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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.

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

Next steps to end impunity for state violence in Thailand

On 30 July 2012, the Criminal Court in Bangkok convicted five police officers for the murder of a teenager during the "war on drugs" in 2004 in Thailand. This is the first case of which the Asian Legal Resource Centre (ALRC) is aware in which police responsible for killings during the "war on drugs" under the government of ousted Prime Minister Thaksin Shinawatra have been held to account for their crimes. In a country in which impunity for state violence is long-standing, institutionalized, and a public fact, the decision in this case is a significant victory for the family of the victim and serves as a cautious signal of the possibility of accountability to others. The ALRC brings this case to the attention of the Human Rights Council in order to highlight a significant success by human rights defenders to secure justice after a protracted struggle as well as to suggest how the decision in this case may be used to encourage the end of impunity in other outstanding cases of state violence.

In February 2003, ousted Prime Minister Thaksin announced the beginning of the "war on drugs" with an unequivocal message to police and other state officials--that any and all necessary actions should be taken to free the country of the drug menace, including killing. Over the next three months, it became apparent that the message served as a *carte blanche* for the use of murderous violence against citizens, rather than using the provisions of the Criminal Code to investigate and prosecute. By May 2003, an estimated number of over 2500 people had been killed. Kalasin Province was the first province in the country that the government declared had "won" the war. This alleged victory was achieved at the cost of many lives taken illegally, at the hands or bidding of state agents. In addition, and particularly evident in Kalasin province, the "war on drugs" did not end in May 2003, but instead extrajudicial violence became a typical tactic used by the police.

This context of routinized state violence is the one in which Kiettisak Thitboonkrong was arrested for a minor crime and then murdered. On 16 July 2004, the police arrested him for allegedly stealing a motorcycle. When his family heard this news, they went to the police station and attempted to talk to him. After returning multiple times, his grandmother was allowed to witness his interrogation on 22 July 2004 and told to wait for him to be bailed out later that day. But Kiettisak never came home and the next day his mutilated body was found in a neighbouring province.

Following his death, his family launched a campaign to investigate and hold the police in Kalasin accountable for his murder and the murders or enforced disappearances of 27 other individuals by police of the same station during and following the so-called "war on drugs". In 2005, the Department of Special Investigation (DSI) in the Ministry of Justice began investigating the case. Under the Special Investigation Act (SIA), the DSI is the state agency tasked with investigating cases in which state officials have committed violent crimes against citizens. The DSI took three years to conduct the investigation. On 18 May 2009, the public prosecutor charged six police officers with premeditated murder and with concealing Kiettisak's corpse to hide the cause of death. Because this case was investigated under the SIA it was sent to the Criminal Court in Bangkok. The public prosecutor conducted the case and Kiettisak Thitboonkrong, father of Kiettisak, successfully sought and obtained permission from the court to act as a joint plaintiff, represented by lawyers from the Lawyers' Council of Thailand working *pro bono*. The hearings took another three years.

In the decision in Black Case No. 3252/2552, 3466/2552, read on 30 July 2012, the Criminal Court found five out of the six police officers accused guilty of murdering Kiettisak Thitboonkrong. The Criminal Court found Pol. Snr. Sgt. Maj. Angkarn Kammoonna, Pol. Snr. Sgt. Maj. Sutthinant Noentthing, and Pol. Snr. Sgt. Maj. Phansin

Uppanan guilty of premeditated murder and hiding a corpse. It sentenced them to death. Pol. Lt. Col. Sumitr Nanthasathit it found guilty of premeditated murder and sentenced him to life imprisonment. Pol. Col. Montree Sriboonloue it found guilty of abusing his authority to aid in protecting his subordinates from criminal prosecution and sentenced him to seven years' imprisonment. The five policemen were released on bail while they appeal the decision.

The case of Kiettisak Thitboonkrong is the first of 28 total cases in which police from the Kalasin police station have been accused of murdering or forcibly disappearing citizens during or following the "war on drugs". Given that this is also the first case in which a court decision has been reached, the ALRC welcomes the guilty verdict as a clear sign that the judiciary is willing to hold police to account for their use of extrajudicial violence against citizens. At the same time, the ALRC would like to note two significant reservations.

- The first is that the ALRC would like to express grave concern that the convicted officers have obtained bail pending appeal. The convictions for these sentences are of such gravity that good reason exists to expect that the convicted police will attempt to evade punishment by absconding or other means. They may also seek to obtain revenge against one or more persons who testified against them. Consequently, the ALRC urges that the granting of bail be revoked and the five convicted officers be imprisoned while awaiting appeal outcomes. The ALRC further urges the relevant Thai authorities to ensure that witnesses and human rights defenders in this case continue to receive witness protection, as the Asian Human Rights Commission, the ALRC's sister organization, has informed the Special Rapporteur on Human Rights Defenders about in a separate appeal.
- The second is that the ALRC, as a matter of human rights principle, opposes the death penalty under all circumstances, and calls for the sentences in this case to be reviewed, such that the convicted police officers instead receive appropriate prison terms.

