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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 (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.

[10 May 2013]

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

Thailand: The regularization of the crisis of freedom of expression

1. The Asian Legal Resource Centre (ALRC) wishes to bring the regularization of the crisis of freedom of expression in Thailand to the attention of the Human Rights Council. This statement is the sixth 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 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 extralegal, 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). During the twenty-second session in March 2013, the ALRC highlighted the January 2013 conviction under Article 112 of human rights defender and labour rights activist Somyot Prueksakasemsuk (A/HRC/22/NGO/44).

2. In the prior five statements, the ALRC has been concerned with the urgency of the threats posed by the constriction of freedom of expression. Particularly in the context of the 19 September 2006 coup and the violent clashes between state security forces and citizens in April-May 2010, the protection of fundamental human rights is necessary to foster the rule of law and democratization. The ALRC is again raising the issue of freedom of expression with the Council because the constriction of speech in the name of protecting the monarchy and national security has now become regularized. This is no longer an unusual breach of human rights, but one that has become constitutive of political and social life in Thailand. The entrenchment of the violation of freedom of expression threatens to normalize an additional series of human rights violations, such as the routine denial of bail to individuals awaiting trial and appeal, the provision of substandard medical care in prisons, and the use of secrecy to restrict the openness of trials and public information about ongoing cases.

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.” The 2007 CCA, which was promulgated as part of Thailand’s compliance as a signatory to the United Nations Convention Against Transnational Organized Crime, has been used to target web editors and websites identified as critical of the monarchy or dissident in other ways. The CCA provides for penalties of up to five years per count in cases which are judged to have involved the dissemination or hosting of information deemed threatening to national security, of which the institution of the monarchy is identified as a key part. While Article 112 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. The CCA has often been used in combination with Article 112 in the four years since its promulgation; similar to the use of Article 112, complete usage information has not been made available by the Government of Thailand. This failure to provide information itself raises many unanswered questions about the use of both laws to diminish space for freedom of expression through the use of secrecy and creation of uncertainty.

4. At present, there are 6 persons known to be serving prison terms for alleged violations of Article 112 and/or the CCA and 1 person behind bars while awaiting trial.

- Daranee Charnchoengsilpakul was convicted of violations of Article 112 related to 55 minutes of speech and sentenced to 18 years in prison on 28 August 2009. Following examination of her case by the Constitutional Court, her sentence was reduced to 15 years in December 2011.
- Wanchai Sae Tan was convicted of violations of Article 112 related to leaflets he made and distributed and sentenced to 15 years in prison on 26 February 2010.
- Thantawut Taweewarodomkul was convicted of violations of Article 112 and the CCA related to his work maintaining the NorPorChorUSA website and sentenced to 13 years in prison on 15 March 2011.
- Surachai Sae Dan (Danwattananusorn) was convicted of a series of violations of Article 112 related to political speeches he made and sentenced to a total of 12.5 years in prison in a series of cases in 2012.
- Somyot Prueksakasemsuk was convicted of violations of Article 112 related to his work in editing and publishing *Voice of Taksin* magazine, which was deemed to include two anti-monarchy articles (written by someone else) and sentenced to a total of 11 years in prison on 23 January 2013 (10 years on Article 112-related charges and 1 year related to a prior case).
- Ekachai Hongkangwan was convicted of violations of Article 112 related to selling VCDs of an ABC Australia documentary and copies of WikiLeaks material and sentenced to 3 years and 4 months in prison on 28 March 2013.
- Yutthapoom (last name withheld) has been held in the Bangkok Remand Prison since 19 September 2012 on charges of violating Article 112.

5. While there have been several other convictions in recent years, these 7 cases stand out because the individuals involved have repeatedly been denied bail, always on the grounds that their crimes are too grave a threat to national security to permit even temporary release. Although some individuals were granted bail while awaiting trial, upon conviction they were all denied bail, despite ongoing processes of appeal. This is in contravention to Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a state party, which specifies: “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.” Bail is routinely granted during trials and after conviction while awaiting appeal in cases of committing violent crimes in Thailand, but routinely denied for cases involving freedom of speech.

6. As highlighted by the May 2012 death in custody of Amphon Tangnoppakul, who was then serving a 20-year sentence for allegedly sending 4 anti-monarchy SMS messages, which the ALRC commented on in a June 2012 submission to the Council (A/HRC/20/NGO/38), the prison healthcare system in Thailand falls well beneath the United Nations Standard Minimum Rules for the Treatment of Prisoners. As part of the testimony provided during the April 2013 postmortem inquest hearings into Amphon’s death in custody, as reported by Prachatai, Amphon reported to fellow prisoners that when he went to seek treatment at the prison hospital, physicians made contemptuous comments

about his alleged defamation of the monarchy. This goes far beyond institutional failure to meet minimum standards and indicates that physicians have become partial and may not provide an equal level of care to all prisoners.

7. Prosecutions under Article 112 and the CCA are surrounded by several different kinds of secrecy. The first is that the total number of charges and prosecutions under these two measures has not been made public by the Government of Thailand. The reason that the ALRC noted above in the list of current prisoners above that these are the known cases of individuals currently serving prison sentences or under detention while awaiting trial is that in the annual U.S. State Department Human Rights Report on Thailand, released in late April 2013, they reported that the number of persons detained or imprisoned under laws related to *lèse majesté* was between 7 and 18. Those 7 individuals listed above are those who are known to be behind bars, but the U.S. State Department report indicates there may be an additional 11 individuals being held. The failure of the Government of Thailand to provide precise information to the public itself raises many unanswered questions about the use of the laws to diminish space for freedom of expression through the use of secrecy. In addition, in at least two cases, those of Daranee Charnchoengsilpakul and Wanchai Sae Tan, the trials were held in camera and were closed to the public on the basis that the dissemination of the testimony may constitute a threat to national security. In a 2011 comment, the Constitutional Court argued that there was no contradiction between a secret trial and the protection of rights and liberties as provided for in the 2007 Constitution. Taken together, these two forms of secrecy create uncertainty about what consequences citizens may face for the basic exercise of human rights and makes political participation filled with possible danger.

8. The ALRC is very concerned about the effects of the regularization of the constriction of freedom of expression on human rights, democracy, and the rule of law in Thailand. The danger of this regularization is that it naturalizes violations of rights and causes them to appear normal and justified. 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 measure 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 faced with 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. Without an adequate explanation being provided, the constriction of freedom of expression is arbitrary.

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

- Call on the Government of Thailand to release all those convicted or facing charges under Article 112 and the 2007 Computer Crimes Act.
- Demand that the Government of Thailand revoke Article 112 of the Criminal Code and the 2007 Computer Crimes Act.
- Demand that the Government of Thailand provide an accounting of how they will improve the provisions for healthcare in prison and ensure that all prisoners receive the same treatment, without regard for the alleged crimes that they have committed.
- 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, to which it is a state party.

- Request the Special Rapporteur on the freedom of opinion and expression to continue ongoing monitoring and research about the brought situation of constriction of rights and individual cases 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.
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