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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 103rd session, 25–29 August 2025

Opinion No. 38/2025 concerning Sirapob Phumphengphut (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 working methods,[1] on 8 November 2024 the Working Group transmitted to the Government of Thailand a communication concerning Sirapob Phumphengphut. 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 (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. Sirapob Phumphengphut is a 24-year-old citizen of Thailand residing in Bangkok. He has been a student activist and human rights defender since 2020. Prior to his detention, he was pursuing a master's degree in political science and working as a paralegal for a non-governmental organization (NGO), Thai Lawyers for Human Rights, which assists with cases involving freedom of political expression and the lèse-majesté law.

5. As a college student, Mr. Phumphengphut led a peaceful demonstration with a student activist group called Generation of Change to protest against the dissolution of the opposition Future Forward Party. He continued to attend pro-democracy protests, publicly expressing criticism of the Government.

6. Mr. Phumphengphut was arrested on the basis of a speech he gave during a peaceful pro-democracy protest in November 2020, in which he questioned the constitutionality of the King's involvement in the enactment of certain laws and constitutional amendments concerning the monarchy. He was charged a month later with violating the lèse-majesté law and convicted on 25 March 2024. He was sentenced to three years in prison, which the trial court reduced to two years. Mr. Phumphengphut has submitted nine applications for bail pending appeal, all of which have been summarily denied. He has thus remained in detention since his conviction.

(i) Arrest and detention under the lèse-majesté law

7. The source submits that on 18 November 2020, Mr. Phumphengphut took part in a peaceful rally that protested the use of violence by the authorities to disperse a pro-democracy demonstration that had taken place in front of Parliament the day before. Mr. Phumphengphut, along with several others, took turns speaking at the rally before the demonstrators gathered in front of the headquarters of the Royal Thai Police.

8. On 18 December 2020, a month after Mr. Phumphengphut gave his speech, he was charged with violating section 112 of the Criminal Code, on the grounds that the speech had "defame[d] the King in a manner which exposes him to scorn and hatred". The source submits that the authorities did not provide any further reasoning, merely quoting various excerpts from the speech where Mr. Phumphengphut had appeared to question the constitutionality of certain actions by the King.

9. On 6 May 2021, Mr. Phumphengphut was indicted under section 112 of the Criminal Code. As noted, Mr. Phumphengphut's speech discussed the role of the King in the country's democracy as well as the status of the Thai people in relation to the monarchy. The indictment did not explain how the speech could amount to a violation of the lèse-majesté law, noting only that it was "false", "insulting" and "defaming", "resulting in damage" to the King's "dignity", and that it demonstrated Mr. Phumphengphut's "intent to destroy the monarchy".

10. The source further notes that after Mr. Phumphengphut was indicted under section 112, he was placed in pretrial detention and applied for bail pending trial. However, Bangkok South Criminal Court denied his application, which caused Mr. Phumphengphut to miss an examination. In the denial order, the trial court vaguely referred to "the gravity of the charges" and "the circumstances of the case", finding that Mr. Phumphengphut had been charged with an offence concerning national security and carrying a long prison sentence. Without further explanation, and despite the prosecution's lack of objection to bail, the trial court considered it had "reason to believe" that the defendant might "commit the same crime" if he were released.

11. Mr. Phumphengphut submitted a second bail application several days later, which the trial court granted on condition that he refrained from engaging in activities defaming the monarchy as well as from leaving the country, and that he must not fail to appear in court.

12. The source submits that at trial, the defence argued that the criticism expressed during Mr. Phumphengphut's speech had been made in good faith, with "respect and a good intention toward the monarchy", and had referred to the institutional role of the King and the monarchy in a democracy. However, the trial court summarily dismissed these arguments,

stating instead that the speech was "inappropriate" and "offensive" and "likely impair[ed] the King's reputation and exposed him to scorn and hatred".

13. The trial court also suggested that Mr. Phumphengphut's speech was inconsistent with the Constitution of Thailand, invoking section 6 which states that the King "shall not be violated" nor exposed "to any sort of accusation or action". Without explaining its reasoning or the appropriate application of the constitutional provision to section 112 cases, the trial court concluded that the speech had not been "an expression of comment in good faith" and had instead wrongfully "accused" the King of "abusing" his constitutional authority.

14. The source submits that the court has thus conflated two distinct concepts: "good faith", for instance, is typically a defence to a charge of defamation of public figures, whereas the constitutional "inviolability" of the King relates to the institutional role of the monarch. Relatedly, the trial court's judgment was unclear as to whether the crime being prosecuted was defamation of the monarch or criticism of the monarchy. For instance, the trial court stated that "merely mentioning the name of the King invit[ed] the audience to hate him", yet at another point, the court stated that the speech had used "words that were regarded as anti-monarchy".

15. The source notes that on 25 March 2024, Bangkok South Criminal Court convicted Mr. Phumphengphut of violating section 112 of the Criminal Code and sentenced him to a three-year term of imprisonment, reduced to two years without probation due to his "useful testimony" at trial.

