

Global Detention Project Submission to the UN Human Rights Committee (CCPR)

117th Session (20 June – 15 July 2016)

Country Report Task Force for the adoption of the list of issues - Thailand

Geneva, 7 April 2016

The Global Detention Project (GDP) welcomes the opportunity to provide information for the Committee Country Report Task Force for the adoption of the list of issues for the second periodic report of Thailand due in 2009, with respect to the implementation of the International Covenant on Civil and Political Rights (ICCPR), ratified by Thailand in 1996. The GDP is an independent research centre based in Geneva that investigates immigration-related detention. As per the GDP's mandate, this submission focuses on the State party's laws and practices concerning detention for immigration- or asylum-related reasons.¹

Asylum seekers and migrants at risk of detention

Thailand is an important destination for migrant workers and asylum seekers from across the Greater Mekong Delta region as well other parts of Asia. Like many of its neighbours, Thailand is not a signatory to the Refugee Convention and does not have a formal asylum framework in place. Asylum seekers and refugees are generally treated as unauthorized immigrants, charged with crimes, and sent to detention centres. Rohingya Muslims fleeing persecution in Myanmar are particularly vulnerable to arrest and detention as are Christian asylum seekers from Pakistan.²

Thailand hosts approximately four million international migrants, an estimated 1.5 million of who are undocumented.³ Approximately 80 percent of the migrants and asylum seekers in the country are from Myanmar while the remaining 20 percent come mainly from Laos and Cambodia. The country has undertaken various regularization and registration operations since the early 2000s within the framework of bilateral labour agreements with Laos, Cambodia, and Myanmar. Nearly 1.6 million irregular migrants (including dependents) were registered during a four-month period in 2014.⁴

¹ This submission is based primarily on GDP research on immigration detention policies and practices, available at: <http://www.globaldetentionproject.org/countries/asia-pacific/thailand>.

² United Nations High Commissioner for Refugees. 2015 UNHCR country operations profile – Thailand. <http://www.unhcr.org/pages/49e489646.html>; BBC, "The Christians held in Thailand after fleeing Pakistan," 26 February 2016, <http://www.bbc.com/news/magazine-35654804>.

³ Department of Economic and Social Affairs, Population Division, United Nations, International Migration 2015 Wallchart, <http://www.un.org/en/development/desa/population/publications/http://www...>, United Nations, 20135; Huguet Jerrold W (ed). United Nations Thematic Working Group on Migration in Thailand. Thailand Migration Report 2014. <http://th.iom.int/index.php/featured-projects>.

⁴ International Labour Organization (ILO). Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries. 2015. http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_356542.pdf.

Despite these regularization exercises, both documented and undocumented migrant workers and asylum seekers remain at risk of arrest, detention, and deportation, as advocacy groups like the Mekong Migration Network have documented.⁵ Migration policies in Thailand often lead to confusion and migrant workers live under the constant threat of deportation. This is due to several factors, including dependency on a single employer, costly and complicated bureaucratic procedures, restrictions on freedom movement, as well as police corruption and collusion with traffickers (see below).⁶

Some 110,000 Myanmar refugees have been allowed to stay in nine camps on the Thai-Myanmar border by executive discretion. There is also an unverified number of refugees and asylum seekers from dozens of other countries, who reside outside camps.⁷ There are often long delays in processing asylum claims, which for those living outside official refugee camps can mean extended periods in immigration detention while awaiting resettlement.⁸

More recently, in early 2016, there were numerous reports concerning the mistreatment of Christian asylum seekers from Pakistan. A January 2016 article in the Christian Post reported that a 30-year-old Pakistani Christian woman died in Thai police custody on "Christmas Eve after she was arrested and prevented from taking much needed medications." The article cited a British Pakistani Christian Association that claimed Thai authorities had launched "a crackdown against Pakistani Christians who've overstayed their visas in Thailand."⁹ A February 2016 BBC report stated that those arrested in the raids were being charged with "illegal immigration, fined 4,000 Baht (£90), and then sent to Bangkok's Immigration Detention Centre."¹⁰

Question: In view of the large population of asylum-seekers and migrants – documented and undocumented - in Thailand, and multiple evidence of their placement in detention, can the member state report on implementation of ICCPR provisions on deprivation of liberty and security of this population? Does martial law declared in May 2014 affect implementation of these ICCPR provisions for asylum seekers and migrants?

Safeguards against arbitrary detention (ICCPR article 9)

⁵ Mekong Migration Network, Website, "Arrest, Detention, and Deportation." http://www.mekongmigration.org/?page_id=126.

⁶ International Labour Organization (ILO). Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries. Tripartite Action to Protect the Rights of Migrant Workers within and from the Greater Mekong Subregion (GMS TRIANGLE project). Regional Office for Asia and the Pacific. 2015. http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_356542.pdf.

