

PETITION TO:

UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Dr. Miriam Estrada-Castillo (Ecuador)
Mr. Mumba Malila (Zambia)
Ms. Priya Gopalan (Malaysia)
Mr. Matthew Gillett (New Zealand)
Dr. Ganna Yudkivska (Ukraine)

HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of
Tantawan Tuatulanon,
Citizen of the Kingdom of Thailand
v.
Government of the Kingdom of Thailand

*Petition for Working Group Opinion Pursuant to Human Rights Council Resolutions 1991/42,
1994/32, 1997/50, 2000/36, 2003/31, 6/4, 15/18, 24/7, and 33/30.*

Submitted by:

Adam Lhedmat
Freedom Now
1750 K Street NW
7th Floor
Washington, DC 20006
+ 1 (202) 223-3733 (tel)
+ 1 (202) 223-1006 (fax)
alhedmat@freedom-now.org

Lindsay Trapp
Dechert LLP
300 South Tryon Street
Suite 800
Charlotte, NC, 28202
+1 (212) 698-3810 (tel)
+1 (704) 339-3101 (fax)
lindsay.trapp@dechert.com

April 25, 2023

**QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY
ARREST OR DETENTION**

I. IDENTITY

1. *Family Name:* Tuatulanon
2. *First Name:* Tantawan
3. *Sex:* Female
4. *Age at the Time of Detention:* 20
5. *Nationality:* Thai
6. (a) *Identity document (if any):* The Thai Identity Card

(b) *Place of Issue:* Thailand

(c) *On (date):* Unknown

(d) *No.:* [REDACTED]
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Tantawan Tuatulanon is a University student and pro-democracy activist.
8. *Address of usual residence:* Her home address in Thailand, the address of which has been redacted from our review.

II. ARREST

1. *Date of arrest:* March 5, 2022.
2. *Place of arrest (as detailed as possible):* Ms. Tuatulanon was arrested on the Ratchadamnoen Nok Road, or the Ratchadamnoen Avenue, in the Phra Nakhon and Dusit Districts of Bangkok, Thailand.
3. *Did they show a warrant or other decision by a public authority?* No warrant was provided for the arrest. Ms. Tuatulanon was charged and arrested on the spot and was read certain of her rights by several officers who jointly arrested her. However, a detention request was filed for the detention of Ms. Tuatulanon and signed by Police Lieutenant Colonel Sang Naeng, Police Lieutenant of the Bang Loeng Police Station.¹
4. *Authority who issued the warrant or decision:* N/A

¹ [Translated] Detention Request dated March 7, 2022 provided by the legal counsel of Tantawan Tuatulanon.

5. *Relevant legislation applied (if known)*: Section 112 of the Thai Criminal Code.

III. DETENTION

1. *Date of detention*: Ms. Tuatulanon's first detention began immediately after being arrested on March 5, 2022.
2. *Duration of detention (if not known, probable duration)*: Ms. Tuatulanon's first detention lasted two days, from March 5, 2022, to March 7, 2022. Ms. Tuatulanon's second detention has lasted 37 days, from April 20, 2022 to May 26, 2022. Ms. Tuatulanon was on conditional bail akin to house arrest from May 26, 2022 to January 16, 2023, such pre-trial house arrest lasted for 235 days. On January 16, 2023, Ms. Tuatulanon went into custodial detention and was subsequently transferred out of custody to Thammasat University Hospital when her health began to deteriorate due to her ongoing hunger strike.² On February 24, 2023, Ms. Tuatulanon was able to check herself out of the hospital, and since then Ms. Tuatulanon has not been under government custody,³ but she is still subject to imprisonment if she loses her case, the trial for which is scheduled for August 2023.
3. *Forces holding the detainee under custody*: The Royal Thai Police of the Government of the Kingdom of Thailand.
4. *Places of Detention (indicate any transfer and present place of detention)*: From March 5, 2022 to March 7, 2022, Ms. Tuatulanon was detained in the Narcotics Suppression Bureau within the Police Club in Bangkok. From April 20, 2022 to May 26, 2022, Ms. Tuatulanon was detained at the Central Women's Correctional Institution in Bangkok. Beginning May 26, 2022, Ms. Tuatulanon had been detained at her home in the form of house arrest, until she voluntarily revoked her conditional bail and opted for custodial detention in prison in solidarity with Mongkhon Thirakot. From January 16 to 20, 2023, Ms. Tuatulanon was held at the Central Women's Correctional Institution. On January 20, 2023, Ms. Tuatulanon was detained at Thammasat University Hospital and watched by the Department of Corrections of the Thai Ministry of Justice.⁴ As of the date of this submission, Ms. Tuatulanon has been released due to her worsened health condition, but she is subject to imprisonment if she fails to win her trial.
5. *Authorities that ordered the detention*: The Royal Thai Police of the Government of the Kingdom of Thailand.

² *Rights commission expresses concern about hunger strike*, Bangkok Post, January 28, 2023. <https://www.bangkokpost.com/thailand/general/2493504/rights-commission-expresses-concern-about-hunger-strike;Thai-Activist-Sentenced-to-28-years-for-Online-Posts-on-King>, AP News, January 26, 2023. <https://apnews.com/article/politics-protests-and-demonstrations-thailand-prisons-2621a5d10d997c6e7e9334e6a45816cb>.