16. The source submits that Mr. Phumphengphut has been denied bail pending appeal, with the Court of Appeal denying his nine applications in a series of nearly identical one-paragraph orders, and making only cursory references to the "severity" of the case and to the fact that previous applications for bail had been denied.

17. The source notes that Mr. Phumphengphut has been in detention since his conviction.

(ii) The lèse-majesté law of Thailand

18. The source explains that the country's lèse-majesté law is found in section 112 of the Criminal Code, which provides for a 3- to 15-year sentence for any person who "defames, insults or threatens the King, the Queen, the Heir Apparent or the Regent".

19. The source further notes that the authorities have repeatedly explained that this provision protects the "rights or reputations" of the royal family in the same way that the libel law does for "commoners", although it imposes significantly higher penalties. The authorities have, moreover, asserted that since members of the royal family are not able to file defamation or libel complaints themselves, section 112 permits a "third party" (i.e. government prosecutors) to lodge a formal complaint on their behalf.

20. The source notes that following a period when there were no section 112 prosecutions, the 2020 pro-democracy protests demanding reform of the monarchy have resulted in renewed use of the law. Since 2020, the number of individuals deprived of their liberty pending trial or following conviction on lèse-majesté charges has increased. The source submits that there are currently 25 individuals in prison on lèse-majesté charges.

21. The source submits that the authorities also routinely hold those accused of lèse-majesté in pretrial detention for months, frequently denying bail due to the alleged severity of the offence (on the logic that the significant potential penalties give rise to a risk of flight) and to the alleged risk of "reoffending" by participating in rallies or making critical speeches.

22. The source notes that in instances where authorities have granted pretrial bail, they often add restrictive conditions, such as bans on participating in protests or on speaking about the monarchy, and courts have revoked bail due to alleged violations of such conditions.

(iii) Legal analysis

23. The source argues that Thailand has violated Mr. Phumphengphut's rights under the Covenant and his detention is arbitrary under categories I, II, III and V.

24. In relation to category I, the source submits that Mr. Phumphengphut's detention is arbitrary because it lacks legal basis. It was based upon alleged violations of the lèse-majesté law, a law that is vague and overly broad. Furthermore, his detention is predicated upon an unforeseeable interpretation of the law – namely that it can apply equally, and at the same time, to criticism of the person of the King and to criticism of the institution of the monarchy.

25. The denial of Mr. Phumphengphut's nine applications for provisional release pending appeal are insufficiently reasoned and thus reflect an arbitrary application of the standards for release under domestic law.

26. The source also argues that Mr. Phumphengphut's detention is arbitrary because the lèse-majesté law under which he was charged and sentenced is vague and excessively broad.

27. Furthermore, under the principle of legality, 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. As a result, vaguely and broadly worded provisions violate the due process of law undergirded by the principle of legality.[2]

28. Such laws provide authorities with unfettered discretion, resulting in unjustified and arbitrary criminalization of the legitimate exercise of the right to freedom of expression.[3]

29. The Working Group has previously concluded that the lèse-majesté law of Thailand fails to provide a legal basis for detention.[4] Specifically, it has held that section 112 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".[5]

30. Therefore, as in prior cases, Mr. Phumphengphut's detention, based on alleged violations of section 112, is without legal basis and arbitrary.

31. The source further argues that Mr. Phumphengphut's detention is arbitrary because it is based on an overly broad and unforeseeable application of the lèse-majesté law and that his detention also violates the foreseeability requirement of the principle of legality.

32. In this context, firstly, the source submits that to the extent the trial court sought to apply a defamation framework, it relied only on conclusory assertions that Mr. Phumphengphut's statements were not made in good faith to find that the speech amounted to a violation of section 112. Secondly, the source notes that the trial court repeatedly conflated alleged harm to the King's reputation with alleged harm to the monarchy, leaving uncertain the reach of an already broad lèse-majesté law.

33. The prosecution asserted that Mr. Phumphengphut's statements were "false and considered an offence" against the King, and the trial court stated that they were "not an expression of comment in good faith", treating the alleged "falsity" and "lack of good faith" respectively as predicates to their ultimate findings that Mr. Phumphengphut's speech was "an offence under section 112".

34. Specifically, the trial court held that because the speech was assertedly "not made in good faith", it amounted to "a defamation, an insult or a threat against the King", while also holding that because the defendant's speech amounted to "a defamation, an insult or a threat", it was "not an expression of comment in good faith", thus constituting "an offence under section 112". According to the source, the trial court thus appeared to be operating under a framework similar to that recognized by international human rights bodies for defamation: that is, defamation laws, and "in particular penal defamation laws" that target "comments about public figures" must include truth and good faith as defences, and not penalize statements made "without malice", to avoid unduly restricting the exercise of freedom of expression.[6]

[2] Opinion No. 10/2018, para. 50.
[3] Opinions No. 20/2017, No. 21/2014 and No. 27/2012; and Human Rights Committee, general comment No. 34 (2011), para. 25.
[4] See opinion No. 49/2023.
[5] Ibid., para. 62.
[6] Human Rights Committee, general comment No. 34 (2011), para. 47.

