizen accused of lese majesty: The case of Amphon Tangnoppakul**

On 8 May 2012, Mr. Amphon Tangnoppakul (also known to his family as “Ah Kong” or “grandfather,” and to the public as “Uncle SMS”), 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 Article 112 of the Thai Criminal Code and the 2007 Computer Crimes Act in Black Case No. 311/2554 on 23 November 2011. Amphon was convicted for allegedly sending four SMS messages to Mr. Somkiat Klongwattanasak, personal secretary of the former prime minister, Mr. Abhisit Vejjajiva. These four SMS messages allegedly contained vulgar language defaming the Thai queen and insulting the honour of the monarchy. Amphon’s conviction rested on questionable electronic evidence presented by the prosecution, about which the Asian Legal Resource Centre (ALRC) has written in a separate written submission to the current session of the Council. The circumstances surrounding his death suggest the presence of, at best, gaps within the prison healthcare system and, at worst, gross negligence.

While it is too late for action to be taken which will save Amphon’s life, the ALRC brings this case to the attention of the Human Rights Council in the hope of raising awareness of problems within the Thai justice and prison systems. While these problems are relevant to all those in custody in Thailand, the ALRC would like to note the additional dangers faced by those in custody who are accused or have been convicted of the crime of allegedly insulting the monarchy. In present-day Thailand, the social and political crisis surrounding the monarchy and the fraught relationship between the institutions of the monarchy and those of democracy mean that alleged insults to the monarchy are categorized formally as crimes of national security and informally as crimes of sedition. Within this context, it then becomes possible for those charged with or convicted of insulting the monarchy to be treated as less than human, and for their persecution to be naturalized.

On 3 August 2010, a group of 15 police officers raided Amphon’s house and arrested him over the four SMS. He was detained for 63 days without being charged, before being granted bail on 4 October 2010. Amphon entered detention again upon being formally charged with violations of section 112 and the Computer Crimes Act on 18 January 2011. At the time he was charged, he was already suffering from oral cancer for which he had been receiving regular treatment, and his counsel immediately requested bail while awaiting trial on this basis. The court denied this request, as it did seven subsequent requests made before his trial, at the time of his conviction, and up until several months before his death. At the time of Amphon’s last request for bail, in February 2012, the Appeal Court ruled that this frail and sick elderly man with little money or resources was a flight risk, and that his illness, which constituted one of the grounds for the request, did “not appear to be life-threatening.”

When questioned about the repeated denial of bail in Amphon’s case, Mr. Sorawut Benchakul, the Deputy Secretary-General of the Office of the Judiciary, noted that while the right to bail is a fundamental human right, section 108 of the Thai Criminal Procedure Code allows for its denial when the court fears that the defendant might flee. Sorawut claimed that when Amphon requested bail, the medical certificate presented did not indicate grave illness. While Sorawut claimed that the vast majority of those charged under section 112 and the Computer Crimes Act are granted bail, in the absence of full statistics released by the judiciary on these cases, the claim cannot be confirmed. No explanation has been given as to why the court might have perceived Amphon to be a flight risk but—if the deputy secretary-general is to be believed—why the vast majority of applicants in similar cases obtain bail.

The ALRC would like to take this opportunity to remind the Government of Thailand that under article 9(3) of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a state party,

“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.”

The ALRC concludes that in the case of Amphon, the state in Thailand clearly and flagrantly violated this section. Amphon spent 63 days in pre-charge detention, and then 310 days detention prior to and during his trial. This is a total of 373 days in detention prior to being convicted, which represents a period of time in detention and trial length that is neither prompt nor reasonable.

Three months after the assessment by the Appeal Court that Amphon’s illness was not a threat to his life, he died in prison custody. While the full details have not yet been made available, the partial information made publicly available about the conditions surrounding his death point to significant problems of capacity and routine negligence, which together amount to a grave threat to the human rights of prisoners.

