



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021****Opinion No. 64/2021 concerning Anchan Preelard (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 42/22.
2. In accordance with its methods of work,¹ on 16 August 2021 the Working Group transmitted to the Government of Thailand a communication concerning Anchan Preelard. The Government has not replied to the communication. Thailand 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](#).



Submissions

Communication from the source

4. Anchan Preelerd is a national of Thailand born on 1 January 1956. Ms. Anchan usually resides in Bangkok.

5. According to the source, Ms. Anchan worked as a civil servant at the Ministry of Finance's Revenue Department for 38 years and six months until the day of her arrest. She also worked as a direct salesperson at the time of her arrest.

Arrest and detention

6. The source reports that Ms. Anchan was arrested on 25 January 2015 at approximately 3 p.m., at her home in Bangkok. The arrest was carried out by a group of 10 armed military officers with the 9th Infantry Division at the Surasi Military Camp, Kanchanaburi Province, and at least four plainclothes personnel from the military and/or the police.

7. The source also reports that the arresting authorities told Ms. Anchan they would take her for interrogation at the 11th Army Circle, located in Dusit District in Bangkok, but they instead took her into custody at the 11th Military Police Battalion, located in Ratchathewi District, Bangkok.

8. The source further reports that the officers did not present a warrant or any other decision by a public authority. An army official, who led the arresting officers, invoked two decrees as the legal basis for searching Ms. Anchan's home and arresting her without a warrant: the Thai Army's declaration of nationwide martial law, issued on 20 May 2014, which stated that martial law was being invoked throughout the Kingdom, effective from 3 a.m. on 20 May 2014 onwards; and the National Council for Peace and Order announcement No. 2/2014, issued on 22 May 2014, which stated that martial law was being invoked throughout the Kingdom, effective from 4.30 p.m. on 22 May 2014 onwards.

9. The source further reports that Ms. Anchan was suspected of having violated article 112 of the Criminal Code of Thailand, pertaining to lèse-majesté, or insulting or defaming the monarchy, and article 14 (2)–(3) and (5) of the 2007 Computer Crimes Act. These violations were suspected in connection with 19 audio clips she uploaded a total of 29 times to various YouTube and Facebook accounts under different usernames between 12 November 2014 and 24 January 2015.

10. The source asserts that the audio clips were produced by the host of an underground podcast about Thai politics and the Thai monarchy. Ms. Anchan was a follower of his programme and was never involved in the production of his audio clips. These clips contained references to members of the royal family and also contained stories that could be interpreted as references to various members of the royal family.

11. In recalling applicable legislation, the source clarifies that article 112 of Criminal Code of Thailand, on lèse-majesté, provides punishment in the form of imprisonment for 3 to 15 years to whomever defames, insults or threatens the King, the Queen, the heir apparent or the Regent.

12. Article 14 (2)–(3) and (5) of the 2007 Computer Crimes Act, amended by the 2017 Computer Crimes Act (No. 2), provides for imprisonment for a term not exceeding five years or to a fine not exceeding 100,000 baht or both, to whomever: dishonestly or deceitfully brings into a computer system computer data that are distorted or forged, either in whole or in part, or that are false, in such a manner likely to cause injury to the public but not constituting a crime of defamation under the Criminal Code; brings into a computer system computer data that are false, in such a manner likely to cause damage to the maintenance of national security, public safety, national economic security or infrastructure for the common good of the nation, or that are likely to cause panic among the public; brings into a computer system computer data that constitute a crime concerning security of the country or crime concerning terrorism under the Criminal Code; brings into a computer system computer data with vulgar characteristics, when such computer data are capable of being accessed by the general public; publishes or forwards computer data, with the knowledge that the computer data fulfil one of the above-mentioned criteria. If the crime under paragraph 1 (1) of article

14 is not committed against the public but is committed against any particular person, the criminal or the person who publishes or forwards the computer data shall be liable to imprisonment for a term not exceeding three years, or a fine not exceeding 60,000 baht, or both, and such crime shall be compoundable.

13. The source further recalls provisions of articles 4, 6 and 8 of the 1914 Martial Law Act. Article 6 stipulates that in case of war or insurrection in any area, the commander of military forces of at least one battalion, or of any military fort, barracks or forfeited areas, that has the power and duty to protect such area shall have the power to proclaim the martial law within his or her responsible area. In this case, the proclamation of the martial law is to be reported to the Government immediately. Article 6 provides that the military authority is to have superior power over the civilian authority in regard to military operation, desistance or suppression, or the keeping of public order. Article 8 affords the military authority the power to search or remain in, or to order the compulsory requisition, prohibition, seizure, destruction or alteration of, any place, and to turn persons out of said place.

14. The source also notes article 1 of announcement No. 37/2014 of the National Council for Peace and Order, issued on 25 May 2014, which states that cases related to national security, the Thai monarchy and violations of the Council's orders and announcements are to be tried in military courts. The source also recalls article 1 of announcement No. 38/2014 of the Council, issued on 25 May 2014, which states that cases listed in Council announcement No. 37/2014 are to be tried in military courts.

