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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its 101st session, 11–15 November 2024**

### **Opinion No. 52/2024 concerning Netiporn “Bung” Sanesangkhom (Thailand)\***

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,<sup>1</sup> on 11 July 2024 the Working Group transmitted to the Government of Thailand a communication concerning Netiporn “Bung” Sanesangkhom. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
  - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
  - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination, based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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\* Mumba Malila did not participate in the discussion of the case.

<sup>1</sup> [A/HRC/36/38](#).

## 1. Submissions

### (a) Communication from the source

#### (i) Context

4. Netiporn “Bung” Sanesangkhom was a citizen of Thailand, born on 8 August 1995, and a resident of Bangkok. Ms. Sanesangkhom was arrested on the basis of her participation in a protest in 2022. She died on 14 May 2024, while in detention pending trial under section 112 of the country’s Criminal Code (*lèse-majesté* law), which criminalizes insulting or defamatory remarks about the monarchy.

5. Ms. Sanesangkhom began advocating for student rights and LGBTQIA+ rights in mid-2021. She began in a support role, raising funds to facilitate activism by young people, and later began taking part in protests. In 2021, she participated in a protest with a group named “Bad Students”. She later joined the “Thalu Wang” group, a pro-democracy organization comprised of young people who use performance art and public polls to challenge social norms concerning the monarchy.

6. In addition to the charges under the *lèse-majesté* law, Ms. Sanesangkhom had been convicted in one case and was facing charges in five other cases, including one other *lèse-majesté* case.

7. For instance, in July 2021, Ms. Sanesangkhom was charged with trespassing and damage to property for protesting in front of the Ministry of Public Health against the coronavirus disease (COVID-19) vaccine policy. In November 2022, she picketed in front of a shopping mall to condemn the alleged violent dispersal of an earlier protest and was charged with trespassing. At the time of her death, that case was at the investigative stage.

8. In June 2023, she was charged, along with two other individuals, with trespassing and damage to property in connection with a demonstration at Triam Udom Suksa Nomkiao School, which she had previously attended. That case was also at the investigative stage at the time of her death.

9. In August 2023, Ms. Sanesangkhom protested in front of the Ministry of Culture, calling for a senator to be stripped of an honorary national artistic designation for abstaining from a parliamentary vote that ultimately prevented the Move Forward Party leader from becoming Prime Minister. Ms. Sanesangkhom was charged with sedition, trespassing, damage to public property, and violation of the Public Assembly Act. At the time of her death, that case was also at the investigative stage. On the basis of that protest, her bail was later revoked.

10. In October 2023, Ms. Sanesangkhom and other members of the “Thalu Wang” group attended the trial of a fellow group member. Ms. Sanesangkhom allegedly tried to climb onto the fence adjacent to the court to communicate with the defendant, for which she was later charged with contempt of court. In January 2024, she was found guilty and sentenced to one month in prison.

11. The additional *lèse-majesté* charge involved an informal poll. Specifically, in April 2022, Ms. Sanesangkhom conducted a peaceful informal poll on whether Thailand had allowed the King to exercise his power indiscriminately. She was subsequently charged with *lèse-majesté*, and at the time of her death, the trial was ongoing.

#### (ii) Arrest and detention of Ms. Sanesangkhom under the *lèse-majesté* law

12. Ms. Sanesangkhom was arrested on the basis of her participation in a pro-democracy protest on 8 February 2022 and was charged with violating the *lèse-majesté* law. The protest action in question entailed conducting a peaceful public opinion poll on whether the royal motorcade had caused the public inconvenience. Subsequently, Ms. Sanesangkhom and the other activists went to Sraphatum Palace for a demonstration, where they had an altercation with police officers. That incident, together with the conducting of the poll, is referred to as the public poll incident.

13. On 10 March 2022, criminal proceedings were officially initiated against Ms. Sanesangkhom, along with several other co-accused who participated in the public poll incident. They were summoned, notified of the charges, and released on bail. The indictment alleged that the group removed metal fences and made insulting comments to police officers. The indictment also alleged that some of the group “expressed symbolically by raising three fingers in a pro-democracy salute in front of Srapathum Palace,” and implied that this too may have been an illegal action. The indictment does not allege that the activists engaged in any violence.

14. According to the indictment, Ms. Sanesangkhom and her co-accused violated the *lèse-majesté* law because conducting the poll attacked the royal cortège. Furthermore, the indictment suggested that traveling to the Palace in defiance of police orders also constituted *lèse-majesté*, without explaining why this would be so.

15. In addition to *lèse-majesté*, on the basis of the same facts, Ms. Sanesangkhom was charged with sedition, on the notion that, according to the indictment, those involved in conducting the poll intended to communicate to the monarchy that the general public was disturbed by the royal cortège; this was neither conducted within the spirit of the Constitution, nor duly expressed honest opinion or criticism, and had an intent to cause unrest and disaffection among the people. Ms. Sanesangkhom was also charged with insulting and resisting the orders of officials.

16. Ms. Sanesangkhom was granted bail on the condition that, among other things, she neither harmed the monarchy, nor posted on social media inviting, inciting, provoking or inducing people to join rallies, nor joined a rally that may cause chaos in the country.

17. On 13 March 2022, a group of activists, including Ms. Sanesangkhom, conducted another public opinion poll on land expropriation. On 3 May 2022, Bangkok South Criminal Court revoked Ms. Sanesangkhom’s bail on the basis thereof, finding that she had participated in a protest that had caused unrest in society, in violation of the bail conditions. She remained detained at Bangkok Women’s Central Correctional Institution from 3 May to 4 August 2022, during which she began a hunger strike that lasted 64 days. She filed eight bail requests during that time.

18. On 4 August 2022, Ms. Sanesangkhom was granted bail by Bangkok South Criminal Court, on the condition that she did not cause further damage to the monarchy and did not cause further disturbance. The Court also prohibited her from engaging in any action similar to the alleged cause of action. Furthermore, she was prohibited from leaving the country, prohibited from leaving her residence between 7.00 p.m. and 6.00 a.m. except as approved by the Court, and ordered to report to the Court every 30 days.

19. After being released on bail, Ms. Sanesangkhom remained active in the pro-democracy movement, participating in several other protests. In August 2023, she attended a protest at the Ministry of Culture demanding that a senator be stripped of his national artist status after he abstained from the parliamentary vote to choose a prime minister. During the protest, Ms. Sanesangkhom allegedly sprayed paint onto a royal flag.

20. In September 2023, Ms. Sanesangkhom and 17 others were charged with sedition, trespassing and public order offences. The charge sheet alleges that the 18 accused persons set off fireworks, “sprayed colour” and “tied some dirty clothes to the wall surrounding the protest area”. The charge sheet makes no allegations of injury or violence; as regards damage to property, it assesses the damage to the marble nameplate of the Ministry of Culture at 8,000 baht, the costs of cleaning up and fixing traffic lanes and road surfaces in front of the Ministry at B26,000 and other costs at B30,000.