³ Text messages with Confidential Source A, March 27, 2023; *Activists End Hunger Strike after 52 Days*, Bangkok Post, March 11, 2023. <https://www.bangkokpost.com/thailand/general/2525574/activists-end-hunger-strike-after-52-days>.

⁴ Bangkok Post, *supra* note 2.

6. *Reasons for the detention imputed by the authorities:* Authorities allege that Ms. Tuatulanon's actions could have incited a person to hate the monarchy, and if Ms. Tuatulanon, as the accused, were to be temporarily released, she would allegedly flee and be difficult to track down.⁵
7. *Relevant legislation applied (if known):* Section 112 of the Thai Criminal Code.

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

A. Statement of Facts

1. Background on Thailand

a. Political, Legal, and Social Background on Thailand

Thailand has been a constitutional monarchy with a bicameral legislature since 1932.⁶ However, military coups, rather than democratic elections, have largely determined changes of power since then. Thailand has experienced nineteen coups and twenty constitutions since 1932.⁷ The government routinely makes use of its lese-majeste laws, or laws outlawing criticism of the monarchy.

b. Lese-Majeste Laws

Section 112 of the Thai Criminal Code establishes a “three to fifteen” year sentence for anyone who “defames, insults or threatens the King, the Queen, the Heir-Apparent or the Regent.”⁸ However, some courts have handed down significantly longer sentences; in one instance, more than one lese-majeste offence was charged and the accused received consecutive sentences for the charges, totaling eighty-seven year sentence.⁹ In fact, the most recent sentence under a lese-majeste charge was of twenty-eight years; Thai activist Mongkhon Thirakot will be locked up for close to three decades for posting allegedly defaming messages on Facebook.¹⁰ In practice, these laws are often used in order to silence political dissent. Since the military coup in 2014, the Government has used this law to crack down on any perceived criticism of Thailand's monarchy or its monarchist system. Those accused of insulting the monarchy are frequently held in pre-trial detention for long periods of time. Trials are often held in closed session, commonly in military

⁵ Detention Request, *supra* note 1.

⁶ *Thailand in Brief*. Royal Thai Embassy. <https://thaiembdc.org/about-thailand/thailand-in-brief/>.

⁷ Ian Bremmer. *Here's What You Need to Know about Thailand's New Constitution*. Time Magazine, August 11 2016. <https://time.com/4448655/thailand-constitutional-referendum/>.

⁸ Royal Family (Sections 107-112) of the Criminal Code of Thailand. Thailand Law Library. <https://library.siam-legal.com/thai-law/criminal-code-royal-family-sections-107-112/>.

⁹ Press Release, Amnesty International. *Thailand: 87-year prison sentence handed in harshest lese majeste conviction*. <https://www.amnesty.org/en/latest/news/2021/01/thailand-87-prison-sentence-lese-majeste/>

¹⁰ AP News, *supra* note 4.

courts, which limit defendants' rights.¹¹ Since 2020, the Government has made extensive use of its lese-majeste laws to clamp down on monarchy reform protests. Between the beginning of 2020 and May 2022, the Government has charged 194 people with lese-majeste.¹² Historically, the government maintains a high annual conviction rates under lese-majeste laws, very frequently above 95% and often 100%.¹³

2. Arbitrary Detention

a. *Background on Tantawan Tuatulanon*

Tantawan Tuatulanon is a student activist from Thailand. She went to university in Singapore, but she returned to Thailand after the COVID-19 pandemic began. In 2020, she joined a volunteer protestor protection group known as WeVolunteer.¹⁴ The group consisted mostly of students, along with some blue-collar workers.¹⁵ Ms. Tuatulanon became more involved in leadership after two of its primary leaders were arrested.¹⁶

In early 2022, Ms. Tuatulanon began mobilizing with the groups Draconis Revolution and Thaluwang.¹⁷ These groups advocated peacefully for democracy in Thailand. Thaluwang operated by conducting public polls. Thaluwang members would walk into the metro holding a poster that asked a question, usually about public support for and perception of the monarchy.¹⁸ They would offer ribbons to metro riders. Each color would signify an answer to the question. Thaluwang members would invite metro riders to tie the ribbon that signified their response to the poll to the handholds on the metro, so that they could measure the responses.¹⁹ This method of polling was chosen at least in part because Thaluwang believed that it would be difficult for the Government to argue that their methods violated the law.²⁰

¹¹ *Lese-majeste explained: How Thailand forbids insult of its royalty*. BBC News, October 6, 2017. <https://www.bbc.com/news/world-asia-29628191>.

¹² Charuvastra, Teeranai. *Jailed activist's hunger strike enters 22nd day, more lese majeste arrests*. Prachatai English. May 13 2022. <https://prachatai.com/english/node/9830>.

¹³ See Preechasilpakul & Streckfuss, *Ramification and Re-Sacralization of the Lese Majesty Law in Thailand* (2008), <https://www.law.cmu.ac.th/law2011/journal/20682.pdf>; UN Office of the High Commissioner for Human Rights, *Press Briefing Note on Thailand*, June 13, 2007. <https://www.ohchr.org/en/2017/06/press-briefing-note-thailand?LangID=E&NewsID=21734>.

