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COMMISSION ON HUMAN RIGHTS  
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**PROMOTION AND PROTECTION OF HUMAN RIGHTS: STATUS  
OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS**

**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).

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## **ARTICLE 2 OF THE ICCPR AND THE CONSTITUTION OF THAILAND**

1. In a series of written statements to the sixty-first session of the Commission, the Asian Legal Resource Centre (ALRC) raised concerns over impunity in Thailand and its effects on the country in terms of growth of torture, disappearances and extrajudicial killings there (E/CN.4/2005/NGO/34, 44, 62, 112). 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). The ALRC hinged that report on the importance of Thailand being able to ensure that the ICCPR is practically enforced in the country in terms its article 2: that each State party will ensure that persons whose rights are violated shall have access to an effective remedy.

2. The Government of Thailand in its submission to the Committee has maintained that the rights under the ICCPR are applicable in Thailand because they are enshrined in the 1997 Constitution (CCPR/C/THA/2004/1). However, the Asian Legal Resource Centre in its alternative submission in March 2005 maintained the contrary: that these rights are not enforceable, as there is no avenue through which a person in Thailand can make a complaint direct to the courts when his or her constitutional rights have been violated—let alone those under the ICCPR itself.

3. The position taken by the Asian Legal Resource Centre was validated this 7 February 2006 when a judge in the Anghong Provincial Court found a farmer, Sathien Janthorn, guilty of illegal broadcasting through a community radio station, despite the fact that this is a right protected by section 40 of the constitution. Sathien was convicted under a 50-year-old law that appears to contradict this section. During the trial, in his defence, Sathien argued that the station operated in line with section 40. 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. The judge was quoted by an observer present in the court as saying that

"The defendant claims to enjoy the rights under the constitution, but it shall be seen that such rights can only be applicable under specific laws. That means there shall be laws to enforce rights."

The reasoning is that where such laws do not exist, the constitution cannot be enforced. Unfortunately, this reasoning itself defies the constitution, which states unconditionally in its section 6 that the constitution is "the supreme law of the State" and that any contradictory law, rule or regulation "shall be unenforceable".

4. Sathien should in principle 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 law to enact section 40, the Wavelength Regulator Act, was introduced in 2000. The regulating bodies envisaged under that act should have been set up shortly thereafter. The Government of Thailand had an obligation to see that it would be enforced within a reasonable period of time. Yet it is Sathien, not someone in power, who has been held responsible for this breach of obligation by the State.

5. Another recent and highly prominent case illustrating to the problem of the gap between a constitution where human rights principles are recognised and the laws and bodies needed to enforce those rights is that of disappeared human rights lawyer Somchai Neelaphajit. The Criminal Court in Bangkok on 12 January 2006 found that Somchai had been abducted and that a police officer was among a group of persons, all suspected to be police, who were responsible. The prime minister subsequently said that Somchai has been murdered. Thus it is now on record that state officers abducted and killed Somchai and disposed of his body, although so far only one has been identified by the court as having had a role in the incident. That person has been sentenced under the offence of coercion, as Thailand has no law to prohibit forced disappearance: the ALRC has submitted a separate statement to the sixty-second session of the Commission on this case and its ramifications for Thailand.

6. However, the Constitution of Thailand was unable to contribute in any special way to resolve this highly-publicised and worrisome disappearance of a leading human rights defender. There seems to have been no provisions or legal avenues through which the investigators or prosecutors could have dealt with the more difficult questions arising from his abduction and murder. There seems to have been no possibility for effective remedies to arise out of the constitution as envisaged by article 2. The prime minister stated that the investigation into Somchai's abduction has been difficult because state officers were the perpetrators. But one of the key concerns of a constitution is to provide avenues for investigations into even the most serious and complicated crimes.

7. The 1997 Constitution speaks of a new order and obliges the State to make it reality. But the problem is that no procedure exists for that new order to be realised. There is at present no practical way for a person in Thailand to make a complaint or defend his or her rights under the Constitution directly through the courts. Nor is there apparently any way that constitutional provisions can be invoked directly in a court and a judgment made on the basis of these--even when a 50-year-old law is used to prosecute someone in a manner contrary to both the spirit and letter of the constitution, or when a citizen is plucked from the street by police and never seen again. There is also no way for a person to take a complaint on constitutional grounds to a superior court.

8. The Constitution of Thailand has been lauded as progressive, and in line with democratic ideals. However, the test of a constitution is its effect on the day-to-day affairs of a country and the lives of its people. It must be judged on its capacity to right the wrongs that people suffer. Victims of abuses should be able to resort to it directly. The constitution must also provide the means for constant improvement of other laws to offer redress, based upon the actual experiences of the country and its people. Above all else, the investigation of state officers for wrongdoing is one of the most important tests that can be applied to determine whether a judicial system is functioning properly or not. When a state is unable to investigate and prosecute crimes committed by officials, it cannot maintain a law-abiding society. A constitution that is unable to lay the groundwork for the same cannot be considered a successful constitution.

9. Judged in terms of article 2 of the ICCPR, the Constitution of Thailand is a failure. This fact must be recognised both by the Government of Thailand and the international community through the Commission, in order for a new phase of work to commence: a

phase in which Thailand's constitution and institutions of justice are brought into line with international law in real terms, rather than merely on paper.

10. The citizens of Thailand have a right to have direct access to the higher courts when their concerns relate directly to the protection and furtherance of the constitution, and the rights it envisages in line with the International Covenant on Civil and Political Rights. The senior-most judges in the country--including but not limited to those of the Constitution Court--need to exercise greater control over how the constitution is implemented and directed to improve the rule of law and protect human rights. The ALRC believes that a frank exchange between senior judiciary in Thailand and the international community could open many new avenues through which this might be done. It strongly encourages the Commission, particularly through its Special Rapporteurs and other special procedures, to take a leading role in making the Constitution of Thailand a reality for people there, and so give real meaning to article 2 of the ICCPR. The ALRC sincerely believes that such initiatives from the Commission and international community will be welcomed by the Government of Thailand.

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