Advance edited version

Distr.: General
9 October 2024

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its 100th session, 26–30 August 2024

Opinion No. 28/2024 concerning Arnon Nampa (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 4 March 2024 the Working Group transmitted to the Government of Thailand a communication concerning Arnon Nampa. The Government submitted a late response on 4 June 2024. 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. Mr. Arnon Nampa is a citizen of Thailand born on 18 August 1984.

5. According to the source, Mr. Nampa is a human rights lawyer and pro-democracy activist. Since mid-2020, he has been known as one of the prominent protest leaders who publicly advocated for democratic reforms in Thailand and for the reform of the monarchy. Mr. Nampa has been the subject of multiple communications from the special procedures of the Human Rights Council to the authorities.[2]

6. The source states that Mr. Nampa is being deprived of his liberty following two prison sentences imposed in connection with two lèse-majesté cases (Black Case No. Aor. 2495/2564 and Black Case No. Aor. 2804/2564). The source explains that, by the time he was indicted for lèse-majesté in those two cases, he was already being detained at the Bangkok Remand Prison in connection with other lèse-majesté cases. The present communication focuses on the two cases in which Mr. Nampa has been convicted and sentenced to prison terms (Black Case No. Aor. 2495/2564 and Black Case No. Aor. 2804/2564).

(i) Detention and cases against Mr. Nampa

7. With regard to case 1 (Black Case No. Aor. 2495/2564), the source indicates that, on 16 December 2020, in response to a police summons, Mr. Nampa presented himself to Samranrat Police Station in Bangkok to acknowledge nine charges, including one charge under section 112 (lèse-majesté) of the Criminal Code, in connection with his participation in a peaceful protest on 14 October 2020 in Bangkok. After acknowledging the charges, Mr. Nampa was not arrested and was free to leave. The source adds that the lèse-majesté charge was based on Mr. Nampa's speech during the above-referenced peaceful protest, in which he called for the resignation of the then Prime Minister, the amendment of the Constitution and the reform of the monarchy.

8. On 7 October 2021, Mr. Nampa was indicted under, inter alia, section 112 of the Criminal Code in connection with his participation in a peaceful protest on 14 October 2020 in Bangkok.

9. The source notes that this was the tenth case in which Mr. Nampa was indicted under section 112 of the Criminal Code. Because of the detention order issued against him by the Bangkok Criminal Court, Mr. Nampa remained in detention at the Bangkok Remand Prison after the 7 October 2021 indictment.

10. Between 7 October 2021 and 22 February 2022, Mr. Nampa submitted a total of eight bail requests (on 14, 19 and 26 October 2021; 3, 5 and 9 November 2021; 2 December 2021; and 22 February 2022) to the Bangkok Criminal Court. The Court denied the first seven bail requests and granted the eighth bail request. In his first bail request on 14 October 2021, Mr. Nampa offered 200,000 baht (approximately $5,550) as a surety and maintained that, if released, he would not flee as he had a usual place of residence and because of his work as a lawyer. However, the Bangkok Criminal Court considered the seriousness of the charge, the circumstances of the case and the severity of potential punishment before denying his bail request. The Court stated that, if released, Mr. Nampa may flee. Subsequent bail requests were denied on similar grounds.

11. On 22 February 2022, the Bangkok Criminal Court granted Mr. Nampa's eighth bail request (as well as his other bail requests in eight other lèse-majesté cases before the Court)[3] at 100,000 baht (approximately $2,770), subject to several restrictive conditions, such as the prohibition to engage in activities or conduct that would tarnish the monarchy or the Court

[2] See communications THA 2/2018, THA 4/2018, THA 7/2020, THA 11/2020 and THA 5/2023. All communications in the present report are available from https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

[3] Black Cases Nos. Aor. 287/2564, 1629/2564, 2804/2564, 2847/2564, 2887/2564, 2888/2564, 2948/2564 and 3124/2564.

and the prohibition on participating in public assemblies "that may cause disorder in society". Mr. Nampa was also required to wear an electronic monitoring device at all times and not to leave his residence between 9 p.m. and 6 a.m., except for medical reasons or to travel to a police station.

12. The source notes that with respect to case 1 alone, Mr. Nampa was held in detention at the Bangkok Remand Prison from 7 October 2021 to 22 February 2022 for a total of 139 days.

13. Despite the granting of bail in nine cases before the Bangkok Criminal Court on 22 February 2022, Mr. Nampa continued to remain in detention at the Bangkok Remand Prison, because the Bangkok South Criminal Court had yet to grant bail to him in two other cases, one of which was a lèse-majesté case.[4] He was eventually granted bail in those two cases by the Bangkok South Criminal Court on 28 February 2022. Overall, that detention period lasted from 11 August 2021 to 28 February 2022 for a total of 202 days.