⁷ United Nations High Commissioner for Refugees. UNHCR's new biometrics system helps verify 110,000 Myanmar refugees in Thailand. 30 June 2015. <http://www.unhcr.org/55926d646.html>.

⁸ United Nations High Commissioner for Refugees. 2015 UNHCR country operations profile – Thailand. <http://www.unhcr.org/pages/49e489646.html>.

⁹ Smith, Samuel, "Asylum-Seeking Christian Mom Dies in Thailand Police Detention on Christmas Eve," CP World, 4 January 2016. <http://www.christianpost.com/news/thailand-christian-pakistani-mother-seeking-asylum-dies-jail-christmas-eve-154055/>.

¹⁰ Rogers, Chris, "The Christians held in Thailand after fleeing Pakistan," BBC, 26 February 2016. <http://www.bbc.com/news/magazine-35654804>.

As per the Human Rights Committee's General Comment 35 (GC35) "Detention in the course of proceedings for the control of immigration is not per se arbitrary, but the detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time." ¹¹

The Immigration Act, B.E. 2522 (1979), provides police officers and immigration officials with broad discretionary powers to detain foreigners.¹² The law does *not* set a maximum length of time that a person can remain in administrative immigration detention.

The Immigration Act also criminalizes unauthorized stay, which is punishable by up to two years imprisonment. The Ministry of Justice's Department of Corrections is responsible for monitoring prison and detention facility conditions, however its mandate does not include administrative detainees. The Immigration Police Bureau of the Royal Thai Police administers the country's approximately 15 dedicated immigration detention centres (IDCs), which are spread out across Thailand's land borders and along the Andaman Sea and Gulf of Thailand.¹³ The detention centres are not subject to many of the regulations that govern the regular prison system. As a result, both the procedures and conditions of immigration detention can vary greatly.¹⁴

The costs of deportation are to be covered by the person being deported. In addition, immigration detainees in Thailand have to pay for the cost of detention, leading to an increased likelihood of lengthy or indefinite detention.¹⁵ Human rights groups have emphasized that this is a discriminatory practice that contravenes international human rights norms and standards.¹⁶

Questions: Where are asylum seekers and migrants –documented and undocumented - detained on account of their immigration status (list dedicated immigration detention facilities and prisons)? Are recognized refugees by UNHCR placed in immigration detention? What is the average length of immigration detention? What mechanisms are in place in law and in practice to protect asylum seekers and migrants from arbitrary detention? Do immigration detainees – whether in administrative detention or in penal institutions - have access to procedural safeguards (cf. GC35 § 58) including information on grounds for detention in a language they understand, on their right to communicate with their consular authorities, access to legal counsel, right to challenge the lawfulness of detention)? Is there a judicial review of the detention order? What happens to immigration detainees who cannot pay for the cost of deportation?

¹¹ Human Rights Committee. General comment No. 35, Article 9 (Liberty and security of person). United Nations, CCPR/C/GC/35, 16 December 2014).

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11.

¹² Immigration Act BE 2522, (1979). http://www.immigration.go.th/nov2004/en/doc/Immigration_Act.pdf.

¹³ Mekong Migration Network. Arrest, Detention and Deportation. Map of IDCs. 2012. http://mekongmigration.org/add/?page_id=33.

¹⁴ United States Department of State. Country Reports on Human Rights Practices for 2014. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>.

¹⁵ Immigration Act, B.E. 2522 (enacted on 24 February 1979, amended in 1992) Sections 54 and 55. Thailand Law Forum. <http://www.thailawforum.com/database1/immigration-law-mejesty.html>.

¹⁶ Human Rights Watch. Two Years With No Moon Immigration Detention of Children in Thailand. 1 September 2014. <https://www.hrw.org/report/2014/09/01/two-years-no-moon/immigration-detention-children-thailand>.

Trafficking and mass graves (ICCPR article 6, right to life)

Thailand's treatment of Rohingyas has been widely condemned. In 2013, after the Myanmar government refused to accept Rohingyas being deported from Thailand, journalists uncovered a secret Thai Royal Police policy called "option two," which was reportedly designed "to remove Rohingya refugees from Thailand's immigration detention centres and deliver them to human traffickers waiting at sea."¹⁷ Reporters interviewed Rohingyas who had been sold to human traffickers by immigration officials and quoted official sources who said that of the two thousand Rohingyas held in Thai detention centres as of early October 2013 only 154 Rohingyas remained in detention some two months later. Since these initial reports were published there have numerous reports by Human Rights Watch (HRW) and others documenting mass graves at camps run by migrant traffickers in Thailand.

Question: Has the government ordered effective independent investigations into alleged mass graves of trafficked victims?

Children in immigration detention

As per the Human Rights Committee's GC 35 "Children should not be deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention, and also taking into account the extreme vulnerability and need for care of unaccompanied minors."

