

Asia Pacific  
Refugee Rights  
Network



# National Screening Mechanism

## Assessment Report

*The Overview and Situation Analysis  
of the NSM's Implementation*

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## Executive summary

The Asia Pacific Refugee Rights Network (APRRN) and the Coalition for the Rights of Refugees and Stateless Persons (CRSP) conducted a situation analysis of the progress of the National Screening Mechanism in Thailand under 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). The study presents the key findings in four sections.

### 1. External and internal factors that influence Thai operation capacity and policy

The Regulation is a legal milestone for improving refugee management even though implementation *has been delayed in practice*. Internal and external factors have affected the implementation of the Regulation, as illustrated in the table below.

Factor	Internal	External
<b>Positive</b>	<ul style="list-style-type: none"> <li>· RTG pledged to implement a refugee screening mechanism at the 2016 Global Refugee Forum</li> <li>· RTG formally raised the challenges of refugees, and some departments prepared a strategic plan</li> </ul>	
<b>Negative</b>	<ul style="list-style-type: none"> <li>· The reshuffling of government officials</li> </ul>	<ul style="list-style-type: none"> <li>· The increase in the number of displaced persons worldwide</li> <li>· Reduction in UNHCR and resettlement's resources available for refugee management</li> <li>· COVID-19, which disrupted in-person activities</li> </ul>

### 2. Needs, priorities, and perceptions of people affected by the NSM

According to a focus group discussion (FGD) with affected communities across Thailand, refugees' *primary needs are legal status, freedom from arbitrary arrest and detention, and access to basic human rights through domestic legal frameworks*. The FGD participants prioritized receiving information on the eligibility criteria of a protected person, the screening procedures, and on how the transition of UNHCR's role would be. The RTG is still determining the details regarding these three matters. The FGD participants' perception of the definition of 'protected person' is positive, but they felt that the definition of 'protected person' should

be as clear as the definition of 'refugee'. The Regulation also increased hope among refugees, asylum-seekers, and CSOs that the enforcement of the Regulation will bring positive results and provide protection for vulnerable populations. Finally, the participants who were refugees in camps stated that they had never heard of the NSM prior to attending the FGDs, whereas the urban refugees seemed to have received more information, although not in detail.

### 3. Operational standards and progress

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The lack of progress of the implementation of the NSM has had a direct impact on its operations, both in the perceptions of key stakeholders and in the operation's objective outcomes.

Although the Regulation has already been enforced, it has not yet been implemented in practice. Stakeholders are divided on how to interpret the apparent delay in the implementation. Whereas the Royal Thai Police (RTP) have said the implementation plan follows the intended timeframe, unnamed sources have asserted that one reason for the delay is the need to balance national security, humanitarian aims, and foreign policy with neighbouring countries. *The operating procedures of the Regulation are currently under determination by the Subcommittee under the Regulation, as the Regulation does not provide details on its implementation.*

The majority of people in the NSM Committee and Subcommittee are part of the RTG, and most have a national security background. Moreover, CSOs have had difficulty accessing information, which has made it hard for them to effectively plan and make strategic interventions. As such, CSOs feel that there is *a need to reflect on the number of CSO representatives on the NSM Committees and Subcommittees.*

UNHCR's role during and after the transition is unclear at present. Although UNHCR has facilitated capacity-building workshops with Thai officials to transfer knowledge necessary to running a screening mechanism and is working to make relevant case law and country of origin information available in Thai, it is unclear when UNHCR will stop conducting Refugee Status Determinations.

### 4. Human rights principles and standards

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Whilst the Regulation mentions some international standards and recognizes the right to healthcare and education, some rights remain unclear, including most fundamentally, for example, access to employment and procedural rights like the right to appeal and non-discrimination. Moreover, the criteria of a protected person is not yet defined to compare all grounding of refugee definition.



## Learning and Potential Recommendations

- 1. Strengthen collaboration between CSOs and the government in the following aspects**
  1. Provide formalisation of CSO legal services.
  2. Establish a case management system and develop vulnerability criteria for the screening procedure.
  3. Commit to communicate and meet on a regular basis to transfer skills, knowledge, and share information, including meaningful participation and formal consultations.
  
- 2. Clearly define the screening and evaluation criteria, rights, and protections for persons who submit a request, so that those undergoing screening and protected persons are provided rights that adhere to international standards**
  1. Ensure adherence to the principle of non-refoulement and freedom from arbitrary arrest and detention without discrimination.
  2. Ensure that persons who are denied protected person status have an opportunity to appeal the decision.
  3. Design universal screening procedures adhering to non-discrimination standards, and elaborate the clear procedure
  4. Expand the protection services and rights of protected persons.
  
- 3. Build a positive narrative of refugees and the benefit of Thailand having a national screening mechanism**
  1. Echo the positive narrative of refugees, who are in need of international protection, and of the NSM in increasing national security.
  2. Enhance collaboration with media and academics and expand to include new partners to raise awareness on refugee issues.
  
- 4. Recommendation for further study by the participants at the soft launch of this report**
  1. Conduct a legal analysis on the current Thai law that relates to asylum-seekers and refugees and possible channels for integration and the right to reside in Thailand legally.
  2. Review the history of asylum-seeker and refugee management and procedure to identify potential 'Soft Law'. Even though there is an absence of written law, soft law has been practiced continuously.

## Acronyms

<b>APRRN</b>	Asia Pacific Refugee Rights Network
<b>CRSP</b>	Coalition for the Rights of Refugees and Stateless Persons
<b>CSO</b>	Civil Society Organization
<b>IOM</b>	International Organization for Migration
<b>MOFA</b>	Ministry of Foreign Affairs
<b>MOI</b>	Ministry of Interior
<b>MOJ</b>	Ministry of Justice
<b>MOL</b>	Ministry of Labour
<b>MSDHS</b>	Ministry of Social Development and Human Security
<b>NIA</b>	National Intelligence Agency
<b>NSC</b>	National Security Council
<b>NSM</b>	National Screening Mechanism
<b>OAG</b>	Office of the Attorney General
<b>OCA</b>	Office of the Council of State
<b>RTG</b>	Royal Thai Government
<b>RTP</b>	Royal Thai Police
<b>SBB</b>	The Special Branch Bureau
<b>Sub-4</b>	Subdivision 4, Immigration Bureau
<b>UNHCR</b>	United Nations High Commissioner for Refugees





## About the National Screening Mechanism (NSM)

### Introduction to the NSM

The Royal Thai Government (RTG) has committed to improving the protection of undocumented migrants and refugees in Thailand. On 20 September 2016, at the Leaders' Summit on Refugees at the United Nations Trusteeship Council in New York, Prime Minister General Prayuth Chan-ocha pledged that Thailand would “develop an effective screening mechanism to distinguish those with genuine protection needs from economic migrants”.<sup>1</sup> Then, on 10 January 2019, the Thai Cabinet gave its principle approval for a National Screening Mechanism (NSM) and appointed the Royal Thai Police (RTP) to develop policies concerning the screening and management of undocumented migrants and refugees.<sup>2</sup> The RTP appointed the Thai Immigration Bureau to be the primary organization to respond to this and issued the NSM Regulation Committee, consisting of the RTP, Ministry of Interior (MOI), National Security Council (NSC), Ministry of Foreign Affairs (MOFA), the Council of State, Office of the Attorney General, National Intelligence Agency, and Ministry of Labor.<sup>3</sup>

In 2018, the Committee conducted six meetings and finalized a draft Regulation relating to the NSM. In December 2019, Police General Somsak Rungsita (Secretariat of the National Security Council) led a team of Thai representatives who participated in the Global Refugee Forum at the United Nations in Geneva, Switzerland. He made a pledge on the preparation of the NSM and that it would be enforced in 2020.<sup>4</sup> Finally, on 24 December 2019, the Thai Cabinet approved “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)” (Regulation on National Screening Mechanism).<sup>5</sup> The Regulation states that the NSM will commence 180 days from the date of its official publication in the Royal Gazette (i.e., 22 June 2020) and that the NSM Committee will: determine the ‘Protected Persons’ criteria; conduct screening; and refer Protected Persons and dismissed requests in accordance with relevant laws, including appeals. However, as of the publication of this report, the NSM Committee is still in the process of drafting the standard operating procedures (SOP) for the NSM. See the NSM timeline for a more detailed update on the current status.

<sup>1</sup> United Nations, Summary Overview Document Leaders' Summit on Refugees, [https://refugeesmigrants.un.org/sites/default/files/public\\_summary\\_document\\_refugee\\_summit\\_final\\_11-11-2016.pdf](https://refugeesmigrants.un.org/sites/default/files/public_summary_document_refugee_summit_final_11-11-2016.pdf) (last visited 19 June 2021)

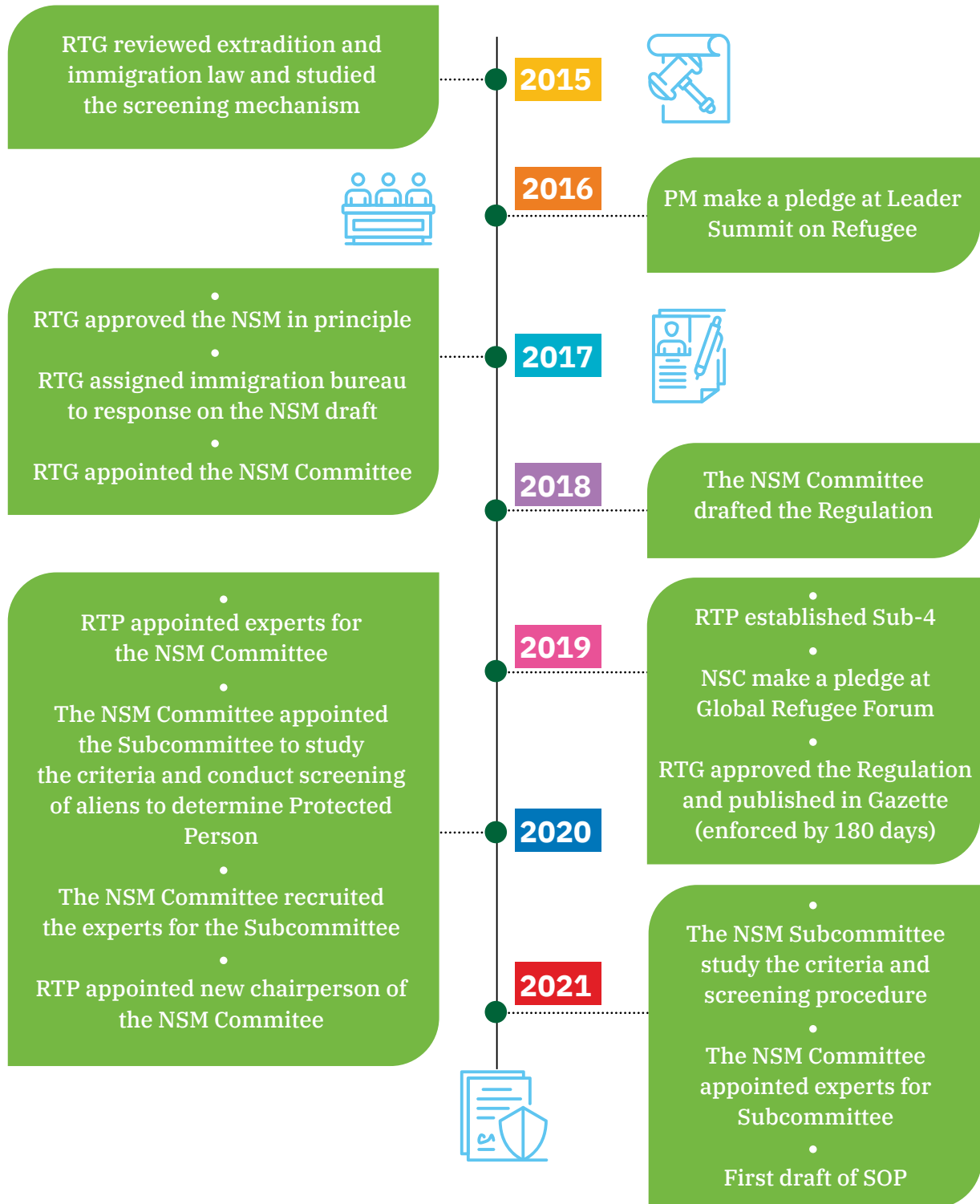
<sup>2</sup> The Council of State, memorandum of the council of state on the draft of Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E.2562 (2019)

<sup>3</sup> Ibid.