14. On 26 September 2023, the Bangkok Criminal Court found Mr. Nampa guilty of lèse-majesté and sentenced him to four years in prison. The Court also fined him 20,000 baht (approximately $555) for violation of an emergency decree, which was in force at the time of the alleged offence.[5]

15. Shortly after the delivery of the verdict, as the case was pending appeal, Mr. Nampa submitted a bail request to the Bangkok Criminal Court, which, in turn, transferred the request to the Court of Appeals for consideration. Mr. Nampa was detained at the Bangkok Remand Prison while waiting for an order from the Court of Appeals.

16. The source notes that usually the Court of Appeals would take two to three days to issue a bail order. However, on 28 September 2023, two days after the submission of the bail request, Mr. Nampa's lawyer called an officer at the Court of Appeals and discovered that the Court had not received Mr. Nampa's bail request. When the lawyer called an officer at the Bangkok Criminal Court, the officer confirmed that the request had not been sent to the Court of Appeals. The officer informed the lawyer that the transfer would be made that day.

17. On 30 September 2023, the Court of Appeals issued an order denying Mr. Nampa's bail request. In the order, the Court explained that Mr. Nampa's conduct "affected and damaged the democratic form of government with the King as the head of State", which was a "serious matter". Considering the four-year prison term imposed by the Bangkok Criminal Court, the Court of Appeals stated that "there was a reason to believe that, if released, Mr. Arnon Nampa would flee".

18. On similar grounds, the Court of Appeal denied Mr. Nampa's four additional bail requests. He remains imprisoned at the Bangkok Remand Prison as his case is at the appeals stage.

19. With regard to case 2 (Black Case No. Aor. 2804/2564), the source recalls that, on 23 June 2021, in response to a summons (dated 17 May 2021) from the Technology Crime Suppression Division, Mr. Nampa reported himself to the Division to acknowledge charges under section 112 of the Criminal Code and article 14 (3) (entering data constituting a national security offence into a computer system) of the Computer Crimes Act (2007). After acknowledging the charges, Mr. Nampa was allowed to leave.

20. The source states that the charges in case 2 originate from two posts by Mr. Nampa on 1 January 2021 and one post on 3 January 2021 on Facebook. In his first Facebook post, published on 1 January 2021, Mr. Nampa reportedly questioned the reasons why losing faith in the monarchy system should be criminalized and the need for section 112 of the Criminal Code. In his second Facebook post, published on 1 January 2021, Mr. Nampa reportedly criticized the monarchy as well as the heavy penalties under section 112 of the Criminal Code for voicing such criticisms. He also stated that, if the matter were true and of public interest, people should be able to speak about it and to criticize it. In his third Facebook post, published on 3 January 2021, Mr. Nampa questioned whether those who opposed reform of the

[4] Black Case No. Aor. 1671/2564.

[5] Emergency Decree on Public Administration in Emergency Situations (2005).

monarchy disagreed with him or whether they opposed the idea simply because the idea was presented by him or people on his side. He also reiterated his criticisms of the monarchy.

21. On 12 November 2021, the prosecutor submitted an indictment order to the Bangkok Criminal Court against Mr. Nampa under section 112 of the Criminal Code and article 14 (3) of the Computer Crimes Act.

22. The source notes that Mr. Nampa was not brought to the Bangkok Criminal Court on that day because he was being detained in the Bangkok Remand Prison in connection with two other lèse-majesté cases before the Court (Black Case No. Aor. 1629/2564 and case 1) and one lèse-majesté case before the Bangkok South Criminal Court (Black Case No. Aor. 1671/2564).

23. On 15 November 2021, Mr. Nampa was brought to the Bangkok Criminal Court where the indictment order was read to him. The Court then issued a detention order against Mr. Nampa.

24. On 2 December 2021, Mr. Nampa submitted a bail request to the Bangkok Criminal Court, which scheduled a hearing on 17 December 2021.

25. On 17 December 2021, the prosecutors informed the judge that they would not be able to submit a motion opposing Mr. Nampa's bail request on the day. The prosecutors then asked the judge to allow them to submit the motion on 22 December 2021. Despite Mr. Nampa's objection, the judge allowed the prosecutors to submit their motion by 23 December 2021 and noted that he would rule on the bail request on 24 December 2021.

26. On 24 December 2021, the Bangkok Criminal Court denied Mr. Nampa's bail request. The Court stated that it considered Mr. Nampa's speech and its potential to cause "disturbance" in society, as well as the other criminal cases pending against him. The Court also stated that there was reason to believe that, if released, Mr. Nampa would engage in "similar acts" or "cause other dangers".

27. On 22 February 2022, Mr. Nampa submitted his second bail request in respect of case 2, as well as bail requests in eight other cases. The Bangkok Criminal Court granted Mr. Nampa's bail request in case 2 at 100,000 baht (approximately $2,770) and imposed several restrictive conditions, as already reported in paragraph 11 above.

28. The source notes that with respect to case 2 alone, Mr. Nampa was held in detention at the Bangkok Remand Prison from 15 November 2021 to 22 February 2022 for a total of 100 days.