21. On 26 January 2024, Ms. Sanesangkhom’s bail was revoked on the basis of her participation in the Ministry of Culture protest in August 2023 (for allegedly spraying paint on the Queen’s flag). She was detained at the Bangkok Central Women’s Correctional Institution. She began a hunger strike on 27 January 2024, calling for reform of the monarchy and for the authorities to stop imprisoning people for holding or expressing dissenting opinions.

22. On 6 February 2024, she was transferred to a hospital due to her deteriorating health condition. She was then transferred back and forth between the detention facility and the

hospital several times over the next few months until suffering a cardiac arrest at approximately 6.20 a.m. on 14 May 2024, at the detention facility.

23. Medical personnel at the prison hospital reportedly attempted to revive her, including by intubation, but failed. At 9.30 a.m., Ms. Sanesangkhom was transferred from the prison hospital to Thammasat University Hospital. A coroner's report noted that Ms. Sanesangkhom arrived at the hospital with no vital signs and had a "faulty intubation". She was pronounced dead at Thammasat University Hospital at 11.22 a.m.

24. The source submits that officials reportedly refused to provide Ms. Sanesangkhom's team with the CCTV footage from the prison hospital at the time of her death.

25. The source notes that although the Prime Minister has promised an inquiry into Ms. Sanesangkhom's death, which would also look at possible negligence by prison officials in managing her treatment, little progress appears to have been made.

(iii) *Legal analysis*

26. The source submits that the detention of Ms. Sanesangkhom was arbitrary and falls under categories I, II and V of the Working Group.

a. Category I

27. The source submits that Ms. Sanesangkhom's imprisonment was arbitrary because it was without legal basis. Her detention was based upon alleged *lèse-majesté* violations under section 112 of the Criminal Code, a law that is vague and overly broad. Furthermore, the revocation of Ms. Sanesangkhom's bail was disproportionate and unnecessary.

28. It is stated in article 9 of the Covenant that "no one shall be subjected to arbitrary arrest or detention". The Working Group has previously determined that "one of the fundamental guarantees of due process is the principle of legality (*nullum crimen, nulla poena sine lege*), including ... the principle of certainty".<sup>2</sup> The Working Group has emphasized that under the principle of legality set forth in article 15 of the Covenant, "an act can be punished only if, at the time of its commission, the act was the object of a valid, sufficiently precise, written criminal law to which a sufficiently certain sanction was attached".<sup>3</sup> Thus, "vaguely and broadly worded provisions, which cannot qualify as *lex certa*, violate the due process of law undergirded by the principle of legality".<sup>4</sup> Under this principle, individuals must be able to know what acts will be considered criminal and regulate their conduct accordingly.<sup>5</sup>

29. The source cites the Working Group's earlier jurisprudence which highlighted the danger posed by vague laws to protected rights.<sup>6</sup> The Working Group has further clarified that such laws afford the authorities unfettered discretion, thereby resulting in unjustified and arbitrary criminalization of the legitimate exercise of the right to freedom of expression.<sup>7</sup>

30. The source further recalls that the country's *lèse-majesté* legislation, as codified in section 112 of the Criminal Code, is vague and overly broad because it fails to define what forms of expression constitute insults or threats to the monarchy, leaving "the determination of whether an offence has been committed entirely to the discretion of the authorities".<sup>8</sup> The Working Group has repeatedly found that section 112 fails to provide a legal basis for detention.<sup>9</sup> Ms. Sanesangkhom's detention, which was based principally on alleged violations of *lèse-majesté*, was therefore without legal basis and arbitrary.

<sup>2</sup> Opinion No. 10/2018, para. 50.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*, para. 52.

<sup>5</sup> See also opinion No. 41/2017; and Human Rights Committee, general comment No. 34 (2011).

<sup>6</sup> Opinion No. 9/2018, para. 44.

<sup>7</sup> Opinions No. 20/2017, para. 35; No. 21/2014, paras. 25 and 26; and No. 27/2012, para. 38; and Human Rights Committee, general comment No. 34 (2011).

<sup>8</sup> Opinion No. 49/2023, para. 62.

<sup>9</sup> See opinions No. 49/2023, No. 64/2021, No. 4/2019, No. 3/2018, No. 56/2017, No. 51/2017, No. 44/2016, No. 43/2015 and No. 41/2014.

31. Moreover, Ms. Sanesangkhom's detention was disproportionate and unnecessary. Although she was initially granted interim relief in the form of bail, her bail was twice revoked, for the second time on 26 January 2024, due to alleged protest actions.

32. It is stated in article 9 (3) of the Covenant that "it shall not be the general rule that persons awaiting trial shall be detained in custody". The Human Rights Committee has stated, in its general comment No. 35 (2014), that detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Accordingly, pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.<sup>10</sup> The Committee further states that courts must examine whether alternatives to pretrial detention ... would render detention unnecessary in the particular case.<sup>11</sup>

33. The Working Group has applied this principle to find detention arbitrary where the relevant authorities have failed to conduct an individualized assessment to determine whether it is reasonable and necessary to keep an individual in pretrial detention.<sup>12</sup> In addition, any justification for detention must be substantiated with evidence, and cannot be based on mere assumption.<sup>13</sup> The Working Group has also found that vague and expansive standards such as "public security"<sup>14</sup> are insufficient to justify pretrial detention and that instead a "present, direct and imperative threat" must be shown.<sup>15</sup>

34. In the case of Ms. Sanesangkhom, she had her bail revoked on the basis that she had violated a condition of the bail order of 4 August 2022. Specifically, the court revoked her bail because she had allegedly "painted a colour on the Queen's emblem in the royal flag". The court allegedly conducted no individualized assessment of whether detention was reasonable and necessary and likewise failed to conduct even a cursory analysis of less restrictive alternatives.

35. The bail order permitted revocation of the bail on grounds that extended beyond the objectives deemed legitimate under the Covenant. The source recalls that the Human Rights Committee notes that pretrial detention can be imposed "for such purposes as to prevent flight, interference with evidence or the recurrence of crime".<sup>16</sup> These limitations are geared to ensuring that detention is reasonable and necessary.

36. However, the order granting bail in Ms. Sanesangkhom's case sets conditions that refer broadly to causing further disturbance and damage to the monarchy. Even assuming that the conditions fall under the objective of preventing "the recurrence of crime", they are far from sufficiently defined and are insufficient to justify pretrial detention.

37. The fact that Ms. Sanesangkhom agreed that she would comply with these conditions in order to obtain bail does not change the analysis. She would not have been able to escape imprisonment in the absence of this agreement that she would not exercise her protected rights, as has been true in numerous other cases where individuals have been charged with *lèse-majesté*.