<sup>4</sup> UNHCR, An overview of how the Global Compact on Refugees is being turned into action in Thailand, <https://globalcompactrefugees.org/article/thailand> (last visited 19 June 2021)

<sup>5</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) is a regulation on establishing a national screening mechanism in Thailand

## The NSM timeline: Key outputs and outcomes from 2015-2021<sup>6</sup>



<sup>6</sup> Sub-Division 4, Immigration Bureau, Presentation: 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, on 23 February 2021 at the NSM Multi-Stakeholder Meeting hosted by the Asia Pacific Refugee Rights Network.



The NSM visual timeline is developed by the presentation from Sub-4 during the NSM multi-stakeholder meeting that was hosted by APRRN, on 23 February, 2021. From 2015-2020, the RTG has formalized the NSM operation and management. In early 2021, they studied the criteria and screening procedure for protected persons. However, to date, it is not yet finalized.

A more detailed timeline of the RTG's progress on policies and law related to the NSM is found in Annex 1 on page 36.

## The Regulation

According to the Royal Thai Government, 'Aliens'<sup>7</sup> (a Thai government term, referring to irregular migrants and refugees) that reside in Thailand present both national security and human rights issues, as well as a shared international problem. The RTG recognized that existing processes were insufficient to distinguish legal and illegal migrants and the issues of repatriation and relocation to a third country. This led to the establishment of the Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562.<sup>8</sup> The Regulation aims to manage people who enter Thailand and are unable to return to - or be returned to - their country of origin, since there are substantial grounds that they would suffer persecution. The Regulation entails the establishment of a screening mechanism to determine the status of this particular group of vulnerable individuals as well as the provision of protection rights.

**There are 30 clauses in the Regulation, which are grouped into five chapters:**

- Chapter 1: The Protected Person Screening Committee. It consists of the qualification of Committee and Subcommittee members, definition, function, and duties.
- Chapter 2: Screening of Protected Persons. This chapter outlines what information needs to be submitted, how the application is to be submitted, and what the screening procedure entails. It also includes the key responsibilities of various government organizations.
- Chapter 3: The Administration of Protected Persons. This chapter details the rights after being granted protected person status, for example, voluntary repatriation, *non-refoulement*, healthcare, education, among others.
- Chapter 4: Evaluation and Review. This chapter specifies that the performance under this Regulation will report to the prime minister on an annual basis.
- Chapter 5: Transitory Provision. This chapter notes that previous refugee status determinations by UNHCR will be taken into consideration for the screening procedure.

<sup>7</sup> Irregular migrants and refugees have replaced the term "alien" in government terminology.

<sup>8</sup> Thailand: 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 [Thailand], 25 December 2019, available at: <https://www.refworld.org/docid/5e675a774.html> (last visited 14 July 2021)

## The Protected Person Screening Committee

According to article 5, the Regulation prescribes the structure, qualification, duties, and authorities of the NSM Committee. The charts below illustrate the structure of the Committee and Subcommittee.

A more detailed outline of the protected person screening Committee is found in Annex 2 on page 39.

### The Structure of Protected Person Screening Committees (Regulation, Article 5)

**Chairperson Pol.Gen. Damrongsak Kittiprapat  
Deputy Commissioner General (since January, 2020)**

**Vice Chairperson, Deputy Permanent Secretary,  
Ministry of Interior, Internal Security Affairs Bureau**

#### Committee by Position

##### Delegate of

- Ministry of Foreign Affairs
- Ministry of Social Development and Human Security
- Ministry of Interior
- Ministry of Justice
- Ministry of Labor
- National Intelligence Agency
- Office of the National Security Council
- Office of the Attorney General
- Special Branch bureau
- Immigration Bureau as a secretariat
- Director of international affairs
- Deputy Permanent Secretary, Ministry of Social Development and Human Security
- Director of the Foreign Affairs, Ministry of Interior
- Director-General, Department of Rights and Liberties Protection
- Director-General of the Department of Employment
- Director department 1 (NIA1)
- Director of the National Security Division
- Director-General, Prosecutor of the Foreign Office
- Pol.Lt.Gen Thanapon Srisopha
- Pol.Lt.Gen Sompong Chitduang

#### Expert

1. Pol.Lt.Gen Teerasak Chukitkun
2. Mr. Nattawut Potisaro
3. Ms. Rattikul Chansuriya
4. Mr. Wattana Choksukwanich

#### Secretariat

Sub-4  
Immigration Bureau



## The Structure of Subcommittee to study the criteria and conduct screening of aliens to determine Protected Person

**Chairperson of Subcommittee**  
 Pol.Lt.Gen Permpoon Chitchob, Commissioner-general

**Vice chairperson of Subcommittee**  
 Director of the Foreign Affairs, Ministry of Interior

### Subcommittee by Position

#### Delegate of

- Ministry of Foreign Affairs
- Ministry of Social Development and Human Security
- Ministry of Interior
- Ministry of Justice
- Ministry of Labor
- National Intelligence Agency
- Office of the National Security Council
- Office of the Attorney General
- Immigration Bureau as a secretariat
- Director of Social Affairs Division, Department of International Organizations
- Director of the Anti-Human Trafficking Division
- Director of Operation Center for Displaced Person
- Justice Officer, Professional Level, department of rights and liberties Protection
- Deputy director-General of the Department of Employment
- Director of department 2 (Act in place department 1)
- Plan and Policy Analyst, Senior Professional
- Special Prosecutor Office of the Attorney General
- Pol.Maj.Gen Worawat Amornwiwat Commander of special branch 2
- Pol.Maj.Gen Archayon Graitong, Deputy commissioner of Investigation Division, Immigration Bureau as Subcommittees and secretariat

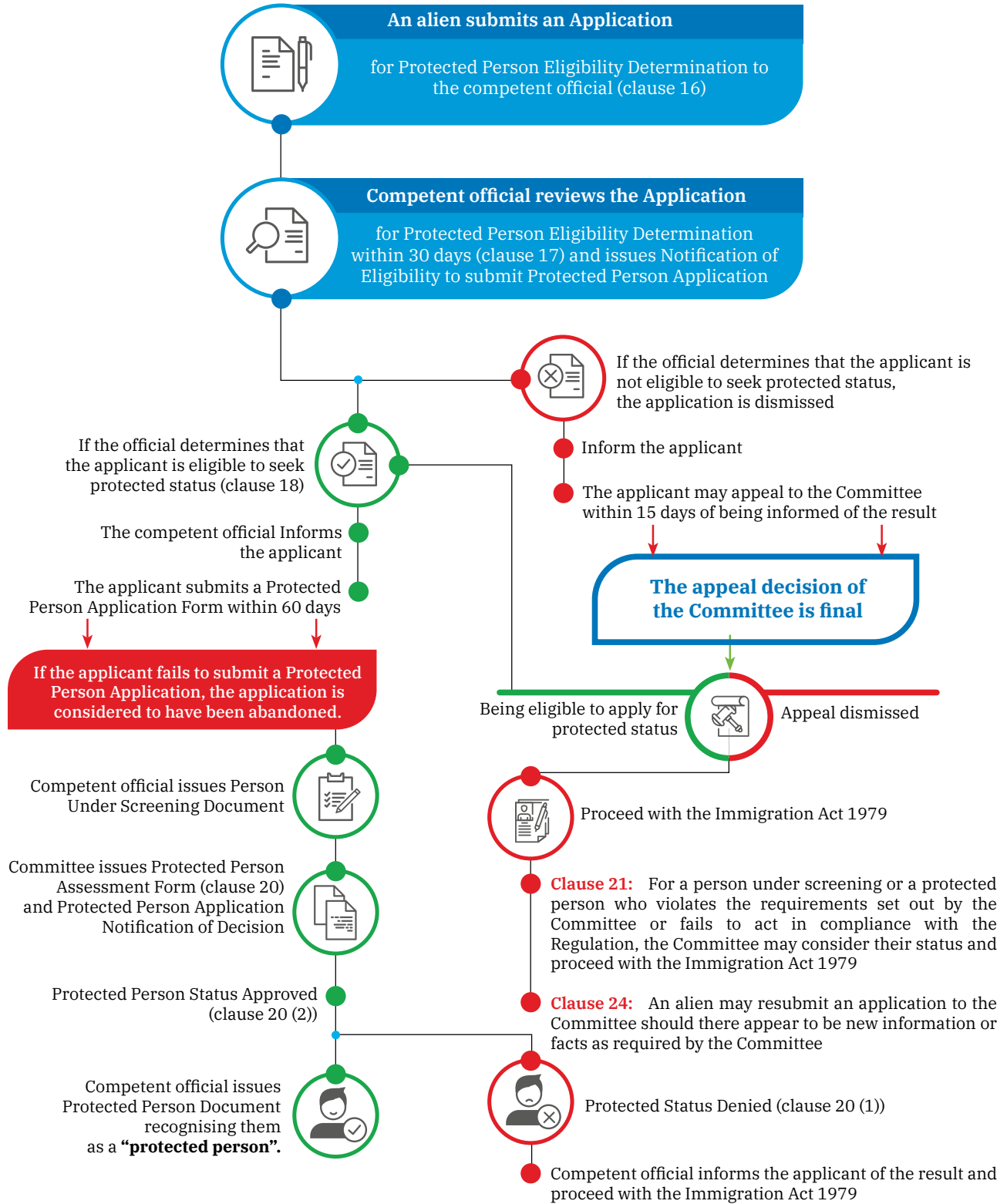
### Expert of the Subcommittee

1. Pol. Maj. Gen. Sukij Totarb
2. Pol. Gen. Apimook Karntayakorn
3. Mr. Bhanubhatra (Kaan) Jittieng: Professor from the Faculty of Political Science, Chulalongkorn University
4. Ms. Chenjuti Tempitak: RSD Office, UNHCR Thailand
5. Ms. Naiyana Thanawattho: Executive Director at Asylum Access Thailand (Representative of civil society)
6. Ms. Walaiporn Ratanaset: Dean of Faculty of Political Science, Dhurakij Pundit University

### Secretariat

Sub-4  
 Immigration Bureau

## Unofficial Screening Procedures under the Regulation, Chapter 2



## The current status

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Since the establishment of the Subcommittee to study the criteria and conduct screening of applicants to determine Protected Person status on 28 April 2021, there has been a first draft of the Standard Operating Procedure (SOP), which was presented on 28 May 2021. The draft SOP contains the criteria, screening procedure, notification and orders, and relevant forms. At time of writing, stakeholders, including UNHCR and a representative of CRSP, are reviewing the SOP to provide feedback. However, the SOP has not yet been finalized.

## About the study

### Project Overview

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APRRN together with CRSP re-conducted a study of the NSM to better understand the existing situation and to develop a methodology to monitor and document the changes that occur once the NSM is enforced. This project was being carried out by APRRN as an external actor and independent of the Thai government.

Initially, APRRN and CRSP aimed to conduct a baseline study of the NSM. However, due to the uncertainty of the NSM's implementation timeline, as well as the lack of information about the NSM's objectives, indicators, and targets for success, the study was conducted as a situation analysis guided by evaluation questions. Furthermore, given that the purpose of the study relates to ongoing monitoring and evaluation of the NSM, the study should be considered initial explorative analysis.

### Key research questions

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The study was guided by the following key research questions. There are four categories of questions that focus on different stakeholders.

**The following are the four categories with the different stakeholders:**

- Relevance | Affected communities:
  - To what extent has the NSM addressed the needs of different refugee populations?
  - To what extent were refugee populations consulted on the NSM's roll-out/made aware of NSM roll-out?
- Effectiveness | Governments, UNHCR, and CSOs:
  - How effective was the NSM's implementation?
  - To what extent were stakeholders' roles and responsibilities (a) adhered to and (b) coherent and complementary?
- Coherence | Governments, UNHCR, CSOs, and Academics:
  - To what extent is the NSM in line with international human rights standards and principles?
  - To what extent has the roll-out of the NSM been equitable?
  - What procedural protection safeguards are in place?
- Effectiveness / Accountability / Transparency | Governments, UNHCR, and CSOs:
  - To what extent has the NSM achieved the goals/objectives of all CSOs, affected communities, and governments?
  - To what extent has the government (and associated ministries) been transparent and accountable during the implementation of the NSM?