29. Despite the granting of bail on 22 February 2022, Mr. Nampa continued to remain in detention at the Bangkok Remand Prison as the Bangkok South Criminal Court had yet to grant bail to him in two other cases, one of which was a lèse-majesté case. He was eventually granted bail in all cases on 28 February 2022 after his detention had begun on 11 August 2021.

30. On 17 January 2024, the Bangkok Criminal Court found Mr. Nampa guilty of violating section 112 of the Criminal Code and article 14 (3) of the Computer Crimes Act and sentenced him to four years in prison. The four-year prison sentence in case 2 and the four-year prison sentence in case 1 will have to be served consecutively, which means Mr. Nampa's prison term currently stands at eight years.

31. On 16 February 2024, Mr. Nampa submitted a bail request to the Bangkok Criminal Court, which, in turn, transferred the request to the Court of Appeals for consideration. On 18 February 2024, the Court of Appeals denied the bail request. The Court noted that Mr. Nampa's action "affected and damaged the democratic form of government with the King as the Head of State", which was a "serious matter". Furthermore, the Court noted that Mr. Nampa had previously received another four-year prison sentence on 26 September 2023. For those reasons, the Court stated that it had a reason to believe that, if released, Mr. Nampa would flee.

(ii) Legal analysis

32. The source submits that the deprivation of liberty of Mr. Nampa is arbitrary and falls within categories I, II, III and V of the Working Group.

a. Category I

33. In relation to category I, the source maintains that Mr. Nampa's deprivation of liberty under section 112 of the Criminal Code lacks a legal basis. It recalls that, according to the well-established jurisprudence of the Working Group, detention pursuant to a law that is inconsistent with international human rights law lacks a legal basis and is thus arbitrary.[6] Furthermore, according to article 9 (1) of the Covenant, any deprivation of liberty must be carried out in accordance with such procedure as is established by law.

34. The source submits that Mr. Nampa's detention under section 112 of the Criminal Code is arbitrary, as it violates the principle of legality under international human rights law, which requires that laws be formulated with sufficient precision so that the individuals can access and understand the law and regulate their conduct accordingly.[7]

35. In that regard, the source recalls that the Working Group has consistently found section 112 to be vague and overly broad as it 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.[8]

36. The source states that Mr. Nampa has never called for people to engage in lawless actions or to resort to any violence. The source argues that in their judgments in lèse-majesté cases, courts have regularly failed to provide clear criteria or parameters to explain why they had determined that certain conduct or statements amounted to a violation of section 112 of the Criminal Code. Consequently, in the source's view, it is impossible to know where the line between permissible and impermissible criticism of the monarchy is drawn, according to domestic law.

b. Category II

37. In relation to category II, the source submits that Mr. Nampa's deprivation of liberty is the direct result of his exercise of his right to freedom of expression, guaranteed by article 19 (2) of the Covenant, to which Thailand is a State party. The source recalls that, under article 19 (3) of Covenant, restrictions on the right to freedom of expression are justified only if they are provided by law and are necessary (a) for respect of the rights or reputations of others and (b) for the protection of national security or of public order, or of public health or morals. The source submits that section 112 of the Criminal Code fails to meet those requirements.

38. The source recalls that, according to the Human Rights Committee, in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, 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, albeit public figures may also benefit from the provisions of the Covenant. Moreover, 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.[9]

39. The source submits that Mr. Nampa's previous and ongoing deprivation of liberty under section 112 of the Criminal Code has ensued from his peaceful speeches criticizing or calling for reform of the monarchy. In particular, the source argues, in relation to case 1, that the right of Mr. Nampa to make a speech such as the one he made on 14 October 2020, alleging that the King had the sole authority to order the dispersal of protests, is guaranteed by article 19 (2) of the Covenant. Such a statement represents a legal observation that contains

[6] Opinion No. 64/2021, para. 57.
[7] Opinion No. 49/2023, para. 64.
[8] Ibid., para. 62.
[9] Human Rights Committee, general comment No. 34 (2011), para. 38 (footnotes omitted).

no judgment, notes the source. The source reiterates that Mr. Nampa has neither insulted nor defamed the King.

40. The source adds that, even assuming that Mr. Nampa's expression constituted a criticism of the King, international human rights law protects speeches criticizing the King as the Head of State "in the exercise of his official duties or … in his capacity as representative of the State which he symbolises". The source maintains that the King's "inviolability" under the Constitution (i.e. immunity from legal proceedings) "should not in itself act as a bar to free debate concerning possible institutional or even symbolic responsibility on his part in his position at the helm of the State".[10] Mr. Nampa's suggestion that the King had the sole authority to order the dispersal of protests must be seen within the larger context of the Government – which the King symbolizes – dispersing peaceful protests in the second half of 2020.

