ASIAN HUMAN RIGHTS COMMISSION

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THAILAND: The State of Human Rights in 2012

Overview: Small advances belied by lack of will for change

In its 2011 annual report, the Asian Human Rights Commission highlighted further consolidation of the revived internal security state, on the rise since the 19 September 2006 coup. The AHRC noted that in the first six months of the new administration, following the July 3, 2011, election of Pheu Thai Party and Yingluck Shinawatra to the post of Prime Minister, little progress on human rights has been made. The new government appears similar to the ones that have preceded it. On key issues, such as accountability for the use of violence by state security forces during the April-May 2010 clashes, the curtailment of freedom of speech through prosecutions under Article 112 and the Computer Crimes Act, as well as the broader frame of ending impunity for state violence caused by state security forces during their routine work, and protecting the rights of citizens to exercise their right to dissent, little progress has been made.

Loosening the constriction of freedom of expression and ending impunity for state violence, have, as a common obstacle, the refusal of state institutions to change. This means that while small advances for human rights have been made, due to the actions of courageous citizens and, more rarely, state officials, support for accountability and rights remains local and unusual in Thailand. If the human rights situation in Thailand is going to meaningfully improve, and along with it the prospects for democracy and the rule of law, then significant transformations of state institutions must occur. Without widespread institutional and legal reform, small advances, and instances of accountability and support for human rights, risk being lost.

The urgency for the development and consolidation of a culture of respect for human rights is underscored by the May 2012 death in custody of Amphon Tangnoppakul, to which this report now turns.

Dehumanization and death in custody

Since the Cold War counterinsurgency of the 1970s, reference to the protection of the trilogy of nation-religion-king has been used by the Thai state and security forces in order to legitimize the use of violence and maintain an environment that allows the persistent violation of human rights. Following the 19 September 2006 coup, the third part of this triumvirate, the king, or the institution of the monarchy broadly-speaking, has been fully politicized by elite and conservative forces inside and outside the government. Reference to the need for the protection of the institution has been a call widely deployed to intimidate dissident voices and ensure compliance from citizens. This politicization of the institution, and subsequent violation of the human rights in its name, has been one fully grounded in law.

Section 8 of the 2007 Constitution positions the King centrally within the Thai polity: "The King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action." Article 112 of the Criminal Code goes on to prescribe punishments for violations: "Whoever defames, insults or threatens the King, Queen, the Heir-apparent or the Regent, shall be punished (with) imprisonment of three to fifteen years." Although Article 112 in its current form has been law since the last revision of the Criminal Code in 1957, statistics provided by the Office of the Judiciary indicate a sharp rise in lese-majesty charges filed since the 19 September 2006 coup, with 33 charges filed in 2005, 30 filed in 2006, 126 filed in 2007, 77 filed in 2008, 164 filed in 2009, and an extraordinary 478 charges filed in 2010. While statistics released for the first five months of 2011 indicate a reduction in the number of charges filed, information for the second half of 2011 and 2012 to date has not been made available publicly. The failure of the Government of Thailand to provide information itself raises many questions about the use of the law to diminish space for freedom of expression through secrecy and the generating of uncertainty.

A third law, the 2007 Computer Crimes Act (CCA), stipulates additional punishments for alleged violations of national security—including insulting the monarchy—which take place online or are otherwise mediated electronically. The relevant section of the Computer Crimes Act in this case is Section 14, Parts 2 and 3, which specify:

> "If any person commits any offense of the following acts shall be subject to imprisonment for not more than five years or a fine of not more than one hundred thousand baht or both: (2) that involves import to a computer system of false computer data in a manner than it likely to damage the country's security or cause a public panic; (3) that involves import to a computer system of any computer data related with an offence against the Kingdom's security under the Criminal Code."

The definition of "computer system" is noted in Section 3 as "a piece of equipment or set of equipment units, whose function is integrated together, for which sets of instructions and working principles enable it or them to perform the duty of processing data automatically." The way in which this law is written means that the CCA may be used to target communication and speech using various forms of transmitting technology, not only computers. The lack of a definition of "security" within the law means that there are wide opportunities for abuse as the authorities can define any dissident or otherwise objectionable content to violate the "security" of the nation.

Compounding these problems, in present-day Thailand, the social and political crisis surrounding the monarchy and the fraught relationship between the institutions of the monarchy and those of democracy mean that while alleged insults to the monarchy are categorized formally as crimes of national security, they are categorized informally as crimes of sedition. Within this context, it then becomes possible for those charged with, or convicted of, insulting the monarchy to be treated as less than human, and for their persecution to be naturalized. The November 2011 conviction and the May 2012 death in custody of Amphon Tangnoppakul is an exemplary case of the danger of the naturalization of this persecution, as well as the specific problems with Article 112 and the CCA.

