

November 11, 2019

Joint Statement

Thailand

# Ensure New Refugee Regulation Meets International Standards

Cabinet expected to consider draft regulation to screen refugees before the end of this year



Asia Pacific  
Refugee Rights  
Network



(BANGKOK, November 11, 2019)—We call on the Government of Thailand to enact and implement laws and policies to ensure full rights and protections for refugees in line with international human rights law, including protection from forced return and arbitrary arrest and detention. The Cabinet under the Prime Minister's Office is expected to consider a draft regulation before the end of the year that provides a framework for screening refugees.

During a closed-door briefing on October 28 organized by civil society organizations to discuss refugee policy developments with relevant government agencies, United Nation agencies, and members of the diplomatic community, a representative from the Immigration Bureau outlined provisions of a draft regulation to create a refugee “National Screening Mechanism.” The Immigration Bureau announced that the regulation would be submitted to the Cabinet for review and approval within the year.

Nearly three years ago, on January 10, 2017, the Thai government adopted Cabinet Resolution 10/01, B.E. 2560, calling for the creation of a committee to develop a mechanism to screen and manage the refugee population in Thailand—a role historically played by the United Nations High Commissioner for Refugees (UNHCR) technically without the formal engagement of Thai

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officials. The government tasked the Royal Thai Police to develop the mechanism in collaboration with the Ministry of Foreign Affairs, Ministry of Interior, Ministry of Labor, Office of the National Security Council and other relevant agencies. The committee-developed draft regulation will then be vetted by the Office of the Council of State before it is reviewed by the cabinet.

The Thai authorities have not publicly shared or requested public feedback on the draft regulation. However, on June 18, 2018, more than 13 organizations working with refugee and migrant communities in Thailand presented language for the proposed regulation during a public forum with representatives of the relevant government agencies.

We reiterate earlier recommendations proposed in June 2018 and call on the Thai government to enact a regulation that includes provisions that guarantee:

- Protection from *refoulement* to prevent the forcible return of an individual to a country where they would be at real risk of torture or other serious human rights violations;
- Inclusion of an internationally-recognized definition of a refugee in line with the 1951 Convention Relating to the Status of Refugees and other international treaties;
- Access to fair and efficient procedures for all individuals seeking refugee recognition, regardless of the manner, place, or date of entry and in line with the principles of non-discrimination and equal protection under the law;
- The right to an independent, judicial appeal process to review questions of both fact and law, and the right to remain in Thailand until a final decision; and
- Access to legal documentation, healthcare and health insurance, educational and work opportunities, and other forms of assistance for all refugees and those undergoing or awaiting screening.

In February 2019, the Thai government established Subdivision 4 of the Immigration Bureau under the Royal Thai Police to implement the proposed screening mechanism. It is imperative that this subdivision is adequately resourced and staffed with officials who have the appropriate skills, knowledge, and training to assess refugee claims, including competency in refugee law, working with interpreters, conducting cross-cultural interviews, and dealing with trauma survivors.

In addition, Subdivision 4 should develop, in consultation with UNHCR, organizations working with refugee communities in Thailand, and members of affected refugee communities, standard operating procedures (SOPs) for identifying refugees and other persons in need of international protection.

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These procedures should ensure that:

- Individuals undergoing the screening have access to information about the process, free and competent legal counsel, and qualified and impartial interpreters as well as other procedural guarantees;
- Decisions are based on an individualized and thorough assessment of the particular circumstances of the individual's experience, including a personal interview that provides an opportunity for an individual undergoing the screening to present information and evidence about their respective situation;
- Written decisions are provided to screened individuals and the decisions articulate the basis for the decision in sufficient detail in order to facilitate a meaningful appeal process if necessary;
- Confidentiality at all stages of the screening process, including during any application submission process, the identity of screened individuals, allegations of persecution, and any other information provided during the screening process; and
- UNHCR, civil society organizations, and others are able to contribute information and meaningfully engage in the screening process and its development to ensure full, effective, and fair procedures that protect refugees in line with international human rights law.