## Scope

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The study period was from November 2020 to August 2021, with a focus on Bangkok's urban refugee community. The research design for a situational analysis that provides a general overview of the NSM's implementation as well as a baseline assessment to develop a monitoring, evaluation, and learning framework, which will be able to describe changes to the NSM and its implementation over time. Therefore, there are four main key assessment areas as shown below:

- Affected communities - *Examine population groups affected or potentially affected by the NSM and their relevant needs and priorities*
- Operational capacity and progress - *Identify measures within the policy, any corresponding standard operating procedures, and/or means of implementation that will be used to affect change for those the policy addresses.*
- Human rights and protection standards - *Identify international human rights and protection standards relevant to the Thai NSM policy, from the perspective of experts and people affected, and examine the extent to which the Thai NSM is set to incorporate these.*
- Monitoring, evaluation, and learning - *Identify evidence-based data to ensure that implementation of the NSM is monitored and evaluated.*

## Methodology

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1. Desk review
2. In-depth interview/questionnaires with NSM Committee organizations (see questionnaire in Appendix 3) with the MOI, MOL, NSC, MSDHS, RTP, AGO, and MOFA (3-10 February 2021)
3. The NSM Multi-stakeholder Meeting (23 February 2021)
4. Focus group discussions with refugees (i.e., affected communities) (20 May 2021) and CRSP members (i.e., experts on refugee assistance) (9 July 2021)
5. The NSM Refugee Roundtable (27 May 2021)
6. Reflection session with CRSP core members (23 August 2021)
7. Soft launch of report to seek feedback from key stakeholders (26 August 2021 via Zoom)

## Key findings and discussion

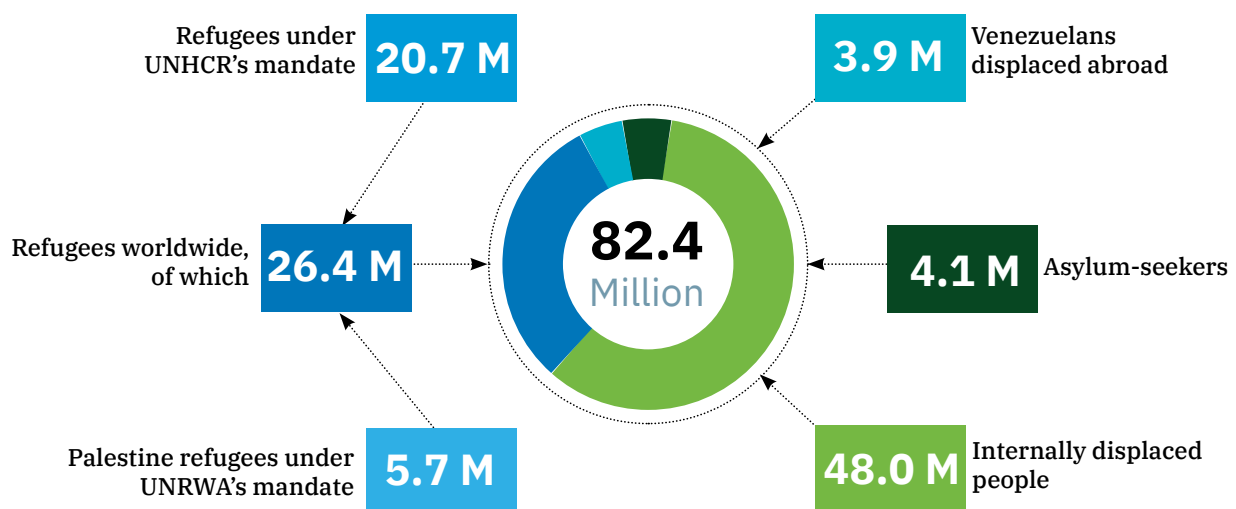
This section provides the analysis and information on the results of the study that represents key findings and discussion in four main sections. It provides the overview of Thailand refugee management, the perception from affected communities, the operation progress according to the Regulation, and the human rights procedure and standard. The information in each section is consolidated by various sources and stakeholders.

### External and internal factors that influence Thai operation capacity and policy

This section focuses on the external and internal factors that have influenced Thai policy and practice. It provides an overview of Thai's current capacity and policy on refugee crisis responses. The information is based on desk research and focus group discussions with CSOs.

#### › External factor: The increase in the number of displaced persons

According to statistics from UNHCR, “[b]y the end of 2020, 82.4 million individuals were forcibly displaced worldwide as a result of persecution, conflict, violence, or human rights violations.” The increased number of people who were forcibly displaced is double from a decade ago. The number of displaced people includes internally displaced people, refugees, asylum-seekers, and those displaced abroad without status.<sup>9</sup> The full impact of the pandemic on worldwide cross-border migration and displacement is not yet clear. Data reveals that new refugee and asylum-seeker arrivals were much lower in most countries – roughly 1.5 million fewer individuals than would have been predicted under non-COVID circumstances.<sup>10</sup>



**UNHCR:** 82.4 million forcibly displaced people worldwide at the end of 2020.

<sup>9</sup> UNHCR, Flagship Reports Forced Displacement in 2019, <https://www.unhcr.org/flagship-reports/globaltrends/global-trends2019/> (last visited 30 August 2021)

<sup>10</sup> Ibid.



However, the increase in the number of displaced persons has not led to a proportional increase in resources. Currently, UNHCR leads and organizes international action for the protection of refugees around the world and the resolution of refugee issues. In 2019, there were 20.4 million refugees of concern to UNHCR across the world, of which less than 1% are resettled yearly.<sup>11</sup> Due to COVID-19, resettlement in 2020 was at a 'record low' of only 22,770 people being resettled.<sup>12</sup> Consequently, this is an international responsibility for resettlement countries and refugee-hosting countries.

The challenges above incentivise the RTG to design the screening mechanism promptly. In an interview, the RTP also mentioned the fear of pull factors (attracting too many refugees to come to Thailand) and inability to manage local expectations in regard to financial responsibilities and national security. Lastly, the Regulation has not identified in detail durable solutions concerning the RTG to protect refugees for a longer period.

### › External Factor: A greater understanding and prioritisation of refugee issues in Thailand is needed

Thailand currently hosts 0.1% of asylum-seekers and refugees worldwide: 91,682 Myanmar refugees and 5,286 urban asylum-seekers and refugees.<sup>13</sup> Therefore, Thailand at present is not a priority country for resettlement. A great example of this is that the resettlement rate is extremely low as illustrated in the resettlement data by UNHCR,<sup>14</sup> which stated that between 2015-2019 (during the progress of the NSM), only 20,731 refugees were resettled. As resettlement is the only possible durable solution for refugees in Thailand, refugees tend to remain in Thailand awaiting resettlement with no timeframe guaranteed. Furthermore, the disparity between camp and urban refugee numbers has led many Thai people to believe that refugees are only found in camps. According to the *Social Journal on Perception and Misperception: Thai Public Opinions on Refugees and Migrants from Myanmar* (2012), there is evidence of misperceptions of refugees and migrants, particularly as nationality security threats and job competition. As a result, the refugee protection crisis in Thailand is not a priority issue internally and leads to positive progress of policy and public awareness since some Thai people still have a negative perception toward refugees.

<sup>11</sup> UNHCR, Refugee resettlement numbers fall to lowest in two decades: UNHCR (19 November 2020), <https://news.un.org/en/story/2020/11/1078052> (last visited 20 August 2021)

<sup>12</sup> UNHCR, With refugee resettlement at a record low in 2020, UNHCR calls on States to offer places and save lives (25 January 2021), <https://www.unhcr.org/news/press/2021/1/600e79ea4/refugee-resettlement-record-low-2020-unhcr-calls-states-offer-places-save.html> (last visited 20 August 2021)

<sup>13</sup> UNHCR, Thailand Factsheet, [https://www.unhcr.org/th/wp-content/uploads/sites/91/2021/07/UNHCR-Thailand-Fact-Sheet\\_30-June-2021.pdf](https://www.unhcr.org/th/wp-content/uploads/sites/91/2021/07/UNHCR-Thailand-Fact-Sheet_30-June-2021.pdf)

<sup>14</sup> UNHCR, Resettlement Data Finder, <https://rsq.unhcr.org/en/#I9xv> (last visited 20 August 2021)

### › Internal Factor: Thailand's participation in international networks on migration and refugees

Thailand is not a signatory to the 1951 Refugee Convention but has hosted a big number of refugees both in camp and urban settings. Thailand has used soft law and provided humanitarian responses to refugees with support by the UN agencies and international communities. Thailand is a committed member of international human rights mechanisms. In 2015, Thailand has initiated the willingness to establish the NSM for better screening to distinguish economic migrants and refugees and in 2016, at the inter-governmental conference on the Global Compact for Safe, Orderly, and Regular Migration (GCM), Thailand committed to 23 objectives for better managing migration at the local, national, regional, and global levels, which were adopted from the New York declaration.<sup>15</sup> In 2018, Thailand signed on to the Global Compact on Refugees (GCR),<sup>16</sup> a non-binding comprehensive refugee response framework. Following this, at the Global Refugee Forum (GRF)<sup>17</sup> in 2019, Thailand provided an update on its progress on implementing its GCR and GCM commitment, stating that Thailand had set up a National Working Group to coordinate national implementation of the GCR and the GCM. Thailand reiterated its commitment to establishing a national screening mechanism by drafting the Regulation as a result of the international human rights mechanism's influence. Therefore, the next global meeting is the Universal Periodic Review (UPR) that Thailand will be reviewed in November 2021<sup>18</sup> and according to the second cycle of UPR report, Thailand received a recommendation to develop and implement national legislation establishing asylum procedures and providing asylum-seekers and refugees with legal status in line with international standards. As a result, this element may accelerate the SOP review in order to enforce the NSM implementation and provide substantial updates in international forums. Alternatively, the first international migration review will take place in 2022, followed by the second GRF in 2023.

### Need, Priorities, and Perceptions of People Affected by the NSM

Focus group discussions were conducted with five refugee groups across Thailand, comprising 20 refugees from six nationalities, covering their general perception towards the NSM; their understanding of the definition of the term 'refugee'; and their expectations of the screening procedure, refugee rights, and support by CSOs, as well as other general comments.

<sup>15</sup> Global Compact for Migration, Agree Outcome on Global Compact for Migration, [https://refugeesmigrants.un.org/sites/default/files/180713\\_agreed\\_outcome\\_global\\_compact\\_for\\_migration.pdf](https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf) (Para 16), (last visited 24 July 2021)

<sup>16</sup> UNHCR, Global Compact on Refugee: Indicator framework, <https://www.unhcr.org/5cf907854> (last visited 24 July 2021)

<sup>17</sup> UNHCR, Statement by Thailand General Somsak Roongsita, Secretary-General, Office of the National Security Council Plenary on Burden and Responsibility Sharing at the 1st Global Refugee Forum, 17 December 2019, Palais des Nations, Geneva, <https://www.unhcr.org/5dfa1c2d4.pdf> (last visited 25 July 2020)

<sup>18</sup> OHCHR, UPR session, <https://www.ohchr.org/en/hrbodies/upr/pages/uprsessions.aspx> (last visited 25 July 2021)



According to the focus group participants, refugees have very limited information on the NSM: only those engaging with CSOs as staff, volunteers, or through attending trainings had received updates on the NSM, while the rest had relied on input shared within their communities by word-of-mouth and online sources. This caused confusion if not misunderstanding across communities, as well as feelings of insecurity for individuals. The participants of refugees in camps stated that they had never heard of the NSM prior to attending the FGDs, whereas the urban refugees seemed to have received more information, although not in detail.

In general, refugees expressed mixed feelings about the NSM implementation. Some elements come up as positive elements and even reasons for hope. First, the refugees hope that the NSM will lead to them being authorized to stay in Thailand through the granting of an administrative status recognizing their right to freedom of movement while also providing some protection, notably from arrest. Thai law currently does not recognize asylum-seeker and refugee status granted by UNHCR, making refugees vulnerable to arrest for irregular stay and to detention pursuant to the Immigration Act. Second, in direct line with the obtaining of legal leave to remain, refugees interviewed expect to gain greater access, in law and in practice, to their rights. As of today, CSOs have limited capacity to provide social services, and Thai government assistance is provided on a case-by-case basis. It is thus hoped that the Regulation will clarify the refugees' civil, political, economic, social, and cultural rights in Thailand, thus improving refugees' access to services. Finally, some participants expressed their gratitude for the use of the term 'protected person', which they considered to be empowering and more positive than 'refugee': such a terminology conveys the need for protection; they believed that it would help Thai people to approach this population differently and more positively as a result. The representative of MSDHS similarly considers that this label is less stigmatising than that of 'refugee'. Ultimately, the refugees and people seeking asylum who attended the FGD expressed high hopes that the RTG would provide a positive outcome for refugees and asylum-seekers and be able to improve their well-being after the Regulation is enforced.

