

## **Briefing Paper to Diplomatic Missions in Bangkok, Thailand: “Arrests and Detention of Refugees and Asylum Seekers on 28 August 2018”**

On 28 August 2018, 181 refugees, asylum seekers, and persons seeking registration with UNHCR were arrested outside of Bangkok, Thailand.<sup>1</sup> Those arrested are predominantly Montagnard (an umbrella term that includes Jarai, Ede, and other ethnic groups) in Vietnam and Cambodia. Many Montagnards are Christian and have fled to Thailand and Cambodia in recent years to flee religious and political persecution.<sup>2</sup>

The newest arrests and separation of children from mothers jeopardises the positive steps taken by the Royal Thai Government to find alternatives to, and ultimately end immigration detention of children. It also seriously calls into question Thailand’s recent commitments to protecting the rights of refugees.

### **TIMELINE OF EVENTS**

- On 28 August 2018, Thai police officers brought the arrested refugees and asylum seekers to Bang Yai district office, Nonthaburi province, where they were criminally charged with illegal entry and illegal stay under articles 11, 62, and 81 of Thailand’s Immigration Act.
- On the evening of 28 August, 34 refugees and asylum seekers, including children, of Cambodian nationality were transferred to the Suan Phlu Immigration Detention Centre to await potential deportation.
- On 29 August, 38 Vietnamese men were moved to the Municipal Court in Nonthaburi to hear charges against them, where lawyers from Asylum Access, Center for Asylum Protection, and Thai Lawyers for Human Rights Lawyers Association provided legal assistance. They were later transferred to a correctional center for detention as they lacked funds to pay the fines imposed by the court. The cases of three men who denied the charges remain pending.
- On 30 August, the remaining Vietnamese men and women were brought to Nonthaburi Municipal Court, where all accepted the charges. They were later transferred to a correctional center for detention as they lacked funds to pay the fines imposed by the court.
- On 30 August, Vietnamese children were separated from their parents and placed in MSDHS-operated shelters. Those separated include children as young as three months old.

### **POLICY BACKGROUND**

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<sup>1</sup> Human Rights Watch, “Thailand: Release Ethnic Minority Refugees, Asylum Seekers,” 29 August 2018, [www.hrw.org/news/2018/08/29/thailand-release-ethnic-minority-refugees-asylum-seekers](http://www.hrw.org/news/2018/08/29/thailand-release-ethnic-minority-refugees-asylum-seekers)

<sup>2</sup> Id.

- A National Roundtable focused on ending child immigration detention was held in Bangkok, Thailand in February 2015. The roundtable was hosted by the Thai National Human Rights Commission, APRRN, and the International Detention Coalition. During these discussions, representatives from the Royal Thai Government and civil society firmly agreed that IDCs are an inappropriate and highly damaging environment for children and their care-givers to be held in, and that alternatives to detention should be explored for children and their families.
- In September 2016, Thailand's Prime Minister Prayut Chan-o-cha pledged to improve protection and solutions for refugees in Thailand at the UN Summit for Refugees and Migrants, and the Leaders' Summit on Refugees convened by US President Barack Obama in New York.
- The pledges by PM Prayut has since been followed by commitments by the Royal Thai Government to ending the immigration detention of children.
- In January 2017, the Royal Thai Government announced its commitment to developing a screening mechanism for refugees.
- Over the past several months, civil society has met with various RTG agencies to provide guidance on the completion of an MOU to accomplish this goal. In particular, civil society organizations have agreed to apply for the release on bail of all adults and children inside detention, including the release of adults with children outside of detention. During these discussions, key concerns have included: whether both fathers and mothers would be released on bail, the high cost of bail (generally 50,000 THB per adult), and whether children would continue to be arrested and detained.

## **INTERNATIONAL AND DOMESTIC LEGAL OBLIGATIONS**

### **Domestic**

- Section 54 paragraph 3 of the Immigration Act B.E.2522 provides: “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.”
- Section 17 of the Immigration Act B.E.2522 provides: “In certain special cases, the Minister, by the Cabinet approval, may permit any alien or any group of aliens to stay in the Kingdom under certain conditions, or may consider exemption from being conformity with this Act in any case.”
- Article 22 of the Child Protection Act provides that the best interests of the child shall take importance in any treatment of the child.
- In Thailand, immigration offences are treated as criminal offences. However, the Criminal Code, article 67 provides a defence where crimes are committed on account of necessity, including when a person acts, “in order to make himself or another person to escape from an imminent danger which could not be avoided by any other means, and which such person did not cause to exist through his own fault.” Breaking immigration laws in order to flee persecution would appear to fit squarely within this defense.

### **International**

Thailand is a signatory to several relevant and important international human rights instruments including the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC):

- Article 3 of the CRC provides that the best interests of the child shall be a primary consideration in all actions affecting children; article 9 provides that children shall not be separated from their parents against their will except, subject to judicial review, it is in the best interests of the child; article 37(b) provides that no child shall be unlawfully or arbitrarily detained unless as a measure of last resort and for the shortest appropriate period of time.
- Article 9 of the ICCPR prohibits arbitrary detention.
- Article 3 of the CAT and article 7 of the ICCPR prohibit states from returning individuals to a country where they are likely to face torture or other serious human rights abuses.

## **KEY ISSUES**

- Mothers and fathers in correctional center remain separated from their children. After serving time in correctional center, all will likely be transferred to Suan Phlu's Immigration Detention Center.
- Those who are not released on bail face detention in squalid conditions. Thailand's current decision to halt bail for refugees and asylum-seekers means that detention may be indefinite, rendering the detention arbitrary.<sup>3</sup>
- However, this outcome is not inevitable. Under article 54 of Thailand's Immigration Act, Thai authorities have the discretion to allow those awaiting deportation to stay outside of detention centers. A small number of those arrested have requested registration from UNHCR but have yet to receive UNHCR cards. These individuals may be at heightened risk of refoulement.

## **RECOMMENDATIONS**

We encourage representations in Thailand to appeal to the Royal Thai Government to:

- Halt the current policy of arresting and detaining refugees and asylum seekers, including children, in consideration of the serious and far-reaching implications of these practices on children and families.
- Release all refugees and asylum seekers currently detained in line with articles 17 or 54 of the Immigration Act.
- Refrain from returning to Vietnam refugees, asylum seekers, and those requesting registration from UNHCR
- Maintain constructive dialogue and work collaboratively with the National Human Rights Commission and civil society organisations to protect the rights of refugees and implement alternatives to immigration detention.

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<sup>3</sup> Bangkok Post, "Detention centres stuck in past century," 18 February 2018, [www.bangkokpost.com/news/special-reports/1414047/detention-centres-stuck-in-past-century](http://www.bangkokpost.com/news/special-reports/1414047/detention-centres-stuck-in-past-century)