

## **Fortify Rights Submission to the U.N. Human Rights Committee on Thailand's Compliance with the International Covenant on Civil and Political Rights (ICCPR)**

Fortify Rights welcomes the opportunity to provide input to the United Nations Human Rights Committee with regard to the Government of Thailand's compliance with the International Covenant on Civil and Political Rights (ICCPR).

In March 2017, the U.N. Human Rights Committee formally reviewed the Government of Thailand's compliance with the ICCPR. During this review process, Fortify Rights published a 38-page report *A Work in Progress: Thailand's Compliance with the International Covenant on Civil and Political Rights*, highlighting violations against human rights defenders, survivors of human trafficking, and refugees.<sup>1</sup> On April 25, 2017, the Committee issued Concluding Observations with more than 30 recommendations for the Thai government to implement to bring their policies and practices in line with its obligations under the ICCPR.<sup>2</sup>

In accordance with the Committee's rules of procedure, Thailand had a one-year period to provide the Committee with information on the implementation of Committee's recommendations.<sup>3</sup> Specifically, the Committee requested Thailand to respond to specific questions with regard to the constitutional and legal framework, extrajudicial killings, enforced disappearances and torture, and conditions of detention.

This submission aims to provide the Committee with further information with regard to these areas.

### ***Constitutional and Legal Framework***

In its review last year, the Committee expressed concern about certain provisions of Thailand's interim Constitution of 2014, such as those in sections 44, 47 and 48, and the order issued by Thailand's military government, National Council for Peace and Order (NCPO) under section 44, which limit access to effective remedies and may lead to immunity of the NCPO for serious human rights violations.<sup>4</sup> The Committee said it was particularly concerned about section 44, which NCPO often uses to issue orders to arbitrarily restrict rights protected by ICCPR.<sup>5</sup> The Committee also expressed

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<sup>1</sup> See, Fortify Rights, *Work in Progress: Thailand Compliance with the International Covenant on Civil and Political Rights*, March 8, 2017.

<sup>2</sup> U.N. Human Rights Committee, 119th session, *Concluding Observations of the Human Rights Committee, Thailand*, U.N. Doc. CCPR/C/THA/CO/2, April 25, 2017.

<sup>3</sup> *Ibid.* at para. 46. See also, International Human Rights Instruments, *Compilation of Rules of Procedure Adopted by Human Rights Treaty Bodies*, U.N. Doc HRI/GEN/3/Rev.3, May 28, 2008, p. 46.

<sup>4</sup> U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee, Thailand*, para 7.

<sup>5</sup> *Ibid.*

concerned about section 279 of the new draft Constitution, which would continue to provide immunity to the NCPO for its acts, announcements, and orders.<sup>6</sup>

The Committee recommended that, “[T]he State party should review all measures adopted under the interim Constitution of 2014, in particular under sections 44, 47 and 48, in the light of its obligations under the Covenant, and make sure that all measures to be adopted under the new draft Constitution, including section 279, will be consistent with its obligations under the Covenant, including the obligation to provide effective remedies to victims of human rights violations.”<sup>7</sup>

More than one year since the Committee’s recommendations and all measures and orders adopted under the 2014 Interim Constitution, in particular under section 44, 47, and 48, remain in place and are further guaranteed by Sections 265 and 279 of the 2017 Constitution.<sup>8</sup>

The abovementioned orders include NCPO Order No. 3/2558, which bans political gathering of more than five people and has severely restricted rights to freedom of expression and peaceful assembly and association.<sup>9</sup> The NCPO also continues to use this order to restrict basic rights. For example, on January 23, 2018, the military filed a criminal complaint against eight protest organizers from People Go Network Forum, a network of at least 109 civil society groups and individuals that formed in 2012.<sup>10</sup> The charge related to alleged violations of Article 12 of NCPO Order No. 3/2558 for their participation in a peaceful march on January 20, 2018 starting at Thammasat University in Pathum Thani Province. The eight protesters are Mr. Lertsak Kumkongsak, Ms. Nimit Tienudom, Ms. Nuchanart Thanthong, Mr. Jumnong Nupan, Mr. Somchai Grajanseang, Ms. Sangsiri Teemanka, Mr. Anusorn Unno, and Mr. Ubon Yuwa. If convicted, the protesters face up to six months’ imprisonment and/or a fine of 10,000 Thai Baht (US\$333).<sup>11</sup> The case is currently under consideration by the Thanyaburi Provincial Prosecutor.<sup>12</sup>

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<sup>6</sup> *Ibid.*

<sup>7</sup> *Id.* at para. 8.