41. Furthermore, in relation to case 2, the source maintains that Mr. Nampa's three Facebook posts are protected by article 19 (2) of the Covenant. As noted by the Human Rights Committee, article 19 (2) protects political discourse, commentary on public affairs and discussion of human rights. The Committee has stated that article 19 (2) embraces even expression that may be regarded as deeply offensive,[11] subject to the restrictions under article 19 (3). Mr. Nampa's three Facebook posts published in January 2021 highlighted the use of section 112 of the Criminal Code and the human rights issues to which it gave rise. Mr. Nampa expressed his opinion that no one should be imprisoned for speaking about the monarchy. The source concludes that his political expressions clearly fell within the ambit of expressions protected by article 19 (2) of the Covenant.

42. The source notes that the Human Rights Committee has explained that 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.[12] The Committee noted that imprisonment was never an appropriate penalty[13] for defamation. The Working Group has also held in its jurisprudence, specifically with reference to lèse-majesté in Thailand, that, if a speech defames any individuals, the remedy will lie in a civil libel claim rather than in criminal sanctions.[14]

43. In addition, the source submits that, despite section 112 of the Criminal Code being categorized as a provision to prosecute national security offences, Thailand has consistently failed to demonstrate in specific and individualized fashion the precise nature of the threat, in particular by establishing a direct and immediate connection between the expression and the threat.[15] It is unclear how Mr. Nampa's peaceful expressions criticizing the monarchy posed a threat to national security or public order. As the Human Rights Committee has explained, it is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.[16]

44. Lastly, the source argues that the mandatory 3 to 15 years of imprisonment prescribed by section 112 of the Criminal Code violates the proportionality principle under international human rights law. The Working Group has consistently held that imprisonment under section 112 of the Criminal Code is a disproportionate penalty for the exercise of fundamental rights.[17] Similarly, it is submitted that Mr. Nampa's eight-year prison term is a disproportionate response to his peaceful expression criticizing the monarchy.

45. Regarding the proportionality principle, the Bangkok Criminal Court, in its judgment of 17 January 2024 in case 2, attempted to explain that the penalty of 3 to 15 years of

[10] European Court of Human Rights, *Otegi Mondragon v. Spain*, Application No. 2034/07, Judgment, 15 March 2011, para. 56.

[11] Human Rights Committee, general comment No. 34 (2011), para. 11 (footnotes omitted).

[12] Ibid., para. 38.

[13] Ibid., para. 47.

[14] Opinion No. 56/2017, para. 53.

[15] Human Rights Committee, general comment No. 34 (2011), para. 35.

[16] Ibid., para. 30.

[17] See, for example, opinion No. 49/2023, para. 69.

imprisonment under section 112 is a proportionate response to Mr. Nampa's criticism of the King. Responding to Mr. Nampa's statement that people should be able to criticize the King, the Court explained that, because the King is "beloved by the people", any insults directed at the King necessarily "hurt the feelings" of the Thai people.[18] The Court noted that the State must afford special protection to the King, being the King, the Head of State and the "embodiment of nationhood and unity".[19] The Court further noted that lèse-majesté is a crime with no exceptions or defences: as such, it is a more serious offence than defamation against ordinary citizens, for which the Court maintained there were exceptions and defences.[20] The Court added that the Constitution recognized the King as "sacred" and "inviolable".[21]

46. The source in turn maintains that the King's "inviolability" under the Constitution[22] does not justify the excessively long prison sentence of 3 to 15 years under international human rights law. It notes that the Human Rights Committee has specifically stated that laws should not provide for more severe penalties solely on the basis of the identity of the person who may have been impugned.[23]

c. Category III

47. In the context of category III, the source argues that Mr. Nampa's pretrial detention in relation to case 1 (for 139 days) and case 2 (for 100 days) violated his right to liberty pending trial under article 9 (3) of the Covenant.

48. Under article 9 (3) of the Covenant, the general rule is that persons awaiting trial should not be detained in custody. As the Working Group has explained, 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. Detention should not be ordered on the basis of the potential sentence for the crime but should be based on a determination of its necessity. Courts must examine whether alternatives to pretrial detention, such as bail, would render detention unnecessary in the particular case.[24]

49. In case 1, Mr. Nampa spent 139 days in pretrial detention after he had been indicted on 7 October 2021 under section 112 of the Criminal Code. His first seven bail requests[25] were denied by the Bangkok Criminal Court, which cited the "seriousness of the charge" and "the severity of potential punishment" as reasons for believing that, if released, Mr. Nampa would flee. Furthermore, the Court believed that, if released, Mr. Nampa would cause "other dangers" or "other harm" in society. Similarly, in case 2, the Bangkok Criminal Court's denial of bail on 24 December 2021 was based on its belief that, if released, Mr. Nampa would engage in "similar acts" again or "cause other dangers". The Court cited Mr. Nampa's speech and its potential to cause "disturbance" in society, as well as other criminal cases against him to support its belief.

50. The source submits that, contrary to international law, the Bangkok Criminal Court failed to conduct an individualized determination as to whether Mr. Nampa's pretrial detention was reasonable or necessary. The source recalls that the Working Group has previously held in another lèse-majesté case in Thailand that courts cannot rely on the severity of potential punishment for lèse-majesté offences to deny bail.[26] For those reasons, the source submits that the manner in which article 108 (1) of the Criminal Procedure Code is being applied in Mr. Nampa's case has been overly broad and arbitrary.