38. In addition to the failure to conduct the requisite individualized analysis, the bail conditions themselves violated the requirement under article 9 of the Covenant that detention be imposed as a last resort and only where necessary and reasonable.

39. The source concludes that Ms. Sanesangkhom's pretrial detention is thus tragically just one example of the larger-scale abuse of pretrial detention in *lèse-majesté* cases.

<sup>10</sup> See para. 38.

<sup>11</sup> *Ibid.*

<sup>12</sup> See opinions No. 62/2017 and No. 56/2017.

<sup>13</sup> *Cedeño v. Bolivarian Republic of Venezuela* (CCPR/C/106/D/1940/2010), para. 7.10.

<sup>14</sup> Opinion No. 56/2017, para. 9.

<sup>15</sup> Opinion No. 44/2017, para. 29.

<sup>16</sup> Human Rights Committee, general comment No. 35 (2014), para. 38.

## b. Category II

40. It is argued that Ms. Sanesangkhom's deprivation of liberty in response to the public poll incident and the later revocation of her bail for her participation in a protest resulted from her exercise of her right to freedom of expression and right to peaceful assembly, in violation of articles 19 and 21 of the Covenant respectively.

41. It is stated in article 19 (2) of the Covenant that "everyone shall have the right to freedom of expression", which includes the right to seek, receive and impart information and ideas, including political discourse, commentary on public affairs, and discussion of human rights.

42. The Human Rights Committee has emphasized the importance of safeguarding public debate and the ability to criticize public officials: "the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain".<sup>17</sup> In the Committee's words, "all public figures, including those exercising the highest political authority such as Heads of State and Government, are legitimately subject to criticism and political opposition".<sup>18</sup> As such, "the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties".<sup>19</sup>

43. Moreover, article 19 (3) of the Covenant provides that there are limited enumerated grounds for restricting freedom of expression – such as for the protection of national security, public order or public health – and that even then restrictions must be subject to stringent conditions; restrictions must, among other things, be necessary and proportionate. Additionally, restrictions on the right to freedom of expression must be "prescribed by law".

44. When assessing proportionality, the Human Rights Committee has held that "laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned".<sup>20</sup> The source also notes that the European Court of Human Rights has stated that defamation laws that afford more protection to kings than to ordinary citizens violate the spirit of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), since "making insults against the King a criminal offence" is "not necessary in a democratic society".<sup>21</sup>

45. The Working Group has emphasized that governments seeking to justify restrictions to freedom of expression on the basis of one of the grounds set forth in article 19 (3) of the Covenant must specifically identify relevant language in the speech at issue that creates a threat. The Human Rights Committee has likewise found that, to restrict protected speech, the authorities "must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat".<sup>22</sup>

46. The Human Rights Committee has further emphasized the importance of safeguarding public debate and the ability to criticize public officials: "the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain".<sup>23</sup> In the Committee's words, "all public figures, including those exercising the highest political authority such as Heads of State and Government, are legitimately subject to criticism and political opposition", and "the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties".<sup>24</sup>

<sup>17</sup> See the Committee's general comment No. 34 (2011), para. 34.

<sup>18</sup> *Ibid.*, para. 38.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> European Court of Human Rights, *Otegi Mondragon v. Spain* (application No. 2034/07), judgment of 15 September 2011, para. 38.

<sup>22</sup> See the Committee's general comment No. 34 (2011), para. 35.

<sup>23</sup> *Ibid.*, para. 34.

<sup>24</sup> *Ibid.*, para. 38.

47. Ms. Sanesangkhom's detention violated her right to freedom of expression for four reasons. Firstly, section 112 of the *lèse-majesté* law is inconsistent with international standards on freedom of expression. In addition to violating the proscription of vague and overbroad restrictions on speech, the law criminalizes protected expression.<sup>25</sup> The high value of political speech is not outweighed by the State's interest in protecting the reputation of the monarchy from insults and defamation, particularly given the significant custodial penalties imposed under this provision. Section 112 is far from the "least intrusive instrument amongst those which might achieve their protective function",<sup>26</sup> rendering it both unnecessary and disproportionate. The Human Rights Committee has called on States to consider decriminalizing defamation and has stated that imprisonment for defamation is never an appropriate penalty.

48. Secondly, the revocation of Ms. Sanesangkhom's bail was based on her protected right to free expression, rendering her detention disproportionate and unnecessary on this basis. Ms. Sanesangkhom's bail was revoked because she had "painted a colour on the Queen's emblem in the royal flag". It is argued that under international standards, penalties cannot be imposed for insulting public officials, and defacing an emblem for expressive purposes is protected by the right to freedom of expression. The Human Rights Committee has specifically raised concerns regarding laws that penalize "disrespect for flags and symbols".<sup>27</sup> The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has found that criminal defamation laws, to which section 112 bears a strong resemblance, may not be used to protect abstract or subjective notions or concepts, such as the State, or national symbols.<sup>28</sup> There is no evidence in the bail revocation order that Ms. Sanesangkhom's conduct incited violence or posed a violent threat, or any other kind of threat. The court's analysis is limited to the fact that the conduct allegedly breached the bail conditions.

49. Thirdly, the basis for the charges themselves was protected expression – namely, the conducting of an informal poll. Such polls were a core part of Thalu Wang's expressive protest activity. The European Court of Human Rights has held that article 10 of the European Convention on Human Rights (protecting freedom of expression) applies to online polls and articles about their results.<sup>29</sup> The Human Rights Committee has likewise applied article 19 of the Covenant to restrictions on the publication of poll results.<sup>30</sup>

50. The authorities failed to establish a direct and immediate connection between the expression and any threat.<sup>31</sup> The indictment does not explain the rationale for restricting Ms. Sanesangkhom's speech. This kind of conclusory analysis is not sufficient to justify restricting speech, much less detention.

51. Even if the authorities had sought to justify Ms. Sanesangkhom's prosecution and detention on the basis of an asserted need to protect the monarchy's reputation, it would still have been disproportionate and unnecessary. Ms. Sanesangkhom's expression fell short of the level of gravity required for criminal prosecutions, which, as the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has concluded, should be reserved for the most serious speech offences.<sup>32</sup> And even if some restriction might have been justified, imprisonment could not be. As the Human Rights Committee has found in the analogous context of criminal defamation, "imprisonment is never an appropriate penalty".<sup>33</sup>

52. Fourthly, the bail conditions themselves violated Ms. Sanesangkhom's right to freedom of expression. She was granted bail on condition that she did not cause further

<sup>25</sup> See opinion No. 49/2023.

<sup>26</sup> Human Rights Committee, general comment No. 34 (2011), para. 34.