On 3 August 2010, a group of 15 police officers raided the home of Amphon Tangnoppakul on the outskirts of Bangkok. Amphon, then aged 61, was arrested and detained for 63 days of pre-charge detention before being granted bail on 4 October, 2010. He was then formally charged by the prosecutor on 18 January, 2011 with violations of Article 112 and the CCA. In particular, the prosecutor alleged that that Amphon sent four SMS messages with vulgar language defaming the Thai queen and insulting the honour of the Thai monarchy to Somkiat Klongwattanasak, personal secretary of the former Prime Minister, Abhisit Vejjajiva. At the time he was charged, Amphon was already suffering from oral cancer for which he had been receiving regular treatment, and his counsel immediately requested bail while awaiting trial on this basis. The court denied this request, as it did seven subsequent requests made before his trial, at the time of his conviction, and up until several months before his death. At the time of Amphon's last request for bail, in February 2012, the Appeal Court ruled that this frail and sick elderly man with little money or resources was a flight risk, and that his illness, which constituted one of the grounds for the request, did "not appear to be life-threatening."

When questioned about the repeated denial of bail in Amphon's case, Sorawut Benchakul, the Deputy Secretary-General of the Office of the Judiciary, noted that while the right to bail is a fundamental human right, section 108 of the Thai Criminal Procedure Code allows for its denial when the court fears that the defendant might flee. Sorawut claimed that when Amphon requested bail, the medical certificate presented did not indicate grave illness. While Sorawut claimed that the vast majority of those charged under section 112 and the Computer Crimes Act are granted bail, in the absence of full statistics released by the judiciary on these cases, the claim cannot be confirmed.

Amphon's trial (Black Case No. 311/2554) took place on 23 and 27-30 September, 2011. On 23 November, 2011, he was found guilty and sentenced to 20 years in prison for four alleged violations of Article 112 and the CCA. As the AHRC noted at the time of Amphon's conviction, the prosecution's actions raised serious questions about the validity of evidence in cases of this sort, and pointed to lacunae in the 2007 Computer Crimes Act. The prosecution argument rested on the assertion that the mobile phone that sent the four allegedly criminal SMS messages had the same IMEI (International Mobile Equipment Identifying) number as the mobile phone which Amphon had used to call his children. From the beginning, Amphon maintained his innocence, noting that he did not know how to send SMS messages and that the number that sent the message to Somkiat was not his number. The response of the prosecutor to Amphon's assertion was to discount it, and note that as the IMEI number of the cell phone that sent the messages to Somkiat belonged to Amphon, he was responsible.

The fact that Amphon received the longest sentence under Article 112 or the CCA given to date underscores the need for examination of the legal ambiguities and lacunae in both laws. In June 2012, the Asian Legal Resource Centre (ALRC), the sister organization of the AHRC, made the following observations about the court decision in a submission to the United Nations Human Rights Council:

> "Similar to other court decisions in cases of alleged violations under section 112 and the CCA, the judges in this case had to infer the meaning of the four SMS messages in question (which was imprecise), the alleged intention of the defendant, and speculate on any potential damage caused

to the monarchy and national security. At best, the court's interpretation could be described as legally inexact. At worst, it can be described as complete fiction.

2. The court's logic in finding the four SMS messages in question criminal rested on an argument about the validity of the information contained within them and on what this might cause readers of the messages to believe. More specifically, the judgment reads that the messages were

'... the import to a computer system of false computer data, that was defamatory, insulting, and threating [*sic*] to the king, queen, heir-apparent, and regent. [This information] would cause those who saw it to believe that the content of the messages was the truth, which would damage the nation's security. As a result, some of the aforementioned actions of the defendant are likely to damage the honor and reputation of the king, queen, heir-apparent, and regent and to cause them to be insulted and despised. [The defendant acted] With an intention to cause the people to dishonor, fail to venerate, and threaten the king, queen, heir-apparent, and regent.'

Throughout the decision the adjective "likely" is used; in other words, damage was not caused by the SMS messages, but was probable in the opinion of the court. The ruling was not one that found the defendant guilty beyond doubt, but rested on a highly uncertain balance of probability.