However, important concerns of the participants in the FGDs remain regarding the lack of information about who should count as a protected person, what the screening procedure will be, and what the procedural safeguards will be - for instance, will the Regulation enshrine the right to access legal representation? Further, there is currently no information available regarding the scope of the rights afforded to protected persons, and what the transition process from UNHCR to the NSM will be. The UNHCR, is currently in charge of registering and supporting international protection seekers since 1975.<sup>19</sup> With such uncertainties, the participants of FGDs expressed insecurity, for they are still considered to be living irregularly in Thailand and cannot make long-term plans for their lives.<sup>20</sup>

<sup>19</sup> UNHCR, UNHCR in Thailand, <https://www.unhcr.org/th/en/unhcr-in-thailand> (last visited 13 July 2020)

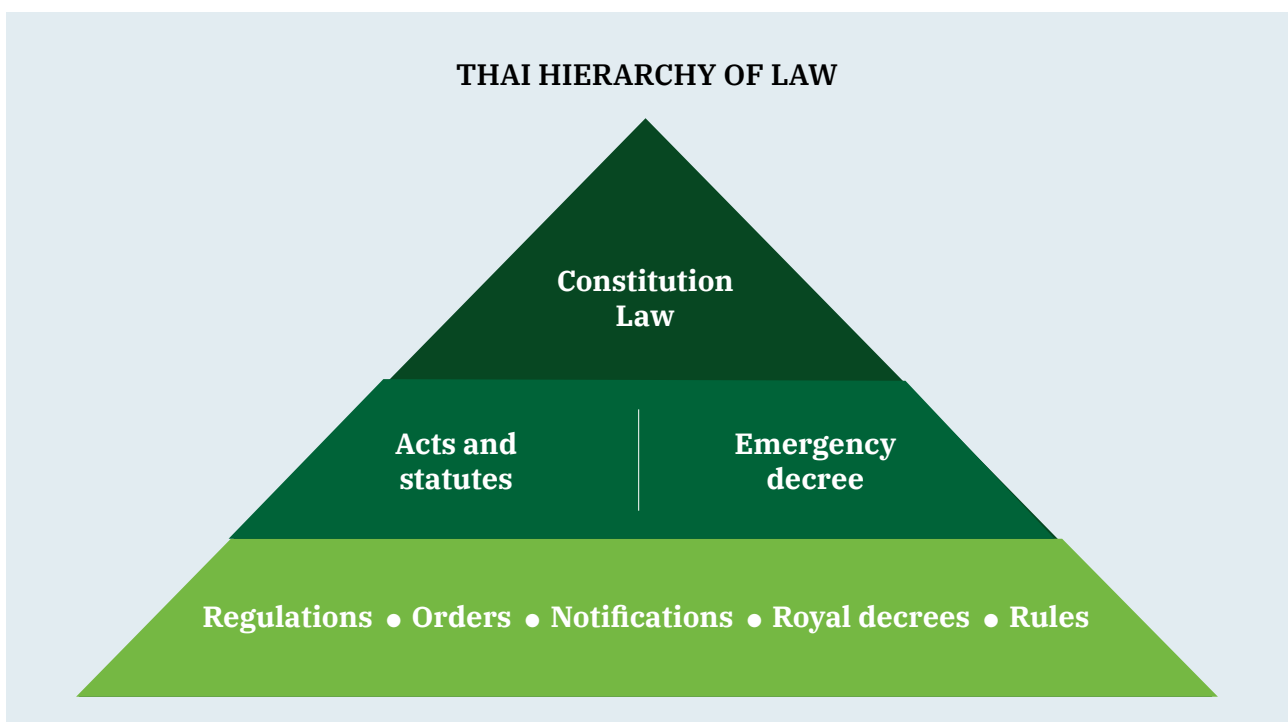
<sup>20</sup> Amnesty International, Thailand: Hard line on refugees leaves thousands vulnerable and at risk, <https://www.amnesty.org/en/latest/press-release/2017/09/thailand-hard-line-on-refugees-leaves-thousands-vulnerable-and-at-risk/> (last visited 22 August 2021)

## Operational Standards and Progress

This section updates the information of the status of the Regulation implementation and the participation of multi-stakeholders. This consists of the nature of Thai law hierarchy, the implementation of the NSM, transparency and accountability and transition of UNHCR. The sources include desk review, meeting minutes, and in-depth interviews with government officials and the FGD with CSOs.

### › National Law

Thailand's legal system is primarily based on civil law but has also been influenced by the common law tradition. The hierarchy diagram below illustrates the source of law in Thailand.



The NSM is regarded as a subordinate/delegated legislation or regulation. Its purpose at this level is to issue the process flow or to coordinate the collaboration between several agencies. The Regulation is governed by Administrative Act, B.E. 2534 (1991), which does not require Senate approval. According to the deregulation report from the Office of the Public Sector Development Commission (2016),<sup>21</sup> there are challenges and concerns in Thailand's subordinate law, such as incoherent detail between the Act and the Regulation, and the Act is outdated, resulting in impractical enforcement and possibly lacking consideration of the public's best interest.

<sup>21</sup> Office of the Public Sector Development Commission, การทบทวน ยกเลิก ปรับปรุง แก้ไข กฎหมาย กฎ ระเบียบ ที่ล้าสมัย หมดความจำเป็น [Deregulation], [https://hss.moph.go.th/fileupload\\_doc\\_slider/2016-12-01-628-410.pdf](https://hss.moph.go.th/fileupload_doc_slider/2016-12-01-628-410.pdf) (last visited 23 July 2021)



Similarly, to the NSM Regulation that conflicts with the Immigration Act, that there is no distinction between the people who request protected person status and other immigrants. Moreover, if the person under screening fails to claim protected person status, they are subject to legal action under immigration law or relevant law. The definition of 'legal action' under the Regulation is not identified in the NSM Regulation. There is also other information that has not been prescribed in detail, for example, the discretion framework of competent officials, time-bound under screening procedure and the eligibility criteria for 'protected person' status, which is currently determine by the Subcommittee. In conclusion, the Regulation is the lowest rank of the Thai law that led the government to undermine the importance of being a signatory to the 1951 Refugee Convention.

### › Implementation of the NSM

As a result of the NSM Regulation, Thailand has made gradual improvement in refugee management since RTG has initiated the effort in 2014. Thailand's formalization of an ad hoc international protection framework is a positive step towards being in line with the fourth national human rights plan 2019-2023,<sup>22</sup> which calls for a Human Rights Plan on Stateless Persons, Ethnic Groups, and Asylum-Seekers or Displaced Persons.<sup>23</sup> Thailand provides rights without discrimination with this particular group, which are guaranteed by articles 4 and 27 of the Thai Constitution (2017). Moreover, Thailand has studied the measurement to response on the asylum-seekers concerning the international human rights standard as a great example of alternative child to detention memorandum of understanding. As a result, Thailand's plan will legalize asylum-seekers and refugees as a protected person, and execute the screening mechanism by themselves. Further, the phrase "refugee" was clearly specified in the NSC's irregular immigrant strategy,<sup>24</sup> and Thailand stated that it would uphold its commitment in accordance with the GCR and GCM. Despite the fact that the Ministry of Public Health and the Ministry of Education are not members of the NSM Committee, they continue to deliver services regardless of people's legal status.

In terms of the NSM Regulation's effective date, there is a mixed perspective from multiple stakeholders, with a wide variety of opinions on whether implementation was delayed. According to the NSM Regulation clause 2, the Regulation took effect 180 days after it was published in the *Royal Gazette*, which is to say that it took effect on 22 June 2020. In an interview for this report, the RTP stated, "...The Regulation requires more study by the NSM Committee. As a result, the implementation is not delayed and is still on the plan..." Other government agencies, on the other hand, stated in interviews that they are waiting for RTP to progress because RTP is a leader. CSOs have observed that other regulations that specify an effective date, such as the Regulations of the Office of the Prime Minister Concerning the Establishment of the Visa and Work Permit Center B.E. 2540 (Volume 6), take effect promptly. As a result, after the NSM Regulation is issued, the steady development focuses mostly on establishing Committees and Subcommittees, as well as constructing a new office. During the multi-stakeholder meeting, a representative from Sub-4 announced that the SOP that determines criteria and screening procedures will be completed by 2021.

<sup>22</sup> Ministry of Justice, the 4th national human rights plan

<sup>23</sup> Ibid.

<sup>24</sup> NSC. NSC's irregular immigrant strategy (2020-2025)

The academic expert - Dr.Bhanubhatra (Kaan) Jittiang and CSOs raised the concern of balancing humanity and national security.<sup>25</sup> The NSM Regulation emphasizes a screening procedure more than a protection perspective as reflected from the Committee majority organization that has a background on security. The nature of their works that focus on national security might create the misconception of the refugee and could not see the overview of the refugee journey - or why they need to flee to Thailand. This may have a detrimental impact on refugees, such as discrimination, failure to grant refugee status, and denial of access to their rights.

Continuing from the human resource issues, the staff relocation under sub-4 as a key concern that challenges the CSO's intervention and progress on advocacy. The chairperson of the NSM Committee has changed for one time and there is no record of the potential competent officials that have been trained by CSOs and UNHCR. This results in the persistence of work, which demands CSOs establishing new relationships, sharing information, and revising the plan. The result of collective intangible assets or quality in terms of human capital<sup>26</sup> investment is not sustainability.

<sup>25</sup> CRSP, Refugees in the Imaginary Land visual note, <https://www.facebook.com/crsp.thailand/photos/pcb.3145434399020083/3145434172353439> (last visited 21 July 2021)


<sup>26</sup> Investopedia, Human Capital, <https://www.investopedia.com/terms/h/humancapital.asp> (last visited 21 July 2021)





## › Transparency and Accountability

Communication between CSOs and the government has involved many spectrums of public participation.<sup>27</sup> The engagement depends on the impact of decisions beginning with informing, consulting, involving, collaborating, and empowering as detailed in the table below.

INCREASING IMPACT ON THE DECISION 					
	INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making in the hands of the public.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.  We will seek your feedback on drafts and proposals.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will work together with you to formulate solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

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CSOs have expressed the difficulties in accessing the information on the NSM's progress in the middle of its implementation, for example, the meeting minutes of the NSM Committee meeting, the Order or memo that relate to the NSM. There are limited sources online available as published by the RTG even though using a different keyword, which is not 'refugee' but 'displaced person' or 'irregular migrant'. This is in contrast to what has been documented

<sup>27</sup> Graeme Stuart, Spectrum of Public Participation, <https://sustainingcommunity.wordpress.com/2017/02/14/spectrum-of-public-participation/> (last visited 23 July 2021)

about human trafficking. The majority of government officials interviewed for this project clarified that they were not authorized to not publicize details about the NSM implementation. To get around this, CSOs can submit a formal letter requesting specific information. The governments will then review any confidential information to see what can be shared. This procedure does not guarantee the result since the RTG could say that it is all confidential. Many CSOs are currently required to cultivate interpersonal relationships in order to have access to refugee information or to organize meetings in which the government is invited to provide updates and share information. As a result, when it comes to data sharing, collaboration between the government and CSOs is at the bottom of the spectrum of public participation because the government has taken no initiative. Furthermore, it is difficult to monitor government's accountability or identify substantial support from CSOs.