15. The source reports that initially, from 25 to 30 January 2015, Ms. Anchan was detained in the 11th Military Police Battalion, located in Ratchathewi District in Bangkok. On 30 January 2015, she was brought before the Bangkok Military Court, which approved the police request to detain her. Following the Court's decision, Ms. Anchan was transferred to be detained in the Central Women's Correctional Institution in Bangkok, where she remained in custody for over 3 and a half years.

16. The source further reports that on 23 April 2015, Ms. Anchan was indicted by the Bangkok Military Court on charges of violating article 112 of the Criminal Code and article 14 (2)–(3) and (5) of the Computer Crimes Act.

17. According to the source, after repeatedly denying her bail requests, on 1 November 2018, the Bangkok Military Court eventually allowed Ms. Anchan to be temporarily released on bail, in accordance with article 108 (1) of the Criminal Procedure Code of Thailand, concerning provisional release. Ms. Anchan was released the next day.

18. The source further asserts that the criminal case against Ms. Anchan remained under the jurisdiction of the Bangkok Military Court until July 2019, when order No. 9/2019 of the Head of the National Council for Peace and Order was issued, which resulted in the transfer of trials of civilians from military courts to civilian courts. Twenty-four hearings were held in the Bangkok Military Court before Ms. Anchan's case was transferred to the Bangkok Criminal Court for the continuation of her trial. Three hearings were held before the Bangkok Criminal Court.

19. According to the source, on 15 December 2020, during the examination of one the prosecution's witnesses at the Bangkok Criminal Court, Ms. Anchan pleaded guilty to all charges against her.

20. On 19 January 2021, the Bangkok Criminal Court sentenced Ms. Anchan to 43 years and six months in prison on all 29 counts. She had been charged with uploading 19 audio clips deemed by authorities to be defamatory to the Thai monarchy to social media platforms, in violation of article 112 of the Criminal Code, and with importing false information in relation to national security, in violation of article 14 (2)–(3) and (5) of the Computer Crimes Act. She was sentenced to three years in prison per count, for a total of 87 years. However, in consideration of the defendant's guilty plea, the court halved the penalty to one year and six months in prison per count, resulting in a final sentence of 43 years and six months in prison.

21. Since 19 January 2021, Ms. Anchan has been detained at the Central Women's Correctional Institution, located in Ngamwongwan Road, Chatuchak District in Bangkok.

Legal analysis

22. The source submits that the deprivation of liberty of Ms. Anchan is arbitrary falling under categories I, II, and III of the methods of work of the Working Group.

23. In relation to category I, the source submits that Ms. Anchan's deprivation of liberty is arbitrary because her initial arrest was carried out without an arrest warrant issued by a competent, independent and impartial judicial authority. It recalls that the international norms on detention, which include the right to be presented with an arrest warrant, except arrests that are made in flagrante delicto.

24. The source further recalls that this right is inherent to the right to liberty and security of person and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the International Covenant on Civil and Political Rights, to which Thailand is a State party, as peremptory norms of customary international law. Article 3 of the Universal Declaration of Human Rights states that everyone has the right to life, liberty and security of person. Article 9 of the Universal Declaration of Human Rights states that no one is to be subjected to arbitrary arrest, detention or exile. Article 9 (1) of the Covenant states that everyone has the right to liberty and security of person, that no one is to be subjected to arbitrary arrest or detention, and that no one is to be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law.

25. In addition, the source recalls that any form of detention and imprisonment should be ordered by, or be subject to the effective control of, a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

26. The source specifies that the charges against Ms. Anchan in relation to lèse-majesté and computer crimes rest upon the 19 audio clips she uploaded a total of 29 times to various YouTube and Facebook accounts under different usernames between 12 November 2014 and 24 January 2015. The source argues that it cannot be considered that she was caught in flagrante delicto in the commission of any alleged crimes when the authorities arrested her on 25 January 2015.

27. In addition, the source argues that Ms. Anchan is being detained under article 112 of the Criminal Code, a legal provision that is inconsistent with international human rights law. As a result, there is no legal basis for her detention. It recalls that the Working Group has repeatedly expressed its concern over the vagueness and the enforcement of article 112 of the Thai Criminal Code, which leads to the suppression of important debates on matters of public interest, undermining the right to freedom of opinion and expression.²

28. Furthermore, the source recalls that in its general comment No. 34 (2011) on freedoms of opinion and expression, the Human Rights Committee also noted 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.

