

Briefing Note:

Ensuring Refugee Rights in Thailand

Under the U.N. Convention on the Status of Refugees, a refugee is defined as a person who is “unable or unwilling to return to their country of origin, owing to a well-founded fear of being persecuted...”¹

While Thailand is not a signatory to the U.N. Refugee Convention or its 1967 Protocol and does not formally recognize or have a regulatory framework to manage refugees within its territory, a significant population of refugees, most of whom are from neighboring Myanmar, reside in Thailand. According to the U.N. High Commissioner for Refugees (UNHCR), in addition to the more than 91,000 protracted refugees from Myanmar living in shelters along the Thailand-Myanmar border, more than 23,000 men, women, and children fled to Thailand following the February 1, 2021 coup in Myanmar.² In addition, there are an estimated 4,800 non-Myanmar refugees in Thailand.³

Although the Thai Cabinet approved a resolution in December 2019 to establish a “National Screening Mechanism” (NSM) to identify and potentially protect refugees, the mechanism has yet to be implemented.⁴ On March 27, 2023, the Thai Government adopted a “Notification” establishing problematic eligibility criteria that discriminatorily excludes certain applicants from accessing the mechanism.⁵ This raises further concern about the effectiveness of the future mechanism. Due to the lack of implementation of proper protections, refugees in Thailand remain at heightened risk of exploitation and abuse.⁶

In addition to documenting the continued arbitrary arrest, detention, and extortion of refugees in Thailand, Fortify Rights also continues to document the forced return or *refoulement* of refugees and others to Myanmar where torture is likely.⁷ Such returns are taking place despite the recent enactment on October 25, 2022 of the anti-torture bill that explicitly prohibits the return of a person to a country where they may face torture.⁸

Recommendations to Ensure Refugee Rights in Thailand:

- End the arbitrary arrest and detention of refugees, and release all refugees currently detained solely on the basis of their immigration status.
- Urgently implement screening mechanisms to identify and provide legal status to refugees and prevent *refoulements*.
- Ensure all individuals with potential protection concerns have access to screening mechanisms to prevent *refoulements*.
- Enforce all provisions of the Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565, including Section 13 that prohibits the return of a person to a country where they may face torture.

An Analysis of the National Screening Mechanism and Prohibition of Forced Returns

Thailand has enacted several laws and policies that ostensibly could protect refugees; however, problematic regulations and the lack of implementation and enforcement of these laws and policies leave refugees in Thailand unprotected and at risk of arbitrary arrest, detention, exploitation, extortion, and forced return.

For example, although the Thai Cabinet approved 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 establish a screening mechanism to identify and potentially protect refugees, Thai authorities have yet to create such a mechanism.⁹ The recent publication on March 27, 2023 in the Royal Gazette of the “Notification of the Protected Person Screening Committee on the Criteria, Methods, and Conditions for Protected Person Screening” raised further concerns about the proposed NSM.¹⁰ Specifically, the Notification excludes access to the NSM for certain applicants, namely: applicants “belonging to any group which is dealt with by specific mechanism or procedure by the Ministry of Interior” and migrant workers from Myanmar, Cambodia, and Laos.¹¹ The Notification also allows officials to reject, without appeal, otherwise qualified applicants on the broad basis of “national security.”¹²

On October 24, 2022, the *Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565* (the Anti-Torture Act) became law.¹³ This new law includes a provision codifying the principle of *non-refoulement*, which prohibits the forced return of a person to a country where they may face torture or other forms of ill-treatment.¹⁴ However, the law lacks an enforcement provision for *refoulement*, and Thai authorities continue to *refoule* refugees and others.¹⁵

The Human Rights Framework

Thailand has a legal mandate under international and domestic law to prevent forced returns or *refoulement*. The prohibition of *refoulement* is considered part of customary international law and binding on all states.¹⁶ Under this principle, states are obligated to assess the risks of torture, persecution, or other serious human rights violations before facilitating the transfer of a person to another country.¹⁷ This duty exists regardless of whether the person has expressed a protection concern or requested protection from the state.¹⁸ Furthermore, as clarified by the U.N. Office for the High Commissioner for Human Rights, the principle of *non-refoulement* is not only applicable to refugees but “applies to all migrants at all times, irrespective of migration status.”¹⁹ The U.N. Commission on Human Rights has also clarified that 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,” which is a high bar to meet.²⁰ However, even in cases where a person may meet that bar, the principle of *non-refoulement* remains applicable.²¹