35. Thai courts have previously found that, unlike for the ordinary crime of defamation, section 112 does not permit truth or good faith defences. Here, the trial court did not sufficiently explain its conclusory rejection of the defence's good faith argument and failed to consider whether the speech had been made without malice.

36. Along with the prosecution's invocation of the speech's alleged "falsity", the prosecution also confuses the applicable legal standard, thereby exacerbating the extent to which the lèse-majesté law is unforeseeably broad.

37. The judgment additionally fails to explain whether Mr. Phumphengphut was being prosecuted for defaming the King or for defaming the monarchy. The trial court held that his speech was "considered offensive and malignant in that manner that likely impair[ed] the King's reputation and exposed him to scorn and hatred", and thus constitutes "a defamation, an insult or a threat against the King", while at the same time characterizing the speech as "anti-monarchy".

38. In addition to the vagueness of this reasoning, the trial court at no point specified to which category any of Mr. Phumphengphut's statements pertained, nor did it offer any evidence for the asserted connection between his statements and the "likely impair[ment]" to the King's reputation – the trial court conflated defamation of a person with criticism of an institution. According to the Government itself, the lèse-majesté law "gives protection to the rights or reputations of the King, the Queen and the Heir Apparent or Regent in a similar way libel law does for commoners".[7]

39. The Government has affirmed this purpose on multiple occasions, at one time explaining that since members of the royal family are not able to file complaints for defamation or libel themselves, a third party was permitted to lodge a formal complaint on their behalf.[8] On the other hand, in a 2012 decision upholding the constitutionality of the lèse-majesté law, the Constitutional Court held that section 112 of the Criminal Code was necessary to give "practical effect" to section 6 of the Constitution, equating the protection of the King's person from defamation under the former to the protection of the "status of the King as the Head of State and principal institution of the country" under the latter.[9]

40. In some of its statements before human rights bodies regarding the lèse-majesté law, the authorities have suggested that the law is meant to protect "key national institutions and national security".[10] Referring at different times to both the monarchy and the monarch as a "main pillar" of the nation that is "highly revered" by the majority of Thai people, Thai authorities have claimed that section 112 protects both the monarch as the "symbol of the existence of the nation" and Head of State, and the monarchy as one of the country's "principal institutions".[11]

41. Consistent with these differing interpretations, the trial court here effaced the distinction between the person of the King and the institution of the monarchy. For example, the trial court stated that Mr. Phumphengphut had made a speech "alluding to the monarchy and mentioning the name of King Rama X, inviting the audience to hate him", and that he had used "words that were regarded as anti-monarchy … in that manner that likely impair[ed] the King's reputation". Similarly, the trial court invoked section 6 of the Constitution, which provides that the King "shall be enthroned in a position of revered worship and shall not be violated" and prohibits exposing him to "any … accusation or action". Asserting that Mr. Phumphengphut's speech had violated section 6 because in it Mr. Phumphengphut had accused the King of "not being under the Constitution by centralizing the power around himself and thereby abusing his power", the trial court implied that section 112 should extend

[7] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=32816. See also opinions No. 3/2018, No. 56/2017 and No. 44/2016.

[8] CCPR/C/SR.3350, para. 18.

[9] "Summary of Constitutional Court Ruling No. 28–29/2555" (2012), Summaries of the Constitutional Court Rulings for Year 2012, *Government Gazette*, vol. 129, part 122a, pp. 64 and 66 (2012), available at https://constitutionalcourt.or.th/occ_en/download/article/article_20210914100655.pdf.

[10] A/HRC/49/17, para. 20; A/HRC/WG.6/39/THA/1, para. 117; and opinion No. 35/2012, paras. 15 and 16. See also A/HRC/19/8/Add.1, para. 8.

[11] CCPR/C/THA/2, para. 153; and A/HRC/WG.6/12/THA/2, para. 37.

to legitimate questions about the scope of the monarchy's constitutional authority. The trial court's conflation of criticism that may be directed against the person of the King and criticism that may be directed against the institution of the monarchy is inconsistent with international standards.

42. The trial court's judgment further illustrates the lack of foreseeability in the application of section 112.

43. Mr. Phumphengphut's detention is arbitrary because the orders denying bail are not sufficiently justified under domestic law.

44. The Criminal Procedure Code incorporates the presumption under international human rights law in favour of granting release from detention pending trial. In line with the standards recognized by the Working Group for pretrial bail,[12] section 108/1 specifically provides that courts may only deny applications for provisional release if there is "reasonable cause to believe" that: (a) the defendant will abscond; (b) the defendant will tamper with evidence; (c) the defendant will cause "other dangers"; (d) the applicant for bail or the security is not credible; or (e) the provisional release will "obstruct or cause damage" to proceedings by a "competent official" or in a court. Under Thai law, however, these standards apply regardless of whether the release sought is pretrial or post-conviction.