<sup>8</sup> See, Wassamon Audjarint, “Some Article 44 Orders to Become Permanent Laws,” *The Nation*, January 11, 2018, <http://www.nationmultimedia.com/detail/politics/30335954> (accessed on June 7, 2018); Wassana Nanuam, “Section 44 Orders to be Legislated into Laws,” *Bangkok Post*, January 10, 2018, <https://www.bangkokpost.com/news/politics/1393458/section-44-orders-to-be-legislated-into-law> (accessed on June 7, 2018)

<sup>9</sup> Head of the National Council for Peace and Order (NCPO) Order No. 3/2558, April 1, 2015, Article 12.

<sup>10</sup> Klong Luang Provincial Police, “Notification of Criminal Complaints against Mr. Lertsak Kumkongsak, Mr. Nimit Tienudom, Ms. Nuchanart Thanthong, Mr. Jumnong Nupan, Mr. Somchai Grajanseang, Ms. Sangsiri Teemanka, Mr. Anusorn Unno, and Mr. Ubon Yuwa, January 31, 2018. See also, “Thailand: Drop Criminal Charges against “People Go Network” Peaceful Protesters,” Fortify Rights and Enlaw Thai Foundation, Joint News Release, June 4, 2018, <http://www.fortifyrights.org/publication-20180604.html> (accessed on June 7, 2018).

<sup>11</sup> NCPO Order No. 3/2558, Article 12.

<sup>12</sup> “Thailand: Drop Criminal Charges against “People Go Network” Peaceful Protesters,” Fortify Rights and Enlaw Thai Foundation.

After the ICCPR review in March 2017, the Thai government has not relaxed its restriction and prosecution of dissidents. The Thai Lawyers for Human Rights, a Thai legal aid and human rights monitoring organization, recorded that, since the May 2014 military coup, Thai authorities have charged at least 92 persons under Article 116 of the Thai Criminal Code—a sedition-like offense carrying a maximum sentence of seven years' imprisonment—and 378 persons under Article 12 of the NCPO Order No. 3/2558.<sup>13</sup> The authorities had charged at least 130 people between January 2018 to May 2018 for violating Article 12 of the NCPO Order No. 3/2558 for peacefully calling for a general election.<sup>14</sup> The authorities charged 27 of the with Article 116 of the Thai Criminal Code, a sedition-like offense carrying a maximum sentence of seven years imprisonment.<sup>15</sup>

Article 6 of NCPO Order No. 3/2558 also provides sweeping power to military officials to “summon suspected individual to report for questioning” and to “detain suspected individuals up to seven days” on premises that are not formal detention facilities.<sup>16</sup> For example, the military authorities relied on NCPO Order No. 3/2558 to summon and arbitrarily detained Pichai Nariphaphan, a former Minister of Energy and economic advisor to *Phue Thai* political party, ten times between May 2014 and February 2018 for posting online comments critical of the NCPO's public and economic policies.<sup>17</sup> On February 20, 2018, the police also summoned Mr. Nariphaphan to notify him about criminal charges against him for allegedly violating NCPO Order No. 39/2557.<sup>18</sup> NCPO Order No. 39/2557 and its annex prohibit individuals who the NCPO summoned and released from detention from engaging in political activities.<sup>19</sup> Violations of these restrictions carry a penalty of up to two years' imprisonment and/or a fine of up to 40,000 Thai Baht (US\$1,333).<sup>20</sup> In addition, these individuals can be subjected suspension of their financial activities.<sup>21</sup>

NCPO Order No. 13/2559 is another problematic measure that empowers the military to conduct warrantless arrests, detentions, and searches and entrenches impunity for wrongdoing by military officials. The Order authorizes military officers from the rank

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<sup>13</sup> Thai Lawyers for Human Rights, *Collapsed Rule of Law: The Consequences of Four Years under the National Council for Peace and Order for Human Rights and Thai Society*, June 22, 2018, [http://www.tlhr2014.com/th/?wpfb\\_dl=100](http://www.tlhr2014.com/th/?wpfb_dl=100) (accessed July 7, 2018).