3. In addition, to interpret under the CCA the sending of a rude SMS message as "the import to a computer system of false computer data" is to stretch the category of "false computer data" beyond the already broad ambit provided by the law. Several pages later in the court decision, "false" is elaborated in political, rather than scientific or legal terms. The judges write that the four SMS messages in question

'... are entirely false because the truth reflected for the people around the country is the king and the queen are full of compassion. They are concerned for every person in the land and perform their royal duties for the benefit and happiness of the Thai citizenry.'

While this may be the judges' opinion of the monarchy, to categorize it as truth is an ideological stance inappropriate for an ostensibly independent judiciary to take, and does not constitute any form of grounds for conviction under law. Further, given the increased frequency with which section 112 is being enforced, this statement is difficult to appeal against, either in law or in public debate, without also risking being charged under the law.

4. Finally, even if the accused in this case had committed the offences as alleged, the 20-year sentence raises significant concerns about the proportionality of punishment for crimes of defamation in Thailand and speaks manifestly to an imbalance in the law of Thailand as written and as currently enforced between protecting the sovereign and protecting the human rights of people residing in the country."

The tension between the protection of the sovereign and the protection of the human rights of people residing in the country was made manifestly clear in the five-and-a-half-months following Amphon's conviction. At the time of his conviction, the AHRC expressed concern about his health and noted that he had been unable to access proper treatment for his laryngeal cancer during detention before and during his trial. The AHRC commented that there was no reason to believe that this would change once he had been convicted, and, in fact, depending on what prison he is transferred to, that there might be further concerns over his safety and well-being. As has been clear in the case of Daranee Charnchoengskilpakul, who suffers from severe jaw disease, and is currently serving a fifteen-year sentence for alleged lese-majesty, the authorities have no qualms about denying necessary medical treatment and violating the rights of political prisoners. In the case of Amphon, this denial of medical treatment led to his death – clear negligence, which should have been avoidable.

On 8 May 2012, three months after the assessment of the Appeal Court that Amphon's illness was not a threat to his life, Amphon died in prison. While the full details have not yet been made available, partial information made publicly available about the conditions surrounding his death point to significant problems of capacity, as well as routine negligence, which together amount to a grave threat to the human rights of prisoners. As reported in *Khao Sod* newspaper, several days after Amphon's death, Police Colonel Dr. Supol Chongphanichkulthorn, spokesperson for the Police General Hospital, said that the preliminary results from the autopsy indicated that he died as a result of liver cancer that had metastasized throughout his body and caused respiratory failure. Dr. Cherdchai Tantisirin, a Member of Parliament from the majority Pheu Thai Party, who was also present for the autopsy, commented that,

> "We have to separate the issue of what is human from the issue of the case. If a person in detention is found to have cancer, he should be released in order to be treated outside [the prison]. Moreover, in the case of Amphon, as far as I have seen, there are no indications of the actions of physicians or nurses trying to resuscitate him or otherwise help him." [AHRC translation]

Whether the failure to take action was an intentional decision to explicitly harm Amphon or the result of negligence or lack of capacity, the resultant violation of his human rights was the same. The United Nations Standard Minimum Rules for the Treatment of Prisoners, and in particular section 22(2) and 25(2) of the rules, mandate that:

> "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers."
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> "The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment."

It is clear that in the case of Amphon Tangnoppakul, the treatment he received did not even approximate the Standard Minimum Rules, but rather stood in direct contravention to them. On 16 May 2012, Dr. Sunai Chulpongsatorn, a Member of Parliament from the majority Pheu Thai Party and the chair of the Parliamentary Foreign Affairs Committee, convened a meeting with representatives from relevant parties, including the Department of Corrections, the Prison General Hospital, the Office of the Judiciary, the National Human Rights Commission, as well as Amphon's family and lawyers, to discuss his life and death. The comments made during the meeting suggest that the treatment of Amphon was not unusual and is rather representative of gross inadequacies that place Thailand far from meeting the guidelines outlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners.

In particular, Dr. Bunmee Wibulchak, a doctor at the general hospital of the Department of Corrections, acknowledged that the conditions in the hospital were not as good as hospitals outside the prison system: they did not have a full staff, and on the evenings and weekends, there were no doctors on duty, only nurses. If a prisoner was in need of medical treatment that a nurse could not provide, then she would call the doctor, who would provide orders via telephone. He further noted that several months earlier, when Amphon had come to the prison clinic complaining that he felt as though his cancer had returned, the conclusion by the prison physician and the ear, nose, and throat specialist who examined his mouth and throat was that it was not cancer. When Amphon entered the prison clinic and then the hospital in the days before he died, he had a painful stomach ache. By Friday, 4 May 2012, the decision had been made that he needed further examination and testing, which could only take place during normal working hours and days. Four days later, before any further steps were taken, Amphon Tangnoppakul died.