29. In relation to category II, the source argues that Ms. Anchan's deprivation of liberty is arbitrary because it stems from the exercise of her right to freedom of opinion and expression, guaranteed by article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights. The source recalls that article 19 (2) of the Covenant states that everyone is to have the right to freedom of expression and that that right is to include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice. Similarly, article 19 of the Universal Declaration of Human Rights states that everyone has the right to freedom of opinion and expression, and that that right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

² See opinions No. 35/2012, No. 41/2014, No. 43/2015, No. 44/2016, No. 51/2017, No. 56/2017, No. 3/2018 and No. 4/2019.

30. The source notes that Ms. Anchan was arrested, detained and imprisoned because of audio clips she uploaded to social media platforms. The source considers that this content falls within the boundaries of the exercise of the right to freedom of expression protected by article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights.

31. The source submits that Thai authorities, including the Bangkok Criminal Court, failed to demonstrate how the above-referenced audio clips, which do not appear to contain any offensive language, could be considered to be defamatory, insulting or threatening under article 112 of the Criminal Code, or how their dissemination could amount to a crime concerning the security of Thailand under article 14 of the Computer Crimes Act. In addition, the source argues that nothing suggests that the audio clips incited violence of any kind that might have given cause to restrict Ms. Anchan's conduct. Lastly, it is argued that Thai authorities failed to demonstrate how the dissemination of the audio clips could threaten the rights or reputations of others, national security, public order, public health or morals, and why Ms. Anchan's prosecution was a necessary and proportionate response to her dissemination of such material.

32. The source recalls that in the Human Rights Committee's general comment No. 34, the Committee emphasized that the mere fact that forms of expression were considered to be insulting to a public figure was not sufficient to justify the imposition of penalties, albeit public figures might also benefit from the provisions of the Covenant. In addition, the Committee noted that all public figures, including those exercising the highest political authority such as heads of State and Government, were legitimately subject to criticism and political opposition. The Committee specifically expressed concern regarding laws on such matters as *lèse-majesté*.³ The Committee further noted that the application of criminal defamation laws should only be allowed in the most serious cases and that imprisonment was never an appropriate penalty.⁴

33. The source submits that Ms. Anchan's prison sentence of 43 years and six months is the longest sentence ever imposed under article 112 of the Criminal Code in Thailand and represents a disproportionate punishment for the offence of which she was convicted.

34. The source further submits that Ms. Anchan's detention is arbitrary under category III because her right to a fair trial, which is guaranteed by article 14 of the Covenant and article 10 of the Universal Declaration of Human Rights, was seriously violated. The source clarifies that as a result of the Thai Army's declaration of martial law on 20 May 2014, announcement No. 2/2014 of the National Council for Peace and Order, issued on 22 May 2014, and announcement No. 37/2014 of the National Council for Peace and Order, issued on 25 May 2014, military courts assumed jurisdiction over several offences, including *lèse-majesté*, committed from 25 May 2014. On 5 September 2014, the Bangkok Military Court asserted jurisdiction over Ms. Anchan's case pursuant to article 1 of announcement No. 37/2014 of the National Council for Peace and Order. Ms. Anchan's case was transferred to a civilian court in July 2019 as a result of order No. 9/2019 of the Head of the National Council for Peace and Order. However, the fact that her case was under the jurisdiction of a military court for nearly four years greatly undermined Ms. Anchan's right to a fair trial. Between September 2014 and July 2019, the Bangkok Military Court held 24 hearings related to Ms. Anchan's case.

35. The source recalls that article 14 (1) of the Covenant guarantees the right to a fair and public hearing by a competent, independent and impartial tribunal and article 10 of the Universal Declaration of Human Rights stipulates that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal. The source submits that the Bangkok Military Court could not be considered competent, independent or impartial, since Thai military courts are not independent from the executive branch of government. Military courts are units of the Ministry of Defence, and military judges are appointed by the Commander-in-Chief of the Army and the Minister of Defence. Furthermore, it is submitted that military judges also lack adequate legal training. Thai lower military courts consist of panels of three judges, and only one of them has legal training. The other two are

³ Human Rights Committee, general comment No. 34, para. 38.

⁴ *Ibid.*, para. 47.

commissioned military officers, with no legal training, who sit on the panels as representatives of their commanders.

36. Moreover, the source argues that in a manner that is inconsistent with article 14 (1) of the Covenant and article 10 of the Universal Declaration of Human Rights, all 27 hearings in Ms. Anchan's case were held behind closed doors, both before the Bangkok Military Court and the Bangkok Criminal Court. On 28 July 2015, the military prosecutor requested the Bangkok Military Court to hold the defendant's statement hearing behind closed doors, arguing that the case was a matter of national security and that the information derived from the hearings would affect public morals if disclosed. On the same day, the Court approved the request and allowed only Ms. Anchan, a lawyer, a witness, a court clerk, a prison officer and a guardian of the Court into the courtroom. On 17 February 2020, the Bangkok Criminal Court justified its closed-door hearing, reasoning that proceedings pursuant to article 112 may affect peace and security of the nation and public morals.