¹⁴ *A New Generation of female activists are forcing tough conversations despite state intimidation and arrests*. Thai Enquirer, April 26 2022. <https://www.thaienquirer.com/39679/a-new-generation-of-female-activists-are-forcing-tough-conversations-despite-state-intimidation-and-arrests/>.

¹⁵ Source on file with author. Conversation with AB, July 13, 2022.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Quinley, Caleb. *'Shattering the palace': Young women take up Thailand reform call*. Al Jazeera, May 19 2022. <https://www.aljazeera.com/news/2022/5/19/shattering-the-palace-young-women-take-up-thailand-reform-call>.

b. *Ms. Tuatulanon's Arrest*

On February 26, 2022, Ms. Tuatulanon was arrested for conducting a poll on whether the country's lese-majeste laws should be repealed.²¹ Her wrists were bound with cable ties, and she was restricted from bringing a trusted advisor with her into the police station.²² She was fined 5,000 Thai bhat and released.²³ Her restraints left bruises on her wrists.²⁴

On March 5, 2022, Ms. Tuatulanon was arrested at Ratchadamnoen Avenue, a historic road in the Phra Nakhon and Dusit Districts of Bangkok, Thailand, while livestreaming a royal motorcade route.²⁵ The audio of her livestream captures her questioning the way that police had cleared a group of protesting farmers who had been living in makeshift housing for multiple months along the route. The farmers were demanding that the Government make good on its two-decades old promise to address the agricultural debt problem in Thailand.²⁶ On the livestream, Ms. Tuatulanon remarked that the farmers' protest was being cleared so that one person—the monarch—could pass through the area without hearing the protest.²⁷ She then indicated that the way the police responded to the farmers showed that the monarchy mattered more to the establishment of Thailand than its people did.²⁸

Police initially took Ms. Tuatulanon to Phaya Thai Police Station, but authorities quickly moved her to the Police Club on the outskirts of Bangkok in Lak Si in an attempt to prevent her supporters from following her and staging a protest at the police station.²⁹ She was held at the Narcotics Suppression Bureau located inside the Police Club. After two hours at the Police Club, Ms. Tuatulanon was permitted to see a lawyer.³⁰

On March 6, 2022, Ms. Tuatulanon was charged under the lese-majeste laws, on the grounds that her comments during the live stream could incite someone to hate the King.³¹ On March 7, 2022, she was granted bail on security of 100,000 Thai bhat and on certain conditions, among others, that she refrained from using social media to incite others to protest or to join in any political protests.³²

²¹ Prachatai English Editorial Board. *Activist arrested while conducting poll on royal defamation law*. Prachatai, February 28 2022. <https://prachatai.com/english/node/9719>.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Prachatai English Editorial Board. *Activist arrested for live broadcasting at a royal procession*. Prachatai, March 7 2022. <https://prachatai.com/english/node/9731>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*; Tyrell Haberkorn, *Starving for Justice in Thailand*. Dissent Magazine, January 26, 2023. https://www.dissentmagazine.org/online_articles/starving-for-justice-in-thailand.

On April 20, 2022 her bail was revoked.³³ The court alleged that Ms. Tuatulanon's social media activity was a repetition of her offense,³⁴ such allegations were supported by Facebook pictures the judge found in his spare time and was likely not admitted to the court under proper evidence procedures. She was brought to and held at the Women's Central Correctional Institution.³⁵

c. *Ms. Tuatulanon's Pre-Trial Detention and Hunger Strike*

A day after her bail was revoked, Ms. Tuatulanon began a hunger strike on April 21, 2022 to protest her pre-trial detention. She refused all food, accepting only water and occasionally milk.³⁶

On May 17, 2022, Move Forward Party MP Pita Limjaroenrat posted bail for Ms. Tuatulanon, pledging his MP status as security.³⁷ His request was denied on the grounds that he failed to submit a pay stub verifying his employment and that there were no other special reasons to grant bail.³⁸ Mr. Limjaroenrat submitted a certifying letter from the Secretariat of the Thai House of Representatives, which listed his salary.³⁹

On May 20, 2022, Ms. Tuatulanon's bail was extended another seven days.⁴⁰ Mr. Limjaroenrat submitted another bail request, and a bail hearing was set for May 26.⁴¹

On May 26, 2022, Ms. Tuatulanon's request for bail was granted, and on May 27, she was released on conditional bail for 30 days. At that point, she had been on hunger strike for 37 days.⁴² However, the conditions for her bail at that time resembled house arrest. She was not permitted to leave her residence except when a motion of extensive detail was filed and the court approved such motion, and she was required to wear an ankle bracelet that monitored her location.⁴³ Moreover, she was and continues to be forbidden from leaving the country.⁴⁴

In November 2022, trial dates were set for Ms. Tuatulanon's case. Examination of the prosecutor's witnesses is set to occur on August 8-10 and August 16, 2023, and examination of Ms. Tuatulanon's witnesses is set to occur on August 17-22, 2023. The verdict is predicted to be

³³ Prachatai English Editorial Board. *Monarchy Reform Activist's bail revoked*. Prachatai, April 20 2022. <https://prachatai.com/english/node/9795>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Charuvastra, *supra* note 14.