In the years since the 19 September 2006 coup, many people have paid a high price for alleged disloyalty to the monarchy, with sentences whose length is comparable to those of persons convicted for drug trafficking and murder. The death in custody of Amphon Tangnoppakul indicates that the price of loyalty is too high: a man paid for four SMS messages with his life, and his family paid with the loss of their husband, father, and grandfather. The tragic circumstances surrounding his death indicate the grave dangers posed by the combination of dehumanization of those perceived to challenge an unchallengeable institution with a strong security apparatus. His death, which reverberated throughout Thai society and caused discomfort to even staunch royalists, must be remembered. Amphon Tangnoppakul's death is a clarion call to take immediate action to redress the human rights violations caused by Article 112 and the CCA, and the broader judicial and security apparatus which contains them.

A step towards accountability for drug-war deaths

Securing accountability for the violent actions of state agents carried out against citizens is persistently difficult in Thailand. The 2011 decision in the case of disappeared human rights lawyer Somchai Neelaphaijit illustrates this well. After a seven-year legal battle by the Neelaphaijit family to find out what happened to Somchai and secure accountability, during which the police consistently failed to provide

evidence and in which witness protection was plagued by unprofessional and dangerous failures, the police were fully acquitted. Not only was the Neelaphaijit family denied justice, but also in so doing, the right of families of victims of disappearance to seek justice was broadly denied.

In this context, the decision by the Criminal Court to hold the police responsible for the murder of a young man in Kalasin province is both surprising and significant. While the decision is not without its problems, the case nonetheless raises hope about the possibility of justice in Thailand. The specific details of the case, the court decision, and events in the aftermath of the decision illustrate this possibility, as well as obstacles to it that remain.

In February 2003, ousted Prime Minister Thaksin announced the beginning of the "war on drugs" with an unequivocal message to police and other state officials—that any and all necessary actions should be taken to free the country from the drug menace, including killing. Over the next three months, it became apparent that the message served as a carte blanche for the use of murderous violence against citizens, rather than using provisions of the Criminal Code to investigate and prosecute those involved in the drug trade. By May 2003, an estimated number of over 2,500 people had been killed.

Kalasin Province was the first province in the country that the government declared it had "won" the war. This alleged victory was achieved at the cost of many lives taken illegally, at the hands, or bidding of, state agents. Yet, despite the "victory", the "war on drugs" did not end in Kalasin in May 2003. It just made extra-judicial violence a common tactic of police.

In this setting of routinized state violence, Kiettisak Thitboonkrong, then aged 17, was arrested for a minor crime, tortured, and killed by police. On 16 July 2004, the police arrested him for allegedly stealing a motorcycle. When his family heard this news, they went to the police station and attempted to talk to him. After returning multiple times, his grandmother was allowed to witness his interrogation on 22 July, 2004 and told to wait for him to be bailed out later that day. But Kiettisak never came home and the next day his mutilated body was found in a neighbouring province.

Following his death, his family launched a campaign to investigate and hold the police in Kalasin accountable for Kiettisak's murder and the murders or enforced disappearances of 27 other individuals by police of the same station during and following the so-called "war on drugs." In 2005, the Department of Special Investigation (DSI) in the Ministry of Justice began investigating the case. Under the Special Investigation Act (SIA), the DSI is the state agency tasked with investigating cases in which state officials have committed violent crimes against citizens. The DSI took three years to conduct the investigation. On 18 May 2009, the public prosecutor charged six police officers with premeditated murder and with concealing Kiettisak's corpse to hide the cause of death. Because this case was investigated under the SIA, it was sent to the Criminal Court in Bangkok. The public prosecutor conducted the case and Kittisapt Thitboonkrong, father of Kiettisak, successfully sought and obtained permission from the court to act as a joint plaintiff, represented by lawyers from the Lawyers' Council of Thailand working pro bono. The hearings took another three years.

In the decision in Black Case No. 3252/2552, 3466/2552, read on 30 July 2012, the Criminal Court found five, out of the six police officers accused, guilty of murdering Kiettisak Thitboonkrong. The Criminal Court found Pol. Snr. Sgt. Maj. Angkarn Kammoonna, Pol. Snr. Sgt. Maj. Sutthinant Noenthing, and Pol. Snr. Sgt. Maj. Phansin Uppanan guilty of premeditated murder and hiding a corpse. It sentenced them to death. Pol. Lt. Col. Sumitr Nanthasathit the court found guilty of premeditated murder and sentenced him to life imprisonment. Pol. Col. Montree Sriboonloue it found guilty of abusing authority to aid in protecting his subordinates from criminal prosecution and sentenced him to seven years imprisonment. The five policemen have been released on bail while they appeal the decision.

