



Statement: Call for Protection of Refugee Children under Child Protection Act B.E. 2546

On 30 November 2016, Mohammad (alias), an undocumented 16-year-old refugee child, national of Somali is going to be prosecuted under the Immigration Act B.E. 2522 in Chiang Rai Juvenile Court because the fact that he is a refugee child.

Before his arrest in February 2016, Mohammad was a football superstar in a school in Thailand and had a lively life. He travelled around Thailand to participate in tournaments with his football team. Because of being undocumented, Mohammad was arrested by Chiang Rai inquiry official in February 2016 on a school trip. He was detained shortly in a children's remand facility in Chiang Rai before being released in March 2016 by the Chiang Rai inquiry official, who decided to drop the charges against him. Unfortunately, Public Prosecutor of Chiang Rai Juvenile Case Branch still continues to proceed for the prosecution against him on 30 November 2016 on charges of illegal entry and illegal stay under the Immigration Act B.E. 2522.

Prior to his journey into Thailand, as young as 5 years old, the Mohammad had to be separated from both of his father and mother during the conflict in the country and he had to stay with his grandmother, his caregiver, in Somalia since then. On 21 May 2013, when Mohammad was 13 years of age, an armed group in Somalia came to his caregiver's house while he was in the school to command them to send Mohammad to become a militant in the armed group. Fearing for his life, his caregiver immediately sent Mohammad out of Somalia to Malaysia. After reaching Malaysia for few weeks, Mohammad was trapped into the hand of a smuggler who smuggled him into Thailand via Malaysia border and took away his Somali passport, making him become undocumented.

The fact is Mohammad was facing imminent danger of being forced to become a child soldier in the militant group and has multi-facet vulnerable status (separated refugee child, undocumented child, and the child expose to illicit transfer, migrant smuggling, exploitation, and trafficking); he should be protected under international and national legal principles, particularly on the rights of the child. However, in reality, he is instead criminalized by Thai legal system in violation of these principles.

While Thailand is not party to 1951 Refugee Convention and its Protocol, it is party to Convention on the Rights of the Child ("CRC") and its Optional Protocol on the Involvement of Children in Armed Conflict ("Op-CRC"). In light with CRC and Op-CRC, the Committee on the Rights of the Child ("the Committee") issued General Comment No. 11 (2009) and paragraph 68 which provides that State parties shall give special attention and humanitarian assistance to children who have been displaced or become refugees. Furthermore, according to the Committee's Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration, the detention of a child because of their or their parent's migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child.

The comments of the Committee above correspond with national legal framework of Thailand, particularly the Child Protection Act B.E. 2546 ("the Act"). Section 22 and Section 32 of the Act require that treatment of the child in any case shall give importance to best interests of the child and children who are subject to harm or children in difficult circumstances shall be able to warrant welfare or protection.

Under both international and national legal framework, Mohammad has the right to protection due to this fact; instead he is going to be prosecuted by Chiang Rai public prosecutor on 30 November 2016 under Immigration Act B.E. 2522 due to his irregular migration status.

Coalition for the Rights of Refugees and Stateless Persons (CRSP) calls for Office of General Public Prosecutor, Ministry of Social Development and Human Security, and relevant competent authorities to take necessary steps to stop arrest, detention, and prosecution against all refugee children or migrant children like Mohammad on charges of illegal entry and illegal stay, to provide them protection under the principles enshrined by CRC and Child Protection Act B.E. 2546, particularly the rights to protection, humanitarian assistance, best interests of the child, and social integration with the communities, also to review its Immigration Act B.E. 2522 to be in line with internationally accepted principles on the rights of the child.

For more information about the case, please contact Ms. Kohnwilai (Koi) Teppunkoonngam, Esq., legal representative of the child, T. 081-250-7358, or kohnwilai@gmail.com.

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