



BETWEEN A ROCK AND A HARD PLACE

THAILAND'S REFUGEE POLICIES AND VIOLATIONS OF THE PRINCIPLE
OF NON-REFOULEMENT

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Cover photo: *Uighur asylum-seekers are transported to a detention facility in the town of Songkhla in southern Thailand, March 2014. @ ANDREW RC MARSHALL/REUTERS*

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EXECUTIVE SUMMARY

On the evening of 26 May 2017, Muhammet Furkan Sökmen, a Turkish national, recorded a video in Bangkok's Suvarnabhumi Airport. In the video, subsequently sent to diplomats and human rights organizations, Sökmen stated:

If I go to Turkey, I am to be imprisoned and most probably [will] be tortured like many others tortured under the current regime. I am an innocent person and committed no crime... I don't want to go to Turkey. I don't want to be imprisoned. I don't want to be tortured. I have committed no crime. I am asking for international protection and I would like the global community to answer my innocent call. Thank you very much for your help.

Later that evening, Thai authorities handed Sökmen – an educational professional swept up in the Turkish government's merciless crackdown on perceived political opponents – over to Turkish officials. He was handcuffed, tape was placed over his mouth, and he was forced onto a plane to Istanbul.

Sökmen's forcible return to Turkey is the latest in a series of similar events that have occurred since the National Council for Peace and Order (NCPO) took power in a 22 May 2014 military coup in Thailand. However, the NCPO is not alone in perpetrating callous actions of this nature. Rather, the NCPO's policies demonstrate continuity with those of prior administrations, which have too often failed to uphold Thailand's international obligations to those seeking protection from persecution and violence in other countries. Under the NCPO, the Thai government has made welcome – although as yet unfulfilled – commitments to strengthening Thailand's refugee policies. By following through on these commitments, the NCPO could reverse a decades-long pattern of rights violations and provide the next government with a strong legal and policy framework that adequately protects refugees and asylum-seekers.

This report describes the shortcomings of Thailand's policies towards refugees and asylum-seekers as well as its violations of the principle of non-refoulement. The principle of non-refoulement obliges states not to return anyone to a territory where they would be at risk of persecution or other serious human rights violations. It is the cornerstone of the international refugee protection regime and is fundamental to the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment. The report draws on testimonies and information from interviews and focus groups discussions with refugees, asylum-seekers and their family members; meetings with NGO representatives, diplomats, UN officials and others; extensive desk research; and prior investigations carried out by Amnesty International researchers in other countries around the world.

* * *

For decades, Thailand has welcomed individuals fleeing violence and persecution in neighbouring countries. From the mid-1970s to the end of the last decade, Thailand hosted hundreds of thousands of refugees fleeing war in Viet Nam, Cambodia and Laos. Armed conflict and grave human rights abuses in eastern Myanmar have also pushed tens of thousands of villagers across the border into Thailand. The Thai government has developed and implemented policies to accommodate these populations for extended periods of time, and Thai authorities have regularly been involved in the provision of humanitarian support to individuals arriving on Thai soil. Approximately 100,000 Myanmar nationals currently reside in refugee camps along the Thailand-Myanmar border.

In addition to sheltering refugees from its war-torn neighbours, Thailand has also hosted thousands of people fleeing persecution and human rights violations in more distant locations. More than 7,000 internationally-recognized refugees and asylum-seekers from approximately 50 countries currently reside in Bangkok and other urban or semi-urban areas in Thailand.

Notwithstanding Thailand's significant contribution to addressing regional and global refugee crises, there have been many dark periods in Thailand's relationship with refugees. In 1979, Thai soldiers forced approximately 42,000 Cambodian refugees across the Thailand-Cambodia border at gunpoint, through an active minefield, and into the hands of Vietnamese soldiers. In the decades that followed, Thai authorities repelled Vietnamese asylum-seekers arriving by boat and forcibly repatriated thousands of Lao Hmong refugees. Forcible returns have at times also occurred along the Thailand-Myanmar border.

Upon taking power, the NCPO inherited this mixed legacy in relation to refugees. It also inherited a legal and policy framework that inadequately protects the rights of refugees.

Thailand is not a party to the 1951 UN Convention Relating to the Status of Refugees (Refugee Convention) or its 1967 Protocol. Moreover, Thai law provides no formal legal status to refugees or asylum-seekers. The 1979 Immigration Act – the primary law defining refugees' relationship to the Thai state – does not distinguish between refugees and other foreigners. All are subject to arrest, detention and deportation for failure to comply with its provisions. Refugees' lack of legal status underlies the wide array of hardships and risks they face in Thailand.

The absence of a domestic legal framework for refugee protection leaves Thailand without the means to independently resolve the situation of refugees in the country. Thailand therefore allows the UN High Commissioner for Refugees (UNHCR) to conduct refugee status determination for urban refugees in order to open the door for their possible resettlement in third countries. However, this process is slow and uncertain, exposing refugees to prolonged periods of residence in Thailand with no formal legal protections.

The lack of formal legal status and safeguards for refugees has facilitated repeated and grave violations of the principle of non-refoulement by Thai authorities. Broadly, refoulement violations documented by Amnesty International fall into three categories.

First, the Thai government has forcibly returned individuals to situations where they are likely to face persecution or serious human rights violations based on the request of foreign governments. Amnesty International collected evidence regarding the following forcible returns:

- The December 2014 forcible return of Bahraini youth activist **Ali Ahmed Ibrahim Haroon** to Bahrain, where he had previously been jailed and tortured. Haroon was reportedly physically abused during his return flight, and his family told Amnesty International that he has been tortured since arriving back in Bahrain, where he remains imprisoned.
- The July 2015 forcible return of **109 Uighur asylum-seekers** to China, where they are likely to have faced severe persecution and possibly torture. Chinese security officers forced these individuals onto a plane in Bangkok with black hoods over their heads. Little is known about their current whereabouts or condition.
- The November 2015 forcible return of Chinese activists **Jiang Yefei** and **Dong Guangping** to China, where they have been detained and await trial. These men were forcibly returned despite the knowledge of Thai authorities that they were UNHCR-registered refugees scheduled for resettlement in Canada.
- The May 2017 forcible return of **Muhammet Furkan Sökmen** to Turkey, where he has subsequently been imprisoned alongside thousands of other perceived political opponents. Sökmen was detained by Thai authorities in a Bangkok airport for approximately 24 hours after being expelled by Myanmar based on an extradition request from the Turkish government.

In relation to each of the above cases, UN officials warned Thai authorities about the risk of torture or other human rights abuses if these individuals were returned to the custody of the requesting government.

Second, the current Thai government has turned back from its borders refugees arriving by sea and air, often in a manner which demonstrates utmost disregard for the human rights of those individuals. In 2015, Thai authorities pushed back to sea ships carrying hundreds of Rohingya refugees from Myanmar and migrants from Bangladesh despite knowledge of the dire humanitarian situation on board the ships, implementing a policy first employed by previous Thai governments. A young Rohingya woman told Amnesty International that the Thai navy prevented her ship from landing in 2015 after it was abandoned by the crew of human traffickers. She described her feelings at that moment:

We decided that we would die, because we didn't have anything in the boat. We were praying and we were ready for our funeral services... We asked, "Why are we not able to go to Thailand, if the captain will go there?" We were worried and we prayed. We only knew that we would die. The choice was death or life.

UNHCR has also reported that refugees have frequently been denied entry at Thailand's airports in recent years.

Finally, the Thai government, by failing to provide formal protections and rights to refugees and asylum-seekers, has facilitated the "constructive refoulement" of refugees who have chosen to return to their home countries because their lives in Thailand had become untenable. Urban refugees in Thailand face many difficulties associated with their lack of domestic legal status, including limited employment prospects, trouble accessing medical care and educational opportunities, financial stresses, severe restrictions on movement and social interactions, and the constant fear of arrest. In early 2016, "Joseph", a Pakistani Christian refugee, and his family abandoned their asylum claim two years after arriving in Thailand because of severe hardships and delays in UNHCR's refugee status determination process. He told Amnesty International:

We were without money. We didn't have anything to eat at that time. It was the same time that the Thai police were raiding [refugee communities] all over Bangkok. We were having all those problems together at the same time. We were hungry and we were also trying to hide from the police. We didn't have food continuously for four or five days... [W]hen we think of those things, we become very sad.

After returning to Pakistan, one family member was abducted, forced to convert to Islam, and forcibly married to a Muslim man. The family's home was also burned, killing Joseph's father.

Refugees who are arrested in Thailand face prolonged and indefinite detention in appalling conditions at immigration detention centers (IDCs). Formerly detained refugees described horrific sanitation conditions, inadequate medical care and cells so cramped that detainees had to sleep in shifts. Many UNHCR-recognized refugees and asylum-seekers have been detained for years, with no indication of when they might be released or resettled. Refugees in IDCs sometimes make the decision to "self-deport" by paying for a return ticket to their home countries, where they must face the dangers and hardships that caused them to seek protection abroad.

During the NCPO's time in power, Thai officials have made several important commitments concerning the protection of refugees in Thailand. Since the forcible return of Chinese nationals on two occasions in 2015 – and the severe criticism from the international community that followed – Thai officials have signalled that they will avoid similar actions in the future and have repeatedly affirmed their commitment to the principle of non-refoulement. The Thai government has also committed to implementing new laws and policies to protect refugees and prevent violations of the principle of non-refoulement. Notably, on 10 January 2017, Thailand's Cabinet passed a resolution authorizing the development of a system for screening refugees and irregular migrants. If implemented in a fair and non-discriminatory manner consistent with Thailand's obligations under international law, the establishment of a national screening mechanism would be a major achievement for the NCPO in terms of advancing refugee rights.

KEY RECOMMENDATIONS

- Do not, under any circumstances, return individuals to a country where they face a real risk of persecution, torture, violence or serious human rights violations and abuses;
- Accede to the 1951 Refugee Convention and its 1967 Protocol;
- Follow through on the Thai government's commitment, as embodied in the 10 January 2017 Cabinet resolution, to develop a mechanism for screening refugees and other undocumented foreigners;
- Ensure that, in practice, any screening processes are implemented in a non-discriminatory fashion and incorporate a definition of "refugee" that reflects international standards and best practices, and ensure asylum claims are processed fairly and efficiently;
- Work with UNHCR to develop a plan for the gradual and incremental handover of refugee management activities from UNHCR to the Thai government and ensure that the plan provides for UNHCR to have a long-term capacity building and oversight role in refugee screening and protection;
- Provide UNHCR with unfettered access to all individuals advancing asylum claims, whether they are in IDCs, prisons, police stations, airports or any other place on Thai soil or Thai waters;

- Ensure that asylum-seekers are only detained when strictly necessary, following an individualized assessment of their humanitarian needs and the risks if they remain at liberty, and for the least amount of time necessary;
- Exercise the discretion provided by Thai law to grant release on bail for all UNHCR-registered individuals in IDCs, and keep opportunities for release on bail open until alternatives to detention for refugees and asylum-seekers – possibly including regular reporting requirements, bail opportunities or sponsorship – have been established by law;
- Ensure that refugees and asylum-seekers arriving by sea are able to disembark and establish a system for screening the asylum claims of individuals arriving by sea;
- Develop procedures for screening asylum claims advanced at Thailand's airports and ensure that such procedures involve providing UNHCR with unfettered access to individuals advancing such claims; and
- Refrain from taking any actions which would prompt the return of refugees from refugee camps to Myanmar in a matter that is not safe, dignified and voluntary.

1. METHODOLOGY

This report examines violations of the principle of non-refoulement which have occurred since the National Council for Peace and Order (NCPO) came to power in a 22 May 2014 military coup. It considers historical events to the extent that they shed light on the Thai government's current policies and recent actions.

The report draws primarily from research conducted between April and July 2017. Amnesty International conducted extensive desk research while preparing this report, reviewing Thai and international law, NGO reports, media reports, legal documents, official statements by the Thai government, UN bodies and others and other public and private documents. To illuminate the human rights conditions that cause refugees to flee their home countries, this report also draws from investigations carried out by Amnesty International researchers over several decades in various parts of the world.

Amnesty International interviewed 42 refugees or family members of refugees in Thailand and six other countries. In a few cases, when face-to-face interviews were not feasible, Amnesty International conducted interviews by phone, Skype or other channels. Amnesty International also conducted focus group discussions with a total of approximately 110 refugees in Thailand and Malaysia. Interviewees and participants in focus group discussions included Chinese, Syrian, Turkish, Cambodian and Pakistani nationals, ethnic Karen and Rohingya from Myanmar, ethnic Hmong from Laos, ethnic Hmong, Montagnard and Khmer Krom from Vietnam, and individuals from one African country not identified for security reasons. Most interviews lasted between 45 minutes and two hours. Individuals were interviewed individually, except for family members, who were at times interviewed jointly. All interviewees gave informed consent and none received compensation for giving an interview.

In most cases, the names of interviewees have been withheld from this report to protect their confidentiality and security. In these cases, interviews are referenced by numbers assigned to interview transcripts, which remain on file with Amnesty International. In some cases, interviewees' countries of origin and the location of interviews have also been withheld from the report.

Amnesty International also interviewed or met with representatives of 29 NGOs and intergovernmental organizations engaged on issues relating to refugees and asylum protections in Thailand.

While conducting research for this report, Amnesty International held several meetings with UNHCR representatives. Except as indicated in the report, UNHCR declined to provide on-the-record comments. UNHCR specifically declined to speak about its engagement with Thai authorities in relation to the specific cases of refoulement described in this report, citing protection considerations. However, UNHCR informed Amnesty International that it is UNHCR's policy to raise concerns directly with the Thai government and other relevant stakeholders when there is a risk that an individual or group will be returned to a situation in which they are likely to face human rights violations.

Amnesty International is grateful for the constructive engagement of Thai government officials on issues raised in this report. In May and June 2017, Amnesty International met with officials from Thailand's Ministry of Foreign Affairs and Ministry of Interior, as well as a national security advisor in the Prime Minister's office in order to discuss preliminary findings and recommendations from the research. Amnesty International also requested a written response to research questions from these ministries, as well as the Immigration Bureau. At the time of writing, Amnesty International had not received an official response from any of the ministries or agencies that had received the research questions.

2. BACKGROUND

THAILAND'S OBLIGATIONS TO REFUGEES AND ASYLUM-SEEKERS UNDER INTERNATIONAL LAW

A “refugee” is a person who left their own country because of a well-founded fear of persecution or other serious human rights violations.¹ International law imposes obligations on states to protect the human rights of refugees. A person’s status as a refugee is not dependant on formal recognition by UNHCR or the government of a host country. Therefore, asylum-seekers, individuals who choose not to advance asylum claims, and individuals whose asylum claims are rejected by UNHCR or national authorities may still be refugees.²

The principle of non-refoulement obliges states not to return anyone to a territory where they would be at risk of persecution or serious human rights violations. The principle is the cornerstone of international refugee protection and is fundamental to the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment.³ Thailand is not a party to the 1951 UN Convention Relating to the Status of Refugees (Refugee Convention) or its 1967 Protocol and therefore has no obligations under those treaties. However, the principle of non-refoulement is also protected under customary international law, which is binding on all states,⁴ and in treaties to which Thailand is a party, including the Convention against Torture.⁵ The ASEAN Human Rights Declaration also includes a right to “seek and receive asylum”.⁶

Thailand has explicitly acknowledged that it is bound by the principle of non-refoulement. In a November 2016 submission to the Human Rights Committee, Thailand stated: “Thailand adheres to the principle of non-refoulement, one of the international customary laws.”⁷ Thailand has also repeatedly committed to not deporting refugees or returning individuals to situations where they face risks of human rights violations.⁸

The principle of non-refoulement applies to all actions by a state that have the effect of returning an individual to a location where their human rights may be violated.⁹ This includes not only the forcible return on individuals in the custody of one government to another government, but also measures such as

¹ See definitions provided in the Refugee Convention and by the UN High Commissioner for Refugees. UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, art. 31(1); UNHCR, *UNHCR Resettlement Handbook*, 2011, www.unhcr.org/46f7c0ee2.pdf, p. 81.

² Despite the fact that an asylum-seeker maybe a refugee under international law even if they have not been formally recognized as a refugee by UNHCR or a national government, this report uses the term “asylum-seeker” to indicate an individual that has registered with UNHCR but has not yet completed the refugee status determination process.

³ UN General Assembly, *Note on International Protection*, UN Doc. A/AC.96/951, 13 September 2001, para. 16.

⁴ Ibid.

⁵ UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, art. 3. Treaty bodies have interpreted treaties that do not explicitly mention refoulement to nevertheless prohibit acts that would expose individuals to the human rights violations proscribed in the treaty. See, for example, Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 12; Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, UN Doc. CRC/GC/2005/6, 3 June 2005, p. 6.

⁶ Association of Southeast Asian Nations (ASEAN), *ASEAN Human Rights Declaration*, 18 November 2012, para. 16.

⁷ Human Rights Committee, Replies of Thailand to the list of issues, UN Doc. CCPR/C/THA/Q/2/Add.1, 15 November 2016, para. 121.

⁸ See, for example, Ibid., para. 128; Human Rights Committee, Second periodic reports of States parties due in 2009: Thailand, UN Doc. CCPR/C/THA/2, 30 September 2015, para. 125, Committee against Torture, Initial reports of States Parties due in 2008: Thailand, UN Doc. CAT/C/THA/1, 9 July 2013, para. 75.

⁹ *Note on International Protection*, para. 16.

extradition, rejection at a country's frontiers and "push-back" operations.¹⁰ Moreover, violations of the principle of non-refoulement can result from actions and policies – including restrictions on liberty and economic, social and cultural rights – that render a decision to return to a situation of persecution or abuse involuntary.¹¹

REFUGEES AND ASYLUM-SEEKERS IN THAILAND

Throughout much of its modern history, Thailand has hosted individuals fleeing persecution and armed conflict in neighbouring countries. Beginning in the mid-1970s, war and the advance of communist forces in Vietnam, Cambodia and Laos sent refugees spilling into Thailand.¹² The population in refugee camps in Thailand's north and east ebbed and flowed over the years as refugees entered the country, returned to their homelands, and resettled in third countries, peaking at 350,000 in 1991.¹³

In the 1980s, a new refugee situation emerged along Thailand's western border.¹⁴ Armed conflict and grave human rights abuses in eastern Myanmar pushed thousands of ethnic Karen and Karenni villagers across the border into Thailand.¹⁵ They were soon joined in newly established refugee camps by persons of other ethnicities and individuals fleeing political persecution in the wake of the 1988 pro-democracy uprising in Myanmar.¹⁶ By 2006, approximately 150,000 refugees resided in ten camps along the Thailand-Myanmar border.¹⁷ From 2004, the United States, Australia, Canada and other countries began resettling refugees from the border camps.¹⁸ According to official counts, approximately 100,000 refugees currently reside in the camps, although the population is hardly static, with refugees moving in and out of the camps regularly.¹⁹

Thailand also hosts thousands of urban refugees and asylum-seekers. Thailand's relatively low cost of living and the accessibility of tourist visas make it a favoured destination for individuals fleeing violence, persecution and human rights abuses in other parts of the world. As of 31 July 2017, there were 7,212 UNHCR-registered refugees and asylum-seekers residing in Bangkok and other urban and semi-urban areas.²⁰ These individuals came from approximately 50 countries of origin, with the largest numbers originating in Pakistan, Viet Nam and Palestine.²¹

¹⁰ Ibid; *Convention against Torture*, article 3(1) ("No State Party shall expel, return ("refouler") or extradite a person"). See also, Emanuela-Chiara Gillard, "There's no place like home: states' obligations in relation to transfers of persons", *International Red Cross Review*, Vol. 90, No. 871, September 2008, p. 711.

¹¹ Refoulement accomplished in this manner is referred to as "constructive refoulement". For further discussion of constructive refoulement, see infra, "Voluntary Returns and Constructive Refoulement", p. 41. See also, James C. Hathaway, *The Rights of Refugees under International Law*, Cambridge University Press, 2005, p. 464.

¹² W. Courtland Robinson, *Terms of Refuge: The Indochinese Exodus & International Response*, Zed Books, 1998, pp. 10-38.

¹³ Robinson, *Terms of Refuge*, p. 88.

¹⁴ Small numbers of refugees began arriving in Thailand in the 1970s, but larger groups came in the 1980s. Refugee camps were formally established and recognized by the Thai government starting in 1984. The Border Consortium, *2016 Annual Report*, www.theborderconsortium.org/media/80489/2016-annual-report-jan-dec.pdf, p. 12.

¹⁵ Hazel J. Lang, *Fear and Sanctuary: Burmese Refugees in Thailand*, Southeast Asia Program Publications, Cornell University, 2002; Amnesty International, *Crimes against humanity in eastern Myanmar*, 5 June 2008 (Index: ASA 16/011/2008).

¹⁶ Ibid.

¹⁷ Thai Burma Border Consortium, "Burmese border refugee sites with population figures", December 2006, www.theborderconsortium.org/media/11958/map-2006-12-dec-ccsdpt-tbbc-1-.pdf. In addition to the nine large camps in Mae Hong Son, Tak, Kanchanaburi and Ratchaburi provinces, there is a small camp containing Shan refugees in Chiang Mai province.

¹⁸ International Organization for Migration, "IOM Refugee Resettlement Tops 67,000", 7 June 2009, www.iom.int/news/iom-refugee-resettlement-tops-67000.

¹⁹ UNHCR, "RTG/MOI-UNHCR Verified Refugee Population", 31 March 2017, www.refworld.org/country,,UNHCR,THA,,590743874,0.html.

²⁰ 2,968 were asylum-seekers awaiting refugee status determination and 4,244 were already recognized as refugees by UNHCR. UNHCR email to Amnesty International dated 11 August 2017.

²¹ UNHCR, Population Statistics, Thailand, total number of persons of concern, 2016, http://popstats.unhcr.org/en/persons_of_concern.



Source: UNHCR, Population Statistics, Thailand, total number of persons of concern, 2016, http://popstats.unhcr.org/en/persons_of_concern.

HISTORICAL VIOLATIONS OF THE PRINCIPLE OF NON-REFOULEMENT

The violations of the principle of non-refoulement described in this report – which have occurred during the more than three years that the NCPO has been in power – are not the only such violations in Thailand's history. Neither are they the most egregious. Over a period of nearly 40 years, the Thai government has frequently returned people to situations where they are likely to experience grave human rights violations.

In June 1979, Thai soldiers forced approximately 42,000 Cambodian refugees at gunpoint across the Thai-Cambodian border at Preah Vihear into the hands of Vietnamese soldiers.²² UNHCR estimated that at least 3,000 died after being shot by the soldiers, falling down cliffs, or stepping on landmines on the Cambodia side of the border.²³ In the late 1980s, the Thai Ministry of Interior adopted a policy, subsequently implemented by Thai marine police, to push boats carrying Vietnamese asylum-seekers back to sea.²⁴ UNHCR reported 170 deaths because of the policy.²⁵

Thailand also violated the principle of non-refoulement on multiple occasions by forcibly returning Lao Hmong refugees to Laos.²⁶ In December 2009, the Thai government closed Huay Nam Khao camp in Petchabun province, north-central Thailand, and forcibly repatriated approximately 4,500 Lao Hmong

²² Larry Clinton Thompson, *Refugee Workers in the Indochina Exodus, 1975-1982*, McFarland & Company, 2010, pp. 171-181.