At the time of the decision, the AHRC heralded it as an important step towards ending impunity for state violence in Thailand. It is the first case, of which the AHRC is aware, in which police responsible for killings during the "war on drugs" under the government of ousted Prime Minister Thaksin Shinawatra have been held to account for their crimes. It is also the first case arising from the so-called "war" that the DSI investigated.

Rather than holding state officials who used extrajudicial violence against these citizens to account, in the worst cases, perpetrators of crimes have been rewarded. In most cases they have been tacitly and conveniently ignored. One of the long-term effects of this approach has been the further consolidation of impunity for state violence in Thailand. Therefore, this case stands out among other cases of extrajudicial killing in Thailand over the last ten years, in which courts have been unwilling to hold state officials to account, notably in the cases of the mass deaths in custody following the Tak Bai incident, and, at least thus far, the April-May 2010 killings. Even in cases in which courts have ruled that a citizen has died while in state custody due to the actions of state officials, such as the March 2009 torture and death of Imam Yapa Kaseng, the actions of state officials have been classed as matters of official "duty" and they have been exempted from allegations of murder. This is the larger context in which Kiettisak was murdered, in which his relatives and other Kalasin residents struggled to secure justice and accountability, and against which the Criminal Court gave its ruling. Given that this is also the first case in which a court decision has been reached, the AHRC welcomed the guilty verdict as a clear sign that the judiciary is willing to hold police to account for their use of extrajudicial violence against citizens.

Yet at the same time, the AHRC expressed several concerns about this case, concerns which have grown only deeper in the months since the decision. The AHRC, as a matter of principle, opposes the death penalty under all circumstances, and called for the sentences in this case to be reviewed, such that the convicted police officers instead received appropriate prison terms. Second, it is of serious concern that the convicted officers obtained bail pending appeal. The convictions for these sentences are of such gravity that good reason exists to expect that the convicted police will attempt to evade punishment by absconding or other means. They may also seek to obtain revenge against one or more persons who testified against them. Somchai Neelaphaijit, one officer convicted of an offence in connection with Kiettisak's disappearance, himself subsequently disappeared, and is suspected to have faked his own death; he was subsequently acquitted on appeal. In the meantime, Somchai's family has received frequent threats against their own lives. The AHRC fears that in the case of Kiettisak Thitboonkrong as well, the police may yet find ways and means to pervert the course of justice and undermine this hard-fought result.

Yet, these actions are nothing in comparison to what took place, quietly, two months after the initial ruling. On 25 September 2012, Pol. Lt. Gen. Sompong Khongpetchsak, the Police Region 4 commander, presented Pol. Lt. Col. Sumitr Nanthasathit and his four colleagues with 100,000 baht ($ USD 3,265). This news was posted on the website of Police Region 4.

According to the website, this money was intended as welfare support to the five police for "having been found guilty resulting from carrying about their duties at the Kalasin police station." While the landmark conviction is a clear sign that the judiciary in Thailand has at last been willing to hold the police to account for their use of extrajudicial violence against citizens, the action by Pol. Lt. Gen. Sompong Khongpetchsak stood in sharp contrast. His action indicated the clear unwillingness of the police to draw a line between duty and extrajudicial violence, and also indicated unequivocal support of the police leadership for the use of extrajudicial violence against citizens.

Pol. Lt. Gen. Sompong's financial gift to the five police officers, and the assertion that it was to aid them in facing a conviction that arose from actions they took while carrying out their duty speaks of a culture of non-accountability that pervades the Royal Thai Police. It should be understood as an attempt to undo the courageous stand taken by the Criminal Court and thereby restore the "normal" order of things, in which police enjoy impunity for torture, killing, enforced disappearance, and other gross abuses of human rights. The financial gift, and the open acknowledgment of it, defies the court's attempt to place the police under the very laws that they claim to enforce. Indeed, it is an act that erases the chasm between law and extra-judicial violence altogether, by implying that to torture and murder a young man are acts consonant with the normal course of a police officer's duty, and not acts for which he or she ought to be punished.