Although there are no official statistics on the numbers of people placed in immigration detention, human rights groups have attempted to document the prevalence of certain practices, like the detention of children. According to HRW, "approximately 100 children per year are detained on a long-term basis (that is, for a period of longer than one month). Meanwhile, at least 4,000 children are thought to move through the immigration detention system each year for shorter periods (days or weeks)."¹⁸

In 2012, the UN Committee on the Rights of the Child reminded Thailand that children should only be deprived of liberty as a last resort and for as short a time as possible. The committee also underscored that when children are detained they must be confined separately from adults and in "a safe, child sensitive environment" that enables regular contact with their families." The committee urged Thailand to "Promote alternative measures to detention such as diversion, probation, counselling, community service or suspended sentences, wherever possible."¹⁹

¹⁷ Jason Szep and Andrew R.C. Marshall. Special Report - Thailand secretly dumps Myanmar refugees into trafficking rings. Reuters. 5 December 2013. <http://uk.reuters.com/article/2013/12/05/uk-thailand-rohingya-special-report-idUKBRE9B400920131205>.

¹⁸ Human Rights Watch. Two Years With No Moon Immigration Detention of Children in Thailand. 1 September 2014. <https://www.hrw.org/report/2014/09/01/two-years-no-moon/immigration-detention-children-thailand>.

¹⁹ Committee on the Rights of the Child. Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: Thailand. CRC/C/THA/CO/3-4. 17 February 2012. <http://uhri.ohchr.org/document/index/976dcd33-b7f5-4d94-b473-cb4c07d99275>.

Questions: Can the member state provide statistics on the number of children placed in immigration detention? Thailand has ratified the Convention on the Rights of the Child: Is a best interest determination carried out before placing children in immigration detention? In what conditions are children detained? Are children segregated from unrelated adults? What measures are in place to protect children from violence? Are guardians assigned to unaccompanied children? Are children placed in alternatives to detention? Which immigration detention facilities include family units?

Conditions in immigration detention: overcrowding, poor hygiene and violence (ICCPR article 10)

As per Human Rights Committee's GC 35 "Decisions regarding the detention of migrants must also take into account the effect of the detention on their physical or mental health. Any necessary detention should take place in appropriate, sanitary, non-punitive facilities and should not take place in prisons."

According to a 2014 Amnesty International report, official regulations in Thailand allow for cell sizes in detention centres to be a minimum of 1.19 metres per person, "which does not allow detainees to lie down to sleep."²⁰ HRW has also reported on the abysmal conditions in detention centres, in particular in Bangkok immigration detention centre, "including severe overcrowding, putrid sanitation, and an atmosphere of violence." Detainees have repeatedly complained of overcrowding and extremely poor hygiene. In 2013, journalists found 276 male Rohingyas detained in two small "cages" meant to hold no more than 15 people at the Phang Nga detention centre on the coast of the Strait of Malacca.²¹ At the time, Thai authorities acknowledged that they were "aware of the overcrowding issue at the existing immigration facilities" and that alternative arrangements were being made. According to the journalists, the head of Thailand's parliamentary Border Affairs Committee commented, "The conditions you have seen would even be difficult for animals."

Questions: What is the overall capacity of dedicated facilities for immigration detention and how many persons are placed in immigration detention (on a single day, and every year). What is being done to reduce overcrowding?

Detention monitoring

As per GC 35 "Independent and impartial mechanisms should be established for visiting and inspecting all places of detention, including mental-health institutions."

International agencies and organisations have been given access to immigration detention centres (IDCs), including the International Organisation for Migration (IOM). According to an IOM report, "Myanmar Muslims from Rakhine State in Phang-Nga IDC conducted two series

²⁰ Amnesty International, "Thailand: submission to the United Nations Committee against Torture," 52nd Session, 28 April – 23 May 2014, ASA 39/003/2014.

²¹ Sparks, John. The plight of Burma's Rohingya Muslims in a Thai Camp. World News Blog. Channel 4. 31 May 2013. <http://blogs.channel4.com/world-news-blog/the-plight-of-burmas-rohingya-muslims-in-a-thai-camp/24226>.

of hunger strikes to express their frustration at their period of detention.”²² Human Rights Watch has asked IOM to monitor and provide reports on conditions of confinement in immigration detention in Thailand and urged UNHCR officials to “intervene promptly to seek the immediate release of refugees and asylum seekers when they are arrested.”²³

Questions: Which organisations at the national and international level have access to places of immigration detention? Does UNHCR have access to all detainees in immigration detention?

²² International Organisation for Migration, “Bay of Bengal and Andaman Sea Crisis - Situation Report October 2015.”

²³ Human Rights Watch. Two Years With No Moon Immigration Detention of Children in Thailand. 1 September 2014. <https://www.hrw.org/report/2014/09/01/two-years-no-moon/immigration-detention-children-thailand>.