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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.

[10 February 2013]

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

Thailand: Freedom of expression in crisis - The conviction of Somyot Prueksakasemsuk

1. The Asian Legal Resource Centre (ALRC) wishes to bring the urgent crisis of freedom of expression in Thailand to the attention of the Human Rights Council. This statement is the fifth 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 article 112 of the Criminal Code and the 2007 Computer Crimes Act (CCA) to constrict freedom of expression and intimidate citizens critical of either the monarchy (A/HRC/17/NGO/27). During the nineteenth session 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). During the twentieth session in June 2012, the ALRC raised concerns about the weak evidentiary basis of convictions made under article 112 and the CCA (A/HRC/20/NGO/37) and the concerning conditions surrounding the death in prison custody of Amphon Tangnoppakul on 8 May 2012, then serving a 20-year sentence for four alleged violations of article 112 and the CCA (A/HRC/20/NGO/38).

2. 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 the consolidation of the rule of law in Thailand. The 23 January 2013 conviction and lengthy sentenced meted out by the Criminal Court to Somyot Prueksakasemsuk, a long-time labour rights activist and human rights defender, is a clear indication of the willingness of the Thai judiciary to actively obstruct the free exercise of civil and political rights. The ALRC is again raising the issue of freedom of expression with the Council because this decision by the Criminal Court, as well as the comments on the case made by the Constitutional Court and other figures within the judiciary indicate that this case both a profound violation of the rights of an individual citizen and an indication of the intensification of the uncertainty present in the polity and the concurrent dangers to the human rights of all citizens.

3. Article 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." While the law has been part of the Criminal Code since the last major revision in 1957, available statistics suggest that there has been a dramatic increase in the number of complaints filed since the 19 September 2006 coup; how often these complaints become formal charges and lead to prosecutions is information that the Government of Thailand has failed to provide up to this point. This failure 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 creation of uncertainty. What has instead become explicitly clear is that the effects of the use of article 112 increasingly mirror extrajudicial forms of intimidation of citizens and constriction of their rights.

4. Somyot Prueksakasemsuk was arrested and taken into custody on April 30, 2011, and shortly thereafter charged with two violations of article 112. In Somyot's case, the charges were for allegedly allowing two articles with anti-monarchy content to be published in Voice of Taksin magazine, a publication with which he worked. Somyot was held for six months of pre-trial detention. The hearings in his trial (Black Case No. O.2962/2554) began on November 12, 2011 and continued until May 3, 2012. Similar to the majority of individuals who have been charged under Article 112, his repeated requests

for bail were denied on the basis of the gravity of the charges against him. In August 2012, the UN Working Group on Arbitrary Detention noted that Somyot's detention was arbitrary because "he has been detained for his peaceful exercise of his right to freedom of opinion and expression provided for" in both the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights (A/HRC/WGAD/2012/35).

5. On January 22, 2013, the Criminal Court found Somyot Prueksakasemsuk guilty on both charges, and he was sentenced to ten years in prison in this case, as well as to one year in prison in relation to a prior case. The prosecution argued that his work in printing, distributing and disseminating two issues of Voice of Taksin magazine which contained content deemed to violate article 112 was itself an equal violation of the law. In the abbreviated decision released on January 23, 2013, the Court offered this interpretation of Somyot's guilt:

"The two Khom Khwam Kit articles in Voice of Taksin did not refer to the names of individuals in the content, but were written with an intention to link incidents in the past. When these incidents in the past are linked, it is possible to identify that (the unnamed individual) refers to King Bhumipol Adulyadej. The content of the articles is insulting, defamatory, and threatening to the king. Publishing, distributing, and disseminating the articles is therefore with the intention to insult, defame, and threaten the king" (ALRC translation).

6. The Court decision raises significant questions regarding freedom of expression and Government of Thailand's willingness, or lack thereof, to protect it. The threats to freedom of expression rest on how evidence was deployed in this case, how intention was assigned, and how the punishment was then calculated on the basis of these two actions.

(a) As in other lese majesty cases, the Court's decision turned on the issue of intention. The Court's analysis that juxtaposition of events and ideas in the two articles in question implied the individual being discussed was King Bhumipol was the basis on which the assessment of the intention to insult, defame, or threaten him was made. At best, by default, this analysis can remain only speculative.