The Criminal Court decision in the case of the murder of Kiettisak Thitboonkrong in Kalasin is significant because it is the first of a series of police killings in Kalasin moving through the investigative and judicial process and because there are many other resonant cases of state killing in Thailand. These include the still-unaddressed cases of state violence during April-May 2010, and many cases of unresolved torture and murder in which state security forces are implicated in the three southernmost provinces of Thailand. If the police do not respect the decision of the court, and instead act to undermine it officially and unofficially, the result is that impunity will be further consolidated and the power of the police to defy the court's authority, as well as systematically violate the rights of citizens, will be revealed. While the decision in this case has the potential to stand as an example of best practices, unless the commitment to end impunity is taken up through the judicial system and state security agencies, its effect will at best be muted, and at worst be erased.

Constricted freedom of expression

In its 2011 report, the AHRC highlighted the ongoing constriction of freedom of expression caused by the expansion of the uses of Article 112 and the CCA. Prosecutions, charges, and convictions, as well as official and unofficial intimidation of those that attempted to challenge the law, all contributed to the constriction. One year later, the constriction remains.

The case of Amphon Tangnoppakul, with which this report began, illustrates the gravity of the challenge to human rights from the enforcement of these two laws in the service of the institution of the monarchy and vaguely-defined "national security." While there have been several prosecutorial or court decisions which indicate possible changes within the judiciary around these cases, the broader social and political frame remains one hostile to abolition, or even reform, of both laws. In the midst of this crisis, there has also been a dramatic movement by human rights defenders (HRDs) and citizens to reform Article 112 and redress the problems caused by it. The response to this movement, which has included official state dismissal and unofficial intimidation, indicates the growing depth of the crisis, the necessity for transformation, and the urgency of protecting HRDs working around this issue. The AHRC's position is that both Article 112 and the CCA should be immediately revoked, current legal proceedings against individuals accused of violating them halted, and those currently imprisoned released.

One of the problems caused by Article 112 is that any citizen can file a complaint of an alleged violation of the law. The police are then compelled to investigate and decide whether or not to forward the results of the investigation to the prosecutor. The prosecutor must then decide whether or not to bring formal charges against the individual(s) accused and begin formal court proceedings. This process can take years, during which time the persons in question face uncertainty over their possible fate.

In a majority of Article 112 cases, for which information is publicly available, cases sent to the prosecutor by the police result in charges being brought. Yet, in the case of Chotisak Onsoong and his friend (name withheld), the prosecutor chose not to bring formal charges of alleged defamation of the monarchy. The complaint stemmed from the couple's decision not to stand during the royal anthem and video montage lauding the life of the king played prior to the screening of a movie in a central Bangkok theatre on the evening of 20 September, 2007. When they did not stand up, Navamintr Witthayakul, a man standing in front of them, turned around and yelled at them. When they did not comply, an argument ensued and Navamintr physically assaulted Chotisak. Later that evening, Navamintr filed a complaint against Chotisak and his friend of violating article 112. Simultaneously, Chotisak filed a complaint against Navamintr for physical assault.

Four-and-a-half years later, in a letter dated 11 April 2012, Visit Sukyukol, Special Prosecutor for Southern Bangkok 4 noted that the complaint was dropped and the reason was that there was insufficient evidence to send the case to court. Visit notes that on 20 September 2007, at approximately 7:45pm, while the royal

anthem and video montage were being played, prior to the beginning of a film at the Central World cinema, Chotisak and his friend remained seated while all other moviegoers in the theater "stood up to pay respect." This caused another moviegoer, Nawamintr Witthayakul, to turn around and say, in English, "Stand up." According to Visit, Chotisak turned around and said, "Why do I have to stand up? There is no law mandating it." This comment led to disagreement between the two, and caused Navamintr to file a complaint with the police alleging that Chotisak and his friend had violated Article 112.

Despite establishing this series of events, Visit, in his order to close the prosecution, commented that their words and actions did not have the characteristic of insulting or causing shame, loss, or humiliation to the king. Further, he noted that there was no clear evidence suggesting that Chotisak and his friend intended to defame the king. Visit's decision was a clear statement that Article 112 cannot be applied to any and all speech or actions that question the relationship between the monarchy and the people, the monarchy and democracy, or the monarchy and human rights. Discussions about these topics—or at the very least, the legality of them—are urgently necessary if there is to be the possibility of the rule of law and the consolidation of human rights in Thailand.

