

Summary Paper of Briefing to Diplomatic Missions

German Embassy in Bangkok, Thailand

19 September 2018:

“Arrests and Detention of Refugees and Asylum Seekers on 28 August 2018”

UPDATED TIMELINE OF EVENTS

- On **28 August 2018**, 181 asylum seekers, refugees and unregistered persons were arrested outside of Bangkok and brought to the Bang Yai district office in Nonthaburi province. Here they were charged with illegal entry and illegal stay under the relevant provisions of the Immigration Act.
- That same evening, 34 refugees and asylum seekers of Cambodian nationality, including approx. 14 children, were directly moved to Suan Phlu Immigration Detention Centre (“IDC”) to await possible deportation.¹
- On **29 August**, 38 Vietnamese men appeared before the Nonthaburi District Court in two groups to hear the charges against them. The Center for Asylum Protection, Asylum Access Thailand and the Human Rights Lawyers Association provided the men with legal assistance. Following interventions by the lawyers present, the procedural defects that occurred during the first court session were corrected for the second group. The first group was thereafter recalled and reprocessed. All but three plead guilty to the charges. Those who plead guilty were sentenced with a fine. As they lacked funds to pay for the fines, the fine was converted into a prison sentence and they were transferred to the correctional centre for detention. The cases of three men who denied the charges remained pending.
- On **30 August**, the remainder of the group (some men and mostly women) appeared before the Nonthaburi District Court to hear the charges against them. All plead guilty to the charges and were subsequently transferred to the correctional centre for detention as they lacked funds to pay for the fines.
- On **30 August**, following signing of a consent form, all Vietnamese children (47 children) were separated from their parents and placed in Ministry of Social Development and Human Security (“MSDHS”) shelters by the Department for Children and Youth (“DCY”), including children as young as 3 months old.

¹ Under the MOU on illegal migrant workers between the governments of Thailand, Myanmar, Laos and Cambodia, immediate deportation in lieu of the regular court procedure is allowed.

- On **6 September**, four breastfeeding mothers were transferred from the correctional centre to Suan Phlu IDC for detention after their fine was paid by an NGO on 4 September.
- On **7 September**, the remainder of the Vietnamese group were transferred to IDC.
- On **12 September**, DCY did an intake in IDC with all the Vietnamese families to obtain their consent to continue to keep the children in the MSDHS shelters. The majority of parents agreed, though a few families requested that the children be returned to them in IDC.

CURRENT SITUATION AND UPDATES AS OF 25 SEPTEMBER 2018

- DCY has prepared shelters for the four breastfeeding mothers to be reunited with the children. They were released on Friday, 21 September and transferred to the shelters the same day.
- DCY is also prepared to offer a place for the Cambodian children in the MSDHS shelters.
- All Vietnamese children are currently held in four MSDHS shelters in Nonthaburi Province, separated by gender and age. DCY is in the process of setting up a system for communication and meetings between siblings as well as parents.
- Among the 47 children, 25 were identified as students in the same school. They will be able to participate in the semester exam on 6-7 October. CSOs will work hard to ensure that these children are able to return to school next semester (late October).
- Meetings between IDC and DCY have taken place to discuss the issue of children in IDC. Currently, the majority of children remain separated from their parents. CSOs are working together with DCY and IDC to find appropriate solutions.

LEGAL AND POLICY UPDATE

- In August 2018, a Memorandum of Understanding on Alternatives to Detention (“MOU” and “ATD” respectively) between related government sectors for the release of migrant children was finalised. All relevant ministries and government agencies have agreed to sign the MOU, however the MOU is still pending the signature of the Prime Minister and Permanent Secretaries of the related Ministries; Royal Thai Police, Ministry of Foreign Affairs, MSDHS, Ministry of Education, Ministry of Public Health, Ministry of Labour.
- Once the MOU is signed, the government will have to finalize the related Standard Operating Procedures (“SOPs”) within 30 days. A draft of the SOPs has been prepared by DCY (under MSDHS) and a consultation meeting among related Ministries and one consultation with CSOs will be scheduled. The SOPs will serve to guide the implementation of the MOU by the different government agencies and CSOs.

- CSOs have been actively engaged in the creation of the MOU by sharing information and points of concern with the government. CSOs have further been collaborating with both IDC and DYC to prepare for the implementation of the MOU.
- The implications of the MOU include the release of all children and their immediate family members and possibly a deferred bail (i.e. bail will not have to be paid up-front but only in case the person absconds), though this has yet to be confirmed. Accordingly, bail remains an issue which should be continually tracked and monitored.
- As of July 2018, there were 24 families with 42 children in IDC Suan Phlu; 24 boys and 18 girls. With the recent arrest on 28 August, the number of children in detention has doubled.
- Regarding the mass arrest of 28 August, DCY has agreed to act as case manager of all Vietnamese children. In that capacity they will create a case management plan for each child (and their family).
- As for the National Screening Mechanism (“NSM”), CSOs developed a draft regulation and presented it to the government on 18 June 2018. Currently, the relevant regulation is in the process of being finalised by the relevant government agencies. Once it is completed, it will be sent to the Cabinet for approval. We are hopeful that this new mechanism will provide a long-term solution as it is anticipated that the NSM will provide some form of legal status for this group of People of Concern (“POC”) and other migrants.

SIGNIFICANCE OF THE MASS ARREST FOR POLICY DEVELOPMENTS

- Policy developments are only commendable if they result in actual improvements in protection.
 - Several incidents throughout the arrest indicated that there was a lack of understanding about refugee issues. This is cause for concern in the future, particularly around the idea of who qualifies as a refugee and what would happen with the refugee after the arrest.
 - The 28 August mass arrest revealed that different government agencies on various levels of government (national, regional, local) have different internal policies and practices, which sometimes are not in accordance with the soon-to-be-announced national policy.
 - If POCs continue to be arrested, this will make ATD solutions much more difficult.

- We should also not lose sight of the issue of detention more broadly. In the past, it was possible to submit bail applications to obtain release from IDC. For the past 2-3 years, bail has been closed. With the commitments made to this new policy of ending child immigration detention, we have seen improvements. However, in some regards, such as the issue of bail, we are still behind where we were 3 years ago.

RECOMMENDATIONS

- Support educating, training and sensitising police, immigration, judiciary, and government officials on refugee law and rights;
- Support NGO ATD initiatives;
- Advocate for the release of children should include release of the whole immediate family, including mothers and fathers
- In the short term, advocate for use of existing solutions under the current Immigration Act, including granting permission to stay under article 17 or allowing the release on bail of all refugees and asylum seekers under article 54 of the Immigration Act.
- In the long term, advocate for a credible screening mechanism that effectively identifies those in need of protection under international law and provides them with a legal status.