
Advance Edited Version

Distr.: General
23 October 2023

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-seventh session, 28 August–1 September 2023

Opinion No. 49/2023 concerning Tantawan Tuatulanon (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,¹ on 9 May 2023 the Working Group transmitted to the Government of Thailand a communication concerning Tantawan Tuatulanon. 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).

¹ [A/HRC/36/38](#).

1. Submissions

(a) Communication from the source

4. Tantawan Tuatulanon is a national of Thailand, aged 20 years at the time of her detention.

5. According to the source, Ms. Tuatulanon is a university student and pro-democracy activist. She went to university in Singapore but returned to Thailand after the coronavirus disease (COVID-19) pandemic began. In 2020, she joined a volunteer protestor protection group known as WeVolunteer, which consisted mostly of students. Ms. Tuatulanon became more involved in leadership after two of its main leaders were arrested.

6. In early 2022, Ms. Tuatulanon began mobilizing with the groups Draconis Revolution and ThaluWang, which reportedly advocated peacefully for democracy in Thailand. ThaluWang allegedly operated by conducting public polls. It is reported that ThaluWang members would walk into the metro holding a poster that asked a question, usually about the public's support for and perception of the monarchy. They would offer ribbons to passengers. Each colour would signify an answer to the question. ThaluWang members would invite passengers to tie the ribbon that signified their response to the poll to the handholds on the metro, so that they could measure the responses.

7. According to the source, on 26 February 2022, Ms. Tuatulanon was arrested for conducting a poll on whether the country's lèse-majesté laws should be repealed. Her wrists were bound with cable ties and she was not allowed to bring a trusted adviser with her into the police station. She was fined 5,000 baht and released. Her restraints left bruises on her wrists.

8. On 5 March 2022, Ms. Tuatulanon was reportedly arrested again. She was allegedly apprehended at Ratchadamnoen Avenue in Bangkok, while live-streaming a royal motorcade route. It is alleged that the audio of her live stream captures her questioning the way in which the police had cleared a group of protesting farmers along the route, who were demanding that the Government address the problem of agricultural debt. On the live stream, Ms. Tuatulanon remarked that the farmers' protest was being cleared so that the King could pass through the area without hearing the protest. She then indicated that the way in which the police responded to the farmers showed that the monarchy mattered more than people.

9. According to the source, no warrant was provided during the arrest. Ms. Tuatulanon was charged and arrested on the spot and was read certain of her rights by several officers who jointly arrested her. However, a request was allegedly filed for the detention of Ms. Tuatulanon and signed by the Police Lieutenant of the Nang Loeng police station.

10. Reportedly, the authorities believed that Ms. Tuatulanon's actions could incite hatred of the monarchy and, if Ms. Tuatulanon were to be temporarily released, she would flee and be difficult to locate. Ms. Tuatulanon was detained under section 112 of the Criminal Code, which stipulates a prison sentence of between 3 and 15 years for anyone who defames, insults or threatens the King, the Queen, the Heir-Apparent or the Regent. The source notes that, in practice, that provision is often used in order to silence political dissent.

11. The police initially took Ms. Tuatulanon to Phaya Thai police station, but quickly moved her to the Police Club on the outskirts of Bangkok in Lak Si, reportedly, in an attempt to prevent her supporters from following her and staging a protest at the police station. Ms. Tuatulanon was allegedly held at the Narcotics Suppression Bureau located inside the Police Club. It is reported that after two hours at the Police Club, Ms. Tuatulanon was allowed to see a lawyer.

12. On 6 March 2022, Ms. Tuatulanon was reportedly charged under the lèse-majesté laws, on the grounds that her comments during the live stream could incite someone to hate the King. On 7 March 2022, she was allegedly granted bail for 100,000 baht on the basis of certain conditions, among others, that she refrained from using social media to incite others to protest or to join in any political protests.

13. On 20 April 2022, Ms. Tuatulanon's bail was revoked. The court alleged that her social media activity was a repetition of her offence; the allegation was based on the social

media images that the judge found in his spare time. It is claimed by the source that that evidence was unlikely to have been submitted to the court under proper procedures concerning evidence. Ms. Tuatulanon was allegedly taken to and held at the Central Women's Correctional Institution.

14. A day after her bail was revoked, on 21 April 2022, it is reported that Ms. Tuatulanon began a hunger strike to protest against her pretrial detention. She refused all food, accepting only water and occasionally milk.

15. Allegedly, on 17 May 2022, a Member of the House of Representatives from the Move Forward Party posted bail for Ms. Tuatulanon, pledging his status as security. His request was reportedly denied on the grounds that he had failed to submit a payslip to verify his employment and that there were no other special reasons to grant bail. He then submitted a certifying letter from the Secretariat of the House of Representatives, which listed his salary.

