



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2006/NGO/63
24 February 2006

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sixty-second session
Item 11(c) of the provisional agenda

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
FREEDOM OF EXPRESSION**

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organisation 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 2006]

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

GE.06-11156

Criminal defamation and continued growing restrictions to freedom of expression in Thailand

1. In a written statement to the sixty-first session of the Commission, the Asian Legal Resource Centre (ALRC) raised concerns over the use of criminal defamation and growing restrictions on freedom of expression in Thailand, as well as the attendant consequences for the country in terms of the rule of law and persistent gross abuses of human rights there (E/CN.4/2005/NGO/112). In particular, the ALRC drew attention to the case of Supinya Klangnarong, who is being sued for criminal libel by Shin Corporation, the family company of the prime minister of Thailand: a verdict in her case is due on 15 March 2006. The ALRC also in March 2005 submitted a 98-page report to the Human Rights Committee speaking to the same concerns, in advance of the Committee's assessment of Thailand's compliance with the International Covenant on Civil and Political Rights (ICCPR).

2. In its concluding observations of July 2005 (CCPR/CO/84/THA), the Committee pointed to some key areas for the Government of Thailand to address in order for the national human rights situation to be improved. These included the growth in attacks on freedom of speech, human rights defenders and others concerned to protect the enjoyment of fundamental human rights in the country.

3. In paragraph 18 the Committee wrote that

"The Committee is concerned about reports of intimidation and harassment against local and foreign journalists and media personnel as well as of defamation suits against them, originating at the highest political level. It is also concerned at the impact of the Emergency Decree on Government Administration in States of Emergency, B.E. 2548, which impose serious restrictions on media freedom (art. 19, para. 3). The State party should take adequate measures to prevent further erosion of freedom of expression, in particular, threats to and harassment of media personnel and journalists, and ensure that such cases are investigated promptly and suitable action is taken against those responsible, regardless of rank or status."

4. The Asian Legal Resource Centre throughout 2005 expressed concern at the rise and rise in the use of criminal defamation by powerful persons in Thailand to silence and intimidate critics, among them the case of Supinya Klangnarong and also that of Ticha Na-Nakorn, who in November was forced to post bail in a criminal defamation case lodged by the former police chief over an allegation of sexual harassment. The ALRC is also aware of cases of ordinary persons who have been sued by police officers for alleging that they have tortured or otherwise abused persons in their custody, after those allegations have been reported in the media.

5. There are many problems associated with criminal libel and the concomitant deeply negative effects that they have on a society in which some persons are struggling to have their voices heard on issues of public concern. Many of these have been articulated by concerned individuals and groups inside and outside Thailand, and there is evidence of growing opposition to government efforts to silence dissent through libel. Among the onerous and patently outmoded features of criminal defamation in Thailand are that complainants can lodge multiple suits in various jurisdictions on a single case, that

defendants are fingerprinted and detained if they cannot put up bail, and that the courts make prima facie inquiries into complaints filed by the public prosecutor, without hearing from the defendant until and unless the case goes to full trial. These provisions, among others, are completely at odds with a modern system of criminal justice and deserve to be struck off the books without delay. Without regards to other factors, Thailand should immediately erase its law on criminal defamation.

6. Closely related to the growth in spurious criminal libel suits by powerful persons in Thailand has been a consistent campaign against community radio stations, which culminated in August in repeated raids, legal action and intimidation of an outspoken station and its staff in Bangkok. Although community radio has been accorded a place in Thailand under the 1997 Constitution, the government has manipulated the process for creation of a regulating body and successfully undermined the constitution's objectives. Simultaneously, local authorities have used various pretexts to target radio stations that have raised critical questions.

7. For instance, on 7 February 2005 55-year-old farmer Sathien Janthorn was convicted of illegal broadcasting, despite the fact that he had been trained and funded in the establishment of the station by a government agency, and had hosted local officials on his programmes. Sathien has insisted that he has been targeted because he had raised questions about misuse of provincial government resources. This is a familiar refrain among embattled broadcasters and one that speaks to the real reasons that the authorities are increasingly hostile to community radio.

8. Sathien was charged under the Radio Telecommunications Act BE 2498 (1955) with "possessing and operating a radio transmitter without permission" and of "setting up a radio station without permission". During the trial, in his defence, Sathien argued that the station operated in line with section 40 of the 1997 Constitution, which states that radio and television transmission frequencies are national resources for use in the public interest. But the court ruled that although this maybe the case as of yet there is no independent regulatory body in operation to distribute the frequencies, and therefore the constitution cannot be enforced. Sathien was sentenced to six months imprisonment and a fine of 60,000 baht. This was reduced to a four-month imprisonment and a fine of 40,000 baht. His jail term was suspended for two years and his radio transmitter confiscated.

9. In principle, Sathien should have grounds to appeal that the fault for not being registered as a community radio station lies not with him but with the government. The regulatory body envisaged under section 40 of the constitution should have been set up. Instead, the government of Thailand has failed to introduce a licensing regime in accordance with the constitution, and by default has kept community radio stations in an ambiguous legal position.

10. The judgment in this case has serious implications for hundreds of community radios in Thailand which have been created thinking that they were legal on the basis of the 1997 Constitution. If they are considered 'illegal' then the only source of radio broadcasting would be radios stations controlled by the government.

11. In this respect, there is another article of the Constitution of Thailand that deserves recollection. Section 39: "A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise, and make expression by other means." While the constitution gives wide space for the protection of free speech in accordance with international standards, how can this exist without avenues and vehicles for free speech? Free expression in Thailand has for a long time been limited by an imposing culture of silence. The prospects for change depend very much on local initiatives like those of Sathien Janthorn. Should constitutional rights be defeated or delayed by mere technicalities such as procedures for registration?

12. In view of this case, which was brought by a government agency, and many others like it in Thailand, it cannot be said that the Government of Thailand has shown sincerity in allowing for genuine freedom of expression as envisaged by the ICCPR and recommended by the Human Rights Committee. The Asian Legal Resource Centre again calls for Thailand to see that the provisions of the 1997 Constitution allowing for freedom of expression are properly enforced, and criminal defamation abolished at once. In addition it urges that the Commission call on the Government of Thailand to cease all criminal prosecutions for defamation in the interim, particularly where they relate to allegations arising out of remarks made in the public interest.

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