

A WORK IN PROGRESS: PROGRESS:

THAILAND'S COMPLIANCE with
the INTERNATIONAL COVENANT
on CIVIL and POLITICAL RIGHTS

MARCH 8, 2017




FORTIFY
RIGHTS

COVER PHOTO: Members of Southern Peasants Federation of Thailand (SPFT)—a community-led group advocating for land rights for farmers in Surat Thani Province—mourn the death of four of its members, killed with impunity in Thailand. Mr. Somporn Pattanaphum, Ms. Montha Chukaew, Ms. Pranee Boonrak, and Mr. Chai Boonthonglek are believed to have been killed due to their activities with SPFT. November 28, 2016 ©Luke Duggleby 2016

Fortify Rights works to ensure and defend human rights for all. We *investigate* human rights abuses, *engage* stakeholders, and *strengthen* initiatives led by human rights defenders, affected communities, and civil society. We believe in the effectiveness of evidence-based research, the power of strategic truth telling, and the importance of working in close collaboration with individuals, communities, and movements. Fortify Rights is an independent, nonprofit organization based in Southeast Asia and registered in the United States and Switzerland. www.fortifyrights.org

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THAILAND

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Ms. Usa Suwannaphat cries before a portrait of her slain husband, Chai Boonthonglek, a land rights activist and member of the community-based organization Southern Peasants Federation of Thailand (SPFT) killed in February 2015 in Surat Thani Province, Thailand. In November 2016, the Appeals Court upheld the acquittal of the only suspect in the killing of Chai Boonthonglek, citing a lack of evidence. November 28, 2016 ©Luke Duggleby 2016



SUMMARY

“When a State accedes to a human rights treaty, enshrines those obligations in constitutional and domestic law, and implements them, then with the passage of time the average citizen—the individual holder of those rights—may take them for granted... Similarly, it is only when rights are no longer upheld, the individual concerned understands with sharp clarity just how critical they were to a meaningful, dignified existence.”

— U.N. High Commissioner for Human Rights Zeid Ra'ad Al Hussein, opening remarks, 34th Session of the Human Rights Council, February 27, 2017

The International Covenant on Civil and Political Rights (ICCPR) is a core instrument of international human rights law, codifying key protections. Together with the International Covenant on Economic, Social, and Cultural Rights and the Universal Declaration of Human Rights, it forms the universal bill of human rights—or what is referred to as the normative framework of human rights law.

Thailand became a state party to the ICCPR in 1996 and, as such, is legally bound to uphold and implement its provisions. The United Nations Human Rights Committee (hereinafter referred to as “the Committee”), an 18-member body of independent experts elected by U.N. member states, monitors the implementation of the treaty.

State parties to the ICCPR are required to submit periodic reports to the Committee upon request regarding how the rights enshrined in the ICCPR are being implemented.

This report considers Thailand’s implementation of the ICCPR and its responses to issues raised by the Committee. It draws on research conducted by Fortify Rights between 2014 and 2017, including eyewitness, survivor, and human rights defenders’ testimonies collected in various locations in Thailand. It is also based on information collected through monitoring trials in Thai courts and analyzing official government, court, and U.N. documents.

While this report acknowledges progress by the Government of Thailand in the area of human rights, it focuses primarily on Thailand’s need to implement key recommendations made by the Committee to address serious human rights concerns and ensure compliance with the ICCPR. It focuses specifically on the right to liberty as protected by Article 9 of the ICCPR, the protection of human rights defenders in Article 22, the prohibition of slavery in Article 8, the right to freedom of expression and peaceful assembly in Articles 19 and 21, and rights extended to refugees in Articles 2, 13, 24 and 26.



Immigration Detention Center (IDC), Songkhla Province, Thailand, 2016. Thai authorities continue to indefinitely detain stateless Rohingya refugees in IDCs. ©Fortify Rights 2016

Thailand submitted its initial report to the Committee in August 2004. In July 2005, the Committee responded to the report with “concluding observations” that welcomed the inclusion of rights and freedoms protected under the ICCPR in Thailand’s 1997 Constitution as well as the establishment of institutions to promote human rights. The Committee also noted human rights concerns and submitted 18 recommendations for Thailand to ensure compliance with the ICCPR. The Committee requested a response within one year to specific recommendations related to the Emergency Decree in Thailand’s three southern provinces, the treatment of detainees, and the situation of forced labor and human trafficking. The Committee also requested that Thailand submit its second periodic report by August 2009.

Thailand failed to meet the August 2009 deadline for its second periodic report.

Since the initial review by the Committee, the Thai military carried out successive military coups in 2006 and 2014. In 2006, Thailand’s military leaders replaced the 1997 Constitution, which was praised by the Committee in 2005 for its inclusion of human rights provisions, with an interim Constitution followed by the 2007 Constitution, which contained several controversial provisions, including amnesty for the leaders of the 2006 coup. On May 22, 2014, the Thai military ousted

the country's democratically elected government, putting into power the National Council for Peace and Order (NCPO) led by General Prayuth Chan-ocha. In July 2014, Thailand replaced the 2007 Constitution with the interim 2014 Constitution, which provides unchecked and sweeping power to the NCPO, particularly under articles 44 and 47. The draft 2016 Constitution, which is expected to come into force in 2017, includes further provisions that may be problematic with regard to ICCPR compliance, including the creation of an unelected Senate and provisions that appear designed to entrench military rule in Thailand.

On March 18, 2015, Thailand submitted its second periodic report to the Committee, using the occasion to address concerns and recommendations made by the Committee in 2005. Thailand also responded to a list of issues posed by the Committee in 2016. In its responses, Thailand failed to raise or recognize several serious human rights issues.

For instance, during the NCPO administration, Thai authorities issued and implemented orders that severely curtailed fundamental freedoms and human rights guaranteed by the ICCPR. In some cases, orders issued by the NCPO, such as those granting power to military officers to summon, arrest and detain, interrogate, search and seize, and perform "any other duties," appear to contravene both Thailand's domestic law and the ICCP.

Moreover, despite Thailand's efforts to develop mechanisms to protect human rights defenders, Fortify Rights documented continued attacks and incidents of harassment perpetrated against human rights defenders and community leaders in the country, often with impunity and without adequate protection from Thai authorities.



Members of Khon Rak Ban Kerd Group (KRBKG)- a community-based organization advocating against the mining operations of a controversial gold mine in Loei Province, marching in Wang Sa Pung District, Loei Province, Thailand, January 15, 2016.

©Fortify Rights 2016





Dozens of community activists block a truck transporting ore from a controversial gold mine operated by the Akara Resources Public Company Limited, a Thai gold mining subsidiary of the Australian firm Kingsgate Consolidated Limited, on July 15, 2016 in Pichit Province, Thailand. Thai authorities subsequently charged 27 of the protesters for allegedly violating the Public Assembly Act for failing to provide notice to the authorities in advance of the demonstration.

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under international law. Following the Thai authorities' discovery of a mass gravesite in Songkhla Province on May 1, 2015, containing 36 bodies believed to be Rohingya and Bangladeshi victims of human trafficking, Thai authorities began an unprecedented criminal investigation, resulting in the country's largest-ever human-trafficking trial. More than 100 alleged human traffickers are now being prosecuted, including military and government officials.

Fortify Rights welcomes the prosecutions. However, survivor testimonies collected by Fortify Rights indicate that the scale of trafficking of Rohingya and Bangladesh nationals through Thailand from 2012 to 2015 may exceed the crimes alleged in the trial. During at least that three-year period, human traffickers held thousands of captives in remote "torture camps" in Thailand at any given time. Government officials detained untold masses of Rohingya in immigration detention, then transferred them to the custody of trafficking syndicates, who proceeded to torture, kill, and enslave them, according to testimonial evidence collected by Fortify Rights. Rohingya men and women were bought and sold en masse. Fortify Rights has reason to believe additional mass gravesites have yet to be exposed.

Moreover, Thailand's human trafficking prosecutions have not been without concern. Witnesses and investigators were allegedly threatened and intimidated and some went into hiding or fled the country.

With regard to the rights to freedom of expression and peaceful assembly, Fortify Rights documented the use of defamation suits and other legal actions by private companies and Thai authorities against community leaders and human rights defenders for exercising basic freedoms. Such reprisals contravene Thailand's obligations under the ICCPR.



In the evening of May 15, 2014, more than 100 masked men armed with sticks, knives, and guns, attacked villagers in Loei Province who had been involved in protesting a controversial gold mine located nearby their village. The attacks lasted for several hours with no intervention from the authorities, despite repeatedly calls for assistance. ©KRBKG 2014

Many rights protected by the ICCPR, including the rights to liberty as well as freedom of expression and peaceful assembly, are not absolute rights. International law permits restrictions on these rights, but only in exceptional circumstances where the restriction is considered “necessary in a democratic society in the interests of national security or public safety, public order, the protection of health or morals or the protection of the rights and freedoms of others.” Thailand continues to cite national security concerns to justify certain restrictions on basic rights and freedoms. Under international law, a state must show a threat against “the existence of the nation or its territorial integrity or political independence” in order to justify such restrictions and, in Thailand, this bar is not typically met.

This is indeed the case for Rohingya refugees who are deprived of their right to liberty and continue to languish in indefinite detention in Thailand on the basis, in part, that they are deemed a “national security concern” by Thai authorities.

In addition to the mass indefinite detention of refugees, Fortify Rights documented other serious human rights violations against refugees in Thailand, including refoulement—a violation that contravenes customary international law in addition to the ICCPR.

The Committee will conduct its review of Thailand's implementation of the ICCPR in March 2017 at the 119th session of the U.N. Human Rights Committee in Geneva, Switzerland. To ensure Thailand's compliance with its obligations under the ICCPR, Fortify Rights recommends that the Government of Thailand:

- Ensure all national laws, legislation, and policies are in line with international human rights laws and standards.
- Investigate all reported killings, attacks, and other crimes committed against human rights defenders, community leaders, members of the media, and refugees with a view towards holding perpetrators to account.
- Ensure perpetrators of human trafficking and their accomplices, including government officials and security forces regardless of rank or position, are charged, prosecuted, and punished according to international standards.
- End all legal proceedings against individuals facing investigation, charges, or prosecution for engaging in legitimate activities protected by the ICCPR and international human rights law.
- Allow all forms of peaceful assemblies, including political, human rights-related, and social events, to proceed without interference or restrictions.
- End the indefinite detention of refugees and survivors of human trafficking; prevent the refoulement of refugees and survivors of human trafficking; and ensure the protection of refugees and survivors of human trafficking.