<sup>14</sup> Thai Lawyers for Human Rights, *Briefing Key Statistics as of May 2018*, unpublished, on file with Fortify Rights.

<sup>15</sup> Thailand Criminal Code, B.E. 2499, 1959, Article 116.

<sup>16</sup> NCPO Order No. 3/2558, Article 6.

<sup>17</sup> See, “Thailand: Dissenting Ex-Minister Secretly Detained,” Human Rights Watch, News Release, September 10, 2015, <https://www.hrw.org/news/2015/09/10/thailand-dissenting-ex-minister-secretly-detained> (accessed on June 7, 2018); “Thailand: Drop Charges for Critical Facebook Posts,” Human Rights Watch, News Release, August 9, 2017, <https://www.hrw.org/news/2017/08/09/thailand-drop-charges-critical-facebook-posts> (accessed on June 7, 2018).

<sup>18</sup> The Royal Thai Police, “Summon Order, Criminal Complaint between Colonel Vijarn Jodtaeng and Pichai Nariphaphan,” February 20, 2018.

<sup>19</sup> NCPO Order No. 39/2557, May 25, 2014 and its annex.

<sup>20</sup> *Id.* at Article 2.

<sup>21</sup> *Id.* at annex.

of sub-lieutenant and above to act as “crime suppression officers,” enabling military officers to facilitate arrests, detentions, and searches without judicial oversight for crimes considered “harmful to public order or sabotage the economy and society of the country.”<sup>22</sup> Article 9 of this order provides that military officers acting under NCPO Order No. 13/2559 “in good faith, without discrimination, and not disproportionately and not unnecessarily” are protected from civil, criminal, or disciplinary liabilities.<sup>23</sup>

Other orders that remain in place and are used to restrict basic rights, include NCPO Order No. 97/2557 and No. 103/2557, which prohibits distribution of information by a media outlet or social media with “malice” and “false information” with an “aim to discredit” the NCPO.<sup>24</sup> This order effectively restricts all forms of criticism of military authorities, erodes media freedom, and increases online and offline censorship. For example, in March 2017, the National Broadcasting and Telecommunication Commission (NBTC), a national media regulator, ordered the suspension of VOICE TV’s operating license for seven days, effective on March 28, 2017, for broadcasting programs that contained content that “could lead to confusion, could provoke conflict, or could cause social division” in violation of the NCPO Order No. 97/2557 and No. 103/2557.<sup>25</sup> The programming in question included: “Bai Tong Haeng On Air,” a program that discusses political and social issues; “In Her View,” a program that provides commentary on current news and political affairs; and “Overview,” a program that critically questions social and economic issues. The NBTC alleged that these three programs broadcasted “one-sided criticisms” of the government.<sup>26</sup>

Fortify Rights also noted with concern that Section 279 of the 2017 Constitution effectively guarantees that all actions and measures including orders and announcements taken by the NCPO are deemed “constitutional” and “lawful.”<sup>27</sup> Therefore, officials who carry out such actions are exempted from all liabilities and accountability as stated in Section 48 of the 2014 Interim Constitution.<sup>28</sup>

### ***Extra-Judicial Killings, Enforced Disappearances, and Torture:***

In its review in 2017, the Committee expressed particular concern about impunity for and the slow progress of investigations into cases of torture and other ill-treatment, extrajudicial executions, and enforced disappearances against human rights

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<sup>22</sup> NCPO Order No. 13/2559, March 29, 2016, articles 3-4.

<sup>23</sup> *Id.* at Article 9. Note that an injured person may still seek compensation from the state under the laws of liability for the wrongful acts of officials.

<sup>24</sup> NCPO Order No. 97/2557, July 18, 2014; NCPO Order No.103/2557, July 21, 2014.

<sup>25</sup> Minutes of Meeting of the National Broadcasting and Telecommunication Commission, No. 10/2560, March 27, 2017, <https://bit.ly/2Low39m> (accessed on June 7, 2018), p. 11.

<sup>26</sup> *Ibid.*

<sup>27</sup> Constitution of the Kingdom of Thailand, B.E.2560, 2017, Section 279.