37. The source recalls that in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee stated that – apart from exceptional circumstances in which the courts have the power to exclude all or part of the public for reasons of morals, public order or national security in a democratic society – a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons.⁵ In the case of Ms. Anchan, the Bangkok Military Court and the Bangkok Criminal Court justified the need for closed-door hearings by claiming that the publicity given to her *lèse-majesté* charges would negatively affect the peace and public morals. The source argues that such criteria are not among those that would allow for the proceedings to be held behind closed doors under article 14 (1) of the Covenant.

38. In addition, it is submitted that Ms. Anchan's extremely lengthy detention, consisting of detention both prior to and during the trial and lasting three years and 281 days, was inconsistent with article 14 (3) (c) of the Covenant, which states that everyone is to be entitled to be tried without undue delay. The source recalls that in Human Rights Committee general comment No. 32, the Committee specifies that that guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgment on appeal. The Committee also notes that all stages, whether in first instance or on appeal, must take place without undue delay.⁶

39. The source states that Ms. Anchan's lengthy detention can only be partly attributed to the procedural delays in the Bangkok Military Court. The delays have been exacerbated by the extremely slow pace of proceedings, which characterized the trials of civilians by military courts in Thailand after May 2014.

40. In this context, the source calls particular attention to its submission that during the almost four years of Ms. Anchan's trial, lasting from 29 October 2015 to 19 July 2019, under the jurisdiction of the Bangkok Military Court, the Court could not complete the examination of the eight witnesses for the prosecution. Witness examinations were postponed eight times, with the delays mainly due to the fact that witnesses failed to appear in court to give their testimonies and be cross-examined.

41. In addition, it is noted that the transfer of Ms. Anchan's trial from the Bangkok Military Court to the Bangkok Criminal Court was not completed until 29 January 2020, and only three hearings were held by the Bangkok Criminal Court in 2020.

42. Finally, the source notes that Ms. Anchan's lawyer submitted applications for bail to the Bangkok Military Court two times, on 5 April 2017 and 1 November 2018, and to the Bangkok Criminal Court on 21 January 2021. The Bangkok Military Court denied the first bail application, citing the military prosecutor's objection and the severity of the punishment for the crime, even though Ms. Anchan offered one million baht (approximately \$33,333) as surety and cited the presumption of innocence principle in accordance with article 14 of the Covenant.

⁵ Human Rights Committee, general comment No. 32, para. 29.

⁶ *Ibid.*, para. 35.

43. The source notes that the justification for her denial of bail is inconsistent with the provision of article 108 (1) of the Criminal Procedure Code of Thailand on the provisional release of detainees. The severity of the punishment to which Ms. Anchan could have been subjected if she had been found guilty of the offences for which she was charged is not prescribed in article 108 (1) as grounds on which the court could refuse the temporary release of a person from prison. Following the second application on 1 November 2018, Ms. Anchan was granted bail with 500,000 baht (approximately \$16,666). She was released the next day.

44. On 21 January 2021, the Court of Appeals rejected a bail application Ms. Anchan had submitted on 19 January 2021 with one million baht as surety. The Court justified the rejection of Ms. Anchan's bail application citing the severity of the offence for which she had been convicted and the fact that the defendant had pleaded guilty to the charges. The Court also argued that the circumstances of the case and the nature of the offence, which related to the security of Thailand, had brought "disgrace on the esteemed and revered monarchy, and traumatized those loyal to the establishment". Lastly, the Court viewed that if bail were to be granted and Ms. Anchan were to be released, she would likely flee.

45. The source adds that Ms. Anchan decided not to appeal for a reduction of her prison sentence through the judicial process, in order to be eligible for a sentence reduction through royal pardon. Only convicts whose sentence is final can apply for royal pardon.

Response from the Government

46. On 16 August 2021, the Working Group transmitted the allegations made by the source to the Government through its regular communications procedure. The Working Group requested the Government to provide, by 15 October 2021, detailed information about the current situation of Ms. Anchan and clarify the legal provisions justifying her continued detention, as well as the compatibility of her detention with the obligations of Thailand under international human rights law. Moreover, the Working Group called upon the Government to ensure Ms. Anchan's physical and mental integrity. In the current context of a global pandemic, and in accordance with the World Health Organization's recommendations of 15 March 2020 concerning the response to the coronavirus disease (COVID-19) pandemic in places of detention, the Working Group urged the Government to prioritize the use of non-custodial measures at all stages of criminal proceedings, including during the pretrial phase, the trial and sentencing, as well as after sentencing.

47. The Working Group regrets that it did not receive a response from the Government to that communication. The Government did not request an extension of the time limit for its reply, as provided for in paragraph 16 of the Working Group's methods of work.

