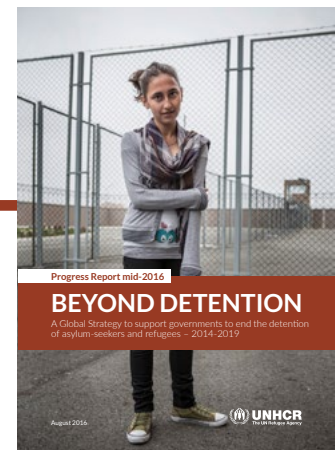


# Thailand

## PROGRESS UNDER THE GLOBAL STRATEGY BEYOND DETENTION 2014-2019, MID-2016

**THAILAND** is not a party to the *1951 Refugee Convention* and has no specific domestic legal framework for protection of urban refugees and asylum-seekers. As such, urban refugees and asylum-seekers may be treated as illegal aliens unless they have a valid visa issued pursuant to the Thai Immigration Act. Absent a valid visa, they may be subject to arrest, prosecution and detention on immigration charges, irrespective of their status with UNHCR. In this context, UNHCR Thailand supports the progressive introduction of alternatives to detention (ATDs) as part of its advocacy for an overall domestic legal protection framework for persons of concern to UNHCR.

The inter-agency Task Force on Detention (DTF) established in 2011 meets regularly and is an important forum for the roll-out of the National Action Plan (NAP). UNHCR is also an active member of the IDC Coordination Committee (IDCCC) which includes NGOs and community-based organizations advocating at the operational level for better conditions in the immigration detention centres, and the ATD working group composed of several NGOs, which was created in 2015 and meets on an *ad hoc* basis. The NAP was drafted based on the practical issues and priorities identified through these coordination mechanisms and through consultation with civil society and the Government.



## KEY DEVELOPMENTS

- Set up of an informal ‘temporary protection’ regime for persons of concern of Rohingya origin and victims of trafficking in 2014: although technically detained, women, girls, and boys under 15 are permitted to reside in semi-open shelters run by the Ministry of Social Development and Human Security, responsible for the provision of basic services (health care, education, etc.). Persons determined to be victims of trafficking also have access to semi-open residential Protection and Occupational Development Centres as opposed to Immigration Detention.
- Admission of children of concern to UNHCR in shelters for children operated by the Ministry of Justice and the Ministry of Social Development and Human Security in the urban setting. Community-based and individual support arrangements for unaccompanied and separated asylum-seeking children (UASC) and other children at risk have been developed by the Jesuit Refugee Service (JRS) with support from UNHCR, but children for whom support is provided still face the risk of arrest and detention and, hence, this mechanism is not considered as a full alternative to detention.
- Revocation of the bail payment for children under the age of 15 given the absence of criminal liability under Thai law. They are only subject to reporting requirements upon release. An amount equivalent to half the usual surety should be paid and “confiscated” in case of absconding. 111 children have been released through this arrangement during the reporting period.
- Release of some persons of concern based on UNHCR systematic reporting of individual specific needs (e.g., medical) to Immigration Detention Centre officials

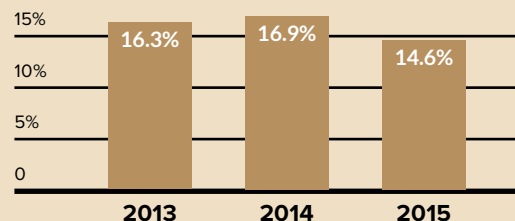
## Activities undertaken by UNHCR and partners during the roll-out period of the Global Strategy

In October 2014, UNHCR presented to the Royal Thai Government a **discussion paper** entitled, “A Framework for Alternatives to Detention”, highlighting existing provisions in Thai law which provide for non-detention, including non-detention of children, and discussed potential models of alternatives at an internal roundtable attended by key government agencies. A companion paper was also presented highlighting state responsibilities pursuant to treaties Thailand is a party to (ICCPR, CRC, CAT), as well as a paper, specifically highlighting elements of existing Thai law in regards to a Temporary Protection Framework for Rohingya persons, which could be adapted to the wider population of concern.

In September 2015, as a follow-up to the foregoing, the Royal Thai Government sent an inter-Ministerial team to a country in the region to assess different aspects of possible protection from *refoulement* and detention in a non-1951 *Refugee Convention*, non-refugee law context. The visit underscores UNHCR’s advocacy with respect to leveraging existing Thai law to create a framework that balances national security concerns with international protection needs, whereby deportation orders are suspended pending determination of status and solutions and, in the meantime, detained individuals are released on personal recognizance with a regular reporting requirement.

### GOAL 1 End the detention of children

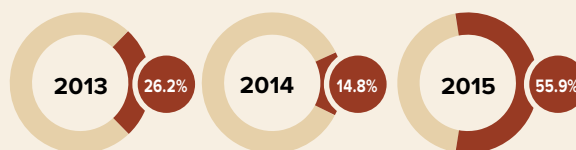
#### PERCENTAGE OF ASYLUM-SEEKING AND REFUGEE CHILDREN AMONG TOTAL ASYLUM-SEEKERS AND REFUGEES POPULATION DETAINED IN 2 DETENTION CENTRES



⊘ Legal framework does not ensure that children are not detained.