²³ Ibid. at p. 177.

²⁴ Robinson, *Terms of Refuge*, p. 182.

²⁵ Ibid.

²⁶ See, for example, Barbara Crossette, "Thailand Pressing Ouster of Laotians", *The New York Times*, 19 March 1987, www.nytimes.com/1987/03/19/world/thailand-pressing-ouster-of-laotians.html; Amnesty International, "Laos: Forcible return/Arbitrary detention/Torture/ill-treatment: Up to 29 ethnic Hmong people, including 23 children", Urgent Action, 27 January 2007 (Index: ASA 26/001/2006); UNHCR, "Close to 400 Lao Hmong repatriated from Thailand", 11 July 2008, www.unhcr.org/news/briefing/2008/7/4877361c5/close-400-lao-hmong-repatriated-thailand.html.

refugees in a massive operation led by the Thai military.²⁷ Thai officials made the decision to return these individuals in collaboration with Lao authorities and justified the action by referring to the returnees as “economic migrants”, stating that they would have a “better life” in Laos, and falling back on assurances by the Lao government that they would be well-treated.²⁸ UN special rapporteurs, UNHCR and foreign governments immediately condemned this mass refoulement in unequivocal terms.²⁹

As described elsewhere in this report, groups of refugees along the Thailand-Myanmar border have also been subject to forcible returns in violation of the principle of non-refoulement.³⁰

²⁷ Amnesty International, “Refugees Forcibly Returned to Laos”, 13 January 2010 (Index: ASA 26/001/2010). These individuals included 158 individuals who had registered as refugees with UNHCR. The remainder were not registered with UNHCR. UNHCR had previously expressed concerns that the Thai government had not granted it access to the residents of Ban Huay Nam Khao camp. See, for example, UNHCR, “Thailand: UNHCR concerned over return of Lao Hmong”, 27 June 2008, www.unhcr.org/news/briefing/2008/6/4864b8b04/thailand-unhcr-concerned-return-lao-hmong.html.

²⁸ Wikileaks, “LAO HMONG: DCM STRESSES USG POSITION ON HMONG, THAI CLAIM LAO WILLINGNESS TO COORDINATE CLOSELY”, 4 December 2009, https://wikileaks.org/plusd/cables/09BANGKOK3074_a.html; Elaine Pearson, “A Blot on Bangkok’s Humanitarian Record”, Human Rights Watch, published in *The Wall Street Journal*, 31 December 2009, <https://www.hrw.org/news/2009/12/31/blot-bangkoks-humanitarian-record>; Seth Mydans, “Thailand Evicts 4,000 Hmong to Laos”, *New York Times*, 28 December 2009, <http://www.nytimes.com/2009/12/29/world/asia/29hmong.html>.

²⁹ “UN rights experts call for end to Thai expulsion of Lao Hmong”, UN News Centre, 31 December 2009, www.un.org/apps/news/story.asp?NewsID=33383#.WXXUcoSGNhE; UNHCR, “UN High Commissioner for Refugees expresses dismay at forced return of Lao Hmong by Thailand”, 28 December 2009, www.unhcr.org/news/press/2009/12/4b38b5f29/un-high-commissioner-refugees-expresses-dismay-forced-return-lao-hmong.html. Many returnees were subjected to “re-education” sessions and human rights abuses including enforced disappearances, torture and arbitrary detention.

³⁰ See infra, “The Thailand Myanmar Border, Voluntary Returns and the Eventual Closure of Refugee Camps”, p. 46. See also, Human Rights Watch, *The Mon: Persecuted in Burma, Forced Back from Thailand*, December 1994, www.hrw.org/sites/default/files/reports/BURMA94D.pdf; Human Rights Watch, *BURMA/THAILAND: No Safety in Burma, No Sanctuary in Thailand*, 25 July 1997, www.hrw.org/legacy/reports/1997/burma/.

3. INADEQUATE PROTECTIONS FOR REFUGEES AND ASYLUM-SEEKERS IN THAILAND

THAI LAW

Thai law provides no formal legal status to refugees and asylum-seekers. This shortcoming underlies the wide array of hardships and risks faced by refugees in Thailand.

The 1979 Immigration Act does not distinguish between refugees and other foreigners. All are subject to arrest, detention and deportation for failure to comply with its provisions. Section 54 of the Immigration Act, a provision that has a great impact on refugees, states:

Any alien who enters or come[s] to stay in the Kingdom without permission or when such permission expires or is revoked, the competent official will deport such alien out of the Kingdom... In case there is an order of deportation for the alien; while waiting for the alien to be deported the competent official may order the alien to stay at any prescribed place or he may order the alien to report to him (competent official) according to a prescribed date, time, and place with Security or with Security and Bond. The competent official may also detain the alien at any given place as [may] be necessary.³¹

The Immigration Act authorizes the deportation of undocumented foreigners “by any conveyance or route as the competent official may consider appropriate”.³² The Act also provides for criminal penalties of a fine or up to two years imprisonment for individuals who enter the country without permission or overstay their visas.³³

The Immigration Act gives the Minister of Interior the power, with the approval of the Cabinet, to allow aliens or groups of aliens to remain in Thailand or exempt them from application of the law.³⁴ This provision has been used to establish programs that allow migrant workers, trafficking victims and UNHCR-registered refugees and asylum-seekers to reside temporarily in Thailand.³⁵

The wide discretion granted to authorities by the Immigration Act – including the power to detain or not detain and to deport by any means on any timeframe – has enabled the Thai government to develop and

³¹ The Immigration Act of 1979, enacted 24 February 1979, section 54.

³² Ibid., section 55.

³³ Ibid., section 81.

³⁴ Ibid., section 17.

³⁵ Kanoknit Tankulratana and Suthep Janamporn, *Research on Alternatives to Detention (ATD) of Asylum Seekers and Urban Refugees in Thailand*, Coalition for the Rights of Refugees and Stateless Persons, 13 February 2017, p. 24. Similarly, Section 34 has been used to provide temporary non-immigrant visas to foreigners through ministerial regulations. Tankulratana and Janamporn, *Alternatives to Detention*, p. 25.

implement refugee policies in an ad hoc manner with little transparency. As described in the pages that follow, some of these policies, such as the use of discretionary powers to grant bail to IDC detainees, have been beneficial to refugees. Others, such as the arbitrary revocation of bail or deportation without judicial oversight, have been deeply harmful.

Lacking legal status, refugees and asylum-seekers in Thailand cannot fully enjoy their economic, social and cultural rights.³⁶ In particular, refugees face challenges securing jobs and accessing education and healthcare.³⁷ Most refugees in Thailand, like other foreigners without a visa, have no permission to work. Refugees told Amnesty International that the inability to work and provide for their families is one of the greatest challenges they face in Thailand.³⁸ Many refugees and asylum-seekers have decided to pursue migrant worker registration through a “nationality verification” process as a way of obtaining basic legal rights in Thailand.³⁹ Some, however, are unable to complete nationality verification because they lack documentation from their home country and risk arrest or violence if they return.⁴⁰

UNHCR, REFUGEE STATUS DETERMINATION AND RESETTLEMENT

The absence of a domestic legal framework for refugee protection leaves Thailand without the means to independently resolve the situation of refugees in the country. Thailand therefore “tolerates” UNHCR’s exercise of its mandate to conduct refugee status determination for urban refugees in order to open the door for their resettlement in third countries.⁴¹

Asylum-seekers commonly complain about the length of the refugee status determination process in Thailand. Amnesty International spoke with refugees and asylum-seekers who had received interview dates up to three years after they registered with UNHCR.⁴² NGO representatives also told Amnesty International that in 2015 and previously, many asylum-seekers waited for three or more years to be interviewed by UNHCR.⁴³

In 2016, the European Union funded a new refugee status determination centre, which employed additional UNHCR staff to conduct interviews and process refugee applications.⁴⁴ Many NGO representatives said that the waiting period for interviews dropped from years to months because of the program.⁴⁵

Resettlement, even for those who have already been recognized as refugees by UNHCR, seems a far off possibility for most individuals seeking protection in Thailand. The failure of world governments to provide adequate resettlement placements has placed an enormous burden on host countries and contributed to a global refugee crisis.⁴⁶ Amnesty International has advocated for world governments to increase resettlement quotas and open other safe and legal routes to safety.⁴⁷ In Thailand, refugees experience significant delays in resettlement, and UNHCR officials have publicly stated that there are not enough resettlement placements

³⁶ Committee on Economic, Social and Cultural Rights, Concluding Observations, UN Doc. E/C.12/THA/CO/1-2, 19 June 2015, para. 15.

³⁷ See, for example, Committee on the Rights of the Child, Consideration of the reports submitted by States parties under article 44 of the Convention, Concluding observations: Thailand, UN Doc. CRC/C/THA/3-4, 17 February 2011, para. 78; UNHCR, UPR submission: Thailand, p. 4; Interviews with refugees, Interview Nos. 21, 28, 37, 38, 39, 42 (FGD), 46, 49, 59 and 61-64, Bangkok, May – July 2016.

³⁸ Interviews with refugees, Interview Nos. 26, 28, 29, 31, 37, 40 (FGD), 42 (FGD), 43, 59, 60, 61, 63 and 64, Bangkok, May – July 2017.

³⁹ Interviews with representatives of organizations working with refugees, Interview Nos. 6-8, 10, 11, 15, 18, 20 and 22, Bangkok and Mae Sot, April – May 2017. See also, UNHCR, submission to the Office of the High Commissioner for Human Rights’ Compilation Report, Universal Periodic Review: Thailand, 2nd Cycle, 25th Session, p. 5; Human Rights Watch, *Ad Hoc and Inadequate*, p. 79.

⁴⁰ Interview with refugees and representatives of organizations working with refugees, Interview Nos. 8, 20, 26 and 40, Bangkok, May – July 2017.

⁴¹ UNHCR, UPR submission: Thailand, p. 2.

⁴² Interviews with refugees, Interview Nos. 35 and 49, Bangkok and Skype, May – June 2017.

⁴³ Interviews with representatives of organizations working with refugees, Interview Nos. 6, 7, 10, 23 and 24, April – May 2017. See also, Asia Pacific Refugee Rights Network, et al, *Kingdom of Thailand: Joint submission to the Universal Periodic Review, 2nd Cycle*, 21 September 2015, www.asylumaccess.org/wp-content/uploads/2016/03/Joint_Thailand_UPR_Submission_Mar_2016.pdf, para. 8 (reporting an average four year waiting period for an interview); Tankulratan and Janamporn, *Alternatives to Detention*, p. 3 (reporting that refugee status determination “may take around five or six years”).

⁴⁴ European Commission, “Providing assistance to asylum seekers in Thailand”, undated, http://ec.europa.eu/echo/field-blogs/stories/providing-assistance-asylum-seekers-thailand_en.

⁴⁵ Interview with representatives of organizations working with refugees, Interview Nos. 7, 14, 23 and 24, Bangkok, April – May 2017. One interviewee indicated that the drop in waiting times was not uniform and that interviewees of some nationalities continue to experience long delays prior to receiving an interview.

⁴⁶ Amnesty International, *Tackling the Global Refugee Crisis: From Shirking to Sharing Responsibility*, 18 October 2016 (POL 40/4905/2016).

⁴⁷ Ibid.; Amnesty International, “Refugee Resettlement Changes Lives”, <https://www.amnesty.org/en/latest/campaigns/2016/03/why-does-refugee-resettlement-change-lives/>.

to accommodate all refugees.⁴⁸ Amnesty International interviewed eight refugees who have already been recognized by UNHCR but have received no information about when they might be resettled.⁴⁹

The prolonged refugee status determination and resettlement process places enormous stresses on refugees, who remain vulnerable to arrest, detention and exploitation while they remain in Thailand. These pressures have caused some refugees and asylum-seekers to decide to abandon their asylum claims or pursuit of resettlement and return home or seek protection in another country.⁵⁰ Thai officials have also expressed concerns about the length of these processes, stating that it puts a considerable financial and administrative burden on the government, which must accommodate refugees in the interim.⁵¹

In practice, individuals from certain nationalities and ethnicities have not been able to consistently have their asylum claims processed by UNHCR. For some of these groups, alternate procedures offer opportunities for resettlement or other forms of protection. Individuals fleeing to Thailand from North Korea are able to seek protection from the South Korean embassy.⁵² In some cases, Rohingya refugees and asylum-seekers are processed through a rapid refugee status determination process with the US government, as well as through official processes set up for human trafficking victims.⁵³ Other Myanmar nationals are expected to reside in the border refugee camps, which are under the control of the Ministry of Interior.⁵⁴

Unfortunately, no such alternative exists for ethnic Hmong people from Laos, who have generally not been able to access UNHCR refugee status determination since the closure of Huay Nam Khao camp in 2009. According to human rights organizations, Lao authorities have perpetrated serious human rights violations against the Hmong both before and after 2009.⁵⁵ An unknown number of Lao Hmong, some of whom had previously been refouled to Laos, currently reside in Thailand, where they find employment in the informal economy and seek to avoid the attention of Thai authorities.⁵⁶

UNHCR declined to provide Amnesty International an on-the-record response regarding its policies concerning the Lao Hmong. However, in 2012, HRW reported that UNHCR is “not allowed” to conduct refugee status determination for Lao Hmong, citing an unnamed UNHCR official, who stated, “It is not that we do not want to exercise our mandate: we cannot exercise our mandate.”⁵⁷ The Thai government did not respond to Amnesty International’s official inquiry regarding its policies towards the Lao Hmong. Despite the lack of clarity regarding the policies of the Thai government and UNHCR, NGOs working with refugees and the Lao Hmong community affirmed that, in practice, UNHCR does not regularly register members of the group at the current time.⁵⁸

In early 2017, UNHCR stopped registering Vietnamese nationals.⁵⁹ Amnesty International interviewed and conducted focus group discussions with dozens of Montagnard Christians and Vietnamese Hmong asylum-seekers who had arrived in 2017 and had been unable to register with UNHCR.⁶⁰ UNHCR declined to provide an on-the-record explanation of its rationale for not registering these individuals, and it is unclear whether the current approach will become a permanent policy.

⁴⁸ Athena Tacet, “Montagnards: Escaping Vietnam, stateless in Thailand”, *Al Jazeera*, 24 March 2017,

www.aljazeera.com/indepth/features/2017/03/montagnards-escaping-vietnam-stateless-thailand-170320090502798.html; Interview with UNHCR-registered refugee, Interview No. 28, Bangkok, 26 May 2017.

⁴⁹ Interviews with refugees, Interview Nos. 28, 29, 34, 37 (three family members), 46 and 59, Bangkok, May – July 2017.

⁵⁰ See *infra*, “‘Voluntary’ Returns and Constructive Refoulement”, p. 41.

⁵¹ Prime Minister Prayuth Chan-O-Cha, Statement for President Obama’s Leaders’ Summit on Refugees, 20 September 2016; Human Rights Committee, Replies of Thailand to the list of issues, 2016, para. 128.

⁵² Jiyoung Song and Alistair D.B. Cook, *Irregular Migration and Human Security in East Asia*, Routledge, 2014, p. 146.

⁵³ Tankulratana and Janamporn, *Alternatives to Detention*, p. 41.

⁵⁴ Human Rights Watch, *Ad Hoc and Inadequate: Thailand’s Treatment of Refugees and Asylum Seekers*, 12 September 2012, www.hrw.org/report/2012/09/12/ad-hoc-and-inadequate/thailands-treatment-refugees-and-asylum-seekers, p. 18, fn. 12.

⁵⁵ See, Amnesty International, *Lao People’s Democratic Republic: Hiding in the Jungle – Hmong Under Threat*, 23 March 2007 (Index: ASA 26/003/2007); Unrepresented Nations and Peoples Organization and Congress of World Hmong People, submission for the UN Universal Periodic Review, 6 March 2014.

⁵⁶ Interviews with Lao Hmong individuals residing in Thailand, Interview Nos. 26 and 27, Bangkok, 26 May 2017.

⁵⁷ Human Rights Watch, *Ad Hoc and Inadequate*, p. 87.

⁵⁸ Interviews with Lao Hmong individuals residing in Thailand, Interview Nos. 26 and 27, Bangkok, May 2017; Interviews with representatives of organizations working with the Lao Hmong community, Interview Nos. 7, 11, and 14, Bangkok, April – May 2017.

⁵⁹ Interviews with representatives of organizations working with refugees, Interview Nos. 7, 11, 24 and 44, Bangkok, April – July 2017.

⁶⁰ Interviews with Montagnard Christians from Vietnam, Interview Nos. 28, 32, 37, 38, 41 and 59-63, Bangkok, May – July 2017; Focus group discussion with Montagnard Christians, Focus Group Discussion Nos. 40, 42 and 64, Bangkok, June – July 2017.

ARREST, DETENTION AND DEPORTATION



↑  Thai policemen escort a group of handcuffed individuals into an immigration detention center in Bangkok. @ SAEED KHAN/AFP/Getty Images

Most urban refugees enter Thailand on tourist visas and then, unable to secure an alternate form of legal status, overstay the expiry date of their visas. These individuals, regardless of their status with UNHCR, are in violation of the terms of the 1979 Immigration Act and thus subject to arrest, detention and deportation. Amnesty International spoke with 15 refugees and asylum-seekers who had been arrested or whose family members had been arrested by Thai authorities for an immigration violation.⁶¹ Often, these arrests occurred at apartment blocks housing large numbers of foreigners or at markets, churches or other public places frequented by foreigners.⁶²

Although status as a UNHCR-registered refugee or asylum-seeker offers no formal legal protection under Thai law, refugees are sometimes able to avoid arrest by presenting identification cards issued by UNHCR to the arresting officers.⁶³ Some individuals have also been released from custody at the site of arrest after intervention by a UNHCR officer or representative of an NGO serving refugees.⁶⁴

The fear of arrest is a constant burden on most refugees and asylum-seekers, affecting many aspects of their lives.⁶⁵ A representative of an NGO that provides psycho-social counselling to refugees told Amnesty International:

Refugees are waiting for a long time. They don't know what to do. They have the constant fear of arrest. These families are facing great stress. They stay inside and they don't see anyone because they don't dare to go out. There is a high incidence of domestic violence. The stress results from the trauma that they have experienced and the perpetual uncertainty and helplessness they face in Bangkok.⁶⁶

Section 54 of the Immigration Act gives Thai authorities wide latitude in deciding on how to manage undocumented foreigners prior to their deportation. Authorities may detain such individuals “at any prescribed place” or “order the alien to report” periodically.⁶⁷ In practice, most refugees and asylum-seekers are sent to an immigration detention center (IDC) following arrest, often after a court hearing on criminal charges under the Immigration Act or other criminal law provisions.⁶⁸

⁶¹ Interviews with refugees, Interview Nos. 3, 28, 29, 32, 35 (three family members, two arrested), 40 (FGD respondent), 43, 46, 49, 59, 64 (FGD respondent), 66 and 68, Bangkok and Skype, April – July 2017.

⁶² Ibid.

⁶³ Interviews with refugees and representatives of organizations working with refugees, Interview Nos. 6, 7, 14, 43, 46, 59 and 64 (FGD respondent), Bangkok, April – July 2017.

⁶⁴ Interviews with refugees and representatives of organizations working with refugees, Interview Nos. 6, 7, 14, 24 and 64 (FGD respondent). In 2014, UNHCR reported that 254 refugees and asylum-seekers were arrested in 108 incidents and that 38 individuals were released after an intervention by UNHCR. APPRN, et al, Joint UPR submission: Thailand, para. 11.

⁶⁵ Interviews with refugees, Interview Nos. 24, 26, 31, 32, 34, 36, 38, 40 (FGD respondent), 41, 43, 45, 46, 49, 59 and 64 (FGD respondent), Bangkok, May – July 2017.

⁶⁶ Interview No. 24, Bangkok, 24 May 2017.

⁶⁷ Immigration Act, section 54. Section 19 similarly gives discretion to authorities regarding the detention of individuals while their immigration status is being determined. Immigration Act, section 19.

⁶⁸ Interviews with refugees and representatives of organizations working with refugees, Interview Nos. 3, 4, 5, 6, 7, 8, 9, 23, 24, 25, 35, 40 (FGD respondent), 43, 44, 47, 48, 49 and 52, Bangkok and other locations, April – July 2017.

At the time of writing 196 UNHCR-registered refugees and asylum-seekers were detained in IDCs throughout the country.⁶⁹ The conditions in IDCs are appalling.⁷⁰ Two NGO representatives independently told Amnesty International that IDCs are “worse than prison”.⁷¹ UNHCR, the UN Committee against Torture and the UN Committee on Economic, Social and Cultural rights, among others, have raised concerns about overcrowding, abuse and dangerous living conditions in IDCs.⁷² UNHCR, NGOs and lawyers serving detained clients have had difficulty accessing detainees.⁷³

A young Pakistani Christian man described his experience in Bangkok’s Suan Phlu IDC:

They locked us in the cells like animals. It was around 250 of us in one cell... There were so many health issues... We did not have water... We did not consider that we had committed any sin... We just came to seek justice and seek protection. This was our sin... It was so hard to even sit on the floor. Laying down and sleeping was impossible... I only had this much space [shows approximately 24 inches]. If anyone put up their legs – if you turn or move your legs – you will lose your space.⁷⁴

UNHCR, human rights organizations and refugee rights organizations have frequently raised concerns about the detention of children, including child refugees and asylum-seekers, in IDCs.⁷⁵ Many children have been detained in IDCs with the consent of parents, who are reluctant to send their children alone to government-run shelters and, lacking other options, choose to retain physical custody of their children.⁷⁶

The Thai government has committed to building a new IDC facility outside Bangkok, but the current progress towards opening the facility is unknown.⁷⁷

The discretion granted to Thai authorities under section 54 of the Immigration Act has in the past been used to grant release on bail to UNHCR-recognized refugees and asylum-seekers. The government has never provided clear criteria for granting bail, and immigration officials have made decisions regarding bail on an ad hoc basis.⁷⁸ The Coalition for the Rights of Refugees and Stateless Persons reported that in 2014 and 2015 more than 400 refugees and asylum-seekers were granted bail.⁷⁹

Bail has typically been set at 50,000 baht (approximately US\$1,600) for refugees and asylum-seekers detained in IDCs, and individuals are required to check in with the Immigration Bureau periodically.⁸⁰ Individuals released on bail whose applications have been rejected by UNHCR are generally recalled to IDCs, causing great emotional turmoil.⁸¹

Starting in 2016, immigration officials ceased granting bail to refugees and asylum-seekers in the vast majority of cases.⁸² At the time of writing, bail remains functionally unavailable for most refugees and asylum-seekers detained in IDCs.

Section 54 of the Immigration Act does not specify the manner or time frame for deporting foreigners. Thai authorities have primarily adopted two channels for deportations.

First, IDC detainees who came to Thailand from neighbouring countries are regularly deported across land borders. These deportations usually occur several times a month, meaning that detainees from these

⁶⁹ UNHCR email to Amnesty International dated 11 August 2017.

⁷⁰ See interviews with refugees and representatives of organizations working with refugees, Interview Nos. 6, 24, 25, 35, 43, 44, 47 and 49, Bangkok and Skype, April – July 2017.

⁷¹ Interviews with representatives of organizations working with refugees, Interview Nos. 6 and 24, Bangkok, April – June 2017.