I. THAILAND'S IMPLEMENTATION OF ICCPR PROVISIONS

Right to Liberty

On April 1, 2015 and March 29, 2016, the NCPO issued Order Nos. 3/2558 (also referred to as NCPO Order No. 3/2015) and 13/2559 (also referred to as NCPO Order No. 13/2016), respectively.¹ Both orders grant power to military officers to summon, arrest and detain, interrogate, search and seize, and perform “any other duties assigned by the NCPO.”² Order No. 3/2558 relates to actions intended to “threaten the peace and security of the nation” whereas Order No. 13/2559 relates to “certain crimes that are harmful to public order or sabotage the economy and society of the country.”³ The broad delegation of powers to military officers for a wide range of offenses raises concern about the potential for abuse of these orders.

In April 2016, Fortify Rights and five other human rights organizations issued a joint statement highlighting human rights concerns raised by Order No. 13/2559, including concerns over the power granted to military officials to conduct arrests, detention, and searches without judicial oversight.⁴

In its List of Issues, the Committee requested clarification on NCPO Order Nos. 3/2558 and 13/2559 and their compatibility with the ICCPR.⁵ In response to the Committee, the government claimed that the orders “do not constitute extra power to officials,” explaining that “the power has to be in line with existing legal frameworks, such as the Criminal Code and Criminal Procedure Code.”⁶

1 Head of the National Council for Peace and Order (NCPO) Order No. 3/2558, April 1, 2015; NCPO Order No. 13/2559, March 29, 2016.

2 See NCPO Order No. 3/2558, art. 4; NCPO Order No. 13/2559, art. 3.

3 See NCPO Order No. 3/2558, para. 1 and NCPO Order No. 13/2559, para 1.

4 “Thailand: Human Rights Groups Condemn NCPO Order 13/2016 and Urge for It to be Revoked Immediately,” Fortify Rights et. al, Joint Statement, April 5, 2016, <http://www.fortifyrights.org/publication-20160405.html>, (accessed January 25, 2017).

5 U.N. Human Rights Committee, 119th Session, *List of Issues in Relation to the Second Periodic Report of Thailand*, U.N. Doc. CCPR/C/THA/Q/2, August 12, 2016, para. 12.

6 U.N. Human Rights Committee, 119th Session, *Replies of Thailand to the List of Issues*, U.N. Doc. CCPR/C/Thai/Q/2/Add.1, November 15, 2016, para. 73.

Under Thailand's Criminal Procedure Code, an arrest, detention, or search may only be conducted with a court order or warrant, except in limited situations.⁷ The Procedural Code also specifies limits on the duration of detention based on the alleged offense and requires certain criteria to be met to facilitate detentions in locations other than designated detention facilities.⁸ Thailand's Criminal Code further provides criminal penalties of up to three years and/or a fine of up to 6,000 Thai Baht (US\$171) for "illegal detention" and up to ten years and/or a fine of up to 20,000 Thai Baht (US\$571) for "wrongful exercise of duties."⁹ However, officials are rarely prosecuted for violating these articles of Thailand's criminal law.

The orders appear to contravene both Thailand's Criminal Procedure Code and international law. For example, both orders allow for the detention of an individual for the purposes of questioning for up to seven days.¹⁰ The orders also authorize the detention of suspects in unofficial detention facilities, which the government acknowledged in its response to the Committee, stating "these people must be placed elsewhere, given prisons are only for offenders," and that the government "usually notifies families of their whereabouts."¹¹ Officials acting under the orders are further granted immunity from civil, criminal, or disciplinary liabilities.¹²

Under international law, arrests and detention must be carried out in accordance with the law and must also be considered reasonable and necessary.¹³ The Committee has also determined that detainees should only be held in officially recognized places of detention. For example, the Committee stated in General Comment No. 20:

To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends.¹⁴

7 See Criminal Procedure Code, B.E. 2477, 1934, art. 78.

8 See Criminal Procedure Code, arts. 86 and 87. See also Criminal Code, B.E. 2499, 1959, art. 24.

9 See Criminal Code, arts. 310 and 157.

10 See NCPO Order No.3/2558, art. 6 and NCPO Order No.13/2016, art. 4..

11 U.N. Human Rights Committee, *List of Issues in Relation to the Second Periodic Report of Thailand*, para. 76.

12 See NCPO Order No.3/2558, art. 14 and NCPO Order No.13/2559, art. 9.

13 U.N. Human Rights Committee, *Communication No. 305/1988, Hugo van Alphen v. The Netherlands*, U.N. Doc. CCPR/C/39/D/305/1988, July 23, 1990, para 5.8.

14 U.N. Human Rights Committee, *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, March 10, 1992, para. 11.

Protection of Human Rights Defenders

In its initial concluding observations on Thailand in 2005, the Committee noted a “number of incidents against human rights defenders and community leaders” and recommended that Thailand “immediately halt and protect against harassment and attacks” as well as investigate reported incidents.¹⁵ In 2016, the Committee reiterated its request for “information on measures taken to protect human rights defenders and community leaders” and specifically requested comment on alleged detentions carried out for “attitude adjustments” and participation in a “re-education program.”¹⁶

In response, the Government of Thailand cited the witness protection program for human rights defenders and their family members, the Ministry of Justice’s 2015 three-part process to develop protective measures for human rights defenders, the inclusion of human rights defenders in the draft 4th National Human Rights Plan as well as the development of draft legislation on the prevention of torture and enforced disappearance.¹⁷

Fortify Rights commends the Government on its initiatives to develop frameworks for the protection of human rights defenders and welcomes efforts to adopt legislation to prevent torture and enforced disappearances. Fortify Rights also encourages the Government to ensure a broad and inclusive consultation process with a variety of civil society groups, including the meaningful participation of human rights defenders themselves, when developing such measures to protect human rights defenders.

However, in its reply, the government failed to provide the Committee with information on the reported arbitrary detention of political protesters and alleged detentions for “attitude adjustment” and “re-education.” Moreover, despite efforts to develop mechanisms to protect human rights defenders, Fortify Rights documented continued attacks and incidents of harassment perpetrated against human rights defenders and community leaders, often with impunity.

For example, Fortify Rights documented an attack against leaders of the Khon Rak Ban Kerd Group (KRBKG)—a community-based organization advocating against the mining operations of a controversial gold mine in Loei Province—by at least 100 masked men during the evening of May 15, 2014.¹⁸ Police and provincial authorities, including the Provincial Governor, failed

15 U.N. Human Rights Committee, 84th session, *Concluding Observations of the Human Rights Committee, Thailand*, U.N. Doc. CCPR/CO/84/THA, July 8, 2005, para. 19.

16 U.N. Human Rights Committee, *List of Issues in Relations to the Second Periodic Report of Thailand*, para. 14.

17 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para 84-86.

18 “Thailand: Ensure Justice for Human Rights Defenders Attacked in Loei, Hold All Perpetrators Accountable,” Fortify Rights, May 31, 2016, <http://www.fortifyrights.org/publication-20160531.html> (accessed January 24, 2016)

to intervene and did not respond to several complaints by local community members that evening, according to eyewitness testimony.¹⁹ The masked militiamen injured at least 13 villagers, including members of KRBKG.²⁰

Of the more than 100 men involved in the attacks, the authorities identified and charged only two individuals for the incident.²¹ On May 31, 2016, the Loei Provincial Court sentenced Army Lieutenant Colonel Poramin Pomnak and retired Army Lieutenant General Porames Pomnak to three and two years' imprisonment respectively for their alleged involvement in the attacks on Na Nong Bong village.²² The Court released the two men on bail. The case is now pending before the Appeal Court.²³

Following the attacks, in July 2014, the head of Special Task Force Unit for Khao Luang District in Loei summoned at least two women members of the KRBKG to the Wang Sa Pung District Office for "attitude adjustment."²⁴ During the "attitude adjustment" sessions, military officers reportedly threatened them with criminal prosecution for signing a letter opposing the establishment of a military-led working committee to address future conflicts between the community and the mining company.²⁵

Members of the Southern Peasants Federation of Thailand (SPFT)—a community-led organization of landless farmers advocating for land reform, food security, and fair distribution of resources—have also experienced serious attacks, largely committed with impunity. Since 2010, at least four SPFT members have been killed, including Mr. Somporn Pattanaphum, who was killed in 2010; Ms. Montha Chukaew and Ms. Pranee Boonrakm, who were killed in the same shooting in 2012; and Mr. Chai Boonthonglek, who was killed in 2015.²⁶ 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 and continues to live under threat.²⁷

19 Fortify Rights interview with H.P., Loei Province, Thailand, March 22, 2016 and Fortify Rights interview with R.V., Loei Province, Thailand, July 22, 2016.

20 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. 52101/513, September 9, 2014.

21 "Thailand: Ensure Justice for Human Rights Defenders Attacked in Loei, Hold All Perpetrators Accountable," Fortify Rights.

22 See *Loei Provincial Prosecutor and nine co-plaintiffs v. Army Lieutenant Colonel Poramin Pomnak and Lieutenant General Porames Pomnak*, Loei Provincial Court, Black Case No. Aor. 5440/2557, Red Case No. Aor. 1983/2559, May 31, 2016.

23 Fortify Rights electronic communication with Sor Rattanamanee Polkla, legal representative of KRBKG, September 15, 2016.

24 Fortify Rights interview with K.P., Loei Province, Thailand, February 17, 2016; Fortify Rights interview with H.P., Loei Province, Thailand, March 22, 2016.

25 Ibid.

26 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*.

27 Supoj Kaplasonog told Fortify Rights that the unknown attackers followed his car while he was traveling outside his village. Fortify Rights interview with Supoj Kanlasong, Surat Thani Province, Thailand, April 16, 2016.

In its initial concluding observations in 2005, the Committee noted the targeting of human rights defenders and that “investigations have generally failed to lead to prosecutions and sentences commensurate with the gravity of the crimes committed, creating a culture of impunity.”²⁸ Fortify Rights is concerned that this culture of impunity persists in Thailand.

There has been no accountability for any of the killings against SPFT members. According to a member of SPFT, no one has been brought to justice for the killing of Mr. Somporn Pattanaphum.²⁹ In a written reply to the U.N. Special Procedures in 2015, the government claimed that the killings of Ms. Montha Chukaew and Ms. Pranee Boonrat in 2012 are under the consideration of the Court of First Instance.³⁰ In April 2016, a member of SPFT told Fortify Rights that the case was still pending, and no one had been held to account four years on from the killings.³¹ 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.³² 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, 2017.³³

In February 2015, the Surat Thani Provincial Army also allegedly summoned SPFT leader Mr. Pienrat Boonrit for “attitude adjustment” and allegedly held him in incommunicado detention for three days in a military prison.³⁴ It is believed that the authorities summoned him due to his public opposition to government orders to forcibly evict members of his community.³⁵ On February 19, 2015, several U.N. Special Rapporteur mandate-holders submitted a communication asking for clarifications from Thailand regarding his detention.³⁶ In its reply, the Thai Government failed address the situation of Pienrat Boonrit’s detention.³⁷

28 U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee, Thailand*, para. 10.

29 Fortify Rights interview with C.T., Surat Thani Province, Thailand, April 17, 2016.

30 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.