[18] Bangkok Criminal Court, *Prosecutor v. Arnon Nampa*, Black Case No. Aor. 2804/2564, Judgment, 17 January 2024, p. 22.

[19] Ibid.

[20] Ibid. pp. 22 and 23. See also articles 326 (criminal defamation), 329 (good-faith criticisms are exempt) and 330 (truth is a defence to criminal defamation) of the Criminal Code.

[21] *Prosecutor v. Arnon Nampa*, Black Case No. Aor. 2804/2564, p. 24.

[22] Constitution, art. 6.

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

[24] Opinion No. 64/2021, para. 76.

[25] Submitted on 14, 19 and 26 October, 3, 5 and 9 November and 2 December 2021.

[26] Opinion No. 64/2021, para. 78.

51. In addition, according to the source, Mr. Nampa's conduct for which he was being detained was protected by article 19 (2) of the Covenant. Therefore, refusing to grant bail to Mr. Nampa in order to prevent him from "engaging in similar acts" violated his right to freedom of expression and to liberty pending trial.

52. The source further notes that, in relation to the Bangkok Criminal Court's concerns that, if released, Mr. Nampa would cause "other dangers", according to the Human Rights Committee, factors to consider when deciding whether to grant bail should not include vague and expansive standards such as "public security".[27] Grounds for detention must be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.[28] The source submits that the Bangkok Criminal Court has never clarified what "other dangers" meant. The Court has also never referred to any evidence to support its concern about the "dangers" that Mr. Nampa may cause.

53. Moreover, the source sustains that Mr. Nampa's imprisonment after having been found guilty of lèse-majesté in case 1 (on 26 September 2023) and case 2 (on 17 January 2024) violates his fundamental right to liberty under article 9 (1) of the Covenant.

54. Finally, also in relation to category III, the source submits that Mr. Nampa's right to be tried without undue delay under article 14 (3) (c) of the Covenant was violated.

55. The source recalls that article 14 (3) (c) of the Covenant guarantees that, in the determination of any criminal charge, everyone shall be "tried without undue delay". Similarly, the Human Rights Committee has noted that an important aspect of the fairness of a hearing is its expeditiousness.[29] The Committee has also noted that, in cases in which the accused are denied bail by the court, they must be tried as expeditiously as possible.[30] In its most recent opinion on detention under the lèse-majesté law of Thailand, the Working Group explained that 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 had been dealt with by the authorities.[31] The Working Group also held that any delay in trying a person whose detention is arbitrary under category II is unreasonable.[32]

56. The source notes that in case 1, Mr. Nampa was charged on 16 December 2020 and indicted on 7 October 2021. He was then subjected to pretrial detention between 7 October 2021 and 22 February 2022 for 139 days. His trial began on 20 June 2023, or 916 days after a criminal charge was formally brought against him. It argues that such a period before the commencement of the trial is excessively long. The trial lasted from 20 June to 5 July 2023, with a total of 10 hearings.

57. Similarly, it is noted that, in case 2, Mr. Nampa was charged on 23 June 2021 and indicted on 15 November 2021. He was then subjected to pretrial detention from 15 November 2021 to 22 February 2022 for 100 days. His trial began on 21 April 2023 or 667 days after a criminal charge was formally brought against him. Such a period before the commencement of the trial is excessively long. The trial lasted from 21 April to 23 November 2023, with a total of 11 hearings.

58. The facts related to both lèse-majesté cases for which Mr. Nampa is being imprisoned do not require technically complex or in-depth investigations. The Working Group has previously found that a delay of more than a year and a half after arrest violated the right under article 14 (3) (c) of the Covenant.[33] The allegations against the subject of that opinion (livestreaming on Facebook) are very similar to those against Mr. Nampa in case 2, notes the source.

[27] Human Rights Committee, general comment No. 35 (2014), para. 38.
[28] Ibid., para. 22.
[29] Human Rights Committee, general comment No. 32 (2007), para. 27.
[30] Ibid., para. 35.
[31] Opinion No. 49/2023, para. 75.
[32] Ibid.
[33] Ibid., para. 76.

d. Category V

59. Lastly, in relation to category V, the source submits that Mr. Nampa's deprivation of liberty is based on his political opinions and his status as a human rights defender.[34]

60. The source submits that Mr. Nampa's deprivation of liberty stems from his political opinions deemed by authorities to be critical of the monarchy and the Government. His criticism of the monarchy, the use of section 112 of the Criminal Code and his views on the Government's policies on the monarchy are key reasons for his deprivation of liberty.[35]

61. Furthermore, the source also submits that Mr. Nampa is being targeted because of his status as a human rights defender. His human rights work and status as a human rights defender have been recognized by the special procedures of the Human Rights Council in numerous instances, including by the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders.[36]

62. Since 2020, Mr. Nampa has been charged in a total of 26 cases – 14 of which are lèse-majesté cases – all in connection with his human rights activities, concludes the source.

e. Additional information received from the source

63. On 26 July 2024, the Working Group received an update from the source that, on 25 July 2024, Mr. Nampa was sentenced to four additional years, on another count of lèse-majesté, bringing his total sentence to 14 years. The source noted that this was his fourth conviction and that he was facing 10 additional charges.

