

# ASYLUM SEEKERS & REFUGEES IN THAILAND



## Brief Assessment of the Implementation of the 2nd Cycle UPR Recommendations

During the 2nd UPR Cycle, Thailand received eight recommendations relevant to refugees and asylum seekers, including recommendations to ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and provide legal status to refugees, abide by the principle of *non-refoulement*, and end the arbitrary detention of refugees. Other recommendations relevant to refugees included addressing human trafficking, ensuring birth registration of all children born on Thai territory, improving access to health, education, and social welfare for all, and improving labor rights and migration laws. Thailand largely noted recommendations specifically relating to refugees. Out of the eight recommendations, Thailand noted six of them, and only supported two (from Kazakhstan and Japan).

According to the U.N. High Commissioner for Refugees, as of July 2021, approximately 91,635 refugees from Myanmar live in nine refugee camps along the Thailand-Myanmar border, and at least another 5,000 refugees and asylum seekers from various nationalities reside in Bangkok and other urban areas. Given the lack of a legal framework to identify refugees in Thailand, many more refugees are likely uncounted in Thailand.

This factsheet focuses on three key challenges continuing to affect refugees in Thailand: (1) the continuing lack of legal status for refugees in Thailand; (2) violations of the principle of *non-refoulement*; and (3) the arbitrary arrest and detention of refugees.

## REALITIES ON THE GROUND

### Challenges

### Cases, Facts, Comments

#### Challenge 1: Thailand lacks a legal framework to provide legal status to refugees

Thailand noted recommendations made during the 2nd UPR Cycle to provide legal status to refugees.

**Thailand is not a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.** While Thailand is a party to the Convention on the Rights of the Child (CRC), it lodged a reservation limiting the application of Article 22 as “subject to the national laws, regulations and prevailing practices in Thailand.” Article 22 of the CRC specifically relates to “a child who is seeking refugee status or who is considered a refugee” and obligates state parties to provide “appropriate protection and humanitarian assistance.”

Thailand lacks a legal framework to specifically recognize and provide protections to refugees. Without legal status in Thailand, refugees are at risk of facing criminal penalties under Thailand’s 1979 Immigration Act, which prohibits unauthorized entry or stay in Thailand. As a result, refugees in Thailand are subject to arbitrary arrest, detention, and *refoulement*.



## REALITIES ON THE GROUND

### Challenges

### Cases, Facts, Comments

On December 25, 2019, the government enacted 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 create a National Screening Mechanism (NSM). The regulation establishing the NSM generally outlines mechanisms to screen for “protected persons.” Clause 3 under the regulation defines a “protected person” as “any alien who enters into or resides in the Kingdom and is unable or unwilling to return to his/her country of origin due to a reasonable ground that they would suffer danger due to persecution as determined by the Committee...”

In May 2020, Thai authorities established the “Protected Person Screening Committee” in accordance with the regulation, and on April 28, 2021, the Committee created sub-committee to develop Standard Operating Procedures (SOPs) for the Committee. Despite these steps, progress towards actual implementation of a screening mechanism to identify and protect refugees in Thailand is slow and concerns remain on whether the mechanism will comply with international human rights standards.

### Challenge 2: Refugees in Thailand are subject to *refoulement*

While Thailand noted recommendations made during the UPR to abide by the principle of non-refoulement, refugees in Thailand remain subject to forced return.

#### Thailand's response to the potential influx of refugees from Myanmar

Following the February 1, 2021 coup in Myanmar, the military junta's subsequent widespread and systematic attack on the general population forced thousands of people in Myanmar to seek refuge in neighboring countries, including Thailand. In response to the potential influx of refugees, on March 19, 2021, Prime Minister Prayut Chan-o-cha instructed the Ministry of Interior, CCSA, and other concerned agencies to “monitor and prevent illegal immigration” along the Thailand-Myanmar border and instructed the Immigration Bureau to “enforce strict inspection of border crossings.” The government also ordered the deployment of Royal Thai Army troops and patrol boats to “monitor illegal entry along the western borders both by land and sea,” according to meeting minutes of the Thai Centre for COVID-19 Situation Administration (CCSA), dated March 19.

A Thai provincial official confirmed to Fortify Rights that in May 2021, Thai authorities forcibly returned at least 2,000 refugees to Myanmar. The official also confirmed to Fortify Rights that Thai authorities prevented humanitarian organizations and U.N. agencies from accessing newly arrived refugees from Myanmar. Groups of displaced persons continue to gather along the Myanmar side of the Thailand-Myanmar border, according to the U.N. Refugee Agency and aid workers who spoke with Fortify Rights.

### Challenge 3: Thai authorities continue to arbitrarily arrest and detain refugees, including refugee children, in immigration detention centers and government-run shelters

Thailand noted the recommendation made during the 2nd Cycle UPR to end the arbitrary detention of refugees.

Without a legal framework in place to provide legal status, refugees remain subject to the 1979 Immigration Act, which prohibits unauthorized entry or stay in Thailand. As a result, refugees are subject to arbitrary arrest and detention.

On January 21, 2019, seven Thai government authorities signed the Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers (MoU). Despite this commitment, children remain subject to immigration detention. For example, according to international and local organizations working with refugee communities in Thailand, as of end of June 2021, Thai authorities continued to detain more than 40 children in the Bang Khen and Songkhla immigration detention centers.

# RECOMMENDATIONS

## 1. On Challenge 1: Refugees and asylum seekers are not provided protection

- 1.1.** Accede to the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol.
- 1.2.** Withdraw the reservation to Article 22 of the Convention on the Rights of the Child.
- 1.3.** Implement the National Screening Mechanism in line with international human rights standards.

## 2. On Challenge 2: Refugees and asylum seekers are subject to *refoulement*

- 2.1.** Prevent the *refoulement* of refugees and ensure their proper screening and protection in Thailand.
- 2.2.** Ensure the U.N. High Commissioner for Refugees and other U.N. and humanitarian agencies have full, unfettered access to Myanmar refugees in Thailand, especially at the border.

## 3. On Challenge 3: Refugees and asylum seekers, including children, continue to be arbitrarily arrested and detained

- 3.1.** End the arbitrary arrest and detention of refugees.
- 3.2.** Release all refugees currently detained solely on the basis of their immigration status.



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## NOTES