

May 11,
2023

open letter:

**Commit to Protect
Rights of Refugees,
LGBTI+ People, and
Human Rights
Defenders**

open letter

To: **Thai
Political
Parties**

To Thai Political Parties

Thai Political Parties: Commit to Protect Rights of Refugees, LGBTI+ People, and Human Rights Defenders

May 11, 2023

Dear Thai Political Party Candidates,

Ahead of Thailand's general election on May 14, 2023, we are writing to request that you and your party commit to upholding human rights for all people in Thailand. To further this request, we have prepared for you three enclosed briefing notes on select human rights concerns affecting communities in Thailand, including recommendations for solutions. These briefing notes cover 1) the ongoing arbitrary detention and forced return of refugees, 2) the lack of marriage equality and discrimination against LGBTI+ people, and 3) the judicial harassment of human rights defenders in Thailand.

We hope you find these documents useful, and we look forward to continuing conversations with you on improving Thailand's human rights record.

As an independent, nonprofit human rights organization, Fortify Rights works to ensure rights for all. We investigate violations, engage people with power on solutions, and strengthen human rights defenders and communities affected by human rights violations. We believe in the influence of evidence-based research, the power of strategic truth-telling, and the importance of working in close collaboration with individuals, communities, and movements pushing for change.

As an international human rights monitor in Thailand, we would fully encourage your leadership on the following:

Arbitrary Detention and Forced Return of Refugees

According to Thai government sources, as of March 3, 2023, more than 23,000 men, women, and children fled to Thailand to escape targeted attacks and violence in Myanmar following the February 1, 2021 *coup d'état* in Myanmar. This new population of refugees from Myanmar is distinct from the population of more than 90,000 refugees from Myanmar, who have been confined to nine camps along the Thailand-Myanmar border for decades.

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Despite not being a party to the 1951 Refugee Convention or its 1967 Protocol, Thailand has a legal obligation under both customary international law and domestic law to prevent the forced return or *refoulement* of any person to a country where they may face serious human rights violations. The enactment of anti-torture legislation in October 2022 codified the prohibition against *refoulement* under Thai law. However, Fortify Rights continues to document Thai authorities forcing refugees from Myanmar to return to situations where they face violence, persecution, torture, and even death.

To prevent the arbitrary detention and forced return of refugees, Fortify Rights recommends an end to the practice of detaining refugees solely on the basis of their immigration status and the urgent implementation of screening mechanisms to identify and provide legal status to refugees and to prevent *refoulements*.

Please see the enclosed briefing note entitled “Ensuring Refugee Rights in Thailand” for detailed information on this issue.

Marriage Inequality and Discrimination against LGBTI+ people

On June 15, 2022, Thailand’s House of Representatives approved the first reading of the Act for Amendment to the Civil and Commercial Code, which would replace the terms “husband” and “wife” with the term “spouse” in Section 1448 of Thailand’s Civil and Commercial Code. This bill, known as the marriage equality bill, would have ensured equal access to the right to marriage for LGBTI+ couples in Thailand. However, the bill failed to progress to the second reading and eventually lapsed when parliament dissolved on March 1, 2023.

The right to family and marriage is protected under Article 23 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a state party, and Article 16 of the Universal Declaration of Human Rights (UDHR). Article 26 of the ICCPR and Article 2 of UDHR also guarantee equal protection of the law without discrimination, similar to Section 27 of the Thai Constitution. Still, Thailand’s laws currently do not provide LGBTI+ couples with the right to marry.

To protect the right to marry and prevent discrimination against LGBTI+ couples in Thailand, Fortify Rights recommends the reintroduction and prioritized approval of the marriage equality bill, amending Thailand’s Civil and Commercial Code, in parliament.

Please see the enclosed briefing note entitled “Ensuring Marriage Equality in Thailand” for detailed information on this issue.