16. On 20 May 2022, Ms. Tuatulanon's bail was allegedly extended for another seven days. The Member of the House of Representatives submitted another bail request and a bail hearing was set for 26 May 2022.

17. On 26 May 2022, Ms. Tuatulanon's request for bail was granted and, on 27 May 2022, she was released on conditional bail for 30 days. At that point, Ms. Tuatulanon had allegedly been on hunger strike for 37 days. However, the conditions for her bail at that time resembled a house arrest. She was not permitted to leave her residence except when a detailed motion was filed and the court approved the motion; she was also required to wear an ankle bracelet that monitored her location. Moreover, the source notes she was and continues to be forbidden from leaving the country.

18. In November 2022, it is alleged that dates were set for Ms. Tuatulanon's trial. Examination of the prosecutor's witnesses was scheduled for 8 to 10 and 16 August 2023, and examination of Ms. Tuatulanon's witnesses was scheduled for 17 to 22 August 2023. The verdict is predicted to be released between one and two months after the end of the trial; if convicted, Ms. Tuatulanon is expected to be sentenced on the same day.

19. On 16 January 2023, Ms. Tuatulanon appeared in court to revoke her own bail and to demand the release on bail of other political activists and the adoption of judicial and legal reforms, including revocation of laws on sedition and lèse-majesté. Ms. Tuatulanon was detained as a result. On 18 January 2023, Ms. Tuatulanon allegedly began a hunger strike again, on that occasion refusing both food and water, in the Central Women's Correctional Institution to protest what she considered to be the unjust pretrial detention of critics of the monarchy.

20. The source notes that, on 20 January 2023, Ms. Tuatulanon collapsed and was transferred to Thammasat University Hospital. She refused food, water and most medical interventions, including antacids, and was very weak, unable to move without support, suffered from severe abdominal pain and swollen lymph nodes and was at risk of cardiac arrest due to malnutrition and lack of potassium. Given her condition, a human rights lawyers group sent its representatives to visit Ms. Tuatulanon on a daily basis. However, on 28 January 2023, officials from the Corrections Department reportedly denied the group permission to visit Ms. Tuatulanon, stating that it was a public holiday.

21. On 24 February 2023, Ms. Tuatulanon was permitted to check herself out of the hospital to continue peaceful protests in front of the Supreme Court. However, the following week, Ms. Tuatulanon was allegedly returned to Thammasat University Hospital because of her deteriorating health condition caused by the hunger strike. After announcing an end to her hunger strike on 11 March 2023, Ms. Tuatulanon was discharged on 23 March 2023.

22. Following her discharge from hospital, Ms. Tuatulanon was allegedly released pending trial. Ms. Tuatulanon's trial was scheduled to begin in August 2023. If convicted, she faces up to 15 years in prison. The source notes that, because of the historically high conviction rate under section 112 of the Criminal Code, Ms. Tuatulanon is very likely to be convicted of the charges brought against her. Furthermore, the source notes that there is no legal barrier for the Government to reimpose pretrial detention or other restrictions on liberty on Ms. Tuatulanon.

23. The source submits that the arrest, denial of bail and detention in the form of house arrest of Ms. Tuatulanon are arbitrary, falling under categories I, II and III of the Working Group. It is argued that the detention is arbitrary under category I because it is impossible to invoke any legal basis justifying her pretrial detention and subsequent house arrest. According to the source, the detention is arbitrary, under category II, because it resulted from Ms. Tuatulanon's peaceful exercise of her right to freedom of expression and, under category III, because the authorities failed to meet minimum international standards of due process, including the presumption of innocence.

24. More specifically, in relation to category I, the source submits that there is no legal basis for the detention of Ms. Tuatulanon since she is detained under legislation that expressly violates international human rights law and she is charged and held under the terms of a vague law.

25. The source recalls that the Working Group has previously found category I violations in cases in which the authorities detained persons pursuant to legislation that expressly violated international human rights law.² Specifically, the source adds that the Working Group has previously found that the *lèse-majesté* law of Thailand, under section 112 of the Criminal Code, amounts to a violation of international human rights law and, accordingly, fails to provide a legal basis for detention.³

26. It is noted that, in Ms. Tuatulanon's case, the authorities have relied exclusively on section 112 of the Criminal Code to justify her arrest and pretrial detention. Furthermore, the authorities have failed to present any evidence that she engaged in any activity that was not protected under well-established principles of international human rights law. The source submits that Ms. Tuatulanon's activities were entirely peaceful and that her conduct constituted disseminating information of legitimate public interest, specifically that concerning unpopular policies on repayment of debt and the fundamental right of citizens to protest. It is argued that, because the legal basis of Ms. Tuatulanon's detention, namely section 112 of the Criminal Code, is inconsistent with international human rights law, it lacks a legitimate legal basis. Accordingly, the detention of Ms. Tuatulanon is allegedly arbitrary and falls under category I of the Working Group.