<sup>27</sup> See the Committee's general comment No. 34 (2011), para. 38.

<sup>28</sup> [A/HRC/14/23](#), para. 84.

<sup>29</sup> See, for example, European Court of Human Rights, *OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia* (application No. 43351/12), judgment of 18 August 2021.

<sup>30</sup> *Kim v. Republic of Korea* (CCPR/C/84/D/968/2001).

<sup>31</sup> Human Rights Committee, general comment No. 34 (2011), para. 35.

<sup>32</sup> [A/66/290](#), paras. 20–36.

<sup>33</sup> See the Committee's general comment No. 34 (2011), para. 47.

damage to the monarchy, did not cause further disturbance and did not engage in any action similar to the alleged cause of action.<sup>34</sup> The first and third conditions simply replicate the vagueness that infects the lèse-majesté law itself. The vagueness is compounded by the use of the term “damage”. This leaves open the question of what the threshold for “damage” is, and from whose perspective this is to be assessed. The concept of “causing disturbance”<sup>35</sup> is equally vague. The Working Group found in a similar instance that the law in question was extremely vague and lacked the requisite degree of precision and legal certainty.<sup>36</sup> In the present case, because the bail conditions themselves did not meet the requirement of being “provided by law”, violating them should not have given rise to imprisonment.

53. Ms. Sanesangkhom’s detention also violated her right to freedom of peaceful assembly, in violation of article 21 of the Covenant.

54. As noted by the Human Rights Committee, the rules governing freedom of expression and freedom of peaceful assembly overlap: restrictions on peaceful assemblies must not be used, explicitly or implicitly, to stifle expression of political opposition to a government, challenges to authority, including calls for democratic changes of government, the constitution or the political system, or the pursuit of self-determination.<sup>37</sup> Given that peaceful assemblies often have expressive functions, and that political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection.<sup>38</sup>

55. Permissible restrictions on the right to freedom of peaceful assembly are strictly limited and must: (a) be prescribed by law (the principle of legality); (b) serve a legitimate objective; and (c) be necessary to achieve and be proportionate to that objective.<sup>39</sup> With respect to the legitimacy of the objective, restrictions on the right to freedom of peaceful assembly are only permitted for the protection of national security or public safety, public order, public health or morals, and the rights and freedoms of others. “This is an exhaustive list.”<sup>40</sup>

56. Ms. Sanesangkhom’s participation in the public poll incident, particularly in the demonstration that followed the polling itself and in the protest for which her bail was later revoked, falls within the scope of protection of the right under article 21 of the Covenant to freedom of peaceful assembly. The charge sheet for the public poll incident does not allege that Ms. Sanesangkhom or her co-accused incited or threatened violence. As the Human Rights Committee has established, “if the conduct of participants in an assembly is peaceful, the fact that certain domestic legal requirements pertaining to an assembly have not been met by its organizers or participants does not, on its own, place the participants outside the scope of the protection of article 21”.<sup>41</sup> Nor does the fact that some participants in the public poll incident may have directed insulting language at the police or removed barricades deprive the protest of protections. As the European Court of Human Rights has held, “being a part of the security forces of the State, the police should display a particularly high degree of tolerance to offensive speech, unless such inflammatory speech is likely to provoke imminent unlawful actions in respect of their personnel and to expose them to a real risk of physical violence.”<sup>42</sup>

57. According to the Human Rights Committee, authorities may only restrict assemblies on the grounds that they have crossed the threshold from peaceful to violent where they entail

<sup>34</sup> Bangkok South Criminal Court, Interim Release Order.

<sup>35</sup> The bail revocation order suggests that the condition may have been understood to extend even further: it summarizes the condition as precluding any provocative message or any invitation to participate in a demonstration which may potentially cause public disturbance. (Bangkok South Criminal Court, Interim Release Revocation Order).

<sup>36</sup> Opinion No. 8/2017, paras. 36 and 38.

<sup>37</sup> See the Committee’s general comment No. 37 (2020), para. 49.

<sup>38</sup> *Ibid.*, para. 32.

<sup>39</sup> *Ibid.*, para. 36.

<sup>40</sup> *Ibid.*, para. 41.

<sup>41</sup> *Ibid.*, para. 16.

<sup>42</sup> *Terentyev v. Russia* (application No. 10692/09), judgment of 4 February 2019, para. 77.

the use of “force against others that is likely to result in injury or death, or serious damage to property”.<sup>43</sup>

58. As to the August 2023 protest in front of the Ministry of Culture, the bail revocation order makes no mention of any alleged breach of public order, but rather focuses on the alleged spraying of paint on the royal flag. The charge sheet, while referencing damage to public property, does not indicate that there was any violence or injury to persons.

59. Given that these were broadly peaceful assemblies seeking to express political views, restrictions on those participating in them needed to satisfy the three-part test. Ms. Sanesangkhom’s detention failed that test for the following four reasons.

60. Firstly, section 112 does not satisfy the requirement that restrictions on participation in peaceful assemblies be “provided by law”. Nor are the restrictions envisaged in section 112 necessary or proportionate.

61. Secondly, the bail revocation in the present case violates article 21 of the Covenant. The source recalls that the only matter mentioned on the bail revocation order is that “the third defendant painted a colour on the Queen’s emblem in the royal flag”.<sup>44</sup> This is insufficient to meet the requirements of legitimacy, necessity and proportionality, submits the source.

62. Thirdly, to the extent that the charges are predicated upon the public poll incident protest, they are also not adequately justified, necessary or proportionate. The indictment does not specify the extent to which the protest was a basis for charging the defendants with violating section 112. According to the source, this does not establish a connection between the assembly and any potential justification for restrictions. Furthermore, the specific restrictions of prosecution and imprisonment are not a necessary or proportionate response to a peaceful assembly, even accounting for the alleged minor verbal altercation between police and protesters.

63. Finally, the bail conditions themselves, to the extent that they restricted Ms. Sanesangkhom’s ability to take part in peaceful assemblies – which they clearly did, given that on two occasions her bail was revoked on the basis of such activism – were unlawful because they were vague and overly broad.

c. Category V

64. The source submits that Ms. Sanesangkhom’s detention constitutes a violation of international law on the grounds of discrimination based on political opinion and on her status as a human rights defender.

65. Her detention is part of a well-established pattern of persecution by the authorities of Ms. Sanesangkhom as well as of others who have been detained on the basis of their political opinions and their activities as pro-democracy activists.