45. The jurisprudence of the Working Group regarding the need for specific reasoning to justify a denial of bail should therefore also apply as a matter of domestic law to applications for post-conviction release in Thailand. Thus, any decision denying provisional release under section 108/1, including post-conviction release, must set out sufficient reasoning.

46. Mr. Phumphengphut has submitted nine applications for provisional release pending appeal to the trial court, all of which were forwarded to the Court of Appeal and summarily denied in a series of nearly identical one-paragraph orders consisting mainly of cursory references to the "high penalty" for the offence and to "the serious circumstances of the case", which four of the orders noted had "caused damage to the monarchy and affected the people's feelings".

47. None of these "vague and expansive" reasons are sufficiently particularized as to establish a permissible ground for denial of provisional release under section 108/1 of the Criminal Procedure Code. In only four of the orders, the Court of Appeal also found that it had reason to believe that Mr. Phumphengphut "may" flee if released. However, the Court of Appeal did not provide any reasoning or evidence in support of a reasonable belief that Mr. Phumphengphut would abscond, as is required under section 108/1. Instead, it only cited the fact that a prison sentence had been imposed by the trial court. The source argues that the severity or length of a potential sentence is not a proper basis for denying bail, as was established in the pretrial context.

48. Furthermore, since the standards used by Thailand regarding provisional release apply equally to pretrial and post-conviction bail, it should follow, at least as a matter of domestic law, that the mere fact that a defendant was sentenced to imprisonment cannot on its own justify a finding that he is a flight risk.

49. In addition, the source notes that, as the Working Group has found in several cases brought under section 112 involving arbitrary detention, "the near blanket rejection of bail applications by lèse-majesté offenders casts serious doubt about the individualized determination of flight risk". [13]

50. Doubts with regard to individualized determinations of bail applications are exacerbated where, as here, the denial of bail has been partially justified by the existence of prior denials (which themselves have lacked sufficient justification); under such a practice, a defendant like Mr. Phumphengphut would be more likely to have his bail denied with each

[12] Opinions No. 41/2014, para. 32; No. 56/2017, para. 67; No. 51/2017, para. 52; No. 3/2018, para. 61; No. 4/2019, para. 65; and No. 64/2021, para. 78.

[13] Opinions No. 4/2019, para. 66; No. 56/2017, para. 68; No. 51/2017, para. 53; and No. 3/2018, para. 62.

successive application, effectively resulting in punishment for a defendant's exercise of his legal right to apply for provisional release.

51. It is submitted that in the present case, the Court of Appeal did not address any of the substantive arguments raised in Mr. Phumphengphut's nine applications, which included the fact that he had been granted provisional release during trial and had complied with all the conditions imposed on his bail, as well as the fact that the trial court had found Mr. Phumphengphut to have cooperated during the proceedings, such that his sentence was reduced by one third. The Court of Appeal similarly ignored the fact that he lives with his parents and is responsible for his household as the eldest child, that he held a job as a paralegal to support his family and to advance his professional career, and that he was pursuing a master's degree at a university.

52. The orders denying Mr. Phumphengphut's applications for provisional release pending appeal are insufficiently reasoned, and therefore without legal basis.

53. The source submits that Mr. Phumphengphut's detention is also arbitrary under category II of the Working Group, because it resulted from the exercise of his right to freedom of expression, based on protected political speech expressed during a pro-democracy protest. Thus, Mr. Phumphengphut's detention violates article 19 of the Covenant.

54. The source notes that defamation laws cannot be justified if their purpose or effect is to prevent legitimate criticism of government officials and public figures. Speech amounting to political opinion expressed as part of a public debate and which criticizes the Government and political figures is afforded a "particularly high" level of protection under international law.[14]

55. With regard to category III, the source notes that international human rights standards provide protection for statements made about public figures "without malice", and permit the defence of "good faith" in defamation cases. Similarly, many jurisdictions impose a requirement of specific harmful intent, or "actual malice", to prove defamation of a public figure.[15] The source argues that the trial court merely asserted that Mr. Phumphengphut's speech was "considered offensive and malignant in that manner that likely impair[ed] the King's reputation and exposed him to scorn and hatred", and thus amounted to "a defamation, an insult or a threat against the King, and not an expression of comment in good faith on any person or thing subjected to public criticism".

56. The source submits that the trial court's conclusory rejection of the defence's "good faith" arguments demonstrates its failure to provide sufficient reasoning in its judgment against Mr. Phumphengphut. This violated Mr. Phumphengphut's right to be presumed innocent, rendering his detention arbitrary under category III.

57. Finally, the source submits that Mr. Phumphengphut's detention is another example in a well-established pattern of persecution by Thai authorities of Mr. Phumphengphut and similarly situated defendants based on their political opinion and pro-democracy activism and that his detention therefore falls within category V.