⁷² Concluding Observations of UN Committee against Torture: Thailand, UN Doc. CAT/C/THA/CO/1, 20 June 2014, para. 22; UNHCR, UPR submission: Thailand, p. 13; CESCR, Concluding Observations, 2015, para. 28.

⁷³ Interviews with representatives of organizations working with refugees, Interview Nos. 7, 8, 9, 24 and 48, Bangkok, April – July 2017.

⁷⁴ Interview No. 35, Bangkok, 1 June 2017. For a fuller description of life inside an IDC, see a blog post written by an individual who told Amnesty International about his time as a refugee in Thailand. “Life Is Precious Yet Precarious”, *TheRiverClyde*, theriverclyde.wordpress.com/2016/06/22/life-is-precious-yet-precarious/.

⁷⁵ UNHCR, *Beyond Detention 2014-2019*, “National Action Plan: Thailand”, October 2015, <http://www.unhcr.org/protection/basic/56333d559/beyond-detention-national-action-plan-thailand.html>; Asia Pacific Refugee Rights Network and Save the Children, *Unlocking Childhood: Current immigration detention practices and alternatives for child asylum seekers and refugees in Asia and the Pacific*, May 2017, http://aprrn.info/wp-content/uploads/2017/06/unlocking_childhood.pdf; 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>.

⁷⁶ Ibid.

⁷⁷ Human Rights Committee, Replies of Thailand to the list of issues, 2016, para. 131.

⁷⁸ Interviews with representatives of organizations working with refugees, Interview Nos. 7, 9, 23, and 24, Bangkok, April – May 2017; UNHCR, UPR submission: Thailand, p. 10; Tankulratana and Janamporn, *Alternatives to Detention*, p. 33.

⁷⁹ Tankulratana and Janamporn, *Alternatives to Detention*, p. 46.

⁸⁰ Interviews with refugees and representatives of organizations working with refugees, Interview Nos. 7, 23, 24 and 35, Bangkok, April – May 2017; Tankulratana and Janamporn, *Alternatives to Detention*, p. 33.

⁸¹ See for example, interview with family of Pakistani Christians whose case had been closed by UNHCR prior to the interview and who were scheduled to return to the IDC in Bangkok within a week, Interview No. 35, Bangkok, 1 June 2017.

⁸² Interviews with representatives of organizations working with refugees, Interview Nos. 5, 7, 9, 23 and 24, Bangkok, April – May 2017.

countries are unlikely to remain in IDCs for more than a week or two.⁸³ In most cases, Thai authorities will not knowingly deport a UNHCR-registered refugee or asylum-seeker.⁸⁴ However, many refugees and asylum-seekers view deportation across a land border – with the ability to easily return – as a favourable option compared to prolonged indefinite detention in an IDC. Therefore, some refugees and asylum-seekers choose not to advance asylum claims or notify Thai authorities of their status as a UNHCR-registered individual.⁸⁵

Second, IDC detainees from countries that do not share a border with Thailand are held until they pay for a return flight to their home countries, a process known as “self-deportation”.⁸⁶ Refugees and asylum-seekers who choose not to self-deport face the prospect of indefinite detention in IDCs. As of 31 July 2017, 159 UNHCR-registered refugees and asylum-seekers had been detained in IDCs for more than one year.⁸⁷ One UNHCR-registered refugee had been held in an IDC for approximately eight years.⁸⁸ Although Thai lawyers have at times used various legal arguments to seek the release of refugees and asylum-seekers from detention,⁸⁹ there are no regular, formal channels for IDC detainees to challenge their prolonged detention.⁹⁰

As described in this report, Thai authorities have, on occasion, summarily deported refugees and asylum-seekers based on the request of a foreign government, bypassing the processes described above. In practice, refugees and asylum-seekers who have been deported in this manner have not had the opportunity to challenge their forcible return, and there appears to be no judicial or legal review of cases prior to deportation.⁹¹

RECENT COMMITMENTS BY THE THAI GOVERNMENT

The NCPO government has made several noteworthy commitments regarding Thailand’s refugee policies. In the wake of the forcible return of Chinese nationals in two separate incidents in 2015 – both loudly decried by the diplomatic and human rights community⁹² – Thai government officials signalled, both publicly and in private meetings with NGOs and others, that they would seek to avoid such actions in the future.⁹³ Thailand also made similar commitments in international fora, including before the UN Human Rights Committee.⁹⁴ Additionally, the government has repeatedly committed to ensuring that the return of refugees from border camps to Myanmar would take place in a “voluntary, safe, dignified, and sustainable” manner.⁹⁵

The NCPO government has also made important commitments to develop new policies and laws to protect refugees and prevent refoulement. Most notably, on 10 January 2017, Thailand adopted a Cabinet resolution authorizing the development of a policy to screen refugees and irregular migrants.⁹⁶ According to the resolution, the policy will take the form of a regulation from the Office of the Prime Minister, which will establish the relevant procedures for “screening” and “managing” refugees and undocumented migrants and set up a Committee for the Management of Undocumented Immigrants and Refugees to implement the new policies.⁹⁷ The resolution states that the Committee must collaborate with relevant non-governmental organizations while carrying out its duties.⁹⁸

⁸³ Interviews with representatives of organizations working with refugees, Interview Nos. 7 and 8, Bangkok, April – May 2017.

⁸⁴ Interviews with representatives of organizations working with refugees, Interview Nos. 7, 15 and 20, Bangkok and Mae Sot, April – May 2017; US State Department, *Country Reports on Human Rights Practices for 2016*:

Thailand, www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dldid=265376; Tankulratana and Janamporn, *Alternatives to Detention*, p. 46.

⁸⁵ Interviews with representatives of organizations working with refugees, Interview Nos. 8, 15 and 16, Bangkok and Mae Sot, May 2017.

⁸⁶ Interviews with refugees and representatives of organizations working with refugees, Interview Nos. 9, 11, 24, 25, 43, 44, 49 and 52, Bangkok and Skype, May – July 2017.

⁸⁷ UNHCR email to Amnesty International dated 11 August 2017.

⁸⁸ Ibid.

⁸⁹ Interview with Thai lawyer, Interview No. 9, Bangkok, 3 May 2017. See also, “Thai Court Rules Year-Long Detention of Suspected Uyghurs is Legal”, *Radio Free Asia*, 27 March 2015, www.rfa.org/english/news/uyghur/ruling-03272015163643.html.

⁹⁰ UNHCR, UPR submission: Thailand, p. 11-12.

⁹¹ UNHCR, UPR submission: Thailand, p. 10-11.

⁹² See infra, “Refouled to China: Uighur Asylum-Seekers”, p. 22; “Refouled to China: Jiang Yefei and Dong Guangping”, p. 26.

⁹³ Interviews with diplomatic officers and representatives of refugee rights organizations, Interview Nos. 5, 7, 53 and 55, Bangkok, April – July 2017; “We didn’t know two men had UN status”, *The Nation*, 24 November 2015, www.nationmultimedia.com/news/national/aec/30273573.

⁹⁴ Human Rights Committee, State parties report: Thailand, 2015, para. 125.

⁹⁵ Ibid.; Human Rights Council, National Report to the Human Rights Council for the Universal Periodic Review, UN Doc.

A/HRC/WG.6/25/THA/1, 12 February 2016, para. 110. In 2016, Thailand also accepted a recommendation made during its Universal Periodic Review before the Human Rights Council to consider ratifying the 1951 Refugee Convention. Human Rights Council, Report of the Working Group on the Universal Periodic Review, UN Doc. A/HRC/33/16, 15 July 2016, para. 158.21.

⁹⁶ Cabinet Resolution 10/01, B.E. 2560, 10 January 2017.

⁹⁷ Ibid.

⁹⁸ Ibid.

The Cabinet resolution referenced a memo by the Council of State describing potential frameworks for a screening mechanism based on its consultations with relevant ministries and agencies as well as UNHCR.⁹⁹ The memo described a “Draft Regulation of the Office of the Prime Minister”, which would provide legal status to refugees, establish a procedure for screening asylum-seekers, and grant certain legal rights to refugees, including the right to work. However, the memo also stated that certain government ministries objected to key provisions of the draft legislation – such as a definition of “refugee” that they believed to be too broad – or to the idea of a screening mechanism generally, citing fears of a “pull factor”. To date, the government has not established a formal process for consulting civil society groups, provided concrete details concerning the form or functions of the proposed screening mechanism, nor shared a timeline for the development and implementation of new policies. NGO representatives told Amnesty International that they were concerned new screening procedures could apply overly restrictive criteria towards asylum-seekers or inject political considerations into asylum procedures.¹⁰⁰

The Thai government’s protracted initiative to develop anti-torture legislation also presents an opportunity to strengthen protections against refoulement. A Draft Prevention and Suppression of Torture and Enforced Disappearance Act contains a flawed, but useful, non-refoulement provision.¹⁰¹ Unfortunately, in February 2017, the National Legislative Assembly sent the bill back to the Cabinet for “more consultations” and, at the time of writing, it appears that no further progress has been made on addressing its shortcomings or securing its passage.

⁹⁹ Memo of the Office of the Council of State regarding the reform of the law concerning immigrants and refugees, No. 1483/2016, 19 October 2016.

¹⁰⁰ Interviews with NGO representatives, Interview Nos. 7, 11, 14, 23, 24, 44, 50 and 65, Bangkok and Skype, April – July 2017.

¹⁰¹ The latest draft of the bill prohibits deportation of individuals where there are grounds to believe they “will be subjected to torture”, which is significantly narrower than the obligation under the Convention against Torture not to deport an individual if they “*would be in danger of* being subjected to torture.” Draft Prevention and Suppression of Torture and Enforced Disappearance Act, draft shared with civil society in November 2016. Thai officials have regularly committed to passing this legislation and have highlighted its non-refoulement provision. See, for example, Prayuth Chan-O-Cha, Statement to Leaders’ Summit, 2016.

4. THAILAND'S VIOLATIONS OF THE PRINCIPLE OF NON-REFOULEMENT

Since the NCPO came to power in 2014, Thai officials have made noteworthy and important commitments to improving protections for refugees and asylum-seekers in Thailand. However, the Thai government has also implemented policies and undertaken actions which violate the human rights of refugees. In particular, Thai authorities have violated the principle of non-refoulement by forcing or coercing the return of refugees and asylum-seekers to situations where they are likely to face persecution or other serious human rights violations.

Thai authorities have violated the principle of non-refoulement in a number of ways. First, they have forcibly returned refugees and asylum-seekers based on requests by the governments of their home countries. Second, they have “pushed back” refugees at Thailand’s frontiers. Finally, they have coerced refugees to “self-deport” by imposing severe restrictions on their rights and freedoms.

These incidents do not reflect the totality of Thailand’s policy position regarding refugees, nor do they negate the important role that Thailand has played in hosting hundreds of thousands of refugees over several decades. Nevertheless, these acts of refoulement are serious violations of Thailand’s obligations under international law and have had a disastrous impact on the lives of the victims and their family members.

FORCIBLE RETURNS AT THE REQUEST OF FOREIGN GOVERNMENTS

Since May 2014, Thai authorities have on several occasions forcibly returned refugees and asylum-seekers to their home countries based on requests made by the governments of those countries. Statements by Thai officials regarding these incidents have evinced a clear prioritization of political and economic relationships with foreign countries at the expense of upholding the human rights of individuals seeking protection in Thailand.

REFOULED TO BAHRAIN: ALI HAROON

Ali Ahmed Ibrahim Haroon is a Bahraini national who fled to Thailand after being arrested and tortured by Bahraini authorities in 2013. In December 2014, Thai authorities arrested Haroon and handed him over to Bahraini officials, who reportedly abused him while forcing him to board a flight back to Bahrain. His family

members told Amnesty International that he was subsequently tortured in Bahrain, where he remains imprisoned.

In recent years, Bahraini authorities have been responsible for widespread human rights violations, including severe restrictions on the rights to freedom of assembly and expression.¹⁰² The Bahraini government has frequently responded to bombings and other violent acts by anti-government protesters by detaining, torturing and otherwise ill-treating suspects and by denying them fair trial rights.¹⁰³ Methods of torture and other ill-treatment reported to Amnesty International have included severe beating, punching, the application of electric shocks, suspension by the limbs, rape, sexual assault, exposure to extremely cold or hot conditions, forced prolonged standing, sleep deprivation, denial of access to toilet facilities, forced inhaling of cigarette smoke, insults and humiliation.¹⁰⁴ Torture has often been used to obtain “confessions” from suspects.¹⁰⁵

Ali Ahmed Ibrahim Haroon was involved in anti-government protests in Bahrain in February and March 2011.¹⁰⁶ On 29 May 2013, Bahraini authorities arrested Haroon, then aged 19 or 20, and nine others, in connection with an explosion in northern Bahrain that injured state security officers.¹⁰⁷ Local human rights organizations reported that Haroon was held incommunicado for a week after his arrest and raised concerns that the arrests had been made without evidence of the involvement of the detainees.¹⁰⁸ During this time, he was made to assume stress positions, beaten and deprived of sleep in order to force him to confess to involvement in the bombing.¹⁰⁹ According to Bahraini rights groups, Haroon sustained permanent injuries from these alleged acts of torture, which were used to elicit a “confession”.¹¹⁰ He was subsequently convicted and sentenced to life imprisonment.¹¹¹ In May 2014, Haroon escaped from prison and fled to Thailand via Turkey and Hong Kong.

On 13 December 2014, Thai authorities arrested Haroon in Bangkok based on an Interpol arrest warrant issued at the request of the Bahraini government.¹¹² According to UNHCR, Haroon possessed a valid visa at the time of his arrest.¹¹³ Five days after his arrest, Thai authorities handed Haroon over to Bahraini officials at Suvarnabhumi International Airport in Bangkok. According to Haroon’s family, he was severely beaten, shackled and put into a wheelchair before being forcibly placed on a flight to Bahrain.¹¹⁴ In a submission to the UN Human Rights Council, UNHCR stated that an initial attempt to board Haroon failed but that a second “reportedly succeeded after the individual was sedated and beaten, allegedly by the police authorities of the country of origin who had come to Thailand in search of the individual”.¹¹⁵

Subsequent reports by Bahraini human rights organizations and media outlets indicated that Haroon had sustained severe injuries prior to arriving in Bahrain and was transferred to a hospital upon his arrival.¹¹⁶ Bahrain’s Office of the Public Prosecutor acknowledged Haroon’s injuries, but stated that they had occurred because he “resist[ed] boarding the flight which made him fall and caused minor injuries.”¹¹⁷

OHCHR confirmed to Amnesty International that it had warned the Thai authorities that Haroon would be at risk of human rights violations if he was returned to Bahrain, and had done so prior to his transfer to the

¹⁰² Amnesty International, *Report 2016/2017: The State of the World’s Human Rights*, “Bahrain”, 22 February 2017 (Index: POL 10/4800/2017), pp. 77-80; Amnesty International, *Bahrain: Promises of Reform Unfulfilled*, submission for the UN Universal Periodic Review, 21 December 2016 (Index: MDE 11/5310/2016).

¹⁰³ Ibid.

¹⁰⁴ Amnesty International, *Behind the Rhetoric: Human Rights Abuses Continue in Bahrain Unabated*, 16 April 2015 (Index: MDE 11/1396/2015), p. 46.

¹⁰⁵ Ibid.

¹⁰⁶ Americans for Democracy and Human Rights in Bahrain, Bahrain Center for Human Rights and Bahrain Institute for Human Rights and Democracy, Letter to Jurgen Stock, Secretary General of Interpol, 15 December 2015, on file with Amnesty International.

¹⁰⁷ Amnesty International, *Behind the Rhetoric*, p. 46; Bahrain Center for Human Rights, “Bahrain: Ten Arrested Without Warrant, Feared Tortured, After Alleged Blast”, 30 May 2013, www.bahrainrights.org/en/node/6148.

¹⁰⁸ Ibid. See also, Bahrain Center for Human Rights, “Bahrain: NGOs Condemn Refoulement of Ali Haroun”, 23 December 2014, www.bahrainrights.org/en/node/7211.

¹⁰⁹ Ibid.

¹¹⁰ Bahrain Center for Human Rights, “NGOs Condemn Refoulement of Ali Haroun”.

¹¹¹ Ibid.

¹¹² Ibid.; al-Wasat News, “النابذة: تابلند في الطائرة ركوب مقاومته أثناء سقوطه بعد أصيب هارون”, 22 December 2014, www.alwasatnews.com/news/946720.html.

¹¹³ UNHCR, UPR submission: Thailand, p. 7.

¹¹⁴ Amnesty International, *Behind the Rhetoric*, p. 50.

¹¹⁵ UNHCR, UPR submission: Thailand, p. 7; see also, Bahrainian Center for Human Rights, “NGOs Condemn Refoulement of Ali Haroun”.

¹¹⁶ Bahrainian Center for Human Rights, “NGOs Condemn Refoulement of Ali Haroun”; “Nabeel Rajab reveals: Ali Haroun was tortured by three police officers and left with a bloody face in front of Thailand police. Ali was anesthetized without the presence of a doctor”, *Bahrain Mirror*, 23 December 2014, bahrainmirror.com/en/news/21140.html.

¹¹⁷ al-Wasat News, “النابذة: تابلند في الطائرة ركوب مقاومته أثناء سقوطه بعد أصيب هارون”.

custody of Bahraini officials.¹¹⁸ UNHCR also reportedly made similar communications to the Thai government, although, in keeping with its policies, would not confirm this fact to Amnesty International.¹¹⁹

Approximately two weeks after Haroon was returned to Bahrain, his family visited him in Jaw Prison.¹²⁰ Haroon told them that he had been tortured since being returned and that officials had shown him a document purportedly withdrawing his nationality. His family said that his hands and feet were shackled during the visit and that there were bruises on his eyes.

In March 2015, officials at Jaw Prison responded to a prison riot by firing tear gas and shotgun pellets.¹²¹ They subsequently beat and administered electric shocks to inmates and denied them access to toilet and shower facilities.¹²² Haroon's family reported that when they visited him more than a month later, he had a pale complexion, could not walk, was shaking and had difficulty speaking.¹²³ When Amnesty International inquired into Haroon's condition in March 2015, Bahrain's Ombudsman's Office stated that it had visited Haroon in prison and that Haroon had said he was in "good condition" and did not wish to file a complaint against prison authorities.¹²⁴

In March 2017, Amnesty International received reliable reports that the situation was "getting worse" for Haroon and other detainees at Jaw Prison, who had reportedly been subjected to prolonged solitary confinement.

REFOULED TO CHINA: UIGHUR ASYLUM-SEEKERS

The Uighurs are a mainly Muslim ethnic minority that have faced severe persecution in China. On 9 July 2015, Thai authorities transferred 109 asylum-seekers – part of a larger group of Uighurs detained in Thailand after fleeing China – to the custody of Chinese authorities. They were subsequently returned to China and little is known about their current status and condition.



↑ Hooded Uighur asylum-seekers on a plane surrounded by Chinese security officers after they were transferred to Chinese custody by Thai authorities, July 2015. @CCTV+

Uighurs are a Turkic-speaking ethnic group numbering approximately 10-million and residing primarily in the Xinjiang Uighur Autonomous Region in northwest China. Chinese authorities are responsible for pervasive ethnic and religious persecution against the Uighurs, who primarily practice Islam.¹²⁵ For decades, Uighurs have been subjected to severe restrictions on freedom of expression, assembly and religion, arbitrary detention, torture, unfair trials, executions, extrajudicial killings and violations of economic, cultural and social rights.¹²⁶ Individuals reporting on, or campaigning against, such violations have been arrested, prosecuted and imprisoned.¹²⁷

For these reasons, many Uighurs have chosen to flee China, often passing through Southeast Asia with the goal of resettling in Turkey.¹²⁸ The Chinese government has placed immense pressure on the governments of countries in Southeast Asia and elsewhere to return Uighur refugees and asylum-seekers to

¹¹⁸ OHCHR email to Amnesty International dated 17 July 2017.

¹¹⁹ Amnesty International, *Behind the Rhetoric*, p. 50.

¹²⁰ Ibid.

¹²¹ Amnesty International, "Bahrain: Trial of 57 opened amidst allegations of abuse during prison riot", 27 July 2015 (Index: MDE 11/2163/2015); see also, "Open Letter from Abdulhadi Al-Khawaja on his 21st day of hunger strike to the High Commissioner for Human Rights", 10 May 2015, www.gc4hr.org/news/view/1000.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Email from Nawaf M. Al Mouada, Bahrain Ombudsman's Office, to Amnesty International dated 29 March 2015.

¹²⁵ Amnesty International, *Report 2016/2017: The State of the World's Human Rights*, "China", 22 February 2017 (Index: POL 10/4800/2017), pp. 122-123.

¹²⁶ Amnesty International, "Long-standing Uighur grievances behind repeated protests must be addressed," 4 February 2011, (Index: ASA 17/006/2011); Amnesty International, "China: Shameful stadium 'show trial' is not justice," 29 May 2014, www.amnesty.org/en/latest/news/2014/05/china-shameful-stadium-show-trial-not-justice/; Amnesty International, "Justice, Justice": *The July 2009 Protests in Xinjiang, China*, 2 July 2010 (Index: ASA 17/027/2010); Amnesty International, *People's Republic of China: Secret Violence: Human Rights Violations in Xinjiang*, 13 November 1992 (Index: ASA 17/050/1992).

¹²⁷ See, for example, Amnesty International, "Five facts about Ilham Tohti, award-winning activist jailed in China", 20 October 2016, www.amnesty.org/en/latest/campaigns/2016/10/five-facts-about-ilham-tohti-ughur-activist-jailed-in-china/; Amnesty International, "China: Open Letter Re: the Current Situation of Nurmemet (aka Nurmuhemmet) Yasin", 27 January 2015 (Index: ASA 17/0004/2015).

¹²⁸ World Uyghur Congress, "Seeking a Place to Breathe Freely: Current Challenges Faced by Uyghur Refugees & Asylum Seekers," June 2016, updated June 2017, www.uyghurcongress.org/en/wp-content/uploads/2017/06/WUC-Refugee-Report-Updated-June-2017.pdf; Amnesty International, *People's Republic of China: Uighurs fleeing persecution as China wages its "war on terror"*, 6 July 2004 (Index: ASA 17/021/2004).

China.¹²⁹ In June 2017, the World Uyghur Congress reported that 317 Uyghurs had been forcibly returned to China from 15 different countries – including Thailand, Vietnam, Cambodia and Laos – since 1997.¹³⁰ Amnesty International has previously campaigned against some of these forcible returns, which constitute violations of the principle of non-refoulement, and has urged the Chinese government to respect the rights of such individuals after they have been returned.¹³¹

In March 2014, Thai authorities detained more than 300 Uyghur individuals, including men, women, children and elderly persons, in at least two operations targeting presumed human smuggling camps in southern Thailand.¹³² The detainees were subsequently placed in local IDCs.¹³³ Human rights organizations, recognizing the danger that the group would be forcibly returned to China, immediately called for the Thai government to respect the principle of non-refoulement.¹³⁴

After being detained, the group requested to be sent to Turkey, a call supported by the Turkish government.¹³⁵ Some advanced claims of Turkish citizenship.¹³⁶ A year after they were arrested, a legal challenge to the prolonged detention of some of the detainees failed.¹³⁷ The detainees protested their prolonged detention and the poor conditions in the IDCs by initiating hunger strikes and attempting to escape.¹³⁸ Media reported the death of at least one child in detention.¹³⁹

On 29 June 2015, a group of Uyghur detainees, reportedly numbering 173 persons, was permitted to board a chartered flight to Turkey, where they joined Uyghur communities in Istanbul and elsewhere.¹⁴⁰ A Thai government spokesperson stated that the individuals had been verified as Turkish citizens but that others were “pending citizenship verification completion”.¹⁴¹ The Thai government’s decision was welcomed by Uyghur human rights groups.¹⁴²

On 9 July 2015, less than two weeks after allowing the first group to proceed to Turkey, Thai authorities transferred a separate group of detainees – reportedly numbering 109 persons and believed to be primarily comprised of Uyghur men – to the custody of Chinese authorities in Bangkok.¹⁴³ These individuals were subsequently forced onto a chartered flight by armed Chinese security personnel.¹⁴⁴ Chinese state-run media broadcast video taken inside the plane, showing the Uyghur returnees sitting in the plane with black hoods over their heads, each flanked by two Chinese security officers.¹⁴⁵ According to the World Uyghur Congress, some of the individuals forcibly returned to China were family members of individuals sent to Turkey in June.¹⁴⁶

¹²⁹ Ibid.

