

Myanmar  
Response Network

# Report on Thai Legislation and Policies Review

## Relating to New Arrivals from Myanmar

Advancing Legal Right Protection Project



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# Myanmar Response Network – MRN

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The network was established in April 2021. Its members are 7 organizations working on different issues to respond to the humanitarian needs and human rights of refugees from Myanmar:

Asylum Access Thailand (AAT)

Burma Concern (BC)

Human Rights and Development Foundation (HRDF)

Jesuit Refugee Service (JRS)

Rights Beyond Border (RBB)

Refugee Rights Litigation Project (RRLP)

Spirit in Education Movement (SEM)

MRN members work closely with Myanmar civil society organizations to help new Myanmar refugees in Thailand to access their rights and advocate for the expansion of mechanisms, policies and laws that protect and promote their rights.

### Disclaimer

The opinions expressed in this publication are those of the authors. They do not purport to reflect the opinions or views of the Myanmar Response Network (MRN) or its members. MRN members do not necessarily agree with the information or opinions expressed in the publication.

# Executive Summary

Despite not being a state party to the 1951 Convention on the Status of Refugees and its 1967 Protocol, Thailand has been offering humanitarian assistance to refugees from the past until now, including the newly arrived refugees from Myanmar. The advent of the National Screening Mechanism to screen “individuals believed to have been affected by persecution if deported outside the Kingdom” enables them to potentially attain the status of “Protected Person” and to afford such protection. Even though Thai laws do provide access to various rights, including birth registration, education, medical treatment, employment, etc., covering a range of fundamental rights, there are gaps in such laws and policies that essentially affect the effectiveness of protection for refugees, particularly the newly arrived refugees. The newly arrived refugees can be roughly categorized into two groups which are refugees affected by armed conflicts or living in the conflict zone and therefore wanting to seek a temporary shelter and individuals (including family members) fleeing individual persecution. There are five issues to ponder regarding this matter:

Firstly, immigration law tends to be enforced before other measures. It could be said that the Thai government recognizes the fact or the existence of a “well-founded fear of prosecution” of various types of refugees who exist in Thailand. It, however, refuses to recognize the definition of refugee. Most importantly, the Thai government tends to place the utmost importance on national security and international relations. As a result, its various implementations in this regard fail to ensure the provision of genuine protection. In particular, such humanitarian assistance shall only be offered when there is an influx of a large group

of asylum seekers who have apparently fled from armed conflicts. As a matter of fact, the Thai authorities tend to apply the immigration law whenever they encounter any illegal entry of refugees. Such refugees shall be treated exclusively based on their legal status pertaining to the immigration law and determined as having broken the law. It will lead to an arrest, detention, and deportation, which result in refugees being vulnerable to persecution. The importance of the enforcement of the immigration law is often justified by reason of legality as the authorities tend to invoke the possibility of being charged with an offence of negligence of duties should they fail to enforce the law.

Secondly, access to various rights, including medical treatment and employment, are among the fundamental rights. Still, such access to rights continues to be impeded in their daily life. Thirdly, the case of refugees detained in the IDC, and how their right to bail has been determined differently in various areas, and how the bail bond is set too high for the refugees. Fourthly, with the influx of newly arrived refugees, it is obvious that these newly arrived refugees are local and affected villagers living in the conflict zones between the military regime and the opposition groups. These people are in dire need of temporary shelters

and access to fundamental assistance, including food, medicine, etc. One of the initial measures is an effort to facilitate and ensure local mechanisms, including administrative agencies, local communities, civil society, etc., are able to offer such timely assistance faster than through the existing bureaucratic process. Fifthly, the case of newly arrived refugees with “well-founded fear of prosecution” and their families. These individuals should be prioritized in an effort to determine the status of refugee via the NSM. However, based on the existing NSM regulations, several of them tend to aim at “screening out” the individuals and it tends to raise questions as to the justification of such administrative procedures.

## **Recommendations from the report**

The management and protection of refugees should be based on an overarching understanding and holistic aspects of refugee protection. Fundamentally, there has

to be the recognition and certification of the definition of refugee. This has been done via a few existing legislations. Yet, it still needs to be elevated to the level of statutory law that includes the definition of refugee, the screening process (Refugee Status Determination process), the recognition of the right to residency in Thailand, before, during and after the NSM process, and the protection or access to various rights. In addition, the Thai government should adopt a policy to genuinely assimilate and integrate refugees into Thai society through various means while bearing in mind the challenges faced by Thai society, including an aged society and imminently a super-aged society in 2030. This also resonates with the Thai government's pledges given to the international community. Taking into account the commission of crime or the impact on social peace, as well as national security, this issue can be addressed via the enforcement of the Criminal Procedure Code and immigration law.

Recommendations regarding the refugees affected by persecution, armed conflict, and/or living in a conflict zone, etc.: The government should implement a policy to offer them humanitarian assistance by “allowing” local people from various sectors to get involved, including local villagers, community, businesspersons, civil society, non-governmental organizations, etc., to offer help, food, medicine, essential services, and transboundary assistance. A temporality alleviated border control together with the abovementioned assistance plays a crucial role in reducing the number of cross-border migration to Thailand for non-necessary cases. Despite the possible effort of the opposition armed group to establish a safe zone in certain areas international coordination (with the countries of origin) and local coordination are needed to ensure humanitarian safe passages or humanitarian corridors. In the situation where the conflict tends to protract (which is very likely), the transfer of necessities should be made possible in response to the situation, and it should be done so based on the review of lessons learned from the previous attempts to offer temporary shelter.

For individual refugees (and their families) and the development of the refugee management and protection system, considering the protective action, it is recommended that the government should recognize the definition of refugee as a person with a well-founded fear of prosecution and make effort to raise public awareness on the

inclusive definition of refugees. This can be done through the issuance of written guidelines (circulars) to concerned agencies at all levels. Such circulars should the principle of non-refoulement the recognition of the right to residency in Thailand before filing the application for the screening process (Refugee Status Determination). This can be done through two means: Firstly by advocating for the government to invoke the Immigration Act B.E. 2522's Section 17 to determine the immigration status and the right to residency in Thailand of a refugee and the issuance of their personal documents. Secondly, by advocating for the issuance of Ministerial Regulations to permit them to continue living in Thailand "due to their vulnerability to persecution" by offering them a Protection Visa, which can be done by invoking the Immigration Act's Sections 34 and 35. In addition, an effort should be made to advocate for the enforcement of existing laws and policies to survive, to provide for their families and to become part of an effort to help drive the local economy. In addition, an effort should be made to advocate for the selling of health insurance to a refugee based on an appropriate co-payment program. This can help reduce the burden of the refugees personally and will have a bearing on the funding for medical facilities. Recommendations on system development: An effort should be made to review the NSM regulations (despite not being implemented yet) through the inclusive process involving all sectors. This can give rise to recommendations to develop and enhance the system to manage refugees (the screening or status determination process for refugees and their protection) and the designation of in-charge agencies which may work on the first solution through the revision of the Immigration Act B.E. 2522 or the second solution to draft a specific law



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1

# Background of the report







In Thailand, approximately  
**100,000** refugees



**are residing inside and outside shelters.**

In Thailand, approximately 100,000 refugees are residing inside and outside shelters. However, relevant organizations providing protection for refugees argued that the real number might be higher, especially the number of urban refugees. Furthermore, the coup in Myanmar on 1 February 2021 led to a mass internal migration of people opposing the military regime, people fleeing counter-insurgency, and villagers living in the conflicted area or being affected by the conflict—some of them may even crossed the border to seek refuge in Thailand. Approximately more than ten thousand of these newly arrived refugees had sneaked into Thailand and resided along the Thai-Myanmar border in Maesot district, Tak Province.

Due to the lack of legal recognition as a refugee, these people become undocumented persons with limited access to various protections. These refugees or undocumented persons live in fear of being arrested and deported to their country of origin. Despite a continuous effort from civil society to raise awareness of the importance of protecting and assisting these newly arrived refugees, Thailand remains a non-state party to the 1951 Convention relating to the status of refugees and its optional protocol, with no existing protection mechanism.

Although Thailand is a state party to various international human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Social, Economic, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Elimination of All form of racial discrimination (CERD) and The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), in practice, the immigration law is still used as a first resort. The Immigration Act is used as a legal basis for unsafe deportation without any consideration on the non-refoulement principle. Refugees and undocumented persons being stuck in such a vacuum and legal gap is thus the topic that should be studied and reviewed to ensure that relevant laws and policies correspond to the ongoing situation.

**Objective and methodology:** Within one month of operation, this report scopes the objective to the study and review of laws and policies regarding immigration and protection. The report tries to identify gaps and challenges that need to be improved for better legal protection of refugees and asylum seekers in Thailand, especially newly arrived refugees from Myanmar. The report is primarily based on desk research and documentation reviews.

**2**

# **Refugees in Thailand: A Review**





## 2.1 Thai policy

It is commonly known that Thailand does not accept the term “Refugee” and often replaces it with the term ‘Displaced person’<sup>1</sup>, ‘Death persecution,’ or ‘Person fleeing armed conflict’ justifying that Thailand is not a state party to the 1951 Refugee Convention and the 1967 Protocol<sup>2</sup>. The target group for this report includes people who fled their

country of origin due to a well-founded fear of persecution on the basis of race, religion, nationality, political opinion, or being a member of a particular social group, which is the definition of a refugee under the 1951 refugee convention<sup>3</sup>, people fleeing armed conflict and people being affected by armed conflict in their country of origin<sup>4</sup>. Although Thailand does not recognize the status of refugees, it does not mean that there is no refugee in Thai society. On the contrary, the Royal Thai Government (RTG) is well-experienced and has dealt with various groups of refugees in the past.



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<sup>1</sup> Displaced person: People who are displaced fleeing riots, armed conflicts, or war and illegally entering the Kingdom against the Thai Immigration Act. The Cabinet resolution dated 31 March B.E. 2497. Quoted in Operation Center for Displaced Persons (OCDP), Ministry of Interior, Order regulation and guidelines for operation regarding displaced persons, (copy), pg.2, quoted in Khačhatphai Burutphat, Displaced persons from the Indochina, Prae Pitaya publishing (1993) pg. 21. The definition was later published in the Announcement of Ministry of Interior No. 4678/2597, date 8 April B.E. 2497 (1954).

<sup>2</sup> It is observed that refugees are identified and given legal definition as a targeted group of beneficiaries for social welfare (Article 44 of the Requirement of the Social Welfare Promotion committee regarding the identification of a person or group of people as beneficiaries for social welfare B.E.2555 under the Social Welfare Promotion Act B.E. 2456) It identifies “refugee” or people fleeing death persecution as a person facing a threat to life in his or her country of origin and fleeing such threat to into Thailand. They can be of Thai nationality, other nationalities with Thai race, or non-Thai with other races.”

The term refugee/people fleeing death persecution is defined as “*people facing a threat to their lives and fleeing such harm to seek refuge in Thailand. These people can be of Thai nationality or foreigners of Thai or other races.*”



## • **A group-based policy implementation**

A clear example of this policy is the policy for the displaced Vietnamese fleeing the French insurgence during 1945 – 1946, who were designated to reside in 13 provinces.<sup>5</sup> Later, 114 focal points were established, and an announcement was made allowing displaced Vietnamese to reside in ten provinces. The sub-committee on the control of Vietnamese migrants was set up. The first group of Vietnamese migrants was given an identification card for Displaced Vietnamese (Displaced Annamese) in 1967<sup>6</sup>. Thai authorities referred to these groups of people as displaced persons or Indochinese displaced persons. Thai authorities also directed different groups of displaced persons to various provinces: Former Chinese National Reformed Army soldiers to two provinces,<sup>7</sup> Former members of The Communist Party of Malaya – CPM to two provinces,<sup>8</sup> and Displaced Laos in 9 provinces.<sup>9</sup> Despite such efforts, the surge of Indochinese displaced still continued to enter Thailand. M.R. Kukrit Pramoj, the prime minister serving then, announced a restraint and push-back policy claiming that displaced persons are

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<sup>3</sup> A person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

<sup>4</sup> In the past, people also migrated to Thailand for economic reasons, such as the Vietnamese immigrants entering Thailand before the First World War or the Chinese people. Puangrat Pathomsiri recommended that people migrating due to economic reasons for fleeing indigency should also be considered as people fleeing death persecution. Please see. Puangrat Pathomsiri, Former people fleeing death persecution in Thailand: a study of Thai governance, Master of Law Thesis, Thammasart University (2013), pg. 23-24.