³⁷ *Monarchy reform activist's bail application rejected for lack of pay slip*. Thai PBS World, May 18, 2022. <https://www.thaipbsworld.com/monarchy-reform-activists-bail-application-rejected-for-lack-of-pay-slip>.

³⁸ *Id.*

³⁹ Prachatai English Editorial Board. *Four monarchy reform activists denied bail; protest at court demands activists' release*. Prachatai, May 22, 2022. <https://prachatai.com/english/node/9836>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Prachatai English Editorial Board. *One activist released, one denied bail*. Prachatai. May 27 2022. <https://prachatai.com/english/node/9845>

⁴³ Telephone call with Confidential Source A, December 2, 2022.

⁴⁴ *Id.*

released one-to-two months after the trial; if convicted, Ms. Tuatulanon is expected to be sentenced on the same day.⁴⁵

On January 16, 2023, Ms. Tuatulanon appeared in court to revoke her own bail to demand the release on bail of other political activists, and adoption of judicial and legal reforms, including revocation of laws on sedition and the lese-majeste law. Ms. Tuatulanon was detained as a result.⁴⁶ On January 18, 2023, Ms. Tuatulanon began a hunger strike again, this time refusing both food and water, in Bangkok's Central Women's Correctional Institution to protest what they considered to be unjust pretrial detention of critics of the monarchy. On January 20, 2023, Ms. Tuatulanon collapsed, and was transferred to the Thammasat University Hospital. She has been refusing food, water and most medical intervention including antacids, and was described as being "very weak" by her lawyer, unable to move without support, burdened by severe abdominal pain and swollen lymph nodes and is at risk of cardiac arrest due to malnutrition and lack of potassium. Given her condition, the Thai Lawyers for Human Rights group sent its representatives to visit Ms. Tuatulanon daily. However, major international media outlets reported that, on January 28, 2023, Corrections Department officials refused the group from visiting Ms. Tuatulanon, citing that it was a public holiday.⁴⁷

On February 24, 2023, Ms. Tuatulanon was permitted to check herself out of the hospital to continue peaceful protests in front of the Supreme Court.⁴⁸ However, the following week Ms. Tuatulanon was returned to Thammasat University Hospital because of her worsened health condition caused by the hunger strike.⁴⁹ After announcing an end to her hunger strike on March 11, 2023, Ms. Tuatulanon was discharged on March 23, 2023.⁵⁰

d. *Current Status*

Following her hospital discharge, Ms. Tuatulanon has been released pending trial.⁵¹ Currently, Ms. Tuatulanon's trial is scheduled to begin in August 2023. If convicted, she faces up to fifteen years in prison, based on the sentencing of Mongkhon Thirakot who was charged under the same law and for similar conduct.⁵² Furthermore, there is not a legal barrier for the government to reimpose and order of pre-trial detention or other restriction of liberty on Ms. Tuatulanon. Because of the government's historically high conviction rate under Article 112, Ms. Tuatulanon is very likely to be convicted on the charges against her. The Source believes that a prompt response to Ms. Tuatulanon's case from the UN Working Group on Arbitrary Detention

⁴⁵ *Id.*

⁴⁶ *Thailand: Free Detained Critics of Monarchy*. Human Rights Watch, January 20, 2023. <https://www.hrw.org/news/2023/01/20/thailand-free-detained-critics-monarchy>.

⁴⁷ Bangkok Post, *supra* note 2.

⁴⁸ *Activists End Hunger Strike after 52 Days*, Bangkok Post, March 11, 2023. <https://www.bangkokpost.com/thailand/general/2525574/activists-end-hunger-strike-after-52-days>.

⁴⁹ *Activists End Hunger Strike after 52 Days*, Bangkok Post, March 11, 2023. <https://www.bangkokpost.com/thailand/general/2525574/activists-end-hunger-strike-after-52-days>.

⁵⁰ *'Tawan' and 'Bam' Hit the Campaign Trail*, Bangkok Post, March 24, 2023. <https://www.bangkokpost.com/thailand/general/2535589/tawan-and-bam-hit-the-campaign-trail>.

⁵¹ Text messages with Confidential Source A, March 27, 2023.

⁵² *Thai Activist Sentenced to 28 years for Online Posts on King*, AP News, January 26, 2023. <https://apnews.com/article/politics-protests-and-demonstrations-thailand-prisons-2621a5d10d997c6e7e9334e6a45816cb>

(the “Working Group”) will encourage the government to cease the wrongful prosecution against her.

B. Legal Analysis

Ms. Tuatulanon’s arrest, denial of bail, and detention in the form of house arrest is arbitrary as established by the Working Group. The detention is arbitrary under Category I because it is impossible to invoke any legal basis justifying her pretrial detention and subsequent house arrest. The detention is arbitrary under Category II because it resulted from Ms. Tuatulanon’s peaceful exercise of her right to freedom of expression. The detention is arbitrary under Category III because the Government’s detention of Ms. Tuatulanon failed to meet minimum international standards of due process, and also violates Ms. Tuatulanon’s presumption of innocence.