¹³⁰ World Uyghur Congress, “Seeking a Place to Breathe Freely”, Appendix A, p. 28.

¹³¹ See, for example, Amnesty International, “Egypt: Further Information: More Uyghur students at risk of forcible return”, Urgent Action, 1 August 2017 (Index: MDE 12/6848/2017); Amnesty International, “China must reveal fate of Uyghur asylum-seekers,” 23 December 2009, www.amnesty.org/en/latest/news/2009/12/china-must-reveal-fate-uyghur-asylum-seekers-20091223/; Amnesty International, “Open Letter to Minister of Justice on Forcibly Deported Uyghur Asylum-Seekers,” 22 December 2009, (Index: ASA 17/072/2009); Amnesty International, “Fear of Torture and Execution/Forcible return”, 21 June 2000 (Index: ASA 17/29/00).

¹³² “Rights Groups Ask Thailand Not to Deport Uyghurs Back to China”, *Radio Free Asia*, 14 March 2014, www.rfa.org/english/news/uyghur/detained-03142014211205.html; “Another Batch of Uyghur Asylum Seekers Held in Thailand”, *Radio Free Asia*, 23 March 2014, www.rfa.org/english/news/uyghurs-03232014173739.html?searchterm=utf8:ustring=uyghur+thailand.

¹³³ Ibid.

¹³⁴ See, for example, The Uyghur American Association, “Uyghur American Association urges Thai government not to return Uyghur refugees to China”, 14 March 2014, uyghuramerican.org/article/uyghur-american-association-urges-thai-government-not-return-uyghur-refugees-china.html; Human Rights Watch, “Thailand: More Uyghurs Face Forced Return to China”, 21 March 2014, www.hrw.org/news/2014/03/21/thailand-more-uyghurs-face-forced-return-china.

¹³⁵ “Illnesses, Deaths Among Uyghur Refugees in Thai Detention Centers”, *Radio Free Asia*, 7 January 2015, www.rfa.org/english/news/uyghur/filmmaker-visits-detention-centers-01072015171346.html.

¹³⁶ Ibid.

¹³⁷ “Thai Court Rules Year-Long Detention of Suspected Uyghurs is Legal”, *Radio Free Asia*, 27 March 2015, www.rfa.org/english/news/uyghur/ruling-03272015163643.html.

¹³⁸ “Uyghur Refugees Go on Hunger Strike in Thai Detention Center”, *Radio Free Asia*, 22 January 2015, www.rfa.org/english/news/uyghur/refugee-hunger-strike-01222015152248.html; “Dismal Conditions Push Uyghurs to Escape From Thai Facility”, *Radio Free Asia*, 17 November 2014, www.rfa.org/english/news/uyghur/uyghurs-escape-11172014170143.html.

¹³⁹ “Three-Year-Old Uyghur Boy Dies in Thai Detention”, *Radio Free Asia*, 24 December 2014, www.rfa.org/english/news/uyghur/boy-12232014195428.html.

¹⁴⁰ Tulay Karadeniz, “Turkey says to keep doors open for Uyghur ‘brothers’, irking China”, *Reuters*, 3 July 2015, www.reuters.com/article/us-china-turkey-uyghur-idUSKCN0PD1UM20150703. It is not known if all 173 were Uyghurs.

¹⁴¹ “Thailand Expels Nearly 100 Uyghurs to Uncertain Fate in China”, *Radio Free Asia*, 9 July 2015, www.rfa.org/english/news/uyghur/thailand-uyghurs-07092015085045.html.

¹⁴² Nurbanu Kizil, “173 Uyghurs kept under detention by Thailand arrive in Turkey”, *Daily Sabah*, 1 July 2015, www.dailysabah.com/diplomacy/2015/07/01/173-uyghurs-kept-under-detention-by-thailand-arrive-in-turkey; “Group of 173 Uyghurs Freed From Thai Detention Arrive in Turkey”, *Radio Free Asia*, 1 July 2015, www.rfa.org/english/news/uyghur/arrival-07012015160103.html.

¹⁴³ Amnesty International, “Thailand must not send Uyghurs to Chinese torture”, 9 July 2015, www.amnesty.org/en/latest/news/2015/07/thailand-must-not-send-uyghurs-to-chinese-torture/.

¹⁴⁴ CCTV+, “100-plus Stowaways, ‘Snakeheads’ Repatriated from Thailand”, www.youtube.com/watch?v=ka8M2uw1vg.

¹⁴⁵ Ibid.

¹⁴⁶ World Uyghur Congress, “Seeking a Place to Breathe Freely”, p. 12.

UN agencies, diplomats and human rights organizations immediately condemned the return in the strongest possible terms, invoking Thailand's legal obligation to avoid refoulement.¹⁴⁷ A UNHCR spokesperson stated: "We are shocked by this deportation of some 100 people and consider it a flagrant violation of international law."¹⁴⁸ UNHCR made clear that it had raised concerns regarding the detainees prior to their deportation:

UNHCR has been aware of these cases for several months, and made numerous interventions on their behalf to the Royal Thai Government. In response, the agency was given assurances that the matter would be handled in accordance with international legal standards, and that the group would continue to receive protection.¹⁴⁹

OHCHR confirmed to Amnesty International that it had also communicated with Thai authorities concerning the case prior to the mass deportation.¹⁵⁰ Thailand, for its part, again justified its actions by citing a "nationality verification" process which, in this case, identified the Uighur deportees as Chinese nationals.¹⁵¹ Thai authorities also relied on Chinese assurances that the returnees would not be subject to mistreatment while at the same time disclaiming responsibility for their fate.¹⁵² President Prayuth Chan-O-Cha stated: "If we send them back and there is a problem that is not our fault."¹⁵³

Prayuth also seemingly admitted that political considerations influenced the decisions concerning the Uighur detainees. Reuters reported that he told journalists:

It is not like all of a sudden China asks for Uighurs and we just give them back. China asked for all Uighur Muslims in Thailand to be sent back but we said we could not do it... Thailand and Turkey are not rivals and we do not want to destroy trade and commerce with Turkey. At the same time, we do not want to destroy the relationship between China and Thailand.¹⁵⁴

The Thai government claims to have "kept a vigilant eye on the follow-up after the return".¹⁵⁵ Within days, the Thai government announced that it would send the Secretary-General of the National Security Council to China to inquire about the status and wellbeing of the returnees.¹⁵⁶ Although the Secretary General reported that the returnees were "in a good condition at a rehabilitation center", few details regarding the visit or situation of the returnees were provided and the Thai government has not described any further steps taken to ensure the safety of the group.¹⁵⁷

At the time of writing, there was little publicly available information concerning the whereabouts, status or condition of the individuals who had been returned from Thailand. In August 2015, Chinese state media published interviews with some of the returnees who had been detained in Urumqi, the capital city of Xinjiang Uighur Autonomous Region. The interviewees "confessed" their involvement with terrorists and smuggling networks and described being treated well by Chinese authorities.¹⁵⁸ Foreign media outlets reported that Chinese authorities have forced some of the returned Uighur individuals to participate in campaigns to discourage Uighurs from emigrating from Xinjiang Uighur Autonomous Region.¹⁵⁹

¹⁴⁷ See, for example, US State Department, "U.S. Condemns Forced Deportation of Ethnic Uighurs in Thailand to China", 9 July 2015, 2009-2017.state.gov/r/pa/prs/ps/2015/07/244754.htm; European Union, "Statement by the Spokesperson on Thailand's deportation of persons of Turkic origin", 10 July 2015, eu-un.europa.eu/statement-by-the-spokesperson-on-thailands-deportation-of-persons-of-turkic-origin/; Amnesty International, "Thailand must not send Uighurs to Chinese torture", 9 July 2015, www.amnesty.org/en/latest/news/2015/07/thailand-must-not-send-uyghurs-to-chinese-torture/.

¹⁴⁸ UNHCR, "UNHCR shocked over Thailand's deportation of some 100 persons of Turkic origin", 9 July 2015, news.trust.org/item/20150709090356-8z166/.

¹⁴⁹ Ibid.

¹⁵⁰ Email from OHCHR to Amnesty International dated 17 July 2017.

¹⁵¹ "Thailand on defensive as activists slam Uighur deportation", *Bangkok Post*, 9 July 2015, www.bangkokpost.com/archive/thailand-defends-treatment-of-uyghurs/618384.

¹⁵² "Thailand slammed for sending 100 Uighur refugees back to China", *Associated Press*, 9 July 2015, america.aljazeera.com/articles/2015/7/9/thailand-criticized-for-sending-100-uyghur-refugees-back-to-china.html.

¹⁵³ Amy Sawitta Lefevre and Yesim Dikmen, "Thai PM defends decision to send Uighurs back to China", *Reuters*, 9 July 2015, www.reuters.com/article/us-thailand-uyghurs-turkey-idUSKCN0PJ18620150709.

¹⁵⁴ Amy Sawitta Lefevre and Pracha Hariraksapitak, "Thailand, under fire, says rejected China request to deport all Uighur Muslims", *Reuters*, 10 July 2015, www.reuters.com/article/us-thailand-uyghurs-turkey-idUSKCN0PK0E420150710.

¹⁵⁵ Human Rights Committee, Replies of Thailand to the list of issues, 2016, para. 125.

¹⁵⁶ Human Rights Committee, Replies of Thailand to the list of issues, 2016, para. 125; "Thai observers head to China", *Bangkok Post*, 11 July 2015, www.bangkokpost.com/print/619668/.

¹⁵⁷ New China TV, "Repatriated Uyghur immigrants 'in good condition'", 21 July 2015, www.youtube.com/watch?v=IvrmWMKDr9I.

¹⁵⁸ "偷渡者控訴「遷徙聖戰」 從泰國被遣返的偷渡者血淚控訴「遷徙聖戰」騙局", 天山網, 4 August 2015, http://news.ts.cn/content/2015-08/04/content_11712315.htm; See also, "中国证实被遣返维族人曾在登机时反抗", *FT Chinese*, 6 August 2015, <http://www.ftchinese.com/story/001063357>.

¹⁵⁹ US State Department, *Country Reports on Terrorism 2015*, "China (Hong Kong and Macau)", June 2016, www.state.gov/documents/organization/258249.pdf, p. 65; "Repatriated Uyghurs Forced To Make Film About Fleeing China For Thailand", *Radio Free Asia*, 21 October 2015, <http://www.rfa.org/english/news/uyghur/repatriated-uyghurs-forced-to-make-film-about-fleeing-china-for-thailand-10212015165429.html>.

Approximately 60 Uighurs remain in Thai custody in several IDCs in Thailand.¹⁶⁰ In May and June 2016, many of the detainees initiated a hunger strike.¹⁶¹ The World Uyghur Congress reported receiving a letter sent out of the IDC by the hunger strikers, which read, in part:

We have no choice but to go on a hunger strike as we don't want to stay any more years in detention innocently and without knowing about what will come upon us. We believe that it is better to die here [than] to be repatriated, tortured and imprisoned in China as we know what they did to our fellow countrymen extradited by Thailand previously... We urgently appeal to the international community not to stay silent on Thailand's unfair treatment of Uyghur refugees, and urge Thai authorities to help protect us against China's repression in accordance with international law.¹⁶²

Thai authorities have severely restricted access to the Uighur detainees.¹⁶³ However, Amnesty International received – but was unable to confirm – reports that Chinese agents have visited the detainees and made threats concerning their future deportation to China.¹⁶⁴ Amnesty International is gravely concerned that the remaining Uighur detainees will be forcibly returned to China in violation of the principle of non-refoulement and Thailand's obligations under international law.

REFOULED TO CHINA: JIANG YEFEI AND DONG GUANGPING

Jiang Yefei and Dong Guangping are political activists from China. They both obtained refugee status in Thailand before being forcibly returned to China in November 2015. At the time of writing, they remain detained and face criminal charges.

For decades, Chinese authorities have severely restricted the rights to freedom of expression and assembly. Activists, journalists and others have been arrested, imprisoned and prosecuted for criticizing or satirizing government officials, organizing or joining protests, and commemorating government crackdowns, among other purported offenses.¹⁶⁵ Many have been tortured or otherwise ill-treated while detained by Chinese authorities.¹⁶⁶ The threat of arrest, prosecution and violations of the right to security of person has caused many to flee China and seek asylum elsewhere.¹⁶⁷ Those forcibly returned to China are often imprisoned and prosecuted, and are at severe risk of being tortured or otherwise ill-treated.¹⁶⁸

Following the massive 2008 Sichuan earthquake in China, Jiang Yefei, a resident of Sichuan province, gave interviews to foreign media outlets in which he criticized the Chinese government's preparedness for and response to the disaster.¹⁶⁹ He subsequently attempted to join the alternative "human rights torch" relay in advance of the Beijing Summer Olympics.¹⁷⁰ Following these actions, Jiang Yefei was briefly detained and reported being tortured by Chinese authorities.¹⁷¹ Later in 2008, after hearing reports that he would again be arrested, Jiang Yefei fled to Thailand, where he remained until 2015.¹⁷² In Thailand, Jiang Yefei continued with his activism, including by blogging, drawing cartoons satirizing Chinese government officials, and participating in protests in front of the Chinese embassy in Bangkok.¹⁷³ He registered with UNHCR and was

¹⁶⁰ Thai authorities have not publicly disclosed information concerning the number and location of remaining Uighur detainees. The Uighur detainees are reportedly being held in IDCs in Bangkok, Ranong, Sadao and potentially at other locations. Interviews with representatives of organizations working with refugees and the Uighur community, Interview Nos. 7, 47, 48 and 77, Bangkok and Skype, April – July 2017. See also, World Uyghur Congress, "Seeking a Place to Breathe Freely", Appendix A, p. 15 (estimating 60 remaining Uighur detainees in Thailand's IDCs).

¹⁶¹ World Uyghur Congress, "Escalation of Uyghur Hunger Strike in Bangkok", 3 June 2016, www.uyghurcongress.org/en/?p=28667.

¹⁶² World Uyghur Congress, "Uyghurs Held without Charge Begin Hunger Strike at Thai Immigration Detention Facility", 31 May 2016, www.uyghurcongress.org/en/?p=28609.

¹⁶³ Interviews with individuals who have tried to access the Uighur detainees in IDCs, Interview Nos. 47 and 48, Bangkok, June 2017.

¹⁶⁴ Interview with representative of World Uyghur Congress, Skype, 23 June 2017; Meeting with World Uyghur Congress, Washington D.C., 11 August 2017.

¹⁶⁵ See, Amnesty International, *Report 2016/2017, "China"*, pp. 120-121; Amnesty International, *China: Despite legal reforms human rights violations widespread*, submission to the UN Universal Periodic Review, 1 March 2013 (Index: ASA 17/013/2013).

¹⁶⁶ Amnesty International, *China: Submission to the United Nations Commission against Torture*, 56th Session, 28 October 2015 (Index: ASA 17/2725/2015); Amnesty International, *No End in Sight: Torture and Forced Confessions in China*, 11 November 2015 (Index: ASA 17/2730/2015).

¹⁶⁷ Interviews with Chinese refugees and representatives of organizations working with refugees, Interview Nos. 1, 2, 3, 4, 11, 14, 54 and 66, multiple locations, November 2016 – July 2017.

¹⁶⁸ See *infra*, "The Long Arm of China: Regional Threats to Refugees", p. 30.

¹⁶⁹ Interview with Chu Shu Ling, wife of Jiang Yefei, 12 April 2017; see also, Front Line Defenders, "Case History: Jiang Yefei", www.frontlinedefenders.org/en/case/case-history-jiang-yefei#case-update-id-177. See also, Amnesty International, *Justice Denied: Harassment of Sichuan Earthquake Survivors and Activists*, 1 May 2009 (Index: ASA 17/018/2009).

¹⁷⁰ Interview with Chu Shu Ling; see also Anneliese McAuliffe, "China accused of 'tricking' dissidents into deportation", *Al Jazeera*, 29 September 2015, www.aljazeera.com/news/2015/11/china-accused-tricking-dissidents-deportation-151129110204520.html.

¹⁷¹ *Ibid*.

¹⁷² Interview with Chu Shu Ling.

¹⁷³ See, Committee to Protect Journalists, *2016 Prison Census*, cpj.org/imprisoned/2016.php; Cartoonist Rights Network International, "Dissident Cartoonist Jiang Yefei 'Repatriated' to China", undated, cartoonistsrights.org/dissident-cartoonist-jiang-yefei-repatriated-to-china/.

recognized as a refugee in April 2015.¹⁷⁴ Although he entered Thailand legally, his visa soon expired and he did not subsequently have formal legal status in the country.¹⁷⁵

According to Jiang Yefei's wife, a Chinese national whom he married in Thailand, in the months prior to his arrest in Thailand, Jiang Yefei received threatening phone calls from anonymous Chinese-speaking callers and was targeted on online message boards.¹⁷⁶ In early October, a family member called Jiang Yefei to inform him that police had visited their family home in China and asked them to inform him to halt his political activities. According to Jiang Yefei's wife, he refused to curb his activism. "He thought he was a refugee, so the China government could not do anything to him, but he was incorrect," she told Amnesty International.¹⁷⁷

Dong Guangping is a former police officer, who was dismissed from his position after distributing articles criticizing the Chinese government and commemorating the 10th anniversary of the 1989 Tiananmen Square crackdown.¹⁷⁸ He was arrested in 2000 and the next year was convicted of "inciting subversion of state power" and sentenced to three years imprisonment.¹⁷⁹ After being released in 2004, Dong Guangping continued his political activities. He was again detained from May 2014 to February 2015 for his participation in an event remembering the Tiananmen crackdown. Fearful that he would again be arrested for his political activities, Dong Guangping fled to Thailand in September 2015, entering the country by crossing a land border without a visa. His wife and daughter flew to Thailand on valid visas the same month. The family subsequently registered with UNHCR.¹⁸⁰ In Thailand, Dong Guangping became acquainted with the Chinese exile community, including Jiang Yefei.

Midday on 28 October 2015, Thai authorities arrested both men near Jiang Yefei's home, charged them with immigration offenses, and placed them in a detention centre outside of Bangkok.¹⁸¹ The wives of both men, citing conversations with their husbands and immigration officials, told Amnesty International that Chinese officials visited their husbands in that location.¹⁸² They stated that the Chinese officials paid a fee – likely a criminal penalty relating to a violation of the Immigration Act – enabling their transfer to Suan Phlu IDC in central Bangkok and clearing a logistical hurdle necessary for deportation.

Officials from UNHCR and the Canadian embassy visited the detained men and expedited refugee status determination for Dong Guangping's family and approval for the resettlement of both families in Canada.¹⁸³ Dong Guangping's wife told Amnesty International about her meeting with her husband after they had been approved for resettlement:

He looked relaxed. He said, "We can talk later after I come home." Both [my husband] and [Jiang Yefei] looked very relaxed. They were talking and they were making jokes. They thought they would be [with us] soon. They already signed the agreement with the Canadian government. They thought we were safe... When I asked other things, he said, "Don't worry about that. We can talk about that when I come home." ¹⁸⁴

On 14 November, Jiang Yefei's wife received a phone call from a woman who had spoken to another detainee in Suan Phlu IDC.¹⁸⁵ That woman passed on reports that Jiang Yefei and Dong Guangping had been taken from their cell on the evening of 12 November and had not returned.¹⁸⁶ According to the men's wives, UNHCR subsequently confirmed to the women that their husbands had been returned to China.¹⁸⁷ Both of their wives and Dong Guangping's daughter flew to Canada for resettlement on 17 November.¹⁸⁸

¹⁷⁴ Interview with Chu Shu Ling; UNHCR, *Press briefing note on China, Thailand, Vietnam and Democratic People's Republic of Korea*, Geneva, 20 November 2015, www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16784&LangID=E.

¹⁷⁵ Interview with Chu Shu Ling.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Interview with Gu Shuhua, wife of Dong Guangping, 13 April 2017; Amnesty International, "Risk of Unfair Trial for Forcibly Returned Activist", Urgent Action, 30 March 2017 (Index: ASA 17/5992/2017).

¹⁷⁹ Ibid.

¹⁸⁰ Interview with Chu Shu Ling.

¹⁸¹ Interviews with Chu Shu Ling and Gu Shuhua.

¹⁸² Ibid.

¹⁸³ Interview with Gu Shuhua. UNHCR and the Canadian embassy declined to comment on the specific details of the case, but following the forcible return of the two men to China UNHCR confirmed that they had refugee status. UNHCR, *Press briefing note on China, Thailand, Vietnam and Democratic People's Republic of Korea*.

¹⁸⁴ Interview with Gu Shuhua.

¹⁸⁵ Interview with Chu Shu Ling.

¹⁸⁶ Ibid.

¹⁸⁷ Interviews with Chu Shu Ling and Gu Shuhua.

¹⁸⁸ Ibid.

UNHCR, diplomats and human rights organizations quickly condemned the Thai authorities for returning Jiang Yefei and Dong Guangping to China.¹⁸⁹ Thai officials acknowledged that the two men were returned to China based on a request from Chinese authorities, but denied having prior knowledge that they were refugees approved for resettlement in Canada. President Prayuth Chan-O-Cha was reported by international media to have said:

They violated immigration law and after checking we found that there was an arrest warrant from the source country... They asked us to send them back and we had to send according to procedure... What was said about protection from UNHCR – we did not know about that.¹⁹⁰

Contradicting these claims, OHCHR confirmed to Amnesty International that it had communicated with Thai authorities about the case prior to the deportation.¹⁹¹ Reuters also reported on UNHCR correspondence sent prior to the deportation informing Thai authorities of the men's status as refugees approved for resettlement to Canada.¹⁹²

On 26 November, Jiang Yefei and Dong Guangping appeared on Chinese state-run CCTV news and "confessed" to human trafficking offenses.¹⁹³ Jiang Yefei stated: "I know it is not legal to do such things and I am remorseful. From now on, I will try to control my behaviour and will not be involved in these activities anymore."¹⁹⁴ Jiang Yefei's wife told Amnesty International that she believed her husband had been tortured and recalled his appearance:

[My husband] was very weak. It was very hard for him to talk. One of his eyes was damaged... He was wearing the same t-shirt and shorts that he was wearing when he was taken [from Thailand]. It was winter already, but he was wearing the summer clothes.¹⁹⁵

Family members who visited Jiang Yefei in detention and spoke to him by phone said that he was severely bruised and had a visible eye injury that had required multiple surgeries.¹⁹⁶

Since the time of their televised confession, Jiang Yefei and Dong Guangping have been held at Chongqing Municipal No. 2 Detention Centre.¹⁹⁷ Both men face charges of "subverting state power" and charges relating to illegally crossing China's borders.¹⁹⁸ The human rights lawyer selected to represent Dong Guangping by his family has repeatedly been denied access to his client, and both families have been pressured to accept government-appointed lawyers.¹⁹⁹

The lawyer chosen by the government to represent Dong Guangping informed the family that he would be tried in April 2017.²⁰⁰ However, authorities cancelled the hearing without providing a reason. Dong Guangping's government-appointed lawyer quit on 14 July 2017, citing difficulties in handling the case.²⁰¹ The lawyer appointed by Dong Guangping's family visited the detention centre in Chongqing on 24 July 2017, but was told by authorities that Dong Guangping would defend himself in court and not employ any lawyer. The lawyer was not allowed to meet Dong Guangping to confirm his decision in this regard. As the authorities

¹⁸⁹ See, for example, UNHCR, *Press briefing note on China, Thailand, Vietnam and Democratic People's Republic of Korea*; Amnesty International, "THAILAND/CHINA: Shameful collusion between China and Thailand in targeting freedom of expression and ignoring refugee rights must end", 20 November 2015 (Index: ASA 39/2914/2015); "Canada deeply disappointed on Thai action on Chinese refugees", *Reuters*, 2 December 2015, www.reuters.com/article/us-china-thailand-refugees-canada-idUSKBN0TL2N420151203.