In terms of formal structure, the NSM committee does not include a representative from CSOs, and the four experts are not yet well-known in the subject of forced migration. They are also former government officials. However, the RTP has appointed CRSP as an expert representative for the NSM Subcommittee. The Subcommittee consists of 18 members, 12 of whom are government officials and six of whom are experts. The non-government experts include CRSP, academics, and UNHCR. Two of the six experts are police officers. Professor Bhanubhatra Jittiang, one of the academic experts, has shared his insight on "Refugee in the Imaginary Land" via Clubhouse on 20 June 2021.<sup>28</sup> The non-government members are a small proportion of the Subcommittee, but they will do their utmost to raise their voices in the best interests of the refugees. As a result, during the drafting of the SOP, CRSP submitted a recommendation but received no response from the government owing to the meeting being postponed due to an increase in COVID-19 cases in Thailand. Another point raised by CSO practitioners is that they find the channels for advocating and engaging with the government to be even more limited, as they will only go through the Subcommittee channel. Therefore, unless the government involves CSOs as a rubber stamp, public participation is somewhere between consultation and involvement. The CSOs are eager to participate in a meaningful way to progress towards collaboration. As CSOs have worked directly with refugee communities, they are able to share insights and fill gaps in protection services and development programs.

### › Transition of UNHCR

Clause 30 of the NSM Regulation states that the NSM screening process will take into account UNHCR's previous determination. There is currently no updated information on the flowchart and criteria for consideration, nor is there any clarification of the difference between NSM and UNHCR refugee mandate in the future. They have, however, designed and implemented a transition strategy, according to the panel discussion with UNHCR and the interview with RTP. According to Peter Grady, a UNHCR Senior Protection Officer, UNHCR provides six capacity-building training sessions on status determination, registration, and international protection standards, as well as technical support in developing the NSM. Furthermore, the RTP stated that the information on people of concern (PoC) has been forwarded to Sub-4.

<sup>28</sup> CRSP, Refugee in the Imaginary Land, <https://m.facebook.com/crsp.thailand/photos/pcb.3145434399020083/3145434172353439/?type=3&source=49> (last visited 21 July 2021)



Finally, a UNHCR representative is appointed to the Subcommittee as an expert. Nonetheless, CSOs and affected communities have many unanswered questions, including the transition plan for asylum-seekers who have not completed their interview, reopening and appeal cases, the protection framework, and the NSM's effective date.

Despite this, UNHCR maintains its role of assisting governments and providing refugee protection and assistance. According to the RTP, UNHCR no longer has the responsibility to perform an RSD now that the NSM legislation has been implemented. As a result, there is a misperception about what UNHCR Thailand's priorities will be after the transition. At this stage, UNHCR will lead on the protection framework throughout developing the SOP.

## Human Rights, Principles, and Standards

This section compares the international human rights laws and UNHCR guidelines with the Regulation. It provides the analysis on the key concerns and updating the current challenges on the management. There are three main groups that the Regulation has mention with practice, mention but still unclear on operation, and not mention at all as the table below;

<b>Mention with practice</b>	<ul style="list-style-type: none"> <li>· Access to education</li> <li>· Access to healthcare</li> </ul>
<b>Mention but still unclear</b>	<ul style="list-style-type: none"> <li>· Definition of refugee</li> <li>· Non-refoulement</li> <li>· Right to appeal and re-opening of applications</li> <li>· Non-discrimination</li> <li>· Right to family life and family unity</li> <li>· Durable solutions</li> <li>· Freedom from arbitrary arrest and detention</li> </ul>
<b>Not mention</b>	<ul style="list-style-type: none"> <li>· Vulnerability criteria</li> <li>· Access to employment</li> </ul>

### › Definition of Refugee

The term 'refugee' is not recognized in Thai legislation, and therefore, the new term 'Protected Persons', which was devised for the purposes of the NSM, has contributed to some confusion in the refugee sector. According to the Refugee Convention's Article 1A (2)<sup>29</sup> provides the universal definition of refugee:

<sup>29</sup> UNHCR, The Refugee Convention, <https://www.unhcr.org/4ca34be29.pdf> (last visited 30 June 2021)

any person who is outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. In the case of stateless persons, their country of origin is understood as the country of their former habitual residence.

The definition provided in Article 1 of the Bangkok Principle is similar. However, it adds two reasons of persecution to the definition: color and ethnic origin. In contrast, the NSM regulation lacks the core components of the definition of “Protected Person”. It doesn’t prescribe the reasons for persecution. Instead, the definition of “Protected Person” is left vague: it says “persecution as determined by the Committee”. Moreover, status determination guidelines under the NSM Regulation remain unclear. Article 20 of the NSM Regulation gives indefinite authority to the Committee and the Cabinet to decide on criteria, procedures, and conditions for determining status of a Protected Person. Thus, there is a real risk that the NSM Committee and the Thai Cabinet will arbitrarily use the authority to make decisions that are not in line with or governed by international standards. Objectivity, predictability, and procedural fairness are clearly jeopardized. On other hand, the confusion of them has affected CSOs and the refugee community commonly reported that this confusion has had an impact on them. The refugee community are uncertain of their eligibility to the protected person and CSOs concern on the eligible criteria does not adhere to the international standard. In addition, the purpose of the refugee convention is to have an internationally shared definition so that governments can come together and better collaborate on managing international refugee flows and resettlement processes. This Thai definition will now need to be made very clear for any stakeholder engaging in the process.

### NSM Regulation, clause 3

“Protected Person” means any alien who enters into or resides in the Kingdom and is unable or unwilling to return to his/her country of origin due to a reasonable ground that they would suffer danger due to persecution as determined by the Committee, and is granted status as a Protected Person under this Regulation.

## › Non-refoulement

### The definition of Non-refoulement<sup>30</sup>

any person who is outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion. In the case of stateless persons, their country of origin is understood as the country of their former habitual residence.

<sup>30</sup> OHCHR, The principle of non-refoulement under international human rights law, <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> (last visited 1 July 2021)



Under the NSM regulation's Clause 15 indicates exception for taking legal actions (i.e., deportation) against Protected Person accordingly to the Immigration Act B.E. 2522 (1979).

The refugee may be subjected to deportation for any of the following three conditions. First, Clause 15 implies that an alien is no longer saved from repatriation when she or he is perceived as a national security threat. Indeed, the term "national security" is not well defined. It may be over broadly used as a claim to deport the refuge. Second, Clause 17 says if an alien fails to make an appeal against the Committee's denial of request for screening, she or he will be subjected to legal action in accordance with immigration and other relevant laws, which could mean deportation. Third, Clause 20 says their Protect Person is denied when they fail the interview. Similarly to the second condition, they will be subjected to the same legal action. As Thailand is a state party to the Convention Against Torture (CAT), it shall strictly comply with the non-refoulement principle in enforcing the NSM regulation.

### Refugee Convention, article 33

"No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group, or political opinion."

### › Right to Appeal and Re-open Applications

The Regulation does not recognize applicants' right to appeal a negative decision in the second step of the application process, in which the Committee makes a decision about granting Protected Person status. This is clearly contradictory to the right to appeal prescribed in the International Covenant on Civil and Political Rights 1966 (ICCPR)'s Article 14<sup>31</sup> (fair trial) and the UNHCR's Executive Committee of the High Commissioner Conclusion No. 8 of 1977.<sup>32</sup> Domestically, the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) outlines that applicants should be able to appeal if they have sufficient evidence to believe that their application was rejected incorrectly. The right to appeal is a fundamental right that protects the rule of law by ensuring that fair procedural requirements are fulfilled.

According to Procedural Standards for RSD under UNHCR's Mandate to prescribe the re-opening of the application that, the applicants who are rejected and fail the appeal has a right to re-opening the file for the following reasons: There is a new reliable serious claim and new information that have not been given, properly examined, nor decided. However, if it is completely new ground that has not been indicated at the initial stage and appeal, the application should be referred to the first instance refugee status determination (RSD) procedure.<sup>33</sup> In the Regulation at clause 24, re-opening is only available but reasons are still vague and subjective: 'if there is information or facts as prescribed by the committees.'

<sup>31</sup> OHCHR, ICCPR, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last visited 23 July 2021)

<sup>32</sup> Executive Committee of the High Commissioner's Programme, Conclusion on Determination of Refugee Status, EXCOM Conclusion No. 8 (XXVII), 12 Oct. 1977. (last visited 23 July 2021)

<sup>33</sup> UNHCR, Procedural Standards for RSD under UNHCR's Mandate, <https://www.unhcr.org/4317223c9.pdf> (last visited 23 July 2021)

## › Non-discrimination

Concerning the exclusion of a certain group, under clause 15 of the NSM Regulation, there is an exception for those who pose a national security threat. Civil society actors have speculated that this will be used to exclude Uighurs, North Koreans, and Rohingya. According to in-depth interviews with the NSC, MOI, and RTP as the NSM Committee has mentioned, the eligibility criteria for applying for protected person status have not been finalized. RTG needs to balance the relationship with other states with this enforcement. Lastly, there is a specific measure in place to manage that specific group.

In contrast with the UDHR article 7<sup>34</sup> and refugee convention article 3 indicates all are equal before the law and are entitled without any discrimination to equal protection of the law. This illustrates the lack of discrimination principle in Thailand and the clarity response from the RTG.

Moreover, as the Regulation barely explains the detailing of screening procedure, there are particular concerns on the screening that may limit the access of the service consisting with the language barrier on form, interview, interpreter services, and also the cultural sensitivity of the officer. As the international standard, the NSM should design the universal measure that is effective to everyone without discrimination as to race, religion, nationality, ethnic origin, gender, membership of a particular social group, or political opinion.

## › Vulnerability Criteria

There has been no demonstration of any specific measure or indication of vulnerability criteria in the NSM regulation chapter 2 on protected person screening and chapter 3 on protected person administration or the process after granting the protecting status, since the vulnerable groups have special problems thus they require special measures. This may cause the prolonged asylum-seeker and refugee management in the future for the operations on the relevance of vulnerability factors to special support measures, detention, and case-management system in the context of forced migration. These particular groups are often exposed to heightened risks of harm and require special treatment and protection services.

According to the UNHCR guideline, Procedures for the Determination of Refugee Status, Part C: Cases giving rise to special problems in establishing the fact, emphasizes the special procedure for their vulnerability, which includes mentally disturbed persons and unaccompanied minors. Align with vulnerability screening tools<sup>35</sup> that shape and determine the vulnerability from personal and environmental factors to prevent arising of the harm and ensure the universal measure for everyone.

<sup>34</sup> United Nation, UDHR, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited 23 July 2021)

<sup>35</sup> UNHCR and IDC, vulnerability screening tools, <https://www.refworld.org/pdfid/57f21f6b4.pdf> (last visited 23 July 2021)



### VULNERABILITY DOMAIN

<b>Child</b>	<ul style="list-style-type: none"> <li>• Unaccompanied or separated child</li> <li>• Child accompanied by parent/s, other family members or guardians</li> </ul>
<b>Sex, Gender, Gender Identity, Sexual Orientation</b>	<ul style="list-style-type: none"> <li>• Pregnant woman or girl, or nursing mother</li> <li>• Sole or primary carer/s (of dependant child, elderly person or person with a disability)</li> <li>• Woman at risk of sexual or gender-based violence, or adult or child experiencing</li> <li>• Family violence, exploitation or abuse Person at risk of violence due to their sexual orientation and/or gender identity (LGBTI: lesbian, gay, bisexual, transgender or intersex persons)</li> </ul>
<b>Health and Welfare Concerns</b>	<ul style="list-style-type: none"> <li>• Physical and mental health</li> <li>• Risk of suicide</li> <li>• Disability</li> <li>• Elderly person</li> <li>• Substance addiction</li> <li>• Destitution</li> </ul>
<b>Protection Needs</b>	<ul style="list-style-type: none"> <li>• Refugee and asylum-seeker</li> <li>• Survivor of torture and trauma</li> <li>• Survivor of sexual or gender-based violence or other violent crime</li> <li>• Victim of trafficking in persons</li> <li>• Stateless person</li> </ul>
<b>Other</b>	<ul style="list-style-type: none"> <li>• The interviewer has an opportunity to identify vulnerability factors not captured by the previous domains</li> </ul>

UNHCR and IDC, vulnerability screening tools, <https://www.refworld.org/pdfid/57f21f6b4.pdf> (Page 3)

#### › Right to Family Life and Family Unity

The NSM Regulation upholds the family unity principle as indicated in clause 20 in which, while assessing the application of the protected person, this will be taken into the consideration. According to the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons,<sup>36</sup> it recommends governments to take the necessary measures for the protection of the refugee's family, especially the minors, and ensuring the unity of the refugee who has fulfilled the conditions in the particular country. This is a great significance of RTG to adopt the international standard and follow the best interests of the child (Article 3 of the 1989 Convention on the Rights of the Child)<sup>37</sup> and Thailand is a state party.