31 Fortify Rights interview with C.T., Surat Thani Province, Thailand, April 17, 2016.

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

33 Fortify Rights electronic communication with Protection International, Bangkok, Thailand, February 22, 2017.

34 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 2/2015, February 19, 2015.

35 Ibid.

36 Ibid.

37 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

Prohibition of Slavery

During Thailand's initial concluding observations in 2005, the Committee recommended adequate protection for survivors of human trafficking and requested Thailand to provide an update on its efforts to address violations within one year. In the List of Issues submitted to Thailand in 2016, the Committee requested that Thailand provide: "updated information, disaggregated by age, sex and ethnicity of the victim, on the number of complaints, investigations, prosecutions, convictions and sentences" in cases of human trafficking since 2004.³⁸ Fortify Rights notes that Thailand failed to provide the Committee with disaggregated details of victims or with information from the multi-year timeframe specified by the Committee.

Thailand did, however, provide the Committee with data focusing on a nine-month period in 2016—from January to August 2016—during which Thailand carried out anti-trafficking work.³⁹ Thailand reported to the Committee that from January to August 2016 it prosecuted 504 cases under the 2008 anti-trafficking law.⁴⁰ Of those cases, Thailand reported that 252 cases are finished and closed and, of the closed cases, Thailand convicted 216 perpetrators (down from 242 in 2015), dismissed 14 cases, and disposed of 22 cases "due to various reasons including cases withdrawn by the plaintiff or settled by reconciliation."⁴¹

Following the authorities' discovery of a mass-grave site in Songkhla Province on May 1, 2015 containing 36 bodies believed to be Rohingya and Bangladeshi victims of human trafficking, Thai authorities began an unprecedented criminal investigation, resulting in the country's largest-ever human-trafficking trial.⁴² The trial began in the Nathawee Criminal Court in July 2015 in Songkhla Province and was transferred to the newly established Criminal Court Division for Human Trafficking in Bangkok on October 2015. In Thailand's response to the Committee, it referred to the establishment of Human Trafficking Court as a demonstration of "the Government's determination in tackling the problem in a more timely and effective manner."⁴³

38 U.N. Human Rights Committee, *List of Issues in Relation to the Second Periodic Report of Thailand*, para. 26.

39 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 96-97.

40 Ibid.

41 Ibid., para. 97. For more information on prosecutions of traffickers in 2015, see U.S. Department of State, *Trafficking in Persons Report 2016*, June 2016, , <https://www.state.gov/j/tip/rls/tiprpt/2016/> (accessed March 4, 2017), p. 365.

42 Austin Ramzay, "Fleeing Thailand, Top Investigator of Human Trafficking Says He Fears for His Safety," *New York Times*, December 10, 2015, https://www.nytimes.com/2015/12/11/world/asia/thailand-human-trafficking-asylum-australia.html?_r=0 (accessed March 4, 2017).

43 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 98.

The authorities are currently prosecuting 103 defendants, including 21 government officials: five military officials, four police officials, seven local politicians, four administrative officers, and one nurse.⁴⁴ The trial concluded in February 2017 and a verdict is expected in July 19, 2017.⁴⁵

Fortify Rights monitored the trial and attended hearings for more than one year.⁴⁶ All defendants had access to legal counsel, including pro-bono lawyers assigned by the court, and the court appointed four interpreters to provide translation in Thai, Rohingya, Bangladeshi, and Burmese languages. The court heard the testimony of hundreds of witnesses.

While these and other efforts by Thailand are welcomed, Fortify Rights documented significant shortcomings in Thailand's prosecutions of human traffickers in 2015 and 2016.

For instance, while the case involving 103 defendants in Bangkok court is touted as a comprehensive government response to the human trafficking of Rohingya Muslims from Myanmar, it fails to account for the scale of human trafficking of Rohingya and others that occurred in Thailand from 2012 to 2015.⁴⁷ Since 2013, Fortify Rights interviewed more than 200 Rohingya survivors of human trafficking who were transported from Myanmar and Bangladesh to Malaysia via Thailand for the purposes of exploitation. Fortify Rights also interviewed 17 individuals involved, or believed to be involved, in trafficking Rohingya.⁴⁸ Fortify Rights documented how transnational criminal syndicates and complicit Thai authorities held captive, at any given time, several thousand Rohingya refugees and Bangladeshi nationals in illicit "torture camps" in Thai territory.⁴⁹ Members of trafficking syndicates and others deprived victims of their liberty and held them in conditions of enslavement; deprived victims of adequate food, water, and shelter;

44 Royal Thai Government, *Trafficking in Persons Report 2015: The Royal Thai Government's Response, January 1-December 31, 2015*, 2015, http://ccpl.mol.go.th/ewt_dl_link.php?nid=86&filename=index (accessed March 4, 2017), p. 59.

45 See Fortify Rights trial monitoring notes (unpublished), Criminal Court Division for Human Trafficking, Case Nos. 27-29, 32, February 24, 2017.

46 See Fortify Rights trial monitoring notes (unpublished), Criminal Court Division for Human Trafficking, Case Nos. 27-29, 32, March 15, 2016 to February 24, 2017.

47 See Fortify Rights, *Get it Right This Time: A Victims-Centered Trafficking in Persons Report*, Testimony before the U.S. House Committee on Foreign Relations, March 22, 2016, http://www.fortifyrights.org/downloads/Testimony_20160322.pdf (accessed March 3, 2017); Fortify Rights, *Accountability and Transformation: Tier Rankings in the Fight against Human Trafficking*, Testimony before the U.S. House Committee on Foreign Relations, April 22, 2015, http://www.fortifyrights.org/downloads/FR_TIP_Testimony_April_2015.pdf (accessed March 3, 2017).

48 See, for example, Fortify Rights interview with D.B., Hat Yai, Thailand, September 17, 2014; Fortify Rights interview with C.D., Yangon, Myanmar, October 29, 2013; Fortify Rights interview with C.H., Hat Yai, Thailand, September 16, 2014; Fortify Rights interview with C.I., Pattani, Thailand, September 16, 2014; Fortify Rights interview with D.H., Bangkok, Thailand, September 23, 2014; Fortify Rights interview with E.Z., Kuala Lumpur, Malaysia, September 28, 2014.

49 Traffickers and armed guards in "torture camps" counted their human cargo aloud multiple times daily, enabling survivors interviewed by Fortify Rights to recall quantities of captives in the camps. See, for example, Fortify Rights interview with E.E., Kuala Lumpur, Malaysia, September 27, 2014; Fortify Rights interview with A.I., Kuantan, Malaysia, August 13, 2014.

and beat and sometimes killed victims.⁵⁰ Testimonies collected by Fortify Rights indicate several thousand deaths of Rohingya and others in the unlawful custody of human trafficking gangs—compared with the deaths of 36 victims as acknowledged by the prosecution in the ongoing trial. These deaths should be further investigated.

Moreover, eyewitness and survivor testimony suggests the existence of additional mass graves of trafficking victims in Thailand beyond the graves uncovered by Thai authorities in May 2015.⁵¹

The investigation that led to the arrest of the defendants in the Bangkok trial also had shortcomings. For example, Police Major General Paween Pongsirin, the former Deputy Commissioner of Provincial Police Region 8, led the team of investigators and prosecutors in uncovering the human trafficking syndicate that resulted in the mass arrest of the defendants who are now facing trial in Bangkok. Major General Paween told Fortify Rights that high-ranking government officials cut short the investigation following the arrest of several high-level officials and that he feared for his life.⁵² In 2015, he fled Thailand.⁵³ Moreover, Fortify Rights documented that human trafficking syndicates who preyed on Rohingya and others in southern Thailand and elsewhere are still active, indicating the need for further investigation into human trafficking networks and criminal syndicates in Thailand.⁵⁴

During the Bangkok trial, the authorities provided limited access to the trial for journalists and other organizations. The authorities also prevented family members and journalists from taking notes or entering the courtroom—they were allowed to observe via a small closed-circuit television in a separate area.⁵⁵

50 See, for example, Fortify Rights interview with A.G. and A.I., Kuantan, Malaysia, August 13, 2014; Fortify Rights interview with Z.D., A.Z., G.E., Kuala Lumpur, Malaysia, August 10, 11, and September 27, 2014; Fortify Rights interview with E.Z., Sadao, Thailand, September 17, 2014.

51 Ibid; See also, Emanuel Stoakes, “Thailand Human Trafficking Death Toll far Greater than Feared Claims Rights Group,” *The Guardian*, May 6, 2015, <https://www.theguardian.com/global-development/2015/may/06/thailand-human-trafficking-mass-grave-burma-rohingya-people> (accessed March 3, 2017).

52 “Thailand: Human Trafficking Case Obstructed and Chief Investigator in Hiding,” Fortify Rights, December 9, 2015, <http://www.fortifyrights.org/publication-20151209.html> (accessed February 10, 2017).

53 Ibid.

54 Fortify Rights and Burmese Rohingya Organization UK, *Everywhere is Trouble: A Briefing on the Situation of Rohingya Refugees from Myanmar in Thailand, Malaysia, and Indonesia*, March 11, 2016, <http://www.fortifyrights.org/downloads/EverywhereisTrouble.pdf> (accessed February 12, 2017), p. 11.

55 Fortify Rights trial monitoring notes (unpublished), Criminal Court Division for Human Trafficking, Case Nos. 27-29, 32, March 29, 2016.

Citing national security concerns, the Court allowed senior military official Lieutenant General Manas Kongpan and three of his witnesses to deliver their testimony in secret sessions.⁵⁶ In addition, interpreters informed Fortify Rights that defendants and defense attorneys threatened them verbally during the trial.⁵⁷ Fortify Rights is concerned these factors may prejudice the outcome of the trial and potentially violate fair trial standards. For example, fair trial standards provide for the right to a public hearing. The Committee has found that trials involving a public figure that take place in courtrooms that are unable to accommodate the public or are closed to the public contravene the ICCPR.⁵⁸

Fortify Rights also documented issues with the authorities' screening process for identifying survivors of human trafficking. Thai government officials involved in the screening process described the process to Fortify Rights as arbitrary, saying that it is common for some Rohingya to be categorized as survivors of human trafficking and others as "illegal migrants" despite both groups having similar experiences.⁵⁹

In its second periodic report to the Committee, Thailand highlighted its enactment of the Act on Human Trafficking Prevention and Suppression in 2008 in order "to prevent and suppress human trafficking in the same manner as transnational organized crimes."⁶⁰ Fortify Rights commends Thailand's efforts to adopt further measures to combat labor exploitation and to amend human anti-trafficking legal frameworks.⁶¹

While these measures are welcomed and reflect serious attention to anti-trafficking, in practice, enforcement and implementation has been mixed, particularly with regard to protection for witnesses and informants. Fortify Rights documented how members of Thailand's state security forces as well as suspected members of a transnational criminal syndicate threatened or intimidated witnesses, investigators, and other individuals involved in the trafficking case in Bangkok court.⁶² At least two witnesses went into hiding out of fear for their lives, and others

56 Fortify Rights trial monitoring notes (unpublished), Criminal Court Division for Human Trafficking, Case Nos. 27-29, 32, January 27 and February 23, 2017.