1. Arbitrary Deprivation of Liberty Under Category I

A detention is arbitrary under Category I when it is clearly impossible to invoke any legal basis justifying deprivation of liberty. In Ms. Tuatulanon’s case, the Government has no legal basis for her detention on the grounds that (i) she is detained under legislation that expressly violates international human rights law, and (ii) she is charged and held under the terms of an impermissibly vague law.

a. *Section 112 Fails to Provide a Legitimate Basis for Ms. Tuatulanon’s Arrest & Pre-trial Detention*

The Working Group has applied Category I in cases where the Government detains a person “pursuant to legislation that expressly violates international human rights law.”⁵³ Specifically, the Working Group has previously found that Thailand’s lese-majeste law under Section 112 of the Criminal Code amounts to a violation of international human rights law, and accordingly fails to provide a legal basis for detention.⁵⁴

In Ms. Tuatulanon’s case, the Government has exclusively relied on Section 112 to justify her arrest and pre-trial detention. Furthermore, the Government failed to present any evidence that she has engaged in any activity that was not protected under well-established principles of international human rights law. Ms. Tuatulanon’s activities were entirely peaceful. Ms. Tuatulanon’s conduct constitutes disseminating information of legitimate public interest, specifically those concerning unpopular debt policies and citizen’s fundamental right to protest. Because the Government’s ostensible legal basis, namely Section 112, is inconsistent with international human rights law, Ms. Tuatulanon’s detention lacks a legitimate legal basis. Accordingly, the Government’s detention of Ms. Tuatulanon violates Category I.

⁵³ See, e.g., *Kornaroot v. Thailand*, UN Working Group on Arbitrary Detention, Opinion No. 4/2019, para. 49 (April 24, 2019), <https://www.undocs.org/A/HRC/WGAD/2019/4>.

⁵⁴ *Id.*

b. Section 112 of the Thai Criminal Code is Impermissibly Vague and Overbroad

The Working Group has previously indicated that restrictions of freedom of expression may not be justified by vague references to interests of national security or public order, and that detentions based on such vague references are arbitrary under Category I.⁵⁵ As guaranteed by Article 15(1) of the ICCPR and as interpreted by the Human Rights Committee, individuals have the right to know what conduct violates the law.⁵⁶

Section 112 of the Thai Criminal Code criminalizes defaming, insulting, or threatening the monarch of Thailand.⁵⁷ The Thai Criminal Code does not provide individuals with any proper guidance on how the law limits their conduct. In the present case, Ms. Tuatulanon livestreamed her commentary on Facebook about the traffic measures the police were instituting to clear roads outside a UN building in preparation for the passing of a royal motorcade. There was no objectively reasonable guidance for Ms. Tuatulanon to have predicted such peaceful commentary on traffic measures could possibly be construed as defamation of the monarchy under the overbroad and vague Section 112.

In the general sense, as well, Section 112 represents the Government's willingness to wield impermissibly vague laws to protect the reputation of the monarchy, regardless of the human cost. The Working Group has in the past commented that Thailand's lese-majeste laws are worryingly vague.⁵⁸ The Working Group, as well as the Human Rights Committee, have already urged the Government to revise Section 112 in order to bring it into conformity with international human rights law.⁵⁹

As the Government's detention of Ms. Tuatulanon is impossible to invoke any legal basis justifying her deprivation of liberty, the Working Group should respectfully recognize such deprivation as a clear violation of Category 1.

2. Arbitrary Deprivation of Liberty Under Category II

A detention is arbitrary under Category II when it is the result of an exercise of fundamental rights or freedoms protected under international law. In the present case, Ms. Tuatulanon's

⁵⁵ See, e.g., *Mbanza Judicael v. Rep. of Congo*: Opinion adopted by the Working Group on Arbitrary Detention, para 26, Human Rights Council, 28th Session., U.N. Doc. A/HRC/WGAD/2014/44 (February 4, 2015), <http://hrlibrary.umn.edu/wgad/44-2014.pdf>.

⁵⁶ See ICCPR, Article 15(1); see generally *supra* note 62.

⁵⁷ Thailand Law Library, *supra* note 9.

⁵⁸ Opinion No. 56/2017 concerning Thiansutham Suthijitseranee: Opinions adopted by the Working Group on Arbitrary Detention, Human Rights Council, 79th Session, U.N. Doc. A/HRC/WGAD/2017/56 (August 21 to 25, 2017), https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session79/A_HRC_WGAD_2017_56.pdf

⁵⁹ *Id.*; see also Opinion No. 51/2017 concerning Sasiphimon Patomwongfangam (Thailand): Opinions adopted by the Working Group on Arbitrary Detention, Human Rights Council, 79th Session, U.N. Doc. A/HRC/WGAD/2017/51 (August 21 to 25, 2017) (*hereinafter* "Opinion 51/2017"), https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session79/A_HRC_WGAD_2017_51.pdf

detention is arbitrary under Category II because she was imprisoned for exercising her right to freedom of opinion, her right to freedom of expression, and her right to freedom of political participation. Her bail conditions further prevented her from engaging in political participation via social media.

a. *Ms. Tuatulanon Was Detained for Exercising Her Freedom of Opinion, Expression and Political Participation*

Freedom of opinion and freedom of expression are fundamental rights under international human rights law.⁶⁰ Article 19 of the ICCPR guarantees for all people the right to “hold opinions without interference” and “freedom of expression,” including the “freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”⁶¹ The UDHR provides a similar guarantee of rights.⁶² The Human Rights Committee has explained Article 19’s protections as extending to “all forms of expression and the means of their dissemination.”⁶³ The Working Group has recognized that the imprisonment of human-rights defenders for speech-related reasons is subject to higher scrutiny.⁶⁴