Despite the outcome of this case, the slow pace at which the prosecutor's inquiries proceeded remains of concern. Chotisak and his friend waited over four years for this outcome: the complaint against them was filed in September 2007, and police lodged charges in April 2008, with the case file going to the prosecutor that October. From then, until April 2012, the two accused lived in daily fear that they might have to face charges in court at any time. By contrast, the prosecutor decided to drop the charges of physical assault brought against Navamintr for his assault of Chotisak in September 2008. Such delay – and others like it, such as the current drawn-out prosecution of Somyos Prueksakasemsuk – functions as a de-facto punishment, constricting the lives and rights of those facing prosecution. It contributes to insecurity and uncertainty.

Like in the case of Chotisak and his friend, the court decision in the case of Chiranuch Premchaiporn is another in which the accused party was forced to face years of uncertainty before an outcome was delivered. Chiranuch is the web-master of Prachatai, an independent online news site, which has served as an important platform for critical news, discussion, and debate for over seven years in Thailand. In Black Case No. 1667/2553 she was charged with ten alleged violations of the CCA. These charges stemmed from her alleged failure to remove comments deemed offensive to the monarchy from the Prachatai web-board quickly enough. The court found Chiranuch guilty for one out of the ten charges, and she was sentenced to one year in prison and a 30,000 baht fine. Resulting from her cooperation with the court and the fact that this was her first offence, this was immediately reduced to a suspended sentence of eight months and a 20,000 baht fine.

As the AHRC noted at the time of the decision, it was a relief that Chiranuch was able to remain outside prison and continue her, and Prachatai's, ground-breaking work, expanding and sustaining the space for freedom of expression in Thailand. Yet, the guilty verdict in her case represents the continued broader threat to freedom of expression and human rights represented by Article 112 and the CCA. Throughout her case, what was of concern was the use of the CCA's vague provisions to constrict freedom of expression

by not only making an individual who writes or posts a comment, image, or video online potentially criminally liable, but also making the providers of internet services, such as web-board moderators, equally liable. Under Section 15 of the CCA, the service provider found "intentionally supporting or consenting to" the use of the computer for an offence under the law is equally liable as the person committing the offence, which, in the case of Chiranuch, is the crime of lese-majesty, as stipulated in Article 112 of the Criminal Code. In the case of Chiranuch Premchaiporn, the prosecution alleged that she should have removed comments deemed to be damaging to the monarchy more quickly, and in not doing so, had violated the CCA.

One of the crucial issues for both the prosecution and the defense was the determination of what constitutes "intentionally supporting or consenting to" an offence, and, more specifically, an appropriate length of time within which questionable web-board comments must be removed. In the decision, the judges responded with an assessment of what an appropriate length of time would constitute. The decision noted that nine of the ten comments in question were removed within one to eleven days, and that this indicates that Chiranuch did not intentionally support or consent to them. In the instance of the tenth comment, which remained online for twenty days before she removed it, however, the Court concluded that this indicated "implied consent". On the basis of this assessment, Chiranuch was found guilty of one charge of violating the Computer Crimes Act.

As Google noted, in a statement released after the verdict was announced on 30 May 2012, the CCA poses threat to a free and open internet in Thailand because it lacks "transparent rules about how to identify and react to unlawful content:

> "Although Thailand's legal system is not precedent-based, this decision partially begins the process of clarifying the constituent vagueness of the Computer Crimes Act. Within this decision, a period of up to eleven days to remove a comment deemed damaging is acceptable and legal; a period of twenty days is unacceptable and criminal. Yet the decision introduces another dangerous lack of clarity with the category of "implied consent."

The text of the CCA mentions intentional support and consent, and the category of "implied consent" indicates that whether or not the consent is explicit or implicit is immaterial in the eyes of the law.

Further, in the abbreviated decision the Court addressed the issue of freedom of expression and its relevance in this case. As a reminder, Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a state party, mandates that:

> "1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (ordre public), or of public health or morals."

Not acknowledging Article 19, the Court has selectively addressed section 3 (b). It is worth quoting from the decision herein:

> "The court acknowledges that freedom of expression is a basic right of citizens that is guaranteed and protected in the Thai Constitution. This is because freedom of thought and expression reflects good governance and the democratization of a given entity or nation. Criticism from the people, both positive and negative, provide an opportunity to improve the nation, given entity, and individuals for the better. But when the defendant opened a channel for the expression of opinions within a computer system, she was the service provider and it was within her control. The defendant had a duty to review the opinions and information that may have impacted the country's security as well as the liberty of others who must be respected as well.... [with respect to comments found to be damaging] the defendant cannot cite freedom of expression in order to be released from responsibility." [AHRC translation]

On the one hand, there is nothing vague about this statement. Webboard moderators, editors, service providers, and anyone else covered by Article 15 of the CCA must anticipate potential threats to national security by anyone who writes, posts, or uses their services. Yet on the other, what remains unclear is the precise method by which the comments on the Prachatai webboard were a threat to national security or the liberty of others. Within this unexplained gap, restrictions on the freedom of expression and related human rights violations flourish. The onus remains on the court to precisely outline the meaning of national security and the specific threats posed to it. Until the judiciary does so, the law will remain flexible enough to serve as a weapon of intimidation of human rights defenders (HRD), journalists, dissidents, and ordinary citizens.