57 Fortify Rights trial monitoring notes (unpublished), Criminal Court Division for Human Trafficking, Case Nos. 27-29, 32, April 28, 2016.

58 U.N. Human Rights Committee, *Marinich v. Belarus*, U.N. Doc. CCPR/99/D/1502/2006, 2010, para. 10.5; U.N. Human Rights Committee, *Kulov v. Kyrgyzstan*, U.N. Doc. CCPR/C/99/D/1369/2005, 2010, para. 8.6.

59 Fortify Rights and Burmese Rohingya Organization UK, "Everywhere is Trouble," p. 21.

60 U.N. Human Rights Committee, *Second Periodic Report of Thailand*, U.N. Doc. CCPR/C/THA/2, September 30, 2015, para. 64.

61 For example, Thailand passed the Anti Trafficking in Persons Act (No.2), B.E 2558, April 28, 2015 and the Anti Trafficking in Persons Act (No.3), B.E 2560, January 26, 2017. The Anti-Trafficking in Persons Act (No.3), B.E. 2560, 2017 amended the definition of "forced labor," as enshrined in the International Labor Organization (ILO) Convention C29 to which Thailand has been a state party since 1969. See Royal Thai Government, Thailand: Trafficking in Persons 2016.

62 "Thailand: Threats Continue in Human Trafficking Trial," Fortify Rights, December 24, 2015, <http://www.fortifyrights.org/publication-20151224.html> (accessed March 3, 2017).

told Fortify Rights that they were considering going into hiding due to security concerns.⁶³ Several months into the trial, only 12 of 500 witnesses were under formal witness protection, and the authorities continued to keep witnesses—themselves survivors of human trafficking—in detention.⁶⁴

Following public pressure, Thailand passed Cabinet Resolution No. 11/B.E. 2559 in March 2016, providing automatic protection under the Ministry of Justice to witnesses in human trafficking cases and temporary legal status to survivors of human trafficking.⁶⁵ On December 13, 2016, Thailand extended the right to stay and work in Thailand under Cabinet Resolution No. 4/13/12 B.E. 2559 to include survivors and witnesses involved in human trafficking cases even after the conclusion of the case.⁶⁶ However, the resolution specifically and explicitly excludes Rohingya from its provisions on the basis of national security concerns.⁶⁷ This blatant discrimination against an entire category of human trafficking survivors contravenes the principle of non-discrimination of the ICCPR.

Also, in 2016 Thailand reported to the Committee that its Ministry of Social Development and Human Security (MSDHS) provided shelter as well as “physical, mental and social support to victims of trafficking in persons.”⁶⁸ While Thailand is obligated to provide support for survivors of human trafficking, such support should not involve situations of detention—Thailand’s “shelters” are closed and, in effect, constitute detention centers.⁶⁹ Thailand’s continued detention of survivors of trafficking contravenes rights and protections guaranteed by the ICCPR.

Moreover, from 2012 to 2015, Thai authorities detained untold masses of refugees and survivors of trafficking in immigration detention centers and jails.⁷⁰ In some cases, authorities in immigration detention centers and jails systematically handed over large numbers of Rohingya men and boys to human trafficking syndicates, allegedly for sums of money, according to survivor testimonies collected by Fortify Rights.⁷¹

63 Ibid.

64 Ibid.

65 Cabinet Resolution No. 11/B.E. 2559, March 15, 2016. See also “Thailand: Implement Cabinet Resolution to Protect Survivors of Trafficking,” Fortify Rights, April 19, 2016, <http://www.fortifyrights.org/publication-20160419.html> (accessed March 4, 2017).

66 Cabinet Resolution No.4/13/12 B.E.2559, December 13, 2559.

67 Cabinet Resolution No.4/13/12, art. 2.

68 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 98.

69 Fortify Rights and Burmese Rohingya Organization UK, *Everywhere is Trouble*, p. 12.

70 See, for example, Fortify Rights interview with Z.E., Kuala Lumpur, Malaysia, August 2014; Fortify Rights interview with E.Z., Bangkok, Thailand, September 23, 2014; Fortify Rights interview with A.I and A.G., Kuantan, Malaysia, August 13, 2014; Fortify Rights audio recording C.D., Yangon, Myanmar, October 29, 2013.

71 See, for example, Fortify Rights interview with A.G., Kuantan, Malaysia, August 13, 2014; Fortify Rights interview with C.H., Hat Yai, Thailand, September 16, 2014; Fortify Rights interview with D.Z., Pattani, Thailand, September 16, 2014.

Right to Freedom of Expression

In its initial concluding observations in 2005, the Committee expressed concern about reports of “intimidation and harassment against local and foreign journalists and media personnel as well as of defamation suits against them” and recommended “adequate measures to prevent further erosion of freedom of expression.”⁷²

Since then, the intimidation and harassment of journalists and media personnel in Thailand has continued, including through the use of defamation suits. For example, the Thai Public Broadcasting Service (Thai PBS) and four of its employees faced criminal defamation charges under the Criminal Code and the Computer-related Crimes Act (CCA) in November 2015 after it reported on alleged adverse environmental impacts potentially related to a Thai gold mine.⁷³ More than year after the company lodged the complaint against Thai PBS, the Bangkok Criminal Court dismissed the case for lack of merit on November 16, 2016.⁷⁴

Fortify Rights also documented the use of defamation suits to intimidate and harass human rights defenders and community-based activists. For example, since 2014, Tungcum Limited, a Thai-owned gold mining company, brought six criminal defamation complaints against villagers and KRBKG members involved in opposing its mining operations in Thailand’s Loei Province.⁷⁵ Two of the complaints were against a 15-year-old schoolgirl who narrated a Thai PBS news clip that resulted in the complaint against Thai PBS and its employees in November 2015.⁷⁶ Tungcum Ltd. has also sought 320 million Thai Baht (US\$9.13 million) from Loei villagers through civil defamation suits.⁷⁷

72 U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee, Thailand*, para. 18.

73 “Thailand: Withdraw Criminal Complaint against Thai PBS.” Fortify Rights, October 3, 2016, <http://www.fortifyrights.org/publication-20161003.html> (accessed January 23, 2017).

74 See *Tungcum Co. Ltd. v. Wirada Saelim and four others*, Criminal Court, Black Case No. Aor 3756/2558, Red Case No. Aor 3680/2559, Decision (Court of First Instance), November 16, 2016. See also “Thailand: Court Dismisses Criminal Defamation Case against Thai PBS and Journalists,” Fortify Rights, November 17, 2016, <http://www.fortifyrights.org/publication-20161117.html> (accessed on January 23, 2017).

75 “Thailand: Drop Defamation Charges against Schoolgirl, Journalists, Villagers.” Fortify Rights, February 12, 2016, <http://www.fortifyrights.org/publication-20160212.html> (accessed January 24, 2017). Tungcum Ltd. filed charges against Mr. Surapun Rujichaiyavat and Ms. Pornthip Hongchai at Phuket Provincial Court in 2014 and lodged another two complaints against Mr. Surapun Rujichaiyavat and Ms. Pornphattra Kaengjampa at Mae Sot Police Station and Mae Sot Provincial Court in 2015. See *Tungcum Co. Ltd. v Surapun Rujichaiyavat*, Mae Sot Provincial Court, Black Case No. 1430/2558, Affidavit (Court of First Instance), June 10, 2015; Royal Thai Police, Testimony of the 2nd Alleged Offender, Pattharaphon Kaengjampa at Mae Sot Provincial Police Station, July 14, 2015. At the time of writing, only the complaint against the school girl is still pending with Minburi Police in Bangkok. See Minburi Metropolitan Police Station, 1st Summon Order to (name withheld), December 14, 2015.

76 See Juvenile Observation and Protection Office of Loei Province, *Invitation Letter to Parents of (name withheld) to Provide Testimonies*, Letter No. Yor Thor 06048/2475, December 4, 2015; Minburi Metropolitan Police Station, 1st Summon Order to (name withheld), December 14, 2015.

77 For example, see *Tungcum Co. Ltd. v. Samai Phakmee and 13 others*, Loei Provincial Court, Civil Case No. 859/2556, (Civil Court), December 13, 2013; *Tungcum Co. Ltd. v. Surapun Rujichaiyavat and six others*, Loei Provincial Court, Civil Case No.132/2557, (Civil Court), April 28, 2014; *Tungcum Co. Ltd. v. Surapun Rujichaiyavat and five others*, Loei Provincial Court, Civil Case No. 974/2556, (Civil Court), December 13, 2013; *Tungcum Co. Ltd. v Surapun Rujichaiyavat and five others*, Loei Provincial Court, Civil Case No. 574/2558, (Civil Court), May 29, 2015.

Community leaders involved in opposing the mining operation in Pichit Province similarly faced civil and criminal defamation charges. From 2013 to 2016, the Akara Resources Public Company Limited, a Thai gold mining subsidiary of the Australian firm Kingsgate Consolidated Limited, filed at least five criminal defamation complaints against community leaders, an activist, and an academic.⁷⁸

Apart from being problematic in principal and with regard to the human rights of human rights defenders, unwarranted complaints and prosecutions can also impose significant time and financial demands and burdens on human rights defenders and affected communities. Meanwhile, access to assistance, including legal support, money for bail, and transportation costs to attend trials and wage a proper defense, is limited.