### GOAL 2 Ensure that alternatives to detention (ATDs) are available

#### PERCENTAGE OF PERSONS IN ATDs (out of total number of persons detained)



For 2013, 2014 and 2015, the percentages relate to the number of persons bailed out of the immigration detention centre in Bangkok.

TYPES OF ATDs:	2013	2014	2015
Deposit or surrender of documentation			
Reporting conditions	☑	☑	☑
Directed residence <sup>1</sup>	☑	☑	☑
Residence at open/semi-open reception/asylum centres			
Release on bail/bond	☑	☑	☑
Provision of a guarantor/surety	☑	☑	☑
Community supervision arrangements			

☑ available in legislation    ☑ used in practice

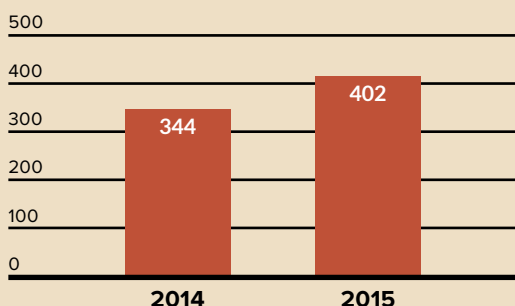
<sup>1</sup> Release to a government shelter for recognized victims of trafficking.

- ⊘ No mechanism allowing asylum-seekers to stay legally in the community. However, there is access to bail and, in the *Immigration Act*, the possibility of release with reporting conditions or directed residence as opposed to detention.
- ⊘ When residing in the community, asylum-seekers do not have access to basic rights (accommodation, medical and psychological assistance, education, legal assistance), except for access to basic education as part of Thailand's education for all policy, as well as birth registration and emergency access to life-saving medical care.

**N/A** Case management\* provided in ATDs.

**GOAL 3** Ensure that conditions of detention meet international standards

**NUMBER OF MONITORING VISITS ORGANIZED BY UNHCR AND/OR PARTNER(S)**



- ⊘ Thailand is not a party to the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*.

**LEGEND:** ☑ Yes ⊘ No ⊙ Partially

**N/A** Not available **U** Unknown

**SOURCE:** All indicators were compiled based on UNHCR and/or UNHCR's partner(s) monitoring visits and observations, except if otherwise stated.

\* See UNHCR *Detention Guidelines*, p.44.

As part of the NAP, UNHCR **increased outreach and direct engagement with and sensitization of authorities** such as police, Army and Immigration officials. UNHCR also considerably increased its **interventions in arrest situations**, mostly through physical presence at the arrest sites. Starting in April 2015, the office also issued interventions letters to the local police stations who conducted the arrest of persons of concern, providing legal opinions as to why asylum-seekers and refugees should not be charged with immigration related charges. The individual specific needs of persons who are ultimately be detained are documented and presented to immigration officials. These different interventions resulted in enhanced understanding between UNHCR and officials, as well as enhanced protection space for persons of concern.

UNHCR Thailand also **engaged in awareness-raising activities**, and in cooperation with UNHCR Regional Office in Bangkok, launched a 'Stop Child Detention' media campaign, featuring digital billboards throughout the South-East Asian region.



#### TRAININGS ORGANIZED IN THAILAND DURING THE REPORTING PERIOD

1 on Screening and referral

8 on Asylum Law, including UNHCR *Detention Guidelines*

#### NUMBER OF PERSONS TRAINED IN THAILAND DURING THE REPORTING PERIOD

80 on Screening and referral

100 on Asylum Law, including UNHCR *Detention Guidelines*

## Gaps and challenges

The overall absence of a national domestic legal framework for the protection of refugees and asylum-seekers remains the main gap and key challenge. Further, in the absence of a maximum time limit for immigration detention, those who are not resettled nor released on bail are facing risk of indefinite detention. Establishing procedures to ensure that the best interests of the child is taken into consideration prior to resort to detention, is another key challenge that the office stands ready to support.

## Next steps

In 2016, UNHCR Thailand will, inter alia, continue: (1) its overall advocacy with respect to ATDs and the establishment of a government policy framework related to protection of persons of concern to UNHCR, as well as sensitization sessions for officials; (2) to intervene formally and informally in individual cases of arrest and detention, enhance engagement with law enforcement and the judiciary and continue analysis of the application of Thai law (such as the Anti-Trafficking in Persons Act ) to improve the protection environment for persons of concern; and (3) to further support the improvement of conditions of detention through, inter alia, systematic outreach to detainees and documentation of their current and new specific needs while in detention, as well as an analysis of the legal framework, regime and conditions applicable in the shelters devoted to the group of Rohingyas.

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UNHCR Bangkok, August 2016.