27. Furthermore, it is argued that the Working Group has previously indicated that restrictions on freedom of expression may not be justified by vague references to the interests of national security or public order, and that detentions based on such vague references are arbitrary under category I.⁴ As guaranteed by article 15 (1) of the Covenant and as interpreted by the Human Rights Committee, individuals have the right to know what conduct violates the law.

28. The source explains that, while section 112 criminalizes defaming, insulting or threatening the King of Thailand, the Criminal Code does not provide individuals with any guidance on how the law limits their conduct. In the present case, Ms. Tuatulanon live-streamed her commentary on social media about the traffic measures the police were taking to clear roads outside a United Nations building in preparation for the passing of the royal motorcade. Allegedly, there was no objective guidance available for Ms. Tuatulanon to have predicted that such peaceful commentary on traffic measures could possibly be construed as defamation of the monarchy under the overbroad and vague provisions of section 112 of the Criminal Code.

29. The source recalls that the Working Group has in the past commented that the *lèse-majesté* laws of Thailand are vague.⁵ The Working Group, as well as the Human Rights Committee, have urged the Government to revise section 112 of the Criminal Code in order to bring it into conformity with international human rights law.⁶

30. In relation to category II, the source argues that Ms. Tuatulanon was imprisoned for exercising her right to freedom of opinion, expression and political participation. Her bail

² Opinion No. 4/2019, para. 49.

³ Ibid.

⁴ Opinion No. 44/2014, paras. 26 and 28.

⁵ See opinion No. 56/2017.

⁶ Ibid., para. 78. See also opinion No. 51/2017, para. 62.

conditions further prevented her from engaging in political participation through social media.

31. The source recalls that the rights to freedom of opinion and freedom of expression, guaranteed by article 19 (1) and (2) of the Covenant, are fundamental rights under international human rights law. Article 19 of the Covenant guarantees for all persons the right to hold opinions without interference and freedom of expression, including the 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 choice. The Universal Declaration of Human Rights provides a similar guarantee. The Human Rights Committee has explained that the protections under article 19 of the Covenant extend to all forms of expression and the means of their dissemination.⁷ The source argues that the Working Group has recognized that the imprisonment of human rights defenders for speech-related reasons is subject to higher scrutiny.⁸

32. Similarly, the source notes that the right to freedom of political participation is a fundamental right under international human rights law. Article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant guarantee the right to political participation. One fundamental element of that right is the right to take part in the conduct of public affairs. The source adds that the Working Group has highlighted the arbitrary detention of political opposition leaders as an example of pervasive limitations on the right to political participation. Individuals must be allowed to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.⁹

33. The source asserts that the authorities have arbitrarily detained Ms. Tuatulanon as a direct result of her exercising her freedom of expression. The charge of lèse-majesté under section 112 of the Criminal Code is a violation of an individual's freedom of expression because it broadly and vaguely criminalizes any expression that could be construed as insulting the monarchy. The source argues that, in practice, that allows the Government to arbitrarily criminalize any political dissent.

34. The source argues that the Working Group has repeatedly indicated its concern that section 112 of the Criminal Code is vague and overbroad and criminalizes protected expression.¹⁰ Reportedly, Ms. Tuatulanon was charged under section 112 for defaming the monarchy. Therefore, regardless of whether the underlying factual allegations are true, the authorities have allegedly deprived Ms. Tuatulanon of her liberty under a law that is incompatible with the right to freedom of expression, which is guaranteed under the Universal Declaration of Human Rights and the Covenant.

35. The source points out that the facts of the case also support the argument that Ms. Tuatulanon was arbitrarily detained because she decided to exercise her right to freedom of expression, opinion and political participation as she was arrested after live-streaming her commentary on the traffic measures related to the royal motorcade, which was considered defamatory to the monarchy. Her bail was later revoked for making social media posts about the monarchy. Each of the acts for which Ms. Tuatulanon was detained was an act expressing her beliefs through various means of dissemination.

36. Moreover, the source argues that the restrictions on freedom of expression enumerated in article 19 (3) of the Covenant do not apply to Ms. Tuatulanon's case and that her detention serves no legitimate purpose.

37. In that context, the source recalls that, in article 19 of the Covenant, there are limited exceptions to the right to freedom of expression, but only if they are provided for by law and are necessary, namely in relation to: (a) respect for the rights and reputations of others; and (b) the protection of national security or of public order, or of public health or morals.¹¹ Those restrictions are generally interpreted narrowly and may not jeopardize the right itself.¹² In

⁷ Human Rights Committee, general comment No. 34 (2011), para. 12.

