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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.

[17 May 2010]

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

Asia: wide-ranging restrictions on freedoms of expression must be addressed

The Asian Legal Resource Centre (ALRC) wishes to highlight a number of restrictions to the freedom of expression ongoing in several countries in the Asian region. There are a number of situations in the region that are cause for concern with regard to this important right, affecting a range of countries with different levels of development, democracy and records concerning human rights.

At one extreme, in Myanmar, the absence of opportunities for free speech is nullifying the prospect for any notion of free and fair elections. The media have been prohibited from analysing the new laws and rules for the planned elections, or from saying anything about parties already registering for the ballot. The ALRC has submitted a separate written submission concerning the issue of the elections in Myanmar to this session of the Human Rights Council (HRC).

Furthermore, in countries in the Asian region that have a range of records concerning the respect for human rights, the ALRC has also noted worrying trends to curtail and violate the freedom of expression, pointing to a wide-ranging and complex problem affecting the entire Asian region in various forms.

In the Republic of Korea, for example, since the current government came to power, it has appointed a close supporter of the President as CEO of the Korean Communications Commission (KCC). Mr. Jeong Yeong-ju, the CEO of the Korea Broadcasting System (KBS), was also forced out of office and union members were dismissed for protesting against these developments.

Mr. Park Dae-sung - a blogger also known as 'Minerva' - was arrested on January 6, 2009 and detained until April 20, 2009, for publishing articles on the internet, notably concerning gloomy predictions about the future of the Korean economy. In July 2008, the Ministry of National Defence labelled 23 books as being seditious. Mr. Park Won-soon, a human rights lawyer alleged illegal activities by the National Intelligence Service (NIS) in an interview with a weekly magazine on June 10, 2009, and based on this, the NIS sued him on September 14 for civil defamation requesting Korean Won 200 million, or around US\$ 170,000, in damages. Several bills that will likely further undermine the freedom of expression have been introduced without adequate public discourse. They include measures to expand the number of internet portal websites that have to adopt a 'self-verification identity system' that registers the identity of users, as well as the creation of a new form of illegal act, known as a cyber insult.

Freedom of expression is greatly constricted in Thailand. Using the *lesè majesté* law (Article 112 of the Criminal Code) and the more recent Computer Crimes Act of 2007, a series of dissidents, journalists, and observers of politics have been threatened, intimidated, and in some cases, arrested and prosecuted. The *lesè majesté* law 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 15 years." On 5 April 2008, Chotisak Onsoong, a young activist, was charged with *lèse majesté* for not standing up during the royal anthem before a film; he has not yet been prosecuted.

The Computer Crimes Act of 2007 was passed in order to address hacking, unlawfully accessing computers or network resources not in possession of the user, and intercepting emails and other electronic data with the aim to commit theft or other criminal activities. 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. Since its inception, the Act has been used to silence opposition and intimidate journalists and other citizens. In April 2009, Suwicha Thakor was sentenced to ten years in prison under both the *lesè majesté* law and the Computer Crimes Act for allegedly posting YouTube clips insulting to King Bhumipol, Thailand's 82-year-old monarch, to a webboard. Compounding the dangers to freedom of expression contained within the two laws, full information about all of the pending and prosecuted cases is not available, as to repeat information about the charges risks causing the speaker to be charged as well. Several exemplary cases illustrate the range of abuses possible under the two laws.

Darunee Charnchoengsilpakul was sentenced to eighteen years in August 2009 for alleged crimes of *lesè majesté* she committed during speeches she made during political rallies in support of ousted former PM Thaksin Shinawatra in June and July 2008. When she was sentenced in August 2009, the court decision included transcripts of her comments. She never mentioned the monarchy or related institutions or individuals by name. However, as noted in the judgment, the court extrapolated the objects of her speech, as well as made conclusions about her intentions. On the basis of the court's extrapolation and interpretation, she was sentenced to eighteen years in prison. Of primary concern, she has significant untreated dental problems. In early 2010, the physician at the prison wrote a report explaining the seriousness of her condition and his inability to treat it with the facilities at the prison. Darunee Charnchoengsilpakul's family filed an appeal for temporary release for her to seek care at a specialized clinic outside the prison. The appeal was denied, on the basis of the alleged severity of her crimes, and the non-life-threatening nature of her dental problems.

Under the Computer Crimes Act, computer users have been accused of committing crimes by circulating others' words and images, and web editors have been accused of not censoring others' words, or not doing so quickly enough. Chiranuch Premchaiporn, webmaster of the Thai and English-language progressive news site *Prachatai*, was arrested and charged on 31 March 2010 under the Computer Crimes Act for allegedly not removing offensive webboard comments quickly enough. She is currently out on bail, but could be sentenced to up to fifty years for her alleged crimes.¹ On 1 April 2010, the government-majority-owned Mass Communications Organization of Thailand reported the arrest of Thanthawut Thaweewarodomkul, who "confessed to posting messages received from a person using a pseudonym on eight websites." The terms of the draconian *lesè majesté* law and the Computer Crimes Act mean that the alleged content of his crimes have not been made public, but other reports indicate that Thanthawut also maintained websites which cover the opposition red-shirt movement (www.norporchorusa.com and www.norporchorusa2.com).