<sup>28</sup> *Ibid.*

defenders.<sup>29</sup> Among its recommendations, the Committee called on Thailand to ensure “prompt, impartial and thorough investigations” into such cases as well as prosecution and punishment of perpetrators and reparations for victims.<sup>30</sup>

Since the Committee’s review one year ago, progress towards accountability for attacks and harassment against human rights defenders and community leaders working on corporate accountability remains slow or non-existent.<sup>31</sup> For instance, more than 100 masked men attacked, detained, and injured residents of Na Nong Bong village and leaders of the Khon Rak Ban Kerd Group—a community-based organization advocating for the protection of the environment against potentially harmful mining operations in Loei Province—on May 15, 2014.<sup>32</sup> Although the Appeal Court upheld the conviction of two military officers in September 2017, sentencing them to 60 and 40 months’ imprisonment, respectively, the Thai authorities have failed to bring the remaining perpetrators to justice.<sup>33</sup>

In another example, members of the Southern Peasants Federation of Thailand (SPFT)—a community-led organization of farmers advocating for land reform, food security, and fair distribution of resources in Surat Thani Province—experienced violent attacks and killings, largely committed with impunity. Since 2010, unknown assailants shot dead at least four SPFT members, including Mr. Somporn Pattanaphum, who was killed in 2010; Ms. Montha Chukaew and Ms. Pranee Boonrak, who were killed in the same shooting in 2012; and Mr. Chai Boonthonglek, who was killed in 2015.<sup>34</sup> On April 8, 2016, Mr. Supoj Kanlasong, an SPFT member and key witness in Mr. Chai Boonthonglek’s killing, survived an attempted assassination but sustained serious injuries with eight bullets wounds in several parts of his body.<sup>35</sup>

The community representatives repeatedly asked the Department of Special Investigation to investigate the killings and assassination attempts, but the Department reportedly refused to investigate on the basis that it did not fall within

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<sup>29</sup> U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee, Thailand*, para. 21.

<sup>30</sup> *Id.* at para. 22.

<sup>31</sup> See, “Submission to the United Nations Working Group on Human Rights and Transnational Corporation and other Business Enterprise: Thailand,” Fortify Rights, U.N. Submission, April 4, 2018, [http://www.fortifyrights.org/downloads/Thailand\\_Submission\\_to\\_the\\_UN\\_Working\\_Group\\_on\\_business\\_and\\_human\\_rights\\_April\\_2018.pdf](http://www.fortifyrights.org/downloads/Thailand_Submission_to_the_UN_Working_Group_on_business_and_human_rights_April_2018.pdf) (accessed on June 7, 2018)

<sup>32</sup> Office of the High Commissioner for Human Rights, *Communication from the Special Procedures of the UN Human Rights Council to Thailand*, Joint Urgent Appeal, Case No. THA 5/2014, July 1, 2014.

<sup>33</sup> *Loei Provincial Prosecutor and Nine Co-Plaintiffs v. Army Lieutenant Colonel Poramin Pomnak and Lieutenant General Porames Pomnak*, Black Case No. Aor. 510/2560, Red Case No. Aor. 1868/2560, Verdict (Appeal Court Region IV), September 13, 2017. See also, “Thailand: Ensure Justice for Human Rights Defenders Attacked in Loei, Hold All Perpetrators Accountable,” Fortify Rights, News Release, May 31, 2016, <http://www.fortifyrights.org/publication-20160531.html> (accessed March 9 2018).

<sup>34</sup> Permanent Mission of Thailand to the United Nations and Other International Organizations in Geneva, *Letter to the Special Procedures of the UN Human Rights Council*, Letter No. 52101/240, April 2, 2015, para. 1-4.

<sup>35</sup> Office of the High Commissioner for Human Rights, *Communication from the Special Procedures of the UN Human Rights Council to Thailand*, Joint Urgent Appeal, Case No. THA 2/2016, June 13, 2016.

their jurisdiction.<sup>36</sup> On November 28, 2016, the Appeal Court upheld the acquittal of the only suspect in the killing of Mr. Chai Boonthonglek, citing a lack of evidence.<sup>37</sup> Similarly, the Wiengsa Provincial Court cited insufficient evidence in its decision to acquit Mr. Santi Wanthong, the only suspect for the attempted assassination of Mr. Supoj Kanlasong, on February 22, 2017.<sup>38</sup> The failure to prosecute perpetrators, despite the seriousness of the crimes, has created a persistent culture of impunity in Thailand that has reverberated in communities throughout the country.