⁸ Opinion No. 62/2012, para. 39.

⁹ Human Rights Committee, *Marques de Morais v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

¹⁰ Opinion No. 56/2017, paras. 43–45; and opinion No. 51/2017, paras. 30–32.

¹¹ Article 19 (3) of the Covenant.

¹² Human Rights Committee, general comment No. 34 (2011), para. 21.

general, a permissible limitation must be provided by law, protect one of the enumerated purposes under article 19 (3) of the Covenant and be necessary to achieve that purpose.¹³ The source argues that the authorities must be able to show, on an individual basis, that the restrictions on rights are necessary. General allegations that an individual's expression or association are injurious to national security, without evidence of a specific threat and without a proportional response, do not suffice as an individualized justification.¹⁴ An expression that is merely insulting to a public figure is not sufficient to justify the imposition of penalties.¹⁵ In the specific context of Thailand, the source notes that the Working Group has repeatedly found the country's lèse-majesté laws to be in violation of article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.¹⁶

38. It is argued that the language of section 112 of the Criminal Code, which criminalizes "whoever defames, insults or threatens the King, the Queen, the Heir-Apparent or the Regent" is unreasonable and ambiguous. The justification for the arrest of Ms. Tuatulanon is that her actions could have incited someone to hate the monarchy, which is an arbitrary and discretionary excuse in violation of the Covenant. Ms. Tuatulanon's conduct allegedly constitutes disseminating information of legitimate public interest, specifically that concerning unpopular debt policies and the fundamental right of citizens to protest. Mere expression of an opinion is not a sufficient justification under the Covenant of any penalties. Moreover, the source argues that her conduct does not amount to incitement to violently overthrow the Government, advocacy of violence or propaganda of war, and in no way threatens national security or public order. Therefore, the source concludes that Ms. Tuatulanon's peaceful expression of her political opinion does not warrant the imposition of restrictions on a citizen's right to political participation.

39. The source notes that, even if Ms. Tuatulanon's conduct is construed as being defamatory, insulting or threatening, the pretrial detention of Ms. Tuatulanon, the bail conditions and other restrictions imposed on her are not justified by any recognized legitimate purpose. Even if Ms. Tuatulanon's conduct did threaten public order and national security, protecting such interests could be achieved by simply restricting Ms. Tuatulanon from initiating or engaging in any future protests. The source argues that no further interest of the State is achieved by confining Ms. Tuatulanon to her home and denying her the opportunity to carry out normal occupational and social activities. Such burdensome requirements isolate Ms. Tuatulanon from society but add no value to the protection of national security and public order.

40. The source recalls that the lèse-majesté laws of Thailand have already been found to violate article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. The authorities provided no individualized justification for their prohibition of royal defamation under section 112 of the Criminal Code, which broadly restricts the right to free expression and free opinion without being based on any of the exceptions enumerated in article 19 of the Covenant.

41. In relation to category III of the Working Group, the source recalls that due process is one of the key tenets of the right to a fair trial and that the minimum international standards of due process are established in articles 9 and 14 of the Universal Declaration of Human Rights, articles 9 and 14 of the Covenant, principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The source adds that section 29 of the Constitution of Thailand likewise ensures the rights of criminal defendants by guaranteeing them the right to be presumed innocent until proven guilty and to pretrial release, specifically that excessive bail should not be demanded and refusal of bail should only be as provided by law.

¹³ Human Rights Committee, *Shin v. Republic of Korea* (CCPR/C/80/D/926/2000), paras. 7.2 and 7.3.

¹⁴ In *Kim v. Republic of Korea*, the Human Rights Committee rejected the notion that an undefined benefit to national security could prove that restrictions on freedom of expression satisfy the necessity requirement. See *Kim v. Republic of Korea* (CCPR/C/64/D/574/1994), para. 12.4.

¹⁵ Opinion No. 51/2017, para. 29.

¹⁶ *Ibid.*, para. 30.

42. In that context, the source asserts that Ms. Tuatulanon's right to release pending trial has been violated. Article 9 (3) of the Covenant guarantees an individual's right to release pending trial, establishing that it shall not be the general rule that persons awaiting trial shall be detained in custody. The Human Rights Committee has clarified 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.¹⁷

43. The source recalls that, in the event that individuals are deprived of liberty by arrest or detention, article 9 (4) of the Covenant guarantees that such individuals shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. The requirement that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other judicial officer applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.¹⁸ As interpreted by the Human Rights Committee, except in extreme circumstances, the term "promptly" means within approximately 48 hours.