<sup>5</sup> According to the guideline on the legal status of people from highland edition 2 (id card for ethnic minorities), 13 provinces: Nakhornpanom, Mukdaharn, Nongkhai, Ubon-ratchathani, Udon thani, Yasothorn, Sakolnakorn, Amnat charoen, Nongbualamphu, Srakaew, Prajeenburi, Surat Thani, and Pattalung.

<sup>6</sup> Ibid. pg. 3

<sup>7</sup> Chiang Mai and Mae-Hongson.

<sup>8</sup> Yala, Narathiwat, and Songkhla.

<sup>9</sup> Nongkhai, Ubon Ratchathani, Loei, Mukdaharn, Phayao, Uttaradit, Chiang Rai, and Nan.

illegal immigrants (Cabinet resolution date 3 June B.E. 2518)<sup>10</sup> and established an immigrants reception center.<sup>11</sup>

- **An open-door policy**

Due to other states' opinions toward the RTG's forced deportation of 42,000 Cambodia refugees in the Meeting on Refugee and Displaced Persons in Geneva on 20 July 1979 and the continuous influx of refugees, which complicated the implementation of the announced restraint and push-back policy, RTG under the lead of General Kriangsak Chamanan concluded that there was no better option than providing humanitarian assistance and requesting for international cooperation. He enforced the "appropriate measure per the humanitarian principle considering Thailand's sovereignty, security, and safety." There are two key principles of the measure: granting temporary asylum for Indochinese displaced persons fleeing to Thailand and the principle of non-refoulement.<sup>12</sup> (The Cabinet resolution is dated 22 October B.E.2522).<sup>13</sup> Temporary shelters for Cambodian immigrants were also established.<sup>14</sup> An analysis explained that the government of General Kriangsak Chamanan would like to use refugee/ displaced persons as a human buffer between Thailand and Vietnam by establishing temporary shelters for Cambodian immigrants.<sup>15</sup>

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<sup>10</sup> Khačhatphai Burutphat, *supra* note. 1, pg. 7-34

<sup>11</sup> Immigrants' operation center: Ministry of Interior, *Solution of displaced persons from Lao, Cambodia, and South Vietnam*, Bangkok, Aksornsamai publishing (1997), cited by Khačhatphai Burutphat, *Indochinese displaced person* pg. 70-72. See also Daungporn Silpawut, *Thai policies on displaced person and human right issues: A case study on the Panasnikom Center*, thesis for Master of political science, Thammasat University (1992), pg. 75.

<sup>12</sup> Phanonwan Yamassathien, *Law and enforcement towards the Indochinese displaced persons in Thailand*, Master of Law thesis, Chulalongkorn University (1984). Pg. 94.

<sup>13</sup> Secretariate of the Prime Minister's office, *The daily cabinet news 22 October B.E. 2522 (1979)*, pg. 2-3. Cited by Khačhatphai Burutphat, *Indochinese displaced person* pg. 73-74.

<sup>14</sup> *Supra* note.1 Khačhatphai Burutphat, *Indochinese displaced person* pg. 73-74.

<sup>15</sup> *Ibid.*

## • Humane Deterrence policy

General Prem Tinsulanonda’s government reimplemented a stricter policy in 1979 after discovering that an open-door policy failed to solve the refugee issue and even became a pull factor. To reduce the number of displaced persons as much as possible, RTG revised the policy on displaced persons. A closed-door policy was implemented; under this policy, displaced persons would be strictly detained in the camp. There would be no resettlement to a third country until they were proven to be a bona fide refugee. Furthermore, refugee/displaced persons would be treated with the lowest standard of living possible, only enough to sustain a life.<sup>16</sup> It was the first time the government included a refugee/displaced person policy in the policy statement at the Parliament.<sup>17</sup>



<sup>16</sup> Daungporn Silpawut, *supra note*. 11, pg. 113.

<sup>17</sup> General Prem Tinsulanonda, Government policy statement at the parliament. Bangkok: Secretariat of the Prime Minister’s Office publishing (1980). Quoted in Khačhatphai Burutphat, *supra note*. 1, pg. 75.

- **Humanitarian assistance policy**

Around 1984, there was a huge influx of displaced persons fleeing from Myanmar due to the clash between the Burmese army and ethnic armed groups in Myanmar. Thailand provided humanitarian assistance to refugees or displaced persons as labelled by the RTG. They were allowed to live in nine temporary shelters along the Thai-Myanmar border. This policy was later enforced upon villagers from various ethnic groups who were affected by the clash between the Burmese armed group and the Democratic Karen Buddhist army after the general election in November 2010-2012.



- **A group-based policy implementation and the use of “illegal immigrants status” as an applicable policy for refugee/displaced persons.**

It is observed that RTG has a different policy called the “specific groups” policy for other groups of refugees, namely Rohingya and Uyghur refugees, for the reason of national security and sensitivity towards international relations. The treatment would be in accordance with Thai Immigration law<sup>18</sup>, meaning they would be arrested and detained at the immigrant detention center (IDC), waiting to be deported. In 2015, RTG deported 109 Uyghurs refugees back to China.<sup>19</sup>

Urban refugees would similarly fall under the Thai Immigration Act if they had illegally entered Thailand or overstayed their visas. However, they could still be bailed out from IDC<sup>20</sup> especially if they have the People of Concern Status from UNHCR.



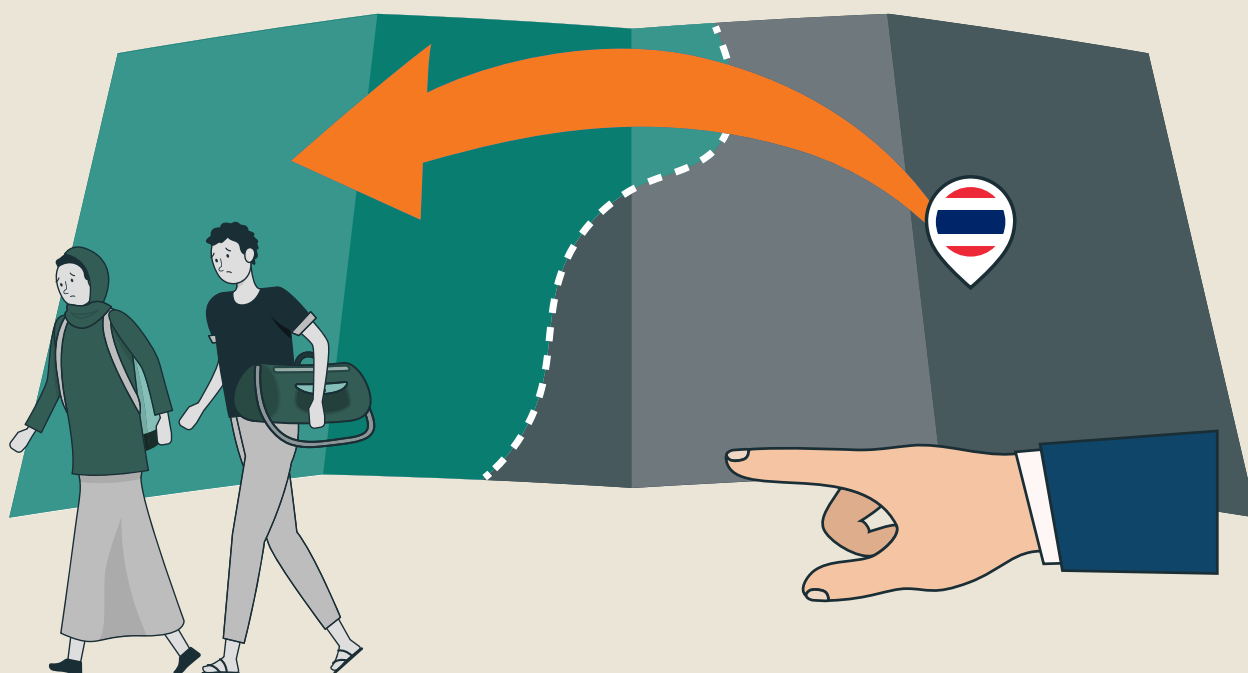
<sup>18</sup> Thai Immigration Act B.E. 2522 (1979) Section 11 and Section 12.

<sup>19</sup> Daily news, Important lesson on deporting “Uyghurs” to China. Thailand opposed the condemnation, claiming it was a counter-terrorism act. Available at: <https://d.dailynews.co.th/article/334579>

<sup>20</sup> The Thai Immigration Act. B.E. 2522 (1979) Section 54.

## • General Prayut Chan-ocha's government

Humanitarian assistance and procedures under the immigration law remain the primary policy of the RTG. Only in some circumstances would RTG try to deport refugees to their countries of origin. For example, in the case of Hakeem al-Araibi, a Bahraini footballer whom the Australian government had already granted refugee status, He was arrested by Thai police per the Interpol arrest warrant. He was put under the Bahrain government's extradition request consideration in February 2019.<sup>21</sup> There was also the case of Rahaf Qunun, a Saudi Arabian woman who fled persecution on the basis of religion in June 2019.<sup>22</sup> However, at last, none of them were deported back to their countries of origin.<sup>23</sup>



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<sup>21</sup> The Guardian, Footballer Hakeem al-Araibi sues Australian government over Thai prison detention, available at: <https://www.theguardian.com/sport/2021/jun/29/footballer-hakeem-al-araibi-sues-australian-government-over-thai-prison-detention> [accessed 26 October 2023]

<sup>22</sup> Aljazeera, Rahaf al-Qunun: Thailand admits Saudi woman seeking asylum, available at: <https://www.aljazeera.com/news/2019/1/7/rahaf-al-qunun-thailand-admits-saudi-woman-seeking-asylum>, [accessed 26 October 2023]

<sup>23</sup> The standard, Thai court rules extradition cases be dropped, available at: <https://thestandard.co/thai-court-rules-extradition-case-be-dropped/> [accessed 26 October 2023]

One important milestone in actions towards refugees (including other illegal immigrants) is alternatives to detentions for mothers and children. This measure was welcomed by various government organizations<sup>24</sup>, and it led to a memorandum of understanding on alternatives to detention (MOU ATD) on 21 January 2019.<sup>25</sup> Nonetheless, detention prior to deportation still means a long unknown faith. Overcrowded detention rooms deteriorate detainees' hygiene and health and could even lead to death in detention centers.<sup>26</sup> A report in February 2023 shows that some Uyghur refugees have been detained in the detention center for more than nine-year and one of them passed away in the detention center.<sup>27</sup> The National Human Rights Commission (NHC) held a press conference in the same month stating that the situation amounts to human rights violations.

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<sup>24</sup> This includes the Royal Thai Police, Ministry of Social Development and Human Security, Ministry of Foreign Affairs, Ministry of Interior, Ministry of Public Health and Ministry of Labour. For further information, please see:

<sup>25</sup> Asylum Access Thailand, available at: [https://asylumaccess.org/wp-content/uploads/2021/06/Thailand-MOU\\_ATD\\_Thai-version.pdf](https://asylumaccess.org/wp-content/uploads/2021/06/Thailand-MOU_ATD_Thai-version.pdf)

<https://www.mfa.go.th/th/content/5d5bd20815e39c30600278f5?cate=5d5bcb4e15e39c306000683d>

<sup>26</sup> BBC Thai reported the death of Asih Abdullah, an Uyghur refugee who died in the detention center. Abdullah was one of the 350 Uyghur refugees influx from Zin Zhiang self-governed state that had fled to Thailand in 2013 and was later arrested by the authorities. After the death of Abdullah, human rights activist groups in Thailand called for the RTG to find a more humane treatment to handle the struggle of 50 Uyghur refugees who have been detained in Thailand for more than 9 years. Misery of Uyghur refugees: indefinite detention and death with no medical care. Available at: <https://www.bbc.com/thai/articles/cgr0m7y78z7o>

<sup>27</sup> Office of the National Security Council, "NSC Weekly news report No.39/2023, available at: [https://www.nhrc.or.th/NHRCT-Work/Statements-Press-Releases-Open-Letters/Press-Releases/23450.aspx?fbclid=IwAR3\\_br\\_UzLUC24fXcqNKwdl6jm6mWnm5ZcHiWcoHugsjynLLQItInLJtNBs](https://www.nhrc.or.th/NHRCT-Work/Statements-Press-Releases-Open-Letters/Press-Releases/23450.aspx?fbclid=IwAR3_br_UzLUC24fXcqNKwdl6jm6mWnm5ZcHiWcoHugsjynLLQItInLJtNBs)

On 3 December 2019, the Cabinet approved the RTG's pledge at the first Global Refugees Compact on eight important points between 16 and 18 December 2019.<sup>28</sup> The government's attitude led to an expectation for an improved refugee protection scheme. However, many policies were frozen due to the COVID-19 pandemic, except for the emergence of a national screening mechanism to screen "people with a well-founded fear of persecution." The Cabinet announced the implementation of **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**<sup>29</sup> and seven other NSM committee announcements in 2023.