Notwithstanding these reservations, this case stands out among other cases of extrajudicial killing in Thailand over the last ten years, in which courts have been unwilling to hold state officials to account. In the worst cases, perpetrators of extrajudicial violence against citizens have been rewarded. In most cases they have been tacitly and conveniently ignored. One of the long-term effects of this approach has been the further consolidation of impunity for state violence in Thailand. The ALRC would therefore like to urge the Thai government to take the example set by the court in the case of Kiettisak Thitboonkrong as a precedent and catalyst to take action to end impunity. This suggestion is aimed at the criminal justice system writ large as well as relevant independent bodies with responsibility for documenting violence and securing accountability. The cases for which recommendations are noted below are both urgently in need of redress and are exemplary of the broader problem of impunity in Thailand.

On 12 March 2004, police officers abducted Somchai Neelaphaijit, a lawyer and human rights defender, from his car in Bangkok. At the time of his disappearance, Somchai was representing clients whom police had tortured as part of their counterinsurgency campaigns in southern Thailand. Concerted action by his family and allied human activists, and interventions by the Working Group on Enforced Disappearances, led to the prosecution of five police officers in connection with his disappearance and murder. However, due to a combination of consistent obfuscation by the involved police officers as well as inability to account for the crime of disappearance within existing Thai legal categories, all but one of the police officers was acquitted. The one officer convicted of relatively minor offences also disappeared and was subsequently acquitted on appeal. The body of Somchai Neelaphaijit has not been recovered and his case remains unsolved.

The ALRC urges the Government of Thailand to amend the Criminal Code to account for the crime of disappearance, and, more importantly, to foster a culture within which the state security forces actively work against, rather than encourage, the casual use of extrajudicial violence.

On 25 October 2004, 85 people died during and following protests in Tak Bai district of Narathiwat province. Over 1500 people had massed in front of the district police station to protest the arrest of six villagers on charges of allegedly stealing guns from the local defence forces. Under the terms of martial law, this protest was an illegal gathering and the protestors were arrested. They were then transported to an army base six hours away. During the transport, the protestors were stacked in horizontal layers in the trucks, as a result of which 78 people died during the transport, in addition to seven people who were killed during the protest. Under Thai law, when there is a death in custody, a postmortem inquest must be conducted. In May 2009, the inquest ruling noted that, "The causes and circumstances related to the deaths were that they died of suffocation while in custody of officials who were deemed to have performed their duties according to their assigned responsibilities." In other words, the court recognized that the protestors died while under the protection of state officials, but classified this not as murder but as "duty". Families of the victims filed a court case arguing that this recourse to "duty" was unconstitutional; both the Criminal Court and the Court of Appeals have refused to accept this case. The recourse to "duty" is far too frequently echoed in postmortem inquest rulings involving deaths in custody in Thailand and the refusal of the courts to accept the case of the families of the victims powerfully illustrates how entrenched and unquestionable this idea is within the security and judicial apparatus.

The ALRC urges the courts to accept this case for review, and calls on the Government of Thailand to carefully examine the practices and policies extant inside the security forces to ensure that "duty" does not stand as justification for inhumane treatment, torture, or murder.

During the clashes and the subsequent government crackdown on the protests by the red-shirted members of the United Democratic Front Against Dictatorship (UDD) in April and May 2010, 94 persons were killed and more than 2000 were injured. A series of investigations have been carried out by different kinds of actors, including a state agency, two state-appointed independent bodies, and a citizen group. With the exception of the citizen group, the People's Information Centre (PIC), which released its report in late August 2012, the operations and results of the investigations have not yet been made available to the public.

The ALRC calls on the state agency, the DSI, and the two state-appointed independent bodies, the Truth and Reconciliation Commission of Thailand and the National Human Rights Commission of Thailand, to complete their investigations and share the information with the public. The ALRC welcomes the report of the PIC as an important action by citizens in the service of protecting human rights and ending impunity. At the same time, the ALRC would like to highlight the fact that the securing of accountability is not only the responsibility of citizens, but the state must actively work to achieve this end as well. The public release of the reports by the DSI and other agencies is an important component of this work, as is the subsequent prosecution of state officials who used extrajudicial violence during the April-May 2010 crackdown.