Judicial Harassment of Human Rights Defenders

Despite commitments by Thailand to protect human rights defenders and uphold business and human rights principles, human rights defenders continue to face judicial harassment, including by companies, for exercising their rights. Thailand's criminal defamation laws are particularly problematic. For example, the controversial Thai poultry company, Thammakaset Company Limited has brought at least 37 criminal defamation complaints against 22, mostly women, human rights defenders in Thailand since 2016.

In October 2019, Thailand was the first State in Asia to develop a National Action Plan (NAP) on Business and Human Rights, where it committed to protect human rights defenders and prevent judicial harassment. Efforts are currently underway to adopt a second phase of NAP. In 2017, Thailand also reaffirmed its commitment to uphold the rights of human rights defenders under the U.N. Declaration on Human Rights Defenders. However, judicial harassment against human rights defenders continues in Thailand.

To prevent further judicial harassment against human rights defenders in Thailand, Fortify Rights recommends the decriminalization of defamation, the urgent enactment of anti-judicial harassment legislation, and an end to all unwarranted complaints and charges against human rights defenders and others.

Please see the enclosed briefing note entitled "Protecting Human Rights Defenders from Judicial Harassment" for detailed information on this issue.

We welcome any opportunity to discuss these issues and support you in meeting Thailand's commitments to promote and protect human rights. Thank you for your attention to these critically important matters.

Sincerely,



Amy Smith
Executive Director
Fortify Rights



Matthew Smith
Chief Executive Officer
Fortify Rights

Briefing Note:

Ensuring Refugee Rights in Thailand

Under the U.N. Convention on the Status of Refugees, a refugee is defined as a person who is “unable or unwilling to return to their country of origin, owing to a well-founded fear of being persecuted...”¹

While Thailand is not a signatory to the U.N. Refugee Convention or its 1967 Protocol and does not formally recognize or have a regulatory framework to manage refugees within its territory, a significant population of refugees, most of whom are from neighboring Myanmar, reside in Thailand. According to the U.N. High Commissioner for Refugees (UNHCR), in addition to the more than 91,000 protracted refugees from Myanmar living in shelters along the Thailand-Myanmar border, more than 23,000 men, women, and children fled to Thailand following the February 1, 2021 coup in Myanmar.² In addition, there are an estimated 4,800 non-Myanmar refugees in Thailand.³

Although the Thai Cabinet approved a resolution in December 2019 to establish a “National Screening Mechanism” (NSM) to identify and potentially protect refugees, the mechanism has yet to be implemented.⁴ On March 27, 2023, the Thai Government adopted a “Notification” establishing problematic eligibility criteria that discriminatorily excludes certain applicants from accessing the mechanism.⁵ This raises further concern about the effectiveness of the future mechanism. Due to the lack of implementation of proper protections, refugees in Thailand remain at heightened risk of exploitation and abuse.⁶

In addition to documenting the continued arbitrary arrest, detention, and extortion of refugees in Thailand, Fortify Rights also continues to document the forced return or *refoulement* of refugees and others to Myanmar where torture is likely.⁷ Such returns are taking place despite the recent enactment on October 25, 2022 of the anti-torture bill that explicitly prohibits the return of a person to a country where they may face torture.⁸

Recommendations to Ensure Refugee Rights in Thailand:

- End the arbitrary arrest and detention of refugees, and release all refugees currently detained solely on the basis of their immigration status.
- Urgently implement screening mechanisms to identify and provide legal status to refugees and prevent *refoulements*.
- Ensure all individuals with potential protection concerns have access to screening mechanisms to prevent *refoulements*.
- Enforce all provisions of the Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565, including Section 13 that prohibits the return of a person to a country where they may face torture.

An Analysis of the National Screening Mechanism and Prohibition of Forced Returns

Thailand has enacted several laws and policies that ostensibly could protect refugees; however, problematic regulations and the lack of implementation and enforcement of these laws and policies leave refugees in Thailand unprotected and at risk of arbitrary arrest, detention, exploitation, extortion, and forced return.