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<sup>28</sup> The points mentioned are as follows:

1. The procedure to recognize educational degrees and certificates of children fleeing armed conflict in Myanmar.
2. Work opportunities for people who repatriated as per Thai rules and vocational training prior to the voluntary repatriation
3. A development of the coordination on the voluntary repatriation process for people fleeing armed conflict in Myanmar.
4. Guideline on the development and preparation plan for the area and local community receiving repatriated people.
5. Capacity building for competent authorities to implement screening mechanisms to differentiate protected persons from economic migrants.
6. An effective implementation of Alternative to detention for children needing international protection.
7. Access to appropriate health care for children needing international protection in Thailand.
8. Access to the criminal justice system on a non-discriminatory basis under the project called "justice care"

Please see Office of the National Security Council, available at:

<https://www.nsc.go.th/%E0%B8%81%E0%B8%B2%E0%B8%A3%E0%B8%9B%E0%B8%A3%E0%B8%B0%E0%B8%8A%E0%B8%B8%E0%B8%A1%E0%B9%80%E0%B8%A7%E0%B8%97%E0%B8%B5%E0%B8%9C%E0%B8%B9%E0%B9%89%E0%B8%A5%E0%B8%B5%E0%B9%89%E0%B8%A0%E0%B8%B1%E0%B8%A2/>

<sup>29</sup> The Royal Gazette No. 136 Special edition 314 D Dated 25 December B.E. 2562. (2019)



In 2023, the National Security Policy and Plan (2023- 2028) was promulgated<sup>30</sup>. The sixth pillar of the policy and plan addresses the management of illegal immigrants and irregular migrants, focusing on the management of the group of people that are vulnerable to national security and international relations, irregular migrants, and protected persons or people undergoing the NSM process and could not return to their countries of origin. It intends to strike a balance between the national security and international relations aspect and the international human rights principle. Refugee was identified as the third objective of the plan which is called The management to prevent and solve the problem of illegal immigrants vulnerable to national security and international relations, irregular migrants, protected persons, and people undergoing NSM who could not return to their country of origin. The key objective is for Thailand to establish systems and measures to oversee illegal migrants sensitive to national security and international relations, irregular migrants, including protected persons and individuals undergoing the NSM process and cannot return to their country of origin. Such measures and systems should be carried out in a manner that respects the balance of national security, international relations, and human rights principles. The key indicator is that Thailand would establish a protection system, measures, and guidelines for the administration of illegal migrants sensitive to national security and international relations. Irregular migrants, including protected persons and individuals undergoing the NSM process and, cannot return to their country of origin before 2028.<sup>31</sup>



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<sup>30</sup> The policy and plan have a legal effect from 5 October 2022 to 30 September 2028. See the Royal Gazette no.140, section 21, dated 20 March 2023.

<sup>31</sup> The National Security Policy and Plan (2023- 2028) pg. 60-61

## • **Actions towards newly arrived refugee from Myanmar**

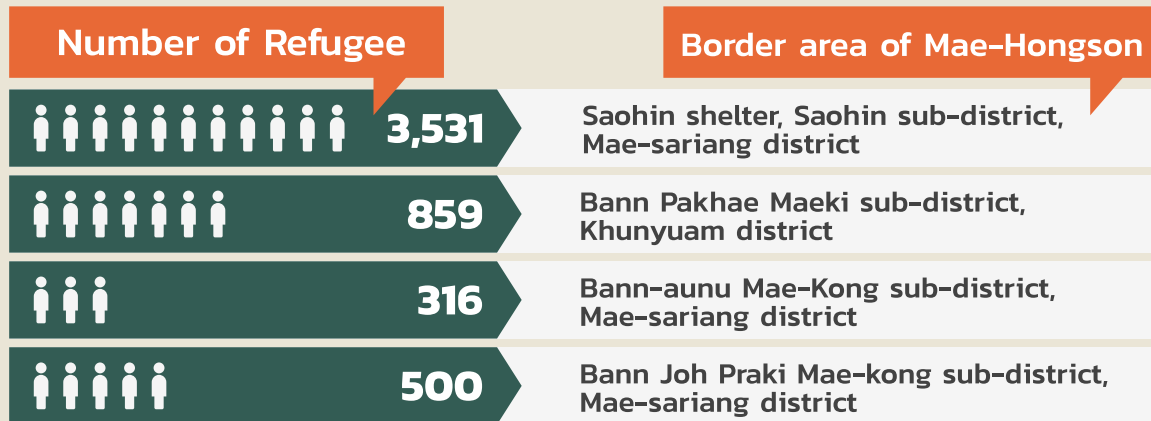
After the coup in February 2021 in Myanmar and the crackdown of the opposition groups by the Burmese Army, many Myanmar people sought refuge in Thailand. This newly arrived refugee from Myanmar can be categorized into two groups: (1) a surge of refugees who were affected by attacks and conflicts between the Burmese army and ethnic armed groups. Most of them are villagers who had to abandon their homes, run away from bombs dropped from fighter aircraft, and enter Thailand through the border of Mae-Hongson and Tak. (2) people fleeing persecution on the basis of their political opinions. One important point to be taken into consideration is that among these newly arrived refugee, 5,000 of them are children. Some of these children are living in the Migrant Learning Center in Maesot district.

The RGT identified these newly arrived refugees as “people fleeing armed conflicts from Myanmar” and provided them with humanitarian assistance. However, the humanitarian assistance they offered is different from what they had done in the past. To further elaborate, RTG appointed the royal armed forces as the responsible authority for humanitarian aid<sup>32</sup> and distribution focal point of food, medicine, etc., to the refugees. These newly arrived refugees are designated to reside in the assigned area along the border—no temporary shelters. It is important to note that they would be pushed back to their country when there are no signs of bombing despite the protracted nature of the conflict. Available information shows that in June 2023, there was a clash between the Karenni armed group and the Burmese army, which led to an influx of Karenni displaced persons fleeing the conflict into shelters in Mae-Hongson. Within two-week time after the clash, there were 5,206 displaced persons: 3,531 people in the Saohin shelter, Saohin sub-district Mae-sariang district, 859 people in Bann Pakhae Maeki sub-district, Khunyuam district, 316 people in Bann-aunu Mae-Kong sub-district, Mae-sariang district, and 500 people people at Bann Joh Praki Mae-kong sub-district Mae-sariang district (information as of 13 July 2023).<sup>33</sup> A timely humanitarian assistance is an emergency issue for these groups of refugees.

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<sup>32</sup> Summary note from the Covid-19 Disease Situation Management Committee Meeting No. 4/2021 dated 19 March 2021, pg.7-8

## An influx of Karenni displaced persons fleeing the conflict into shelters in Mae-Hongson.



## Within two-week time after the crash, there were **5,206** displaced persons.

(\*information as of 13 July 2023)

Instant humanitarian assistance is an urgent matter for this group of refugees. Hence, it is fair to say that the administrative sector, CSOs, and NGOs are more experienced at providing humanitarian aid as it is faster and more thorough compared to the royal armed forces, especially when the conflict in Myanmar has been protracted for more than two years.

Mr. Satarn Chevavichaiphong, The Moei, Ngau, and Saraween rivers resources management network, informed that “This huge influx of refugees is of Karenni and Karen ethnicities and that we, as Thai people, when we see our neighbour suffering, we would like to help. He wished the RTG would accept these people and allow villagers, locals, NGOs, and administrative authorities to provide them with assistance such as food, water, and medical care directly. For as much as we can do it quicker, and the government’s assistance can sometimes cause that food to be rotten by the time it is delivered.”<sup>34</sup>

<sup>33</sup> Thai Publica, Challenges in the management of displaced Myanmar fleeing armed conflict and seeking refuge in Thailand, available at: <https://thaipublica.org/2023/07/challenges-of-thailand-concerning-myanmar-refugees/>

<sup>34</sup> An interview was conducted on 18 October 2023

Pornsuk Kerdsawang, the director of the Friends Without Border Foundation, stated “If the RTG shuts all possible ways of seeking refuge and deporting people back to Myanmar before an appropriate time, they will sneak out and disappear into Thai territory. Hence, they are more likely to stay longer in Thailand. However, if the government practices the non-refoulment, they will definitely return when it is safe. It is also observed that political refugees who are against the Burmese army are more likely to move into the inner part of the area.”<sup>35</sup>

## **2.2 The administration and management of Thailand.**

### **2.2.1 Thai’s operational approach of reducing the number of refugees**

According to international standards, durable solutions for refugees include voluntary repatriation, local integration, and resettlement. However, in Thailand, there are only two possible durable solutions: voluntary repatriation and resettlement. Moreover, it is exclusive for people identified as “displaced persons” by the RTG. RTG’s important measure to facilitate durable solutions was to close the temporary shelter to reduce the number of displaced persons. As mentioned above, two main strategies for managing refugees are establishing displaced persons receiving centers or designated limited residing areas in the case of Indochinese displaced persons and establishing temporary shelters for Myanmar displaced persons.

Bann Huay Namkhao controlling center (Kheck Noi), Khao Kho district, was the last Indochinese displaced person receiving center to be closed in December 2009 while Myanmar displaced persons were still undergoing the voluntary repatriation process. (RTG has conducted voluntary repatriation four times in total.)<sup>36</sup> The Office of the National Security Council (NSC) plays a crucial role in policymaking regarding displaced persons. They highlighted that voluntary repatriation must be done “voluntarily with honour,

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<sup>35</sup> An interview was conducted on 28 October 2023.

dignity, and guarantee of safety upon return.”<sup>37</sup> Currently, there are 90,000 displaced persons living in the nine temporary shelters, and the screening process for resettlement in a third country is about to resume<sup>38</sup>



Currently, there are **90,000** displaced persons living in the nine temporary shelters.

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<sup>36</sup> The first time was in October 2016 with 71 people. The second time was in 2018 with 93 people. The third time was in 2019 with 565 people, and the fourth time also in 2020 with 310 people. The fifth time was planned to be done in 2020 but it stopped due to the Covid pandemic and the situation in Myanmar. See also meeting notes of the National Security Council: border affairs, national strategy, and national reform at the House of Representatives 69th meeting dated 16 December 2021 pg. 7-8.

<sup>37</sup> Ibid pg. 7

<sup>38</sup> Prachathai online, it is admitted that the resettlement project for displaced persons along Thai Myanmar border may resume after 10 years. Available at: <http://prachathai.com/journal/2023/06/104523>

## 2.2.2 Identity document issuance and the negotiation from refugees

A headcount is a key refugee management tool to know the exact number of refugees and to keep them from going out of restricted areas, displaced persons receiving centers, and temporary shelters.