¹⁹⁰ "Thai PM says two refugees sent back following request from China", *Reuters*, 24 November 2015, uk.reuters.com/article/uk-china-thailand-refugees-idUKKBN0TD0T620151124.

¹⁹¹ Email from OHCHR to Amnesty International dated 17 July 2017.

¹⁹² Aubrey Belford and Amy Sawitta Lefevre, "Thailand knew deported Chinese were refugees awaiting resettlement in Canada: UN document", *Reuters*, 30 November 2015, www.reuters.com/article/us-china-thailand-refugees-idUSKBN0TJ1E620151130#8dfAQyczcY5Vc6xy.97. Amnesty International was not able to obtain a copy of the letter to Thai authorities, but spoke with one person and corresponded with another who could confirm its existence. Interview No. 55, Bangkok, 5 July 2017; Email to Amnesty International dated 27 June 2017.

¹⁹³ CCTV, 泰警方向中方移交两名犯罪嫌疑人, <https://v.qq.com/x/page/o0019tytd1e.html>; Anneliese McAuliffe, "UN refugees returned to China 'confess' to charges", *Al Jazeera*, 6 December 2017, www.aljazeera.com/news/2015/12/refugees-returned-china-confess-charges-151206084753618.html.

¹⁹⁴ Ibid.

¹⁹⁵ Interview with Chu Shu Ling.

¹⁹⁶ Interview with Chu Shu Ling; "Repatriated Cartoonist 'Being Mistreated' in Police Detention Center: Wife", *Radio Free Asia*, 24 May 2017, www.rfa.org/english/news/china/cartoonist-05242017102621.html.

¹⁹⁷ Amnesty International, "Returned Activists at Risk of Unfair Trial", Urgent Action, 1 June 2016 (Index: ASA 17/4169/2016).

¹⁹⁸ Amnesty International, "Risk of Unfair Trial for Forcibly Returned Activist"; "Chinese Refugee in Thailand Gets Bail, Repatriated Activist Charged With Subversion", *Radio Free Asia*, 15 June 2017, www.rfa.org/english/news/china/chinese-refugee-in-thailand-gets-bail-repatriated-activist-charged-with-subversion-06152016111943.html.

¹⁹⁹ Interviews with Chu Shu Ling and Gu Shuhua; see also, "China to Try Political Refugee Forcibly Repatriated by Thailand for Subversion", *Radio Free Asia*, 20 April 2017, www.rfa.org/english/news/china/refugee-04202017120108.html.

²⁰⁰ Interview with Gu Shuhua; Amnesty International, "Risk of Unfair Trial for Forcibly Returned Activist".

²⁰¹ Amnesty International, "Further Information: Forcibly Returned Activist Held Incommunicado: Dong Guangping", 8 August 2017 (Index: ASA 17/6889/2017).

do not recognize the family's appointed lawyer, he has to date been unable to review the indictment and other documents relating to the proceedings.²⁰²

More than 20 months after his forcible return to China, Dong Guangping's family have yet to receive any direct notification from authorities on his whereabouts, arrest, indictment or charges against him, and, at the time of writing, no public announcement had been made regarding the criminal proceedings against the two men.

REFOULEMENT AVERTED: CHEN GUIQIU AND HER CHILDREN

In March 2017, Thai authorities arrested and detained Chen Guiqiu, the wife of a Chinese human rights lawyer imprisoned in China, and her two daughters. A strong intervention by American diplomats likely prevented Chen Guiqiu's refoulement. Chen Guiqiu and her children have now been resettled in the US.

On 9 July 2015, the Chinese government initiated an unprecedented crackdown on human rights lawyers and activists.²⁰³ Since that date, almost 250 lawyers and activists have been detained or questioned by Chinese authorities.²⁰⁴ At the time of writing, seven had been convicted of "subverting state power" or "picking quarrels and provoking trouble".²⁰⁵ Many of those arrested during the crackdown were subjected to incommunicado detention, and several have alleged torture or other ill-treatment.²⁰⁶ These allegations reflect longer term patterns of torture and ill-treatment by Chinese authorities documented by Amnesty International.²⁰⁷

Xie Yang is a human rights lawyer who was detained on 11 July 2015 during the early stages of the crackdown.²⁰⁸ In January 2017, the transcript of an interview with Xie Yang was published describing routine torture and ill-treatment at the hands of Chinese authorities, including lengthy interrogations, beatings and deprivation of water and sleep.²⁰⁹ In the transcript, Xie Yang stated that he was tortured in order to coerce him to "confess" and give false testimony against other human rights defenders.²¹⁰

Following the publication of Xie Yang's testimony, Chinese authorities began to threaten and pressure his wife Chen Guiqiu, an environmental science professor who had also publicly commented on his mistreatment.²¹¹ She told Amnesty International:

There was a lot of pressure domestically and internationally. The guobao [state security police officers] wanted me to persuade Xie Yang to confess to his crimes so as to get a suspended sentence. I refused... The guobao threatened me that I couldn't keep my job and my family would be in trouble. Even my life would be in danger.²¹²

In February 2017, Chen Guiqiu and her two daughters – one of whom is an American citizen – fled to Thailand in order to register with UNHCR and seek asylum. The family entered Thailand illegally and did not possess valid visas. Chen Guiqiu told Amnesty International that on 2 March, Thai police officers, accompanied by a Chinese speaking man who identified himself as a translator, arrested her and her two daughters at the home of a friend where they were staying at the time.²¹³ Chen Guiqiu suspects that the Chinese speaking man worked for the Chinese embassy. She told Amnesty International that he took photographs of her and her daughters' identity documents and seemed to be giving orders to the police officers. He later paid a fee at court – likely a criminal penalty in relation to a violation of the Immigration Act

²⁰² Ibid.

²⁰³ Amnesty International, "China: Dozens of human rights lawyers targeted in nationwide crackdown", 11 July 2015, www.amnesty.org/en/latest/news/2015/07/china-lawyers-targeted/.

²⁰⁴ Amnesty International, "China: Lawyers and activists detained and questioned by police since 9 July 2015", 2 December 2016 (Index: ASA 17/5262/2016).

²⁰⁵ Amnesty International, "Authorities must end ruthless crackdown on human rights lawyers and activists", 7 July 2017, www.amnesty.org/en/latest/news/2017/07/china-end-ruthless-crackdown-human-rights-lawyers-activists/. Amnesty international researchers confirmed one further conviction subsequent to the publication of this statement.

²⁰⁶ Ibid; see also, Amnesty International, "China's lawyers crackdown: two years on the torment continues", 7 July 2017, www.amnesty.org/en/latest/campaigns/2017/07/china-lawyers-crackdown-two-years-torment-continues/.

²⁰⁷ Amnesty International, Submission to UNCAT: China; Amnesty International, *No End in Sight*.

²⁰⁸ Amnesty International, "China: Lawyers and activists detained and questioned".

²⁰⁹ Amnesty International, "Detained human rights lawyer location unknown", 12 April 2017 (Index: ASA 17/6056/2017); Amnesty International, "Lawyer on bail remains under tight surveillance", Urgent Action, 23 May 2017 (Index: ASA 17/6307/2017).

²¹⁰ Ibid.

²¹¹ See, "Open letter by Ms. Chen Guiqiu, professor of the College of Environmental Science and Engineering at Hunan University and wife of the detained rights lawyer Xie Yang implicated in the 709 Crackdown, calling for the acquittal and immediate release of lawyer Xie Yang", 19 September 2016, www.facebook.com/chrhcg/photos/a.1571958406350448.1073741828.1571955643017391/1772164646329822.

²¹² Interview with Chen Guiqiu, 11 July 2017; see also Interview Nos. 2, 53 and 54, April – June 2017.

²¹³ Ibid.

– allowing the family to be officially transferred to Bangkok’s Suan Phlu IDC and setting the stage for deportation to China.

The following day, officials from the US embassy met Chen Guiqiu in the IDC.²¹⁴ Chen Guiqiu told Amnesty International that the US officials helped secure her release from the IDC while Chinese agents waited outside the facility on that day.

After leaving the IDC, US officials took Chen Guiqiu and her daughters to the airport. Chen Guiqiu told Amnesty International that a previous commitment by Thai authorities to allow the three to pass through immigration using a “special procedure” was not honoured.²¹⁵ She said that she was not able to speak about what happened next because of an agreement with the US government, but confirmed that she reached the United States on 17 March. Officials at the US embassy in Bangkok and US State Department in Washington D.C. acknowledged involvement in the case but declined to provide any details regarding their intervention, citing diplomatic sensitivities.

An individual who was directly involved in Chen’s resettlement to the US confirmed the “direct, forceful role” of Thai authorities in creating the perilous situation for Chen Guiqiu and her daughters.²¹⁶ He described what he believed to be “direct collaboration” between Thai and Chinese officials, stating that Thai officials prevented Chen’s departure despite the fact that she already had documents authorizing her exit from Thailand and entry to the US.²¹⁷

Chen Guiqiu believes that the outcome of the situation could have been drastically different if her daughter was not an American citizen. “Her citizenship saved us,” she told Amnesty International.²¹⁸

THE LONG ARM OF CHINA: REGIONAL THREATS TO REFUGEES AND ASYLUM-SEEKERS

The grave human rights situation in China has caused thousands of Chinese nationals to seek protection as refugees abroad. Thailand, which annually receives millions of Chinese tourists through a visa-on-arrival program, is a frequent destination for individuals fleeing human rights violations in China. However, Chinese asylum-seekers also often settle in, or pass through, other Southeast Asian nations.

In recent years, China has stepped up its efforts to secure the return of individuals fleeing criminal charges in China. This has been accomplished through a combination of diplomatic pressure, the conclusion of extradition treaties, and covert operations by Chinese agents.²¹⁹ Thailand, for its part, signed a bilateral extradition treaty with China in 1993, making it the first country in the world to conclude such an agreement with China.²²⁰

Many of those returned from overseas have been swept up as part of China’s ongoing anti-corruption campaign.²²¹ However, political activists, journalists and others who have sought asylum abroad have also been caught by China’s extraterritorial operations.²²² For example, in October 2015 Bao Zhuoxuan, the 15 year old son of a Chinese lawyer Wang Yu, and two Chinese activists, Tang Zhishun and Xing Qingxian, were reportedly abducted by Chinese agents in Myanmar and returned to China.²²³

Forced returns to China have not been limited to political cases. As described in the preceding section, many Asian countries have forcibly returned Uighur asylum-seekers to China over a period spanning decades.²²⁴ Individuals fleeing religious persecution –

²¹⁴ Ibid.

²¹⁵ Interview with Chen Guiqiu, 11 July 2017.

²¹⁶ Interview No. 54, Skype, 3 July 2017.

²¹⁷ Ibid.

²¹⁸ On 8 May 2017, Xie Yang was tried on charges of “inciting subversion of state power” and “disrupting court order”. He was subsequently released on bail despite the fact that no verdict had been announced in the case. Chen Guiqiu told Amnesty International that she believes he is constantly monitored and under extreme pressure from Chinese authorities. Interview with Chen Guiqiu, 11 July 2017. See also, Amnesty International, “Lawyer on bail remains under tight surveillance”.

²¹⁹ See, Mercator Institute of China Studies (Merics), “China’s Global Law Enforcement Drive”, *Merics China Monitor*, 18 January 2017, www.merics.org/fileadmin/user_upload/downloads/China-Monitor/Merics_China-Monitor_36_Law-Enforcement.pdf.

²²⁰ “China Voice: Sino-Thai law enforcement shows way for neighborhood diplomacy”, *Xinhua*, 23 July 2015, news.xinhuanet.com/english/2015-07/23/c_134440932.htm; “聚焦中国打击外逃贪官行动”系列之一：中国和外国缔结的引渡条约一览表”, *People.cn*, world.people.com.cn/n/2014/1021/c1002-25874521.html.

²²¹ Hannah Beech, “China’s Most Wanted Can Run, but Increasingly They Cannot Hide,” *Time*, 8 January 2016, time.com/4172397/china-law-fugitives-extradition/.

²²² See, Nicholas Bequelin, “We should not trust China over the forcible return of its citizens”, *The Guardian*, 8 December 2015, www.theguardian.com/world/2015/dec/08/china-forcible-return-citizens-amnesty.

²²³ Front Line Defenders, “Case History: Xing Qingxian”, 15 March 2016, www.frontlinedefenders.org/en/case/case-history-xing-qingxian.

²²⁴ See supra, “Refouled to China: Uighur Asylum-Seekers”, p. 22.

notably Falun Gong practitioners – have also been subject to forcible returns.²²⁵

China has also been at the other end of refoulement violations, returning thousands of North Korean refugees to North Korea despite the strong warnings of human rights organizations and others.²²⁶

An academic expert on asylum procedures in Asia told Amnesty International that governments throughout the region were seeking reciprocity in the return of their own nationals in violation of the principle of non-refoulement. He added, “China is the biggest violator.”²²⁷

REFOULED TO TURKEY: MUHAMMET FURKAN SÖKMEN

Muhammet Furkan Sökmén is a Turkish national and long-time resident of Myanmar. In late May 2017, Thailand authorities assisted in extraditing Sökmén to Turkey, despite warnings from UN agencies that he was at risk of human rights violations because of alleged links to exiled Turkish cleric Fethullah Gülen.

In July 2016, an attempted coup in Turkey prompted a massive government crackdown on perceived political opponents by the government of Turkish President Recep Tayyip Erdoğan. Erdoğan and other Turkish authorities have blamed US-based cleric Fethullah Gülen for the coup attempt and targeted his supporters as part of the crackdown. Gülen is the head of a movement that, among other initiatives, supports educational programs worldwide. The government has labelled the Gülen movement a terrorist group, dubbing it the Fethullah Gülen Terrorist Organisation (FETÖ).

Following the coup attempt, the Turkish government announced a three-month state of emergency, since extended four times, and derogated from a long list of articles in the International Covenant on Civil and Political Rights and the European Convention on Human Rights.²²⁸ Over 100,000 civil servants including teachers, police officers, military personnel, doctors, judges and prosecutors have been dismissed from their positions for purportedly threatening national security.²²⁹ At least 47,000 people have been detained for supposed links to the coup or the Gülen movement.²³⁰ Amnesty International has documented extended pre-trial detention of these individuals despite a lack of evidence of criminal behaviour.²³¹ Reports of torture and ill-treatment have proliferated following the passage of government decrees that have stripped away the rights of detainees, including access to lawyers and judicial review of continued detention.²³²

As part of its crackdown on dissent, Turkish authorities have stepped up efforts to secure the return of political opponents living abroad, including supposed members of the Gülen movement residing in Southeast Asia. Since October 2016, five men allegedly linked to the Gülen movement have been forcibly returned to Turkey from Malaysia, including three who were extradited by Malaysian authorities on 11 May 2017.²³³

From 2012 until his extradition to Turkey, Muhammet Furkan Sökmén lived in Yangon, Myanmar, where he worked as an administrator at an international school alleged by the Turkish government to have links to the Gülen movement.²³⁴ In Yangon, Sökmén lived with his wife, a Turkish national whom he met in Myanmar, and their daughter. The family possessed valid visas and had never previously had problems with Myanmar authorities.

²²⁵ See, for example, “South Korea Protests Over Falun Gong Deportations”, *The Wall Street Journal*, 20 September 2011, blogs.wsj.com/chinarealtime/2011/09/20/south-korea-protests-over-falun-gong-deportations/; US State Department, *2007 Country Reports on Human Rights Practices*, “Russia”, June 2016, p. 65.

²²⁶ Paul Handley, “Non-Refoulement under Threat: The Case against China”, *South Carolina Journal of International Law and Business*, Vol. 13.1, 2016, pp. 51-75; Amnesty International, “China: Eight North Koreans at Risk of Forcible Return”, Urgent Action, 6 July 2017 (Index: ASA 17/6652/2017).

²²⁷ Interview No. 65, Skype, 10 July 2015.

²²⁸ Amnesty International, “Turkey Deterioration of Human Rights Must be Addressed by the United Nations”, written statement to the 35th session of the Human Rights Council (Index: IOR 40/6434/2017).

²²⁹ Amnesty International, *No End in Sight: Purged Public Sector Workers Denied a Future in Turkey*, 22 May 2017 (Index: EUR 44/6272/2017).

²³⁰ Amnesty International, written statement Human Rights Council: Turkey.

²³¹ Amnesty International, “Turkey: Independent monitors must be allowed to access detainees amid torture allegations”, 24 July 2016, www.amnestyusa.org/press-releases/turkey-independent-monitors-must-be-allowed-to-access-detainees-amid-torture-allegations/.

²³² Amnesty International, written statement Human Rights Council: Turkey; see also, Human Rights Watch, “A Blank Check: Turkey’s Post-Coup Suspension of Safeguards Against Torture”, 24 October 2016, www.hrw.org/report/2016/10/24/blank-check/turkeys-post-coup-suspension-safeguards-against-torture.

²³³ Amnesty International, “Ensure Safety of Three Extradited Men”, Urgent Action, 15 May 2017 (EUR 44/6256/2017).

²³⁴ Interview with Ayse Sökmén, Skype, 6 July 2017; Amnesty International, “Turkish Man Detained and At Risk of Extradition”, Urgent Action, 26 May 2017 (Index: ASA 39/6374/2017).

On 24 May 2017, officials at Yangon International Airport prevented Sökmen, his wife and their daughter from boarding a flight from Yangon to Bangkok.²³⁵ Sökmen and his family were subsequently detained at the airport for approximately 24 hours, during which time they were questioned by a Turkish embassy official.²³⁶ On the evening of 25 May, Sökmen was forced to board a Myanmar International Airways flight to Bangkok, while his wife and daughter were released from custody.²³⁷ Myanmar authorities subsequently confirmed that they had cooperated in the deportation of Sökmen based on a request from the Turkish government.²³⁸

At Bangkok's Suvarnabhumi International Airport, Sökmen was taken into the custody of Thai immigration officials.²³⁹ Both Sökmen's wife and an NGO representative interviewed by Amnesty International were in regular contact with Sökmen by telephone while he was detained at Suvarnabhumi airport.²⁴⁰ According to these accounts, Thai and Turkish authorities attempted to place Sökmen on a Turkish Airways flight to Istanbul on the evening of 25 May, but were refused by airline officials. He was then held overnight in an immigration detention cell in the airport with other foreigners. Sökmen reported that a UN official was present at the airport and urged Thai and Turkish officials not to send him to Turkey.²⁴¹

On the evening of 26 May, Sökmen recorded two videos that were contemporaneously distributed to diplomats and human rights organizations, including Amnesty International.²⁴² In the first he stated:

If I go to Turkey, I am to be imprisoned and most probably [will] be tortured like many others tortured under the current regime. I am an innocent person and committed no crime... I don't want to go to Turkey. I don't want to be imprisoned. I don't want to be tortured. I have committed no crime. I am asking for international protection and I would like the global community to answer my innocent call. Thank you very much for your help.

In the second video, seemingly taken while Thai and Turkish officials are attempting to force him to board a flight, a visibly distressed Sökmen states: "I'm calling everyone, please help me. I am in the terminal area. They are pushing me. They are trying to give me to the Turkish embassy. Please help me, all over the world, please help me."²⁴³

In a final audio recording, Sökmen begins speaking in Turkish with another man, before starting to scream in English:

Unknown (Turkish): Look, we all have a job to do. If you make it difficult for us, we will then have to force you.

Sökmen (Turkish): Look, even if you force me, I will try my hardest not to board that plane. I am politely explaining this to you.

Unknown (Turkish): But we will make you board that plane.

...

Sökmen (Turkish): Wait a second! I will buy my own ticket. I will buy my own ticket. I don't want to board that plane. (Switching to English:) I want to take my ticket myself, OK?

Unknown (English): No, no...

Sökmen (English): I want to buy my ticket myself.

Unknown (Turkish): No. Please hang on.

Sökmen (Turkish): No, no! Hey, hey! You are forcing me! You are abducting me! Now you are shackling me. Stop it! Don't do it! (Switching to English and screaming:) Please don't do it! I will go myself. I will

²³⁵ Ibid.

²³⁶ See video taken by Sökmen, on file with Amnesty International.

²³⁷ Interview with Ayse Sökmen, Skype, 6 July 2017; Amy Sawitta Lefevre, Wa Lone and Yimou Lee, "U.N. expresses grave concern over Myanmar, Thai deportation of Turkish national", *Reuters*, 27 May 2017, www.reuters.com/article/us-myanmar-turkey-politics-idUSKBN18NOGX.

²³⁸ Ibid.

²³⁹ Interviews with Ayse Sökmen, Skype, 6 July and 13 July 2017; Interview with human rights researcher, Interview No. 57, Skype, 6 July 2017; Sawitta Lefevre, et al, "U.N. expresses grave concern over Myanmar, Thai deportation of Turkish national", *Reuters*.

²⁴⁰ Interview with Ayse Sökmen, Skype, 6 July 2017; Interview with human rights researcher, Interview No. 57, Skype, 6 July 2017.

²⁴¹ Ibid.

²⁴² Video on file with Amnesty International.

²⁴³ Video on file with Amnesty International.

buy my ticket myself. Please don't do it! Help me! [inaudible] This is not democracy! This is not democracy! This is not human rights! Please help me! Help me!²⁴⁴

Sökmen subsequently told family members that he was handcuffed and tape was placed over his mouth before he was physically forced onto the plane.²⁴⁵ On 27 May, Sökmen was pictured disembarking from a plane in Istanbul, handcuffed and in the custody of a Turkish Interpol official.²⁴⁶

The day after Sökmen's forcible return, OHCHR issued a statement expressing "grave concern" over the deportation, citing "an imminent risk of grave human rights violations, including torture".²⁴⁷

OHCHR further indicated that UN officials had raised these concerns with Thai authorities prior to Sökmen's transfer to the custody of Turkish officials, stating: "UN officials have been in regular contact with the Thai authorities regarding the possible deportation of Mr. Muhammet and had warned of human rights risks if he was sent to Turkey."²⁴⁸

Shortly after arriving in Istanbul, Sökmen was transferred to a prison in southern Turkey.²⁴⁹ At the time of writing, Amnesty International was not able to confirm the status of criminal proceedings against Sökmen.