As reported in *Khao Sod* newspaper, several days after Amphon’s death, Police Colonel Dr. Supol Chongphanichkulthorn, spokesperson for the Police General Hospital, said that the preliminary results from the autopsy indicated that he died as a result of liver cancer that had metastasized throughout his body and caused respiratory failure. Dr. Cherdchai Tantisirin, a member of parliament from the majority Pheu Thai Party who was also present for the autopsy, commented that,

“We have to separate the issue of what is human from the issue of the case. If a person in detention is found to have cancer, he should be released in order to be treated outside [the prison]. Moreover, in the case of Amphon, as far as I have seen, there are no indications of the actions of physicians or nurses trying to resuscitate him or otherwise help him.”

The ALRC would like to express concern over both the presence of metastatic cancer found in Amphon’s body as well as the observation by Dr. Cherdchai that there appears to have been no attempt to resuscitate him, which the ALRC would further note may have been due to a lack of adequate staff to closely monitor patients. Whether the failure to take action was an intentional decision to explicitly harm Amphon or the result of negligence or lack of capacity, the resultant violation of his human rights is the same. The ALRC would like to remind the Thai Government of the United Nations Standard Minimum Rules for the Treatment of Prisoners, and in particular section 22(2) of the rules, that mandate that:

"Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers";

and, to section 25(2), that:

"The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment."

On 16 May 2012, Dr. Sunai Chulpongsatorn, a member of parliament from the majority Pheu Thai Party and the chair of the Parliamentary Foreign Affairs Committee, convened a meeting with representatives from relevant parties, including the Department of

Corrections, the Prison General Hospital, the Office of the Judiciary, the National Human Rights Commission, as well as Amphon's family and lawyers, to discuss his life and death. The comments made during the meeting suggest that the treatment of Amphon is not unusual and rather is representative of gross inadequacies that place Thailand far from meeting the guidelines outlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners.

In particular, Dr. Bunmee Wibulchak, a doctor at the general hospital of the Department of Corrections, acknowledged that the conditions in the hospital were not as good as hospitals outside the prison system: they did not have a full staff, and on the evenings and weekends, there were no doctors on duty, only nurses. If a prisoner was in need of medical treatment that a nurse could not provide, then she would call the doctor, who would provide orders via telephone. He further noted that several months earlier, when Amphon had come to the prison clinic complaining that he felt as though his cancer had returned, the conclusion by the prison physician and the ear, nose, and throat specialist who examined his mouth and throat was that it was not cancer. When Amphon entered the prison clinic and then the hospital in the days before he died, he had a painful stomachache. By Friday, 4 May 2012, the decision had been made for further examination and testing, but could only take place during normal working hours and days. By Tuesday, 8 May 2012, Mr. Amphon Tangnoppakul was dead. Sickness and death frequently do not observe working hours.

In light of the above, the Asian Legal Resource Centre calls on the Government of Thailand to:

- conduct a special investigation into the death of Amphon Tangnoppakul and again table the findings publicly with a view to taking criminal legal action against the persons responsible for his death and administrative action against those officers who failed in their duty of care for a person in state custody, including prison officials, doctors and judicial officers, and ensure that compensation is given in accordance with international standards to his family;
- release statistics on the number of persons charged with lese majesty and offences under the Computer Crimes Act since the military coup of 2006, providing details on the average days spent in pre-charge detention, average days spent in pre-trial detention, average days spent in detention during trial, numbers of application for bail accepted and rejected and grounds for rejection, in order that the unsubstantiated and unverified claims on cases like those of Amphon be subject to public scrutiny;
- conduct a complete review of the current procedures and instructions to judges concerning the granting of bail, and in particular, the provision of bail in cases where detainees are elderly, infirm or sick and make the findings of the review known publicly and what action is taken on the basis of the review to ensure that bail is granted in accordance with the terms of international human rights law;
- conduct a complete review of the provision of medical services to persons in state custody, taking into account statements by the doctors in the case of Amphon both with regards to the circumstances of his death and conditions in prison medical facilities in general, again make the findings and recommendations of the review known publicly, and indicate what steps are taken to implement recommendations to ensure that no further tragic deaths in custody occur as in the case of Amphon;
- revoke section 112 of the Criminal Code and the Computer Crimes Act, both of which are vehicles for the abuse of human rights by state agents and neither of which serves its ostensible purposes of protecting Thailand's national interests.