In its List of Issues submitted to Thailand in 2016, the Committee requested data on the number of criminal defamation proceedings brought against human rights defenders, journalists, and other civil society actors.⁷⁹ In its response, the Thai government acknowledged that official records did not exist regarding the numbers of such criminal defamation cases due to a lack of disaggregated data.⁸⁰ The government also claimed that the definition of these categories of actors, “particularly human rights defenders, is still debated...” despite Thailand’s repeated commitment to protect human rights defenders, including recently with the adoption of the U.N. Declaration on human rights defenders, which defines “human rights defenders.”⁸¹ Moreover, in its second periodic report to the Committee and its reply to the Committee’s List of Issues, the government also directly responded to the Committee’s questions about human rights defenders, using the term more than 14 times in the two documents.⁸²

78 Community leaders, Ms. Chananchida Limnonthakul and Ms. Thanyarat Sinthornthammathat, faced two separated criminal defamation complaints in 2013 for their role in submitting a complaint letter concerning alleged negative impacts of the gold mine to the representative of Australian Embassy and giving interview to the media in May 2013. The public prosecutor dropped both complaints in 2015 and 2016, respectively. See, Office of Special Prosecutor of the 4th Kwaeng Court (Yannawa), “Order of Non-Prosecution to the Superintendent of Tung Mahamek Metropolitan Police Station,” Letter No. Aor Sor 0013.4/1975, July 14, 2015; Office of Special Prosecutor of Bangkok South Criminal Court, “Order of Non-Prosecution to the Super Intendent of Tung Mahamek Metropolitan Police Station,” Letter No. Aor Sor 0037.7/293, March 29, 2016. On March 31, 2016, Akara Resources PCL also brought similar charges against Ms. Somlak Hutunuwatr and Ms. Thanyarat Sinthornthammathat for alleged negative Facebook postings about the company. The Bangkok South Criminal Court dismissed the charges on November 9, 2016. See, *Akara Resources Public Co., Ltd. v. Ms. Somlak Hutunuwatr and Ms. Thanyarat Sinthornthammathat*, Bangkok South Criminal Court, Black Case No. Aor. 1086/2559, Affidavit (Court of First Instance), March 31, 2016. On June 21, 2016, the company brought a second defamation complaint against Ms. Somlak Hutunuwatr and Mr. Smith Tungkhasamit, a lecturer at Rangsit University who used blood tests to reveal adverse health impacts among villagers living near the gold mine. The Bangkok South Criminal Court dismissed the case on November 29, 2016. See, *Akara Resources Public Co., Ltd. v. Ms. Somlak Hutunuwatr and Mr. Smith Tungkhasamit*, Bangkok South Criminal Court, Black Case No. Aor. 2076/2559, Affidavit (Court of First Instance), June 21, 2016. On July 22, 2016, the company brought a third defamation complaint against Somlak Hutunuwatr at Pichit Provincial Court. This case is currently pending trial. See, *Akara Resources Public Co., Ltd. v. Ms. Somlak Hutunuwatr*, Pichit Provincial Court, Black Case Aor. 1468/2016, Affidavit (Court of First Instance), July 22, 2016.

79 U.N. Human Rights Committee, *List of Issues in Relations to the Second Periodic Report of Thailand*, para. 18.

80 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para 105.

81 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 105.

82 U.N. Human Rights Committee, *Second Periodic Report of Thailand*; Human Rights Committee, *Replies of Thailand to the List of Issues*.

Although Thailand could not provide data on the total number of criminal defamation proceedings, it did acknowledge an increase in the number of defamation cases under the CCA.⁸³ This information matches Fortify Rights' findings. Information provided to Fortify Rights by the Office of the Court of Justice indicates a significant rise in the number of prosecutions under CCA with the Thai authorities prosecuting 399 defendants from January to August 2016, compared with a total of 321 in 2015, 71 in 2014, 46 in 2013, 13 in 2012, and six in 2011.⁸⁴ In its reply to the Committee in 2016, Thailand suggested that the increase was due to "an increasing number of defamation incidents conducted in cyber space or social media."⁸⁵

The 2007 CCA prohibits computer-related offenses, including the distribution of "forged computer data in a manner that is likely to cause damage to a third party or the public" or is against "national security and public order."⁸⁶ It further prohibits service providers from "intentionally supporting or consenting" to host unlawful computer data.⁸⁷ The authorities and private companies have used these provisions to restrict freedom of expression among human rights defenders, journalists, and others.

In its List of Issues, the Committee requested information on measures taken to prevent the use of CCA to infringe on the right to freedom of expression.⁸⁸ In response, Thailand assured the Committee that the Act "does not prohibit freedoms of expression and of opinion" and referred to two CCA cases dismissed by Thailand courts to "illustrate the attempt to interpret and encourage the use of this Act in accordance with its true objective."⁸⁹ One case involved two Phuketwan journalists charged under CCA for reprinting a *Reuters* article alleging Thai official complicity in trafficking Rohingya refugees.⁹⁰ The other case involved CCA charges against Mr. Watana Muangsook for criticizing a Cabinet member on Facebook.⁹¹

Although Thai courts in these two cases dismissed the unwarranted CCA charges, courts have convicted and sentenced human rights defenders, journalists, and others for violating the CCA. For example, on September 20, 2016, the Bangkok Criminal Court convicted Mr. Andy Hall, a British researcher, of criminal defamation and violations of the CCA for his work on labor rights

83 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 107.

84 See Office of the Court of Justice, "Table for Statistics of Criminal Cases under 2007 Computer-related Crime Act Pending and Disposed of by the Court of Justice in Thailand Between Year 2007- August 2016," 2016.

85 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 107.

86 Computer-related Crime Act (CCA) B.E. 2550, 2007, art. 14(1).

87 CCA, art. 14(1) and (2).

88 U.N. Human Rights Committee, *List of Issues in Relations to the Second Periodic Report of Thailand*, para. 18.

89 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 108.

90 *Ibid.*

91 *Ibid.*

abuses in Thailand.⁹² The court sentenced Hall to three years in prison and a 150,000 Thai Baht (US\$4,200) fine.⁹³ The Natural Fruit Company Limited filed the initial complaint against Mr. Hall in 2013 for his work documenting alleged labor rights violations at the company's factory in Prachaub Kirikhan Province.⁹⁴

In September 2015, Thailand's Supreme Court upheld the verdict against Ms. Chiranuch Premchaiporn, the webmaster of Prachatai online news, for violating article 15 of the CCA.⁹⁵ Chiranuch Premchaiporn received a sentence of eight months' imprisonment, suspended for one year, and a fine of 20,000 Thai Baht (US\$571) for failing to promptly remove from Prachatai's website content deemed to be in violation of Thailand's *lese-majeste* law, which defamations, insults, or threats against the royal family.⁹⁶

Many other human rights defenders and activists in Thailand currently face charges for alleged violations of the CCA. For example, on June 8, 2016, the Internal Security Operation Command Region 4 lodged CCA and other defamation-related charges against human rights defenders Ms. Anchana Heemmeena, Ms. Pornpen Khongkajornkiat, and Mr. Somchai Homlaor for publishing a report alleging that the Thai military used torture and ill-treatment against detainees under military custody in Thailand's southern provinces.⁹⁷ Andy Hall is also facing new charges under CCA as well as other defamation-related charges for sharing information on alleged abuses against 14 migrant workers by their employer, Thammakaset Company Limited, a Thai-owned poultry-rearing farm.⁹⁸ The 14 migrant workers are also facing criminal defamation charges for submitting a complaint against the company to the National Human Rights Commission of Thailand.⁹⁹

In its response to the Committee's List of Issues in 2016, Thailand indicated that the CCA "is currently under amendment to make clearer definitions in each section and ensure that it would be interpreted in accordance with its real objective."¹⁰⁰ Despite significant public

92 See *Natural Fruits Co. Ltd. v. Andy Hall*, Bangkok South Criminal Court, Black Case No. Aor. 517/2556 and Red Case No. Aor. 2749/2559, Judgment (Court of First Instance), September 20, 2016.

93 The court suspended the sentence on the basis that Hall's work was "beneficial to Thai society." See *Ibid.*, para 49.

94 See, *Ibid.*, para 1-33.

95 *Office of Attorney General v. Chiranuch Premchaiporn*, Criminal Court, Doc. No. 10541/2558, Judgment (Supreme Court), September 9, 2015, pp. 15-40.

96 *Ibid.*

97 Office of the High Commissioner for Human Rights, *Communication from the Special Procedures of the UN Human Rights Council to Thailand*, Joint Urgent Action, U.N. Doc. UA THA 6/2016, August 4, 2016.

98 See *Thammakaset Co. Ltd. v. Andy Hall*, Bangkok South Criminal Court, Black Case No. Aor. 3644/2559.

99 See *Thammakaset Co. Ltd. v. Tun Tun Win and 13 others*, Don Muang Kwaeng Court, Black Case No. Aor. 2769/2559, October 6, 2016.

100 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 109.

opposition, the National Legislative Assembly unanimously adopted the amended version of the CCA on December 16, 2016.¹⁰¹ The amended CCA provides law enforcement officials with broad and unchecked power to access private information on electronic devices and block websites.¹⁰² For example, article 8 of the amended CCA criminalizes individuals who import “computer data” considered “distorted” or “false” or compromising to “national security, public safety, economic stability.”¹⁰³ Article 13 also allows law enforcement officials to access personal data without judicial oversight.¹⁰⁴ Article 14 further permits the blocking or removal of computer data deemed against “national security.”¹⁰⁵

The amended CCA contravenes rights protected by the ICCPR. Guidance provided by the U.N. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression provides that any measure “to take down digital content or access customer information must be based on validly enacted law, subject to external and independent oversight, and demonstrate a necessary and proportionate means” of achieving a legitimate aim.¹⁰⁶

Right to Freedom of Peaceful Assembly

In its List of Issues, the Committee requested Thailand to comment on reports that “since May 2014, the right to freedom of expression and peaceful assembly has been severely restricted, including through the banning of public events related to human rights and democracy.”¹⁰⁷ Thailand did not counter these reports but instead provided a justification for the crackdowns, claiming “some limitations are deemed necessary to prevent social divisiveness and political conflicts.”¹⁰⁸

While the rights to freedom of expression and peaceful assembly are not absolute rights, international law permits restrictions only in exceptional circumstances where the restriction is considered “necessary in a democratic society in the interests of national security or public safety, public order, the protection of health or morals or the protection of the rights and

101 Kasamakorn Chanwanpen and Asina Pornwasin, “300,000 Internet Users Petition NLA against the Amendments,” *The Nation*, December 16, 2016, <http://www.nationmultimedia.com/news/national/30302213> (accessed January 25, 2017).

102 See Computer-related Crime Act (2) (CCA)(2), B.E.2559, 2017, art. 13 and 14.

103 See *Ibid.*, art. 8.

104 See *Ibid.*, art. 13.

105 See *Ibid.*, art. 14.

106 U.N. Human Rights Council, 32th Session, “*Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*,” A/HRC/32/38, May 11, 2016, para. 85.

107 U.N. Human Rights Committee, *List of Issues in Relations to the Second Periodic Report of Thailand*, para. 19.

108 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 110.

freedoms of others.”¹⁰⁹ These legitimate aims are narrowly defined in international law and would not include the prevention of “social divisiveness and political conflicts.”

In its List of Issues, the Committee also requested information on the criteria used to authorize political gatherings and provide examples of the reasons given for prohibiting an assembly.¹¹⁰ Thailand responded that “[a]lmost all requests for public assembly have been approved except for few public gatherings seen to be politically motivated, misleading, and provocative.”¹¹¹ Restricting peaceful assemblies on these grounds contravenes the ICCPR.