58. The source submits that these indicators demonstrate the discriminatory nature of Mr. Phumphengphut's detention. Firstly, Mr. Phumphengphut has been charged in five other cases on the basis of his participation in peaceful, political protests that have called for constitutional change and reform of the monarchy.

59. Secondly, the source notes that the authorities have prosecuted and imprisoned numerous other individuals like Mr. Phumphengphut who are perceived to have criticized the monarchy, including in cases that have come before the Working Group.

60. Thirdly, the context of the case indicates that Mr. Phumphengphut was detained to prevent him from exercising his right to freedom of expression. Mr. Phumphengphut's

[14] Human Rights Committee, general comment No. 34 (2011), para. 38.

[15] Inter-American Commission of Human Rights, Declaration of Principles on Freedom of Expression, principle 10.

detention amounts to discrimination on the grounds of political opinion, in violation of international law.

61. Mr. Phumphengphut has engaged in public criticism of prosecutions on the grounds of lèse-majesté legislation, for the purpose of drawing public attention to human rights violations, and has been charged in five other cases due to his participation in pro-democracy protests which, among other issues, criticized the use of section 112 to restrict freedom of speech.

62. Prior to his detention, Mr. Phumphengphut also worked as a paralegal at the NGO that monitors and provides legal aid for human rights violations, focusing on the right to political expression.

63. The authorities have therefore discriminated against Mr. Phumphengphut on the basis of his actual or perceived political opinions as well as his activities as a human rights defender, in violation of international law, rendering his detention arbitrary under category V of the Working Group.

64. In conclusion, the source submits that the authorities have detained Mr. Phumphengphut pursuant to a vague and excessively broad law for making a speech during a pro-democracy protest in which he expressed criticism of the monarchy and the Government. The source further submits that the authorities have also unlawfully kept Mr. Phumphengphut in detention while he exercises his right to appeal against his conviction.

65. The source submits that Mr. Phumphengphut's case serves as another example of the application of the lèse-majesté law. Furthermore, this case reflects the insufficiently reasoned and unforeseeable application of the Criminal Procedure Code in Thailand to deny bail in lèse-majesté cases.

(b) Response from the Government

66. On 8 November 2024, the Working Group transmitted to the Government of Thailand a communication concerning Mr. Phumphengphut under its regular communications procedure, requesting a reply by 7 January 2025.

67. On 6 January 2025, the Government of Thailand requested an extension in accordance with paragraph 16 of the Working Group's methods of work, which was granted with a new deadline of 7 February 2025. The Working Group regrets that, despite the extension, it has received no reply from the Government.

2. Discussion

68. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

69. In determining whether Mr. Phumphengphut'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.[16]

70. In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

(a) Category I

71. The source alleges that Mr. Phumphengphut's detention is arbitrary because it lacks legal basis – he is detained under legislation that expressly violates international human rights law. The authorities have exclusively relied on section 112 of the Criminal Code to justify his arrest and pretrial detention.

[16] A/HRC/19/57, para. 68.

72. In considering whether that provision meets international standards, the Working Group firstly recalls that 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.[17] It has taken into account relevant analysis of lèse-majesté offences in Thailand carried out in recent years by the Working Group and other international human rights mechanisms.[18]

73. In this regard, 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 has resulted from peaceful exercise of the right to freedom of expression.[19]

74. Furthermore, in 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.[20] 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 the right to freedom of expression under international human rights law.[21] The Office of the United Nations High Commissioner for Human Rights has expressed similar concerns.[22]

75. 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 were subject to punishment of 3 to 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 had resulted in extensive periods of imprisonment in some cases.[23]

76. 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 the restrictions on the right to freedom of opinion and expression were frequently raised as

[17] 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 the Committee 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).

[18] 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; and No. 64/2021, paras. 54–58.

[19] 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.

[20] 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. All communications mentioned in the present document are available from https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

[21] See, for example, UN News, "UN rights expert urges Thailand to loosen restrictions around monarchy defamation law", 7 February 2017, available at https://news.un.org/en/story/2017/02/550962-un-rights-expert-urges-thailand-loosen-restrictions-around-monarchy-defamation. See also A/HRC/14/23/Add.1, paras. 2361–2409; and A/HRC/29/25/Add.3, para. 366.

[22] 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.

[23] CCPR/C/THA/CO/2, paras. 37 and 38; United Nations Educational, Scientific and Cultural Organization, submission for 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 cycle review of Thailand, "Implementation of international human rights obligations, considering applicable international humanitarian law", April 2021, paras. 58 and 59.

matters of concern. Delegations urged the Government to bring its lèse-majesté laws into conformity with its international commitments.[24]

77. The Working Group recalls its jurisprudence in which it has found that section 112 of the Criminal Code, pursuant to which Mr. Phumphengphut was prosecuted and convicted, is vague and overly broad and as such prevents accused persons from being able to defend themselves, contrary to article 14 (3) (b) of the Covenant.[25] Section 112 of the Criminal Code does not define what kinds of expression constitute defamation of or an insult or threat to the monarchy, and leaves the determination of whether an offence has been committed entirely to the discretion of the authorities.