There has been an issuance of **identity documents and registration (household registration)** for people fleeing persecution and their family members, the influx of migrants affected by the conflict and political changes, and those living in conflicted areas. Thus, Thai society is familiar with the “19 types of colored cards.”<sup>39</sup> Thai identity card has 13 digits. Illegal immigrant’s first digit will start with the number 6, and their children’s digit will start with the number 7 if they are born in Thai territory.<sup>40</sup>

Later on, people with the abovementioned cards were identified as ethnic minorities or indigenous people commonly known in Thai society as “stateless persons.” Their ID cards were changed to “ID cards for registered stateless”<sup>41</sup> with 22 sub-categories.<sup>42</sup> The other group that receives identity cards is refugees in the temporary shelter, whose cards are issued under the cooperation of the Ministry of Interior and UNHCR. They worked together on the household registration process and issuance of ID cards. They divided people into two groups: people fleeing armed conflicts and residents (people entering Thailand after 2008).<sup>43</sup> Since 2008, the Department

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<sup>39</sup> (1) Displaced Vietnamese – Yuan (white card with blue lining) (2) Former Kuo Min Tang Soldier (white card) (3) Haw Chinese Immigrant (Yellow card) (4) Independent Haw Chinese (Orange card) (5) Former Malaya Communist (Green card) (6) Thai Lue (Orange card) (7) Displaced Lao (Blue card with navy lining), Displaced Nepali (Green card) (9) Displaced Myanmar Nationality (Pink card) (10) Myanmar illegal migrants (purple and orange card) (11) Displaced Myanmar with Thai race (Yellow card with navy lining) (12) Highland people (Blue card) (13) Displaced Thai from Kong Island (Green card) (14) Cambodian immigrants (15) Mlabri people (Blue card) (16) Highlander’s survey card (Green card with red lining) (17) Illegal migrant workers (specifically for B.E. 2451) Please see ministry of provincial administration guideline *supra note*. 5

<sup>40</sup> Non-Thai ID Card with digit number 6xxxx-xxxxx-xxx and 7xxxx-xxxxx-xxx. They will be registered in the household registration for temporary resident (legally enter)

<sup>41</sup> The Bureau of Registration Guideline regarding the issuance of non-Thai people B.E.2551



of Provincial Administration has been issuing ID cards for people with no registration record, and their 13-digit numbers are 0xxxx-x75xxx-xxx. (0-75 group)<sup>44</sup>

Apart from the abovementioned group of refugees/displaced persons, the RTG has no policy to issue any identity document for other groups of refugees. Thus, registering

<sup>42</sup> The 22 sub-categories are (1) Displaced Vietnamese (2) Former Kuo Min Tang Soldiers (3) Haw Chinese Immigrants (4) Independent Haw Chinese (5) Myanmar displaced persons (6) Myanmar illegal immigrants (with permanent residency) (7) Myanmar Illegal immigrants (living with employers) (8) Displaced Vietnamese (9) Displaced Lao (10) Displaced Nepali (11) Former Malayu Communist (12) Thai Lue (13) Mlabri people (14) Displaced Thai from Kong Island (15) Cambodian Illegal Immigrants from Kong Island (16) Cambodian Illegal immigrants (17) Displaced Myanmar with Thai race (18) Displaced Myanmar with Thai race who entered Thailand after 9 March 1977 (19) Highlander (the 9 hill tribes) (20) Highlander (non-hill tribes) and (22) Morgan people. Please see Letter from the office of central registration, urgent MT0309.8/V 29, dated 24 March B.E. 2565 (2022) on the standard of practice for identifying and reviewing the ethnic group of people with no registration record who had fled and been residing in Thailand.

<sup>43</sup> House of Representatives, Report on the study of People fleeing from Conflict in Myanmar who resided in the 9 temporary shelters pg. 25.

<sup>44</sup> ID card for people with no registration record 0xxxx-75xxx- xxx would be register in the registry type TR 38A.

for newly arrived migrant workers would be a possible way for them to get a document. Although such registration will not legalize their illegal migrant status, they can temporarily reside and work in Thailand until the permit expires. Refugees/ displaced persons may register as migrant workers and shift their status from refugee to migrant workers. The RTG should be able to estimate this reasonable possibility because, with the mentioned status shift, the decrease of refugees in the paper would not reflect reality.<sup>45</sup> The other possible way to get a document would be access to the no-household record ID card or the 0-00 card, which will be further elaborated in the section related to protection. The case of Anwar Amin<sup>46</sup>, an urban refugee who accessed the identity document type 0-00, is an important and interesting case study for the use of the 0-00 card as a solution for a displaced person with no documentation. In some circumstances, refugees may even pay the broker just to get any documentation. Besides the abovementioned methods, refugees may pay a certain amount of money to the broker to get some sort of identification document.



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<sup>45</sup> The cabinet resolution date 28 September B.E. 2564 (2021) opened a new registration process for migrants whose permit expired and illegal migrants with no documents.

<sup>46</sup> Anwar Armin is an urban refugee from Kuwait with a POC document from UNHCR. He requested for his 0-000 card in March 2022 and he got his card in September 2023 with assistance from Ms. Siwanuch Sroithong. For further information please see Siwanuch Sroithong (Golden Fish Legal clinic – The mirror foundation) “Anwar Amin Kuwaiti refugee, available at: <https://www.facebook.com/media/set/?set=a.4889180121093382&type=3>



### **2.2.3 Legal status of a person (which could be changed if with an applicable policy)**

As mentioned earlier, Thailand does not recognize the existence of refugees, claiming that it is not a state party to the 1951 Refugee Convention and its 1967 Protocol “when in reality, there are people who fit all the refugee definitions.”<sup>47</sup> The RTG even uses the term “illegal immigrants” to describe people fleeing persecution.<sup>48</sup> The fact that the RTG allows refugees to live in the displaced persons receiving center in the restricted area in different provinces including temporary shelters does not amount to the legal right to reside. Such residency is not a result of the RTG exercising its power according to the law, but it was just an act of leniency out of respect for the humanitarian principle.<sup>49</sup>

Nonetheless, it is observed that many former displaced persons who were not repatriated or resettled but have scattered in various restricted provinces were later identified as “ethnic minorities” by the RTG, commonly known as registered stateless persons by Thai society. To solve the statelessness of these people, RTG came up with the following policy: The RTG would, by the power of the Immigration Act Section 17, change the legal status and residency of stateless persons when it is established that their parents/ ancestors have been residing in Thailand for a period of time and formed a connecting point between individual and state through local and cultural integration as a result of the long residency. Their children may form a connecting point between them and the state via being born in the Thai territory. Nowadays, the first generation

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<sup>47</sup> The meeting notes of the National Security Council supra note. 36 pg.33

<sup>48</sup> According to the Immigration law, people with no Thai nationality have to cross the border in the designated platform as mentioned in the Thai Immigration Act B.E.2522 Section 11

<sup>49</sup> In the past, RTG was exercising its power under the Thai Immigration Act B.E. 2522 to allow certain groups of people to “come in” and “reside” in various forms, depending on the applicable policies. For example, they may be given an illegal immigrant status but were allowed to stay temporarily. Some illegal immigrants were given a temporary right to stay. Some were even granted legal immigrant status with a temporarily right to stay. Some may be given legal immigrant status with permanent residence.

of registered stateless person (the parents – the number 6 group) may obtain legal immigrant status and request permanent residence. If they give birth while holding permanent residence status, their children would be entitled to Thai nationality through the principle of *jus soli*.<sup>50</sup>

Furthermore, they could obtain Thai nationality through the naturalization request after 5-year residency.<sup>51</sup> Children born in Thailand (group number 7) can undergo the naturalization process if they can prove that they were born in Thailand.<sup>52</sup> Moreover, they will have the right to work with a work permit<sup>53</sup>, and they can choose any occupation except for one that is strictly reserved for Thai nationals.<sup>54</sup>

One important observation point is that the legal status of these formerly displaced persons fleeing death persecution was changed from illegal immigrants to a spared temporary stay – temporary residence – permanent residence – and then to possible access to Thai nationality.<sup>55</sup> It can be said that such measures unofficially allow refugees and displaced persons to integrate into the Thai community. The criteria were based on time conditions and situations: 1. Long residency in Thailand that resulted in integration in social, cultural, language, and way of living. 2. Being a second generation or later generation born in Thailand.

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<sup>50</sup> Thai Nationality Act B.E. 2508 (1965) Section 7

<sup>51</sup> Thai Nationality Act B.E. 2508 (1965) Section 10 and Section 11

<sup>52</sup> In case the child was born in Thailand before 26 February 1992, they would get Thai nationality at birth by the principle of *jus soli* as a legal effect of the Immigration Act 4 B.E. 2551 (2008). If they were born after 26 February 1992, they would get Thai nationality by the principle of *Jus soli* according to the Thai Immigration Act 3 B.E. 2535 (1992) Section 7 bis.

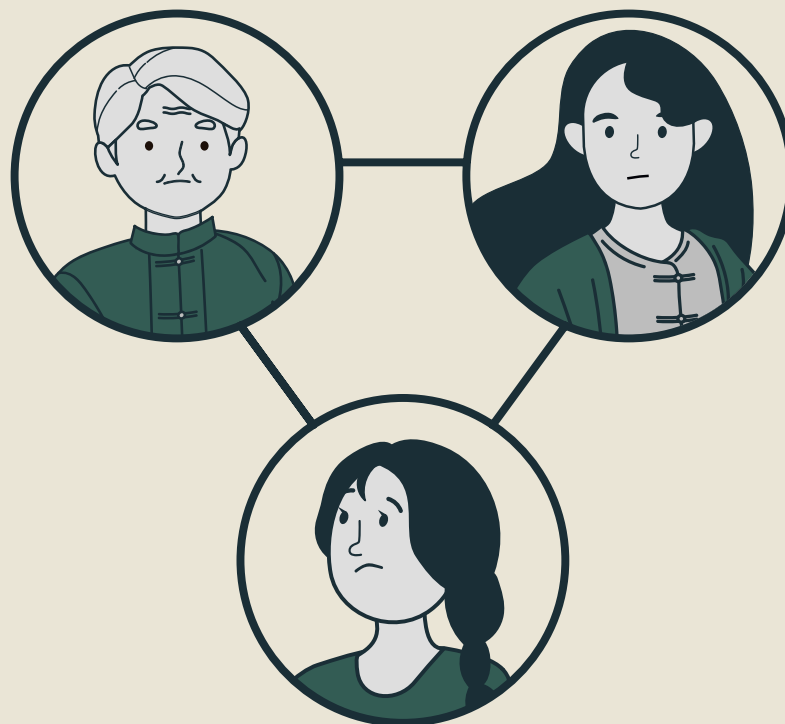
<sup>53</sup> Working of Aliens Act B.E.2551 (2008) Section 13, which was later canceled and replaced with FOREIGNERS' WORKING MANAGEMENT EMERGENCY DECREE, B.E. 2560 (2017) revised version 2 B.E.2561 (2018) Section 63/1

<sup>54</sup> Announcement from the office of the Prime Minister regarding the determination of occupation that foreigners may request for work permit under Section 13 of the Foreigner Working Management Emergency Decree B.E.2551, The Royal Gazette No.133 special edition 260 d dated 15 September 2016.

<sup>55</sup> Cabinet Resolution dated 7 December 2017 and the recent Cabinet Resolution dated 26 January 2022.

## • Discussion points

There is a debate about whether or not the time condition and situation criteria mentioned above could be applied to refugees who have been living in Thai temporary shelters for more than 30 years. On this matter, the National Security Council raised concerns that “People living in temporary shelters are those who opposed the Burmese military. Even though time has passed, there is no clear indicator of whether their political opinion has changed.” The other important excuse is “the fear of possible impact on international relations”<sup>56</sup> However, when considering the characteristics of the second generation and the later generation who were born in Thailand, it is observed that they do not have any bonding with their parent’s country of origin.<sup>57</sup>



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<sup>56</sup> Joint Meeting with deputy secretary general of the National Security Council on 25 August 2023 at the office of the National Security Council.

