

Fortify Rights



# Analysis:

## Thailand's Record on Refugee Rights, 2016-2021

investigate  
engage  
strengthen

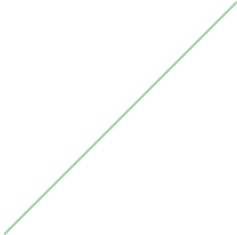
2021



FORTIFY  
RIGHTS

---

# Analysis: Thailand's Record on Refugee Rights, 2016-2021



On November 10, 2021, the U.N. Human Rights Council, as part of the Universal Periodic Review (UPR) process, will consider Thailand's human rights record—including its obligations to uphold the rights of refugees—between 2016 and 2021. The following analysis provides information on the situation of refugees in Thailand based on research and monitoring conducted by Fortify Rights during the period under review. In particular, this analysis provides information on and recommendations to address:

- The lack of legal status for refugees in Thailand;
- The *refoulement* of refugees seeking protection in Thailand; and
- The arbitrary arrest and detention of refugees in Thailand.

According to the U.N. High Commissioner for Refugees (UNHCR), as of [September 30, 2021](#), approximately 91,480 refugees from Myanmar reside in nine refugee camps along the Thailand–Myanmar border, and at least another 5,250 refugees of 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 is Thailand's third review under the UPR process—a process that takes place every five years. During Thailand's last review in 2016, Thailand received [several recommendations relevant to refugees](#), 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.

In its [national report](#) to the Human Rights Council Working Group on the UPR, dated August 17, 2021, Thailand provides a generalized overview of the situation of refugees in the country, referring to refugees as “displaced persons and Persons of Concern (POC).” In its report, Thailand emphasized the government's continued management of “temporary” shelters for refugees on the Thailand–Myanmar border, humanitarian assistance to refugees in urban settings, as well as efforts to develop a National Screening Mechanism (NSM) to “identify people in need of protection and to grant them legal status and access to the necessary public services.”

In advance of the upcoming UPR proceeding, member states of the U.N. Human Rights Council submitted 20 questions to Thailand, two of which focused on Thailand's obligations to protect the rights of refugees. In particular, one question seeks clarification on Thailand's plans to address concerns related to ensuring legal status for refugees in Thailand and the other question seeks information on Thailand's efforts to end the detention of migrant and refugee children.

This analysis seeks to support the UPR process by providing specific information on Thailand's refugee rights record between 2016 and 2021 and recommendations to improve refugee protections.

## The Lack of Legal Status for Refugees in Thailand

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*.

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 the 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, the Royal Thai Police created the "Protected Person Screening Committee," comprised of 12 representatives from government agencies and four experts. The Protected Person Screening Committee is tasked under Clause 9 of the regulation with determining the screening criteria and conducting screening, promoting cooperation and coordination with different sectors, and reporting on any obstacles in the implementation of the NSM regulation. The Protected Person Screening Committee conducted its first meeting on September 3, 2020, almost nine months after the regulation was enacted.

On April 28, 2021, the Committee created an 18-person sub-committee, including a representative from UNHCR, two academics, and one representative from Thai civil society, to develop Standard Operating Procedures (SOPs) for the Committee. The draft SOPs are expected to be submitted to the Committee for review before the end of this year. 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.

## Recommendations:

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

## The Refoulement of Refugees Seeking Protection in Thailand

While Thailand noted recommendations made during their last UPR to abide by the *principle of non-refoulement* and stated in its national report to the Human Rights Council Working Group on the UPR that “Thailand respects the principle of *non-refoulement*,” refugees in Thailand remain subject to forced return.

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, according to *meeting minutes of the Center for COVID-19 Situation Administration (CCSA)* dated March 19, 2021, Prime Minister Prayut Chan-o-cha instructed the Ministry of Interior, the Centre for COVID-19 Situation Administration (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.”

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 UNHCR and aid workers who spoke with Fortify Rights.

In its *compilation report on Thailand* submitted to the Human Rights Council Working Group on the UPR, the U.N. High Commissioner for Human Rights “expressed concern about reports of deportations and forcible returns without review or adequate assessment of the protection needs of refugees, asylum seekers and other people in need of international protection, including Uighur and Rohingya people, and insufficient guarantees against refoulement.”

## Recommendations:

- Prevent the *refoulement* of refugees and ensure their proper screening and protection in Thailand
- 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

## The Arbitrary Arrest and Detention of Refugees in Thailand

Thailand noted a recommendation made during its previous UPR to end the arbitrary detention of refugees.

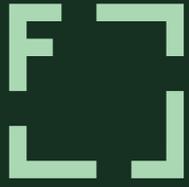
Without a legal framework in place to provide legal status, refugees remain subject to the 1979 Immigration Act, which prohibits unauthorized entry or stay in Thailand. As a result, refugees are subject to arbitrary arrest and detention. For example, in June 2020, Fortify Rights [documented](#) the arrest and detention of 35 Rohingya refugees, including six women and 16 children, on the Thailand–Myanmar border. Earlier in the reporting period, Fortify Rights documented the [mass arrest and detention](#) of more than 200 refugees during a two month period in 2018 and [other arrests in 2017](#).

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, concerns remain about the detention of children. For example, Fortify Rights raised concern in 2020 over the continued detention of more than 200 refugees, including at least 15 children, in 22 immigration detention facilities throughout the country, despite a COVID-19 outbreak in the Songkhla Immigration Detention Center in Sadao District, Songkhla Province. In November 2017, Fortify Rights also documented [the death of a 16-year-old Rohingya refugee](#), who died after spending more than three years indefinitely detained in immigration detention facilities and government-run shelters. Her death led to an investigation by the National Human Rights Commission of Thailand (NHRCT), which reaffirmed international legal standards that children should not be detained for immigration-related purposes. A week after the NHRCT's report and on the one-year anniversary of the girl's death, Thai authorities transferred all migrant children and their mothers out of Suan Plu immigration detention center in Bangkok. However, Thai authorities continue to arrest and detain refugee children.

The Human Rights Committee noted in the [compilation report on Thailand](#) submitted to the Human Rights Council Working Group on the UPR “reports of children being detained and separated from their relatives without access to school and placed in cells with adult detainees.” The Human Rights Committee also expressed concern about “reports of overcrowded cells, lack of adequate health services, poor sanitation facilities, inadequate food and water and incidents of violence in immigration detention centres.”

### Recommendations:

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



# FORTIFY RIGHTS

investigate  
engage  
strengthen

[fortifyrights.org](https://fortifyrights.org)

[fortify.rights@fortifyrights.org](mailto:fortify.rights@fortifyrights.org)

Twitter: @FortifyRights

Facebook: fortifyrights