Similarly, freedom of the right to political participation is a fundamental right under international human rights law. Article 21 of the UDHR and Article 25 of the ICCPR guarantee the right to political participation.⁶⁵ One fundamental element of this right is the right to take part in the conduct of public affairs.⁶⁶ The UN Working Group has highlighted arbitrary detention of political opposition leaders as examples of pervasive limitations on the right to political participation. Individuals must be allowed to “criticize or openly and publicly evaluate their [g]overnments without fear of interference or punishment”.⁶⁷

The Government arbitrarily detained Ms. Tuatulanon as a direct result of her exercising her freedom of expression. First, the charge of lese-majeste 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 monarchy. In practice, this allows the Government to arbitrarily criminalize any political dissent. The Working Group has repeatedly indicated their concern that Section 112 is vague, over-broad, and criminalizes protected expression.⁶⁸ Ms. Tuatulanon was charged under Section 112 for defaming the monarchy. So, regardless of whether the underlying factual allegations are true, the Government has deprived Ms. Tuatulanon of her liberty under a law which is incompatible with the right to freedom of expression guaranteed under the ICCPR and UDHR.

⁶⁰ ICCPR, Articles 19(1)-(2).

⁶¹ *Id.*

⁶² UDHR, G.A. Res. 217A (III), UN Doc. A/810, Article 19 (1948).

⁶³ Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/G/34 at para. 12 (September 12, 2011).

⁶⁴ *Nega v. Ethiopia*, UN Working Group on Arbitrary Detention, Opinion No. 62/2012, U.N. Doc. CCPR/C/83/D/1128/2002, para. 6.7 (March 29, 2005).

⁶⁵ UDHR, G.A. Res. 217A (III), UN Doc. A/810, Article 21 (1948); ICCPR, Article 25.

⁶⁶ *Id.*

⁶⁷ *Rafael Marques de Morais v. Angola*, UN Human Rights Committee, Communication No. 1128/2002 (May 29, 2005) at ¶ 6.7.

⁶⁸ Opinion No. 56/2017, *supra* note 58, para. 43-45; Opinion No. 51/2017, para. 30-32.

The facts of this case also plainly support that Ms. Tuatulanon was arbitrarily detained because she decided to exercise her rights to freedoms of expression, opinion and political participation. Ms. Tuatulanon was arrested after livestreaming her commentary on the traffic measures related to a royal motorcade that the Government considered defamatory to the monarchy. Her bail was later revoked for making Facebook posts about the monarchy. Each of the acts for which Ms. Tuatulanon was detained was an act of expressing her beliefs about the monarchy, through various means of dissemination. In summation, Ms. Tuatulanon was arbitrarily detained under Category II because she was detained for exercising her rights to freedom of expression, opinion and political participation.

b. *The Restrictions on Freedom of Expression Enumerated in Article 19(3) of the ICCPR Do Not Apply to Ms. Tuatulanon's Case and the Government's Detention of Ms. Tuatulanon Serves No Legitimate Purpose*

There are limited exceptions provided for in Article 19. These exceptions are “(a) For respect of the rights and reputations of others; and (b) For the protection of national security or public order (ordre public), or of public health and morals,” but only if the restrictions are provided for by law and are necessary.⁶⁹ These restrictions are generally interpreted narrowly and may not jeopardize the right itself.⁷⁰ In general, a permissible limitation must be “provided by law,” must protect one of the “enumerated purposes” under Article 19(3) of the ICCPR, and be “necessary” to achieve that purpose.⁷¹ The Government must be able to show on an individual basis that the restrictions on rights are necessary.⁷² General allegations that an individual’s expression or association are injurious to national security, without evidence of specific threat and without a proportional response, do not suffice as individualized justification.⁷³ Expression that is merely insulting to a public figure “is not sufficient to justify the imposition of penalties.”⁷⁴ In Thailand specifically, the Working Group has repeatedly found the country’s lese-majeste laws to be in violation of Article 19 of the ICCPR and the UDHR.⁷⁵

Here, the language of Section 112 of the Thai Penal Code, which criminalizes “whoever defames, insults, or threatens the King, the Queen, [and] Heir,” is unreasonable and ambiguous.⁷⁶ The Government’s justification for the arrest of Ms. Tuatulanon is that her actions could have incited someone to hate the monarchy, an arbitrary and discretionary excuse in violation of ICCPR.⁷⁷ Ms. Tuatulanon's conduct constitutes disseminating information of legitimate public interest, specifically those concerning unpopular debt policies and citizen’s fundamental right to

⁶⁹ ICCPR, Article 19(3).

⁷⁰ General Comment No. 34: Article 19, *supra* note 73, para. 21.

⁷¹ *Shin v. Republic of Korea*, Communication No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000, Paras. 7.2-7.3 (adopted March 16, 2004), <http://hrlibrary.umn.edu/undocs/html/926-2000.html>.

⁷² *Id.*

⁷³ In *Kim v. Republic of Korea*, the Committee rejected the notion that an undefined benefit to national security could prove that restrictions on freedom of expression satisfy the necessity requirement. *Kim v. Republic of Korea*, Commc’n No. 574/1994, para. 12.4, 64th Sess., Human Rights Comm., U.N. Doc. CCPR/C/64/D/574/1994, (Nov. 20., 1998).