Discussion

48. The Working Group thanks the source for its submission. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

49. In determining whether Ms. Anchan'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 presented a prima facie case for breach of the international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.⁷ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

Category I

50. In the absence of any submission from the Government, the Working Group considers that the source has presented a credible prima facie case that the authorities did not present an arrest warrant at the time of Ms. Anchan's arrest on 25 January 2015. Any form of detention or imprisonment should be ordered by, or be subject to the effective control of, a judicial or other authority under the law whose status and tenure should afford the strongest

⁷ A/HRC/19/57, para. 68.

possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group underlines that any deprivation of liberty without a valid arrest warrant issued by a competent, independent and impartial judicial authority is arbitrary and lacks legal basis.⁸ It is not sufficient that there is a law that authorizes the arrest. The authorities must invoke that legal basis and apply it through an arrest warrant.⁹ As a result, Ms. Anchan was arrested without an arrest warrant, in violation of article 9 (1) of the Covenant.

51. The source submits that from 25 to 30 January 2015, Ms. Anchan was detained in the 11th Military Police Battalion. On 30 January 2015, she was brought before the Bangkok Military Court, which approved the police request to detain her. In these circumstances, the Working Group considers that she was not brought promptly before a judge during her pretrial detention, that is, within 48 hours of her arrest barring absolutely exceptional circumstances, as per the international standard set out in the Working Group's jurisprudence.¹⁰ Thus, she was not afforded the right to take proceedings before a court so that it could decide without delay on the lawfulness of her detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights, articles 2 and 9 (3) of the Covenant, and principles 11, 32, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court affirms that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and is essential to preserve legality in a democratic society.¹¹ This right, which is in fact a peremptory norm of international law, applies to all forms and situations of deprivation of liberty.¹² Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.¹³

52. In the present case, Ms. Anchan has been detained, prosecuted and imprisoned on charges under the *lèse-majesté* provisions found in article 112 of the Criminal Code, and under article 14 (2)–(3) and (5) of the Computer Crimes Act. Pursuant to article 112 of the Criminal Code, whoever defames, insults or threatens the King, the Queen, the heir apparent or the Regent is to be punished with 3 to 15 years of imprisonment. Pursuant to article 14 (2)–(3) and (5) of the Computer Crimes Act, as amended in 2017, whoever commits the acts therein are to be liable to imprisonment for a term not exceeding five years or to a fine not exceeding 100,000 baht, or both.

53. The Working Group notes with great concern the source's submission that Ms. Anchan's prison sentence of 43 years and six months is the longest sentence ever imposed in Thailand under article 112 of the Criminal Code.

54. In considering whether these provisions meet international standards, particularly the right to freedom of opinion and expression, the Working Group has taken into account relevant analysis of *lèse-majesté* offences in Thailand undertaken by the Working Group and

⁸ Opinion No. 93/2017, para. 44.

⁹ Opinions No. 36/2018, paras. 39–40; No. 46/2018, para. 48; No. 44/2019, para. 52; and No. 45/2019, para. 51.

¹⁰ Opinions No. 57/2016, paras. 110–111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; No. 20/2019, para. 66; No. 26/2019, para. 89; No. 30/2019, para. 30; No. 36/2019, para. 36; No. 42/2019, para. 49; No. 51/2019, para. 59; No. 56/2019, para. 80; No. 76/2019, para. 38; No. 82/2019, para. 76; and No. 78/2020, para. 49.

¹¹ [A/HRC/30/37](#), paras. 2–3.

¹² *Ibid.*, para. 11, and annex, para. 47 (a). See also opinion No. 39/2018, para. 35.

¹³ See the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, para. 3. See also, e.g., Opinions No. 35/2018, para. 27; and No. 83/2018, para. 47.

other international human rights mechanisms in recent years.¹⁴ Briefly, this includes the following:

(a) In its jurisprudence relating to Thailand, the Working Group has consistently found the detention of individuals under article 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;¹⁵

(b) In numerous communications to the Government, special procedure mandate holders have expressed concern about the *lèse-majesté* provisions of the Criminal Code and the provisions of the Computer Crimes Act, including their use in restricting the freedom of expression and their incompatibility with article 19 of the Covenant.¹⁶ The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stated that *lèse-majesté* provisions had no place in a democratic country and were incompatible with the freedom of expression under international human rights law.¹⁷ OHCHR has expressed similar concerns;¹⁸

(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 punishable with a sentence of 3 to 15 years' imprisonment. The Committee also expressed concern about reports of a sharp increase in the number of people 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 Committee explicitly urged the review of article 112 of the Criminal Code to bring it into line with article 19 of the Covenant, reiterating that the imprisonment of persons for exercising their freedom of expression violates article 19;¹⁹

(d) During the most recent consideration of Thailand under the universal periodic review mechanism of the Human Rights Council, in May 2016, the *lèse-majesté* laws and restrictions on the right to freedom of opinion and expression were frequently raised as matters of concern. Delegations urged the Government to bring its *lèse-majesté* laws into conformity with its international commitments.²⁰

55. The Working Group recalls its jurisprudence pursuant to which the provisions under which Ms. Anchan is being prosecuted are vague and overly broad. Article 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. Similarly, article 14 of the Computer

¹⁴ 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.

