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**Asia Pacific
Refugee Rights
Network**

**Report on the Implementation of the International Covenant on Civil and
Political Rights with Regard to the Rights of Urban Refugees and Asylum
Seekers and
Rohingya Refugees and Asylum Seekers in Thailand**

**Submitted for the Adoption of the List of Issues On the Second Periodic
Report of
Thailand (CCPR/C/THA/2) at the 117th Session of the
United Nations Human Rights Committee**

Bangkok, 7 April 2016

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I. INTRODUCTION

The following report is submitted on behalf of Asylum Access and the Asia Pacific Refugee Rights Network (APRRN). Asylum Access is an international refugee rights organization providing legal aid, empowerment, law and policy reform for refugees in Latin America, Africa and Asia. APRRN is a network of organizations working on advancing the rights of refugees in the Asia Pacific Region through information sharing, mutual capacity building, and joint advocacy.

2. The report was made possible in part with support from the Centre for Civil and Political Rights (CCPR Centre).
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II. EXECUTIVE SUMMARY

4. Thailand is home to an estimated 3.7 million migrants - one of the largest populations in Southeast Asia. An estimated 130,000 of these migrants are asylum seekers and refugees,¹ 90 percent of who are from neighboring Myanmar and have been living in camps along the Thailand-Myanmar border for more than two decades. An estimated 10,000 asylum seekers and refugees representing more than 40 nationalities live outside the camps in urban areas.² Asylum seekers and refugees in Thailand have no legal status, face constant discrimination, and are at risk of arbitrary arrest and detention, refoulement, and exploitation. Access to justice is limited and little relief is possible for human rights violations.
5. This submission highlights violations of the rights of asylum seekers and refugees in Thailand that have occurred between 2011 to 2016; namely the denial of (i) the right to life and the prohibition against torture under Article 6 and 7 respectively; and (ii) the prohibition of arbitrary detention, humane conditions of detention, and the rights of the child under Article 9, 10, and 24 respectively.
6. Since refugee status is declaratory and not dependent on adjudication, any person who satisfies the definition under the Convention Relating to the Status of Refugees (Refugee Convention) is a refugee.³ For purposes of this submission, however, the term “refugee” will be used to refer to any person whose refugee claim has been recognized by the UN High Commissioner for Refugees (UNHCR) or through Thailand’s domestic mechanisms, such as the Provincial Admissions Board system. The term “asylum seeker” will be used to refer to any person seeking to be adjudicated for refugee status who is yet to be recognized as a refugee by UNHCR or domestic mechanisms.

7. Asylum Access recommends that the following questions be included in the List of Issues on Thailand:



III. CONTRIBUTIONS TO THE LIST OF ISSUES

i. Right to Life and Prohibition Against Torture (Article 6 and 7)

Legal Obligation

8. As interpreted by the Human Rights Committee, under Articles 6 and 7 of the ICCPR, states “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their

extradition, expulsion or refoulement.”⁴ This includes persons who may not be in the state’s territory but fall within the state’s effective control.⁵

9. The principle of non-refoulement is also found in customary law as a requirement that states do not return asylum seekers and refugees, regardless of their legal status, to countries where they would face a threat to their life or freedom. Non-refoulement is also a fundamental component of the absolute prohibition of torture. Under Article 3 of the CAT, states are required to ensure that no individual, regardless of whether she is an asylum-seeker or refugees, is expelled to a country where such person would face a substantial risk of torture.⁶