In June 2016, Fortify Rights participated in a press conference where Thai authorities interfered and prevented discussions from taking place.¹¹² A Thai civil society coalition organized the press conference at the Foreign Correspondents Club of Thailand to discuss Myanmar’s treatment of ethnic Rohingya Muslims and its effect on refugee flows to Thailand. According to the event organizers, Thai police contacted them on the evening before the event and requested them not to proceed with the event.¹¹³ On the morning of the event, Thai police reportedly requested that the organizers meet with police at a local police station, where the police reiterated the request that the event not proceed.¹¹⁴

The Thai police also requested that the participants, including staff of Fortify Rights, meet at a location nearby the event venue. During this meeting, police and military officers told Fortify Rights that the organizers could deliver a statement at the event but that there should be no discussion. The reason provided for effectively preventing discussion was due to the sensitivity of the topic—Myanmar’s policy and treatment towards Rohingya Muslims in Myanmar—and to ensure Thailand’s cooperative bilateral relations with Myanmar. The event took place on the first day of Myanmar State Counselor Aung San Suu Kyi’s first official visit to Thailand.

The organizers viewed these requests as a threat and cancelled the planned panel discussion as well as the question-and-answer session that was scheduled to follow. Following the event, Thai authorities arbitrarily detained, intimidated, and monitored the movements of several prominent Rohingya community leaders from Myanmar who lawfully reside in Thailand.¹¹⁵

109 See, ICCPR, art. 19(3) and 21. See also, U.N. Human Rights Committee, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, General Comment No. 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13, 2014, para. 6; Manfred Nowak, *UN Covenant on Civil and Political Rights; CCPR Commentary* (Kehlram Rhein: N.P. Engel, 1993), p. 387-87.

110 U.N. Human Rights Committee, *List of Issues in Relations to the Second Periodic Report of Thailand*, para. 20.

111 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 117.

112 “Thailand: Protect Ethnic Rohingya Human Rights Defenders,” Fortify Rights, June 28, 2016, <http://www.fortifyrights.org/publication-20160628.html> (accessed January 25, 2017).

113 Fortify Rights conversations with Ms Parinya Boonridrerthaikul, Coordinator of the Coalition for Refugees and Stateless Persons, June 22, 2017.

114 Ibid.

115 “Thailand: Protect Ethnic Rohingya Human Rights Defenders,” Fortify Rights.

In its response to the Committee's List of Issues, Thailand assured the Committee that Thailand's Constitution guarantees the right to freedom of peaceful assembly and that "certain restrictions with regard to right to assembly are only temporary and based on necessity to restore stability and avoid further violence in the society."¹¹⁶

Human rights defenders and community activists have faced legal actions or the threat of legal actions for engaging in or defending the right to peaceful protest. For example, in June 2016, the Thai police issued a summons to Ms. Sirikan Charoensiri, a human rights lawyer working with Thai Lawyers for Human Rights, for allegedly violating NCPO Order No. 3/2558 and Article 116 of Thailand's Criminal Code.¹¹⁷

Article 116 of the Criminal Code relates to sedition-type offenses and carries a penalty of up to seven years' imprisonment.¹¹⁸

Sirikan Charoensiri is facing a series of other charges related to her organization's work in providing legal representation to 14 pro-democracy student activists.¹¹⁹ Thai authorities have charged the 14 student activists with allegedly breaching NCPO Order No. 3/2558 and Article 116 of the Criminal Code for engaging in a peaceful protest in June 2015.¹²⁰ The case is currently pending before the Bangkok Military Court.

In its List of Issues, the Committee specifically requested that Thailand provide information about the use of NCPO Order Nos. 7/2557 and 3/2558 as well as Article 116 of the Criminal Code to "detain individuals who have peacefully expressed their political opinions."¹²¹ These two orders include provisions to restrict gatherings of five or more people for political purposes.¹²² In response, Thailand claimed that the orders are aimed at "maintaining peace, order, and security" and that Article 116 "does not apply to those who peacefully express political opinions with well intention, but aims at preventing the expression of hatred that stirs violence in the society."¹²³ This rationale fails to meet the strict criteria required by the ICCPR to justify restrictions on the right to freedom of peaceful assembly.

116 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 115.

117 "Thailand: Immediately Drop Sedition Case and All Proceedings against Human Rights Lawyer, Sirikan Charoensiri," Fortify Rights, Joint Statement, October 3, 2016, http://www.fortifyrights.org/downloads/Thailand_Joint_Presser_Sirikan_Charoensiri.pdf (accessed January 25, 2017).

118 Criminal Code, art. 116.

119 Office of the High Commissioner for Human Rights, *Communication from the Special Procedures of the UN Human Rights Council to Thailand*, UN Doc. AL THA 6/2015, July 7, 2015.

120 Office of the High Commissioner for Human Rights, *Communication from the Special Procedures of the UN Human Rights Council to Thailand*, Urgent Action, UA THA 7/2015, July 16, 2015.

121 U.N. Human Rights Committee, *List of Issues in Relations to the Second Periodic Report of Thailand*, para. 19.

122 See NCPO Order No. 7/2014, May 22, 2014; NCPO Order No. 3/2558, art. 12; Criminal Code, art. 116.

123 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 112.

Thai authorities have also threatened legal action against human rights defenders and community activists engaged in peaceful assemblies for violating the 2015 Public Assembly Act.¹²⁴ For example, on December 18, 2016, Thai police in Wang Sa Pung District, Loei Province summoned seven members of women leaders of KRBKG for allegedly violating, among other offenses, article 10 of the Public Assembly Act for failing to notify the authorities 24 hours prior to engaging in a protest on November 16, 2016.¹²⁵ A violation of article 10 of the Public Assembly Act carries a fine of up to 10,000 Thai Baht (US\$285).¹²⁶ The case is currently pending further investigation.¹²⁷ In another example, Thai police in Pichit Province charged 27 community activists for also allegedly violating article 10 of the Public Assembly Act and other offenses during a peaceful protest on July 15, 2016 against the Akara Resources PCL Ltd. gold mine.¹²⁸

With regard to sanctions for failing to provide advanced notification, U.N. Special Rapporteurs have stated, “[w]here there has been a failure to properly notify, organizers, community or political leaders should not be subject to criminal or administrative sanctions resulting in fines or imprisonment.”¹²⁹

The Public Assembly Act also prohibits demonstrations “held within the National Assembly, the Government House and the Courts” and forbids “concluding public procession or marching from 6 p.m. to 6 a.m.”¹³⁰ These restrictions contravene international standards on the right to freedom of peaceful assembly. The Special Rapporteurs have held that “blanket bans, including bans on the exercise of the right entirely or on any exercise of the right in specific places or at particular times, are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly.”¹³¹

On May 27, 2016, the U.N. Special Procedures issued a communication to the Thai Government with regard to concerns over the Public Assembly Act and its compatibility with international law, particularly highlighting that “[t]he Act places limitations on the exercise of the right to

124 Public Assembly Act B.E. 2558, 2015.

125 The seven KRBKG members facing potential charges include: Mrs. Pornthip Hongchai, Mrs. Viron Rujichaiyavat, Mrs. Ranong Kongsraen, Mrs. Mon Khunna, Mrs. Suphat Khunna, Mrs. Boonraeng Srithong, and Mrs. Lumplearn Ruengrith. Fortify Rights interview with H.P., Bangkok, Thailand, January 18, 2017.

126 See Public Assembly Act, art. 28.

127 Fortify Rights interview with H.P., Bangkok, Thailand, January 18, 2017.

128 Fortify Rights phone communication with S.T., Bangkok, Thailand, December 2016.

129 U.N. Human Rights Council, *Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies*, U.N. Doc. A/HRC/31/66, February 4, 2016, para. 23.

130 See Public Assembly Act, arts 7 and 16(8).

131 U.N. Human Rights Council, *Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies*, para. 30.

peaceful assembly by imposing strict rules on locations allowed for public assembly.”¹³² Thailand responded to the communication claiming the law was “to ensure that public order and social harmony prevail.”¹³³ In its response to the Committee in 2016, Thailand further claimed that the restrictions are aimed at “protecting important government and public premises and maintaining security of the people participating in the gathering as well as those in the surroundings.”¹³⁴

Although Thailand claims that its intention is not to impose restrictions on “ordinary citizens” who are well intentioned and “willing to participate meaningfully in the reform process of the country,” it appears that laws, such as NCPO Order Nos. 7/2557 and 3/2558 as well as the Public Assembly Act, are used to restrict freedoms protected by the ICCPR.¹³⁵ Fortify Rights welcomes Thailand’s cooperation with the U.N. Office of the High Commissioner for Human Rights to facilitate trainings for law enforcement officials on crowd control and the use of the Public Assembly Act and encourages further engagement to ensure Thailand’s policies and practices are in line with international standards.

Rights of Refugees

According to the U.N. High Commissioner for Human Rights, the refugee population in Thailand as of the end of 2016 was approximately 102,500, a majority of whom are from neighboring Myanmar.¹³⁶ In its List of Issues, the Committee requested information on “measures taken to ensure non-nationals, including refugees and asylum seekers...enjoy their rights under the ICCPR...”¹³⁷ Thailand acknowledged in its response to the Committee that although it is not a party to the 1951 Refugee Convention or its 1967 Protocol, it maintains “a long-standing commitment to humanitarianism and to take care of various groups of irregular migrants.”¹³⁸

Since its last review before the Committee, Thailand has continued to allow protracted refugee communities to remain in Thailand. Thailand lacks a domestic legal framework to recognize and protect refugees and instead relies on ad hoc policies, often established through Cabinet Resolutions, to manage the various populations. Notably, Thailand passed three Cabinet

132 Office of the High Commissioner for Human Rights, *Communication from the Special Procedures of the UN Human Rights Council to Thailand*, U.N. Doc. AL THA 4/2016, May 27, 2016.

133 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. 52101/472, June 1, 2016.

134 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 116.

135 *Ibid.*, para. 111.

136 U.N. High Commissioner for Refugees (UNHCR), “Refugees in Thailand,” Website, <https://www.unhcr.or.th/en> (accessed March 4, 2017).

137 U.N. Human Rights Committee, *List of Issues in Relation to the Second Periodic Report of Thailand*, para. 22.

138 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para.121.

Resolutions in December 2016 and January 2017 related to undocumented migrants and refugees, survivors of human trafficking, and stateless persons.¹³⁹ Fortify Rights welcomes these initiatives and encourages the implementation of these Cabinet Resolutions in line with international standards.

Cabinet Resolution No. 10/01 B.E. 2560 provides for the establishment of a “Committee for the Management of Undocumented Migrants and Refugees” to develop criteria and methods to screen undocumented migrants and refugees.¹⁴⁰ The nature of this screening process is unclear; however, Fortify Rights encourages this Committee to establish asylum procedures aimed at identifying and recognizing refugees in order to provide them with access to legal status and protection in Thailand.