### ***Conditions of Detention:***

In its review in 2017, the Committee also raised concern with the conditions of detention in Thailand, particularly the high levels of overcrowding, poor sanitation and hygiene in detention facilities, the lack of access to adequate health care, food, and water, and the stigmatization of certain detainees.<sup>39</sup> The Committee also expressed concern about reports of the excessive use of restraining devices, such as shackles, and sexual harassment of detainees.<sup>40</sup>

To reduce overcrowding, the Committee recommended that Thailand promote “alternatives to detention” and improve conditions in detention by ensuring that “all of the country’s prisons are compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).”<sup>41</sup>

The Immigration Bureau continues to detain refugees as a matter of policy. For example, in October 2017, the authorities arrested and detained more than 45 persons, most of whom the United Nations High Commissioner for Refugees (UNHCR) identified as “persons of concern.” Nineteen children were among those detained.<sup>42</sup> The Thai authorities have also detained more than 20 Rohingya refugee survivors of trafficking at Sadao Immigration Detention Center (IDC) for more than three years.<sup>43</sup> The total number of Rohingya indefinitely detained in IDCs and government-run shelters remains unknown.

Since March 2017, at least two detainees died while under the custody of Thai immigration officials. In November 2, 2017, Ms. Zainab Bi Bi, a 16-year-old Rohingya

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<sup>36</sup> Fortify Rights phone interview with C.T., March 9, 2018.

<sup>37</sup> “UN Human Rights Office Concerned that Killers of Thai Activists Not Brought to Justice,” U.N. Office of High Commissioner for Human Rights, News Release, November 28, 2016, <http://bangkok.ohchr.org/news/press/Thaiactivistsjustice.aspx> (accessed January 24, 2017).

<sup>38</sup> *Wiangsa Provincial Prosecutor and Supoj Kanlasong, Co-Plaintiff v. Santi Wanthong*, Black Case No. 1723/2559, Red Case No. 438/2560, Verdict (Wiangsa Provincial Court), February 22, 2017.

<sup>39</sup> U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee, Thailand*, para. 33.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Id.* at para. 34.

<sup>42</sup> “Thailand: Release Asylum Seekers Detained in Raids Last Week,” Fortify Rights, News Release, November 6, 2017, <http://www.fortifyrights.org/publication-20171106.html> (accessed on June 22, 2018).

<sup>43</sup> Fortify Rights interview I.S., Songkhla Province, Thailand, November 6, 2017.

survivor of trafficking, died at Hat Yai hospital in Songkhla Province six days after Thai authorities transferred her from Sadao IDC. Fortify Rights obtained information indicating that she died from bleeding in her brain and an alleged blood-clotting disorder, which results in easy or excessive bruising and bleeding. Thai authorities detained Zainab Bi Bi for more than three years in government-run shelters and IDCs.<sup>44</sup>

In May 2017, Mr. Paras Ijaz, a 34-year-old asylum seeker from Pakistan, died after being detained for 11 months at Suan Phlu IDC in Bangkok. IDC officials reportedly refused to refer him to the hospital for treatment after he complained of chest pain the day before his death.<sup>45</sup>

Both cases are under the investigation by National Human Rights Commission of Thailand.<sup>46</sup>

Children remain in detention at the IDC despite commitments made by Prime Minister General Prayut Chan-o-cha to end child detention at the Leaders' Summit on Refugees on September 21, 2016.<sup>47</sup> During the last 12 months, according to information provided by civil society organizations, the authorities detained about 60 refugee children, including about 10 Rohingya children survivors of trafficking, and more than 100 children of migrant workers.<sup>48</sup> Refugees face protracted and, in some cases, indefinite detention in Thailand.

Starting in July 2017, as part of a pilot program, the Immigration Bureau removed 11 children from a Bangkok immigration detention center, where they were detained with one or both of their parents, and placed these children into the custody of privately-run shelters.<sup>49</sup> As of the date of writing, the parents remain detained and separated from their children. During the pilot program, Fortify Rights and others privately raised concern with senior Thai officials about the pilot program proceeding without proper protections and procedures in place to safeguard the rights of the child.

