

**Remarks of Ms. Puttanee Kangkun  
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**PUBLIC FORUM**

**One Year After the Andaman Sea Refugee Crisis  
End Detention and Bring Justice to Survivors of Human Trafficking**

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Bangkok, Thailand**

Distinguished guests of “The Anniversary of the Andaman Sea Refugee Crisis” public forum, thank you for coming to today’s event. My colleagues and I at Fortify Rights thank you for your interest and concern on this crucial human rights issue.

Today, I would like to focus my remarks on the situation faced by the Rohingya survivors of the May 2015 “boat crisis” and their rights and remedies as provided by international and Thai law. Although my remarks will focus on the Rohingya survivors and the ongoing concerns of this population in Thailand, we should remember that Bangladeshi nationals comprised a significant number of the survivors and victims involved in the boat crisis. Whereas most Bangladeshi survivors were able to return to Bangladesh with the support of the Bangladeshi Embassy, the option to return home does not exist for stateless Rohingya refugee survivors from Myanmar and Bangladesh. As a result, several hundred Rohingya remain in Thailand—living in detention and uncertainty.

Fortify Rights has several recommendations for Government of Thailand, including for the authorities to:

- End the abusive detention of Rohingya refugees and trafficking survivors;
- Implement Cabinet Resolution no. 11/B.E.2559, which would provide automatic witness protection to witnesses involved in human trafficking cases as well as temporary legal protection to survivors of human trafficking;
- Reunite families of survivors separated in Thailand and within the region;
- Provide Rohingya with access to asylum procedures;
- Facilitate work opportunities and freedom of movement for survivors;
- End the practice of informal deportations;
- Investigate all allegations of harassment, intimidation, and threats against witnesses involved in human trafficking cases;
- Continue to facilitate regional cooperation to combat trafficking in persons;
- Provide compensation for survivors of human trafficking; and
- Continue to investigate and bring to account perpetrators of human trafficking.

My research into these issues has taken place from October 2015 to the present day, and these remarks are based on firsthand testimonies by survivors and key informants, information

gathered on site visits to shelters and Immigration Detention Centre (IDC), a literature review, and human trafficking trial monitoring, which we have conducted for several months.

## **Background Information**

The Thai authorities first discovered mass graves of trafficked Rohingya and Bangladeshi on Khao Kaew Mountain in Padang Besar, Songkhla Province in early 2015. This discovery prompted the Thai government to initiate a crackdown on the network of human traffickers in southern Thailand and reinforce its borders. As a result, human traffickers abandoned their ships at sea, along with thousands of Rohingya and Bangladeshis, disowning their claim over the so-called “Kai Dham” (black chicken)—a derogatory term used by human traffickers in reference to Rohingya refugees and Bangladeshis.

The trafficking and smuggling of Rohingya and Bangladeshi to Malaysia via Thailand are not new phenomena. As a Muslim country with a strong economy, work opportunities, and an established Rohingya community, Malaysia is a primary destination for Rohingya refugees. As a result, large-scale transnational criminal syndicates focusing on routes from Myanmar and Bangladesh have emerged in the last 10 years, preying on the desperation of Rohingya in Myanmar who face serious abuses and are being forced to flee their homes.

Abuses against Rohingya in Myanmar peaked in 2012 with two waves of targeted, state sanctioned anti-Muslim attacks. Following the violence, the government tightened restrictions against Rohingya, including restrictions on freedom of movement, marriage, and childbirth. The government now confines more than 140,000 Rohingya in more than 40 overcrowded internment camps, where they continue to be denied adequate humanitarian aid. These factors have pushed many of the Rohingya to flee their homeland.

In Thailand and Malaysia, there is a high demand for cheap labor in various sectors in order to reduce production costs as well as to fill the gap of young workers. This is the regional economic backdrop to the establishment of well-organized criminal syndicates of human traffickers, which involve brokers and operatives from the north of the Bay of Bengal down to the Malay Peninsula.