For example, although the Thai Cabinet approved the “Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562” to establish a screening mechanism to identify and potentially protect refugees, Thai authorities have yet to create such a mechanism.⁹ The recent publication on March 27, 2023 in the Royal Gazette of the “Notification of the Protected Person Screening Committee on the Criteria, Methods, and Conditions for Protected Person Screening” raised further concerns about the proposed NSM.¹⁰ Specifically, the Notification excludes access to the NSM for certain applicants, namely: applicants “belonging to any group which is dealt with by specific mechanism or procedure by the Ministry of Interior” and migrant workers from Myanmar, Cambodia, and Laos.¹¹ The Notification also allows officials to reject, without appeal, otherwise qualified applicants on the broad basis of “national security.”¹²

On October 24, 2022, the *Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565* (the Anti-Torture Act) became law.¹³ This new law includes a provision codifying the principle of *non-refoulement*, which prohibits the forced return of a person to a country where they may face torture or other forms of ill-treatment.¹⁴ However, the law lacks an enforcement provision for *refoulement*, and Thai authorities continue to *refoule* refugees and others.¹⁵

The Human Rights Framework

Thailand has a legal mandate under international and domestic law to prevent forced returns or *refoulement*. The prohibition of *refoulement* is considered part of customary international law and binding on all states.¹⁶ Under this principle, states are obligated to assess the risks of torture, persecution, or other serious human rights violations before facilitating the transfer of a person to another country.¹⁷ This duty exists regardless of whether the person has expressed a protection concern or requested protection from the state.¹⁸ Furthermore, as clarified by the U.N. Office for the High Commissioner for Human Rights, the principle of *non-refoulement* is not only applicable to refugees but “applies to all migrants at all times, irrespective of migration status.”¹⁹ The U.N. Commission on Human Rights has also clarified that restrictions on rights based on national security are justified only when there is “force or a threat of force” against “the existence of the nation or its integrity or political independent,” which is a high bar to meet.²⁰ However, even in cases where a person may meet that bar, the principle of *non-refoulement* remains applicable.²¹

Background

Since the coup in Myanmar on February 1, 2021, the Myanmar military’s attack on the civilian population and the resurgence of clashes between the Myanmar army and ethnic armed organizations has led to the displacement of more than one million people both within and over Myanmar’s borders, including into Thailand.²² Fortify Rights continues to document ongoing international crimes, including genocide, war crimes, and crimes against humanity, committed by the Myanmar military against the civilian population in Myanmar.²³

In response to the coup in Myanmar on February 1, 2021, the Thai government increased its military presence on the Myanmar-Thailand border and authorized authorities to return refugees to Myanmar, in violation of Thailand’s legal obligations.²⁴

Endnotes

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- 3 U.N. High Commissioner of Refugees, *Thailand Factsheet*, September 30, 2022, <https://reporting.unhcr.org/document/3351>.
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- 9 Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562, December 25, 2019, <https://dl.parliament.go.th/handle/20.500.13072/556408>.
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Briefing Note:

Ensuring Marriage Equality in Thailand

Currently, Thailand's laws do not provide LGBTI+ couples with the right to marry. This contravenes Article 23 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a state party, and the legally binding principle of non-discrimination.¹ In March 2022, the Move Forward Party introduced to the parliament the marriage equality bill to address this issue.² The marriage equality bill, or the Act for Amendment to the Civil and Commercial Code as it is formally known, if enacted, would replace the terms "husband" and "wife" with the term "spouse" in Section 1448 of Thailand's Civil and Commercial Code.³ This, in effect, would provide LGBTI+ couples equal access to the right to marriage, welfare, child adoption, healthcare consent, property co-management, inheritance, and access to spousal benefits of tax deductions and government pensions.⁴

Although the bill passed its first reading in the House of Representatives on June 15, 2022, it failed to progress to the second reading and lapsed when parliament dissolved on March 20, 2023.⁵

Recommendations to Ensure Marriage Equality in Thailand

- Reintroduce to parliament the marriage equality bill in line with Section 147 of the Thailand Constitution.
- Approve without delay a bill in all its readings that will guarantee the right to marriage equality in Thailand.
- Accept and process without delay petitions in accordance with Section 5 of the Initiative Process Act B.E. 2564 for the parliament to consider bills that will facilitate marriage equality in Thailand

An Analysis of Legislative Opportunities to Ensure Marriage Equality in Thailand

Despite the previous parliament's failure to enact the marriage equality bill, the new parliament may still consider the now-lapsed bill.