Background

Since the coup in Myanmar on February 1, 2021, the Myanmar military’s attack on the civilian population and the resurgence of clashes between the Myanmar army and ethnic armed organizations has led to the displacement of more than one million people both within and over Myanmar’s borders, including into Thailand.²² Fortify Rights continues to document ongoing international crimes, including genocide, war crimes, and crimes against humanity, committed by the Myanmar military against the civilian population in Myanmar.²³

In response to the coup in Myanmar on February 1, 2021, the Thai government increased its military presence on the Myanmar-Thailand border and authorized authorities to return refugees to Myanmar, in violation of Thailand’s legal obligations.²⁴

Endnotes

- 1 U.N. High Commissioner of Refugees, "Convention and Protocols relating to the Status of Refugees", p. 14-16, <https://www.unhcr.org/media/28185>.
- 2 U.N. High Commissioner of Refugees, "Operational Data Portal on Refugee situations: Myanmar Situation," <https://data.unhcr.org/en/situations/myanmar>.
- 3 U.N. High Commissioner of Refugees, *Thailand Factsheet*, September 30, 2022, <https://reporting.unhcr.org/document/3351>.
- 4 Fortify Rights, "Thailand: Ensure New Policies Protect Refugees," November 11, 2019, <https://www.fortifyrights.org/tha-inv-2019-11-11/>.
- 5 Notification of the Protected Person Screening Committee: On the Criteria, Methods and Conditions for Protected Person Screening, March 27, 2023, <https://ratchakitcha.soc.go.th/documents/140D072S0000000003500.pdf>.
- 6 Fortify Rights, "Thailand: Ensure "National Screening Mechanism" is Accessible to All Refugees," December 15, 2022, <https://www.fortifyrights.org/tha-inv-2022-12-15/>.
- 7 Fortify Rights, "Thailand: Implement Anti-Torture Legislation, End Forced Returns of Refugees," October 28, 2022, <https://www.fortifyrights.org/tha-inv-2022-10-28/>.
- 8 The Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565, October 24, 2022, Section 13, <https://www.moj.go.th/view/81367>.
- 9 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, December 25, 2019, <https://dl.parliament.go.th/handle/20.500.13072/556408>.
- 10 Notification of the Protected Person Screening Committee: On the Criteria, Methods and Conditions for Protected Person Screening, March 27, 2023.
- 11 Fortify Rights, "Thailand: Ensure "National Screening Mechanism" is Accessible to All Refugees,"
- 12 *Ibid.*
- 13 The Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565, October 24, 2022.
- 14 *Ibid.*
- 15 Fortify Rights, "Thailand: Prevent Pushbacks, Establish Protection Mechanisms for Refugees Fleeing Myanmar," May 12, 2021, <https://www.fortifyrights.org/tha-inv-2021-05-12/>.
- 16 Fortify Rights, "What is Non-Refoulement?," July 30, 2021, https://www.fortifyrights.org/our_films/reg-inv-vdo-2021-07-30/.
- 17 U.N. High Commissioner for Refugees (UNHCR), *The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, January 31, 1994, <https://www.refworld.org/docid/437b6db64.html>; U.N. Office of High Commissioner for Human Rights, "The Principle of Non-Refoulement under International Human Rights Law," <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.
- 18 *Ibid.*
- 19 *Ibid.*
- 20 U.N. Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, September 28, 1984, E/CN.4/1985/4, <https://www.refworld.org/docid/4672bc122.html>.
- 21 *Ibid.*
- 22 Fortify Rights, *Nowhere is Safe: The Myanmar Junta's Crimes Against Humanity Following the Coup d'État*, March 24, 2022, <https://www.fortifyrights.org/mya-inv-rep-2022-03-24/>.
- 23 U.N. High Commissioner of Refugees, "Operational Data Portal on Refugee situations: Myanmar Situation."
- 24 Fortify Rights, "Thailand: Prevent Pushbacks, Establish Protection Mechanisms for Refugees Fleeing Myanmar."