<sup>36</sup> UNHCR, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons

<sup>37</sup> United Nation, Convention on the Rights of the Child, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited 24 July 2021)

However, the Regulation has not provided more detail on scope of the family unity principles. The SOP that develops the subcommittee should elaborate more in detail as it will support the staff who determine the status and effect the whole screening process, i.e., form, vulnerability criteria, special procedure, and others.

### › Freedom from Arbitrary Arrest and Detention

Although Thailand is not a signatory to the 1951 Convention Related to the Status of Refugees (nor the 1967 Optional Protocol), Thailand is a state party to the ICCPR, in which Article 9 states: 'No one shall be subjected to arbitrary arrest or detention'.<sup>38</sup> The NSM's Regulation prescribes that if the people under screening fails to obtain protected person status, there will be a legal action under the immigration law. It does not indicate the details of legal action. Under the Immigration Act article 54, the refugee will be detained as long as necessary until the date of repatriation.<sup>39</sup> In relation to clause 21 under the NSM Regulation, protected person status can be cancelled under three circumstances reasons: 1) the person breaches the conditions set by the Committee; 2) the person does not comply with this Regulation; and 3) the person does not cooperate with the Committee, Subcommittee, or competent authorities. The penalty will be legal action under the immigration or relevant law. Therefore, the statement is subjective and the detailed conditions are currently studied by the Subcommittee. From this standpoint, there is a high probability that the protected person will be at risk of being detained. Another observation from the multi-stakeholder meeting and interviews is that the majority of the committee members have a national security background, which also remains subjective to determine.

**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.

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.

<sup>38</sup> OHCHR, ICCPR, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last visited 24 July 2021)

<sup>39</sup> The council of state, Immigration ACT. (B.E. 2522), [http://web.krisdika.go.th/data/outside21/file/Immigration\\_Act\\_B.E.\\_2522.pdf](http://web.krisdika.go.th/data/outside21/file/Immigration_Act_B.E._2522.pdf) (last visited 24 July 2021)





## Protected person rights/protection services

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Under clause 25 of the regulation, the Protected Person is granted several rights, namely that the RTG will refrain from repatriating the person, will provide assistance for voluntary return to the country of origin, will permit the person to stay in Thailand under special circumstances, and will grant the person access to education and healthcare. Even though Thailand has ratified neither the 1951 Refugee Convention nor its 1967 Protocol, this is nearly equivalent to international protection services. However, several outstanding rights should be addressed in law and practice:

### › Access to Durable Solutions

According to the Framework for Durable Solutions for Refugees and Persons of Concern from UNHCR,<sup>40</sup> there are three durable solutions to forced displacement: voluntary repatriation (go back to one's home country if the circumstances allow), local integration (progressively acquiring more rights in the country of refuge), and resettlement to a safe third country. Thailand, under article 27, prescribes the voluntary repatriation to the country of origin of either intended country of residence and resettlement to the third country as durable solutions. Local integration is not mentioned - the closest one comes to a concept of local integration is clause 25 (3), which allows the protected person to reside in Thailand 'under special circumstances' and 'temporary stay', and in accordance with immigration law and taking the results of the status screening into consideration. Therefore, the management and administration of irregular migrants under the immigration law has led to the uncertainty of the protected person status to be permitted in Thailand nor is there no naturalization under the Thai domestic law. In the end, local integration is unlikely to be implemented in Thailand.

### › Access to Healthcare

Article 25 (4) specifically guarantees the right to healthcare. At present, asylum-seekers and refugees can access healthcare service under the universal healthcare scheme, but are typically limited to certain government hospitals, and the service is only available in emergency situations. UNHCR, Bangkok Refugee Center (BRC), and Tzuchi foundations provide medical aid to support urban refugees and asylum-seekers. However, refugee communities still raise this as a critical concern since the services do not cover every treatment and expense, and, when trying to access the services, they face language barriers, discrimination at the hospital, and also fear of arrest while travelling.<sup>41</sup>

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<sup>40</sup> UNHCR, Framework for Durable Solutions for Refugees and Persons of Concern, <https://www.unhcr.org/partners/partners/3f1408764/framework-durable-solutions-refugees-persons-concern.html> (Page. 11), (last visited 24 July 2021)

<sup>41</sup> Asia Pacific Refugee Rights Network, Country Fact Sheet Thailand, <https://aprrn.info/wp-content/uploads/2018/09/APRRN-Country-Factsheet-Thailand-4-Sept-2018.pdf> (last visited 24 July 2021)

As stated in an open letter from the International Federation for Human Rights (IFHR),<sup>42</sup> detention facilities' occupancy is at 300% capacity. Detainees have limited access to healthcare. During the COVID-19, the Immigration Bureau could not provide sufficient protective equipment. When detainees were found to have COVID-19, they received inadequate treatment in hospitals.<sup>43</sup>

### › Access to Education

Thailand's domestic laws provide that all children, regardless of legal status, have the right to a quality and free basic education given by the State for at least 12 years. Therefore, UNHCR together with BRC has facilitated refugee and asylum-seeker children to enroll in Thai public schools as well as providing Thai and culture preparation. Nonetheless, due to travel limitations, language barriers, a lack of financial resources, and discriminatory treatment by school administration, many refugee children are unable to attend Thai schools. Secondary and tertiary education are considerably more difficult to obtain. Lastly, the Ministry of Education does not recognize NGO and community-based organization classes or curriculum.<sup>44</sup>

### › Access to Employment

The NSM Regulation does not include work rights, and Thailand's labor laws prohibit refugees from working legally in the country without a valid visa and work permit.<sup>45</sup> This is partly due to the idea that Thailand does not want to create a pull factor by causing potential economic immigrants to assume they will be allowed to work in Thailand.<sup>46</sup> As a result, refugees are frequently forced to participate in unauthorized, dangerous, and degrading jobs, exposing already vulnerable individuals to exploitation, abuse, and an unsafe working environment.<sup>47</sup> In another viewpoint, this is a financial and humanitarian burden upon the host country.<sup>48</sup>

<sup>42</sup> International Federation for Human Rights, Thailand - COVID-19: Release prisoners, ensure the health and safety of all those in detention facilities, <https://www.fidh.org/en/region/asia/thailand/thailand-covid-19-release-prisoners-ensure-the-health-and-safety-of> (last visited 24 July 2021)

<sup>43</sup> Ibid.

<sup>44</sup> CRSP, FFR, APRRN, Thailand: Ensure Refugee Rights and Protections Through Refugee Regulation, [https://www.fortifyrights.org/downloads/Joint\\_Statement\\_Thailand\\_Ensure\\_Refugee\\_Rights\\_and\\_Protections\\_Through\\_Refugee\\_Regulation\\_June\\_18\\_2018.pdf](https://www.fortifyrights.org/downloads/Joint_Statement_Thailand_Ensure_Refugee_Rights_and_Protections_Through_Refugee_Regulation_June_18_2018.pdf) (last visited 8 August 2021)

<sup>45</sup> Ibid.

<sup>46</sup> Vitit Muntarbhorn, Refugee Law and Practice in the Asia and Pacific Region: Thailand as a Case Study, <http://www.refugeelaw-reader.org/en/en/english/section-v-asian-framework-for-refugee-protection/v1-protection-challenges-in-asia/core-readings-140/9456-muntarbhorn-refugee-law-and-practice-in-the-asia-and-pacific-region-thailand-as-a-case-study-1/file.html> (last visited 8 August 2021)

<sup>47</sup> CRSP, FFR, APRRN, Thailand: Ensure Refugee Rights and Protections Through Refugee Regulation, [https://www.fortifyrights.org/downloads/Joint\\_Statement\\_Thailand\\_Ensure\\_Refugee\\_Rights\\_and\\_Protections\\_Through\\_Refugee\\_Regulation\\_June\\_18\\_2018.pdf](https://www.fortifyrights.org/downloads/Joint_Statement_Thailand_Ensure_Refugee_Rights_and_Protections_Through_Refugee_Regulation_June_18_2018.pdf) (last visited 8 August 2021)

<sup>48</sup> MUN Refugee Challenge, ECONOMIC INCLUSION OF REFUGEES, <https://www.unhcr.org/5df9f0bc7.pdf> (last visited 8 August 2021)



Modern studies on forced migration tend to highlight how refugees have economic agency or provide facts on how to assist them in their economic survival. Granting refugees the right to work is an economic growth opportunity and provides a layer of protection for refugees.<sup>49</sup> Furthermore, rather than seeing a refugee as a problem, it promotes self-dignity, stress release, and public reinforcement of a positive narrative.<sup>50</sup> In Kenya, for example, UNHCR collaborated with the World Bank Group on a study that discovered that the 180,000 refugees in and around Kakuma camp contributed to a US\$56 million annual economy, triggering a program to attract additional private-sector investment.<sup>51</sup> Similarly, according to the Economic Impact of Granting Refugees in Malaysia the Right to Work report from IDEAS, granting a right to work to refugees could contribute more than 3 billion ringgit (approximately US\$724 million) to Malaysia's GDP by 2024, with an annual increase in tax revenue of more than 50 million ringgit due to the expanded tax base.<sup>52</sup>

According to the interview with MOL and MSDHS, there are possibilities to support the refugee to access employment similar to the trafficking in person case, Cabinet resolution and notification. However, in order to balance the public interests and pull factor indicated above, RTP is still exploring a livelihood program influenced by the UNHCR program.

<sup>49</sup> Nora Bardelli, The shortcomings of employment as a durable solution, <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/bardelli.pdf> (last visited 8 August 2021)

<sup>50</sup> Aslam Abd Jalil, The right to work can empower refugees in Malaysia, <https://theconversation.com/the-right-to-work-can-empower-refugees-in-malaysia-119666> (last visited 8 August 2021)

<sup>51</sup> UNHCR, Why including refugees makes economic sense, <https://www.unhcr.org/news/stories/2019/4/5c9caee84/including-refugees-makes-economic-sense.html> (last visited 8 August 2021)

<sup>52</sup> IDEAS, the Economic Impact of Granting Refugees in Malaysia the Right to Work, <https://www.ideas.org.my/publications-item/policy-paper-no-60-economic-impact-of-granting-refugees-in-malaysia-the-right-to-work/> (last visited 8 August 2021)

## Learnings and Potential Recommendations

### 1. Strengthen collaboration between CSOs and the government

There are several good practices on the asylum-seekers and refugees management in Thailand from the collaboration of the government and existing service available from the CSOs. Continuing the good practice and strengthening the collaboration between CSOs and government will complement the efficiency of the NSM implementation and contribute to the best interest of refugees.

- 1.1 We recommend that the RTG formally recognize qualified local CSOs as legal service providers. By doing so, the RTG could help ensure that applicants are able to receive high-quality legal assistance without increasing the amount of money that the RTG spends on the National Screening Mechanism.
- 1.2 We recommend that the RTG continue to adhere to the Alternative Child to Detention Memorandum of Understanding (ATD-MoU) to provide case management, formalize the collaboration with CSOs, and develop the vulnerability criteria.
- 1.3 We recommend that the RTG design universal screening procedures adhering to non-discrimination standards, and elaborate the clear procedure for the competent officer to determine the application.
- 1.4 We recommend that CSOs, UNHCR, and governments commit to communicate and meet on a regular basis to transfer skills, knowledge, and share information, including meaningful participation and formal consultations. Therefore, the CSOs could design the resolution to fulfill the NSM implementation or share the feedback from affected communities.

### 2. Clearly define the screening and evaluation criteria, rights, and protections for persons who submit a request, so that those undergoing screening and protected persons are provided rights that adhere to international standards

The Regulation does not fully define the rights that applicants have at the different stages of the NSM process. The SOP to determine the criteria of the screening procedure could fill this gap by clarifying what forms of protection accrue at each stage of the application process, including to persons who submit a request for protected person status, persons undergoing screening, and persons who have been granted protected person status. Implementing the Regulation without this clarification would cause great confusion and pain for officials and for applicants, as they would not know what their rights and responsibilities are.