There is a strong underground economy incentivizing the trade of Rohingya persons. The cost of transporting one Rohingya from Myanmar to Thailand is approximately 26,000 Thai Baht (US \$745). In Thailand, moving thousands of Rohingya and Bangladeshis from Ranong to Khao Kaew and Padang Besar required professional operations and connections with high-ranking officers, many of whom were complicit in the trade. Others may have unwittingly supported the trade, including owners of grocery shops who provided fish and vegetables for the trafficked population. The budgets of these trafficking syndicates included various materials and items, such as boats, ships, gasoline, pick-up cars, bribes for Thai officers, funding for camp operations, armed guards, transporters, brokers, coordinators, as well as payments for bosses and “big bosses”—all of these costs came to establish the market for Rohingya refugees. In order to recover costs and still make a profit, the trafficking syndicates charged 60,000 to 100,000 Thai Baht (US\$2,000 to US\$ 2,800) for each trafficked person. Each trip from Myanmar to Malaysia

via Thailand had to transport at least 350-400 people for the operations of traffickers to remain profitable.

Traffickers and their brokers used deception, kidnapping, and other tactics to fill their ships with passengers, and in some cases, it took up to three months to fill 400-500 people on board—ships were packed well over safe occupancy levels. Those who were brought onto ships early endured ill treatment and deprivations by traffickers on the boat for a longer period of time, putting them in a substantially weakened position. Negative health effects carried over to their time on the shore, and many died in the camps in Thailand.

We have documented a variety of abuses by traffickers against Rohingya at sea and in Thailand, including torture; deprivation of food, water, space and movement; killings; negligence that led to preventable deaths; and rape and sexual assaults. Witnesses testifying in ongoing trials in Thailand that we have been monitoring have also recounted these abuses.

My Colleagues at Fortify Rights have documented firsthand testimonies from dozens of Rohingya who made it to Malaysia after being trafficked through Thailand. Some escaped the camps but most raised sizable ransom payments to secure their passage to Malaysia. According to testimony in an ongoing trial in Thailand, traffickers freed Rohingya women who “agreed” to have sex with them—which would amount to rape. Witnesses have also said that the traffickers rewarded some Rohingya who worked for them—cooking food, portering water, etc.— with safe passage to Malaysia.

The extent of human trafficking in Thailand and its affects came to the international community’s attention in May and June last year, after Thai authorities’ discovered mass graves and commenced high-profile prosecutions of alleged traffickers. However, based on my eight months of research and observation, I can say with confidence that subsequent developments in human trafficking in the Andaman Sea have not been entirely positive.

### **Thailand’s Treatment of Survivors**

Human trafficking in the Andaman Sea declined since last year; however, it is important to keep in mind that Myanmar’s government has not addressed the root causes that force many Rohingya to flee Myanmar. There are some indications that alternative routes are now being sought. For example, as recent as April 2016, Thai news media reported that Chumporn police officers arrested 14 Rohingya, who were transported into Thailand overland via Mawlaymine, Myanmar, and Kanchanaburi, Thailand before reaching a police checkpoint at Chumporn Province. According to news reports, each of the Rohingya paid 15,000 Thai Baht (US \$430) to brokers for transport.

I would like to focus on three key areas with regard to the situation and treatment of survivors of trafficking: 1) the mechanisms to screen for survivors of human trafficking, and the detention of survivors; 2) the actions of the Thai government following the May 2015 boat crisis; and 3) investigations and prosecutions of the crime of trafficking in persons.

### **Screening Mechanisms for Human Trafficking and the Detention of Survivors**

Multidisciplinary units from the Ministry of Immigration, the Ministry of Social Development and Human Security (MSDHS), and the Ministry of Justice (MOJ) conduct the screening of possible survivors of human trafficking in Thailand. We initially became concerned with the process when we learned that Thai authorities categorized Rohingya who came from the same boat and experienced similar situations differently: the authorities considered some as survivors of trafficking and others as “illegal migrants.”

Recognizing weaknesses in the screening mechanism, the Thai authorities revised the questionnaire form used to assess potential survivors of trafficking. However, the authorities failed to re-screen those who had previously been assessed under the earlier mechanism. As a result, previous discrepancies remained uncorrected.

The screening process is critical for determining how Rohingya will be treated in Thailand, with survivors of trafficking largely receiving better conditions of detention in government-run shelters while “illegal migrants” face indefinite detention in poorly equipped IDCs.