INDEFINITE DETENTION OF ROHINGYA REFUGEES

An estimated 280 Rohingya refugees from Myanmar remain in indefinite detention in Thailand.¹⁴¹ Although Thailand’s immigration detention facilities are designed for stays of no longer than 15-days, Thai authorities have detained some Rohingya refugees for several years.¹⁴²

In its List of Issues, the Committee requested information on the lengthy and “in some cases, indefinite periods” of detention for undocumented migrants and asylum seekers.¹⁴³ In response, Thailand claimed that the “[p]eriod of detention depends on the Refugee Status Determination and resettlement processes conducted by UNHCR.”¹⁴⁴ This response fails to acknowledge that the State is the primary duty-bearer to ensure the protection of all persons in its territory. The State is also responsible for ensuring the right to liberty for all persons, including non-nationals.¹⁴⁵ The opportunity for resettlement to a third country is also extremely limited and not always appealing for Rohingya refugees, particularly those who prefer to remain close to their homeland or those hoping to reunite with family members in the region.¹⁴⁶

139 See Cabinet Resolution No. 10/01 B.E. 2560, January 10, 2017; Cabinet Resolution No. 04/13/12 B.E. 2559, December 13, 2016; Cabinet Resolution No. 9/7/12 B.E. 2559, December 7, 2016.

140 Cabinet Resolution No. 10/01, para 1.3.

141 Fortify Rights communication with Asylum Access Thailand, Senior Policy Advisory Officer, Bangkok, March 3, 2017.

142 Fortify Rights, *Thailand: One Year After the Andaman Sea Refugee Crisis, End Detention and Bring Justice to Survivors of Human Trafficking*, Remarks of Ms. Puttanee Kangkun Thailand Human Rights Specialist, June 8, 2016, http://www.fortifyrights.org/downloads/Remarks_20160608.pdf (accessed March 4, 2017), p. 4. para. 5.

143 U.N. Human Rights Committee, *List of Issues in Relation to the Second Periodic Report of Thailand*, para. 23,

144 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 129;

145 ICCPR, art. 10.

146 Fortify Rights, *Thailand: One Year After the Andaman Sea Refugee Crisis*, p. 4.

Thailand also indicated that it provides “bail for those believed to have fled home for fear of persecution, especially women, children, and persons with serious medical conditions, to live outside Immigration Detention Centers.”¹⁴⁷ However, some categories of refugees, including Rohingya, are not eligible for bail. Under the current situation, there are no viable pathways for detained Rohingya to challenge their detention or obtain release.

Thailand’s continued detention of Rohingya refugees and other refugees contravenes the rights and protections guaranteed by the ICCPR. The ICCPR forbids arbitrary, unlawful, or indefinite detention, including of non-nationals. A state may only restrict the right to liberty of migrants in exceptional cases following a detailed assessment of the individual concerned.¹⁴⁸ Any detention must be necessary and proportionate to achieve a legitimate aim.¹⁴⁹

Senior Thai officials told Fortify Rights that the reason for the continued detention of Rohingya refugees is based in part on national security concerns.¹⁵⁰ Under international law, a state must show a threat against “the existence of the nation or its territorial integrity or political independence” in order to justify a restriction on the right to liberty based on national security concerns.¹⁵¹ This bar is not met in the case of Rohingya refugees in Thailand.

Thailand also has a duty to ensure that the treatment and conditions for detainees in immigration detention centers and government-run shelters are in line with international standards.¹⁵² This would include ensuring access to basic necessities, such as bedding and toiletries as well as adequate and nutritional foods; access to appropriate medical treatment, including psychological counseling; and access to suitable outside space as well as an opportunity to conduct daily physical exercise.¹⁵³

147 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 130.

148 See U.N. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Concluding Observations of the Committee on the Second Periodic Report of Bosnia and Herzegovina*, U.N. Doc. CMW/C/BIH/CO/2, September 26, 2012, para. 26(c); CMW, *Concluding Observations of the Committee on the Initial Periodic Report of Rwanda*, U.N. Doc. CMW/C/BIH/CO/2, September 26, 2012, para. 24(a).

149 See U.N. Human Rights Committee, *Communication No. 560/1993, A. v. Australia*, U.N. Doc. CCPR/C/59/D/560/1993, April 3, 1997, para. 9.2.

150 Fortify Rights communications with senior Thai government officials, Bangkok, Thailand and Washington, D.C. United States, 2014-2016.

151 U.N. Commission on Human Rights, *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights*, U.N. Doc. E/CN.4/1985/4, September 28, 1984, arts. 29-32.

152 U.N. Basic Principles on the Treatment of Prisoners, December 14, 1990; U.N. Standard Minimum Rules for the Treatment of Prisoners, August 30, 1955.

153 U.N. Standard Minimum Rules for the Treatment of Prisoners, art. 10.

The report “*Everywhere is Trouble: An Update on the Situation Refugees in Thailand, Malaysia, and Indonesia*” produced by Fortify Rights and the Burmese Rohingya Organization UK in March 2016 found that Thailand failed to meet its duty of care for Rohingya held in its custody.¹⁵⁴ Rohingya detainees confined to the Songkhla Immigration Detention Center told Fortify Rights that the authorities confined them in their cells 24-hours a day with inadequate personal space, and they sleep side-by-side on the floor while sharing one functioning toilet between 40 detainees.¹⁵⁵ Detainees reported not having access to soap or toothpaste and told Fortify Rights that they lack access to healthcare, mental health services, and opportunities to exercise or be in open air for any period of time.¹⁵⁶ At least seven Rohingya reportedly died in Thai immigration detention facilities in the past four years, including an 18-year-old boy.¹⁵⁷ The authorities typically separate Rohingya families in detention: Rohingya women and children are detained in government-run shelters and Rohingya men are detained in immigration detention centers or shelters for survivors of human trafficking.¹⁵⁸

In its List of Issues, the Committee specifically requested information on the situation of refugee children in Thailand.¹⁵⁹ In March 2016, Rohingya detainees informed Fortify Rights that 16 of the 40 Rohingya detained at the Songkhla Immigration Detention Center were under the age of 18 and two were approximately ten years old.¹⁶⁰ All of the Rohingya refugee children detained in the Songkhla Immigration Detention Center were reportedly unaccompanied and detained together with unrelated adult males.¹⁶¹ Thai authorities also continue to indefinitely detain Rohingya refugee children in government-run shelters.

Given the information provided by Thailand in its response to the Committee on conditions in immigration detention, it appears that the conditions in which Thailand continues to detain Rohingya contravene not only the ICCPR but also Thailand’s domestic policies. Thailand reported to the Committee that the Thailand Immigration Bureau Order No. 148/2000 requires individuals held in immigration detention centers to be separated by age and guarantees “rights to sanitization, food, and health and ensures respect for religious belief.”¹⁶²

154 Fortify Rights, “*Everywhere is Trouble*,” pp. 6-10.

155 *Ibid.*, para. 4.

156 *Ibid.*, para. 4 and 6.

157 “Thailand: Ensure Access to Justice and Protection for Rohingya Asylum-Seekers,” Amnesty International, press release, July 15, 2013, <https://www.amnesty.org/en/documents/asa39/003/2013/en/> (last accessed March 3, 2017); “Thailand: Open Letter on the Treatment of Rohingya Asylum-Seekers and Migrants,” Amnesty International, open letter, June 10, 2013, <https://www.amnesty.org/en/documents/ASA39/002/2013/en/> (last accessed March 3, 2017).

158 Fortify Rights, “*Everywhere is Trouble*,” p. 8.

159 U.N. Human Rights Committee, *Second Periodic Report of Thailand*, para. 24.

160 Fortify Rights, “*Everywhere is Trouble*,” para. 14.

161 *Ibid.*, para. 16.

162 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 136.

The Committee also requested that Thailand provide information on alternatives to detention. Fortify Rights is engaged in regular dialogue with Thai authorities about potential alternatives to detention for Rohingya refugees. Fortify Rights welcomes Thailand's engagement on this issue but remains concerned by proposals that fail to ensure the full rights and protection of refugees. Fortify Rights remains committed to working in cooperation with the Thai authorities to find acceptable alternatives to detention, recognizing that the immediate release of Rohingya refugees from detention is critical to ensure Thailand upholds the rights and protections guaranteed under the ICCPR.

VIOLATIONS AGAINST ROHINGYA REFUGEES

Although Thailand affirmed to the Committee that the "Government upholds human rights for all persons regardless of nationality or legal status," Fortify Rights notes that violations against Rohingya refugees in Thailand have taken place with impunity.¹⁶³ For example, in May 2013, a Thai police officer stationed in Khao Lak, Phang Nga Province was reportedly involved in transporting a woman from a government shelter to a secluded location where another man repeatedly raped her during several days.¹⁶⁴ Thai authorities reportedly dismissed the officer from the police force and charged him for his involvement in human trafficking and abuse of his position.¹⁶⁵ However, the court reportedly dismissed the charges on the basis that the woman was no longer in the country, despite the fact that the woman had identified the officer in a photograph and provided written and signed testimony to the police.¹⁶⁶

More recently, on May 23, 2016, Thai police shot and killed an 18-year-old Rohingya refugee from Myanmar who escaped from the Phang Nga immigration detention center.¹⁶⁷ To Fortify Rights' knowledge, the Thai police officer involved in this killing was not charged and appears on the Phang Nga Immigration Department website as an active-duty officer at the Phang Nga Immigration Department.¹⁶⁸ Under international law, lethal force by police is only lawful when necessary to prevent loss of life and when proportionate to the threat at hand.¹⁶⁹

163 Ibid., para. 121.

164 "Thailand: Ensure Access to Justice and Protection for Rohingya Asylum-Seekers," Amnesty International.

165 Ibid.

166 Fortify Rights phone interview with Mr. Jesada Senade, lawyer for the co-plaintiff, April 29, 2016.

167 "Thailand: Investigate Fatal Shooting of Rohingya Refugee, End Indefinite Detention," Fortify Rights, news release, May 24, 2016, <http://www.fortifyrights.org/publication-20160524.html> (accessed February 13, 2017).

168 See Phang Nga Immigration Department, "Phangnga Immigration," website, <http://www.phangnga-imm.com/team.php> (accessed March 4, 2017).

169 See, U.N. General Assembly, *Extrajudicial, Summary or Arbitrary Executions, Note by the Secretary-General*, U.N. Doc. A/61/311, September 5, 2006, para. 42 and 44.