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<sup>44</sup> "Thailand: Investigate Death of Rohingya Girl in Immigration Detention Center" Fortify Rights, News Release, November 10, 2017, <http://www.fortifyrights.org/publication-20171110.html> (accessed on June 22, 2018).

<sup>45</sup> "Thailand: Investigate Death in Immigration Lockup," Human Rights Watch, News Release, June 2, 2017, <https://www.hrw.org/news/2017/06/02/thailand-investigate-death-immigration-lockup> (accessed on June 24, 2018).

<sup>46</sup> Fortify Rights interviewed with Ms. Angkhana Neelapaichit, National Human Rights Commissioner, Bangkok, Thailand, June 18, 2018.

<sup>47</sup> See, Leader's Summit on Refugees, "Speech by General Prayuth Chan-o-cha, New York, United States, September 20, 2016, <https://www.youtube.com/watch?v=K7W2oEMRj84> (accessed on June 22, 2018), minute 2:34.

<sup>48</sup> Communications with members of the Coalition for the Rights of Refugee and Stateless Person and Migrant Working Group, Bangkok, Thailand, May 2018.

<sup>49</sup> Meeting with Royal Thai Police and the National Human Rights Commission of Thailand, Bangkok, Thailand, June 22, 2016.

In October 2017, the UNHCR and the International Organization of Migration (IOM) together with three civil society organizations working with refugee children developed an Inter-Organizational Standard Operating Procedures for Alternatives to Detention for Children, providing guidance on facilitating Best Interest Determinations and case management to facilitate the transfer of children from detention facilities to private shelters.<sup>50</sup> The Thai government is also in the process of developing Memorandums of Understanding with private shelters in Thailand to receive refugee children from detention facilities.<sup>51</sup> Despite these measures, the separation of children from their parents through the proposed program and the continued arbitrary and indefinite detention of refugees contravene international standards protected by the ICCPR.

On January 10, 2017, the Thai Prime Minister's Office issued Cabinet Resolution No. 01, B.E. 2560 requiring the creation of a committee to identify and manage undocumented migrants and refugees.<sup>52</sup> While the introduction of a framework to screen refugees would be a positive step towards potentially improving protections and addressing long-standing human rights concerns for refugees in Thailand, the government has made little progress towards implementing the Resolution. On June 18, 2018, Fortify Rights and Thai civil society coalitions held a public workshop with members of the Thai government to propose a draft regulation to implement Cabinet Resolution No. 01/10, B.E. 2560.<sup>53</sup> The draft regulation outlines asylum procedures and protections to ensure refugees are recognized and protected in Thailand.<sup>54</sup> Access to legal status in Thailand will reduce the risk of detention for refugees and improve their protections.

The Thai government issued Cabinet Resolutions No. 01 B.E. 2559 on March 15, 2016 and No. 04 B.E. 2559 on December 13, 2016, granting witnesses in human trafficking cases automatic protection under the Ministry of Justice and survivors of human trafficking rights to stay and work temporarily in Thailand for up to one year with the possibility of extension.<sup>55</sup> These initial resolutions excluded Rohingya as ineligible on

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<sup>50</sup> UNHCR, *et al.*, Inter-Organizational Standard Operating Procedures for Alternative to Detention for Children, October 2017.

<sup>51</sup> Meeting with Ministry of Ministry of Social Development and Human Security, Bangkok, Thailand, January 26, 2018; Meeting with representative of Royal Thai Police, Bangkok, Thailand, June 18, 2018; Called with representative of Royal Thai Police, Bangkok, Thailand, July 6, 2018.

<sup>52</sup> Cabinet Resolution No. 01/10, B.E. 2560, January 10, 2017.

<sup>53</sup> "Thailand: Ensure Rights and Protections Through Refugee Regulation," Fortify Rights, Asia Pacific Refugee Rights Network, and the Coalition for the Rights of Refugees and Stateless Persons, Joint Statement, June 18, 2018,

[http://www.fortifyrights.org/downloads/Joint\\_Statement\\_Thailand\\_Ensure\\_Refugee\\_Rights\\_and\\_Protections\\_Through\\_Refugee\\_Regulation\\_June\\_18\\_2018.pdf](http://www.fortifyrights.org/downloads/Joint_Statement_Thailand_Ensure_Refugee_Rights_and_Protections_Through_Refugee_Regulation_June_18_2018.pdf) (accessed July 7, 2018).