44. The source recalls that Ms. Tuatulanon's detention and deprivation of liberty began immediately following her arrest on 5 March 2022 and continued throughout her stay at Thammasat University Hospital, up until her recent conditional release. Moreover, Ms. Tuatulanon received excessively high bail conditions or bail thresholds throughout her detention, which further added to the barriers preventing her from enjoying her right to pretrial release. Upon her initial arrest, she was offered bail of 100,000 baht, which it is argued was excessively high considering the nature of her offence, especially as it was attached to the condition that she remain at home pending trial, where any request for permission to leave her home was accompanied by additional conditions.

45. The source recalls that, as guaranteed under the Constitution of Thailand, excessive bail should not be imposed. In Ms. Tuatulanon's case, despite the fact that she was a student who did not represent a flight risk and that she was not responsible for any acts of violence, disproportionately high monetary bail conditions were imposed on her. Subsequently, on 17 May 2022, Ms. Tuatulanon's bail application was rejected even though a Member of the House of Representatives posted bail on her behalf, pledging his status as the required security. The unreasonable and intentional barriers imposed on Ms. Tuatulanon's bail were, according to the source, excessive, especially for a student who merely broadcast commentary on social media.

46. Furthermore, the source submits that the Government has violated Ms. Tuatulanon's right to a prompt trial. The source notes that article 14 (3) (c) of the Covenant provides that, in the context of criminal proceedings, the accused is entitled to the right to be tried without undue delay. The Human Rights Committee has also emphasized that an important aspect of the fairness of a hearing is its expeditiousness.¹⁹ Moreover, the right to a prompt trial is mentioned in principle 38 of the Body of Principles, which states that a person detained on criminal charges shall be entitled to a trial within a reasonable time or to release pending trial.

47. According to the source, Ms. Tuatulanon's arrest occurred more than one year ago, and the Government's investigation into her alleged crime has been ongoing for the past year. However, her trial was not scheduled to occur until August 2023, more than a year and a half after the investigation began. The allegations against Ms. Tuatulanon relate to events that were live-streamed online and, as a result, the facts of the case would not appear to require in-depth or prolonged investigation. Furthermore, the Government has not provided any grounds to justify the delay in proceedings.

48. The source submits that, despite Ms. Tuatulanon having been released pending her trial, the Government has an obligation to hold a trial in an expeditious manner. However,

¹⁷ Human Rights Committee, general comment No. 35 (2014), para. 38; and the Universal Declaration of Human Rights, art. 19.

¹⁸ Human Rights Committee, general comment No. 35 (2014), paras. 32 and 38; and the Universal Declaration of Human Rights, art. 19.

¹⁹ Human Rights Committee, general comment No. 32 (2007), para. 27.

the prosecution has taken steps that have unnecessarily delayed proceedings, including failing to respond to defence counsel filings. For example, on 14 September 2022, Ms. Tuatulanon's legal counsel filed a motion to petition for a change in Ms. Tuatulanon's stringent bail conditions. That motion was allegedly denied. It is reported that her counsel then filed an appeal on 22 September 2022. The appeal was sent to the prosecutor to review, who generally has 25 business days to provide an answer. In mid-November 2022, the counsel was notified that the prosecutor had failed to provide an answer and that the appeal had been automatically sent to the appeals court. Allegedly, that appeal is still pending. Such delays are reportedly common in the case of activists, such as Ms. Tuatulanon. The source argues that such delays unnecessarily prolong the length of proceedings and, as a result, Ms. Tuatulanon's right to a prompt trial is being violated. Accordingly, it is submitted that the delays in Ms. Tuatulanon's trial amount to a violation of article 14 (3) (c) of the Covenant and principle 38 of the Body of Principles.

49. The source concludes by reiterating that Ms. Tuatulanon was detained based on section 112 of the Criminal Code, which is an overbroad and vague law used to limit the rights to freedom of expression, opinion and political participation afforded under international human rights laws. Ms. Tuatulanon's rights were further violated by the imposition of house arrest and excessive bail conditions. For those reasons, the source contends that the detention of Ms. Tuatulanon and continuing restrictions on her freedoms are a violation of international law and are therefore arbitrary and illegal.

(b) Response from the Government

50. On 9 May 2023, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 10 July 2023 about the current situation of Ms. Tuatulanon. The Working Group also requested the Government to clarify the legal provisions justifying her detention, as well as its compatibility with the State's obligations under international human rights law and, in particular, with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure Ms. Tuatulanon's physical and mental integrity.

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

2. Discussion

52. 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.

53. In determining whether Ms. Tuatulanon's detention is 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 Government if it wishes to refute the allegations.²⁰ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

(a) Category I

54. 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 is arbitrary under category I because it is impossible to invoke any legal basis justifying Ms. Tuatulanon's pretrial detention and subsequent house arrest.