- 2.1 The RTG should, consistent with its obligations under customary international law, ensure adherence to the principle of non-refoulement and freedom from arbitrary arrest and detention without discrimination regarding to national security under clause 15. The principle of non-refoulement is part of customary international law. As such, the RTG was obliged to respect it prior to passing the Regulation and continues to be bound to respect it now. While the definitions of 'protected person' and 'refugee' are not exactly the same, they are similar.
- 2.2 The RTG has a compelling interest in ensuring that persons who are denied protected person status have an opportunity to appeal the decision. The consequences of incorrectly assessing an application for protected person status are significant: an incorrect decision can expose a rejected applicant to detention, deportation, and even persecution. Further, mistakes are bound to occur, especially in the context of implementing a new system like the NSM.
- 2.3 The RTG should expand the rights and entitlements of protected persons under the Regulation. Currently, protected persons are eligible for education and healthcare but are not entitled to work and are blocked in other ways from enjoying their basic human rights. By expanding the protection services and rights of protected persons, the RTG would contribute to protected persons' resiliency and ability to provide self-protection, while also decreasing dependency on public services and enabling the protected persons to contribute to the economic growth of Thailand. Further, by doing this, Thailand would strengthen its position as a leader in the region in refugee protection and a Champion country under the Global Compact for Migration.

### **3. Build a positive narrative of refugee and benefit of Thailand to having the national process**

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Thailand has been assisting displaced persons for almost 70 years. Nonetheless, the public could benefit from a greater understanding of refugee conditions, as well as a new narrative of refugees who are considered a national security threat or are refugees with a well-founded fear of persecution upon return to their country of origin. The public's acceptance has the potential to transform the security paradigm by balancing human rights security with national security.

- 3.1 Both the RTG and CSOs should build and echo a positive narrative of refugees as:
  - 3.1.1 A refugee is a person who is in need of international protection due to a well-founded fear of persecution upon return to the country of origin.
  - 3.1.2 The screening procedures under the NSM's Regulation will increase national security by screening people who are non-citizens and able to provide background information.
- 3.2 Both the RTG and CSOs should enhance collaboration with media and academics and expand to include new partners, e.g., the business sector to raise awareness on the narrative above mentioned.

## 4. Recommendation for further study

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Participants at the soft launch of this report recommended several areas where further study would be valuable.

- 4.1 Conduct a legal analysis on the current Thai law that relates to asylum-seekers and refugees and possible channels for integration and the right to reside in Thailand legally. For example, relevant existing legal provisions include: Immigration Act. Section 17 - approve the special case of irregular migrants to enter and stay in Thailand with certain conditions or Section 54 - While waiting for repatriation, the government will grant a permit to reside in a place provided and need to report according to the time and venue determined by the officials. Finally, the Ministerial Regulation of Section 5 of the Civil Registration Act to register for a non-Thai nationality card or pink card.
- 4.2 Review the history of asylum-seeker and refugee management and procedure to identify potential 'Soft Law'. Even though there is an absence of written law, soft law has been practiced continuously. More detail in the thesis of Puangrat Patomsirirak and Prapawadee Salakphet.



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## Annex

### Annex 1: Detailed Timeline of the NSM's Progress from 2015-2021

RTG accomplished gradual progress on policies and law on the NSM from 2015 to 2021, as follows:

#### 2015

- 15 December 2015, the Cabinet issued a resolution authorizing the Ministry of Foreign Affairs, the Ministry of Interior, and the State Council to study extradition and immigration law in regard to the prosecution of refugees who are undocumented migrants or who are violating human rights
- 15 December 2015, the Office of the Council of State appointed the Council committee (the second Committee) by assigning the Secretariat to draft a system for screening undocumented migrants and refugees to consider the guidelines for the screening mechanism.

#### 2016

- 20 September 2016, PM General Prayuth Chan-ocha spoke at the Leader's Summit on Refugees at the UN Trusteeship Council in New York, USA, and made a pledge that Thailand would 'develop an effective screening mechanism to distinguish those with genuine protection needs from economic migrants'. Additionally, a pledge to adhere to the non-detention of children in the Immigration Detention Centers, with consideration of the best interests of the child. Lastly, also ensuring the intention of Thailand not to deport illegal migrants who face harm upon return (*non-refoulement*).

#### 2017

- 10 January 2017, the Cabinet approved in principle to establish a national screening mechanism according to a study by the State Council Subcommittee. The Royal Thai police are designated as the primary organization to draft the Regulation, which underpins the NSM.
- 30 January 2017, the Commissioner-General assigned (record 0029.171/197, dated 20 Jan 2017) the Immigration Bureau to be the main department to design the National Screening Mechanism according to the Cabinet's resolution in collaboration with the Department of Legal and Affairs.
- On 18 December 2018, the Immigration Bureau (217/2560(B.E.)) ordered the establishment of a committee to consider the screening mechanism consisting of the RTP, Ministry of interior (MOI), National Security Council (NSC), Ministry of Foreign Affairs, the Council of State, Office of Attorney General, National Intelligence Agency, and Ministry of Labor.





## 2018

- The Committees conducted six meetings to draft the Regulation of Aliens and Refugee Screening Mechanism. According to their study, they finalized the draft of the Regulation. Changes include:
  - The remaining principles of the Prime Minister's Office Regulations are limited to screening and protection of people at risk of being persecuted or tortured, but not to oversight of undocumented migrants and refugees. The proposal of policies and strategic plans is not included in the system-wide management since the National Security Council and the Cabinet has direct responsibilities in this regard.
  - Amending the content in the draft Regulation in accordance with limiting principles:
    - Changing the Regulation's name from Draft on the Regulation of Aliens and Refugee Screening Mechanism B.E. (date TBD) to the Regulation of the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. (date TBD).
    - Removing the word 'protect' from the Regulation's name and its forward, since the principle of the Regulation concerns the screening mechanism. Protection is the consequence after the screening has occurred. Therefore, if people are granted protected person status, they will receive protection services according to the Regulation. The revised Regulation also limits the pull factor and any misunderstandings.
    - Removing the phrase 'torture' from the definition of 'protected person' and replace it with 'as determined by the Committee,' empowering the committee to determine what constitutes a valid foundation for persecution, which includes torture. It also avoids a contradiction with the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.
    - Changing the terminology from 'Refugee' to 'Protected Person' and 'Asylum-Seeker' to 'Person under Screening'.
    - Changing the Committee name from '*Committee of the Screening and Management of Undocumented Migrants and Refugees*' to '*Protected Person Screening Committee for granting Protected Person Status*'.

## 2019

- 31 January 2019, RTP released the 'Regulations of the Royal Thai Police on the Determination of Royal Thai Police Duties' (No 16) 2019, which became effective on 5 February 2019.
  - According to clause 16, the Immigration Bureau, Investigation Division, Sub-4 has duties and responsibilities to accommodate requests from individuals who apply for protected person status (2019). They are also responsible for taking the protected person Committee secretariat, as well as investigation, screening, and protection duties.
- 16–18 December 2019, Pol.Gen. Somsak Rungsita, Secretariat of National Security Council, was appointed leader of the Thai representatives participating in the Global Refugee Forum at the United Nations in Geneva, Switzerland. He made the following pledges:

- Staff training and preparation to be ready to execute under the NSM, which may be enforced within 2020 and, hopefully, would benefit from the Asylum Capacity Support Group Mechanism that the United Nations High Commissioner for Refugees (UNHCR) had initiated to support the Thai system.
- Staff capacity building and sharpening necessary skills on the screening mechanism to distinguish between protected persons and economic migrants.
- 24 December 2019, the Cabinet approved the Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562, and it was published in the Royal Gazette Volume 136, Special section 314, Dated 25 December 2019. The Regulation is stipulated by law to be in effect after 180 days after the published date in the Gazette.

## 2020

- 29 May 2020, the RTP (Order 290/2563) assigned the Committees to recruit experts for the Protected Person Committee.
- 29 July 2020, the RTP ordered the Order 389/2563 to appoint the experts for Protected Person Committee
- 3 September 2020, Protected Person Screening Committee conducted the first meeting and approved the assignment of Subcommittees to study the criteria and conduct screening protected person to determine Protected Person status, in the same structure and qualification with the Committee structure and Subcommittee expert.
- 15 October 2020, the Immigration Bureau issued the document 0029.85/3743, to open the Subcommittee representative nomination from government agencies, UNHCR, and civil society.
- 26 November 2020, the Immigration Bureau ordered the Order 310/2563 assigned the committees to appoint the Subcommittee experts to study the criteria and conduct screening of protected persons to determine Protected Person status.
- 8 December 2020, the Immigration Bureau issued document 0029.85.1046, to allow for nominations of multi-stakeholder experts to serve on the Subcommittee.
- 28 December 2020, the Committees that were recruiting Subcommittee members held a meeting to identify criteria and approaches for appointing subcommittee experts.

## 2021

- 17 February 2021, the committee that was recruiting subcommittee members to study the criteria and conduct screening of applicants to determine Protected Person status conducted a meeting to consider experts according to clause 6: the qualification from Regulation.
- 28 April 2021, the Committee appointed the Subcommittee and experts to study the criteria and conduct screening of applicants to determine Protected Person status according to the meeting on 31 March 2021.
- 28 May 2021, the Subcommittee conducted the first meeting to study the criteria and practice when screening of participants to determine Protected Person status and shared the first draft of the Standard operating Procedures.
- Due to the Covid-19 pandemic, the subsequent Subcommittee meeting was delayed and the SOP has not yet been finalized.



## Annex 2: Protected Person Committee

- The Committee, also referred to as the 'Protected Person Screening Committee' under Clause 5:
  - Chairperson:
    - Royal Thai Police: a Deputy Commissioner-General or the Commissioner-General (Pol. Gen. Damrongsak Kittiprapat) (appointed in January 2021)
  - Vice-chairperson:
    - Ministry of Interior: the Deputy Permanent Secretary
  - Delegates:
    - Ministry of Foreign Affairs: Director of International Affairs
    - Ministry of Social Development and Human Security: Deputy Permanent Secretary
    - Ministry of Interior: Director of Foreign Affairs
    - Ministry of Justice: Director-General of the Department of Rights and Liberties Protection
    - Ministry of Labor: Director-General of the Department of Employment
    - National Intelligence Agency: Director department 1 (NIA1)
    - Office of the National Security Council: Director of the National Security Division
    - Office of the Attorney General: Director-General of the Prosecutor of the Foreign Office
    - The Special Branch Bureau
  - Experts:
    - No more than four persons, appointed by the Commissioner-General of the Royal Thai Police due to their expertise and experience in human rights or other fields relevant to the duties and authorities of the Committee, who shall not be a civil worker with any position or salary, a personnel or an employee of civil service, government authorities, state enterprises, or local administrative organizations, with the exception of lecturers in public universities, as members of the Committee.
    - The following experts were appointed on 29 July 2020 to serving a term of three years:
      - Pol. Lt. Gen Teerasak Chukitkun
      - Mr. Nattawut Potisaro
      - Ms. Rattikul Chansuriya
      - Mr. Wattana Choksukwanich
  - Secretariat:
    - Immigration Bureau, Sub-Division 4
- The Subcommittee to study the criteria and conduct screening of applicants to determine Protected Person status was appointed on 28 April 2021:
  - Chairperson
    - Royal Thai Police: a Commissioner-General (Pol. Lt. Gen. Permpoon Chitchob)
  - Vice-chairperson:
    - Ministry of Interior: Director of Operation Center for Displaced Persons (Ms. Monhathai Rattannupong)

- Delegates:
  - Ministry of Foreign Affairs: Director of Social Affairs Division, Department of International Organizations
  - Ministry of Social Development and Human Security: Director of the Anti-Human Trafficking Division
  - Ministry of Interior: Director of the Operation Center for Displaced Person
  - Ministry of Justice: Justice Officer, Professional Level, Department of Rights and Liberties Protection
  - Ministry of Labor: Deputy Director-General of the Department of Employment
  - Office of the National Security Council: Plan and Policy Analyst, Senior Professional
  - Office of the Attorney General: Special Prosecutor Office of the Attorney General
  - The Special Branch Bureau: Commander of Special Branch 2
- Experts<sup>53</sup>:
  - Pol. Maj. Gen. Sukij Totarb
  - Pol. Gen. Apimook Karntayakorn
  - Mr. Bhanubhatra (Kaan) Jittiang: Professor from the Faculty of Political Science, Chulalongkorn University
  - Ms. Chenjuti Tempitak: RSD Office, UNHCR Thailand
  - Ms. Naiyana Thanawattho: Executive Director at Asylum Access Thailand (Representative of civil society)
  - Ms. Walaiporn Ratanaset: Dean of Faculty of Political Science, Dhurakij Pundit University

### Annex 3: In-depth Interview Questionnaire

1. Legal framework rational on refugee protection and screening mechanism
  - 1.1 Kindly give some examples of international law that reference this NSM (optional)
  - 1.2 Kindly give some examples of domestic law that reference this NSM (optional)
  - 1.3 To establish the NSM Regulation, how does it important and relate to your organization and how?
  - 1.4 In legal perspective, what do you think about NSM's values, i.e., national security, humanitarian response, etc.?
  - 1.5 What are the reasons that Thailand does not refer to refugee convention?
2. Development of NSM
  - 2.1 How does your organization participate in NSM establishment and implementation?
  - 2.2 How does UNHCR support NSM implementation?
  - 2.3 What causes the delay of NSM implementation?
  - 2.4 What are the challenges and limitations of the NSM implementation and what are the solutions?
  - 2.5 Has any Thai refugee situation changed since the Regulation has been established?