<sup>54</sup> Draft Regulation of the Office of the Prime Minister on the Management of Refugee, unpublished, document on file with Fortify Rights, June 18, 2018. *See also*, "Thailand: Ensure Rights and Protections Through Refugee Regulation," Fortify Rights *et al.*

<sup>55</sup> Cabinet Resolution No. 11 B.E. 2559, March 15, 2016; Cabinet Resolution No. 4 B.E. 2559, December 13, 2016. *See also*, "Thailand: Implement Cabinet Resolution to Protect Survivors of Trafficking," Fortify Rights, News Release, April 19, 2016 <http://www.fortifyrights.org/publication-20160419.html> (accessed July 7, 2018); Fortify Rights, *A Work in Progress*, p. 18.

the unsupported basis that Rohingya posed a “national security” concern. Although the Deputy Prime Minister issued a letter on January 25, 2017 to relevant ministries extending the provisions of Cabinet Resolution No. 01 to Rohingya, the restriction on Cabinet Resolution No. 04 remains in place.<sup>56</sup> While some Rohingya survivors have reportedly received documents in line with these resolutions, a majority of Rohingya survivors of trafficking remain confined to government-run shelters.<sup>57</sup>

## **RECOMMENDATIONS:**

Fortify Rights recommended that the Thai Government should:

- Repeal or amend laws and orders that entrench impunity and infringe on and basic freedoms, including the Section 279 of the 2017 Constitution and NCPO Order Nos. 3/2558, 13/2559, 97/2557, and 103/2557.
- End all legal proceedings against individuals facing investigation, charges, or prosecutions for engaging in legitimate activities protected by the ICCPR and international human rights laws.
- Investigate all reported killings, attacks, threats, and other crimes committed against human rights defenders with a view towards holding all perpetrators to account. Provide remedies and ensure access to justice for survivors of human rights abuses and their families.
- Extend Cabinet Resolution No. 04 B.E. 2559, December 13, 2016 to apply to all survivors of human trafficking, regardless of their nationality or ethnicity.
- Enforce the Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), in particular Rules 22 to 26 with respect to ensuring detainees have access to quality, timely, and adequate healthcare services.
- Ensure asylum procedures are enshrined in legislation and effectively implemented to facilitate the recognition and protection of refugees in Thailand.
- End the arbitrary and indefinite detention of all migrants, including refugees and children, and ensure migrants are detained only in exceptional circumstances, following an individualized assessment, and after all less invasive alternatives to detention have been exhausted.
- Ensure any alternatives to detentions aimed at facilitating the release of children from detention are implemented in line with international human

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<sup>56</sup> For example, *see*, Letter from the Deputy Prime Minister to the Ranong Provincial Employment Department, unpublished, January 25, 2017.

<sup>57</sup> Fortify Rights interview with M.A., Bangkok, Thailand, January 31, 2018.

rights standards, particularly with respect to the rights of the child and best practices. Children should not be separated from their parents without strict procedures in place to ensure voluntary and informed consent and a best interest determination process facilitated by a trained child rights specialist.

- Immediately implement Cabinet Resolution 01 B.E. 2560, January 10, 2017 by enacting regulations, following consultation with refugees, civil society organizations working with refugees in Thailand, UNHCR, and individuals with specialized knowledge, to adopt a screening mechanism that facilitates the right to asylum for in line with international standards. At minimum, the mechanism should:
  - Ensure all individuals wishing to seek asylum in Thailand have access to asylum procedures, regardless of the manner, place, or date of entry;
  - Adopt the definition of a refugee as articulated by the U.N. Refugee Convention, and ensure that any person meeting this definition is legally recognized as a refugee in Thailand;
  - Ensure applicants have the right to an independent appeal process to review questions of both fact and law and are allowed to remain in Thailand until there is a final decision in their case;
  - Ensure that all recognized refugees in Thailand are provided with access to legal documentation, work permits, healthcare, educational opportunities, and other forms of assistance.
  
- Accede to the 1951 Refugee Convention and its 1967 Protocol, the Convention on the Protection of All Migrant Workers and Members of Their Families, and other key human rights treaties.