(b) Response from the Government

64. On 4 March 2024, 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 3 May 2024 about the current situation of Mr. Nampa. The Working Group also requested the Government to clarify the legal provisions justifying his detention, as well as their compatibility with the obligations of the Government of Thailand under international human rights law and, in particular, with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure Mr. Nampa's physical and mental integrity.

65. The Government submitted its response on 4 June 2024, which was after the set deadline. 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. Consequently, the Working Group cannot accept the reply as if it were presented within the time limit.

2. Discussion

66. 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.

67. In determining whether Mr. Nampa'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.[37] In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

[34] A/HRC/48/55, paras. 46–50.
[35] Opinions No. 12/2019, para. 131; and No. 91/2020, paras. 65 and 66.
[36] See communications THA 2/2018, THA 4/2018, THA 7/2020, THA 11/2020 and THA 5/2023.
[37] A/HRC/19/57, para. 68.

(a) Category I

68. 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 Mr. Nampa's detention under section 112 of the Criminal Code, as it violates the principle of legality under international human rights law.

69. 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.[38] 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 article 14 of the Computer Crimes Act to be arbitrary under category II when it resulted from the peaceful exercise of the freedom of expression;[39]

(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.[40] 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 freedom of expression under international human rights law.[41] The Office of the United Nations High Commissioner for Human Rights has expressed similar concerns;[42]

(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;[43]

(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

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

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

[40] 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.

[41] 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.

[42] See, for example, Office of the United Nations High Commissioner for Human Rights, "Press briefing note on Thailand", 13 June 2017, available at https://www.ohchr.org/en/2017/06/press-briefing-note-thailand.

[43] CCPR/C/THA/CO/2, paras. 37 and 38. See also 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 cycle review of Thailand, "Implementation of international human rights obligations, considering applicable international humanitarian law", April 2021, paras. 58–59.

matters of concern. Delegations urged the Government to bring its lèse-majesté laws into conformity with its international commitments.[44]

70. The Working Group recalls its jurisprudence in which it found that section 112 of the Criminal Code, pursuant to which Mr. Nampa is being prosecuted, was vague and overly broad.[45] 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.

71. Given 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. Nampa 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 also 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.[46]

72. As the Working Group has stated, the principle of legality requires that laws be formulated with sufficient precision so that individuals can access and understand the law and regulate their conduct accordingly.[47] 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.[48] 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.

73. The source also asserts that Mr. Nampa's pretrial detention in case 1 (for 139 days) and case 2 (for 100 days) violated his right to liberty pending trial under article 9 (3) of the Covenant. The source recalls that such prolonged pretrial detention has been due to the Court's rejection of Mr. Nampa's numerous bail requests. According to the source, these decisions were not based on individualized assessments of the circumstances of Mr. Nampa's case.

74. 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.[49] Courts must examine whether alternatives to pretrial detention, such as bail or other conditions, would render detention unnecessary in the particular case.[50] Detention should not be ordered on the basis of the potential sentence for the crime but should be based on a determination of its necessity. While the Government in its late reply states that the court's decisions were based on repeated offences, seriousness of the charges and the sentences imposed, as the Working Group has previously held (in another lèse-majesté case in Thailand), courts cannot rely on the severity of potential punishment for lèse-majesté offences to deny bail.[51]

[44] 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.

[45] Opinions No. 51/2017, para. 32; No. 56/2017, para. 45; No. 4/2019, para. 55; No. 64/2021, paras. 55 and 56; and No. 49/2023, paras. 62, 64, 66 and 70.

[46] See, for example, opinions No. 43/2017, para. 34; No. 40/2018, para. 45; and No. 69/2018, para. 21. See also opinion No. 14/2017, para. 49.

[47] 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.

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

[49] Human Rights Committee, general comment No. 35 (2014), para. 38.

[50] Ibid.

[51] Opinion No. 64/2021, para. 78.

75. Based on the foregoing, the Working Group concludes that a proper individualized determination of Mr. Nampa's circumstances was absent, in light of the nature of the alleged conduct and, as a result, his detention lacked a legal basis and was ordered in violation of article 9 of the Universal Declaration of Human Rights and 9 (3) of the Covenant, and in contravention of principles 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

76. The Working Group observes that, even when granted bail, Mr. Nampa was subjected to stringent conditions – notably the obligation to wear an electronic monitoring device at all times and the prohibition to leave his residence between 9 p.m. and 6 a.m., except for medical reasons or to travel to a police station – that resemble house arrest. 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.[52] In its deliberation No. 1 on house arrest, the Working Group also stated that, in all other situations, it would devolve on the Working Group to decide, on a case-by-case basis, whether the case in question constituted a form of detention and, if so, whether it had 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.[53]

77. For the reasons set out above, the Working Group finds that there is no legal basis for Mr. Nampa's detention and that his deprivation of liberty is arbitrary under category I.