<sup>57</sup> Office of the National Human Rights Council, Alternative policy solution for People Fleeing armed conflict in the temporary shelters, available at: [http://www.cesd.soc.cmu.ac.th/wordpress/wp-content/uploads/2017/01/Report2.pdf?fbclid=IwAR0FvFNpSzogCobSIh\\_86uvjPVsBiW8xakYFxp\\_jyFRaIMRFZqoYK-PlnKEE](http://www.cesd.soc.cmu.ac.th/wordpress/wp-content/uploads/2017/01/Report2.pdf?fbclid=IwAR0FvFNpSzogCobSIh_86uvjPVsBiW8xakYFxp_jyFRaIMRFZqoYK-PlnKEE)

## 2.2.4 Other types of protection: Observations and Discussions.

International Protection of Refugees is affirmed in various international human rights conventions, and the essence of such protection is protection from threat to life or persecution (the right to life) and other fundamental rights crucial to sustaining life. This principle is enshrined in the Universal Declaration of Human Rights 1948 Article 14 and the ASEAN Human Rights Declaration Article 16. Especially the principle of non-refoulement, which is enshrined in the International Covenant on Civil and Political Rights (ICCPR) Article 7 and the Convention against Torture and all Forms of Inhuman Treatment and Punishment (CAT) Article 3. It creates a legal obligation upon Thailand as a state party and as a customary international law and *jus cogens*.<sup>58</sup>

Thailand has a policy to ensure the fundamental rights of non-Thai people, such as registered stateless persons and undocumented persons. It is observed that refugees who hold such status or meet the legal criteria for such status would also have access to such rights. Nonetheless, it is important to note that, in practice, access to such fundamental rights may have certain limitations and risks as follows:



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<sup>58</sup> Conclusion No.25 (XXIV) 1982 in UN Doc. No. 12 A (A/37/12/Add. 1) pg. 55-56. Available at: <https://www.refworld.org/pdfid/5a2ead6b4.pdf>



## • Education

Since 2005, all children have had access to education regardless of their legal status and parents' legal status.<sup>59</sup> Therefore, children of refugees would also have access to education. However, in July 2023, there was a case where 126 undocumented and stateless children were deported while the school dean was prosecuted.<sup>60</sup>

This case shed light on children's rights violations according to both international law and national law that was carried out by state officials. The abovementioned case was an implementation of immigration law, which is a general law without considering the principle of the child's best interest in the Child Protection Act B.E.2546 (2003), which is a specific law.<sup>61</sup> Such an act also violates the right to education of undocumented children, which was mentioned in the Ministry of Education Regulation and the rights enshrined in the Convention on the Rights of the Child, which obliged Thailand as a state party.<sup>62</sup> Furthermore in Maesot district, Tak Province, there is a Memorandum of Understanding (MOU) between the municipal office of primary education District 2 and the organisation called Rights Beyond Border.<sup>63</sup> The objective of the MOU is to ensure that children in the Maesot's migrant children center can at least one out of five existing education system.<sup>64</sup>

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<sup>59</sup> Cabinet Resolution dated 10 January 2005 and the regulation of the Ministry of Education regarding the acceptance of students into school B.E. 2005.

<sup>60</sup> Transborder news, deportation of 126 students to Myanmar – peeling the RTG's policy (1) and (2), available at: <https://transbordernews.in.th/home/?p=34978>

<sup>61</sup> Section 22 Child Protection Act. B.E. 2546: Treatment of the Child, in any case, shall give primary importance to the best interests of the Child and there shall not be unfair discrimination.

In determining if any act is for the best interests of or is discriminatory in an equitable nature to Child, considerations shall be made to the guidelines stipulated in the Ministerial Regulation.

<sup>62</sup> Bangkok Post, Decision to deport Myanmar Children condemn, available at: <https://www.bangkokpost.com/thailand/general/2607111/decision-to-deport-myanmar-children-condemned>

<sup>63</sup> The Corporation under the education promotion and support for migrant children who are affected by the long-term impact of Covid 19 and the advancement of migrant children protection in Maesot district is effective from 2021-2026

<sup>64</sup> (1) Ensuring non-discriminatory access to education – schools under the municipal office of primary



### • **Birth registration**

Since 2008, all children born in Thailand have access to birth registration regardless of the parent's legal status.<sup>65</sup> This also applies to children born in temporary shelters.<sup>66</sup> Nonetheless, there are practical challenges and limitations regarding the birth registration of people with no Thai nationality. For example, government officials often request more evidence and witnesses than the law requires. Undocumented people are unlikely to report the birth of their child to the authorities due to fear of being arrested.

### • **Identity document**



Since 2008, RTG has been issuing ID cards and registering undocumented persons, hoping to solve the issue of undocumented persons per the principle of recognition of a person before the law, which is one of the fundamental human rights. Criteria for issuing ID cards and household registration include:

1. The person must hold no identity document from no state.
2. The person does not have the 13-digit number issued by the RTG.
3. The person

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education District 2 and migrant children's learning center shall ensure that there will be no unreasonable discrimination in the admission process. (2) Ensuring that the migrant children's learning center has a child protection policy for children who are affected by the long-term impact of Covid19 in place. (3) Ensuring that the migrant children's learning center has education management in the situation of the protracted effect of the pandemic. (4) Ensuring the capacity building for teachers and education staff on teaching and protection of children in the education system. (5) Ensuring fundraising and response mechanisms in case of emergency situation.

<sup>65</sup> Parents or guardians of the child have the duty to report the birth while the officers have the duty to register the birth and issue the birth certificate. The type of birth certificate will depend on the condition of birth of the child and his or her parents (according to the Civil Registration Act B.E.2534 revised version 3 B.E.2551 (2008)) Section 18 and 20. For example, birth certificates of children whose parents are non-Thai but have a temporary residence, the 13-digit for ID card would start with the number 7 and their birth, undocumented children with 0-00, and children of displaced persons in the temporary shelters would start with 0-75.

<sup>66</sup> MT. 0309.1/V2 dated 17 January 2017 and MN 0309.1 V27 dated 9 June 2017.

must have resided in Thailand for a certain period of time. If meet all the criteria mentioned above, undocumented persons can request a “registered stateless person” card and receive the 13-digit personal number starting with the number 0 category 00 (0-00).<sup>67</sup> Even so, people holding such documents will remain the status of illegal migrants with no right to stay, but they at least will not be arrested. Other pros that come with the card are the right to work, access to health insurance, and the right to request a temporary residency in Thailand after five years.<sup>68</sup>

- **Access to health care**



All people are entitled to medical assistance from health care providers, and they cannot refuse such assistance.<sup>69</sup> However, the service is not free of charge, as the patients shall be responsible for any financial expense. Social work units are available in the hospital where patients can ask for assistance, but occasionally, they will encourage patients to sign the debt acknowledgement agreement.



- **Health insurance**

Currently, stateless people group number 6 and number 7, people with undocumented status ID cards 0-89 and 0-00 would have access to health insurance (People with legal status and rights issue Fund).<sup>70</sup> Furthermore, children under the age of seven have

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<sup>67</sup> ID card of a registered stateless person 0xxxx-00xxx-xxx. They shall also be registered in the household registration type TR. 38 A which is a document designed by the government to solve the issue of stateless or undocumented persons in 2008 (The Civil Registration Act B.E.2534 (1992) 2nd revision B.E.2551 Section 38 part 2) together with Ministry of Interior document no. MT.0309.1/V3 dated 22 January 2015.

<sup>68</sup> Cabinet Resolution dated 26 January 2021

<sup>69</sup> The National Health Security Act B.E.2545 (2003) Section 5.

<sup>70</sup> Cabinet Resolution Dated 23 March 2013, Cabinet resolution dated 20 April 2015, Cabinet resolution dated 10 March 2020, Cabinet resolution dated 22 September 2020, and Cabinet resolution 30 March 2021. Available at:

the right to buy health insurance for 365 baht, and the price will increase to 2,200 baht for children above seven years old. However, the sale of health insurance would depend on each hospital's policy<sup>71</sup>, and there is still a question of access to health insurance for refugees with no documents.<sup>72</sup>



### • Eligibility for bail

The Thai Immigration Act B.E.2522 Section 54 paragraph 3 states that detainees can request a bailout, and they shall report themselves to the official as scheduled.<sup>73</sup> In reality, however, it is observed that each immigration office would have different practices regarding bail. Furthermore, it is very likely in practice to reject a bail request from a Myanmar refugee. In some cases, the bail money could cost 50,000 baht, and it is considered expensive for refugees.

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<sup>71</sup> Ministry of Public Health's announcement regarding the health check-up and health insurance for foreigners dated 30 March 2015.

<sup>72</sup> Darunee Paisarnpanichkul, The situation of access to health care for non-Thai nationals and recommendation, Songkla nakharin University Law Journal, Year 5 Vol.1 (July 0 December 2023) pg. 44-62. Available at: [https://dhes.moph.go.th/?page\\_id=10300](https://dhes.moph.go.th/?page_id=10300)

<sup>73</sup> The Thai Immigration Act B.E.2522 (1979)

Section 54: Any alien entering or staying in the Kingdom without permission, or with permission that is expired or revoked, may be repatriated from the Kingdom by the competent official. If an investigation is to be conducted for repatriation under paragraph one, the provisions of Sections 19 and 20 shall apply mutatis mutandis.

In a case where there is an order to repatriate an alien from the Kingdom, while waiting for the repatriation to take place, the competent official shall have power to permit the alien to reside at a place provided that such alien shall have to come to meet the competent official on the date, time and place as prescribed, with bond or with bond and security, or the competent official may detain such alien at a place for however long as is necessary. The detention expenses shall be borne by such alien.





## • The right to work

It is possible for people without Thai citizenship to work with a work permit if the RTG has announced a policy identifying the type of occupations and designated area. There are two concerning points for the right to work of non-Thai people:

Refugees in temporary shelters, including refugees detained in IDC: The RTG shall prescribe the type of work available for refugees, considering national security and its impact on society. Refugees shall request a work permit following Foreigner Working Management Emergency Decree B.E.2560 Section 63(1) – (2)<sup>74</sup>. However, it is noted that this law has never been enforced despite its legal recognition.

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<sup>74</sup> The Foreigner’s work Management Emergency Decree B.E.2560 2nd revision B.E.2561 Section 63. A foreigner of the following character may apply for permission from the Registrar for carrying out the work of the type prescribed by the Council of Ministers by publication in the Government Gazette with the recommendation of the Commission, having regard to national security and social impacts:

(1) being exiled under the law on exiling and granted lenient permission for engaging in an occupation at a particular place in lieu of an exile or awaiting an exile;

(2) entering or staying in the Kingdom without permission under the law on immigration but being granted permission to stay in the Kingdom temporarily for the purpose of awaiting a deportation from the Kingdom under the law on immigration, which is not the case for section 63/2

The application for work permission and the issuance of a work permit under paragraph one shall be in accordance with the rules, procedures, and conditions prescribed in the Ministerial Regulation. The work permission shall be valid for the same time as their lenient permission to stay in the country but up to one year after the date issued. The renewal shall be on a necessity basis but not more than one year per time.

The registrar shall notify the responsible authorities according to immigration law after the work permit is issued.

By the end of January every year, per immigration laws, the responsible official under the immigration law shall notify the Registrar of the results of exile or deportation. In case there is no exile or deportation or no notification from a competent official according to immigration law, the registrar shall have the power to renew the work permit under paragraph one as requested by the foreigner. The registrar shall notify the competent official under the immigration law after the work permit renewal.

With regard to refugees in temporary shelters, there are concerns from the National Security Council about their political opinions. NSC raised that “Refugees in temporary shelters are those who oppose the Burmese Military Government. Although it has been a while, their political opinion remains unclear.” Other interesting points the NSC raised were “the possible impact on international relations”<sup>75</sup> and “the possible challenge for the repatriation once displaced persons are allowed to work.”<sup>76</sup> Even so, the NSC still recommended that “there should be a pilot project or model to slowly close the temporary shelters by transferring displaced persons out as migrant workers. Displaced persons may cross the border back to Myanmar for a short period of time to obtain a document to work in Thailand before coming back.”<sup>77</sup>

Refugees in general circumstances namely urban refugees: They would be able to work once the RTG prescribe the type of work (with consideration of economic social development contribution) and they obtain the work permit.<sup>78</sup> Similar to the previous case, the law is yet to be enforced.

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<sup>75</sup> *Supra note.* 56 Joint Meeting with the deputy secretary general of the National Security Council on 25 August 2023 at the office of the National Security Council.

<sup>76</sup> House of Representatives, Commission on National Security, border affairs, national strategy, and the National Revolution, Report on the case study of Myanmar fleeing armed conflicted in the nine temporary shelters, pg. 36.

<sup>77</sup> *Supra note.* 43 pg. 33

<sup>78</sup> The Foreigner's Works Management Emergency Decree B.E.2560 No.2 B.E.2561

Section 63/2: In the case where the Minister, under the immigration law, allows any foreigners or any group of foreigners to enter the Kingdom according to the law on immigration or exempts any foreigners or any group of foreigners from having to comply with the law on immigration. The Cabinet may determine that any foreigners or any group of foreigners are not people prescribed in Section 63/1 and that they may request a work permit. The Cabinet may also specify the types of work that foreigners may do to benefit economic and social development.

