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**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.

[7 February 2005]

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

CRIMINAL DEFAMATION AND GROWING RESTRICTIONS TO FREEDOM OF EXPRESSION IN THAILAND

1. The Asian Legal Resource Centre is extremely concerned by the civil and criminal libel case filed by media conglomerate Shin Corp against a media-reform activist Ms Supinya Klangnarong and the Thai Post. Supinya, Secretary General of the Campaign for Popular Media Reform (CPMR), was sued for defamation by Shin Corp after she observed in her article published in the Thai Post on 16 July 2003 that Shin Corp's profits have increased enormously since its founder, Thaksin Shinawatra, became Prime Minister. Supinya gave details – based on sound research - of how the PM had used the political system to manipulate business in favour of Shin Corp. She also noted that Shin Corp's business interests were all in public communications – mobile phones, satellite transmissions and television – and therefore matters over which there should be public debate as matters of national concern. Additionally, she pointed out that profits from Shin Corp were being channelled back into the Tha Rak Thai company, effectively integrating the PM's political and commercial interests into a single highly powerful enterprise.

2. After the report was released, Shin Corp filed a libel suit for about ten million Thai Baht (US\$260,000) against Supinya. After several preliminary hearings, on 6 September 2004, the Criminal Court scheduled the first hearing into this libel suit for 19 July 2005. Meanwhile, Shin Corp also filed a 400 million Thai Baht (US\$10,370,000) libel suit in Civil Court against Supinya and the Thai Post on 24 August 2004, after winning Criminal Court approval. Shin Corp has claimed financial institutions downgraded its creditworthiness and that its credibility in the stock market was affected as a result of her comments in the article.

3. Criminal defamation has in recent years been condemned globally as offensive to basic rights of free expression and publication. Many countries have recognised that criminal defamation is obsolete, and have removed it from the statute books. Unfortunately, Thailand is not among them. There, a person convicted under section 328 of the Penal Code may be subject to a fine of 200,000 Thai Baht (US\$5,200) and two years' imprisonment. This is an extremely backward provision entirely out of place in a modern and democratic society, and out of step with developments in international law. It is also contrary to both the letter and spirit of the 1997 Constitution, which guarantees unrestricted freedom of expression.

4. The reasons that criminal defamation has been rendered obsolete are many. They have been articulated in great detail through documents issued over some years by the UN Human Rights Committee – which oversees the International Covenant on Civil and Political Rights, to which Thailand is a party – the Special Rapporteur on freedom of opinion and expression, and prominent rights groups such as Article XIX. Among the principle reasons, first, criminal defamation cases stifle free speech by intimidating others from speaking openly and directly about matters of public interest. Secondly, they improperly shift the burden of proof onto a criminal defendant. Thirdly, criminal defamation is unnecessary when civil defamation exists as an alternative.

5. As for civil defamation, there are also many international standards that should be considered by the courts in these cases. Among these, first, the purpose of a defamation suit should be limited to protecting a person or legal entity from public ridicule or hatred; not, by contrast, to stifle legitimate criticism of public bodies, corporations or persons, particularly where this is done in the public interest. Secondly, a civil defamation suit should be granted only in cases where the offending statement is demonstrably false, with the burden of proof resting

with the complainant. Thirdly, any remedy granted in a civil defamation suit should be with the purpose of redressing the harm caused to the complainant, not punishing the person or persons responsible for the defamation. Where the remedy granted involves payment of compensation, the amount must be proportionate to the harm done, and should take into account other factors, such as the overall negative effect on free speech that may be felt as a consequence.