66. The Working Group has highlighted several non-cumulative indicators that serve to establish the discriminatory nature of detention based on actual or perceived political opinion. These include the following: (a) the deprivation of liberty was part of a pattern of persecution against the detained person, including for example through previous detention; (b) other persons with similarly distinguishing characteristics have also been persecuted; (c) the authorities have made statements to or have conducted themselves towards the detained person in a manner that indicates a discriminatory attitude; (d) the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights; and (e) the alleged conduct for which the person is detained is only a criminal offence for members of his or her group.<sup>45</sup>

67. The source argues that the first, second and fourth indicators apply to Ms. Sanesangkhom, demonstrating the arbitrary nature of her detention under category V. Firstly, the authorities have launched seven cases against Ms. Sanesangkhom arising from

<sup>43</sup> See the Committee’s general comment No. 37 (2020), para. 15.

<sup>44</sup> Bangkok South Criminal Court, Interim Release Revocation Order.

<sup>45</sup> A/HRC/36/37, para. 48.

her activism. Secondly, the source recalls that Thailand has prosecuted numerous others like Ms. Sanesangkhom who are perceived to have criticized the monarchy. Thirdly, the context suggests that Ms. Sanesangkhom was detained in order to prevent her from exercising her rights to freedom of peaceful assembly and freedom of expression.

68. Furthermore, there is an overlap between category II freedom-of-expression claims and category V claims based on political opinion. When the deprivation of liberty results from the exercise of civil and political rights, such as the right to freedom of expression or association, there is a strong presumption that the deprivation of liberty also constitutes a violation of international law on the grounds of discrimination based on political or other views.<sup>46</sup> The source submits that this presumption applies in favour of Ms. Sanesangkhom.

69. Additionally, the Working Group has previously found violations of category V based on discrimination against individuals for their status as human rights defenders.<sup>47</sup>

70. Ms. Sanesangkhom participated in peaceful assemblies and publicly criticized *lèse-majesté* prosecutions and other rights-restrictive laws. For this, she was repeatedly subjected to criminal proceedings and detention. As such, her deprivation of liberty in the present case also constitutes a category V violation as part of a pattern of persecution for her activities as a human rights defender.<sup>48</sup>

71. The source concludes that the Government detained Ms. Sanesangkhom on the basis of a vague law for conducting an informal poll and participating in a protest, and then again for refusing to stop exercising her rights. The source notes that this case exemplifies how the cycle of detention, bail (subject to repressive conditions) and then the threat of or the actual revocation of bail serves to chill speech and protest in the country.

## (b) Response from the Government

72. On 11 July 2024, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide detailed information by 9 September 2024 about the circumstances of Ms. Sanesangkhom's deprivation of liberty. The Working Group also requested the Government to clarify the legal provisions justifying her detention, as well as their compatibility with the obligations of the Government of Thailand under international human rights law, and in particular with regard to the treaties ratified by the State.

73. The Working Group regrets that it did not receive a response from the Government to the present communication. The Government did not request an extension of the time limit for its reply, as is provided for in the Working Group's methods of work.

## 2. Discussion

74. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work. As a preliminary issue, the Working Group takes note that Ms. Sanesangkhom died while in custody and is therefore no longer detained. There is no provision in the Working Group's methods of work that precludes consideration of a case in such circumstances. Indeed, the Working Group considers it necessary to render an opinion given that the allegations relating to Ms. Sanesangkhom's deprivation of liberty in Thailand and subsequent death in custody are serious and warrant further attention.<sup>49</sup>

75. In determining whether Ms. Sanesangkhom's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the

<sup>46</sup> Opinion No. 88/2017, para. 43.

<sup>47</sup> See opinions No. 26/2017 and No. 48/2017.

<sup>48</sup> Opinion No. 26/2017, para. 57.

<sup>49</sup> See opinions No. 55/2018, para. 59; and No. 50/2017, para. 53 (c); and opinion No. 36/2020.

Government if it wishes to refute the allegations.<sup>50</sup> In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

(a) **Category I**

76. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis. The source argues that the detention was arbitrary under category I because it is impossible to invoke any legal basis justifying Ms. Sanesangkhom's detention under section 112 of the Criminal Code, as it violates the principle of legality under international human rights law.

77. In considering whether that provision meets international standards, the Working Group has taken into account relevant analysis of *lèse-majesté* offences in Thailand carried out by the Working Group and other international human rights mechanisms in recent years.<sup>51</sup> Briefly, that includes the following:

(a) In its jurisprudence relating to Thailand, the Working Group has consistently found the detention of individuals under section 112 of the Criminal Code and section 14 of the Computer Crimes Act to be arbitrary under category II when it resulted from the peaceful exercise of freedom of expression;<sup>52</sup>

(b) In numerous communications to the Government, special procedure mandate holders have expressed concern about the *lèse-majesté* provisions of the Criminal Code, including their use in restricting freedom of expression and their incompatibility with article 19 of the Covenant.<sup>53</sup> The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that *lèse-majesté* provisions have no place in a democratic country and are incompatible with freedom of expression under international human rights law.<sup>54</sup> The Office of the United Nations High Commissioner for Human Rights has expressed similar concerns;<sup>55</sup>

(c) In its concluding observations on the second periodic report of Thailand, the Human Rights Committee expressed its concern that criticism and dissension regarding the royal family was subject to punishment of between 3 and 15 years' imprisonment. The Committee also expressed concern about reports of a sharp increase in the number of persons detained and prosecuted for the crime of *lèse-majesté* since the military coup and about extreme sentencing practices, which have resulted in extensive periods of imprisonment in some cases. The Committee has explicitly urged the Government to review section 112 of the Criminal Code to bring it into line with article 19 of the Covenant, reiterating that the imprisonment of persons for exercising their freedom of expression violates article 19;<sup>56</sup>

<sup>50</sup> A/HRC/19/57, para. 68.

<sup>51</sup> Relevant examples of this analysis are also given in opinions No. 51/2017, paras. 28–40; and No. 56/2017, paras. 36 and 42–55. For more recent examples, see opinions No. 4/2019, paras. 48 and 49; No. 64/2021, paras. 54–58; and No. 49/2023, paras. 61–64.

<sup>52</sup> See opinions No. 35/2012, No. 41/2014, No. 43/2015, No. 44/2016, No. 51/2017 and No. 49/2023. The Working Group has also made similar findings in relation to *lèse-majesté* laws in other countries; see, for example, opinions No. 28/2015, No. 48/2016 and No. 20/2017.

<sup>53</sup> See communications THA 5/2011, THA 9/2011, THA 10/2011, THA 13/2012, THA 1/2014, THA 3/2014, THA 13/2014, THA 9/2015, THA 1/2017, THA 7/2017, THA 3/2019, THA 8/2020, THA 11/2020, THA 6/2021, THA 1/2023 and THA 2/2023, available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>54</sup> See, for example, UN News, “UN rights expert urges Thailand to loosen restrictions around monarchy defamation law”, 7 February 2017. See also A/HRC/14/23/Add.1, paras. 2361–2409; and A/HRC/29/25/Add.3, para. 366.