¹⁵ 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.

¹⁶ See 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 and THA 7/2017. Available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

¹⁷ 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. 2361–2410; and [A/HRC/29/25/Add.3](#), para. 366.

¹⁸ See, for example, OHCHR, press briefing note on Thailand, Geneva, 13 June 2017. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21734&LangID=E. See also OHCHR Regional Office for South-East Asia, press release dated 28 March 2017. Available at <https://bangkok.ohchr.org/news/press/Thailand%20Arbitrary%20Arrests.aspx>.

¹⁹ [CCPR/C/THA/CO/2](#), paras. 37–38; United Nations Educational, Scientific and Cultural Organization, submission to the thirty-ninth session of the Working Group on the Universal Periodic Review for the universal periodic review of Thailand, para. 4; and United Nations country team submission for the universal periodic review of Thailand, Implementation of international human rights obligations, considering applicable international humanitarian law, April 2021, paras. 58–59.

²⁰ [A/HRC/33/16](#), paras. 158.130–158.138, 158.141–158.142, 159.18 and 159.50–159.63. The third cycle of the universal periodic review of the human rights record of Thailand was held in 2021.

Crimes Act, as amended in 2017, does not define what conduct constitutes a crime concerning the security of the Kingdom.²¹

56. As the Working Group has stated, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly.²² The Working Group considers that those provisions are so vague as to be inconsistent with international human rights law, and calls upon the Government to repeal them or bring them into line with its obligations under the Covenant.

57. Given this considerable body of findings in relation to the *lèse-majesté* provisions in article 112 of the Criminal Code and the provisions of article 14 of the Computer Crimes Act, the Working Group is convinced that Ms. Anchan is being detained pursuant to legislation that expressly violates international human rights law. As a result, there is no legal basis for her detention. The Working Group recalls its extensive jurisprudence finding that detention pursuant to a law that is inconsistent with international human rights law lacks legal basis and is therefore arbitrary.²³

58. 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.

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

Category II

60. The source alleges that Ms. Anchan was arrested, detained, prosecuted and imprisoned for audio clips that she uploaded onto social media platforms, even though these acts fall within the remit of her right to freedom of opinion and expression pursuant to article 19 of the Universal Declaration and the Covenant.

61. The Working Group considers that Ms. Anchan's posts fall within the boundaries of the exercise of the right to freedom of expression protected by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. This 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.²⁴ 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 specifically expressed concern regarding *lèse-majesté* laws,²⁵ 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.²⁶

²¹ See, for example, opinion No. 4/2019, para. 55.

²² See, for example, opinion No. 41/2017, paras. 98–101. See also Human Rights Committee, general comment No. 34, paras. 24–26 (noting that any restriction on the freedom of expression must be provided for by law with sufficient precision to enable an individual to regulate his or her conduct, and that such law must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution).

²³ See, for example, opinions No. 69/2018, para. 21; No. 40/2018, para. 45; and No. 43/2017, para. 34 (detention pursuant to a law that criminalized conscientious objection to military service). See also opinion No. 14/2017, para. 49 (detention pursuant to a law that criminalized consensual same-sex relations between adults). In all of those cases, the Working Group found that the detention lacked a legal basis and was therefore arbitrary under category I.

²⁴ Human Rights Committee, general comment No. 34, para. 11.

²⁵ *Ibid.*, para. 38.

²⁶ *Ibid.*, para. 47.

62. Under article 19 (3) of the Covenant, any restriction imposed on the right to freedom of expression must satisfy three requirements, namely the restriction must be provided by law, designed to achieve a legitimate aim (namely the protection of national security, public order, public health or morals), and imposed in accordance with the requirements of necessity and proportionality.²⁷

63. The Working Group find that the limitations on these rights and freedoms permitted under article 19 (3) of the Covenant do not apply in the present case.

64. The Working Group accepts as credible the source's submission that Thai authorities failed to demonstrate how the above-referenced audio clips, which do not appear to contain any offensive language, could be considered as defamatory, insulting or threatening under article 112 of the Criminal Code, nor how their dissemination could amount to a crime concerning the security of Thailand under article 14 of the Computer Crimes Act. Importantly, there is nothing to suggest that Ms. Anchan or her posts incited violence of any kind that might have given cause to restrict her behaviour.²⁸

65. The Government did not present any argument to the Working Group to invoke any of these limitations, nor did it demonstrate why arresting, detaining and prosecuting Ms. Anchan, and initially sentencing her to 87 years in prison were a necessary and proportionate response to her peaceful activities. The Working Group does not consider it plausible that her posts could threaten the rights or reputations of others, national security, public order, public health or morals, and it notes with grave concern this grossly disproportionate sentence of imprisonment for the exercise of fundamental rights.