55. The source submits that Ms. Tuatulanon was arrested without a warrant on 5 March 2022. In the absence of any submission from the Government, the Working Group considers that the source has presented a credible prima facie case that the authorities did not present an arrest warrant at the time of Ms. Tuatulanon's arrest. The Working Group recalls that a

²⁰ A/HRC/19/57, para. 68.

detention is considered arbitrary under category I if it lacks a legal basis. As it has previously indicated, for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.²¹ That is typically²² done through an arrest warrant or arrest order or equivalent document.²³ In addition, any form of detention or imprisonment should be ordered by, or be subjected to the effective control of, a judicial or other authority under the law, the status and tenure of which should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles. The Working Group finds that that was denied to Ms. Tuatulanon, in violation of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant.

56. The source also asserts that Ms. Tuatulanon's right to release pending trial has been violated, recalling that Ms. Tuatulanon's detention and deprivation of liberty began immediately following her arrest on 5 March 2022 and continued throughout her stay at Thammasat University Hospital, up until her recent conditional release. Moreover, the source contends that Ms. Tuatulanon's excessively high bail conditions or bail thresholds throughout her detention, imposed unreasonably and intentionally, further added to the barriers preventing her from enjoying her right to pretrial release.²⁴

57. Article 9 (3) of the Covenant provides that it shall not be the general rule that persons awaiting trial shall be detained in custody. The Working Group recalls the view of the Human Rights Committee that pretrial detention should be an exception and 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.²⁵ Courts must examine whether alternatives to pretrial detention, such as bail or other conditions, would render detention unnecessary in the particular case.²⁶ Recalling the finding of the Human Rights Committee that an excessive bail amount violated the requirement under article 9 (3) that pretrial detention be exceptional,²⁷ the Working Group finds a violation of article 9 (3) of the Covenant, in contravention of principles 38 and 39 of the Body of Principles. Moreover, the Constitution of Thailand requires that excessive bail should not be imposed.

58. In addition, the source submits that, while Ms. Tuatulanon was, on 27 May 2022, released on conditional bail for 30 days, the conditions for her bail at that time resembled a house arrest. She was not permitted to leave her residence except when a detailed motion was filed and the court approved such a motion, and she wore an ankle bracelet that monitored her location. Moreover, it is reported that she was and continues to be forbidden from leaving the country. In that regard, the Working Group recalls its position that house arrest may be compared with deprivation of liberty when it is carried out in closed premises that the person in question is not allowed to leave.²⁸ The Working Group's deliberation No.1 on house arrest also states that, in all other situations, it will devolve on 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.²⁹

²¹ In cases of in flagrante delicto, the opportunity to obtain a warrant will not be typically available.

²² Human Rights Committee, general comment No. 35 (2014), para. 21. See also opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

²³ Human Rights Committee, general comment No. 35 (2014), para. 21; and opinion No. 30/2017, paras. 58 and 59.

²⁴ See above, paras. 42–45.

²⁵ Human Rights Committee, general comment No. 35 (2014), para. 38.

²⁶ *Ibid.*

²⁷ Opinions No. 9/2017, para. 28; and No. 46/2022, para. 78. See also General Assembly resolution 73/181, para. 12; and opinions No. 16/2021, paras. 51–54; and No. 29/2021, para. 41.

²⁸ 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).

²⁹ Opinion No. 50/2022, para. 79.

59. In the light of Ms. Tuatulanon's conditional bail, which according to the source resembled house arrest, the Working Group notes that she was deprived of her liberty in closed premises (albeit her house) and that she was not allowed to leave, unless she fulfilled the onerous restrictions on her freedom of movement described above. In those circumstances, the Working Group finds that her house arrest is tantamount to deprivation of liberty.

60. The source submits that there is no legal basis for Ms. Tuatulanon's detention since she is detained under legislation that expressly violates international human rights law and since she is charged and held under the terms of a vague law. The authorities have exclusively relied on section 112 of the Criminal Code to justify her arrest and pretrial detention.

61. 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.³⁰ Briefly, that includes the following:

(a) In its jurisprudence relating to Thailand, the Working Group has consistently found that 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 the freedom of expression;³¹

(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 the freedom of expression and their incompatibility with article 19 of the Covenant.³² The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that *lèse-majesté* provisions had no place in a democratic country and were incompatible with the freedom of expression under international human rights law.³³ The Office of the United Nations High Commissioner for Human Rights has expressed similar concerns;³⁴

(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 a punishment of between 3 and 15 years' imprisonment. The Human Rights 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 resulted in extensive periods of imprisonment in some cases. The Human Rights Committee 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 violated article 19;³⁵

³⁰ 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. 48–49; and No. 64/2021, paras. 54–58.

³¹ See opinions No. 35/2012, No. 41/2014, No. 43/2015, No. 44/2016 and No. 51/2017. 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.