All Rohingya survivors, regardless of their categorization as human trafficking survivors or “illegal migrants” are subject to detention in IDCs or government-run shelters. As of today, there are approximately 400 Rohingya detainees in Thailand; however, the number of Rohingya in each IDC and shelters fluctuates with the authorities frequently moving survivors from one location to another. It is unclear what procedure the authorities use to select and move Rohingya from place to place, but much seems to depend on the discretion of the presiding officers.

The IDC facilities are designed for stays of no longer than 15-days; however, many Rohingya have been detained for more than a year, enduring inhumane conditions that fail to meet international standards. The Ministry of Social Development and Human Security (MSDHS) operates the shelters, and the conditions of shelters vary, depending on the attitude and administration of the shelter head. Most men are kept in the IDCs while women and most children are at the shelters. This has resulted in the separation of family members.

A special agreement between the Thai government and the United Nations High Commissioner for Refugees (UNHCR) has helped facilitate the resettlement to third countries for Rohingya survivors. Bangladeshi people are not in the resettlement program and are instead subject to deportation back to their home country.

Resettlement to the U.S. is not an appealing option for some Rohingya survivors, who want to reunite with their family members in Malaysia. Others prefer to stay in the region in order to remain relatively close to their homeland in Myanmar. Resettlement to the U.S. is voluntary, and the survivors who chose to not resettle face the possibility of remaining in Thai detention indefinitely.

In some cases, survivors have disappeared from the shelters or IDCs—according to the authorities, they “escaped.” Fortify Rights has documented how Thai authorities transported Rohingya in detention to the custody of human trafficking syndicates.

From October 2015 until May 2016, there are more than 40 Rohingya refugees who are said to have “escaped” from Thai IDCs and shelters. Some were re-captured and some reached Malaysia. Others may have been re-trafficked. On May 22, 2016, 21 refugees escaped from Phang Nga IDC. Police reportedly re-captured 14 men and shot dead one Rohingya. Colonel Chote Chitchai, Deputy Superintendent of the Phang Nga Provincial Police informed the media that Phang Nga Immigration officer Senior Sergeant Major Thinakorn Noosawas is now under investigation for the killing.

### **Actions of the Thai government Following the May 2015 Boat Crisis Onwards**

The Thai government has undertaken initiatives to demonstrate its efforts to combat human trafficking in line with the annual U.S. Trafficking in Person (TIP) report, as well as with the European Union standards for combatting illegal, unreported, and unregistered (IUU) fishing. Thailand is currently ranked Tier 3 in the U.S. TIP rankings—the lowest ranking—and has been issued a warning by the E.U. with respect to IUU. These rankings may have serious economic and reputational repercussions for Thailand, and as a result, Thai authorities have taken the issue seriously. Fortify Rights has welcomed a series of high-level discussions with Thai authorities to discuss solutions to the endemic problems of trafficking, migrant rights abuses, and illegal fishing.

In the past year, the Thai government established specialized anti-trafficking units within the Criminal Court and the Office of Attorney General to expedite and further enhance the efficacy of the country's criminal justice system. The government also launched the new Trafficking in Persons Criminal Procedure Act on May 2015, aimed at improving the efficiency and speed of collecting evidence and testimony in human trafficking cases. However, this may come at the cost of reducing the procedural rights of the defendants.

In November 2015, Thailand initiated a mass trial against 91 defendants, including government police, and military officials, accused of trafficking of Rohingya refugees and Bangladeshi nationals. Fortify Rights is continuing to monitor the hearings of this trial, which is expected to continue for another year.

The Thai government also passed a Cabinet Resolution earlier this year to allow work opportunities and freedom of movement to survivors of human trafficking. [Cabinet Resolution no. 11/B.E.2559](#) would provide witness protection under the Ministry of Justice to witnesses in human trafficking cases as well as fast-track documentation, including work permits, for survivors of human trafficking to stay freely in Thailand for up to one year with the possibility of extension. The Permanent Secretary of the Ministry of Interior approved two Ministerial Orders in late April 2016 to support the Cabinet Resolution. However, actual implementation of the Orders has yet to occur. Nevertheless, some government shelters have been quietly allowing survivors to work outside of the shelter during the daytime. The wages earned by the survivors have been around 280 Thai Baht (US\$ 7.91) per day, which is lower than the set minimum wage of 300 Thai Baht (US\$ 8.48) per day.