<sup>53</sup> Criteria same as the committee: No more than four persons, appointed by the Commissioner-General of the Royal Thai Police due to their expertise and experience in human rights or other fields relevant to the duties and authorities of the Committee, who shall not be a civil worker with any position or salary, a personnel or an employee of civil service, government authorities, state enterprises, or local administrative organizations, with the exception of lecturers in public universities, as members of the Committee.



3. Human rights approach on NSM implementation
  - 3.1 In your experience, would you please share some stakeholders that you have worked with to support refugees in Thailand?
  - 3.2 Who is the NSM target group and will it apply to other vulnerable groups?
  - 3.3 What is your opinion on protected person access to human rights, i.e., education, livelihood?
  - 3.4 As CSOs, how can we monitor the update of the NSM?
4. Recommendation to CSOs and Refugees
  - 4.1 Do you have any recommendations for CSOs or refugee communities?
  - 4.2 How CSOs and refugee communities could support your works?
5. Recommendation to government agencies?
  - 5.1 Do you have any recommendations for government agencies to enforce NSM implementation?

## Annex 4: Refugee Focus Group Discussion Questionnaire

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1. General
  - 1.1 What do you already know about the NSM?
  - 1.2 When you think about the NSM, what was the first thing that comes into your mind?
  - 1.3 How have you learned about the NSM?
  - 1.4 What aspects or things are you unsure or unaware about the NSM? What do you want to learn more?
  - 1.5 What's your first priority for the NSM? And why?
2. Definition of refugee
  - 2.1 How do you understand the term 'refugee'? What are the great evident-based to proof refugee grounds?
  - 2.2 Do refugees think it is possible to gather evidence (both old and new ones) if your case is required to be reassessed?
  - 2.3 How do you feel with this terminology 'protected person' but similar definition of refugee based on refugee convention 1951
  - 2.4 To what extent do you think the Thai government understands the definition of 'refugee'?
3. Screening process
  - 3.1 If Thailand is an open country to screening refugees, what is your dream screening process and why? Begin with arrival, registration, and screening procedure, which include interview and appeal.
  - 3.2 What do you like about the RSD process that you want the RTG to continue, and what do you not like that you want the RTG to consider to improve?
  - 3.3 Do you think all asylum-seekers currently have equal access to RSD processes? How could the NSM address these?

4. If you are rejected by the NSM procedure, what should be your alternative plans/next steps? (What might be the government's responsibilities? What kind of support might they need?)
  - 4.1 For the moment, the NSM doesn't include an appeal during the screening process. Instead, it asks you to file a new application or to reopen a new case. Do you think it's a fair process? What are your recommendations to the Thai government and how could you improve it?
  - 4.2 The rejected case under the NSM will be treated under the Immigration Act, which could be stricter than now (high risk to detain). So if your case were rejected, what would you do? Would you still stay in Thailand?
  
5. Refugee/Protected person rights
  - 5.1 What are the priority refugee rights while waiting for refugee status and durable solutions? (health, education, livelihood, etc.)
  - 5.2 Any difficulties to access medical, education rights, or others at the moment?
  - 5.3 To what extent do you feel you are supported through the RSD process? What can stakeholders (including NGOs) do to better this support (feeding into refugees' needs and priorities)?
  
6. Conclusion
  - 6.1 What are the range of perspectives about the NSM? Positive (hopes, needs, and wants) and negative (concerns, fears)?
  - 6.2 What are your recommendations for the NSM? (What do you believe is most important for the government to understand when implementing the NSM?)
  - 6.3 Any additional comment?





## ANNEX 5: DATA COLLECTION MATRIX

Baseline Areas & Objectives	Baseline development questions This leads the research	Level of ToC	Sources
<b>1. Beneficiaries</b>   Examine population groups affected or potentially affected and their relevant needs and priorities;	a. Who are the (potential) target population groups?		
	b. What are target group's (differing, based on location, community, etc.) needs and priorities? (May or may not be about the NSM) (current state)		
	c. To what extent have they been informed about the NSM? What is their current understanding of the NSM?		
	d. What are the range of perspectives about the NSM? Positive (hopes, needs, and wants) and negative (concerns, fears) What would a positive NSM process look like to them?		
	a. What are different stakeholders' goals / objectives? What are the similarities and differences between different stakeholder groups?		





Methods / Tools	Prelim. findings	Potential key evaluation questions sense check / cross-check to ensure sufficient baseline
		<p><b>Relevance  </b>                      To what extent has the NSM addressed the needs of different migrant / refugee population groups? To what extent were population groups consulted on NSM roll-out / made aware of NSM roll-out? To what extent has the NSM (and associated support) fulfilled refugees' expectations?</p> <p><b>Indicators you will need:</b>                      e.g. number of consultations with population groups by government; knowledge of NSM within population groups; the extent to which communities' self-identified needs are met by the NSM</p>
		<p><b>Effectiveness  </b>                      To what extent has the NSM achieved the goals / objectives of all relevant stakeholders? What mechanisms does the NSM have in place to ensure its effectiveness?</p> <p><b>Indicators you will need:</b> e.g. goals / objectives of relevant stakeholders; perceptions of change / impact;</p>

Baseline Areas & Objectives	Baseline development questions This leads the research	Level of ToC	Sources
<p><b>2. Operational</b>   Identify measures within the policy, any corresponding standard operating procedures, and/ or means of implementation which will be used to affect change for those the policy addresses.</p>	<p><i>a. (when/progress)</i> What are the current plans with regards to NSM (implementation)?</p> <p>To what extent has the NSM been implemented according to plan?</p> <p>To what extent do key stakeholders (civil society, people affected, implementing agencies) aware of the plans?</p>		
	<p><i>b. (what)</i> To what extent has the NSM been adopted in law, policy, and practice? To what extent does the NSM cohere to other policy / legal measures currently in place?</p>		
	<p><i>c. (who)</i> What are the roles and responsibilities of relevant stakeholders and institutions? To what extent do the respective stakeholders understand their role? To what extent do respective stakeholders and institutions have adequate training, resources, and knowledge to perform their role?</p>		
	<p><i>d.</i> To what extent are plans, progress, and operational transparency in accordance with stated objectives and human rights standards?</p>		



Methods / Tools	Prelim. findings	Potential key evaluation questions sense check / cross-check to ensure sufficient baseline
		<p><b>Effectiveness / Coherence</b>   How effective were SOPs in practice? To what extent were stakeholders' roles and responsibilities (a) adhered to, and (b) coherent and complementary?</p> <p><b>Indicators you will need:</b></p>

Baseline Areas & Objectives	Baseline development questions This leads the research	Level of ToC	Sources
<p><b>3. Human Rights / Protection Standards</b>   Identify inter (national) human rights and protection standards relevant to the Thai NSM policy, from the perspective of experts and people affected and examine the extent to which the Thai NSM is set to incorporate these.</p>	<p>a. What are human rights standards, principles, and best practice standards related to NSM law policy and practice that are relevant to the Thai NSM?</p> <p>b. (Consistency / clarity across stakeholder groups) How do different stakeholders understand the application of the human rights framework to the NSM? Where are there gaps?</p> <p>c. To what extent has the NSM law policy and or practice applied these best practices standards? To what extent has the government demonstrated transparency and consistency in the communication and application of the NSM?</p> <p>d. Based on self-identified needs and priorities of people affected, what are the relevant human rights and protection standards pertinent to the Thai NSM? To what extent does the NSM apply to different population groups in law, policy, and practice?</p>		
<p><b>4. Monitoring and Evaluation</b>   What plans are in place to ensure the implementation of the roll-out is monitored and evaluated?</p>	<p>a. What are the stated goals and objectives of the NSM? What are the similarities and differences in perspective between different stakeholder groups on the objectives of the NSM?</p> <p>b. What systems are in place for government to review this work? What accountability mechanisms / procedures are in place?</p> <p>c. How is / will civil society hold government to account in affecting the NSM in law, policy, and practice?</p>		



Methods / Tools	Prelim. findings	Potential key evaluation questions sense check / cross-check to ensure sufficient baseline
		<p><b>Coherence</b>   To what extent is the NSM in line with human rights standards and principles?</p> <p><b>Human Rights / Protection Standards</b>   To what extent has the roll-out of the NSM been equitable? What are RSD approval rates? What procedural safeguards are in place?</p> <p><b>Indicators you will need:</b></p>
		<p><b>Effectiveness / Accountability / Transparency</b>   To what extent has the NSM achieved the goals / objectives of all relevant stakeholders? What mechanisms does the NSM have in place to ensure its effectiveness? To what extent has the government (and associated ministries) been transparent and accountable during the implementation of the NSM? To what extent have systems and other stakeholders contributed to transparency and accountability?</p> <p><b>Indicators you will need: e.g. goals / objectives of relevant stakeholders; perceptions of change / impact;</b></p>

## ANNEX 6: LIMITATIONS

Risk/ limitation	Impact	Mitigation plan
<b>Contingency planning for COVID-19</b>	Due to the COVID restriction, there is a travel and group meeting restriction, we could not conduct the NSM refugee roundtable and the national roundtable together with soft launch. These caused the lack of engagement with key stakeholders. There were also technical challenges and limitations for some participants.	APRRN has designed a simplified online channel to continue the event. We offered technical support for those who requested and provided Internet package support for refugee participants.
<b>Access to stakeholder</b>	While conducting an in depth-interview with the government and conducting a multi-stakeholder meeting, APRRN could not engage with a key person from some governments who has direct response on the NSM implementation or some of them could not attend the meeting at all.	We prioritized the time available with key stakeholders and ensure the objectives meet for all parties. Moreover, we have followed the invitation and reached out to many channels. Lastly, we prepared for a backup plan.
<b>Sampling and Method Size</b>	<p>As APRRN is a regional-based organization and does not provide direct service to the refugees in Thailand. We have limited access to the refugee communities. Moreover, APRRN works closely with the stakeholders whose focus is the urban refugee. Therefore, the participation from the refugee camp will be less.</p> <p>In order to manage the online logistics, we have criteria for FGD participants to be able to speak English, which limits the number of potential participants.</p>	We ensure the diversity ratio from nationalities, gender, and refugee backgrounds by collaborating with CRSP.
<b>Error</b>	The methodology has been implemented in both Thai and English, during the translation or paraphrasing, which may cause the data flaw.	We have double proofreading from internal and external.
<b>Team capacity</b>	There was only one person who contributed directly to the report. Moreover, there are some staff relocation during the report development, which causes the delay and capacity to cover more sections.	We have hired Lighthouse Partnership Organization to support and review data collection and report reviewing. Moreover, we have circulated the report draft to the CRSP member and the respective academic.



## ANNEX 7: ETHICAL CONSIDERATION

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**The 'do no harm' principle** seeks to ensure that stakeholders involved in the study and assessment are not negatively impacted by assessment activities and that sensitive relationships are preserved. Close communication will occur between the study team and external consultant to ensure that the study team is appropriately briefed before data collection.

People with lived experiences will only be engaged in the study and assessment process if the study team is satisfied that the risk of harm is low. The study team is appropriately selected and supported to make free and informed decisions about whether and how to participate, and that the study team and external consultant employ appropriate engagement methods including cultural and gender considerations when conducting an interview or focus group.

**Reciprocity:** We will seek to uphold the principle of reciprocity by using methods and approaches that provide some degree of benefit or utility to program participants. This may include aligning methods with the priorities of participants, financial compensation for time and costs, and being updated about evaluation findings.

**Confidentiality and anonymity:** Evaluators are legally and ethically required to maintain confidentiality of assessment data.

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