<sup>55</sup> See, for example, Office of the United Nations High Commissioner for Human Rights, “Press briefing note on Thailand”, 13 June 2017. See also Office of the United Nations High Commissioner for Human Rights, Regional Office for South-East Asia, press release dated 28 March 2017.

<sup>56</sup> CCPR/C/THA/CO/2, paras. 37 and 38; United Nations Educational, Scientific and Cultural Organization (UNESCO) submission to the Working Group on the Universal Periodic Review at its thirty-ninth session for the third-cycle review of Thailand, para. 4; and United Nations country team submission for the third-cycle review of Thailand, “Implementation of international human rights obligations, considering applicable international humanitarian law”, April 2021, paras. 58 and 59.

(d) During the most recent consideration of Thailand under the universal periodic review mechanism of the Human Rights Council, in November 2021, the *lèse-majesté* laws and restrictions on the right to freedom of opinion and expression were frequently raised as matters of concern. The Government was urged to bring its *lèse-majesté* laws into conformity with its international commitments.<sup>57</sup>

78. The Working Group recalls its jurisprudence in which it found that section 112 of the Criminal Code, pursuant to which Ms. Sanesangkhom was deprived of her liberty, was vague and overly broad.<sup>58</sup> Section 112 of the Criminal Code does not define what kinds of expression constitute defamation, insult or threat to the monarchy, and leaves the determination of whether an offence has been committed entirely to the discretion of the authorities.

79. Given the considerable body of findings in relation to the *lèse-majesté* provisions in section 112 of the Criminal Code, the Working Group is convinced that Ms. Sanesangkhom was being detained pursuant to legislation that expressly violates international human rights law. As a result, there was no legal basis for her detention. The Working Group also recalls its extensive jurisprudence in which it has found that detention pursuant to a law that is inconsistent with international human rights law lacks a legal basis and is therefore arbitrary.<sup>59</sup>

80. As the Working Group has stated, the principle of legality requires that laws be formulated with sufficient precision so that the individuals can access and understand the law and regulate their conduct accordingly.<sup>60</sup> The Working Group considers that section 112 of the Criminal Code is so vague as to be inconsistent with international human rights law. It is thus incompatible with article 11 (2) of the Universal Declaration of Human Rights and article 15 (1) of the Covenant and cannot be considered to be prescribed by law and defined with sufficient precision due to its vague and overly broad language.<sup>61</sup> Given the continuing international concern regarding the country's *lèse-majesté* laws, the Government should work with international human rights mechanisms to bring those laws into conformity with its international obligations under the Universal Declaration of Human Rights and the Covenant.

81. The source also asserts that Ms. Sanesangkhom's pretrial detention violated her right to liberty pending trial, under article 9 (3) of the Covenant. The source recalls that such prolonged pretrial detention has been due both to the court's rejections of Ms. Sanesangkhom's bail requests and, once accorded, to the court's revocation of such bails, on the basis of alleged infringement of the bail conditions. According to the source, these decisions were not based on individualized assessments of the circumstances of Ms. Sanesangkhom's case.

82. Article 9 (3) of the Covenant provides that it is not to be the general rule that persons awaiting trial are detained in custody. The Working Group recalls the view of the Human Rights Committee that pretrial detention should be the exception and should be as short as possible and must be based on an individualized determination that it is reasonable and necessary, taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.<sup>62</sup> Courts must examine whether

<sup>57</sup> A/HRC/49/17, paras. 52.56–52.62. See also the recommendations made during the second-cycle review: A/HRC/49/17, paras. 158.130–158.138, 158.141, 158.142, 159.18 and 159.50–159.63.

<sup>58</sup> Opinions No. 51/2017, para. 32; No. 56/2017, para. 45; No. 4/2019, para. 55; No. 64/2021, paras. 55 and 56; and No. 49/2023, paras. 64, 66 and 70.

<sup>59</sup> See, for example, opinions No. 43/2017, para. 34; No. 40/2018, para. 45; and No. 69/2018, para. 21. See also opinion No. 14/2017, para. 49.

<sup>60</sup> See, for example, opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59; Human Rights Committee, general comment No. 35 (2014), para. 22; and Human Rights Committee, general comment No. 34 (2011), paras. 24–26 (in which it noted that any restriction on freedom of expression must be provided for by law with sufficient precision to enable individuals to regulate their conduct, and that such law must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution).

<sup>61</sup> Human Rights Committee, general comment No. 34 (2011), para. 25.

<sup>62</sup> Human Rights Committee, general comment No. 35 (2014), para. 38.

alternatives to pretrial detention, such as bail or other conditions, would render detention unnecessary in the particular case.<sup>63</sup>

83. The source argues that Ms. Sanesangkhom had her bail revoked on the basis that she had violated the condition in the bail order of 4 August 2022 not to cause further damage to the monarchy or further disturbance. Specifically, the court revoked her bail because she had allegedly “painted a colour on the Queen’s emblem in the royal flag”, thus violating that condition. The source submits that beyond that, the court conducted no individualized assessment of whether detention was reasonable and necessary and likewise failed to conduct even a cursory analysis of less restrictive alternatives.

84. When considering whether the bail application complies with the requirements of article 9 (3) of the Covenant, it is crucial for non-custodial measures, such as bail and sureties, to be set at realistic levels.<sup>64</sup> In the present case, the Working Group affirms that the bail condition was too vaguely worded (“causing further disturbance and damage to the monarchy”).<sup>65</sup> In the absence of the requisite degree of precision that would enable her to direct her conduct accordingly, such bail conditions render the measures arbitrary.

85. Furthermore, and significantly, these bail conditions require that she not exercise her protected rights, the exercise of which exposed her to the charges against her in the first place. As such, and noting the lack of a government response, the Working Group observes that the bail order permitted the revocation of bail on grounds that extended beyond the objectives deemed legitimate under the Covenant, and as such was not based on an individualized determination that it was reasonable and necessary. In effect, bail conditions that prohibited comparable conduct that underlay charges resulted in further violations of Ms. Sanesangkhom’s fundamental rights. Based on the foregoing, the Working Group finds that her detention lacked a legal basis and was ordered in violation of article 9 (3) of the Covenant and in contravention of principles 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

86. The Working Group further observes that, even when granted bail, Ms. Sanesangkhom was subjected to stringent conditions – notably, being prohibited from leaving the country and from leaving her residence between 7 p.m. and 6 a.m. except as approved by the court, as well as being obliged to report to the court every 30 days – that resembled house arrest. In this regard, the Working Group recalls its position that deprivation of liberty may be compared with house arrest when it is carried out in closed premises that the person in question is not allowed to leave.<sup>66</sup> The Working Group’s deliberation No. 1 on house arrest also states that, in all other situations, it is for the Working Group to decide, on a case-by-case basis, whether the case in question constitutes a form of detention and, if so, whether it has an arbitrary character. As the Working Group has found, deprivation of liberty is not only a question of legal definition, but also a question of fact, and that, if a person is not free to leave a place or establishment, all appropriate safeguards that are in place to prevent arbitrary detention must be respected.<sup>67</sup>

87. For the reasons set out above, the Working Group finds that there was no legal basis for Ms. Sanesangkhom’s detention and that her deprivation of liberty was thus arbitrary under category I.