Despite the ambiguities in Article 112 and the CCA, and therefore the potential for abuse, the state has been unwilling to recognize the danger they pose to human rights. In response to criticism by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression during the June 2012 UN Human Rights Council meeting, the Thai state delegation said:

> "As regards to Thailand's lese-majesty law, the Thai delegation would like to stress that the law itself is not aimed at curbing the rights and the legitimate exercise of academic freedom, including debates about the monarchy and the institution. Issues that have arisen with regard to the lese-majesty law lie not in any fundamental problem with the law itself, but in the abuse of the law for

> political gain in the context of political conflict which has been ongoing in Thailand for the past few years. Indeed, an ongoing lively public debate has been taking place on the lese-majesty law to which the Thai people will find an appropriate solution for themselves."

Yet the sincerity of this comment has been called into question by the official state dismissal of criticism and complaint about the law, and para-state intimidation and violence with which attempts by Thai HRD's to reform the law have been met.

In January 2012, a group of seven law lecturers at Thammasat University (Worachet Pakeerut, Jantajira Iammayura, Thapanan Nipithakul, Teera Suteewarangkurn, Sawatree Suksri, Piyabutr Saengkanokkul, and Poonthep Sirinupong) proposed an amendment to Article 112 in the Khana Nitirat (i.e. "Law for the People" in Thai). The proposed amendment of the Khana Nitirat left the position of the monarchy within the Thai polity as it is currently, but aimed to reduce the potential for abuse under Article 112 in several significant ways. The proposed amendment would make the punishment for alleged lese-majesty proportionate to the crime, limit who – rather than any ordinary citizen – can file a complaint to the Office of His Majesty's Principal Private Secretary, differentiate sincere and truthful criticism from threats to the monarchy, and categorize violations of Article 112 as that concerning the honor of the monarchy, rather than a matter of national security.

The proposed amendment by the Khana Nitirat became the basis for a nationwide campaign by the Campaign Committee to Amend Article 112 (CCAA 112), a coalition of HRDs, intellectuals, media activists, and human rights activists. Under the 2007 Constitution, if at least 10,000 citizens sign in support of a proposed amendment, the Parliament is obliged to examine it. Beginning on 15 January 2012, CCAA 112 began to gather signatures. Almost immediately, there was sharp criticism from some quarters. There was a dangerous combination of statements, asking the campaigners to halt their activities and vaguely threatening violence, made by commanders of the state security forces, with growing vigilante rhetoric propagated by civil society actors. In particular, there were specific death threats made in the comments section of articles on Manager (Phuchadkan) newspaper online, including calls for the members of the Khana Nitirat to be beheaded and their heads placed on stakes outside the university gates, and calls for them to be burned alive with their families outside the homes.

Several weeks later, this rhetoric took concrete form, when Professor Worachet Pakeerut, an HRD and leader of the Khana Nitirat was assaulted by two men outside his office at the Faculty of Law at Thammasat University. The two men punched Professor Worachet several times in the face until he bled and his eyeglasses broke. He was subsequently treated at Thonburi Hospital and released. Although the AHRC was heartened by the swift prosecution of the two men who assaulted Professor Worachet, the assertion by the two during the investigation – that they assaulted him because they disagreed with his ideas – is an indication of the tension and looming crisis around this law.

Despite the attack on Professor Worachet, the CCAA continued their campaign. On 28 May 2012, they submitted 30,838 signatures, gathered from citizens around the country, in support of the proposed amendment. In late October 2012, the parliament announced that it had decided not to hold a debate on

the proposed amendment. In addition to the parliament's decision being in contravention of the Constitution, it is a matter of concern that it is unwilling to consider the amendment. While its inaction is not a form of violence equivalent to the assault on Professor Worachet by the two young men who disagreed with the idea of reforming the law, the effect of silencing discussion around an alternative to the current status quo is the same. As the death of Amphon Tangnoppakul, recent cases, and ongoing prosecutions indicate, the status quo is not sustainable for human rights, the rule of law, or democracy and justice broadly conceived, in Thailand.