State Practice

10. Thailand continues to deport asylum seekers and refugees without judicial oversight under Section 54 of the 1979 Immigration Act.”⁷ Under the Immigration Act, officials must assess the risks of deportation, the circumstances in the home or receiving country, and inform a returnee of these findings. However, since Thailand’s last ICCPR review, Thailand has repeatedly returned refugees and asylum seekers to countries where they risk torture, including Rohingya refugees, as well as refugees and asylum seekers from Laos, Vietnam, and China.
11. Since 2009, Thailand has seen a large number of arrivals of Rohingya asylum seekers.⁸ After serving a term in detention, some asylum seekers were immediately transported back to Myanmar without any risk assessment from Thailand or UNHCR. The Immigration Bureau deports some 200-300 immigration detainees every week without proper screening of their protection claims.⁹ Returnees hence are at risk of persecution or being trafficked.
12. In addition, since 2009, Thailand has implemented a “push back” policy with regard to asylum seekers arriving by boat. The policy essentially intercepts boats of asylum seekers approaching Thailand’s shores and turns them back to sea. In 2014, Thai authorities regularly intercepted and pushed back more than 250 Rohingya asylum seekers.¹⁰ In May 2015, Thailand also refused to allow the disembarkation of Rohingya asylum seekers and Bangladeshi survivors of human trafficking arriving to Thailand by sea. Consequently, human traffickers abandoned boats after Thai authorities enforced push back policies, leaving many Rohingya and Bangladeshis to die at sea.¹¹ While Indonesia and Malaysia agreed to provide temporary protection to Rohingya, Thailand remained silent on any offer to do so, agreeing only to deploy ships carrying humanitarian aid. By deporting Rohingya asylum seekers in Thailand without properly assessing their protection needs and diverting asylum seekers traveling on boats away from its borders, Thailand risks returning individuals to countries where they will face serious risk of torture or threat to life or liberty.
13. In 2015, Thailand handed over about 109 male Uighur asylum seekers under its custody to China.¹² Following claims by Chinese authorities that deportees were terrorism suspects, the Uighur asylum seekers were officially extradited to China under a Sino-Thai bilateral extradition agreement with no assessment of their protection needs. Those extradited face a great risk of persecution, torture or enforced disappearance upon return to China

due to the ongoing conflict between the Chinese Government and ethnic Uighurs.¹³ The fate of those returned remains unknown.

14. In 2013, Thailand allowed the arrest and deportation of Vietnamese asylum seekers to Cambodia, where they were put on trial as suspected members of the Khmer National Liberation Front. Asylum seeker removed to Cambodia claim they were later tortured and coerced into confessing.¹⁴ In 2009, Thailand returned an estimated 4,000 Hmong refugees and asylum seekers to Laos, where they faced risk of persecution.¹⁵
15. The deportation of 200-300 immigration detainees every week risks violating the State's duty against refoulement by forcing individuals to return to countries they fled for reasons of persecution. The risk of refoulement also arises when the State diverts boats of asylum seekers at sea and prevents them from disembarking. This "push back" policy risks violating Thailand's duty under customary international law to ensure that no one is sent back to a country where there exists a threat to her life or freedom. Further, the return of refugees and asylum seekers to China, Cambodia, and Laos, where they faced the risk of torture, is a violation of the principle of non-refoulement.

Prior Observations by the Human Rights Committee and other Human Rights Treaty Bodies

16. In its 2005 Concluding Observations, the Human Rights Committee recommended that Thailand:

"establish a mechanism to prohibit the extradition, expulsion, deportation or forcible return of aliens to a country where they would be at risk of torture or ill-treatment, including the right to judicial review with suspensive effect. The State party should observe its obligation to respect a fundamental principle of international law, the principle of non-refoulement."¹⁶

17. More recently, in its review under the Convention against Torture, Thailand stated that it had "not stipulated any specific provision" in regard to the prohibition against refoulement.¹⁷ It elaborated that: "Thai law has prescribed approaches to the exercising of discretion on the part of competent authorities. In practice, military officers, police officers, immigration officers, public prosecutors, and officers of other public agencies have acquired the understanding of the non-refoulement principle whereby foreign nationals shall not be sent from or forced out of the country if there appear to be convincing grounds that any such person thus forced out of the country might be subjected to danger or torture. Thailand's adherence to this principle is widely acknowledged and has accordingly earned Thailand recognition internationally."