³² 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 at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

³³ 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.

³⁴ 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.

³⁵ [CCPR/C/THA/CO/2](#), paras. 37–38; United Nations Educational, Scientific and Cultural Organization, submission to the thirty-ninth session of the Working Group on the Universal Periodic Review for the third cycle review of Thailand, para. 4; and United Nations country team submission for the third

(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. Delegations urged the Government to bring its *lèse-majesté* laws into conformity with its international commitments.³⁶

62. The Working Group recalls its jurisprudence in which it found that section 112 of the Criminal Code, pursuant to which Ms. Tuatulanon is being prosecuted, was vague and overly broad.³⁷ 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.

63. Given that considerable body of findings in relation to the *lèse-majesté* provisions in section 112 of the Criminal Code Act, the Working Group is convinced that Ms. Tuatulanon is being detained pursuant to legislation that expressly violates international human rights law. As a result, there is no legal basis for her detention. The Working Group recalls its extensive jurisprudence in which it found that detention pursuant to a law that was inconsistent with international human rights law lacked a legal basis and was therefore arbitrary.³⁸

64. 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.³⁹ 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 as defined with sufficient precision due to its vague and overly broad language.⁴⁰ 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.

65. For the reasons set out above, the Working Group finds that there is no legal basis for Ms. Tuatulanon's detention and that her deprivation of liberty is arbitrary under category I.

(b) *Category II*

66. The source argues that Ms. Tuatulanon's detention is arbitrary under category II because it resulted from the peaceful exercise of her right to freedom of opinion, expression and political participation. Her bail conditions further prevented her from engaging in political participation through social media. The source asserts that the charge of *lèse-majesté* under section 112 is a violation of an individual's freedom of expression because it broadly

cycle review of Thailand, "Implementation of international human rights obligations, considering applicable international humanitarian law", April 2021, paras. 58–59.

³⁶ A/HRC/49/17, paras. 52.56–52.62. See also the recommendations made during the second cycle review: A/HRC/33/16, paras. 158.130–158.138, 158.141, 158.142, 159.18 and 159.50–159.63.

³⁷ Opinions No. 51/2017, para. 32; No. 56/2017, para. 45; No. 4/2019, para. 55; and No. 64/2021, paras. 55 and 56.

³⁸ See, for example, opinions No. 43/2017, para. 34; No. 40/2018, para. 45; and No. 69/2018, para. 21 (detention pursuant to a law that criminalized conscientious objection to military service). See also opinion No. 14/2017, para. 49 (detention pursuant to a law that criminalized consensual same-sex relations between adults). In all of those cases, the Working Group found that the detention lacked a legal basis and was therefore arbitrary under category I.

³⁹ See, for example, opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59; and Human Rights Committee, general comment No. 35 (2014), para. 22. See also 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).

⁴⁰ Human Rights Committee, general comment No. 34 (2011), para. 25.

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

67. The Working Group considers that Ms. Tuatulanon's live stream and posts 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.⁴¹ 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. Moreover, the Human Rights Committee has specifically expressed concern regarding *lèse-majesté* laws,⁴² 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.⁴³

68. Under article 19 (3) of the Covenant, any restriction imposed on the right to freedom of expression must satisfy three requirements, namely the restriction must be provided by law, designed to achieve a legitimate aim (namely, the protection of national security, public order, public health or morals) and imposed in accordance with the requirements of necessity and proportionality.⁴⁴ The Government did not invoke any of these limitations, nor did it demonstrate why arresting, detaining and prosecuting Ms. Tuatulanon was a necessary and proportionate response to her peaceful activities.

69. Ms. Tuatulanon was arrested after live-streaming her commentary, which was considered defamatory to the monarchy, on the traffic measures related to the royal motorcade. Her bail was later revoked for making social media posts about the monarchy. Each of the acts for which Ms. Tuatulanon was detained was an act of expressing her beliefs through various means of dissemination. Ms. Tuatulanon's conduct constitutes disseminating information of legitimate public interest, specifically that concerning unpopular debt policies and the fundamental right of citizens to protest. 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. Tuatulanon's conduct incited violence of any kind that might have given cause to restrict her behaviour.⁴⁵ The Working Group does not consider it plausible that her conduct could threaten the rights or reputations of others, national security, public order, public health or morals, and it notes with grave concern the disproportionate sentence of imprisonment for the exercise of fundamental rights.

70. 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.⁴⁶ 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.

71. Given the increased usage of the Internet and social media as a means of communication, it is likely that the detention of individuals for exercising their rights to freedom of opinion and expression online will continue to increase until steps are taken by the Government to bring the *lèse-majesté* laws into conformity with international human rights law.⁴⁷ In the view of the Working Group, freedom of expression is a core tenet of a

⁴¹ Ibid., para. 11.

