

December 15,
2022

open letter:

Human Rights
Concerns
Regarding the
Draft Notification
of the Protected
Person Screening
Committee

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To: Prayut Chan-o-cha, Prime Minister of Thailand

Government House

1 Nakhon Pathom Road

Dusit, Dusit District,

Bangkok Thailand 10100



FORTIFY
RIGHTS

Prayut Chan-o-cha,

Prime Minister of Thailand
Government House
1 Nakhon Pathom Road
Dusit, Dusit District,
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Human Rights Concerns Regarding the Draft Notification of the Protected Person Screening Committee

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Dear Prime Minister Prayut Chan-o-cha,

Fortify Rights is a non-profit, nongovernmental organization registered in the United States and Switzerland that works to ensure human rights for all. In the past, Fortify Rights has communicated directly with your administration on issues related to refugee protections and trafficking-in-persons in Thailand.

We write to you today regarding the National Screening Mechanism (NSM) aimed at identifying and potentially protecting refugees in Thailand and the development of the Draft Notification of the Protected Person Screening Committee (Draft Notification). Fortify Rights welcomes the NSM. However, we analyzed the Cabinet Resolution dated October 5, 2022, which summarizes the Draft Notification, and we note problematic exclusionary provisions and the lack of an appeals process for applicants. These issues may lead to the creation of an NSM that falls short of international human rights standards and results in the forced return or *refoulement* of refugees. We encourage your administration to fix these areas to bring the NSM and relevant processes in line with international law and standards.

Exclusionary Provisions in the Draft Notification

According to the summary of the Draft Notification described in the Cabinet Resolution, the NSM excludes applicants “belonging to any group which is dealt with by specific mechanism or procedure by the Ministry of Interior.” It also specifically excludes migrant workers from Myanmar, Cambodia, and Laos.

Although Thailand is not a party to the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol, the Convention provides authoritative guidance on refugee protection under international law. Under the Convention, a refugee is defined as a person who is unable or unwilling to return to their country due to a well-founded fear of persecution.

Refugee status and the attendant protections for refugees should extend to any individual who meets the definition of a refugee, regardless of other types of legal status that refugee may possess. It is also important to note that a person can become a refugee after leaving their country. For example, a migrant worker may have left their homeland for economic reasons but is later unable or unwilling to return to their country due to fear of persecution.

Thailand currently hosts more than 2.6 million migrant workers. More than a half million of these migrant workers entered Thailand and hold legal status through the official Memorandum of Understanding process. Another 1.8 million entered Thailand through other routes but were later regularized and currently hold legal status under the National Verification process. More than 90.8 percent of Thailand's migrant workers are from Myanmar, Cambodia, or Laos, with Myanmar nationals comprising almost 65.65 percent. Another 90,000 Myanmar nationals are living in nine camps along the Thailand-Myanmar border as refugees.

Many Myanmar nationals in Thailand may be unable or unwilling to return to Myanmar due to fear of persecution, particularly following the February 1, 2021 coup d'état in Myanmar and the subsequent nationwide crackdown. Fortify Rights has documented ongoing international crimes, including genocide, war crimes, and crimes against humanity, committed by the Myanmar military against the civilian population. The coup and continuing attacks by the Myanmar military have forced tens of thousands of people to flee the country, including to Thailand. Although these individuals would meet the definition of a "refugee" under international law, the Draft Notification may exclude them from accessing the NSM, putting them at risk of *refoulement* in violation of international law.

Under international law, migrant workers and others in Thailand, with or without legal status, should not be excluded from accessing the NSM or refugee protections provided through the NSM.

The Draft Notification also apparently calls for vetting the applicant's background, including their "personal and political behavior." While states may request information from applicants about their personal experiences and backgrounds, including as part of a vetting process to establish the parameters of the applicant's protection concerns, this information mustn't be used to exclude from refugee protection individuals based on political or other beliefs or opinions.

Denying protection and an appeal on the grounds of "national security"

The Draft Notification, according to the Cabinet Resolution, notes that "in light of national security, the Committee may still decide against awarding the protected person status to the person under screening" despite that person meeting "all the qualifications, the criteria and the conditions set forth." The Draft Notification further states: "The Committee's decision shall be final and such information shall be treated as undisclosed information pursuant to Section 15(1), (2) of the Government Information Act B.E. 2540."

Section 15(1) of the Government Information Act prohibits the disclosure of official information that "will jeopardize the national security, international relations, or national economic or financial security." Section 15(2) of this act

prohibits disclosing information that “will result in the decline in the efficiency of law enforcement or failure to achieve its objectives.”

The Draft Notification would appear to deny applicants protection under the NSM, access to information about the basis of this decision, and the right to appeal in the event the government invokes national security.

According to the U.N. Commission on Human Rights, restrictions on rights based on national security are justified only when there is “force or a threat of force” against “the existence of the nation or its integrity or political independent.” This presents a very high standard that should not be invoked to deny an individual protection or access to protection mechanisms without a reasonable basis grounded in evidence. In particular, such a claim should not be based solely on the ethnicity or religion of the applicant.

While national security may justify specific measures against refugees or the expulsion of a refugee, the Refugee Convention provides that judicial safeguards must be met, including the right to appeal or review the decision. Furthermore, the principle of *non-refoulement*—legally binding on all states under customary international law—remains applicable in cases of national security to prevent the forced return of a person to a country where they may face torture or other forms of ill-treatment.

The NSM apparently lacks an appeal process or judicial review for decisions based on national security, which would contravene international law.

Based on these concerns, Fortify Rights respectfully recommends the following revisions to the Draft Notification to ensure that the future NSM aligns with international human rights law and standards. Specifically, the Draft Notification should:

- Remove the provision that excludes applicants who have status under specific mechanisms or procedures provided by the Ministry of Interior.
- Remove the provision that excludes migrant workers from Myanmar, Cambodia, and Laos.
- Ensure all individuals seeking asylum in Thailand have access to the NSM.
- Ensure the definition of a “refugee” under the NSM aligns with the definition provided by the U.N. Refugee Convention.
- Ensure that all individuals who meet the definition of a “refugee” are provided with legal status and complete protection in Thailand.
- Ensure applicants have access to information about the basis of decisions made under the NSM.
- Ensure applicants have access to an appeal process or judicial review of decisions made under the NSM.

We appreciate the opportunity to share these concerns and recommendations on the Draft Notification. We would welcome any opportunity to discuss these issues with your administration further and to support the Royal Thai Government in meeting its commitments to promote and protect human rights, including the rights of refugees. Thank you for your attention to this matter.

Sincerely,



Amy Smith
Executive Director



Matthew Smith
Chief Executive Officer