A request for a work permit, according to paragraph one, must be in accordance with the criteria and methods specified in the ministerial regulation. Such regulation may authorize the Director-General to prescribe conditions in the work permit. However, the work permit is valid for the requested period but shall not be valid for more than two years from the date the work permit is issued.



- **Access to the right to Thai citizenship**

The current laws and policies provide that individuals who were born in Thailand but did not obtain Thai nationality due to the irregular migration status of their parents<sup>79</sup> may file a Thai citizenship application as if they fulfil the key eligibility criteria of being born in Thailand (with place of birth evidence) and having a bachelor’s degree.<sup>80</sup>



- **Access to the criminal justice system**

In case of arrest and detention, the state officials shall act in accordance with the Criminal Procedure regarding the detention which is a general law.<sup>81</sup> Apart from the general law, the state official is required to continuously record audio and video throughout the refugees’ arrest and detention process until the person is delivered to the inquiry official or released.<sup>82</sup> The responsible office shall immediately notify the public prosecutor and the administrative department. If the arrest occurs in Bangkok, the responsible officer shall notify the director of the Office of Investigation and Legal Affairs - Department of Provincial Administration. For other provinces, the district mayor of the place where the arrest occurs shall be notified.<sup>83</sup> The responsible officer shall document all information<sup>84</sup> regarding the detainee and their parties in interest (such as relatives, legal representatives, or the committee,

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<sup>79</sup> Thai Nationality Act BE.2508 (1965) Revision (No.2) BE.2535 (1992) (No. 4) BE. 2551 (2008) Section 7 bis 1st paragraph

<sup>80</sup> Thai Nationality Act BE.2508 (1965) Revision (No.2) BE.2535 (1992) (No. 4) BE. 2551 (2008) Section 7 bis 2nd paragraph in conjunction with the Cabinet Resolution dated 7 December 2016 and the Ministry of Interior’s announcement regarding the acquisition of Thai nationality for individuals being born in Thailand to non-Thai parents – the prima facie acquisition and individual acquisition dated 16 February 2017

<sup>81</sup> Thai Criminal Procedure Code Section 83 and 84

<sup>82</sup> The Prevention and Suspension of Torture and Enforced Disappearance Act. B.E.2566 (2023) Section 22 paragraph 1.

etc.)<sup>85</sup> Parties in interest have the right to request the disclosure of the detainee's information from the officials<sup>86</sup> and can file the competition to the court if the officials reject the disclosure request.<sup>87</sup>

Furthermore, state officials must also act in accordance with the principle of human trafficking victim protection and identification, especially when the victim is a child.<sup>88</sup>



### • **Non-Refoulement**

The Prevention and Suspension of Torture and Enforced Disappearance Act. B.E.2566 (2023), which is national law, prohibits government agencies and officials from banishing or deporting a person or extraditing a criminal if there is reasonable ground to believe that they will be subjected to torture, cruel, inhumane, and degrading treatment, or forced disappearance.<sup>89</sup>

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<sup>83</sup> The Prevention and Suspension of Torture and Enforced Disappearance Act. B.E.2566 (2023) Section 22

<sup>84</sup> Relevant information may include but is not limited to the detainee's identity information (name, surname, birthmarks, description), date, time, and place of arrest, information about the arresting officials, final destination (in case of transfer), Order of detention and its reasoning, etc. The Prevention and Suspension of Torture and Enforced Disappearance Act. B.E.2566 (2023) Section 23

<sup>85</sup> The Committee on the Prevention and Suspension of Torture and Enforced Disappearance, The Prevention and Suspension of Torture and Enforced Disappearance Act. B.E.2566 (2023) Section 14.

<sup>86</sup> The Prevention and Suspension of Torture and Enforced Disappearance Act. B.E.2566 (2023) Section 24 paragraph 1.

<sup>87</sup> The Prevention and Suspension of Torture and Enforced Disappearance Act. B.E.2566 (2023) Section 24 paragraph 2.

<sup>88</sup> Nexus Institute, Trafficking Victim Identification, available at <https://nexusinstitute.net/wp-content/uploads/2022/03/PG1-Trafficking-Victim-Identification-Thai-1.pdf> Or Human Rights and Development Foundation and Save the Children, Law and Guideline of the Protection of foreign child victims of trafficking. 2023.

<sup>89</sup> The Prevention and Suspension of Torture and Enforced Disappearance Act B.E.2565 (2022) Section 13

## • If and how does the Thai Constitution recognize and protect the rights of refugees?: A practice that tries to outperform the debate

There has been a long ongoing debate on if and how the Thai Constitution recognizes and protects the rights of refugees. One argument supporting why non-Thai people are not rights holders under the Thai Constitution is the wording used in “Chapter III: Right and Liberty of Thai People.”<sup>90,91</sup> To counter this argument, the inherited character of fundamental human rights is raised. Thus, according to this counterargument, there are many rights that all people are entitled to regardless of their nationality, such as the right to a fair trial (Section 29)<sup>92</sup>, which is one of the fundamental human rights. Furthermore, it is commonly known that the rights enshrined in Thai Constitution consist of both civil rights and human rights.

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<sup>90</sup> Thai Constitution B.E.2560 Chapter III: Rights and Liberties of Thai People. (Section 25-49)

Section 29. No person shall be subject to a criminal punishment unless he or she has committed an act which the law in force at the time of commission provides to be an offence and prescribes a punishment therefor, and the punishment to be imposed on such person shall not be of greater severity than that provided by law in force at the time of the commission of the offence.

<sup>91</sup> Yut Sanguthai, Description of Thai Constitution (B.E.2511) An orderly explanation of each section and a brief overall description of the Constitution. pg.103 He argued that the word “Thai people” in Chapter III and Section 3 intentionally refers to only people of Thai nationality, not foreigners. The Constitution only determines the relationship between the state and its nationals, not foreigners. If they intend to ensure rights and liberties for non-nationals, it should be specifically identity.

<sup>92</sup> Constitution of the Kingdom of Thailand B.E.2560 (2017)

Section 29. No person shall be subject to a criminal punishment unless he or she has committed an act which the law in force at the time of commission provides to be an offence and prescribes a punishment therefor, and the punishment to be imposed on such person shall not be of greater severity than that provided by law in force at the time of the commission of the offence.

A suspect or defendant in a criminal case shall be presumed innocent, and before the passing of a final judgment convicting a person of having committed an offence, such person shall not be treated as a convict.

Custody or detention of a suspect or a defendant shall only be undertaken as necessary to prevent such person from escaping. In a criminal case, a person shall not be forced to make a statement incriminating himself or herself.

However, the argument regarding the “Placement” of the rights of non-Thai people within the Constitution may no longer be relevant as, in reality, there are standards of practice that have already surpassed such argument.

There is an interesting case that could put an end to this debate<sup>93</sup>: the RTG announcement regarding financial assistance for insured persons affected by the COVID-19 pandemic. It is commonly known as “Section 33, we love each other.” It is noted that the Section does not cover insured persons who are migrant workers. The national Ombudsmen commented on this matter: “*Section 27, paragraph 3 of the Thai Constitution only prohibits unjust discrimination against a person on the grounds of differences in race; hence, it does not by any means include nationality.*”<sup>94</sup> It could be interpreted that the National Ombudsman acknowledged migrant workers as rights holders of the Thai Constitution, leading to their predication on discrimination matters. Moreover, the judgment of the High Administrative Court also did not explore the rights holders aspect under the constitution when deciding on the matter of discrimination. It cannot yet be concluded that the administrative court recognized the right holder status under the Thai Constitution. Therefore, an observation should be raised to sustain the debate on this topic for further clarification.<sup>95</sup>

## **2.2.5 Refugee Screening Mechanism: The Four Preliminary Observations**

The first refugee screening mechanism in Thailand was designed for Indochinese refugees Lao in 1975 because the RTG noticed that “there were economic migrants who had blended in with refugees hoping to be resettled to a third country.” The RTG then developed a screening measure aiming to categorize illegal immigrants into two groups: 1. Economic migrants or Mala fide refugees who would be deported back to their country of origin. 2. Bona fide refugees who would be detained in the IDC waiting to be resettled to a third country.<sup>96</sup> On the western side of Thailand, there was a pre-screening process to determine the status of refugees before being accepted into the temporary shelters.

In 2019, the RTG, by virtue of the Organization of State Administration Act B.E 2534 Section 11(8), enacted The Prime Minister’s Office Regulation on the Screening of



An application for a bail of a suspect or defendant in a criminal case shall be accepted for consideration, and excessive bail shall not be demanded. The refusal of a bail must be as provided by law.

<sup>93</sup> In 2011, there was a case in the Criminal court accusing the Immigration Bureau of unlawfully detaining migrant workers against Section 90 of the Criminal Procedure and the Thai Constitution B.E.2550 Section 26 and Section 30. In this case, the court ruled that the detention was against the law but did not clarify whether migrant workers are rights holders of the Thai Constitution or not.

<sup>94</sup> Human Rights and Development Foundation (HRDF), News leaflet, The National Ombudsman issued a document regarding migrant workers stating that “Section 33 We love each other” is not discriminatory nor violates the Thai Constitution Section 27 because the constitution prohibits unjust discrimination based on race, not nationality. Available at: <https://hrdfoundation.org/?p=2642>. See also the Order of the National Ombudsman, Complaint No. 1361/2564 and complaint No. decided complaints1615/2564

<sup>95</sup> Order of the high administrative court, Complaint No.1065/2565 Order No.1326/2566

<sup>96</sup> Sakda Orphong, Individual Study on the Origin of Lao Displaced Person and Nongkhai Province’s Illegal Entrance Protection Measure, The National Defense College, (1985) Quoted in Khačhatphai Burutphat supra note. 1

Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E. 2562).<sup>97</sup> Although it is not directly mentioned that the mechanism is established to determine the status of refugees, the regulation aims to screen “*individuals with a well-founded fear of persecution upon return to their countries of origin.*” It is believed that this regulation would lead to a National Screening Mechanism (NSM) that is effective, culturally sensitive to Thai society, and relevant to current global affairs.<sup>98</sup> This NSM regulation would enter into force 180 after being published in the Royal Gazette<sup>99</sup> on 22 June 2020. Until today, the mechanism still has not yet been opened for the protected person’s request.

Four remarks and concerns regarding the regulation and the committee’s announcement are as follows.

### **Firstly, certain groups of refugees are not included or excluded from the mechanism.**

Before the final version of the regulation, there was a concern that some groups of refugees would not be able to access the NSM. These groups of refugees include “people fleeing armed conflict from Myanmar, Rohingya, Uyghurs, and North Korean refugees as they are perceived as illegal migrants with specific national security issues.”<sup>100</sup> There was

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<sup>97</sup> Cabinet Resolution dated 24 December 2019 and the Royal Gazette announcement dated 25 December 2019. The regulation entered into force on 22 June 2020, with seven announcements from the NSM committee.

<sup>98</sup> The Preamble of The Prime Minister’s Office Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E. 2562)

<sup>99</sup> The Prime Minister’s Office Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E. 2562) Article 2

<sup>100</sup> The Immigration Bureau of the Royal Police responded to the concern raised by the NSC on this matter by saying, “There are members of the NSC represented in the NSM committee member. Thus, he or she could raise such concerns and refer to the Council for consideration when needed.” As the NSC did not object to the response, the Immigration Bureau then did not revise. Please see the Office of the Council of State’s document No. NR 0907/449 regarding an important law that needs to be urgently edited or revised (Draft – The Immigration Act (No. \_\_) B.E.\_\_\_\_ dated 18 December 2019



an initial prediction that NSM would only be available for urban refugees with a Person of Concern status from UNHCR. Later, after the eligibility criteria announcement, it turned out that refugees holding other types of documents for various reasons would be excluded or not eligible to make a request. This includes refugees holding migrant worker cards or refugees in temporary shelters. (NSM Committee announcement on rules, measures, and criteria for the screening of protected persons request No.2(2) and 3))<sup>101</sup>

The point is that if the objective of the NSM is to screen people who are able or unwilling to return to their countries of origin owing to a well-founded fear of persecution<sup>102</sup>, the eligibility for request screening should be based on established facts and verification of the facts claimed. Thus, the abovementioned NSM Committee announcement could exclude *de facto* refugees from the mechanism.