66. The Working Group wishes to express its grave concern about the pattern of arbitrary detention in cases involving the *lèse-majesté* laws of Thailand. 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.²⁹

67. The Working Group has previously expressed its concern to the Government about the *lèse-majesté* laws on numerous occasions. In the view of the Working Group, such an approach reflects the fact that the freedom of expression is a core tenet of a democratic society, and 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.³⁰

68. The Working Group notes with concern the chilling effects of judicial prosecutions on society that is furthered by a climate of intimidation that appears to surround the enforcement of these laws. In the case of Ms. Anchan, who was 59 years old at the time of her arrest on 25 January 2015, it is unclear as to why 10 armed military officers and at least four plainclothes personnel were involved in arresting her in her own home. The source notes that from May 2014 until early 2018, at least 127 people were arrested for violating article 112 of the country's Criminal Code (*lèse-majesté*, or insulting or defaming the monarchy), with 50 of them being sentenced to prison terms of up to 35 years. *Lèse-majesté* charges and arrests came to an end in early 2018, but were resumed in late November 2020, in response to the nationwide pro-democracy protests. The source further notes that between 24 November 2020 and 2 July 2021, 103 individuals, including children, were charged under article 112. As of July 2021, all those detained were released on bail, most of them under the condition that they would not engage in activities that were perceived to cause further damage to the monarchy.

²⁷ Ibid., paras. 21–36.

²⁸ Ibid., paras. 21–36. 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.

²⁹ See also opinions No. 51/2017, para. 57; and No. 56/2017, para. 72.

³⁰ See also Human Rights Committee, general comment No. 34, 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).

69. For the reasons discussed above, the Working Group concludes that Ms. Anchan's deprivation of liberty resulted from her peaceful exercise of the right to freedom of expression and opinion, in violation of article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. Her deprivation of liberty is arbitrary and falls within category II. The Working Group refers this matter to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for appropriate action.

Category III

70. Given its finding that Ms. Anchan's detention is arbitrary under category II, the Working Group emphasizes that no trial should have taken place. However, with the trial having taken place, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give her deprivation of liberty an arbitrary character, so that it falls within category III.

71. While Ms. Anchan's case was transferred to a civilian court in July 2019, the source submits that her case was under the jurisdiction of the Bangkok Military Court, which held 24 hearings related to her case between September 2014 and July 2019.

72. The Working Group has previously found that the Thai military courts cannot be considered competent, independent or impartial, as required under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant,³¹ and it considers that this finding continues to be applicable in the present case. Thai military courts are not independent of the executive branch because military judges are appointed by the Commander-in-Chief of the Army and the Minister of Defence and lack adequate legal training, and two of the three judges are commissioned military officers who sit on panels as representatives of their commanders.³²

73. Trials of civilians and the placing of civilians in preventive detention by military courts are in violation of the Covenant and customary international law, as confirmed by the jurisprudence of the Working Group.³³ The intervention of a military judge who is neither professionally nor culturally independent is likely to produce an effect contrary to the enjoyment of the human rights and to a fair trial with due guarantees.³⁴

74. The Working Group concurs with the source's submission that the use of military courts to try civilians accused of *lèse-majesté* is incompatible with article 10 of the Universal Declaration of Human Rights and article 14 of the Covenant. It also recalls general comment No. 32 of the Human Rights Committee, on the right to equality before courts and tribunals and to a fair trial, in which the Committee viewed that trials of civilians by military or special courts should be exceptional, that is, limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where, with regard to the specific class of individuals and offences at issue, the regular civilian courts are unable to undertake the trials.³⁵ The Working Group observes that Ms. Anchan's right to a fair trial was greatly undermined when her case was tried before the military court.

75. The Working Group notes with concern the source's submission that all 27 hearings in Ms. Anchan's case, both in the Bangkok Military Court and the Bangkok Criminal Court, were held behind closed doors. As the Human Rights Committee has stated, criminal trials are to be conducted in public unless one of the exceptional circumstances outlined in article 14 (1) justifies the closure of a trial.³⁶ The source submits that on 28 July 2015, the military prosecutor requested the Bangkok Military Court to hold the defendant's statement hearing behind closed doors, arguing that the case was a matter of national security and that the

³¹ Opinions No. 44/2016, paras. 32–33; No. 51/2017, para. 43; No. 56/2017, para. 58; and No. 3/2018, para. 57.

³² Opinions No. 3/2018, para. 57; and No. 4/2019, para. 58. See also the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, guideline 4, para. 55.

³³ A/HRC/27/48, paras. 66–70. See also opinions No. 44/2016, No. 30/2017, No. 28/2018, No. 32/2018, No. 66/2019, No. 48/2020, No. 1/2021, No. 3/2021, No. 8/2021 and No. 10/2021.

³⁴ A/HRC/27/48, para. 68.

³⁵ Human Rights Committee, general comment No. 32, para. 22.