⁴² Ibid., para. 38.

⁴³ Ibid., para. 47.

⁴⁴ Ibid., paras. 21–36.

⁴⁵ Ibid. There is no evidence to indicate, for example, that restrictions might have been legitimately imposed under article 19 (3) of the Covenant for the protection of national security or public order.

⁴⁶ Opinions No. 51/2017, paras. 30–32; and No. 56/2017, paras. 43–45.

⁴⁷ See also opinions No. 51/2017, para. 57; and No. 56/2017, para. 72.

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.⁴⁸

72. The Working Group notes with concern the chilling effects of judicial prosecutions on society, furthered by a climate of intimidation that appears to surround the enforcement of *lèse-majesté* laws. For example, according to the source, when Ms. Tuatulanon was arrested in February 2022 for conducting a poll on whether the country's *lèse-majesté* laws should be repealed, her wrists were bound with cable ties. Although she was subsequently released following a fine, she was restricted from bringing a trusted adviser with her into the police station and her restraints left bruises on her wrists.

73. For the reasons set out above, the Working Group finds that the deprivation of liberty of Ms. Tuatulanon 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 III*

74. The source argues that the detention of Ms. Tuatulanon is arbitrary under category III because the authorities failed to meet minimum international standards of due process. The source argues that the Government has violated Ms. Tuatulanon's right to a prompt trial. According to the source, Ms. Tuatulanon's arrest occurred more than one year ago and the Government's investigation into her alleged crime has been ongoing for the past year. However, her trial was not scheduled to occur until August 2023, more than a year and a half after the investigation began. The allegations against Ms. Tuatulanon relate to events that were live-streamed online and, as a result, the source argues that the facts of the case do not *prima facie* require in-depth or prolonged investigation.

75. Under articles 9 (3) and 14 (3) (c) of the Covenant, anyone arrested or detained on a criminal charge is entitled to trial within a reasonable time and without undue delay. The reasonableness of any delay in bringing a case to trial must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the authorities.⁴⁹ Given the Working Group's finding that Ms. Tuatulanon's detention was arbitrary under category II because it resulted from the peaceful exercise of her rights, any delay in trying her case is unreasonable.⁵⁰

76. The source submits that, despite Ms. Tuatulanon having been released pending her trial, the Government has an obligation to provide a trial in an expeditious manner. In that regard, the Working Group notes the source's submission that the prosecution has taken steps that have unnecessarily delayed proceedings, including failing to respond to defence counsel filings, leading to delays that are reportedly common in the case of activists, such as Ms. Tuatulanon. Considering those factors, the Working Group finds that the scheduled trial date of August 2023, which is more than a year and a half after her arrest, is unacceptably long and is in violation of articles 9 (3) and 14 (3) (c) of the Covenant and principle 38 of the Body of Principles.

77. For the reasons above, the Working Group concludes that the violations of the fair trial and due process rights of Ms. Tuatulanon are of such gravity as to give her deprivation of liberty an arbitrary character, falling within category III.

⁴⁸ See also 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).

⁴⁹ Human Rights Committee, general comment No. 35 (2014), para. 37; and general comment No. 32 (2007), para. 35. See also [CCPR/C/VNM/CO/3](#), paras. 35 and 36.

⁵⁰ Opinions No. 8/2020, para. 75; No. 16/2020, para. 77; No. 10/2021, para. 78; and No. 16/2023, para. 84.

(d) Concluding remarks

78. The present case is one of several cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty of persons in Thailand. 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.⁵¹

3. Disposition

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

The deprivation of liberty of Tantawan Tuatulanon, being in contravention of articles 3, 9, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14, 15 and 19 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, and III.

80. The Working Group requests the Government of Thailand to take the steps necessary to remedy the situation of Ms. Tuatulanon without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

81. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Tuatulanon immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law.

82. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Tuatulanon and to take appropriate measures against those responsible for the violation of her rights.

83. 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.

84. 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, for appropriate action.

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

4. Follow-up procedure

86. 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 Ms. Tuatulanon has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Tuatulanon;
- (c) Whether an investigation has been conducted into the violation of Ms. Tuatulanon's rights and, if so, the outcome of the investigation;
- (d) 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;
- (e) Whether any other action has been taken to implement the present opinion.

87. 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

⁵¹ Opinions No. 44/2016, No. 51/2017, No. 56/2017, No. 3/2018, No. 4/2019 and No. 42/2020.

whether further technical assistance is required, for example through a visit by the Working Group.

88. 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 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.

89. 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.⁵²

[Adopted on 30 August 2023]

⁵² Human Rights Council resolution 51/8, paras. 6 and 9.