Section 147 of the Thailand Constitution prescribes that, "in the case where the term of the House of Representatives expires or the House of Representatives is dissolved, the draft Constitution Amendments or bills which have not yet been approved by the National Assembly . . . shall lapse."⁶ However, the second paragraph of the same provision provides that any house of parliament may consider a lapsed bill if the Cabinet makes a request for the parliament to further consider the bill.⁷ Under the constitution, the Cabinet must make "such requests within sixty days as from the date of convocation of the first sitting of the National Assembly after the general election."⁸ Following such a request, the House of Representatives may consider the bill as a second reading if the majority of the full parliament vote to allow it.⁹

As an alternative option, a bill may also be introduced to parliament for consideration through Section 5 of the Initiative Process Act B.E. 2564, which requires "ten thousand eligible voters subscribing their names to a petition for introducing a bill."¹⁰ As of April 2023, the Rainbow Coalition for Marriage Equality has collected more than 350,000 signatures to reintroduce the marriage equality bill into parliament.¹¹

For a bill to become law, it must pass three readings in the House of Representatives as well as three readings in the Senate before it is submitted to the Prime Minister, who will request royal assent from the King. The bill will then be published in the Royal Gazette and become law after a period of 60 days.¹²

The Human Rights Framework

Article 23 of ICCPR and Article 16 of the Universal Declaration of Human Rights (UDHR) guarantee the right to family and marriage. Thailand is a state party to the ICCPR, and all U.N. member states are obligated to uphold the UDHR. Article 23 of ICCPR provides that “[t]he right of men and women of marriageable age to marry and to found a family shall be recognized.” In accordance with these laws, states must “take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.”¹³

Article 26 of the ICCPR and Article 2 of UDHR also guarantee equal protection of the law without any discrimination.¹⁴ The principle of non-discrimination is further considered a fundamental right under customary international law and is binding on all states. Section 27 of the Thailand Constitution similarly prohibits all forms of discrimination.¹⁵

Background

LGBTI+ people in Thailand are denied the right to marriage and continue to face discrimination under Thai law.¹⁶ Despite being one of only two Asian U.N. member states to vote in favor of a Human Rights Council resolution on human rights, sexual orientation, and gender identity in 2011, Thailand still lacks adequate domestic mechanisms to safeguard LGBTI+ rights.¹⁷

When youth-led protests calling for political reforms erupted nationwide in Thailand in 2020, the agenda for reforms included calls for LGBTI+ rights alongside broader calls for democratic change.¹⁸ The LGBTI+ community and the human rights movement in Thailand’s primary demand for marriage equality in Thailand led to the development of the marriage equality bill and the introduction of the bill into parliament two years later.¹⁹

On June 15, 2022, the marriage equality bill passed its first reading in the House of Representatives by a vote of 210 to 180.²⁰ The House of Representatives then established a parliamentary vetting committee to review the bill section-by-section and make any necessary revisions.²¹

In September 2022, three months after the vote, the parliamentary vetting committee completed its review process and reintroduced the bill to the House of Representatives for a second reading on November 3, 2022.²² Despite urgings by the National Human Rights Committee and civil society, the bill failed to progress and eventually lapsed after a series of delays in the legislative process followed by the closure of parliament at the end of the regular session on March 1, 2023.²³

Endnotes

- 1 International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, ratified by Thailand, arts. 23 and 26; Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810, UDHR, arts. 2 and 16; Constitution of the Kingdom of Thailand, April 6, 2017, <https://ratchakitcha.soc.go.th/pdfdownload/?id=2103519>. The principle of non-discrimination, as defined by the U.N. Human Rights Committee, includes:
[A]ny distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.
Human Rights Committee, *General Comment No. 18: Non-Discrimination*, U.N. Doc. HRI/GEN/1/Rev.9, November 10, 1989, para. 7.
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- 15 Constitution of the Kingdom of Thailand, April 6, 2017.
- 16 Thailand Civil and Commercial Code.
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Briefing Note:

Protecting Human Rights Defenders from Judicial Harassment

Thailand's has repeatedly affirmed a commitment to ensuring protections for human rights defenders and upholding business and human rights principles.¹ However, human rights defenders in Thailand continue to face judicial harassment, including by companies, for exercising their rights.