³⁶ *Ibid.*, para. 29.

information derived from the hearings would affect public morals if disclosed. In the present case, the Government did not provide any information or evidence to demonstrate how the proceedings against Ms Anchan presented any threat to morals, public order or national security to warrant the exceptional step of holding a closed trial. In addition, the Working Group has found that none of the exceptions that would allow for closed proceedings under article 14 (1) of the Covenant could reasonably apply to trials of *lèse-majesté* defendants and, as such, in this case.³⁷ Accordingly, the Working Group finds that Ms. Anchan has not received a public hearing during her proceedings to date, in violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.

76. The source alleges that Ms. Anchan's pretrial detention for over 3 and a half years violates her fair trial rights. The source also submits that Ms. Anchan's lengthy pretrial detention was exacerbated by the extremely slow pace of proceedings, which characterized the trials of civilians by military courts in Thailand after May 2014. The Working Group recalls that, pursuant to article 9 (3) of the Covenant, it should not be the general rule that persons awaiting trial are detained in custody. 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. The relevant factors should be specified in law and should not include vague and expansive standards such as "public security". 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.³⁸ Moreover, international standards require that non-custodial measures be prioritized for women.³⁹ Ms. Anchan's unjustified pretrial detention is exacerbated by the source's submission that her request for bail was only granted at her second request, as discussed below. The Working Group finds that the delay was particularly excessive in the light of its findings in category II.

77. The Working Group would also like to consider the military court's refusal to grant Ms. Anchan's bail request made on 5 April 2017, on the basis of the severity of the offence with which she was charged. The source submits that this is inconsistent with provision 108 (1) of the country's Criminal Procedure Code on the provisional release of detainees. Ms. Anchan was released on bail following her second application, on 1 November 2018, almost 20 months after her first bail application. Article 9 (3) of the Covenant requires that detention in custody of persons awaiting trial be the exception rather than the rule, subject to guarantees of appearance, including appearance for trial, appearance at any other stage of the judicial proceedings and, should the occasion arise, appearance for execution of the judgment.

78. 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. The relevant factors should be specified in law and should not include vague and expansive standards such as "public security". Nor should pretrial detention be mandatory for all defendants charged with a particular crime, without regard to individual circumstances, or ordered for a period based on the potential sentence for the crime charged, rather than on a determination of necessity.⁴⁰ In Ms. Anchan's case, the Working Group considers that the military court cannot rely on the severity of potential punishment for *lèse-majesté* offences to deny bail.

79. The Working Group notes with particular concern that only 4 of the 66 individuals (6 per cent) arrested for alleged violations of section 112 of the Penal Code after the military coup of 22 May 2014 were released on bail pending trial.⁴¹ The Working Group is therefore

³⁷ Opinions No. 44/2016, para. 31; No. 51/2017, para. 42; No. 56/2017, para. 57; and No. 3/2018, para. 56.

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

³⁹ Rules 57 to 66 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). See also the Working Group's deliberation No. 12 (A/HRC/48/55, annex), paras. 7–9.

⁴⁰ A/HRC/19/57, paras. 48–58; and Human Rights Committee, general comment No. 35, para. 38.

⁴¹ Opinion No. 3/2018, para. 20.

of the view that the Government has not fully met the burden of demonstrating the necessity for Ms. Anchan's pretrial detention until her second request for bail was granted.

80. Given the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give the deprivation of liberty of Ms. Anchan an arbitrary character that falls within category III. The Working Group refers this matter to the Special Rapporteur for the independence of judges and lawyers, for appropriate action.

Concluding remarks

81. The present case is one of several cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty of persons in Thailand. The Working Group notes that many of the cases involving Thailand, particularly in *lèse-majesté* cases, follow a familiar pattern of lengthy pretrial detention with no individualized consideration of non-custodial alternatives such as bail; charges and prosecution under vaguely worded criminal offences that typically attract heavy penalties and lack a legal basis; and a closed trial before a military court with a limited right to appeal and at which basic due process has not been observed.⁴²

Disposition

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

The deprivation of liberty of Anchan Preelerd, being in contravention of articles 3, 8, 9, 10 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14 and 19 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

83. The Working Group requests the Government of Thailand to take the steps necessary to remedy the situation of Ms. Anchan 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.

84. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Anchan immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Ms. Anchan.

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

86. The Working Group requests the Government to bring its laws, particularly article 112 of the Criminal Code and article 14 of the Computer Crimes Act, into conformity with the recommendations made in the present opinion and with the commitments made by Thailand under international human rights law.

87. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to (a) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and (b) the Special Rapporteur for the independence of judges and lawyers, for appropriate action.

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

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

Follow-up procedure

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

- (a) Whether Ms. Anchan has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Anchan;
- (c) Whether an investigation has been conducted into the violation of Ms. Anchan'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.

90. 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.

91. 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 any failure to take action.

92. 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.⁴³

[Adopted on 17 November 2021]

⁴³ Human Rights Council resolution 42/22, paras. 3 and 7.