**(b) Category II**

88. The source submits that Ms. Sanesangkhom’s deprivation of liberty is arbitrary under category II, as it stems directly from her peaceful exercise of her right to freedom of expression. Moreover, restrictive bail conditions imposed on her further obstructed Ms. Sanesangkhom’s political participation. The source asserts that the charge of *lèse-majesté* under section 112 is a violation of an individual’s freedom of expression because

<sup>63</sup> Ibid.

<sup>64</sup> A/HRC/39/45/Add.2, paras. 23 and 83 (a) (i).

<sup>65</sup> Opinions No. 30/2023, paras. 69–72; and No. 34/2024.

<sup>66</sup> Opinions No. 13/2007, para. 24; No. 37/2018, para. 25; and No. 11/2023, para. 49; and deliberation No. 1 on house arrest (E/CN.4/1993/24, sect. II).

<sup>67</sup> Opinions No. 50/2022, para. 79; and No. 49/2023, para. 58.

it broadly and vaguely criminalizes any expression that could be construed as insulting the monarch and, in practice, allows the Government to arbitrarily criminalize any political dissent.

89. The Working Group considers that Ms. Sanesangkhom's speeches and activities fall within the boundaries of the exercise of the right to freedom of expression protected by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. That right includes the expression of every form of idea and opinion capable of transmission to others, including political discourse, commentary on public affairs, and cultural and artistic expression.<sup>68</sup> The mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties. All public figures, including those exercising the highest political authority, such as Heads of State and Government, are legitimately subject to criticism and political opposition, and laws should not provide for more severe penalties solely on the basis of the identity of the person who may have been impugned.<sup>69</sup> Moreover, the Human Rights Committee has specifically expressed concern regarding *lèse-majesté* laws, noting that the application of criminal defamation laws should only be allowed in the most serious cases and that imprisonment is never an appropriate penalty.<sup>70</sup>

90. Under article 19 (3) of the Covenant, any restriction imposed on the right to freedom of expression must satisfy three requirements: the restriction must be provided by law, be designed to achieve a legitimate aim (namely the protection of national security, public order, or public health or morals) and be imposed in accordance with the requirements of necessity and proportionality.<sup>71</sup> Moreover, in response to the recent ruling of the Constitutional Court, which found that the Move Forward Party's efforts to amend section 112 of the Criminal Code, which included engaging in social media discussions and political protests about it, were aimed at overthrowing the monarchy, United Nations experts said: "Political debates, even on sensitive topics, are the oxygen of a democratic society and should not be conflated with violence or sedition. According to international law and international treaties to which Thailand is a party, public figures, including those exercising the highest political authority in the land, such as monarchs and Heads of State and Government, are not immune from criticism."<sup>72</sup>

91. Ms. Sanesangkhom was reportedly detained for her participation in public protests, including the carrying out of an informal poll containing expressions of dissent towards public figures. This is irrespective of whether some participants taking part in the public poll may have used insulting language against the police or removed barricades placed by the security force. Importantly, the indictment does not allege that the activists engaged in any violence.

92. Furthermore, Ms. Sanesangkhom was also detained for her participation in the protest in front of the Ministry of Culture, in the context of which she allegedly damaged the royal flag by throwing paint on it. This conduct was deemed to be defamatory to the monarchy. However, in the absence of a government response, the Working Group finds that Ms. Sanesangkhom's act constitutes legitimate expression – since freedom of expression also embraces non-verbal forms of expression – concerning matters of public interest, such as the fundamental right of citizens to protest and to actively engage in the political life of the country, even when this entails dissenting views. The source submits that, while section 112 criminalizes defaming, insulting or threatening the monarch of Thailand, the Criminal Code does not provide individuals with any guidance on how the law limits their conduct. Importantly, there is nothing to suggest that Ms. Sanesangkhom's conduct incited violence of any kind that might have given cause to restrict her behaviour.<sup>73</sup>

<sup>68</sup> Human Rights Committee, general comment No. 34 (2011), para. 11.

<sup>69</sup> *Ibid.*, para. 38.

<sup>70</sup> *Ibid.*, para. 47.

<sup>71</sup> *Ibid.*, paras. 21–36.

<sup>72</sup> See <https://www.miragenews.com/un-experts-concerned-over-thailands-party-1294231/>.

<sup>73</sup> The Government has not provided any information to indicate, for example, that restrictions might have been legitimately imposed under art. 19 (3) of the Covenant for the protection of national security or public order.

93. With respect specifically to the issue of the damaging of symbols and emblems, the Human Rights Committee has raised concerns regarding laws that penalize “disrespect for flags and symbols”.<sup>74</sup> Against this backdrop, the Working Group recalls that the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has found that criminal defamation laws, to which section 112 bears a strong resemblance, may not be used to protect abstract or subjective notions or concepts – such as the State, or national symbols.<sup>75</sup> Indeed, the Special Rapporteur points out that international human rights law protects individuals and groups of people, not abstract notions or institutions that are subject to scrutiny, comment or criticism.<sup>76</sup> Noting the source’s un rebutted submissions, the Working Group does not consider it plausible that Ms. Sanesangkhom’s conduct could threaten the rights or reputations of others, national security, public order, or public health or morals, and it notes with grave concern the disproportionate sentence of imprisonment for the exercise of fundamental rights.

94. The Working Group recalls the duty of the Government to bring the *lèse-majesté* laws into conformity with international human rights law.<sup>77</sup> Freedom of expression is a core tenet of a democratic society. There is a growing consensus regarding the serious harm to society caused by existing *lèse-majesté* laws enforced in a manner that may lead to individuals refraining from debates on matters of public interest in order to avoid prosecution.<sup>78</sup>

95. The Working Group remains concerned by the pattern of arbitrary detention in cases involving the *lèse-majesté* laws of Thailand. It has repeatedly indicated its concern that section 112 of the Criminal Code is vague and overly broad and criminalizes protected expression.<sup>79</sup> The Working Group considers that charges and convictions under section 112 of the Criminal Code for the peaceful exercise of rights are inconsistent with the Universal Declaration of Human Rights and the Covenant. Furthermore, the United Nations High Commissioner for Human Rights recently expressed grave concern over the Constitutional Court’s ruling to dissolve the Move Forward Party and ban its senior figures from political life on account of its advocacy for the reform of the country’s *lèse-majesté* laws, recalling that United Nations human rights mechanisms have long expressed concerns about section 112 of the Criminal Code, which is inconsistent with the obligations of Thailand under the Covenant and should be reviewed.<sup>80</sup>

96. Based on the foregoing, the Working Group finds that the deprivation of liberty of Ms. Sanesangkhom is arbitrary, falling within category II, as it violates article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for appropriate action.