Also, of concern is Thailand's longstanding practice of "soft deportations," whereby Thai authorities are responsible for informally deporting or forcibly returning survivors from the IDCs and government run shelters to areas along the Thailand-Myanmar border. Despite the watchful eyes of the international community, Thai authorities have secretly deported survivors, often into the hands of people who will exploit them. Soft deportations are believed to be conducted with the cooperation of officials and trafficking agents.

### **Investigations and Prosecutions into the Crime of Trafficking in Persons**

Thai authorities have conducted investigations and charged a number of perpetrators with the crime of trafficking and other related charges under the Penal Code and Trafficking in Persons Act since the May 2015 crisis. However, threats and intimidation, corruption, and other problems hindered the investigation and trial process.

Some witnesses have allegedly faced pressure not to testify in cases against human traffickers. For example, defendants in the case allegedly attempted to bribe witnesses to refuse to testify. In one particular case, an interpreter told a Rohingya witness to stop making allegations against a powerful trafficker in exchange for 400,000 Thai Baht (US\$1,1305).

Some witnesses recanted their confessions in court, noting that the interpreters instructed them to lie to the police officers during the initial police interviews to avoid criminal charges, such as illegal entry. By giving false information, some witnesses may now be facing charges for giving false testimony under the Penal Code, Section 177.

Allegations of threats against investigators and key witnesses involved with the case, including the lead investigator in the case, raises concern about the trial process and the potential affect on its outcome. Fortify Rights has engaged with senior level government advisers about the need to ensure witness protection under the Ministry of Justice for witnesses testifying in the case.

Despite approval of Cabinet Resolution no. 11/B.E.2559, which would provide witness protection under the Ministry of Justice to witnesses in human trafficking trials, witnesses still lack protections. For example, the only protection provided to at least two witnesses is the option to stay overnight at the police station during the trial. Staying with the police is not feasible for their livelihoods as they need to work and care for their families. Furthermore, few witnesses have access to witness protection.

Despite claims of a "crackdown" on traffickers on Thailand, the Thai authorities have not exposed or dismantled the full network of human trafficking syndicates. More than 100 persons are accused of trafficking Rohingya but, according to information we have collected, we believe many traffickers are still free and some are on the run in other countries. Police Major General Paween Pongsirin, the chief investigator on the high profile case in Thailand, informed Fortify Rights that the police planned to issue more arrest warrants based on the evidence his team collected, but the authorities failed to issue further arrest warrants after Paween fled the country following threats by what he termed as "influential people."

## **Thailand's Legal Obligations and Recommendations**

***Thailand should end the detention of refugees and trafficking survivors in the IDCs and government-run shelters.***

International law forbids arbitrary, unlawful, or indefinite detention, including of non-nationals. A state may only restrict the right of liberty of migrants in exceptional cases following a detailed assessment of the individual concerned. Any detention must be necessary and proportionate to achieve a legitimate aim. Failure to consider less coercive or restrictive means to achieve that aim may also render the detention arbitrary. Specifically, the continued detention of trafficking survivors without a legitimate or necessary aim contravenes Article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a state party. Thailand also recently ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP). Article 14(8) of the ACTIP notes that parties cannot unreasonably hold survivors of trafficking in detention.

Fortify Rights also reminds Thailand that when a State deprives a person of their liberty, it assumes a duty of care for that person. Thailand has a responsibility not only to ensure that the decision to detain an individual is lawful but also that the treatment and conditions for detainees are in line with international standards as per Article 10 of the ICCPR.

***Thailand should implement without delay Cabinet Resolution no. 11/B.E.2559***

[Cabinet Resolution no. 11/B.E.2559](#) would provide witness protection under the Ministry of Justice to witnesses in human trafficking cases as well as fast-track documentation, including work permits, for survivors of human trafficking to stay freely in Thailand for up to one year with the possibility of extension. This is in line with Article 16(7) of the ACTIP, which provides for the protection of survivors and witness from intimidation and harassment.