The Thai government has not publicly commented on Sökmen's extradition to Turkey. However, Thailand's role in the case has raised concerns among certain members of the Turkish community residing in Thailand. The Turkish embassy has issued official statements identifying as terrorists Turkish educators and members of the business community in Bangkok.²⁵⁰ Moreover, individuals affiliated with schools and organizations purportedly linked to the Gülen movement have reported difficulties securing consular services from the Turkish embassy, including the renewal of passports and the issuance of birth and marriage certificates.²⁵¹ Many long term residents of Thailand have already felt compelled to leave the country, and others are uncertain about how to address approaching passport expiry dates or remedy other problems caused by their inability to secure official documents.²⁵²

To date, Thai authorities have dismissed the allegations of the Turkish embassy and have not taken any adverse actions against the affected Turkish community.²⁵³ However, the lack of legal status for refugees and asylum-seekers in Thailand limits possible avenues of recourse for these individuals. Thai authorities have also not taken any apparent steps to address the uncertainty regarding the expiry of Turkish passports and implications for compliance with Thai immigration law.

AT RISK OF REFOULEMENT: CAMBODIAN AND VIETNAMESE ACTIVISTS

Facing persecution at home, political activists and others from Cambodia and Vietnam have sought protection in Thailand. These individuals, many of whom are UNHCR-registered refugees and asylum-seekers, have come under increasing pressure from both Thai police and Cambodian agents operating in Thailand. They fear being forcibly returned to Cambodia and imprisoned, as some of their colleagues were during a previous Thai administration.

During his three-decade tenure as Prime Minister of Cambodia, Hun Sen has severely restricted human rights and sought to hobble political opponents. In recent years, the Cambodian government has ruthlessly cracked down on political activists and human rights defenders.²⁵⁴ Many have been detained and prosecuted in politically-motivated trials administered by a judiciary that lacks independence and has

²⁴⁴ Audio recording on file with Amnesty International.

²⁴⁵ Interview with Ayse Sökmen, location withheld, 13 July 2017.

²⁴⁶ "FETÖ'nün 'Myanmar imamı' Türkiye'ye getirildi", *Anadolu Agency*, 27 May 2017, aa.com.tr/tr/gunun-basliklari/fetonun-myanmar-imami-turkiyeye-getirildi/827416.

²⁴⁷ OHCHR, "UN Human Rights Office expresses grave concern over Myanmar/Thailand deportation of Turkish national", 27 May 2017.

²⁴⁸ Ibid.

²⁴⁹ Interview with Ayse Sökmen, location withheld, 6 July 2017; Stockholm Center for Freedom, "Teacher Sökmen Sent To Jail In Turkey After Forced Return From Myanmar", 6 June 2017, stockholmcf.org/teacher-sokmen-sent-to-jail-in-turkey-after-forced-return-from-myanmar/.

²⁵⁰ See, for example, Turkish Embassy in Bangkok, "Facts On The Real Identity Of The So-called 'Thai Turkish Business Association'", 31 July 2016, bangkok.emb.mfa.gov.tr/ShowAnnouncement.aspx?ID=310734; Turkish Embassy in Bangkok, "Announcement Regarding The Schools In Thailand Connected To The Fethullah Gülen Terrorist Organization (feto)", 14 September 2016, bangkok.emb.mfa.gov.tr/ShowAnnouncement.aspx?ID=320020.

²⁵¹ Amnesty International meeting with Turkish national residents of Thailand, Bangkok, 7 July 2017.

²⁵² Ibid.

²⁵³ See, for example, "No proof of schools' links with terrorists", *The Nation*, 17 September 2016, www.nationmultimedia.com/news/national/30295522.

²⁵⁴ See, Amnesty International, *Courts of Injustice: Suppressing Activism through the Criminal Justice System in Cambodia*, 30 May 2017 (Index: ASA 23/6059/2017).

repeatedly failed to uphold international fair trial standards.²⁵⁵ Others have faced threats and physical violence.²⁵⁶

Given the grave threats at home, many Cambodian political activists have sought protection abroad, including in Thailand. Some have continued their activism while in exile. One group that has regularly conducted peaceful political activities in Thailand is the Khmer National Liberation Front (KNLF), an organization with the self-stated mission of “fight[ing] for peace, freedom, independence and democracy” in Cambodia.²⁵⁷ The KNLF has frequently held political gatherings and historical commemorations in Bangkok.²⁵⁸ In both Thailand and Cambodia, Cambodian KNLF members have sometimes been joined in their activities by Vietnamese nationals, including individuals from the persecuted Khmer Krom ethnic minority.²⁵⁹

In March 2013, Thai police accompanied by Cambodian agents arrested seven Cambodian and Vietnamese men in Thailand.²⁶⁰ At least five of the men, among them three monks, were KNLF members.²⁶¹ These individuals were subsequently taken to the Thai-Cambodian border and handed over to Cambodian authorities.²⁶² Approximately one year later, the seven individuals were convicted of plotting to overthrow the government alongside six others, including KNLF president Sam Serey, who were tried in absentia.²⁶³ Lawyers for the KNLF members later alleged that Cambodian police had extracted their clients' confessions through torture.²⁶⁴

Amnesty International interviewed three KNLF members who described face-to-face encounters in Bangkok with individuals they believed to be Cambodian agents.²⁶⁵ Two described events that occurred in the past year. To protect the identities and security of the interviewees, the details of those meetings have been withheld from this report. However, Amnesty International was able to corroborate one of the accounts through multiple eyewitnesses, photographs and other forms of evidence.²⁶⁶ Moreover, representatives of NGOs providing services to refugees and asylum-seekers believe that the accounts provided by these individuals are credible and raise serious concerns about their safety.²⁶⁷ The risk to Thailand-based activists in exile has been reinforced by the repeated threats made by Cambodian authorities to secure the return of KNLF members from Thailand.²⁶⁸

Thai police officers have also closely surveilled activists from Cambodia and Vietnam, raising concerns that Thai and Cambodian authorities may be cooperating in efforts to suppress exile groups. Bangkok-based activists told Amnesty International that they and their family members have on multiple occasions been visited at their homes and in their neighbourhoods by Thai police officers, who have asked about the membership and activities of the KNLF.²⁶⁹ One activist, a UNHCR-registered refugee, told Amnesty International about his encounters with Thai police:

The Thai authorities came to ask for us by name. “Who is [name redacted]?” “Who is the community leader in this area?” They came to ask me directly. I pretended that I didn’t know... I felt very scared when they came to ask questions about us.²⁷⁰

255 *Ibid.*

²⁵⁶ See, for example, Amnesty International, Human Rights Watch and International Commission of Jurists, “Cambodia: Significant Questions Remain After Guilty Verdict in Kem Ley Trial”, 23 March 2017 (Index: ASA 23/5944/2017).

²⁵⁷ Khmer National Liberation Front, “Declaration of the Formation of the Khmer National Liberation Front”, 12 December 2012, drive.google.com/file/d/0B7JhkEGJBg26akxISUVodmITcnM/view.

²⁵⁸ Interviews with KNLf members, Interview Nos. 30, 31, 34 and 45, Bangkok, May – June 2017.

²⁵⁹ Interviews with Khmer Krom refugees, Interview Nos. 34 and 35, Bangkok, May – June 2017.

²⁶⁰ Amnesty International, *Thailand: Restrictive Environment for Human Rights*, submission to the UN Universal Periodic Review, 1 September 2015 (Index: ASA 39/3539/2015), p. 9; Human Rights Watch, "Cambodia: Drop 'Treacherous Plotting' Case", 9 April 2014, www.hrw.org/news/2014/04/09/cambodia-drop-treacherous-plotting-case.

²⁶¹ Notes from a 2013 meeting with KNUF members provided to Amnesty International by Human Rights Watch.

²⁶² Although this incident is outside the temporal scope of this report, Amnesty International interviewed a man who was arrested alongside one of the seven individuals. Interview No. 46, Bangkok, 9 June 2017.

²⁶³ Laignee Barron and Chhay Channyda, "Cambodia seeking arrest of at-large KNLF 'terrorists'", *The Phnom Penh Post*, 18 April 2014, www.phnompenhpost.com/national/cambodia-seeking-arrest-large-knlf-%E2%80%98terrorists%E2%80%9999.

²⁶⁴ Alice Cuddy and Chhay Channyda, "Torture alleged in 'conspiracy' case", *The Phnom Penh Post*, 27 March 2014. www.phnompenhpost.com/national/torture-alleged-%E2%80%98conspiracy%E2%80%99-case;

²⁶⁵ Interview Nos. 30, 34 and 45, Bangkok, May – June 2017. Another interviewee described a face-to-face encounter between a Khmer-speaking man, presumed to be a Cambodian agent, and a family member. Interview No. 29, Bangkok, 26 May 2017.

²⁶⁶ Photographs and other evidence on file with Amnesty International.

²⁶⁷ Interview Nos. 7 and 11, Bangkok, April – May 2017.

²⁶⁸ See, for example, Taing Vida, “KNLF remains on police radar”, *The Phnom Penh Post*, 2 November 2014, www.phnompenhpost.com/national/KNLF-remains-police-radar.

²⁶⁹ Interview Nos. 30, 31, 34, 45 and 46, Bangkok, May – June 2017.

²⁷⁰ Interview No. 34, Bangkok, 31 May 2017.

He continued to describe how Thai police showed up at a February 2017 event to commemorate a prior crackdown on Khmer Krom monks by the Vietnamese government:

The police came through and asked my name and the other members' names. The plan of those police was they were trying to look for the KNLF members. Every name that was asked by the police were of members of the KNLF... If I am arrested, I am sure they will detain me for 8 to 9 years in Cambodia. I hope that in your report, you will inform people more about the safety concerns. I am very concerned that I will be arrested by any cooperation between the countries. I might face long term imprisonment.²⁷¹

At the time that Amnesty International was conducting research, this interviewee and one other individual had gone into hiding because of the recent attention they were receiving from Thai police officers and Cambodian agents.²⁷²

Another KNLF member and UNHCR-registered refugee told Amnesty International about the difficulties and emotional strain caused by the joint threat posed by Thai and Cambodian authorities:

It is hard for me to live in Thailand... It is hard to find a job. If there is any news that it is not safe, then I just stop working. It is hard to find money and a place to stay. Sometimes in one month I change places two or three times. I am scared of both the Thai and Cambodian government. I am more scared of Hun Sen. Sometimes I get news from my friends, "This place is not safe. People are looking for you." Then, I have to move. I don't want to move, but I have to move to make sure it is safe for me... The situation now is more scary. The government is now getting crazy. I just want to get out of here... I don't know when they will come and grab me and take me back... A few days ago, the police... went to my old place. [My friends] said they remembered that [police officer] who came to talk to me before. My friend asked me to go to the place that I will be safe because he might be looking for me. I am so afraid.²⁷³

Another stated:

We are really worried about our safety. They used to have the cooperation between the Cambodian and Thai governments before. As of now, when I have not yet been arrested, I have to tell about my story. If I'm arrested, I might not be able to tell the story. I don't want to be the same as... the other KNLF members [arrested in 2013].²⁷⁴

POSSIBLE ABDUCTIONS BY FOREIGN AGENTS OPERATING ON THAI SOIL

As described above, many KNLF members and others seeking protection in Thailand have had encounters in Thailand with Cambodian state agents. Amnesty International also spoke with Chinese nationals who have reported being monitored or harassed by Chinese agents.²⁷⁵ In total, Amnesty International interviewed nine individuals who provided credible reports of personal encounters with foreign agents, or similar encounters by family members, on Thai soil.²⁷⁶

Amnesty International also received reports and reviewed publicly available information regarding possible abductions of foreign nationals, including UNHCR-registered refugees and asylum-seekers, in Thailand. In one recent case described to Amnesty International – the details of which are withheld from this report because of security concerns – a family of asylum-seekers disappeared from their home in Bangkok.²⁷⁷ The family had previously fled to Thailand after being specifically targeted for their political affiliations.

In October 2015, Gui Minhai, a Swedish national of Chinese origin who co-owns a Hong Kong publishing house that produces books about political scandals in China, disappeared from his condo in Pattaya, a beach resort in Thailand.²⁷⁸

²⁷¹ Ibid.

²⁷² Interview Nos. 34 and 45, Bangkok, May – June 2017

²⁷³ Interview No. 31, Bangkok, 26 May 2017.

²⁷⁴ Interview No. 45, Bangkok, 9 June 2017.

²⁷⁵ Interview Nos. 1, 3, 4, and 66, multiple locations, November 2016 – July 2017.

²⁷⁶ Interview Nos. 1, 3, 4, 29, 30, 31, 34, 45 and 66, multiple locations, November 2016 – July 2017. See also, interviews with NGO representatives and others who described the operation of foreign agents in Thailand, Interview Nos. 7, 11, 14, 44, 47, 48, and 54, multiple locations, April – July 2017.

²⁷⁷ Interview with a relative of the disappeared persons, Interview No. 29, Bangkok, 29 May 2017.

²⁷⁸ Oliver Holmes and Tom Phillips, "Gui Minhai: the strange disappearance of a publisher who riled China's elite", *The Guardian*, 8 December 2015, <https://www.theguardian.com/world/2015/dec/08/gui-minhai-the-strange-disappearance-of-a-publisher-who-riled-chinas-elite>; Hannah Beech, "China's Search for Dissidents Has Now Expanded to Foreign Countries", *Time*, 18 January 2016, <http://time.com/4184324/gui-minhai-dissident-search/>.

Eyewitnesses described Gui being taken away from his condo by Mandarin-speaking men and that two Thai men later returned with two Mandarin-speakers to search Gui's condo.²⁷⁹ On 17 January 2016, Gui Minhai appeared on Chinese state television "confessing" to outstanding drunk driving charges from 12 years prior.²⁸⁰ Commentators identified inconsistencies in the "confession" and questioned whether it resulted from coercion.²⁸¹ Although he claimed that he had returned to China voluntarily, Thai authorities have said that they have no evidence of his leaving the country through regular means, leading to speculation that he was abducted.²⁸² Four other individuals from Gui's publishing house disappeared under similar circumstances in Hong Kong and mainland China, only to reappear in state custody.²⁸³

In January 2016, Li Xin, a Chinese journalist and government critic who had come to Thailand to apply for refugee status, disappeared while traveling on a train in northern Thailand.²⁸⁴ The following month, Li Xin's partner reported receiving a phone call from Li Xin in which he said he had returned to China on his own to assist with an investigation in China.²⁸⁵ He told her to "lead a stable life" and "not to communicate with people outside", but did not say where he was.²⁸⁶ Thailand's Ministry of Foreign Affairs subsequently told journalists that there was "no record as yet as to whether he has left the country," and "no indication whatsoever that Mr. Li Xin was abducted from Thailand".²⁸⁷ Amnesty International was unable to obtain information about Li Xin's current location, status or condition.

The Thai government has not made any known efforts to investigate any of the above-described disappearances or to prevent Chinese or other foreign agents from operating on its soil. Nor has the Thai government publicly condemned the apparent abduction of foreign nationals, including asylum-seekers, from their soil. Under international law, states are responsible for both actions and omissions that constitute a breach of international obligations.²⁸⁸ Therefore, Thailand could be responsible for aiding in or acquiescing to the forcible return of individuals to countries where they would be at risk of serious human rights violations, in violation of the principle of non-refoulement.

"PUSH-BACKS" AT THAILAND'S FRONTIERS

In addition to prohibiting the forcible return of refugees and asylum-seekers to situations where they are likely to face serious human rights violations, the principle of non-refoulement demands that governments not refuse individuals the right to enter their territories when such refusal carries the inherent risk of people being sent back to a place where their life would be at risk, or where they would face persecution or torture. In the past three years, Thai authorities have violated the obligation of non-refoulement by turning back refugees and asylum-seekers arriving by sea and air, often in a manner which demonstrates callous disregard for the human rights of those individuals.

Such "push-backs" may involve repelling people who are attempting to cross a border or pushing people back soon after they cross a border. They are unlawful because they take place without procedural safeguards and without respecting the right of individuals to challenge their expulsion or apply for asylum.

²⁷⁹ Ibid.

²⁸⁰ Danny Mok, "Missing Hong Kong bookseller says he turned himself in for 2003 drunk driving death on state TV", *South China Morning Post*, 27 January 2017, www.scmp.com/news/hong-kong/law-crime/article/1902198/missing-hong-kong-bookseller-says-he-turned-himself-2003?page=all.

²⁸¹ Tom Grundy, "Questions raised after missing HK bookseller 'confesses' to drink-driving death on state TV", *Hong Kong Free Press*, 17 January 2017, www.hongkongfp.com/2016/01/17/questions-raised-after-missing-hk-bookseller-confesses-to-drink-driving-death-on-state-tv/.

²⁸² Phila Siu and Lai Ying-kit, "Thai authorities investigating case of missing bookseller Gui Minhai after it emerges there is no record of him leaving Thailand", *South China Morning Post*, 19 January 2016, <http://www.scmp.com/news/hong-kong/law-crime/article/1902800/thai-authorities-investigating-case-missing-bookseller-gui>.

²⁸³ Amnesty International, "China: Authorities' revelations on detained Hong Kong booksellers 'smoke and mirrors'", 5 February 2016, www.amnesty.org/en/latest/news/2016/02/china-authorities-revelations-on-detained-hong-kong-booksellers-smoke-and-mirrors/.

²⁸⁴ Amnesty International, "Chinese Journalist Missing in Thailand", Urgent Action, 28 January 2016 (Index: ASA 01/3348/2016).

²⁸⁵ Amnesty International, "Chinese Journalist Feared Detained", Urgent Action, 3 February 2016 (Index: ASA 17/3374/2016).

²⁸⁶ Ibid.

²⁸⁷ Chris Buckley, "Journalist Who Sought Refuge in Thailand Is Said to Return to China", *The New York Times*, 3 February 2016, www.nytimes.com/2016/02/04/world/asia/china-thailand-li-xin.html.

²⁸⁸ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, 2001, articles 2 and 16.

“PUSH-BACKS” BY SEA: ROHINGYA REFUGEES



↑  A Thai army helicopter drops provisions into the sea beside a boat carrying Rohingya refugees, 14 May 2015. @ CHRISTOPHE ARCHAMBAULT/AFP/Getty Images

For decades, the Rohingya minority living in Rakhine State, western Myanmar has suffered severe persecution and violence at the hands of Myanmar authorities. Amnesty International and other human rights organizations have documented human rights abuses against the Rohingya including denial of citizenship, restrictions on movement, torture and other ill-treatment, forced labour, land confiscations and forced evictions, extortion and restrictions on marriage.²⁸⁹ In 2012, clashes between Buddhist and Muslim communities in Rakhine State left hundreds dead and about 140,000 displaced.²⁹⁰

In late 2016, Myanmar security forces responded to an armed attack by Rohingya militants on border police outposts in Rakhine State by conducting widespread “clearance operations” targeting the Rohingya population. Amnesty International documented indiscriminate attacks on civilians, extrajudicial killings, arbitrary arrest and detention, rape and other sexual violence, and the destruction of homes and religious structures perpetrated by Myanmar security forces during these operations, leading to further massive displacement.²⁹¹ In August 2017, Rohingya militants again attacked security force posts in Rakhine State, leading to renewed attacks on Rohingya civilians by Myanmar security forces and local populations.²⁹² At the time of writing, approximately 400,000 Rohingya refugees had fled into Bangladesh, with more crossing the border each day. Amnesty International stated that the abuses perpetrated against the Rohingya could be described as ethnic cleansing and legally constitute crimes against humanity that include murder and deportation or forcible transfer of population.²⁹³

²⁸⁹ Amnesty International, *Union of Myanmar (Burma): Human Rights Abuses against Muslims in the Rakhine (Arakan) State*, 30 April 1992 (Index: ASA 16/006/1992); Amnesty International, *Rohingya: The Search for Safety*, September 1997 (Index: ASA 13/007/1997); Amnesty International, *Myanmar: The Rohingya Minority: Fundamental Rights Denied*, 18 May 2004 (Index: ASA 16/005/2004). See also, forthcoming Amnesty International report on human rights violations against the Rohingya in western Myanmar, expected November 2017.

²⁹⁰ Human Rights Watch, *‘All You Can Do Is Pray’: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State*, 22 April 2013, www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims; UN Office for the Coordination of Humanitarian Affairs, “Humanitarian Bulletin: Rakhine State, Myanmar,” April 2013, http://reliefweb.int/sites/reliefweb.int/files/resources/Ref_Doc_UNOCHA_Humanitarian_Bulletin_on_Rakhine_April_2013.pdf.

²⁹¹ Amnesty International, *‘We Are at the Breaking Point’: Rohingya: Persecuted in Myanmar, Neglected in Bangladesh*, 19 December 2016 (Index: ASA 16/5362/2016).

²⁹² Amnesty International, “Myanmar: Scorched-earth campaign fuels ethnic cleansing of Rohingya from Rakhine State”, 14 September 2017, <https://www.amnesty.org/en/latest/news/2017/09/myanmar-scorched-earth-campaign-fuels-ethnic-cleansing-of-rohingya-from-rakhine-state/>.

²⁹³ Ibid.

The dire situation in Myanmar has led many Rohingya to risk their lives by making deadly sea journeys in an attempt to find safety and security in other Southeast Asian nations.²⁹⁴ In early 2015, the UN Special Rapporteur on the situation of human rights in Myanmar stated that the Rohingya had two options: “stay and die or leave by boat”.²⁹⁵ UNHCR estimated that more than 100,000 Rohingya fled Myanmar by sea between 2012 and 2015, often alongside Bangladeshi migrants seeking economic opportunities and relief from hardships at home.²⁹⁶ Boat journeys were often facilitated by human trafficking and smuggling networks. Amnesty International has documented grave human rights abuses by traffickers, including beatings and other ill-treatment, deprivation of food and water, indefinite detention in remote trafficking camps, and extortion.²⁹⁷

Over the past decade, the Thai government has responded to the maritime flow of refugees and migrants by implementing a “push-back” policy, in which authorities prevented vessels containing Rohingya and Bangladeshi asylum-seekers and migrants from landing and sometimes escorted them out of the state’s territorial waters.²⁹⁸

In December 2008, Thai security forces pushed approximately 1,000 Rohingya refugees out to sea on boats with no engines and with little food or water.²⁹⁹ Following public outcry concerning these incidents, the Thai government made a subtle shift to a “help on” policy, whereby Thai authorities would provide humanitarian assistance to refugees or migrants found at sea before directing them onwards to Malaysia or another destination.³⁰⁰

In 2011, Prime Minister Abhisit Vejjajiva, publicly acknowledged the prior push-backs and the shift in policy, stating:

For this year, the accounts given to me, the evidence is very mixed about what actually took place but certainly after 2009 when we investigated, it was clear that the instructions are that if these people are turned away, they must be supplied with food and water and I think that's the operating procedures that we pursue... We just have these operating standard procedures to make sure that they have food and water. I can't say about whether their engines were damaged or not. Clearly, there's no intention for them to just be pushed out without chances of survival. But we have every right just as European countries and other countries have pushed back these people, these kinds of people trying to enter the country.³⁰¹

Between 2011 and 2013, media and human rights organizations continued to report on ill-equipped boats being pushed out to high seas.³⁰² In a February 2013 event reported by UNHCR, OHCHR and human rights groups, Thai navy sailors opened fire on Rohingya refugees after twice towing their boat out to sea.³⁰³

²⁹⁴ Amnesty International, *Deadly Journeys: The Refugee and Trafficking Crisis in Southeast Asia*, 21 October 2015 (Index: ASA 21/2574/2015).