6. Supinya Klangnarong and the editors of the Thai Post newspaper now face possible jail terms and financial sanctions under a backward and unnecessary law that runs contrary to the direction of all international standards and the national constitution. Under these circumstances, there is a genuine possibility that in the future, whenever the press is faced with the prospect of such penalties, they will simply elect not to publish critical and controversial material, even where it is of high public importance and despite its contents being able to be fully supported with sound evidence. In this case, for example, allegations that a Corporation with close ties to government is the beneficiary of special favours is of the most pressing public concern. While the allegations may not sit comfortably with those it is accusing, the right of the press to publish them, and the right of the public to receive such information, particularly where, as here, they are based on substantial research, must be protected. In other cases, specifically involving radio, Thai authorities have threatened and intimidated programme managers, producers and hosts not to say anything critical of the government. A source from a radio station revealed that the executives of various radio stations under the Royal Thai Army had been informed by an insider under the authority of the Royal Thai Government, to warn the radio producers, especially those managing the programme on news recounting, not to say anything about the situation on the violence in the South of Thailand. If anybody continued to do so, it was warned, the broadcast would suffer from immediate suspension. In another incident, a radio host was taken off the air after the Supreme Command, which owns the frequency, told the radio media to exercise extreme caution in reporting security and political issues. A former lecturer on mass communications at Sukhothai Thammathirat Open University, Ms Uajit, has said that authorities are currently keeping a close watch on community radio stations, especially in the deep South. Many stations have been shut down after their programmes were deemed critical of the government, she said.

7. Also of concern, along with the restrictions placed on independent media, is the current state of government and military-owned media in Thailand. The television and radio media in Thailand have been under a government and military monopoly since their introduction to the country. Although the new Constitution of Thailand introduced in 1997 set in place provisions for the democratization of these media, these provisions have not been realised. Radio stations have been started by local communities, but the government has threatened them with closure on the grounds they are "illegal". In fact it is the government itself that has failed to introduce a licensing regime in accordance with the 1997 Constitution. There is what the CPMR has identified as a new media monopoly emerging between the commercial and government sectors, as media concessions are issued to Shin Corp and other businesses close to senior politicians, thereby defeating the purpose of the constitutional reforms. Shin Corp in particular has totally dominated all sectors of the commercial media in Thailand, as it owns 24 companies running telecommunications, television, radio, internet, satellite and other communications throughout the country, and even into neighbouring Cambodia, Laos and Burma. The result is that outside a limited number of newspapers and low-distribution journals, there remains virtually no independent media in Thailand, thereby greatly damaging the prospects for opening discussion on serious violations of human rights and other concerns from the local level in Thailand, and as

such the country continues to be dominated by an elite urban-centred discourse inimical to the furtherance of human rights in the country.

8. Supinya set up the CPMR to advocate media reform on the basis of provisions in the 1997 Constitution, intended to liberalise and democratise electronic media in Thailand. As the spokesperson and leading figure of this forerunning organisation for media reform in Thailand she poses a threat to those who would see a government and big business monopoly. Media reform on the basis of provisions in the new Constitution is essential for opening discussion on serious violations of human rights and other concerns currently faced by the people in Thailand. If Shin Corp succeeds in its civil and criminal libel case, it will have serious repercussions on the issue of Thailand's freedom of speech. Supinya's remarks were made out of concern for public interest in issues of media ownership and freedom of speech in Thailand. If Shin Corp is successful with the suit, it will legitimate the use of the judicial system in Thailand as a means to silence public dissent and further intimidate Thailand's civil sector. Under such circumstances, this case is very important for the people of Thailand at a time when many of their basic rights are under threat.

8. The ALRC, therefore, urges the Commission to take the necessary steps to ensure that the Government of Thailand

a. Strongly pressures the Shin Corp to drop the criminal and civil suits against Ms Supinya immediately.

b. Abolishes criminal defamation and makes reforms to civil defamation law so that it serves to protect a person or legal entity from public ridicule or hatred; no, by contrast, to stifle legitimate criticism of public bodies, corporations or persons, particularly when this is done in the public interest. Compensation in civil defamation suits must also be proportionate to the harm done.

c. Implements immediately an independent media watch-dog, as specified by the Constitution, with a view to breaking the monopoly of the media by state leaders and their partners.

d. Undertakes not to use its authority to intimidate or dismiss radio and television broadcasters.