⁷⁴ Opinion No. 51/2017, para. 29.

⁷⁵ *Id.*, at para. 30.

⁷⁶ Thailand Law Library, *supra* note 9.

⁷⁷ Detention Request, *supra* note 1.

protest. Mere expression of an opinion is not a sufficient justification of penalties under ICCPR. Moreover, her conduct does not amount to the incitement to violent overthrow the Government, advocacy of violence or propaganda of war, and in no way threatens national security or public order. Therefore, Ms. Tuatulanon's peaceful expression of political commentary does not warrant any categorical justification of the imposition of restrictions on a citizen's right to political participation by a government.

Even if Ms. Tuatulanon's conduct is construed as being defamatory, insulting or threatening, the Government's pre-trial detention of Ms. Tuatulanon and the bail conditions and other restrictions imposed on her is not justified by any recognized legitimate purpose. Arbitrarily detaining Ms. Tuatulanon at her own home disproportionately restricts her freedoms. Even if Ms. Tuatulanon's conduct did threaten public order and national security, protecting such interests could be as easily achieved by simply restricting Ms. Tuatulanon from initiating or engaging in any future protests. No further interest of the state is achieved by confining Ms. Tuatulanon to her home and denying Ms. Tuatulanon the opportunity to carry out normal occupational and social activities. Also, requiring Ms. Tuatulanon to seek advanced permission every time she wishes to leave her house also arbitrarily subjects her freedoms at the whims of the Ministry of Justice of Thailand. Such burdensome requirements not only isolate Ms. Tuatulanon from the rest of society, but also add no value in the protection of national security and public order.

Thailand's lese-majeste laws have already been found to violate Article 19 of the ICCPR and the UDHR.⁷⁸ The Government has also provided no individualized justification for its Section 112 prohibition on royal defamation. Section 112 broadly restricts the right to free expression and free opinion. Therefore, Section 112 cannot claim any exceptions enumerated in Article 19. It follows that the application of Section 112 to restrict Ms. Tuatulanon's freedoms should not stand.

3. Arbitrary Deprivation of Liberty Under Category III

The Royal Thai police's detention of Ms. Tuatulanon amounts to an arbitrary deprivation of liberty under Category III of the Working Group's Revised Methods of Work.⁷⁹ According to Category III, a deprivation of liberty is arbitrary "[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the UDHR 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."⁸⁰ Due process is one of the key tenets of the right to a fair trial. The minimum international standards of due process are established in the ICCPR,⁸¹ the UDHR,⁸² the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the "Body of Principles"),⁸³ and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules"). Section 29 of the Constitution of Thailand

⁷⁸ *Id.*

⁷⁹ *Report of the Working Group on Arbitrary Detention*, 16th session, A/HRC/16/47 (Jan. 19, 2011) Annex 8(b), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/102/76/PDF/G1110276.pdf?OpenElement>, Category III, para. c.

⁸⁰ *Id.*

⁸¹ ICCPR, Articles 9 and 14.

⁸² UDHR, G.A. Res. 217A (III), U.N. Doc. A/810.

⁸³ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the "Body of Principles"), Principle. 19.

likewise ensures the rights of criminal defendants by guaranteeing them the right to be presumed innocent until proven guilty and to pre-trial release, specifically that excessive bail shall not be demanded, and refusal of bail shall only be provided by law.⁸⁴

a. *The Government Violated Ms. Tuatulanon's Right to Release Pending Trial*

Article 9(3) of the ICCPR guarantees an individual's right to release pending trial, establishing that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody."⁸⁵ The Human Rights Committee has clarified that "[d]etention 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."⁸⁶ In the event an individual is deprived of liberty by arrest or detention, Article 9(4) of the ICCPR guarantees that such individual "shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."⁸⁷ The requirement that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other judicial officer applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.⁸⁸ As interpreted by the Human Rights Committee, except in extreme circumstances, the term "promptly" means within approximately 48 hours.⁸⁹

Ms. Tuatulanon's detention and deprivation of liberty began immediately following her arrest on March 5, 2022 and continued throughout her stay at Thammasat University Hospital, up until her recent release. Moreover, Ms. Tuatulanon received excessively high bail conditions or bail thresholds throughout her detention which further added to the barriers preventing Ms. Tuatulanon from enjoying her right to pre-trial release. Upon her initial arrest, she was offered bail on security of 100,000 Thai Baht, which was excessively high considering the nature of her offense, especially as it was attached to the condition that she remain at home pending trial, where any request for permission to leave her home was accompanied by additional conditions. As guaranteed under the Constitution of Thailand, excessive bail shall not be imposed. In Ms. Tuatulanon's case, despite the fact that she was a student with no flight risk or indication of any reported incidents of violence, she was imposed such a disproportionately high monetary bail condition. Subsequently, on May 17, 2022, Ms. Tuatulanon's bail application was rejected even though Move Forward Party MP Pita Limjaroenrat posted bail on Ms. Tuatulanon's behalf, pledging his MP status as security as required.⁹⁰ Nonetheless, his request and ultimately Ms. Tuatulanon's bail application was rejected on the grounds that he failed to submit a pay stub verifying his employment and that there were no other special reasons to grant bail despite the fact that MP Limjaroenrat submitted a certifying letter from the Secretariat of the Thai House of Representatives, which listed his salary.⁹¹ One could easily argue that such certifying letter from

⁸⁴ *Thailand's Constitution of 2017*. Constitute Project, April 27, 2022, https://www.constituteproject.org/constitution/Thailand_2017.pdf?lang=en.