²⁹⁵ OHCHR, “UN rights expert calls on Myanmar to address worrying signs of backtracking in pivotal year”, 18 March 2015, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15714&LangID=E.

²⁹⁶ UNHCR, *Mixed Movements in Southeast Asia*, 2016, <https://unhcr.atavist.com/mm2016>.

²⁹⁷ Amnesty International, *Deadly Journeys*, pp. 21-25.

²⁹⁸ Prior to this time, arriving Rohingya were often apprehended and forcibly returned to Myanmar across a land border. See, for example, Human Rights Watch, “Rohingya Refugees from Burma Mistreated in Bangladesh”, 27 March 2007, www.hrw.org/news/2007/03/27/rohingya-refugees-burma-mistreated-bangladesh. According to reports by media and human rights organizations, the policy was officially authorized in a January 2009 National Security Council meeting. “Rights group concerned over Thai policy on refugees, migrants”, *Mizzima*, 22 January 2010, archive-1.mizzima.com/news/regional/3418-rights-group-concerned-over-thai-policy-on-refugees-migrants; Human Rights Watch, “Thailand: Investigate Departure of Rohingya ‘Boat People’”, 21 February 2011, www.hrw.org/news/2011/02/21/thailand-investigate-departure-rohingya-boat-people.

²⁹⁹ Amnesty International, “Myanmar minority group in peril”, 2 February 2009, www.amnesty.org/en/latest/news/2009/02/myanmar-minority-group-peril-20090202/. Amnesty International interviewed a Rohingya survivor who was aboard one of these boats. Interview No. 70, Alor Setar, Malaysia, 18 July 2017.

³⁰⁰ Prime Minister Abhisit Vejjajiva and Deputy Prime Minister Suthep Thaugsuban acknowledged that boats were pushed back after ensuring their seaworthiness and providing food to passengers in meetings with US diplomats in early-to-mid-2009. WikiLeaks, “THAILAND: AMBASSADOR ENGAGES PM ABHISIT, FM KASIT ON ROHINGYA,” 5 February 2009, wikileaks.org/plusd/cables/09BANGKOK311_a.html; WikiLeaks, “AMBASSADOR RAISES SECURITY, REFUGEES, CUSTOMS, AND OTHER ISSUES WITH DEPUTY PM SUTHEP”, 1 June 2009, wikileaks.org/plusd/cables/09BANGKOK1305_a.html.

³⁰¹ Human Rights Watch, *Ad Hoc and Inadequate*, pp. 78-79 (citing unpublished transcript of remarks during the Foreign Correspondents Club of Thailand’s annual dinner in Bangkok on 22 March 2011). The “help on” policy was later affirmed by a colonel from Thailand’s Internal Security Operations Command, who stated that between November 2011 and March 2012 the navy had intercepted boats carrying 2,522 Rohingya, who had been provided assistance and “helped on” to other destinations. Chutima Sidasathian and Alan Morison, “Thailand Lists Boatpeople Arrested or Assisted Along Phuket Holiday Coast”, *Phuket Wan*, 28 March 2012, phuketwan.com/tourism/thailand-lists-boatpeople-arrested-assisted-along-phuket-holiday-coast-15685/.

³⁰² See, for example, Subir Bhaumik, “Burmese Rohingya refugees rescued in India’s Andamans”, *BBC*, 10 February 2011, www.bbc.com/news/world-south-asia-12413528.

³⁰³ UNHCR, “UNHCR concern at reports of shooting involving Rohingya boat people”, 15 March 2013, www.unhcr.org/news/briefing/2013/3/5143076c9/unhcr-concern-reports-shooting-involving-rohingya-boat-people.html; OHCHR, *Press briefing notes: Hungary, Thailand/Rohingyas and Kenya*, 15 March 2013,

In May 2015, Thai authorities discovered mass graves containing the bodies of Rohingya and Bangladeshis in the vicinity of abandoned trafficking camps near the Malaysian border, setting off a crackdown on trafficking networks.³⁰⁴ Prime Minister Prayuth Chan-O-Cha quickly ordered an investigation into trafficking operations, leading many traffickers to abandon their boats, along with their human cargo.³⁰⁵ The Indonesian, Malaysian and Thai governments initially responded to the crisis by engaging in “maritime ping-pong”, with each government pushing boats back from its shores.³⁰⁶ As of late May, an estimated 8,000 Rohingya refugees and Bangladeshi migrants were believed to be stranded at sea without adequate food, water and medical supplies.³⁰⁷

Amnesty International spoke with Thapanee Ietsrichai, a Thai journalist who reported on the 2015 boat crisis for Thailand’s Channel 3 News and was an eyewitness to a push-back by the Thai Navy.³⁰⁸ On 14 May 2015, international journalists took a motorboat to the location where a large green boat holding approximately 350 Rohingya – and potentially Bangladeshi – individuals had been stopped by the Thai navy.³⁰⁹ The journalists took photographs and broadcast video showing a boat crowded with gaunt individuals, including many women and children, desperately crying for help and making signs to indicate their hunger.³¹⁰

Thapanee, arriving after the international journalists had left, used a Rohingya interpreter she called on her cell phone to speak with the people on the boat.³¹¹ They told her that they had been at sea for approximately two months and that the captain had disabled the motor and abandoned the ship 15 days prior. They also said that 10 people aboard the ship had already died.

Thapanee described her experience:

Once I talked to the women on the boat, they said that they would land anywhere. One woman said that she had already lost one child and just wanted to land. They had been at sea for two months... They all said that they were already tired and that they wanted to land anywhere. They needed medical care. They were starving. I could see their ribs... The Thai Navy was trying their best to give food and supplies to the people. The problem is that [the authorities] knew that this was a trafficking boat. They had to follow it and send it out to international waters. They said that they have to follow the policies and orders from above. They said this to me. Really they did their best, but they said they had to follow orders.³¹²

Thapanee stayed with the boat overnight as Thai navy sailors repaired the boat’s motor, provided some of the passengers with lessons on how to drive the boat, and put supplies on board.³¹³ She then followed as the Navy pulled the boat out to international waters. At 6am, the Thai navy released the boat, which sailed towards Malaysia.³¹⁴ The Malaysian navy reportedly also repelled the boat, forcing the group to cross the sea before finally being able to disembark in Indonesia on 20 May.³¹⁵

Amnesty International interviewed a Rohingya refugee who was aboard a different boat that was prevented from landing in Thailand in May 2015.³¹⁶ She told Amnesty International that she and the other passengers

newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13144&LangID=E; Human Rights Watch, “Thailand: Fleeing Rohingya Shot in Sea by Navy”, 13 March 2013, www.hrw.org/news/2013/03/13/thailand-fleeing-rohingya-shot-sea-navy.

³⁰⁴ Human Rights Watch, “Thailand: Mass Graves of Rohingya Found in Trafficking Camp”, 1 May 2015, www.hrw.org/news/2015/05/01/thailand-mass-graves-rohingya-found-trafficking-camp; The Thai authorities’ decision to proactively investigate the trafficking networks was likely precipitated by media reports regarding the issue and pressure from human rights organizations.

³⁰⁵ “PM Orders Camp Cleanup”, *Bangkok Post*, 7 May 2015, www.bangkokpost.com/news/politics/553247/pm-orders-camp-cleanup; UNHCR, “South-East Asia: Mixed Maritime Movements”, June 2015, www.refworld.org/docid/55e6c1994.html, p. 3.

³⁰⁶ Amnesty International, “South East Asia: Immediately step up efforts to rescue thousands at grave risk at sea”, 13 May 2015, www.amnesty.org/en/press-releases/2015/05/south-east-asia-immediately-step-up-efforts-to-rescue-thousands-at-grave-risk-at-sea-1/; Aubrey Belford and Reza Munawir, “Migrants in ‘Maritime Ping-Pong’ as Asian Nations Turn Them Back”, Reuters, 16 May 2015, www.reuters.com/article/2015/05/16/us-asia-migrants-idUSKBN00105H20150516; see also Amnesty International’s documentation of “push backs” by Malaysian and Indonesian authorities. Amnesty International, *Deadly Journeys*, pp. 26-27.

³⁰⁷ International Organization for Migration, “IOM Appeals for USD 26 million for Migrants in SE Asian Boat Crisis”, 26 May 2015, www.iom.int/news/iom-appeals-usd-26-million-migrants-se-asian-boat-crisis.

³⁰⁸ Interview with Thapanee Ietsrichai, Bangkok, 30 May 2017.

³⁰⁹ “Rohingya boat migrants call out for help”, *BBC*, 14 May 2015, www.bbc.com/news/av/world-asia-32737146/rohingya-boat-migrants-call-out-for-help.

³¹⁰ *Ibid.*

³¹¹ Interview with Thapanee Ietsrichai; See Channel 3 News coverage. ข่าว 3 มิติ พบเรือโรฮิงญา จ สตุล 14 พค58, www.youtube.com/watch?v=QK7NlcDq3do.

³¹² *Ibid.*

³¹³ *Ibid.*

³¹⁴ See video of the departure taken by the Channel 3 News team. คลิปจู่จู่รูปถ่าย เอ็มพีซีไทย เรือโรฮิงญา, www.youtube.com/watch?v=ZF2Yz3h5uU0.

³¹⁵ “The perilous journey of a migrant boat that made it”, *BBC*, 20 May 2015, www.bbc.com/news/world-asia-32806998.

³¹⁶ Interview No. 71, Alor Setar, Malaysia, 18 July 2017. Amnesty International also conducted a focus group discussion in Malaysia with approximately 15 Rohingya individuals, most of whom had traveled from Myanmar to Malaysia by boat. Four of these individuals had

had been aboard the boat for more than a month prior to arriving in Thai waters. She further stated that 60 of the Rohingya men on board had been killed trying to protect the Rohingya women from sexual violence during the journey. When nearing Thailand, the boat was stopped by the Thai navy, which told the captain, a trafficker, that the boat would not be allowed to land. According to the interviewee, the captain and his crew then intentionally damaged the boat, causing it to leak water, and departed by speed boat. She told Amnesty International about her feelings at that moment:

We decided that we would die, because we didn't have anything in the boat. We were praying and we were ready for our funeral services... We asked, "Why are we not able to go to Thailand, if the captain will go there?" We were worried and we prayed. We only knew that we would die. The choice was death or life.³¹⁷

The group managed to navigate the disabled boat to Langkawi, a Malaysian island not far from Thailand, where they were arrested by Malaysian police and sent to an immigration detention facility.³¹⁸

At an emergency summit in late May 2015, regional governments reversed course, with Indonesia and Malaysia committing to providing temporary shelter to 7,000 people still at sea.³¹⁹ While the Thai government stated that it would no longer push stranded boats out to sea, it did not agree to provide shelter to these individuals or facilitate screening of asylum-seekers by UNHCR in Thailand.³²⁰

UNHCR estimated that 370 Rohingya and Bangladeshi individuals died at sea in the first half of 2015.³²¹ Amnesty International is concerned that many deaths may have never been reported and that the total death toll could be much higher.³²²

Since the crisis of 2015, there have not been major reported departures by sea of Rohingya from Myanmar or Bangladeshi nationals. During this time, the Thai government has taken some positive steps towards addressing the situation of Rohingya refugees as it relates to Thailand. Notably, on 19 July 2017, a Thai court convicted 62 individuals, including senior government officials, for involvement in the trafficking and murder of Rohingya refugees and Bangladeshi migrants.³²³ Thai authorities have also cooperated with UNHCR and US officials to facilitate a rapid refugee status determination and resettlement program, which has seen Rohingya refugees resettled to the United States.³²⁴ Nevertheless, an unknown number of Rohingya – estimated by an NGO representative with knowledge of the situation to be approximately 100³²⁵ – remain in IDCs and shelters for trafficking victims.

traveled in 2015 during the Andaman Sea boat crisis. Of the four, one was on a boat that was not permitted to land in Thailand, although the interviewee did not described direct contact between her boat and the Thai Navy. The other three individuals were on a boat that traveled directly to Malaysia, where they were arrested on arrival. Focus Group Discussion No. 73, Sungai Petani, 18 July 2017.

³¹⁷ Ibid.

³¹⁸ Ibid.

³¹⁹ Amnesty International, "South East Asia: Necessary U-turn on refugee boats still leaves thousands at risk", 20 May 2015, www.amnesty.org.nz/south-east-asia-necessary-u-turn-refugee-boats-still-leaves-thousands-risk.

³²⁰ Thailand Ministry of Foreign Affairs, "Summary: Special Meeting on Irregular Migration in the Indian Ocean", 29 May 2015, <http://www.mfa.go.th/main/en/media-center/14/56880-Summary-Special-Meeting-on-Irregular-Migration-in.html>.

³²¹ UNHCR, "Mixed Maritime Movements", 2015.

³²² Amnesty International, *Deadly Journeys*, p. 27.

³²³ Fortify Rights, "Thailand: Government Officials Convicted of Human Trafficking, Organized Crime", 20 July 2017, www.fortifyrights.org/publication-20170720.htm. Fortify Rights raised concerns about threats to witnesses and investigators during the trial, including threats which caused the lead investigator to flee Thailand. Fortify Rights also claimed to have received reports of additional undiscovered mass graves of Rohingya near former trafficking camps and urged the Thai government to reopen its investigation. See also, Fortify Rights, "Thailand: Human Trafficking Case Obstructed, Chief Investigator in Hiding", 9 December 2015, www.fortifyrights.org/publication-20151209.html.

³²⁴ UNHCR, UPR submission: Thailand, p. 2. See also, Interview with representative of refugee rights organization, Interview No. 7, Bangkok, 26 April 2017.

³²⁵ Interview No. 7, Bangkok, 26 April 2017.

“PUSH-BACKS” BY AIR: REFUGEES AT THE AIRPORT



↑  Bangkok's Suvarnabhumi International Airport © KRISANAPONG DETRAPHIPHAT/AFP/Getty Images

Thailand has at times violated the principle of non-refoulement by refusing entry to asylum-seekers at its airports. In a submission to the Human Rights Council to support Thailand's Universal Period Review, UNHCR stated:

Most cases of refoulement occur as a result of “denial of entry” at Thailand's main international airport, despite specific UNHCR intervention with both Immigration and Ministry of Foreign Affairs officials. Given the nature of these refoulement cases, however, details and tracking of the consequences are challenging. In one such case, a Syrian child was denied entry in February 2015, despite a specific intervention by UNHCR highlighting both conditions in Syria and the status of the child as a minor. He was, nevertheless, put on a plane for Lebanon and, UNHCR learned subsequently, ended up back in Syria. His current fate is unknown.³²⁶

Amnesty International was not able to document specific cases of individuals being refused entry at airports. Representatives of NGOs serving refugees and asylum-seekers stated that individuals were often forcibly returned from airports before they had knowledge of the situation.³²⁷

Thai authorities have also arrested asylum-seekers who have attempted to enter Thailand with fake passports or visas.³²⁸ In most cases, Thai authorities have made no effort to facilitate the screening of asylum claims by UNHCR at the airport, although UNHCR has often been able to access these individuals in prisons or IDCs after being alerted to the cases by family members or NGOs.

“VOLUNTARY” RETURNS AND CONSTRUCTIVE REFOULEMENT

As described previously, urban refugees in Thailand face many difficulties associated with their lack of domestic legal status, including limited employment prospects, trouble accessing medical care and educational opportunities, financial stresses, self-imposed restrictions on movement and social interactions, and the constant fear of arrest. Refugees and asylum-seekers arrested for immigration violations may face prolonged and indefinite detention in appalling conditions in IDCs.³²⁹ At the time of writing, bail opportunities were, in practice, unavailable to refugee and asylum-seekers, and more than 150 UNHCR-registered individuals had been detained in an IDC for more than one year.³³⁰

³²⁶ UNHCR, UPR submission: Thailand, p. 7.

³²⁷ Interviews with representatives of organizations working with refugees, Interview Nos. 5, 7, 50, 51 and 52, Bangkok, April – June 2017.

³²⁸ See, for example, Jeerawat Na Thalang, “Out of a war zone, into a Thai prison”, *Bangkok Post*, 7 February 2016, www.bangkokpost.com/print/854428/; Achara Ashayagachat, “Refugees thwarted en route to Sweden”, *Bangkok Post*, 27 March 2014, www.bangkokpost.com/print/402116/.

³²⁹ See supra, “Arrest, Detention and Deportation”, p. 16.

³³⁰ See supra, footnote 87.

UN human rights bodies, UNHCR and civil society organizations have repeatedly raised concerns about the prolonged detention of refugees and asylum-seekers, the poor conditions in IDCs, and the impact of these factors on the physical, psychological and social wellbeing of those seeking protection in Thailand.³³¹ These groups have also advocated for the adoption of alternatives to detention in order to alleviate these pressures.³³²

Given the stark realities of detention and refugee life in Thailand, some refugees and asylum-seekers make the difficult decision to return to their home countries and face the dangers and hardships that caused them to seek protection abroad.

Refolement need not be accomplished using physical coercion. International law also prohibits “constructive” refolement, which occurs when states use indirect means to coerce the return of individuals to situations where they are likely to face human rights violations. UNHCR’s “Handbook on Voluntary Repatriation” states, “The principle of voluntariness is the cornerstone of international protection with respect to the return of refugees.”³³³ While a number of factors, including the economic, social and cultural pressures may affect whether a return is voluntary, lack of legal status and indefinite confinement can be chief drivers in an involuntary decision to return to one’s country of origin.³³⁴

Asylum-seekers who have been arrested and detained in IDCs are the most likely to make the choice to abandon their asylum claims and return to their home countries. Given the Thai authorities’ current restrictive approach to granting release on bail and the distant prospect of resettlement, prolonged and indefinite detention is the most probable scenario for most refugees and asylum-seekers being held in IDCs. This grim outlook, combined with the horrific conditions and potential for abuse in the IDCs, leads some to determine that their only viable choice is to try to mitigate threats in their home country.³³⁵ Representatives of NGOs serving the refugee population have indicated that refugees’ decisions to return home have often been precipitated by the inability to access proper medical care for acute health needs.³³⁶

Refugees and asylum-seekers who make a choice to return to their home countries exit IDCs through two channels.

First, as described previously, IDC detainees who are nationals of countries that do not share a border with Thailand can only be deported if they pay for their own flights, a process often described as “self-deportation” by NGOs. Some individuals purchase plane tickets using personal funds or rely on contributions from family and friends, while others receive support from humanitarian organizations.³³⁷ Refugees and asylum-seekers must formally notify immigration officials – who are aware of the individuals’ status as UNHCR-registered individuals – of their intention to renounce their asylum claims and return home.³³⁸ Amnesty International was not able to ascertain how many refugees and asylum-seekers have returned home in this manner in recent years. However, human rights and refugee rights organizations have previously raised concerns about the pressures that force refugees to “self-deport” and the dangers they face upon returning home.³³⁹

Second, individuals in IDCs who are nationals of neighbouring countries can return to their home countries by renouncing their asylum claims and being included in a routine cross-border deportation. Some individuals who might have valid asylum claims, never advance such claims because they consider deportation a better outcome than indefinite detention. This is particularly true of Rohingya individuals from Myanmar, who often tell Thai authorities that they are Myanmar Muslims so that they will be deported rather than held indefinitely in IDCs.³⁴⁰ In 2012, Human Rights Watch reported on the voluntary self-deportation of Rohingya refugees facing indefinite detention in IDCs.³⁴¹ In 2014, a senior police officer defended the

³³¹ UNHCR, UPR submission: Thailand, p. 10-13; CAT, Concluding Observations, 2014, para. 22; UNHCR, UPR submission: Thailand, p. 13; CESCR, Concluding Observations, 2015, para. 28.

³³² Ibid. See also, UNHCR, *Beyond Detention*, 2015; Tankulratan and Janamporn, *Alternatives to Detention*.

³³³ UNHCR, *Handbook on Voluntary Repatriation*, 1996, www.unhcr.org/publications/legal/3bfe68d32/handbook-voluntary-repatriation-international-protection.html, p. 10.

³³⁴ Ibid.

³³⁵ See interviews with representatives or organizations working with urban refugees, Interview Nos. 11, 24 and 52, Bangkok, May – June 2017.

³³⁶ Ibid.

³³⁷ Interview with urban refugees and representatives of organizations working with urban refugees, Nos. 23, 25 and 43, Bangkok, May – June 2017.

³³⁸ Interviews with representatives of refugee rights organizations, Interview Nos. 11 and 24;

³³⁹ Human Rights Watch, *Ad Hoc and Inadequate*, p. 135-136; Tankulratan and Janamporn, *Alternatives to Detention*, p. 46.

³⁴⁰ Interviews with Rohingya community leaders and representatives of organizations working with the Rohingya community, Interview Nos. 8, 75 and 76, Thailand and Malaysia, March – July 2017.

³⁴¹ Human Rights Watch, *Ad Hoc and Inadequate*, pp. 77-78.

deportation of 1,300 Rohingya refugees, stating that they had returned voluntarily because “they could not see any future while being held in Thailand”.³⁴²

In an email to Amnesty International, “James” a Pakistani Christian stated that he chose to self-deport while detained in Bangkok’s Suan Phlu IDC with his father.³⁴³ In July 2013, he fled to Thailand with his family after he married a Muslim woman in Pakistan and was subsequently physically attacked and threatened with legal actions by the woman’s family. James and his father, who lacked valid visas, were arrested on immigration charges and placed in the IDC 28 months after arriving in Thailand and registering with UNHCR. He wrote to Amnesty International about what it was like living in the IDC:

It was pathetic. We were kept in a cell where there were more than 150 people from Pakistan, Sri Lanka and Bangladesh. Only three toilets for 150 people. We hardly managed to sleep at night. An individual was given space of 2 X 4 foot only. Many diseases due to over-crowded cell. Pathetic medical facilities given by IDC. I personally witnessed [the] death of two persons due to lack of medical care given by IDC. They used to take us out of cell for 2 hours for exercise after a gap of two to three days. I can't forget that time in my life. My father, an old man of 59 years... started [losing] hope. He was finding it very difficult to survive inside. It was very tough for me to see my father in that condition.

My wife [and] my Thailand-born son... and my mother were outside. They were finding it really hard to cope with financial hardships. They were always looking for help from here and there for room rent and food expenses. I had already finished my savings. [M]y mother was sick and needed to [be] hospitalize[d]...

I was so much worried about my family. The UNHCR process was going nowhere... [T]hey acknowledged the fact that [they understood our] position but showed their inability to do anything.³⁴⁴

Two months after James and his father were arrested, James was informed that the family’s refugee status determination interview had been postponed for a third time. James and his father decided that they would self-deport, and two months later the entire family returned to Pakistan.

In his email to Amnesty International, sent from Pakistan, James stated that he was fearful of physical attacks from his wife’s family or others, worried about legal actions based on accusations of blasphemy or apostasy, and concerned about the lack of documentation of his marriage and his child’s birth. He stated that he was continuously changing locations and looking for an opportunity to again leave the country and seek asylum elsewhere.