18. In its Concluding Recommendations, the Committee Against Torture recommended that Thailand:

"adopt appropriate legislation and procedures to comply with the principle of non-refoulement and to protect refugees and asylum seekers, in line with article 3 of the Convention, in particular by:

(a) Amending the Immigration Act and establishing a national asylum system to provide the legal framework required to address the situation of refugees and asylum

seekers. Moreover, the State party should take the necessary measures, in cooperation with the United Nations High Commissioner for Refugees (UNHCR), to review its procedures for determining refugee status;

(b) Providing protection and rehabilitation support to victims rescued from human smugglers' camps in southern Thailand and defining the temporary protection regime and related rights granted to Rohingya refugees and stateless persons, including protection from refoulement;

(c) Acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol."¹⁸

ii. Prohibition of Arbitrary Detention, Humane Conditions of Detention, and the Rights of the Child (Article 9, 10, and 24)

Legal Obligation

19. Article 9 of the ICCPR protects against arbitrary arrest and detention, including in the course of immigration proceedings. Guidance by the Human Rights Committee indicates that detention should be reasonable, necessary and proportionate. Asylum seeker who unlawfully enter a State party's territory should only be detained for as long as is necessary to identify the individuals and register their claims.¹⁹ When necessary, detention should take place in appropriate, sanitary, non-punitive facilities, and should not take place in prisons. General Comment 35 sets forth that, "Children should not be deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention, and also taking into account the extreme vulnerability and need for care of unaccompanied minors."²⁰

20. Article 10 sets forth that, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."²¹

21. Article 24 of the ICCPR provides that, "Every child shall have [...] the right to such measures of protection as are required by his status as a minor."²² The Convention on the Rights of the Child provides further guidance in relation to detention of children. Article 3 of the CRC obligates states to take the best interest of the child as the primary

consideration in all actions that concern children. The Committee on the Rights of the Child has found that 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.”²³

State Practice

22. By virtue of being treated as illegal migrants under Thai law, asylum seekers and refugees without valid visas are increasingly subject to arbitrary detention. In 2014, 254 individuals including 34 children were arrested in 108 incidents; while in 2013, 125 individuals were arrested in 58 incidents. Of those detained in 2014, 38 asylum seekers and refugees were successfully released after UNHCR intervened. From December 2013 to August 2015, Thai authorities detained 4,569 ethnic Rohingya, 2,598 Bangladeshi migrants and over 240 Uighur asylum seekers in different Immigration Detention Centers (IDCs) nationwide.²⁴
23. In southern Thailand, families are typically separated in detention centers—women and children are normally confined to shelters run by the Minister of Social Development and Human Security while men are typically detained in jails or holding cells.²⁵ Civil society organizations, including legal services providers, are unable to speak with at-risk populations held in IDCs. This makes it difficult for asylum seekers and refugees to obtain services, legal support, and screening for human trafficking. Asylum seeker and refugees, including children and the sick, are held in overcrowded detention facilities. Reportedly, these facilities do not have adequate healthcare access due to limited budgets. Officials in IDCs have low cultural and religious awareness about detainee populations and, thus, do not offer meals in line with their religious dietary restrictions.²⁶
24. Studies by civil society organizations in Thailand reveal that detained children in Bangkok are often separated from their parents, typically for periods of more than a year and are at great risk of sexual abuse by adult detainees.²⁷ The report also discovered that children in IDCs cannot enjoy basic services necessary for their development; many detained children suffer from stress, depression, fear, and alienation and cannot access education otherwise available to all children in Thailand under the 1999 National Education Act.²⁸
25. The State breaches its obligations under articles 9 and 10 of the ICCPR by arbitrarily detaining asylum seekers and refugees and housing them in facilities with conditions that fall below international standards. The detention of asylum seekers and refugees in Thailand is arbitrary under Article 9 as it is not for purposes of identification, but rather to punish those who violate the Immigration Act. The detention is neither reasonable nor proportionate, and can last indefinitely. Furthermore, the conditions of Thailand’s detention centers fall below international standards since they are often overcrowded, take place in jails or holding cells, and lack access to adequate healthcare services,²⁹ violating article 10 of the Covenant.
26. Article 24 is violated when refugee and asylum-seeker children are detained without regard to measures of protection required by their status of minors. This principle is not only violated when Thailand subjects children of asylum seekers and refugees to detention, but when the State separates such children from their parents and house them in IDCs where they face a risk of sexual abuse and lack access to services necessary for their development.