78. In the present case, the courts' application of section 112 demonstrates an even more troubling expansion of the law's problematic scope. The source submits that the trial court conflated two distinct legal concepts by simultaneously invoking the constitutional principle of royal "inviolability" under section 6 of the Constitution – which relates to the institutional role of the monarch – with the defamation-based "good faith" defence typically applicable to criticism of public figures. The court stated that Mr. Phumphengphut's speech was inconsistent with the Constitution because the King "shall not be violated" nor exposed "to any sort of accusation or action", while also concluding that the speech had not been "an expression of comment in good faith" but had instead wrongfully "accused" the King of "abusing" his constitutional authority. Without explaining its reasoning or the appropriate application of the constitutional provision to section 112 cases, the trial court merged these conceptually distinct frameworks without legal justification.

79. This judicial approach further undermines the principle of legality. The source notes that the trial court's judgment was unclear as to whether the crime being prosecuted was defamation of the monarch as an individual or criticism of the monarchy as an institution. The trial court stated at one point that merely mentioning the name of the King invited the audience to hate him, while elsewhere characterizing the speech as using "words that were regarded as anti-monarchy". In the absence of any explanation from the Government, the Working Group finds that such inconsistent application demonstrates that even the courts themselves cannot coherently define the boundaries of the prohibited conduct, rendering the law fundamentally incompatible with the requirement that criminal offences be defined with sufficient precision.

80. In view of that considerable body of findings in relation to the lèse-majesté provisions in section 112 of the Criminal Code, the Working Group is convinced that Mr. Phumphengphut is being detained pursuant to legislation that expressly violates international human rights law. As a result, there is no legal basis for his detention. The Working Group recalls its 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.[26]

81. The Working Group reiterates 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.[27] The present case demonstrates how this vagueness enables judicial interpretations that further undermine legal certainty and expand the law's repressive scope even beyond its already problematic textual boundaries. Given the continuing international concern regarding the country's lèse-majesté laws, the Working Group calls on the Government to work with international human rights mechanisms to bring these laws into

[24] 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.

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

[26] See, for example, opinions No. 43/2017, para. 34; No. 40/2018, para. 45; and No. 69/2018, para. 21. In these cases, the Working Group found that the detention lacked a legal basis and was therefore arbitrary under category I.

[27] Human Rights Committee, general comment No. 34 (2011), para. 25.

conformity with its international obligations under the Universal Declaration of Human Rights and the Covenant.

82. The Working Group notes the source's submissions, unrefuted by the Government, that Mr. Phumphengphut's detention pending appeal has been extended through nine successive bail denials without any individualized assessment. The Court of Appeal denied all nine applications for provisional release in "nearly identical one-paragraph orders", making only cursory references to the "high penalty" for the offence and to "the serious circumstances of the case", with four orders noting that the case had "caused damage to the monarchy and affected the people's feelings".

83. The Working Group recalls that it is a well-established norm of international law that detention is to be the exception and not the rule and that it should be ordered for as short a time as possible.[28] Article 9 (3) of the Covenant provides that it is not to be the general rule that persons awaiting trial are detained, but that release may be subject to guarantees to appear for trial and at any other stage of the judicial proceedings. It follows that liberty is recognized as a principle and detention as an exception in the interests of justice.

84. Moreover, although the severity of the sentence faced is a relevant element in assessing the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from this purely abstract point of view – taking into consideration only the gravity of the offence and using stereotyped formulae, without any individualized assessment or considering alternative preventive measures.

85. The Working Group has consistently found that the "near blanket rejection of bail applications by lèse-majesté offenders casts serious doubt about the individualized determination of flight risk".[29] The Court of Appeal ignored substantive arguments raised in Mr. Phumphengphut's applications, including that he had been granted provisional release during trial and had complied with all conditions imposed, that the trial court had found him to have cooperated during proceedings such that his sentence was reduced by one third, and that he lives with his family, with strong community ties and employment.

86. In the present case, the Working Group considers that by failing to address specific facts and alleged risks, or to consider alternative less severe preventive measures, the authorities failed to properly justify the post-conviction detention of Mr. Phumphengphut. In the absence of any argument to the contrary from the Government, and given the systematic failure to provide individualized assessments, the Working Group finds that Mr. Phumphengphut's continued detention pending appeal violates the principles underlying article 9 (3) of the Covenant.

87. In the light of the preceding considerations, the Working Group finds that the deprivation of liberty of Mr. Phumphengphut is arbitrary under category I.

(b) Category II

88. The source submits that Mr. Phumphengphut's detention is also arbitrary under category II of the Working Group, because it resulted from the exercise of his right to freedom of expression, based on protected political speech expressed during a pro-democracy protest. Thus, Mr. Phumphengphut's detention violates article 19 of the Covenant.

89. The Working Group recalls that freedom of opinion and expression and freedom of thought and conscience are fundamental human rights enshrined in articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the Covenant.