Thailand's problematic criminal defamation laws are particularly used to target, harass, and attempt to silence human rights defenders in Thailand.² For example, the controversial Thai poultry company, Thammakaset Company Limited has brought at least 37 criminal defamation complaints against 22, mostly women, human rights defenders in Thailand since 2016.³

Although Thailand's National Legislative Assembly amended the Criminal Procedural Code in 2018 to allow courts to dismiss and reject complaints filed "in bad faith," Thai courts have consistently allowed cases of judicial harassment to proceed.⁴

Recommendations to Protecting Human Rights Defenders from Judicial Harassment

- Amend the criminal code to decriminalize defamation
- Urgently enact anti-judicial harassment legislation
- End all unwarranted complaints and charges against human rights defenders and others

Analysis of the Judicial Harassment of Human Rights Defenders in Thailand

Despite commitments by Thailand to protect human rights defenders and uphold business and human rights principles, human rights defenders in the country continue to face judicial harassment, including by companies, for exercising their rights.

In October 2019, Thailand was the first State in Asia to develop a National Action Plan on Business and Human Rights (NAP), committing to protect human rights defenders and prevent judicial harassment.⁵ In 2022, the Rights and Liberties Protection Department under the Ministry of Justice introduced a draft second phase NAP.⁶ The draft focuses on improving the policies and measures to protect human rights defenders from SLAPP suits, including by raising awareness about the importance of the work of human rights defenders.⁷ In August and September 2022, the Ministry of Justice held public consultations on the draft NAP; however, the cabinet has yet to pass the draft.⁸

In 2018, the National Legislative Assembly amended Section 161/1 of the Thailand Criminal Procedure Code, allowing judges to dismiss and forbid the refiling of a complaint by a private individual if the complaint is filed "in bad faith or with misrepresentation of facts to harass or take advantage of a defendant."⁹ Section 165/2 also allows the presentation of evidence to show that the complaint "lacks merit."¹⁰ Despite these amendments and specific requests for the courts to apply Section 161/1 to dismiss cases, it is not uncommon for the courts to allow these cases to proceed.¹¹

For example, Thai courts have allowed the many cases brought by Thammakaset Company Limited to proceed against multiple human rights defenders in various jurisdictions despite requests for the application of Section 161/1.¹²

The Human Rights Framework

Section 34 of the Thailand Constitution protects the right to freedom of expression, as does Article 19 of the ICCPR, to which Thailand is a state party.¹³ General Comment No. 34 of the Human Rights Committee on Article 19 of the ICCPR states that “State Parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression,” including “persons who engage in the gathering and analysis of information on the human rights situation who publish human rights-related reports.”¹⁴

Background

Since 2016, Thammakaset has brought at least 37 complaints against 22 human rights defenders, mostly women, in Thailand. The courts have dismissed or ruled against the company in most of these cases.¹⁵

One of the final remaining cases brought by Thammakaset currently pending in the Bangkok South Criminal Court involves a current Fortify Rights team member, Puttanee Kangkun, a former Fortify Rights team member, Thanaporn Saleephol, and a member of the U.N. Working Group on Enforced Disappearances, Angkhana Neelapaijit.¹⁶ Thammakaset’s complaints against the three women are focused on 28 social media posts or re-posts that contain messages of solidarity for other human rights defenders facing lawsuits brought by the company with links to news releases published by Fortify Rights.¹⁷ Altogether, these three Thai women human rights defenders face 30 counts of criminal defamation, which could amount to sentences ranging from eight to 42 years in prison for 30 posts or re-posts on social media.¹⁸

Endnotes

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