**(c) Category V**

97. The Working Group will now examine whether Ms. Sanesangkhom’s deprivation of liberty is discriminatory under international law and whether it therefore falls under category V.

98. The Working Group has already established that Ms. Sanesangkhom’s detention resulted from her exercise of the right to freedom of expression. When it is established that deprivation of liberty resulted from the active exercise of civil and political rights, there is a

<sup>74</sup> See the Committee’s general comment No. 34 (2011), para. 38.

<sup>75</sup> A/HRC/14/23, para. 84.

<sup>76</sup> Ibid.

<sup>77</sup> See, for example, opinions No. 51/2017, para. 57; No. 56/2017, para. 72; and No. 49/2023, para. 71.

<sup>78</sup> Human Rights Committee, general comment No. 34 (2011), paras. 2 and 21 (noting that freedom of expression is an essential foundation of every free and democratic society and that any restrictions on freedom of expression must not put in jeopardy the right itself).

<sup>79</sup> Opinions No. 51/2017, para. 32; No. 56/2017, para. 45; No. 4/2019, para. 55; No. 64/2021, paras. 55 and 56; and No. 49/2023, para. 70.

<sup>80</sup> See <https://www.ohchr.org/en/press-releases/2024/08/thailand-un-human-rights-chief-says-deeply-troubled-dissolution-move-forward>.

strong presumption that the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on political or other views.<sup>81</sup>

99. The Working Group recalls several non-cumulative indicators that serve to establish the discriminatory nature of detention. These include the following: the deprivation of liberty was part of a pattern of persecution against the detained person, including, for example, through previous detention; other persons with similarly distinguishing characteristics have also been persecuted; or, the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights.<sup>82</sup>

100. With regard to these non-cumulative indicators, the Working Group recalls that when Ms. Sanesangkhom was granted bail, her conditions of release were tantamount to house arrest and she was subjected to several restrictive conditions, such as being prohibited from engaging in certain activities or conduct linked to the charges against her. Moreover, the Working Group recalls the source's submission that a total of seven legal cases were brought against Ms. Sanesangkhom, all in connection with her displays of political dissent and her human rights activities. It further observes an overall pattern in Thailand of detaining individuals who peacefully oppose the lèse-majesté laws, and the present case is another example.<sup>83</sup> The Working Group observes that Ms. Sanesangkhom's political views are at the centre of the present case and that the authorities have displayed a discriminatory attitude towards her.

101. The Working Group notes that many of the cases involving Thailand, particularly those concerning its lèse-majesté laws, relate to charges and prosecution under vaguely worded criminal offences that typically attract heavy penalties, lack a legal basis and also incur due process violations.<sup>84</sup> United Nations experts recently expressed dismay at the undemocratic use of the lèse-majesté law as a political tool to dissolve the Move Forward Party, which won the largest number of seats in the last general election, and to remove its parliamentarians from politics. During the 2023 election campaign, the party had promised to reform section 112 of the Criminal Code (i.e. the lèse-majesté law).<sup>85</sup>

102. Based on the foregoing, the Working Group finds that Ms. Sanesangkhom was deprived of her liberty on discriminatory grounds on the basis of her political opinions.<sup>86</sup> For these reasons, the Working Group considers that Ms. Sanesangkhom's deprivation of liberty constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant on the grounds of discrimination based on political or other opinion, as well as on her status as a human rights defender. Her deprivation of liberty therefore falls under category V.

**(d) Concluding remarks**

103. The Working Group expresses grave sadness that Ms. Sanesangkhom died in custody at the age of 29 on 14 May 2024. The source submits that officials have reportedly refused to provide Ms. Sanesangkhom's team with the CCTV footage from the prison hospital at the time of her death. The source further notes that although the Prime Minister has promised an inquiry into Ms. Sanesangkhom's death, including possible negligence by prison officials in managing her treatment, little progress appears to have been made thereon.

104. The Working Group urges the Government to urgently conduct a thorough, effective and independent investigation into the circumstances that led to the death of Ms. Sanesangkhom while in custody. The investigation must include a detailed report by an independent expert of the medical and other care provided to Ms. Sanesangkhom since her

<sup>81</sup> Opinions No. 91/2020, para. 65; No. 59/2019, para. 79; No. 13/2018, para. 34; and No. 88/2017, para. 43.

<sup>82</sup> A/HRC/36/37, para. 48.

<sup>83</sup> See, for example, opinions No. 51/2017, No. 56/2017, No. 4/2019, No. 64/2021 and No. 49/2023.

<sup>84</sup> Opinions No. 44/2016, No. 51/2017, No. 56/2017, No. 3/2018, No. 4/2019, No. 42/2020 and No. 49/2023.

<sup>85</sup> See <https://www.ohchr.org/en/press-releases/2024/08/thailand-un-experts-seriously-concerned-about-dissolution-main-political>.

<sup>86</sup> Opinions No. 91/2020, para. 66; No. 13/2018, para. 36; and No. 88/2017, para. 45.

arrest and must be conducted in a transparent manner with the full involvement of Ms. Sanesangkhom's family members and their legal and medical representatives.<sup>87</sup>

### 3. Disposition

105. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Netiporn Sanesangkhom, being in contravention of articles 2, 7, 9 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and V.

106. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Ms. Sanesangkhom's family an enforceable right to compensation and other reparations, in accordance with international law.

107. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Sanesangkhom, as well as her death during the detention period, and to take appropriate measures against those responsible for the violation of her rights.

108. The Working Group requests the Government to bring its laws, particularly section 112 of the Criminal Code, into conformity with the recommendations made in the present opinion and with the commitments made by Thailand under international human rights law.

109. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, for appropriate action.

110. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

### 4. Follow-up procedure

111. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether compensation or other reparations have been made to Netiporn "Bung" Sanesangkhom's family;

(b) Whether an investigation has been conducted into the violation of Ms. Sanesangkhom's rights and, if so, the outcome of the investigation;

(c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Thailand with its international obligations in line with the present opinion;

(d) Whether any other action has been taken to implement the present opinion.

112. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

113. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action

<sup>87</sup> Opinions No. 36/2020, para. 79; and No. 57/2021, para. 77; and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 34.

would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as of any failure to take action.

114. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>88</sup>

*[Adopted on 11 November 2024]*

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Advance edited version

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<sup>88</sup> Human Rights Council resolution 51/8, paras. 6 and 9.