Thailand has a responsibility to ensure the right to freedom of movement as guaranteed under ICCPR Article 12. ACTIP Article 14(10) demands that Thailand provide care and support to survivors of trafficking in terms of housing, medical assistance, and employment. Thailand is also a party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which provides for the the right to work under Article 6. Fortify Rights strongly urges Thailand to fall in line with international legal standards by implementing the Ministerial Orders in support of the Cabinet Resolution.

***Thailand should facilitate family reunifications in Thailand and coordinate with UNHCR and governments within the region to facilitate transnational family reunifications without delay.***

Rohingya refugees and survivors of trafficking are needlessly separated from their families in Thailand and throughout the region. Separating children from their parents in detention contravenes Article 10 of the ICESCR, which recognizes family as “the natural and fundamental group unit of society” and requires parties to accord it “the widest possible protection and assistance.”

***Thailand should also provide Rohingya with access to asylum procedures.***

Fortify Rights reminds the Thai government that the right to seek and enjoy in other countries asylum from persecution is a fundamental human right. Individuals who have fled persecution in their country of origin have a right to seek and enjoy asylum abroad, as enshrined in Article 14 of the Universal Declaration of Human Rights. All states, including Thailand, must give all individuals who wish to seek asylum access to a full, effective, and fair procedure to assess their asylum claims. In order for Rohingya persons to effectively access asylum procedures, proper procedures for identification of trafficking survivors is also necessary in line with Article 14 of ACTIP.

***Thailand should immediately abolish the practice of “soft deportations.”***

While Article 15 of the ACTIP provides for the returning of survivors of trafficking to their permanent resident, the return must be done through official channels. Additionally, due regards must be given for the safety of the survivors. Indeed, in line with the principle of non-refoulement, which is part of customary international law and binding on all states, Fortify Rights reminds Thailand that it is forbidden from rendering a survivor of persecution back to his or her persecutor.

***Thailand should investigate all allegations of harassment, intimidation, and threats against witnesses involved in human trafficking cases.***

Thailand’s Witness Protection Act, B.E. 2546 provides for special protection measure for witnesses of organized crimes and bans any disclosure that causes the witness to lose security. ICCPR, ACTIP, the Convention Against Torture, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Transnational Organized Crime (UNTOC), and the International Convention for the Protection of All Persons from Enforced Disappearance, all to which Thailand is state party, likewise provide for witness protection under international law. Fortify Rights also reminds Thailand that the use of financial reward to induce false testimony of witnesses is forbidden under Article 9 of the ACTIP.

***Thailand should cooperate with other ASEAN nations to prevent trafficking in persons***

The ACTIP outlines ways that Thailand should cooperate with other nations in the region to prevent human trafficking, including cross-border cooperation, mutual legal assistance between parties, extradition, cooperation between law enforcement, and cooperation for confiscation of properties used for trafficking. Additionally, Fortify Rights recommends that Thailand establish coordinating structures to enhance international cooperation against trafficking in persons as per Article 23 of the ACTIP.

***Thailand should provide compensation to those affected by human trafficking***

Survivors of trafficking may be eligible for compensation under Thailand’s 2001 Compensation and Expenses for Injured Persons and the Accused Act. Under this Act, survivors of a crime in



Thailand are able to apply for different forms of compensation, including for medical treatment and mental rehabilitation. Article 14(13) of ACTIP also requires Thailand to provide legal mechanisms to allow survivors of trafficking the possibility of obtaining compensation for damage suffered. Additionally, Article 22(2) of the Act provides for the return of confiscated property to survivors of trafficking and/or the legitimate owners of such property.

***Thailand should continue to investigate and bring to account perpetrators of human trafficking***

Human trafficking is prohibited under the UNTOC and the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children—both of which Thailand is a party to. Additionally the rights of trafficked persons are protected under provisions in the Universal Declaration of Human Rights, which is binding on all nations and forms part of the basis of customary international law. Additionally, as per Article 16(2) of the ACTIP, Thailand should punish corruption and any form of obstruction of justice that contributes to trafficking in persons. Fortify Rights urge Thailand to prevent and combat trafficking in persons by using mass media campaign as well as cooperating with nongovernmental organizations and businesses.