(b) Somyot Prueksakasemsuk was not the author of the two articles in question. This was of no concern for the Court. Here, the Court has equated involvement in the editing, publishing, disseminating, or distribution of material that is judged to have the intention to defame, insult, or threaten the monarchy, to also carry criminal intention.

(c) On the basis of a speculative analysis of the content of the two articles, and Somyot Prueksakasemsuk's proximity to them, he was sentenced to ten years in prison. Even if Somyot had been the author of the two articles in question, the ten-year sentence (five years per count, in this case, per article), the length would raise serious questions about the proportionality of punishment. Given the details of this case thus noted, the punishment signals the gravity of the situation in Thailand.

(d) This decision firmly established article 112 as an unofficial censorship measure in Thailand. The conviction and punishment of Somyot Prueksakasemsuk is an ominous warning to anyone involved in publishing, distributing or selling print or other media. The uneven enforcement and interpretation practiced under article 112 makes the danger present even more grave.

7. The logic underlying the use of article 112 frequently cited by the Court is the uniqueness of Thailand as a nation with the king as the head of state. This decision speaks manifestly to an imbalance in the law of Thailand as written and currently enforced between protecting the sovereign and protecting the human rights of the people residing in the country. In a comment made in October 2012 by the Constitutional Court in relation to a petition filed by Somyot Prueksakasemsuk's legal team, the Constitutional Court offered a

disconcertingly ideological analysis of the position of the king within the Thai polity in order to dismiss the petition that article 112 violates the basic rights of citizens and as the reason for the harsh punishment mandated under article 112. For example, the Constitutional Court noted that the purpose of article 112 of the Criminal Code is to "control the behaviour of individuals in society, protect safety, and safeguard public peace for members of society, including strengthening the security in society." The reason why it is appropriate to do so is because speech deemed to insult, defame, or threaten the king, queen, heir-apparent or regent, "may be action that destroys the hearts of Thai people who have respect, love, and are loyal to the king and the institution of the monarchy, and may cause resentment among the people" (ALRC translation).

8. The ALRC would like to remind the Government of Thailand that under Article 19 of the ICCPR, restrictions on the right to freedom of expression are only permissible under two circumstances: "for respect of the rights or reputations of others" and "for the protection of national security or of public order (ordre public), or of public health or morals." While article 112 is classified as a crime against national security within the Criminal Code of Thailand, and this is frequently cited by the Government of Thailand when the criticism that the measure is in tension with the ICCPR, to date a clear explanation of the precise logic for categorizing the measure as such has not been provided. This comment by the Constitutional Court is no different. The exercise of freedom of expression is frequently messy and productively contentious, but this does not equate to a threat to public order or morals. Respect and love for a figure held by some members of a polity is not an adequate reason to put another member of the polity behind bars for allegedly criticizing that figure and restricting everyone's freedom of expression. To raise questions about the role of the king, or the institution of the monarchy broadly, does not equal a violation of his rights or reputation.

9. In view of the above, the Asian Legal Resource Center calls on the Human Rights Council to:

(a) Call on the Government of Thailand to release Somyot Prueksakasemsuk and all other individuals convicted under article 112.

(b) Demand that the Government of Thailand revoke article 112 of the Criminal Code and related measures, which are vehicles for the abuse of human rights by state agents and do not serve the ostensible purpose of protecting national security, let alone any unique national traits or institutional features distinct from those of other modern constitutional monarchies, which do not have recourse to such measures.

(c) Urge the Government of Thailand to allow and support the full exercise of freedom of expression and political freedom, consistent with the terms of the Universal Declaration of Human Rights, to which it is a signatory; and, the International Covenant on Civil and Political Rights, of which it is a State Party.

(d) Request the Special Rapporteur on the freedom of opinion and expression to continue ongoing monitoring and research work about the broad situation of constriction of rights and individual cases, including Somyot Prueksakasemsuk, in Thailand; and, the Working Group on Arbitrary Detention to continue to monitor and report on those cases of persons arbitrarily detained under article 112.