(b) Category II

78. The source submits that Mr. Nampa's deprivation of liberty is arbitrary under category II, as it stems directly from his peaceful exercise of his right to freedom of expression. Moreover, his restrictive bail conditions further obstructed Mr. Nampa's political participation. The source asserts that the charge of lèse-majesté under section 112 is a violation of an individual's freedom of expression because it broadly 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.

79. While the Government in its late reply reiterates its commitment to international obligations, including freedom of expression and peaceful assembly, the Working Group considers that Mr. Nampa's speeches – whether delivered in the context of physical assemblies or on online platforms – 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.[54] 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, 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.[55]

80. 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

[52] 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).
[53] Opinions No. 50/2022, para. 79; and No. 49/2023, para. 58.
[54] Human Rights Committee, general comment No. 34 (2011), para. 11.
[55] Ibid., paras. 38 and 47.

and proportionality.[56] While the Government in its late reply reiterates the purposes of the lèse-majesté law, which it states is also intended to uphold public order and national security, it fails to adequately explain why arresting, detaining and prosecuting Mr. Nampa was a necessary and proportionate response to his peaceful activities. Moreover, in response to the recent ruling of the Constitutional Court, which found that the efforts of the Move Forward Party to amend section 112 of the Criminal Code, including engaging in social media discussions or political protests about it, were aimed at overthrowing the monarchy, United Nations experts said that: "Political debates, even on sensitive topics, are the oxygen of a democratic society and should not be conflated with violence or sedition. … According to international law and international treaties to which Thailand is a party, public figures, including those exercising the highest political authority in the land, such as monarchs and heads of state and government, are not immune from criticism."[57]

81. With regard to case 1, Mr. Nampa was detained for his statements on the King's authority to disperse protests. In relation to case 2, Mr. Nampa was detained for his Facebook posts in which he said that people cannot be imprisoned for speaking about the monarchy. Those statements were considered defamatory to the monarchy. However, the Working Group finds that Mr. Nampa's conduct constitutes legitimate expressions concerning matters of public interest, such as the fundamental right of citizens to protest and to actively engage in the political life of the country, even when this entails dissident views. The source submits that, while section 112 criminalizes defaming, insulting or threatening the monarch of Thailand, the Criminal Code does not provide individuals with any guidance on how the law limits their conduct. Importantly, there is nothing to suggest that Mr. Nampa's conduct incited violence of any kind that might have given cause to restrict his behaviour.[58] The Working Group does not consider it plausible that his 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.

82. 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.[59] 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.[60]

83. 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.[61] The Working Group considers that charges and convictions under section 112 of the Criminal Code for the peaceful exercise of rights are inconsistent with the Universal Declaration of Human Rights and the Covenant. Furthermore, the United Nations High Commissioner for Human Rights recently expressed grave concern about the ruling of the Constitutional Court to dissolve the Move Forward Party and ban its senior figures from political life on account of its advocacy for reforming the country's lèse-majesté laws,

[56] Ibid., paras. 21–36.

[57] Office of the United Nations High Commissioner for Human Rights, "Thailand: UN experts seriously concerned about dissolution of main political party", press release, 12 August 2024, available at https://www.ohchr.org/en/press-releases/2024/08/thailand-un-experts-seriously-concerned-about-dissolution-main-political.

[58] 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.

[59] See also opinions No. 51/2017, para. 57; No. 56/2017, para. 72; and No. 49/2023, para. 71.

[60] 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).

[61] Opinions No. 51/2017, para. 32; No. 56/2017, para. 45; No. 4/2019, para. 55; No. 64/2021, paras. 55 and 56; and No. 49/2023, para. 70.

recalling that United Nations human rights mechanisms have long expressed concerns about section 112 of the Criminal Code, which is inconsistent with the obligations of Thailand under the Covenant and should be reviewed.[62]

84. For the reasons set out above, the Working Group finds that the deprivation of liberty of Mr. Nampa 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 and the Special Rapporteur on the situation of human rights defenders, for appropriate action.

(c) Category III

85. The source argues that Mr. Nampa's detention is arbitrary under category III because the authorities failed to meet minimum international standards of due process. According to the source, the Government has violated Mr. Nampa's right to a prompt trial.

86. The source notes that, in case 1, Mr. Nampa was charged on 16 December 2020 and indicted on 7 October 2021. He was then subjected to pretrial detention between 7 October 2021 and 22 February 2022 for 139 days. His trial began on 20 June 2023, or 916 days after a criminal charge was formally brought against him.