90. Mr. Phumphengphut was arrested, detained, prosecuted and imprisoned under section 112 of the Criminal Code for his speech at a pro-democracy protest, at which he questioned whether the King's recent involvement in the legislative process fell within his constitutional authority as Head of State. The Working Group considers that Mr. Phumphengphut's speech falls within the boundaries of the exercise of the right to

[28] Opinion No. 8/2020, para. 54; No. 1/2020, para. 53; No. 57/2014, para. 26; No. 49/2014, para. 23; and No. 28/2014, para. 43; Human Rights Committee, general comment No. 35 (2014), para. 38; and A/HRC/19/57, paras. 48–58.

[29] See, among others, opinion No. 3/2018, para. 62.

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 discussion of constitutional and governmental matters. The trial court acknowledged that the event at which Mr. Phumphengphut had given his speech was a "political public assembly concerning the administration of the Government and the monarchy". His speech specifically addressed the institutional role of the King and the monarchy in a democracy, questioning constitutional boundaries of authority on the basis of academic materials from his political science studies, and his defence counsel argued that the speech had been made in good faith with respect and a good intention towards the monarchy.

91. The Government did not submit a reply in the present case, although it has previously claimed on numerous occasions that the lèse-majesté law has the objective of respecting the rights and reputations of members of the royal family and of regents – purportedly a legitimate restriction on freedom of expression under article 19 (3) (a) of the Covenant. However, in the Working Group's assessment, the purported objective of the lèse-majesté law can hardly be considered as a valid ground for a necessary restriction of freedom of expression, given that all public figures can legitimately be subject to criticism and political opposition. 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,[30] 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.[31]

92. 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, be designed to achieve a legitimate aim and be imposed in accordance with the requirements of necessity and proportionality. Given its lack of a response, the Government did not invoke any of these limitations, or demonstrate why arresting, detaining and prosecuting Mr. Phumphengphut was a necessary and proportionate response to his peaceful political speech. The trial court failed to establish "a direct and immediate connection between the expression and [any] threat", instead relying on vague determinations that the speech was "inappropriate" and "offensive", without concrete analysis of how it threatened legitimate interests protected under international law.

93. In this specific case, the Working Group cannot but also consider that the detrimental effects of the lèse-majesté law and its application on Mr. Phumphengphut's freedoms, and the chilling effect for the public, far outweigh any potential benefits. The Working Group does not consider it plausible that Mr. Phumphengphut's academic-based questioning of constitutional authority could threaten the rights or reputations of others, national security, public order, or public health or morals. In this vein, the Working Group has been unable to find Mr. Phumphengphut's deprivation of liberty under section 112 of the Criminal Code necessary or proportionate for the purposes set out in article 19 (3) of the Covenant.

94. The Working Group therefore considers that Mr. Phumphengphut's deprivation of liberty is arbitrary under category II, as it resulted from his exercise of the rights or freedoms guaranteed under articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the Covenant.

(c) Category III

95. Given its finding that Mr. Phumphengphut's deprivation of liberty is arbitrary under category II, the Working Group wishes to emphasize that no trial of Mr. Phumphengphut should have taken place. However, with the trial having taken place, the Working Group will

[30] Human Rights Committee, general comment No. 34 (2011), para. 38.
[31] Ibid., para. 47.

now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give his deprivation of liberty an arbitrary character, so that it falls within category III.

96. The Working Group notes that the trial court's reasoning in Mr. Phumphengphut's case raises concerns regarding the adequacy of judicial reasoning. Judgments of courts and tribunals should adequately state the reasons on which they are based, as reasoned decisions serve the purpose of demonstrating to the parties that they have been heard, thereby contributing to a more willing acceptance of the decision on their part. In addition, they oblige judges to base their reasoning on objective arguments and to also preserve the rights of the defence. Moreover, an issue from the perspective of the presumption of innocence may arise if judgments finding guilt are not sufficiently reasoned. The source submits that despite the defence arguing that the criticism expressed during Mr. Phumphengphut's speech had been made in good faith, with "respect and a good intention towards the monarchy", and had referred to the institutional role of the King and the monarchy in a democracy, the trial court dismissed these arguments without adequate consideration.

97. While courts are not obliged to give a detailed answer to every argument raised, it must be clear from the decision that the essential issues of the case have been addressed, and that a specific and explicit reply has been given to the arguments that are decisive for the outcome of the case. Instead, the court asserted that Mr. Phumphengphut's speech was "considered offensive and malignant in that manner that likely impair[ed] the King's reputation and exposed him to scorn and hatred", concluding that it amounted to "a defamation, an insult or a threat against the King, and not an expression of comment in good faith". The Working Group considers that by not adequately addressing the specific arguments made by the accused regarding the good-faith nature of his academic-based commentary on constitutional matters, the domestic court's reasoning was insufficient to meet the standards required under article 14 of the Covenant. The Working Group finds that this inadequate consideration of key defence arguments raises concerns about whether Mr. Phumphengphut received a fair trial.