<sup>101</sup> NSM Committee Announcement regarding the rule, procedure, and criteria of the Protection Person Status Request screening. Please see The Royal Gazette No.140, special edition 72 D, dated 27 March 2023.

No. 2 (2) Not an alien under the special measure. Or solution from the Ministry of Interior

No. 2 (3) Not migrant workers of Myanmar, Lao, Cambodian, or Vietnamese Nationalities for whom the RTG has specified a special measure or solution.

<sup>102</sup> The Prime Minister’s Office Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E. 2562) Article 3

## **Secondly, the screening procedure does not reflect the objective of the mechanism.**

To further elaborate:

- **The requirement for information, documents, or personal behavior checks relating to political matters and national security<sup>103</sup> to be a part of the consideration process.**

It can be seen that such requirements overcomplicated the criteria of the NSM, the initial objective of which is to identify “people with a well-founded fear of persecution.”<sup>104</sup> Therefore, A political background check could lead to a serious concern that political refugees might be excluded or considered to be not eligible for the protected person status.

- **Request for a medical certificate showing that the person making the request has no illness prescribed in the Ministerial Regulation, which specifies prohibited diseases for foreigners entering or residing in Thailand B.E.2020. The medical certificate is supporting evidence needed for the request consideration process.<sup>105</sup>**

This ministerial regulation is used to screen foreigners with prohibited diseases from entering the country.<sup>106</sup> However, refugees are those who have already resided in Thailand. If they have the prohibited diseases, they should be taken into medical. Such illness should

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<sup>103</sup> NSM Committee announcement on rules, measures, and criteria for the screening of protected persons request) Article 6(2)

<sup>104</sup> The 1951 Refugee Convention Article 1 A together with the 1967 Protocol

<sup>105</sup> NSM Committee announcement on rules, measures, and criteria for the screening of protected persons request) Article 6(3)

<sup>106</sup> The prohibition of people with unsound mind (lunatic- *non compos mentis*) or people with certain disease from entering the country according to Section 12(4) or residing according to Section 44 (2) of the Immigration Act B.E. 2522

not be used as an exclusion cause, especially when they already meet all five criteria under the NSM committee’s announcement regarding rules, measures, and criteria for the determination of protected person status.

- **The procedure is not in conformity with the Administrative Procedure Act.**

NSM regulation states that the NSM committee’s decision on a protected person status shall be “final.” To further elaborate, if the committee dismisses the request to submit for the protected person status because the committee decides that the person is not eligible to submit the request<sup>107</sup>, the person can appeal the dismissal decision regarding the eligibility to make a request, and such an appeal decision shall be “final.”<sup>108</sup> In the case of the protected person status rejection decision<sup>109</sup>, the committee’s decision not to grant a protected person status shall be final.<sup>110</sup> (Article 9, paragraph 2 NSM Committee announcement on rules, measures, and criteria for the screening of protected persons request)

One important point to ponder is that according to the principle of administrative procedure, the committee members are state officials<sup>111</sup>, and the committee’s orders are indeed an administrative act. It was an act of competent state official by law to create any legal relation between individuals resulting in the change, transfer, reserve,

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<sup>107</sup> The Prime Minister’s Office Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E. 2562) Article 16

<sup>108</sup> The Prime Minister’s Office Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E. 2562) Article 17 last paragraph<sup>109</sup> The Prime Minister’s Office Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E. 2562) Article 20 paragraph 2 (1)

<sup>110</sup> The Prime Minister’s Office Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E. 2562) Article 20 last paragraph

<sup>111</sup> Act Establishment of the Administrative Courts and Administrative Courts Procedure B.E.2542 (1999) Section 3: State official means:

(2) a person who is under the supervision or superintendence of an administrative agency or a state official under (1) or (2)

and restraint of rights or duty of a person.<sup>112</sup> Therefore, the word “final” written in the NSM regulation and its committee’s announcement shall be considered final in the administrative term because there are no higher authorities in the administrative pillar to review such orders. Thus, for the criminal justice system to review the legitimacy of the administrative act,<sup>113</sup> the individual can bring the case to court without going through the appeal procedure within the administrative section.<sup>114</sup> The exercise of this judicial right is recognized in the Thai Constitution Section 197 regarding the jurisdiction of the administrative court together with the Act on the Establishment of the Administrative Courts and Administrative Courts Procedure B.E.2542 (1999) Section 9 (1). However, such an exercise of rights is inconsistent with The Thai Constitution Section 4 regarding human dignity, UDHR Article 7 and ICCPR Article 26.

- **The NSM committee specified that the decision to refuse protected person status is information “not subjected to disclosure.”<sup>115</sup>**

On this matter, there are three things to be discussed.

(1) To establish this rule, the NSM committee broadly exercised its power in a manner that exceeded the scope of the NSM regulation. Hence, it is important to question the legitimacy of the committee’s power in this regard. Furthermore, because this regulation is “by-law” under the general administrative matter,<sup>116</sup> there should be an investigation into the legitimacy of the rule (by-law) and the principle of No law, No power.

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<sup>112</sup> Administrative Procedure Act B.E.2539 (1996) Section 5

<sup>113</sup> Please see Opinion of the Committee on the Administrative Procedure No.684/2545 N.3

<sup>114</sup> Please see Opinion of the Committee on the Administrative Procedure No. 836/2546

<sup>115</sup> National Screening Mechanism Committee’s announcement on rules, measures, and criteria for the screening of protected person’s request No. 9

<sup>116</sup> Administrative Procedure Act B.E.2539 (1996)

Section 5 By-law means a Royal Decree, Ministerial Regulation, Notification of a Ministry, ordinance of a local government rule, regulation or any other provisions of general applicability without addressing a specific case or person

(2) The reference to “information not subjected to disclosure” under the PDPA could be considered an abuse of law to avoid legal accountability. The NSM committee is well aware that, unlike people of Thai nationality<sup>117</sup>, foreigners could not appeal the refusal of information disclosure to the Information Disclosure Committee. Thai official information law sets a limitation on what kind of official information a foreigner can access, and it shall be strictly specified in the ministerial regulations<sup>118</sup>. However, there has not been any ministerial regulation regarding official information accessible to foreigners and how to access it.<sup>119</sup>

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<sup>117</sup> Official Information Act B.E.2540 (1997) Section 18

<sup>118</sup> Official Information Act B.E.2540 (1997) Section 9

Subject to section 14 and section 15, a State agency shall make available at least the following official information for public inspection in accordance with the rules and procedure prescribed by the Board:

- (1) a result of consideration or a decision which has a direct effect on a private individual including a dissenting opinion and an order relating thereto;
- (2) a policy or an interpretation which does not fall within the scope of the requirement of publication in the Government Gazette under section 7 (4);

If any part of the information made available for public inspection under paragraph one is prohibited from disclosure under section 14 or section 15, it shall be deleted, omitted or effected in such other manners whatsoever so as not to disclose such part of the information.

A person, whether interested in the matter concerned or not, has the right to inspect or obtain a copy or a certified copy of the information under paragraph one. In an appropriate case, a State agency may, with the approval of the Board, lay down the rules on the collection of fees therefor. For this purpose, regard shall also be had to the making of concession given to persons with low incomes, unless otherwise provided by specific law.

The extent to which an alien may enjoy the right under this section shall be provided by the Ministerial Regulation. Section 10. The provisions of sect

<sup>119</sup> HRDF used to assist migrant workers in filing the appeal to the Information Disclosure Tribunal regarding the Order of Office of Labour relation, Department of Labour Welfare and Protection to refuse the information requested by migrant workers. Information Disclosure Tribunal decided that the refusal order of such request is legal and legitimate as there has not been any Ministerial Regulation prescribing the extent of the right an alien may exercise under Section 9 paragraph 4. Therefore, aliens still have no right to request for a disclosure of official information.

(3) It is a general principle that any “resolution” of the NSM committee that is an administrative act shall be carried out in accordance with the administrative procedure. In other words, a written administrative act must also contain reason and such reason shall consist of material facts, the legal ground referred to and the ground and justification for exercising the discretion.<sup>120</sup> The NSM Regulation was enacted by the virtue State Administrative Act B.E.2534 (1991) which is “the primary law” Hence, any action under this act shall “in so far no contrary or inconsistent with this Act or other laws”.<sup>121</sup> Therefore, the administrative act must, at least, be done in writing and must contain reason consisting of material facts, the legal ground referred to, and the ground and justification for exercising the discretion.<sup>122</sup>

### **Thirdly, observation points relate to the Protection Aspects.**

The screening mechanism stipulates that once a refugee is recognized as a protected person, they will be entitled to four rights as follows. (1) the right to non-refoulement and assistance in case of voluntary repatriation or resettlement.<sup>123</sup> (2) the allowance to temporarily stay in Thailand on special circumstances<sup>124</sup>. (3) Access to health care.<sup>125</sup> (4) Access to education for children.<sup>126</sup> There are several primary observations with regard to the protection provided to protected persons.

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<sup>120</sup> Administrative Procedure Act B.E.2539 (1996) Section 37

<sup>121</sup> State Administrative Act B.E.2534 Section 11 (8)

<sup>122</sup> Administrative Procedure Act B.E.2539 (1996) Section 37

<sup>123</sup> The Prime Minister’s Office Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E. 2562) Article 25 (1)

<sup>124</sup> The Prime Minister’s Office Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E. 2562) Article 25 (2)

<sup>125</sup> The Prime Minister’s Office Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E. 2562) Article 25 (3)

<sup>126</sup> The Prime Minister’s Office Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin (B.E. 2562) Article 25 (4)

- Once a person is granted protected person status and temporary residence in Thailand, there should be an issuance of identity documents and household registration according to Civil Registration Act B.E.2534 2nd revision B.E.2551 Section 38 paragraph 2.
- There is no clear explanation on access to education for children with protected person status.



- There is no clear explanation on access to public health care in which the RTG should also consider the issue of access to public health insurance by setting an appropriate cost for such insurance.
- According to Article 20 of the NSM regulation, if the committee declines the protected person status, they shall refer the issue to the competent official to take legal action upon the Person under Screening in accordance with immigration and other relevant laws.<sup>127</sup> It is noted that the competent officials should also consider the exercise of judicial right, the practice under The Prevention and Suspension of Torture and Enforced Disappearance Act. B.E.2566 (2023) Section 13, the principle of Non-refoulment, ICCPR Article 7, and CAT Article 3.

### **Lastly, Observation points relate to the composition of the NSM committee members.**

The composition of the NSM committee members plays a crucial part in the direction and implementation of this National Mechanism. It is observed that a number of the committee members are from government organizations by position. Even though the new working group now consisted of academics and politicians, which can be considered more diverse, observation of their understanding of the status of refugees and the challenges they faced remains. The other important thing that should be considered is the understanding of Human rights principles, as it can influence the making of rules, criteria, procedures, and their implementation.

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<sup>127</sup> The Ministry of Public Health announcement on the health check-up and health insurance for foreigners B.E.2559 (2015)







**3**

# **Gaps in Laws and Policies**





Despite not being a state party to the 1951 Refugee Convention and its 1967 Protocol, Thailand has been providing humanitarian assistance for refugees and displaced persons. This statement is supported by the Humanitarian assistance provided to those newly arrived Myanmar refugees, the emergence of the national screening mechanism to screen “people with a well-founded fear of persecution upon their return to the country of origin” and to give them protected person status, and the recognition of various fundamental rights such as birth registration, access to education, access to public health care, and the right to work, etc. Nonetheless, there are existing gaps in the above-mentioned laws and policies that could significantly hinder the protection of refugees, especially the newly arrived refugees, which can be categorized into two groups: refugees seeking temporary refuge because they were affected by armed conflict or had resided in such area and person (including their family member) fleeing individual persecution. There are four main consideration points presented below.