The government briefing on October 28 also provided an opportunity to discuss implementation updates on alternatives to immigration detention for children since the signing of a *Memorandum of Understanding on the Determination Measures and Approaches to Alternative to Detention of Children in Immigration Detention Centers* in January 2019. Under the MoU, Thai authorities agreed to transfer children and their mothers out of immigration detention centers upon the payment of 50,000 Thai Baht (US\$1,500) in bail per person. Under the MoU, the government committed to ensure that children are detained only as a measure of last resort and for as brief a period as possible.

During the briefing, a representative from the Department of Children and Youth, which is under the Ministry of Social Development and Human Security, announced that the authorities had developed guidelines for transferring children out of immigration detention facilities and managing their care. However, these guidelines are not publicly available, and the MoU, as it is currently being implemented, fails to provide full protection to children and their families. For example, bail is only available to mothers with children who are also under immigration custody and does not apply to similarly-situated fathers or other primary caregivers. The required bail is also exorbitant for most refugees in Thailand, who are prohibited from working. The MoU also falls short of international law, which allows the detention of refugees and migrants only when it is provided by law, necessary and proportionate and protected from arbitrary or unlawful detention.

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With these concerns in mind, we call on the Thai government to engage in meaningful consultations with UNHCR, organizations working with refugee communities, and members of affected refugee communities in Thailand to develop procedures to implement the MoU in line with international human rights law. In particular, the Thai government should:

- Extend the MoU to facilitate alternatives to detention for all refugees and migrants, not only children and their mothers;
- Prevent the arbitrary arrest and detention of refugees and migrants solely on the basis of their immigration status;
- Eliminate or significantly reduce the bail requirement for refugees;
- Ensure that refugees and migrants are never arbitrarily detained, and migrants are only detained in exceptional circumstances following an individualized assessment and after the exhaustion of all alternatives to detention in line with international law; and
- Withdraw the reservation to Article 22 of the Convention on the Rights of the Child, which limits Thailand's obligation to extend rights under the Convention to refugee children.

According to UNHCR, Thailand hosts approximately 95,000 refugees, a majority of whom are protracted refugees from Myanmar living in temporary shelters along the Thailand-Myanmar border. Not included in this figure are about 6,000 "urban refugees" from over 45 countries, including Pakistan, Vietnam, Somalia, Iraq, Palestine, Syria, China, and other countries, mostly living without regular migration status or recognition throughout Thailand. There are also approximately 5,000 Rohingya refugees and survivors of human trafficking in Thailand, some of whom are detained in immigration detention facilities or in shelters run by the Ministry of Social Development and Human Security.

Due to the lack of regular migration status in Thailand, refugees are subject to arbitrary arrest and detention. For families, this can result in the protracted separation of families. Thailand's efforts to develop a National Screening Mechanism and bring the MoU further into line with international standards will help improve security measures, advance protections, and prevent arbitrary arrests and detentions and other violations.

Although Thailand is not a party to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, the Thai government has repeatedly expressed a commitment to protect refugees in Thailand, including by adopting the Global Compact for Safe, Orderly and Regular Migration and endorsing the Global Compact on Refugees during the UN General Assembly in December 2018. The Thai government also affirmed a commitment to "humanitarianism and to take care of various groups of irregular migrants" during the UN Human Rights Committee review of Thailand's obligations under the International Covenant on Civil and Political Rights in March 2017.

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Most recently, on November 2, Thailand played a leading role in facilitating the adoption of the *ASEAN Declaration on the Rights of Children in the Context of Migration* by ASEAN leaders during the ASEAN Summit in Bangkok. Through the Declaration, ASEAN leaders committed to protect refugee children and develop effective alternatives to child immigration detention.

To further demonstrate this commitment, we encourage the Thai government to accede to the 1951 Refugee Convention and its 1967 Protocol, the Convention on the Protection of All Migrant Workers and Members of Their Families, and other key human rights treaties. We also welcome opportunities to support the Thai government in developing laws and policies and ensuring the implementation of practices that comply with international human rights law.