Prior Observations by the Human Rights Committee and other Human Rights Treaty Bodies

27. In its 2005 Concluding Observations, the Human Rights Committee stated it was “concerned at the overcrowding and general conditions of places of detention, particularly with regard to sanitation and access to health care and adequate food.” It recommended that Thailand:

“bring prison conditions into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners as a matter of priority. The State party should guarantee the right of detainees to be treated humanely and with respect for their dignity, particularly with regard to hygienic conditions, access to health care and adequate food.”³⁰

28. The Committee against Torture noted in its 2014 concluding observations it was:

“concerned at the use of lengthy and, in some cases, indefinite detention in immigration detention centres for asylum seekers and migrants who enter the State party undocumented, as well as at the lack of an independent and systematic review of such detention decisions and the restrictive use of alternatives to detention for asylum seekers,”

29. It recommended Thailand, “review its detention policy with regard to asylum seekers and give priority to alternatives to detention,” and “end indefinite detention for asylum seekers and migrants and guarantee them access to independent, qualified and free legal advice and representation.”³¹

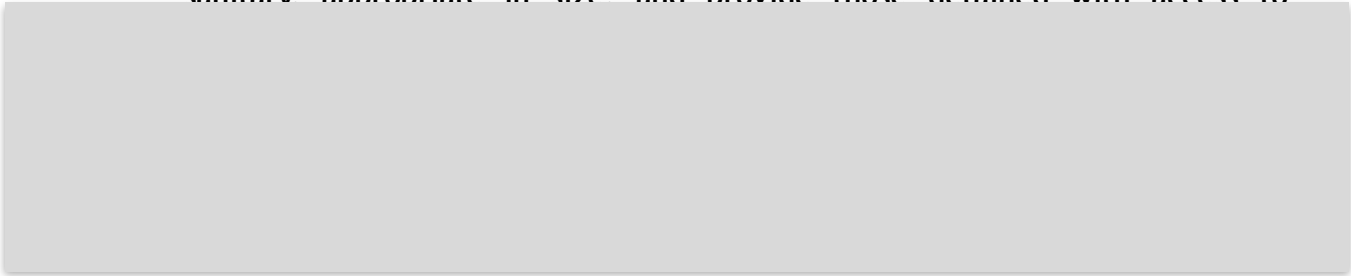
30. The Committee Against Torture also remained:

“seriously concerned at the extremely high levels of overcrowding and harsh conditions prevailing in detention facilities, including immigration detention centres. Such conditions include insufficient ventilation and lighting, poor sanitation and hygiene facilities and inadequate access to health care.”

31. It recommended Thailand “strengthen its efforts to improve prison conditions in order to end any cruel, inhuman or degrading treatment or punishment,” in particular by reducing prison overcrowding, and “(e)nsuring the basic needs of persons deprived of their liberty with regard to sanitation, medical care, food and water, and taking measures to prevent violence in prison.”³²

exceptional circumstances, following an individualized assessment, and after all less invasive alternatives to detention have been exhausted?

- What measures are in place to ensure all immigration detention centers are sanitary, appropriate in size, and provide those detained with access to