REFOULEMENT OF REFUGEES

In its initial concluding observations, the Committee recommended that Thailand “establish a mechanism to prohibit the extradition, expulsion, deportation or forcible return of aliens to a country where they would be at risk of torture or ill-treatment, including the right to judicial review with suspensive effect.”¹⁷⁰ In particular, the Committee called on Thailand to respect “a fundamental principle of international law, the principle of non-refoulement.”¹⁷¹

In its second periodic report to the Committee, Thailand acknowledged that non-nationals residing in Thailand are not able to enjoy the rights and liberties provided by Article 13, which prohibits the arbitrary expulsion of non-nationals.¹⁷² However, Thailand affirmed that it “does not approve the deportation of alien persons to face risks against human persons, even though the Thai society is aware of the difficulties in taking the responsibility of addressing the issue of illegal migration into Thailand of a large amount of alien migrant workers.”¹⁷³

In its List of Issues, the Committee requested that Thailand provide information on measures taken to ensure protection against refoulment and specifically requested Thailand to comment on “reports of Rohingya asylum seekers and Bangladeshi survivors of human trafficking being pushed back.”¹⁷⁴ In its reply, Thailand affirmed its adherence to “the principle of non-refoulement, one of the international customary laws.”¹⁷⁵ However, Thailand went on to say that its National Security Council had “integrated all actions and projects undertaken by relevant organizations to tackle the predicament of Rohingyas taking into consideration the balance between security and human rights.”¹⁷⁶ Thailand explained that for “Bangladeshi Rohingyas,” the Ministry of Foreign Affairs collaborated with the Bangladeshi Embassy to facilitate the return of “over a thousand persons back to Bangladesh.”¹⁷⁷ This raises questions considering most Rohingya in Bangladesh are refugees without Bangladesh citizenship and with limited rights and protections. For “Myanmar Rohingyas,” Thailand replied that the Ministry of Social Development and Health Services “has provided shelter for female and children.”¹⁷⁸ In its response, Thailand made no mention of measures taken to protect Rohingya men from refoulement.

170 U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee, Thailand*, para 17.

171 Ibid.

172 U.N. Human Rights Committee, *Second Periodic Report of Thailand*, para 123.

173 Ibid., para 125.

174 U.N. Human Rights Committee, *List of Issues in Relation to the Second Periodic Report of Thailand*, para. 22.

175 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 121.

176 Ibid., para.123.

177 Ibid.

178 Ibid.

In practice, Thailand continues to maintain its “help on” or “push back” policy with regard to possible refugees arriving by sea.¹⁷⁹ Under this policy, Thai authorities have intercepted and towed boats out to sea, greatly endangering the lives of those on board.¹⁸⁰ This policy contravenes the principle of non-refoulement, which prohibits the “rejection at the frontier, interception and indirect refoulement” of individuals whose “life or freedom would be threatened, or where he or she would risk persecution.”¹⁸¹ As noted by the Special Rapporteur on the Human Rights of Migrants, “although it is the sovereign right of all States to safeguard their borders and regulate their migration policies, States should ensure respect for the human rights of migrants while enacting and implementing migration laws.”¹⁸²

REFOULEMENT OF LAO HMONG REFUGEES

In its initial concluding observations in 2005, the Committee expressed concern about “the deplorable situation of the Hmong people in Petchabun Province, the majority of whom are women and children who are not considered refugees by the State party and are facing imminent deportation to a State where they fear they will be persecuted.”¹⁸³

During the period between the Committee’s initial review of Thailand and Thailand’s submission of its second periodic report to the Committee—from 2005 to 2015—Thailand forcibly deported at least 8,000 Lao Hmong refugees from Thailand.¹⁸⁴ Fortify Rights met with representatives of a community of 100 Lao Hmong who were forcibly returned from Thailand between 2009 and 2010. One Lao Hmong woman told Fortify Rights that Thai authorities provided her with only 24-hours notice before she was transported to the border at night and deported.¹⁸⁵

In its second periodic report, Thailand justified the return saying that the Lao People’s Democratic Republic (Lao PDR) “has made progress in regard to human rights development” and that the two governments “came to an agreement” to facilitate the repatriation of all Lao Hmong.¹⁸⁶ Thailand claimed that the “endeavour was carried out with due importance given to the safety and well-being of the Laotian Hmongs repatriated so that they could make their living in a sustainable manner and enjoy appropriate choices in life.”¹⁸⁷

179 Fortify Rights, *Get it Right This Time*, p. 8.

180 *Ibid.*

181 Executive Committee of the High Commissioner’s Program, *Note on International Protection*, U.N. Doc. A/AC.96/951, September 13, 2001, para. 16.

182 U.N. Human Rights Committee, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, U.N. Doc. A/HRC/7/12, February 25, 2008, para. 10.

183 U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee, Thailand*, para 17.

184 Supang Chandawanich and Thawin Pleansi, eds., *The Lao Hmong in Thailand: State Policies and Operations (1975-2009)*, (Bangkok: Asian Research Center for Migration, 2011), p. 187-191.

185 Fortify Rights interview with L.X., undisclosed location, July 31, 2016.

186 U.N. Human Rights Committee, *Second Periodic Report of Thailand*, para 56.

187 U.N. Human Rights Committee, *Second Periodic Report of Thailand*, para 56.

More than 70 Lao Hmong families who were repatriated between 2005 and 2009 have since returned to Thailand after experiencing or fearing persecution in Lao PDR.¹⁸⁸ Many of refugees are now living in hiding in Thailand without access to protection. This population is unable to access UNHCR refugee registration mechanisms in Thailand and are at risk of being refouled a second time. For example, in June 2014, Thailand deported a Lao Hmong leader despite calls by UNHCR and members of the international community to prevent his return.¹⁸⁹

In its List of Issues submitted to Thailand in 2016, the Committee requested information on the return of Lao Hmong refugees “with no assessment of their protection needs and in violation of the non-refoulement principle.”¹⁹⁰ Thailand responded that the “Laotian Government guaranteed that these people are of Laotian nationality and would be entitled to the same rights afforded to nationals, including allocation of lands and support for their livelihood.”¹⁹¹

Returned Lao Hmong refugees told Fortify Rights that Lao authorities interrogated them when they were forced back from Thailand.¹⁹² One Lao Hmong woman reported that her uncle disappeared and was last seen when he went to speak with the Lao authorities.¹⁹³ Several Lao Hmong told Fortify Rights the Lao authorities regularly monitored and intimidated them after Thailand forced them back to Lao.¹⁹⁴

Without legal status or other protections in Thailand, Lao Hmong refugees are at risk of human trafficking, exploitation, and other serious human rights violations and abuses in Thailand. One Lao Hmong woman told Fortify Rights a Thai broker who promised to assist her in obtaining Thai documents later raped her.¹⁹⁵ Fearing potential charges for illegal entry or being re-deported to PDR Lao, she did not report the rape to the Thai authorities.¹⁹⁶

188 Asylum Access Thailand, March 2016.

189 “UNHCR Deplored Deportation of Laotian Refugee from Thailand,” UNHCR, July 8, 2014. <http://www.unhcr.org/news/briefing/2014/7/53bbc65b9/unhcr-deplores-deportation-laotian-refugee-thailand.html> (accessed February 6, 2017).

190 U.N. Human Rights Committee, *List of Issues in Relation to the Second Periodic Report of Thailand*, para. 22.

191 U.N. Human Rights Committee, *Replies of Thailand to the List of Issues*, para. 124

192 Fortify Rights interview with L.X. and L.P., undisclosed location, July 31, 2016.

193 Fortify Rights interview with L.X., undisclosed location, July 31, 2016.

194 Fortify Rights interview with L.X. and L.P., undisclosed location, July 31, 2016.

195 Fortify Rights interview with L.X. and L.Y., undisclosed location, January 21, 2017.

196 Fortify Rights interview with L.X. and L.Y., undisclosed location, January 21, 2017.

RECOMMENDATIONS

To the Government of Thailand:

- Ensure all national laws, legislation, and policies are in line with international human rights laws and standards. In particular:
 - Repeal or amend NCPO Orders that allow for arbitrary detention and infringe on and other basic freedoms, including NCPO Orders Nos. 3/2558 and 13/2559.
 - Repeal or amend laws and orders that are incompatible with the rights to freedom of expression and peaceful assembly, including articles 116, 326 - 328 of Thailand's Criminal Code, the Public Assembly Act, the Computer-related Crimes Act, and NCPO Order No. 3/2558.
 - Decriminalize defamation-related offenses, including those proscribed under articles 326 - 328 of Thailand's Criminal Code and the Computer-related Crimes Act.
 - Enact without delay a version of the draft Prevention and Suppression of Torture and Enforced Disappearance Act that fully complies with the requirements of the U.N. Convention against Torture and the Convention against Enforced Disappearance.
- End all forms of arbitrary detention in Thailand, including through summons and detention in relation to "attitude adjustment" or "re-education" programs.
- Immediately and unconditionally release all individuals detained for engaging in protected activities or under laws and orders that are incompatible with international law and provide them access to remedies.
- Ensure that arrests, detentions, and searches of private properties and persons are carried out only with a court order or warrant and in line with international standards.
- Ensure the treatment of detainees, including non-national detainees, and conditions of detention, including immigration detention centers and government-run shelters, meet international standards, including relevant provisions of the ICCPR as well as the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In particular, ensure that individuals are detained only in official places of detention with prompt access to legal counsel, family members, medical assistance, and independent judicial review.

- Investigate all reported killings, attacks, and other crimes committed against human rights defenders, community leaders, members of the media, and refugees and ensure perpetrators are held to account.
- 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.
- In consultation with human rights defenders and civil society, create protection mechanisms aimed at strengthening the safety and security of human rights defenders.
- Uphold rights contained in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.
- Reopen the investigation into the human trafficking of Rohingya refugees and Bangladeshi nationals in Thailand and provide adequate resources to ensure the investigation is complete, independent, and effective.
- Ensure perpetrators of human trafficking and their accomplices, including government officials and security forces, are charged, prosecuted, and punished according to international standards.
- Investigate all allegations of harassment, intimidation, and threats against witnesses involved in human trafficking cases and hold perpetrators to account.
- Allow all forms of peaceful assembly, including political, human rights-related, and social events, to proceed without interference or restrictions.
- End the indefinite detention of refugees and survivors of human trafficking held in immigration detention centers and government-run shelters.
- Ensure that refugees are detained only in exceptional circumstances, following an individualized assessment, and after all less invasive alternatives to detention have been exhausted.

- Develop and implement national legislation establishing asylum procedures and providing refugees with legal status in line with international standards.
- Facilitate access to legal documentation, work permits, healthcare, educational opportunities, and other forms of assistance for refugees.
- Prevent the refoulement of individuals whose life or freedom would be threatened upon return to their home countries, including Rohingya and Lao Hmong refugees. In particular, end the policy of interdicting and turning back migrants arriving by sea.
- Issue a standing invitation to visit Thailand to the U.N. Special Procedures, in particular the Special Rapporteur on Freedom of Peaceful Assembly and Association, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Accede to the Optional Protocols I and II of the ICCPR, the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, the U.N. Convention Relating to the Status of Refugees and its 1967 Protocol, and other key human rights treaties.

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BACK COVER PHOTO: Lao Hmong refugees block a bus in Nong Khai Province to protest an order calling for their return to the Lao People's Democratic Republic, a country they fled after the Lao Army attacked and killed women and children from their community. Despite their protests and calls from the international community to prevent their refoulement, the Thai authorities forcibly returned more than 8,000 Lao Hmong refugees from 2005 to 2015. Dozens have since returned to Thailand after experiencing further reprisals and threats in Lao PDR. ©Roger Arnold 2007



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