Increased arrests, charges and convictions under both the *lesè majesté* law and the Computer Crimes Act of 2007 represent a grave threat to freedom of expression and human rights broadly in Thailand. During the crisis between the opposition red-shirts and the government which began in late March 2010, the government announced extensive funding and other state resources being allocating for monitoring of websites and webboards. This means that anyone active in dissident Thai politics online – and dissident at this moment can simply involve passing on the words of someone else – must wonder if, and when, there will be a knock at the door.

In Sri Lanka, since the end of the conflict, rather than seeing a marked improvement in the human rights situation, the government has tightened restrictions on the freedom of the media in order to silence any forms of dissent or criticism. Journalists have even been killed; the most infamous example concerns Lasantha Wickramatunga, the editor of the *Sunday Leader* who, a few weeks before his death predicted his assassination and pointed the finger at the government in the event that it should come to pass. He was killed on

January 8, 2009, however, to date no effective investigation has been conducted and no-one has been prosecuted for this crime. An estimated 40 prominent journalists have left Sri Lanka claiming that their lives have been seriously threatened. For example, Poddala Jayantha, a senior journalist and who is also the General Secretary of Sri Lanka Working Journalists Association (SLWJA) and a key activist of the Free media movement (FMM) in Sri Lanka, was abducted on June 1, 2009 in broad daylight near the Embuldeniya junction in Nugegoda. His legs were broken and he was thrown out of a white van. He survived but was forced to leave the country due to further threats.

Keith Noyer, another well-known journalist, was abducted after he wrote an article critical of some financial aspects of the Sri Lankan military. After resurfacing he fled the country. Many others have imposed self-censorship on themselves for fear of repercussions. Journalists who have visited the country have complained of various kinds of harassment. The overall situation is extremely threatening to all those who are engaged in the publication of material that challenges the government, particularly concerning the issue of corruption or the manner in which the security laws have been used by the government.

In Indonesia, the Attorney General's Office has been engaged in acts of censorship. On December 23, 2009, the AGO announced the banning of five books including an Indonesian translation of John Roosa's "Pretext for Mass Murder: The September 30 Movement and Suharto's Coup," a historical review of the political turmoil in the 1960s that resulted in millions of persons being imprisoned or killed. Other censored books include writings about human rights violations in the Papuan provinces and religious freedom. The AGO justified this claiming that such books risked "disturbing public order" or threaten "state unity".

The Indonesian Film Censorship Board (LSF) dates back to the colonial period of Indonesia's history and continues to ban movies as recent cases show. Three documentaries about East Timor and one about Aceh were banned during a movie festival in order to avoid "social unrest" according to the authorities. The ALRC is concerned that the prohibition of these publications not only violates the fundamental freedom of expression but also fosters impunity by blocking public discourse on key human rights issues in Indonesia. Censorship by the AGO and the LSF is arbitrary and doesn't follow any objective standards or legal criteria.

Radio Era Baru - a local radio station airing in the local language and Mandarin Chinese has been forcibly shut down by the police. The station had its equipment forcibly seized on March 24, 2010. The police and Batam Radio Frequency Spectrum Monitoring Agency officials, representing the Indonesian Broadcasting Commission (KPI), closed the radio offices in Batam, Riau Islands Province to stop broadcasts. An investigation by the National Human Rights Commission concluded that the move was in response to pressure from officials from the People's Republic of China, who objected to the station's airing of criticism of Beijing's human rights record. After a visit from Chinese officials in 2007, several Indonesian institutions and ministers received letters from Beijing, requesting a termination of the licence of the radio station. The Riau regional branch of the Indonesian Broadcasting Commission had refused to renew the radio's licence ever since, without a valid explanation. The matter is now being appealed in the Supreme Court. The closure of the radio station is of particular concern given its international character.

The Asian Legal Resource Centre is gravely concerned by the fact that it is currently witnessing serious attacks on the freedom of expression in many different contexts in Asia. These restrictions take many forms and are adapting to the level of development and means of communication available, either through direct prohibition, threats and attacks on the media, the censorship of publications, or even attempts to control online content and monitor or even punish the authors of such material.

The ALRC urges the Special Rapporteur on the freedom of opinion and expression to raise the above issues with the relevant governments. More widely, the ALRC urges the Special Rapporteur to conduct a study to evaluate the quantity, timeliness and quality of 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.