### 3.1 The immigration law is often used as a first resort

It can be said that the RTG acknowledges the factual existence of various kinds of well-founded that refugees in Thailand have faced. Yet, they refuse to give a legal definition to the word refugee. Furthermore, the RTG often prioritizes national security and international relationships over refugee protection, resulting in many actions that do not truly consider the protection of refugees. For instance, RTG only has a policy to provide humanitarian to people collectively fleeing a specific armed conflict.<sup>128</sup> Government officials would first apply immigration law to refugees if the refugees entered the country illegally. Refugee would only be considered illegal immigrants, which lead to arrest, detention, and even repatriation to the country of origin, where refugee may face a well-founded fear of persecution upon return. Even so, a duty to implement the immigration law is indeed a sound and reasonable legal basis for such action. Hence, the nonfeasance of immigration law is a commonly used excuse by state officials for such actions.

**Consideration point:** The lack of existing law recognizing “The right to stay” of refugees in Thailand is a huge legal gap, and it plays a significant role in putting refugees at high risk of violations and various forms of exploitation. It is recommended that the RTG consider recognizing the right to stay under the law. The legal recognition can be done in various forms, including a temporary allowance to stay, temporary residency, or a Protection visa<sup>129</sup>. Legal definition and legal recognition of the word refugee is an important and primary action needed to solve an overall issue and build a well-connected protection scheme. Some operating laws (please see 2.1) might need to be elevated to an Act<sup>130</sup> that covers the definition of protected persons, the screening process (Refugee status determination, the recognition of legal status prior to, during, and after the screening, and access to various rights of the protected persons. One action that can be immediately carried out is issuing

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<sup>128</sup> It can be seen from the RTG’s previous policy on the management of Indochinese displaced persons, People fleeing armed conflict in Myanmar in 1989, and people fleeing after the Myanmar coup in 2021.

<sup>129</sup> Immigration Act B.E.2522 Section 17 together with Section 34 and 35

<sup>130</sup> For further details, please look at the management of Refugee Convention state parties such as Canada, and Australia, and the non-state party such as Indonesia

an official document (a circular notice) to set a standard of practice regarding the principle of non-refoulement.

Furthermore, the RTG should seriously consider implementing the local integration policy. (Thailand is experienced and has previously implemented such a policy, as explained in 2.1 and 2.2.3.) As Thailand is now facing an Aged Society and about to enter a super-aged society by 2030, the implementation of local integration policy would not only be relevant considering the societal context of Thailand but would also conform with the pledge previously made by the RTG. (See 2.1.). Concerns regarding criminal rates or impacts on the social order, including national security, can be dealt with separately with the implementation of the criminal procedure code and the immigration law.

### **3.2 Protection of refugees and access to rights**

**Consideration point:** Medical care and occupation are basic factors to sustain a life. Due to their limitation in lives, refugees often come to the hospital when their illness or health condition is severe. Thus, access to health insurance is not only in line with the public health policy but would also lower the medical cost of every relevant stakeholder. (See 2.2.4) With regard to the right to work, allowing refugee to work with a work permit would empower them to provide for themselves and their families. It would not only allow them to live with dignity but also contribute to the community and society as a whole. There is already an existing law regulating the work of foreigners (See 2.2.4). Allowing refugees to work and provide for themselves would also reflect the pledge made by the RTG and its national plan and policy regarding national security (2023-2028), in which the RTG aims to strike a balance between national security and international relations and Human Rights principles. (See 2.1)

### **3.3 Refugees being detained in the Immigration Detention Center (IDC)**

**Consideration point:** The government should consider increasing bail opportunities for detainees through the implementation of the existing law. In the meantime, they should allow detainees to work so that they can provide for themselves and their families via

the implementation of the existing laws. (See 2.2.4) Such action would be in line with the pledge made by the RTG and its national plan and policy regarding national security (2023-2028) in which the RTG aims to strike a balance between national security and international relations and Human Rights principles. (See 2.1)

### **3.4 Influx of the newly arrived refugees.**

It is obvious that these newly arrived refugees are villagers who had resided in the conflicted area between the Military government and opposing groups or people who were affected by the crash. They are looking for temporary refuge and basic assistance such as food, medicine, etc. Thus, the first measure that should be taken is to allow local actors, such as the administrative sector, neighbouring communities, civil society, and so on, to provide assistance as they are able to provide a more timely assistance compared to the current military bureaucracy. It is also possible that these groups of people may not need to undergo the refugee status determination process because the persecution they fear is an armed conflict in their country. Hence, they are willing to return to their home and carry on with their lives once the conflict end.

**Consideration point:** The refusal and limitation of humanitarian assistance by hindering the involvement of other relevant sectors or premature repatriation would result in refugees infiltrating into Thai territory in search of refuge. Such action would indeed make refugees stay in Thailand longer.<sup>131</sup> However, if the armed conflict protracts longer than it already is (which is also possible), the delivery of basic needs should be carried out accordingly. One important point is that RTG should also do a lesson learned from the nine temporary camp management along the Thai-Myanmar border when considering the five-decade experience in handling refugee influxes. Because the detention of refugee would shut down their opportunities to work and provide for themselves and their family. The detention system is not only degrading but also create a perception that refugee is a burden to the national budget, when it is indeed possible

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<sup>131</sup> Interview with Pornsuk Kerdsawang, the director of the Friend without border foundation on 28 October 2023.

in both law and policy for them to provide for themselves and be independent from the state's budget. Moreover, they could also contribute to the economic development along the border. The abovementioned recommendation aligns with the RTG's pledge and the national plan and policy regarding national security (2023-2028) in which the RTG aims to strike a balance between national security and international relations and Human Rights principles. (See 2.1)

### **3.5 Newly arrived refugees who are an individual with a “well-founded fear of persecution” (including their family members)**

They should be considered a targeted group for the refugee status determination process or the national screening mechanism. However, when considering the screening mechanism, it can be seen that many criteria were designed to exclude them from the mechanism. Such procedures in the NSM create questions with regard to the legitimacy of the screening mechanism procedure under the state administrative procedure. (See 2.1.5)

Consideration point: The screening mechanism of people who cannot return to their country of origin due to well-founded fear of persecution is undeniably and important and necessary mechanism. However, at the current time, the review and revision to ensure that the screening mechanism and other rules issued by the committee are in line with the administrative procedure and the protection principle under International Human Rights standard are even more urgent and important. Especially those human rights standards that oblige Thailand as a state party. The RGT may start by allowing civil society to take part in reflecting the limitation and raising their concern regarding the mechanism to improve the mechanism and to ensure that it is in line with the national plan and policy regarding national security (2023-2028) in which the RTG aims to strike a balance between national security and international relations and Human Rights principles. (See 2.1)







**4**

**Recommendation  
regarding the  
management of newly  
arrived Myanmar  
refugees**





## **4.1 The influx of refugees who were affected by the coup, the conflicted and/ or lived in the armed conflict area**

- The RTG should proceed with humanitarian assistance by allowing people in the community, including villagers, communities, businesspeople, civil society, and NGOs, to provide assistance such as food, medicine, and necessary utilities.
- The Ministry of Interior should be in charge of the management and control of the area. The MoI should also decentralize the role to the province level (or the Thai Border Control Center), authorizing them to manage, order, and precisely screen people at the border. In the case of refolement, a risk assessment should be done through a participatory process taking into account the information from other sectors.
- Cross-border assistance and relief points are important as it is a key factor in preventing immigration into Thailand unless necessary.
- There is a possibility that the armed group and the military government are trying to establish a temporary safe zone (TSZ) in certain areas. However, international coordination (with the country of origin) and local coordination are needed to ensure that there are humanitarian safe passages or humanitarian corridors available for people fleeing armed conflict.
- If the conflict protracts (which is possible), the delivery of basic needs should correspond with the situation. The guidelines for the delivery should be set up based on the lessons learned from the previous management of the temporary shelters.

## **4.2 Individual refugees (including their family members) and the development of refugee management and protection system**

### Protection aspect

- A legal recognition of the definition of refugee or people “with a well-founded fear of persecution” and also an awareness raising on the definition of a refugee. This can be done by setting up guidelines (circular notices) regarding the principle of non-refoulment and sending them to all relevant stakeholders at all levels.
- A recognition of legal status to stay in Thailand before undergoing the screening (refugee status determination) can be done in two different ways:
  - First option: RTG issues a resolution under the Immigration Act B.E.2522 specifying the entry and residency status of refugees to issue an identity document accordingly.

Second option The competent authority enacts a ministerial regulation allowing refugees to stay in the country due to the necessity from the persecution or protection visa. (Immigration Act B.E. 2522 Sections 34 and 3)

- Advocation for the implementation of the existing law to allow refugees to work, take care of themselves and their families and contribute to the local economy.
- Advocation for the sale of public health insurance for refugees with an appropriate co-pay rate in order to reduce refugee' burdens and the impact on the hospital's budgets.

### System development aspect

- A revision of the NSM regulation (even when it is observed that no action has been carried out under the regulation). with a participation from all relevant stakeholders.
- Development of the refugee management system (refugee status determination and refugee protection) including the establishment of a specifically responsible agency. The two possible options are:

First option: Revising the Immigration Act B.E. 2522; or

Second option: Drafting a new and specific law

### Remarks

The latest Myanmar government policy – the enforcement of the “ People Military Service Law” which entered into force on 10 February 2024 substantiates protracted armed conflicts and would definitely lead to more Myanmar people crossing the border to seek refuge in Thailand.<sup>132</sup>

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<sup>132</sup> Notification No. 27/2024 In normal circumstances an eligible age for military service is 18-35 for male nationals, 18-27 for female nationals, and 18-35 for individuals with specialized skills ( doctors, engineers, mechanics and other specialized professions). The normal period for military service is 2 and 3 years accordingly. In the situation where Myanmar is under an emergency situation, the military service period can be extended to 5 years. Conscription evasion or avoidance is a criminal act with a punishment of 5-year imprisonment or fine or both. For more information please see : Myanmar Junta Enforces Military Service Law Following Battlefield Losses (irrawaddy.com) , Myanmar junta enforces mandatory military service for young people | Reuters

# Reference List

## Laws

- Act Establishment of the Administrative Courts and Administrative Courts Procedure B.E.2542 (1999)
- Administrative Procedure Act B.E.2539 (1996)
- Child Protection Act B.E.2546 (2003)
- Constitution of the Kingdom of Thailand B.E.2560 (2017)
- Criminal Procedure Act
- Foreigner Working Management Emergency Decree B.E.2551
- Nationality Act B.E. 2508 (1965) No. 2 B.E.2535 (1992), No.4 B.E.2551 (2008) and No.5 B.E.2551 (2008)
- Official Information Act B.E.2540 (1997)
- Social Welfare Promotion Act B.E.2546 (2003)
- State Administrative Act B.E.2534 (1991)
- The Civil Registration Act B.E.2534 (1991) 2nd revision B.E.2551 (2018)

## Regulations

- Central Registration Bureau Regulation on the issuance of Identity card for people without Thai Nationality B.E.2551 (2008)
- The Prime Minister's Office Regulation on the Screening of Aliens Entering into the Kingdom and Unable to Return to their Country of Origin B.E. 2562 (2019)

## Official Announcements

- The Ministry of Public Health announcement on the health check-up and health insurance for foreigners dated 30 March 2015
- National Screening Mechanism Committee's announcement on rules, measures, and criteria for the screening of protected persons' request

## Policy

- The National Security Policy and Plan (2023- 2028)

## Other documents

Department of Provincial Administration, guideline on the legal status of people from highland edition 2 (id card for ethnic minorities)

Khačhatphai Burutphat, Displaced persons from the Indochina, Prae Pitaya publishing (1993)

Darunee Paisarnpanichkul, The situation of access to health care for non-Thai nationals and recommendation, Songkla nakharin University Law journal, Year 5 Vol.1 (July 0 December 2023)

Daungporn Silpawut, Thai policies on displaced person and human right issues: A case study on the Panasnikom Center, thesis for Master of political science, Thammasat University (1992)

House of Representatives, Meeting notes of the National Security Council: border affairs, national strategy, and national reform at the House of Representatives 69th meeting dated 16 December 2021

House of Representatives, Report on the study of People fleeing from Conflict in Myanmar who resided in the 9 temporary shelters

Phanonwan Yamassathien, Law and enforcement towards the Indochinese displaced persons in Thailand, Master of Law thesis, Chulalongkorn University (1984)



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