87. Similarly, it is noted that, in case 2, Mr. Nampa was charged on 23 June 2021 and indicted on 15 November 2021. He was then subjected to pretrial detention from 15 November 2021 to 22 February 2022 for 100 days. His trial began on 21 April 2023, or 667 days after a criminal charge was formally brought against him.

88. 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, considering the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the authorities.[63] The source states that the facts related to both lèse-majesté cases for which Mr. Nampa is being imprisoned do not require technically complex or in-depth investigations. Therefore, the source concludes that such delays in trying Mr. Nampa's cases are evidently unreasonable.

89. The Human Rights Committee has stated that an important aspect of the fairness of a hearing is its expeditiousness and that, in cases in which the accused is denied bail by the court, he or she must be tried as expeditiously as possible.[64] The delay in the present case was exacerbated as Mr. Nampa was subjected to lengthy pretrial detention, as discussed above.[65] Absent an explanation from the Government in its late reply, the Working Group therefore finds that the delay to Mr. Nampa's trial after the charges against him were laid is unacceptably long and in violation of articles 9 (3) and 14 (3) (c) of the Covenant and contrary to principle 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

90. For the reasons above, the Working Group concludes that the violations of Mr. Nampa's fair trial and due process rights are of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III.

[62] Office of the United Nations High Commissioner for Human Rights, "Thailand: UN Human Rights Chief says deeply troubled by dissolution of Move Forward Party", press release, 8 August 2024, available at https://www.ohchr.org/en/press-releases/2024/08/thailand-un-human-rights-chief-says-deeply-troubled-dissolution-move-forward.

[63] Human Rights Committee, general comment No. 35 (2014), para. 37; and general comment No. 32 (2007), para. 35.

[64] Human Rights Committee, general comment No. 32 (2007), para. 27.

[65] Opinions No. 8/2020, para. 75; No. 16/2020, para. 77; No. 10/2021, para. 78; No. 16/2023, para. 84; and No. 49/2023, para. 75.

(d) Category V

91. The Working Group will now examine whether Mr. Nampa's deprivation of liberty is discriminatory under international law and whether it therefore falls under category V.

92. The Working Group has already established that Mr. Nampa's detention resulted from his exercise of the right to freedom of expression. When it is established that deprivation of liberty resulted from the active exercise of civil and political rights, there is a strong presumption that the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on political or other views.[66] The Working Group observes that Mr. Nampa's political views are at the centre of the present case and that the authorities have displayed a discriminatory attitude towards him.

93. The Working Group recalls several non-cumulative indicators that serve to establish the discriminatory nature of detention. Those include the following: the deprivation of liberty was part of a pattern of persecution against the detained person, including, for example, through previous detention; other persons with similarly distinguishing characteristics have also been persecuted; or the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights.[67]

94. With regard to these non-cumulative indicators, the Working Group recalls that Mr. Nampa's numerous bail requests were denied and that he was placed under prolonged pretrial detention without any reasonable justification. When granted bail, his conditions of release were tantamount to house arrest and he was subjected to several restrictive conditions, such as the prohibition on engaging in certain activities or conduct linked to the charges against him. Moreover, the Working Group recalls the source's submission that, since 2020, Mr. Nampa has been charged in a total of 26 cases – 14 of which are lèse-majesté cases – all in connection with his human rights activities. Furthermore, it observes an overall pattern in Thailand of detaining individuals who peacefully oppose the lèse-majesté laws and the present case is another example.[68]

95. 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.[69] United Nations experts recently expressed dismay at the undemocratic use of the lèse-majesté law as a political tool to dissolve the Move Forward Party that won the largest number of seats in the last general election and to remove its parliamentarians from politics. During the 2023 election campaign, the party had promised to reform section 112 of the Criminal Code.[70]

96. Based on the foregoing, the Working Group finds that Mr. Nampa was deprived of his liberty on discriminatory grounds on the basis of his political or other opinion regarding the lèse-majesté laws.[71] For those reasons, the Working Group considers that Mr. Nampa'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 therefore falls under category V.

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

[67] A/HRC/36/37, para. 48.

[68] See, for example, opinions No. 51/2017, No. 56/2017, No. 4/2019, No. 64/2021 and No. 49/2023.

[69] Opinions No. 44/2016, No. 51/2017, No. 56/2017, No. 3/2018, No. 4/2019, No. 42/2020 and No. 49/2023.

[70] Office of the United Nations High Commissioner for Human Rights, "Thailand: UN experts seriously concerned about dissolution of main political party".

[71] Opinions No. 88/2017, para. 45; No. 13/2018, para. 36; and No. 91/2020, para. 66.

3. Disposition

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

> The deprivation of liberty of Arnon Nampa, being in contravention of articles 2, 7, 9, 11 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14, 15, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

98. The Working Group requests the Government of Thailand to take the steps necessary to remedy the situation of Mr. Nampa 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.

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

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

101. 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.

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

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

4. Follow-up procedure

104. 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. Nampa has been released and, if so, on what date;

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

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

105. 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.

106. 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.

107. 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.[72]

[*Adopted on 30 August 2024*]

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