- ¹ UN Department of Economic and Social Affairs, Population Division, International Migration 2013 Wallchart, 15 July 2013; UNHCR. (2015) UNHCR Refugee in Thailand [Online] Available from: <http://bit.ly/1gRC0fl>.
- ² Over 40 ethnic groups are represented in Thailand's refugee population including: Pakistanis, Sri Lankans, Rohingyas, Vietnamese (Hmong, Khmer Krom), Lao Hmong, Syrians (Palestinian), Somali and other African nationalities; UN High Commissioner for Refugees, "Thailand Factsheet: September 2014," *UNHCR The UN Refugee Agency*, (August 2015), <http://bit.ly/1fjOevQ>
- ³ *Convention Relating to the Status of Refugees*, 189 U.N.T.S. 137, article 1(2) (*Refugee Convention*).
- ⁴ Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 10 March 1992, U.N. Doc. HRI/ GEN/1/Rev.7, para. 9.
- ⁵ Human Rights Committee, General Comment No 31: The Nature of the Legal Obligation Imposed on States Parties to the Covenant, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para. 10.
- ⁶ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1465 U.N.T.S 85, Article 3.
- ⁷ Migrant Working Group (MWG) Annual Report 2014; *Op., Cit. Supra note No.*
- ⁸ UNHCR. (2014). *More than 20,000 people risk all on Indian Ocean to reach safety*. UNHCR Report. Retrieved, April 08, 2016, from <http://www.unhcr.org/53f741fc9.html>
- ⁹ Office of Democracy, Human Rights and Labor Rights, *2014 Human Rights Report, Thailand*, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.
- ¹⁰ BBC. (2014, February 13). *Thailand Sends Rohingya Muslims Back to Burma*. BBC News. Retrieved April 08, 2016, from <http://www.bbc.com/news/world-asia-26167676>
- ¹¹ The Guardian. (2015, May 14). *Malaysia and Thailand turn away hundreds on migrant boats* – The Guardian News. Retrieved April 08, 2016, from <http://www.theguardian.com/world/2015/may/14/malaysia-turns-back-migrant-boat-with-more-than-500-aboard>
- ¹² Putz, Catherine. (2015, July 11). *Thailand Departs 100 Uyghurs to China*. The Diplomat. Retrieved April 08, 2016, from <http://thediplomat.com/2015/07/thailand-departs-100-uyghurs-to-china>.
- ¹³ US Department of State. (2015). *U.S. Condemns Forced Deportation of Ethnic Uyghurs in Thailand to China* [Pressed Release]. Retrieved from <http://www.state.gov/r/pa/prs/ps/2015/07/244754.htm>
- ¹⁴ The Cambodia Daily. (2015). *KNLF Group Claim Confessions Came By Torture*. Retrieved April 08, 2016, from <https://www.cambodiadaily.com/archives/knlf-group-claim-confessions-came-by-torture-82799/>.
- ¹⁵ The Guardian. (2009 December, 28). *Thailand begins deportation of more than 4,000 Hmong asylum seekers*. Retrieved April 08, 2016, from <http://www.theguardian.com/world/2009/dec/28/thailand-deportation-hmong-laos>.
- ¹⁶ Human Rights Committee, Concluding observations of the Human Rights Committee: Thailand, CCPR/CO/84/THA, 8 July 2005, para. 17.
- ¹⁷ Committee against Torture, Initial reports of States parties due in 2008, Thailand, CAT/C/THA/1, 9 July 2013, paras 74-75.
- ¹⁸ Committee against Torture, Concluding observations on the initial report of Thailand, CAT/C/THA/CO/1, 20 June 2014.
- ¹⁹ Human Rights Committee, *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, para. 18.
- ²⁰ *Ibid.*
- ²¹ *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171, article 10 (*ICCPR*).

²² ICCPR article 24.

²³ *Report of the 2012 Day of General Discussion*, Committee on the Rights of the Child, par. 78. Retrieved April 08, 2016, from <http://aprrn.info/wp-content/uploads/2016/03/UPR-Submission-FINAL.pdf>.

²⁴ Migrant Working Group (MWG). Monthly report from January to August 2015.

²⁵ Cambell, Charlie. (2014). *Thousands of Refugee Children Are Suffering in Thai Detention Centers*. TIME. Retrieved April 08, 2016, from <http://time.com/3252129/thailand-migrant-children-detention-human-rights/>.

²⁶ Kongchantuek, Rasasiripong, and Kanchanatiwat. (2013). *Preliminary Study of the Situation of Children in SuanPlu Immigration Detention Centers*, Bangkok, Thailand. Bangkok: Save the Children International.

²⁷ Ibid.

²⁸ Sukpanich, Tunya. (2013). *A Childhood Behind Bars*. The Bangkok Post. Retrieved April 08, 2016, from <http://www.bangkokpost.com/print/370898/>.

²⁹ Farmer, Alice. (2014). *Two Years with No Moon. Immigration Detention of Children in Thailand*. Retrieved from Human Rights Watch Website: https://www.hrw.org/sites/default/files/reports/thailand0914_ForUpload_0.pdf

³⁰ Human Rights Committee, Concluding observations of the Human Rights Committee: Thailand, CCPR/CO/84/THA, 8 July 2005, para. 16.

³¹ Committee against Torture, Concluding observations on the initial report of Thailand, CAT/C/THA/CO/1, 20 June 2014, para. 21.

³² Committee against Torture, Concluding observations on the initial report of Thailand, CAT/C/THA/CO/1, 20 June 2014, para. 22.