98. The Working Group further notes that failure to provide a reasoned judgment constitutes a breach of article 14 (5) of the Covenant, as it effectively prevents prospective appellants from enjoying the effective exercise of the right to appeal.

99. The Working Group recalls that the right to fair trial provides that key issues raised by the defence are taken into account by the court; this right is violated where the court provides only limited reasons for its conclusions. In the present case, the trial court's failure to engage meaningfully with the defence's arguments regarding good-faith commentary on matters of public interest, particularly in view of international human rights standards that provide protection for statements made without malice about public figures, renders Mr. Phumphengphut's conviction and subsequent detention arbitrary under category III.

(d) Category V

100. The source submits that Mr. Phumphengphut's detention is another example in a well-established pattern of persecution by the authorities of Mr. Phumphengphut and similarly situated defendants on the basis of their political opinion and pro-democracy activism. The source also submits that the authorities have discriminated against Mr. Phumphengphut on the basis of his actual or perceived political opinions as well as his activities as a human rights defender, in violation of international law, rendering his detention arbitrary under category V of the Working Group.

101. The Working Group has already established that Mr. Phumphengphut's detention resulted from his exercise of the right to freedom of expression. When it is established that a deprivation of liberty has resulted from the active exercise of civil and political rights, there is a strong presumption that the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on political or other views.[32]

[32] Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; No. 59/2019, para. 79; and No. 91/2020, para. 65.

102. The Working Group recalls several non-cumulative indicators that serve to establish the discriminatory nature of detention. 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; or (c) the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights.[33]

103. With regard to these non-cumulative indicators, the Working Group notes that Mr. Phumphengphut has been charged in five other cases on the basis of his participation in peaceful political protests that have called for constitutional change and reform of the monarchy. Moreover, the Working Group recalls that the authorities have prosecuted and imprisoned numerous other individuals like Mr. Phumphengphut who are perceived to have criticized the monarchy, including in cases that have previously come before the Working Group.[34] The Working Group further observes an overall pattern in Thailand of detaining individuals who peacefully oppose the lèse-majesté laws, and the present case is another example. The Working Group observes that Mr. Phumphengphut's political views are at the centre of the present case and that the authorities have displayed a discriminatory attitude towards him.

104. 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 involve due process violations.[35]

105. The Working Group further notes that Mr. Phumphengphut has engaged in public criticism of prosecutions under the country's lèse-majesté legislation for the purpose of "drawing public attention" to human rights violations, and has been charged in five other cases due to his participation in pro-democracy protests that, among other issues, criticized the use of section 112 to restrict freedom of speech. Prior to his detention, Mr. Phumphengphut worked as a paralegal at an NGO that monitors and provides legal aid for human rights violations, focusing on the right to political expression. The Working Group has found category V violations in cases involving discrimination due to a defendant's status as a human rights defender.[36]

106. Based on the foregoing, the Working Group finds that Mr. Phumphengphut was deprived of his liberty on discriminatory grounds on the basis of his political opinions. For these reasons, the Working Group considers that Mr. Phumphengphut'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 his status as a human rights defender. His deprivation of liberty is therefore arbitrary under category V of the Working Group.

(e) Concluding remarks

107. 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 wishes to express its grave concern about the pattern of arbitrary detention in cases involving the lèse-majesté laws of Thailand. It 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, particularly in the context of legitimate academic and political discourse about constitutional governance. Given the continuing international concern regarding the country's lèse-majesté laws, the Government may consider it to be an appropriate time to work with international human rights mechanisms to

[33] A/HRC/36/37, para. 48.
[34] See, for example, opinion No. 28/2024.
[35] Opinions No. 44/2016, No. 51/2017, No. 56/2017, No. 3/2018, No. 4/2019, No. 42/2020 and No. 49/2023.
[36] See, for example, opinions No. 19/2018, No. 50/2017 and No. 48/2017, and A/HRC/36/37.

bring those laws into conformity with its international obligations under the Universal Declaration of Human Rights and the Covenant.

108. The Working Group notes that in Mr. Phumphengphut's case, the judicial application of section 112 has demonstrated even more troubling innovations – including the conflation of distinct legal concepts such as constitutional "inviolability" and defamation law's "good faith" defence, and the systematic denial of bail through formulaic reasoning that fails to meet basic standards of individualized assessment. In the view of the Working Group, 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.

3. Disposition

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

The deprivation of liberty of Sirapob Phumphengphut, being in contravention of articles 2, 7, 9 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

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

111. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Phumphengphut and to take appropriate measures against those responsible for the violation of his rights.

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

4. Follow-up procedure

113. 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 Mr. Phumphengphut has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Phumphengphut;

(c) Whether an investigation has been conducted into the violation of Mr. Phumphengphut'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.

114. 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.

115. 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.

116. 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.[37]

[*Adopted on 25 August 2025*]

[37] Human Rights Council resolution 51/8, paras. 6 and 9.