⁸⁵ ICCPR, Article 9(3).

⁸⁶ General Comment No. 35: Article 9, *supra* note 62, at para. 38.

⁸⁷ ICCPR, Article 9(4).

⁸⁸ General Comment No. 35: Article 9, *supra* note 62, at para. 32 and at para. 38.

⁸⁹ Thai PBS World, *supra* 37, at para. 33.

⁹⁰ Thai PBS World, *supra* note 37.

⁹¹ *Id.*

the Secretariat of the Thai House of Representatives, a recognized institution of Thailand no less, which listed his salary was sufficient proof or the equivalent of a pay stub verifying his employment. The unreasonable and intentional barriers imposed on Ms. Tuatulanon's bail were excessive, especially for a student who merely broadcasted commentary on social media.

b. *The Government Violated Ms. Tuatulanon's Right to A Prompt Trial*

Article 14(3)(c) of the ICCPR provides that in the context of criminal proceedings, the accused is entitled to the right "to be tried without undue delay."⁹² The Human Rights Committee has also emphasized that "[a]n important aspect of the fairness of a hearing is its expeditiousness."⁹³ Moreover, the right to a prompt trial is mentioned in Principle 38 the Body of Principles, which states that "[a] person detained on criminal charges shall be entitled to a trial within a reasonable time or to release pending trial."⁹⁴

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

Despite Ms. Tuatulanon having been released pending her trial, the Government maintains a compelling obligation to provide a trial in an expeditious manner. However, the prosecution has taken steps that have unnecessarily delayed proceedings, including failing to respond to defense counsel filings. For example, on September 14, 2022, Ms. Tuatulanon's local counsel filed a motion to petition for a change in Ms. Tuatulanon's stringent bail condition. This motion was denied. Her counsel then filed an appeal on September 22, 2022. The appeal was sent to the prosecutor to review, who generally had 25 business days to provide an answer. In early-to-mid November 2022, counsel was notified that the prosecutor failed to provide an answer, and that the appeal was automatically sent to the appeals court. This appeal is still pending at the time of submission. Such delays unnecessarily prolong the length of proceedings, and as a result, the Government has failed to respect Ms. Tuatulanon's right to a prompt trial.

Accordingly, the delays in Ms. Tuatulanon's trial amount to a violation of Article 14(3)(c) of the ICCPR, Principle 38 of the Body of Principles, defying international norms relating to the right to a fair trial.

4. CONCLUSION

The Government of Thailand detained and arrested Ms. Tuatulanon based on Section 112 of the Thai Code, an impermissibly overbroad and vague law which is used as a weapon by the Government to squash accused violators' rights to freedom of expression, opinion and political

⁹² ICCPR, Article 14(3)(c).

⁹³ UN Human Rights Committee, General Comment No. 32: Article 14 (Fair Trial), UN Doc. CCPR/C/GC/32, para. 27 (Aug. 23, 2007), *available at* <https://undocs.org/CCPR/C/GC/32>.

⁹⁴ Body of Principles, Principle 32.

participation afforded to them under international human rights laws. After her arrest, the Government continued to violate Ms. Tuatulanon's rights by imposing house arrest and other inappropriately excessive bail conditions. For the foregoing reasons, the detention of Ms. Tuatulanon and continuing restrictions on her freedoms is a violation of international law and is therefore arbitrary and illegal.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

As discussed above, Ms. Tuatulanon had on multiple occasions requested bail since she was first detained on March 5, 2022 but was rejected. On September 14, 2022, Ms. Tuatulanon's local counsel filed a motion to petition for a change in Ms. Tuatulanon's stringent bail condition. This motion was denied. Her counsel then filed an appeal on September 22, 2022. The appeal was sent to the prosecutor to review, who generally had twenty-five business days to provide an answer. In early-to-mid November 2022, counsel was notified that the prosecutor failed to provide an answer, and that the appeal was automatically sent to the appeals court. This made it more difficult for counsel to follow up on the case. Such delays are common in the case of activists such as Ms. Tuatulanon. The results of this appeal are unreasonably delayed and are still pending at the time of this submission.⁹⁵ The Thai Royal Court has set the trial dates for Ms. Tuatulanon's lese-majeste case (i.e., Livestreaming Royal Motorcade Case in March 2022) for August 2023.

VI. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

Adam Lhedmat
Freedom Now
1750 K Street NW
7th Floor
Washington, DC 20006
+ 1 (202) 223-3733 (tel)
+ 1 (202) 223-1006 (fax)
alhedmat@freedom-now.org

Lindsay Trapp
Dechert LLP
300 South Tryon Street
Suite 800
Charlotte, NC, 28202
+1 (212) 698-3810 (tel)
+1 (704) 339-3101 (fax)
lindsay.trapp@dechert.com

Date: April 25, 2023

Signature:  _____

⁹⁵ Telephone call, *supra* note 43.