Amnesty International spoke with a former student activist from an African nation who decided to return to his own country rather than face indefinite detention in Bangkok’s Suan Phlu IDC.³⁴⁵ He was arrested outside of his church on a Sunday morning and placed in the IDC despite being a UNHCR-recognized refugee and showing the arresting officers his UNHCR card. He stated that he had serious fears about his safety and health while in the IDC. He had lost 12 kilograms of weight prior to deciding to self-deport and described serious injuries suffered by other detainees from physical violence in the IDC. At the time of writing he was with his family in his home country, but was limiting his movements and worried about the repercussions if his former persecutors discovered he had returned.

Refugees and asylum-seekers not detained in IDCs sometimes also feel compelled to return to their home countries because of the extreme pressures they face in Thailand. Amnesty International interviewed “Joseph”, a Pakistani Christian asylum-seeker who chose to return to Pakistan after two-and-a-half years living in Bangkok.³⁴⁶ His story exemplifies the range of pressures on refugees and asylum-seekers in Thailand and the disastrous human impact of Thailand’s deficient refugee policies.

Prior to coming to Thailand, Joseph worked for a human rights organization in Pakistan. Over several years, Joseph was subjected to violent threats because of his work. In 2012, unknown gunmen fired shots at him in the street. After anonymous callers threatened his children in 2013, Joseph decided to move his wife, two

³⁴² “Thailand sends Rohingya Muslims back to Burma”, *BBC*, 13 February 2014, www.bbc.com/news/world-asia-26167676.

³⁴³ Email to Amnesty International dated 27 July 2017.

³⁴⁴ *Ibid*.

³⁴⁵ Interview No. 25, location withheld, 25 May 2017.

³⁴⁶ Amnesty International conducted two interviews with “Joseph” (not his real name). Interview Nos. 49 and 74, June – July 2017. Amnesty International could not independently corroborate all aspects of Joseph’s story. Amnesty International did, however, speak with an NGO which had contact with Joseph in Bangkok, read reports concerning the work of Joseph and his organization in Pakistan, read articles concerning the events that prompted him to leave Pakistan, and view a scanned copy of the death certificate of Joseph’s father. His account was both internally consistent and consistent with all outside sources of information.

sons and one daughter to Bangkok. The following year, he joined his family in Bangkok after being seriously threatened again. The family registered with UNHCR and was assigned an interview date in February 2016.

During the almost two years that the family waited to be interviewed by UNHCR, they experienced many difficulties, including several close encounters with Thai police officers when they believed they would be arrested. Joseph told Amnesty International:

Living in Thailand without a job or a source of income is very difficult. Also, living in Thailand without a valid visa is very risky. We always had a fear that we would be arrested. My children[’s]... psychological situation became very dark. Twice while we were there, the police visited the place where we were living. It was a horrible scene. We were inside the room and the police were outside the room. My children became scared. When I saw my children, they were so scared and my daughter was so scared. I said, “I am sorry I brought you here. I love you guys.”...

Actually, we were [all] staying in one room. We were having our life in one room. We had the kitchen in the same room. We were not free to go out. We were not free to visit anyone. We were not free to go to church. I was volunteering... but when I came out from my home, I became scared. I had to look here and there for the police. When I went [out], I always had to think about my family who were in the room alone. It was a very difficult life. It was like we were living in hell. We had no place to go.³⁴⁷

Joseph also told Amnesty that within a few months of arriving in Thailand his family spent its entire savings. He described periods of hunger, when his family went without food for days at a time:

We were without money. We didn’t have anything to eat at that time. It was the same time that the Thai police were raiding all over Bangkok. We were having all those problems together at the same time. We were hungry and we were also trying to hide from the police. We didn’t have food continuously for four or five days... [W]hen we think of those things, we become very sad.³⁴⁸

Joseph and his family were joined in Bangkok by his sister-in-law, who had escaped after being kidnapped in Pakistan, forced to convert to Islam, and forcibly married to a Muslim. In November 2015, while shopping at a market, she was arrested by the Thai police. Joseph’s sister-in-law spent the following six months in an IDC in Bangkok.³⁴⁹

In February 2016, just weeks before their scheduled RSD interview, UNHCR called Joseph and informed him that his family’s interview date had been postponed by a year. The family, which had already been considering returning to Pakistan, decided that life in Bangkok was no longer tenable. Joseph told Amnesty International about the conversations he had with his family over a period of several months:

We had nothing. Our money had run out... We [decided] that we didn’t want to stay. But then... we started thinking about Pakistan. We thought about how hard it would be there. In the next two hours we changed our minds... It is very scary to go back to Pakistan. We were thinking that if we went back, we would be killed. Maybe my daughter would face the same things that my sister-in-law did... But living in Bangkok was also horrible. We didn’t have any security from the police; from our neighbours also. Whenever they want to hurt us, they can hurt us.³⁵⁰

In April 2016, the family returned to Pakistan. Joseph’s sister-in-law also “self-deported” from the IDC and returned. After a few months, Joseph began to receive threats. In January 2017, attackers severely beat Joseph, breaking bones in his hands. In the same month, his sister-in-law was abducted by individuals affiliated with the same man to whom she had previously been forcibly married. At the time of writing, she remained in his household. In April 2017, unknown attackers set fire to Joseph’s home. He was able to help his wife and children escape to the roof of a nearby home, but his father perished in the fire.³⁵¹ Joseph and his family have moved to a different location in the same city and hope to avoid further attacks.

Amnesty International reviewed other reports of self-deportations by UNHCR-registered refugees and asylum-seekers.³⁵² Notably, in August 2016, two Chinese political activists and refugees, who had been

³⁴⁷ Interview No. 49, Skype, 23 June 2017.

³⁴⁸ Interview No. 74, Skype, 19 July 2017.

³⁴⁹ Ibid.

³⁵⁰ Ibid.

³⁵¹ Amnesty International viewed a scanned copy of the death certificate of Joseph’s father from the burn center of a local hospital.

³⁵² See Interview No. 43, Skype, 6 June 2017.

arrested and were detained in IDCs, chose to be deported rather than face indefinite detention.³⁵³ The friend of one of the detainees cast doubt on whether he was truly acting voluntarily.³⁵⁴ Amnesty International has not been able to ascertain any details about the status or condition of these men since their return to China.

³⁵³ “Two Thailand-Based Chinese Refugees Return Home ‘Voluntarily’”, *Radio Free Asia*, 30 August 2016, www.rfa.org/english/news/china/return-08302016110913.html; “Thai Police Detain Chinese Teen With U.N. Refugee Status”, *Radio Free Asia*, 29 July 2016, www.rfa.org/english/news/china/china-thailand-07292016125459.html.

³⁵⁴ *Ibid.*

5. THE THAILAND-MYANMAR BORDER, VOLUNTARY RETURNS AND THE EVENTUAL CLOSURE OF REFUGEE CAMPS

In seeming contrast to the “push-back” policy enforced against Rohingya refugees and the other serious breaches of the principle of non-refoulement described in this report, in recent years Thai authorities have continued to receive and shelter individuals fleeing armed conflict in eastern Myanmar, following through on Thailand’s longstanding commitment to provide protections to these communities.

As described previously, Myanmar nationals comprise by far the largest group of refugees in Thailand and reside primarily in camps along the Thailand-Myanmar border. As of July 2017, the camps officially held 100,238 residents who had been verified by the Thai Ministry of Interior and UNHCR.³⁵⁵ The Thai government’s efforts to accommodate, protect and provide for the material needs of this population over a period spanning several decades is commendable and should not be understated.

Beginning in 2004, the Thai government stopped allowing UNHCR to conduct refugee status determination for Myanmar nationals.³⁵⁶ Individuals arriving in camps after this date have therefore been cut off from possible resettlement in a third country unless they have been approved by Thailand’s Provincial Administration Boards (PABs), often on the basis of family reunification.³⁵⁷ Nevertheless, as of October 2016, more than 100,000 Myanmar nationals – mostly individuals registered by UNHCR prior to 2004 – had been resettled from the refugee camps to third countries.³⁵⁸

Despite the fact that the refugee camps have been a constant presence along the border since the 1980s, the situation is not static. Refugees enter and exit the camps, both with and without official permission, and

³⁵⁵ UNHCR, “RTG/MOI-UNHCR Verified Refugee Population”, 31 July 2017, http://reliefweb.int/sites/reliefweb.int/files/resources/Thailand_MyanmarBorder_RefugeePopulationOverview_July2017.pdf.

³⁵⁶ Human Rights Watch, *Ad Hoc and Inadequate*, p. 83; Refugees International, “Thailand: Complications in the resettlement of Burmese refugees”, 12 December 2015, reliefweb.int/report/thailand/thailand-complications-resettlement-burmese-refugees.

³⁵⁷ *Ibid.* PABs are local government bodies under the Ministry of Interior. In 2004, the National Security Council assigned PABs to take over from UNHCR the task of assessing the asylum claims of Myanmar nationals.

³⁵⁸ UNHCR, “Resettlement of Myanmar Refugees from Temporary Shelters in Thailand”, 31 October 2016, www.refworld.org/country,,UNHCR,,THA,,582b155b4,0.html.



↑ A Thai paramilitary soldier patrolling around the Mae La refugee camp, May 2011 @ CHRISTOPHE ARCHAMBAULT/AFP/Getty Images

cross the border for social and economic reasons. Events on both sides of the border – most notably eruptions of armed conflict in eastern Myanmar – have often resulted in large and sudden populations movements. While Thailand has by-and-large accommodated individuals fleeing violence in Myanmar, the government at times has failed to adequately protect refugees.

Under prior governments, Thai authorities on occasion forcibly returned Karen refugees across the Thailand-Myanmar border, despite risks from ongoing armed conflict.³⁵⁹ During the term of the current government, the level of armed conflict in eastern Myanmar has been greatly reduced compared with prior periods, leading to fewer cross-

border flows of individuals fleeing violence. Nevertheless, in the past three years Thai officials have repeatedly affirmed their policy of receiving refugees fleeing violence in Myanmar and ensuring that individuals are not forced to return to situations of imminent danger.³⁶⁰

Saw Bwey Say, first secretary of the Karen Refugee Committee, which represents the Karen refugee population in Thailand, told Amnesty International that local military units often cooperate with refugee leaders to provide for the needs of fleeing villagers:

In general, if there are clashes, the refugees are allowed to come across the border. The Thai authorities let them come. On some occasions, if they don't know what is happening, they stop [them] for a moment to find out what is happening.³⁶¹

In September and October 2016, fighting in eastern Myanmar caused 200 or more Karen villagers to cross into Thailand's Tak province.³⁶² Saw Bweh Say told Amnesty International that Thai authorities communicated with refugee leaders about the situation and permitted the villagers to stay temporarily in a village on the Thai side of the border.³⁶³ According to Saw Bweh Say, a few days later the new arrivals were given a choice of returning to Myanmar or going to the established refugee camps, and chose to return.³⁶⁴ Amnesty International received, but was unable to confirm, other reports of Thai authorities receiving and providing support to villagers crossing into Thailand since 2014.³⁶⁵

Under the current and past governments, Thai authorities have also cooperated with UNHCR, NGOs and local civil society organizations to ensure that refugee camp residents are protected from deportation. Individuals working with the refugee population indicated that cooperative relationships between local police and immigration officials ensure that refugees are most often returned to refugee camps rather than being sent across the border when arrested for being outside of the camps without permission or for minor infractions of Thai law.³⁶⁶

³⁵⁹ See for example, Human Rights Watch, "Thailand: Stop Forced Returns of Karen Refugees to Burma", 18 July 2008, www.hrw.org/news/2008/07/18/thailand-stop-forced-returns-karen-refugees-burma; Karen Human Rights Group, "Functionally Refoulement: Camps in Tha Song Yang District abandoned as refugees bow to pressure", 1 August 2010, khrhg.org/2010/08/functionally-refoulement-camps-tha-song-yang-district-abandoned-refugees-bow-pressure; WikiLeaks, "DAS MARCIEL ENGAGES THAI LEADERS ON BILATERAL ISSUES, CAMBODIA, REFUGEE POLICY, REGIONAL ARCHITECTURE, AND BURMA", 12 February 2010, wikileaks.org/plusd/cables/10BANGKOK381_a.html; UNHCR, "UNHCR urges Thailand against forced returns to Myanmar", 28 December 2010, www.unhcr.org/news/press/2010/12/4d19d6469/unhcr-urges-thailand-against-forced-returns-myanmar.html.

³⁶⁰ Interview with representatives of organizations working with the refugee community along the Thailand-Myanmar border, Interview Nos. 6, 12, 16, 20, and 21, Bangkok and Mae Sot, April – May 2017.

³⁶¹ Interview with Saw Bweh Say, first secretary of the Karen Refugee Committee, Mae Sot, 12 May 2017.

³⁶² "KNU calls on the Burma Army and its militia to end its military operations in Mae Tha Wor, Karen State – 2,000 villagers displaced", *Karen News*, 12 September 2016, <http://karennews.org/2016/09/knu-calls-on-the-burma-army-and-its-militia-to-end-its-military-operations-in-mae-tha-wor-karen-state-2000-villagers-displaced.html/>.

³⁶³ Interview with Saw Bweh Say.

³⁶⁴ Ibid. Karen residents from this part of Tak province and international relief workers provided similar descriptions of these events. Interview Nos. 15, 16, and 20, Mae Sot, May 2017.

³⁶⁵ Interview with relief worker, Interview No. 16, Mae Sot, 11 May 2017.

³⁶⁶ Interview Nos. 5, 12, 15, 16, 18 and 20, Mae Sot and Bangkok, April – May 2017.

Recent political developments in Myanmar, including the signing of several bilateral ceasefire agreements in 2012 and the conclusion of a Nationwide Ceasefire Agreement in 2015, have accelerated discussions regarding refugee repatriation to Myanmar and possible closure of the border refugee camps.

UNHCR has developed a “Strategic Roadmap for Voluntary Repatriation” to guide the process of refugee returns.³⁶⁷ This document, which has been updated several times, establishes that returns will only be carried out in a “safe, dignified and voluntary manner”.³⁶⁸ It further sets out three types of returns: (1) *spontaneous* returns organized by refugees themselves, (2) *facilitated* returns in which UNHCR provides counselling and material support for travel and reintegration, and (3) *promoted* returns involving a “formalised framework and process” between the governments of Myanmar and Thailand.³⁶⁹ In October 2016, the first facilitated voluntary return was carried out, with 71 refugees leaving the camps to return to Kayin State, Yangon or elsewhere in Myanmar.³⁷⁰ Although there have been complaints from civil society organizations regarding a lack of consultation and transparency regarding UNHCR’s return initiatives, these groups have not contested that returns carried out to date have been voluntary.³⁷¹

In its 2016 report to the Human Rights Council in advance of Thailand’s Universal Periodic Review, the Thai government stated that: “Providing a voluntary, safe, dignified, and sustainable return for Myanmar displaced persons is a top priority for the Government.”³⁷² High level Thai officials have reportedly reiterated these commitments in closed door meetings with UNHCR and others.³⁷³

Nevertheless, the Thai government has at times sent mixed messages regarding its intention towards refugees, raising concerns among the refugee population. For example, following a meeting with Myanmar Commander-in-Chief Min Aung Hlaing in July 2014, Prime Minister Prayuth Chan-O-Cha was reported stating that the two countries would cooperate on the return of refugees to Myanmar within approximately one year.³⁷⁴ The Ministry of Foreign Affairs subsequently issued a statement asserting that no timeframe for returns had been discussed in the meeting.³⁷⁵

Since coming to power, the NCPO has tightened enforcement of pre-existing restrictions on movement for refugee camp residents.³⁷⁶ However, this change in approach may have more to do with the NCPO’s general emphasis on law and order than the targeting of refugees.³⁷⁷ In practice, the NCPO has not implemented overtly coercive measures intended to force refugees to return.

In the near term, the greatest threat to the viability of the border refugee camps appears to be the potential withdrawal of funding by donors.³⁷⁸ Several rounds of rations cuts, combined with tighter restrictions on movement and the attendant impact on income opportunities, have already placed significant pressures on refugee populations. In June 2017, IOM reported that the suicide rates in Thailand’s largest refugee camp far exceeded local, national and global rates.³⁷⁹ The report cited restrictions on freedom of movement, cuts to rations and uncertainty about the future, among other factors, as contributors to a “high level of distress” among refugees, but refrained from concluding the precise reasons for the elevated suicide rate.³⁸⁰

UNHCR, relief organizations and refugees themselves agree that conditions in eastern Myanmar preclude any organized mass return of refugees in the near future.³⁸¹ Continued militarization, armed skirmishes,

³⁶⁷ UNHCR, “Strategic Roadmap for Voluntary Repatriation: Refugees from Myanmar in Thailand, 2015-2017”, updated January 2017, www.data.unhcr.org/thailand/download.php?id=1544.

³⁶⁸ Ibid. at p. 3.

³⁶⁹ Ibid. at p. 2.

³⁷⁰ UNHCR, “Myanmar refugees pave the way home in pilot return”, 28 October 2016,

www.unhcr.org/news/latest/2016/10/58131e5d4/myanmar-refugees-pave-way-home-pilot-return.html.

³⁷¹ Interviews with organizations working with the refugee community along the Thailand-Myanmar border, Interview Nos. 12, 15, 18 and 19, Bangkok and Mae Sot, May 2017.

³⁷² Human Rights Council, “Thailand: National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21”, UN Doc. A/HRC/WG.6/25/THA/1, 12 February 2016.

³⁷³ Interviews with individuals who have participated in meetings with Thai government officials, Interview Nos. 10, 12 and 16, Bangkok and Mae Sot, May 2017. Lower-level officials have reportedly given conflicting messages at times.

³⁷⁴ “Refugees to be resettled in one year”, *Bangkok Post*, 14 July 2014, www.bangkokpost.com/archive/refugees-to-be-resettled-in-one-year/420409. See also, Burma Partnership, “Flurry of Rumor and Counter Rumor Regarding Repatriation is Detrimental to Refugees”, 22 July 2014, www.burmapartnership.org/2014/07/flurry-of-rumor-and-counter-rumor-regarding-repatriation-is-detrimental-to-refugees/.

³⁷⁵ Thailand Ministry of Foreign Affairs, “Displaced persons from Myanmar in Thailand”, press release, 17 July 2014, www.burmapartnership.org/wp-content/uploads/2014/07/RTG-PR-displaced-persons.pdf.

³⁷⁶ Focus group discussion with refugees, 7 December 2015; Interviews with representatives of organizations working with the refugee community along the Thailand-Myanmar border, Interview Nos. 12, 16, 18, and 21, Bangkok and Mae Sot, May 2017.

³⁷⁷ Ibid.

³⁷⁸ Interviews with representatives of organizations working with the refugee community along the Thailand-Myanmar border, Interview Nos. 10, 12, 15, 16 and 18, Bangkok and Mae Sot, May 2017.

³⁷⁹ IOM, *Assessment of Suicide Risks and Factors in a Refugee Camp in Thailand*, 19 June 2017, <http://progressivevoicemyanmar.org/wp-content/uploads/2017/06/IOM-Mission-in-Thailand-Assessment-of-Suicide-Risks-and-Factors-in-a-Refugee-Camp-in-Thailand.pdf>.

³⁸⁰ Ibid.

³⁸¹ UNHCR, “Strategic Roadmap”, p. 1; “Human Rights Watch, UNHCR and Refugees Raise Concerns Following Reports That Thai Military Will Return Refugees After Reaching Agreement with Burma’s Military”, *Karen News*, 15 July 2014, karennews.org/2014/07/human-rights-

human rights abuses by armed groups, landmine contamination, land confiscation, livelihood concerns and, importantly, the tenuous state of Myanmar's peace process, are among the factors preventing a safe and dignified return for many refugees.³⁸² Any action or initiative by the Thai government to induce the involuntary return of refugees would constitute a violation of the principle of non-refoulement and a serious breach of Thailand's obligations under international law.

[watch-unhcr-and-refugees-raise-concerns-as-reports-that-thai-military-to-return-refugees-after-reaching-agreement-with-burmas-military.html/](#); Interviews with representatives of organizations working with the refugee community along the Thailand-Myanmar border, Interview Nos. 5, 10, 12 and 16, Bangkok and Mae Sot, May 2017. See also, Amnesty International focus group discussions with refugees and community based organizations, Mae Sot, 2014 and 2015.

³⁸² For further analysis of the concerns relating to the potential return of refugees to Myanmar, see, Progressive Voice, *Where Do We Go from Here?: A Snapshot of Recent Developments for Refugees Along the Thailand-Myanmar Border*, December 2016, [progressivevoicemyanmar.org/wp-content/uploads/2016/12/Refugee-Briefer-2016-FINAL_eng.pdf](#); Asia Pacific Refugee Rights Network, "APPRN Statement on Repatriation of Refugees from the Thai-Myanmar Border", 22 July 2014, [aprrn.info/statement-on-repatriation-of-refugees-from-the-thai-myanmar-border/](#).

6. RECOMMENDATIONS

LEGAL FRAMEWORK

- Accede to the 1951 Refugee Convention and its 1967 Protocol;
- Withdraw Thailand's reservation to article 22 of the UN Convention on the Rights of the Child;
- Consider providing UNHCR-registered refugees and asylum-seekers streamlined access to migrant worker status through processes that take into account the fact that refugees often do not possess identity documents and face risks if they return to their country of origin or come into contact with government officials from those countries;
- Take measures to address the practical barriers to access to education for refugees and asylum-seekers;
- Ensure that refugees and asylum-seekers have access to affordable health care; and
- Amend the Draft Prevention and Suppression of Torture and Enforced Disappearances Act to ensure its compliance with international law and standards, including by strengthening its non-refoulement provision, and prioritize its passage into law without delay.

SCREENING MECHANISM

- Follow through on the Thai government's commitment, as embodied in the 10 January 2017 Cabinet resolution, to develop a mechanism for screening refugees and other undocumented foreigners;
- Cooperate with refugee rights and civil society organizations in the development of policies and procedures regarding the screening of refugees, including by providing formal opportunities for such groups to give recommendations concerning the policies and feedback on draft laws or regulations;
- Alongside policies governing the screening of refugees and asylum-seekers, develop policies that provide domestic legal status to refugees, accompanied by the rights to remain and move freely in Thailand, to work, and to access education and healthcare;
- Ensure that policies concerning refugees and asylum-seekers, including those relating to a potential screening mechanism, are established by law, rather than merely established by policy directives or administrative regulations;
- Ensure that policies concerning refugees and asylum-seekers, including those concerning a potential screening mechanism, utilize a definition of "refugee" that reflects international standards and best practices, including by incorporating the various forms of persecution, violence and threats to liberty and security of person that could cause an individual to seek asylum in another country;
- Ensure that policies concerning a potential screening mechanism establish refugees' right to legal representation and to appeal decisions regarding their status, procedures for identifying refugees with acute needs and providing necessary protection or assistance, and formal protection against refoulement;
- Ensure that, in practice, any screening processes are implemented in a non-discriminatory fashion, meaning that individuals' asylum claims are evaluated on a case-by-case basis and that groups are not excluded from asylum protection for political reasons;

- Ensure that policies concerning refugees and asylum-seekers, including those establishing a potential screening mechanism, account for Thailand's current obligations under international human rights law, as well as its future obligations should Thailand accede to the Refugee Convention and its 1967 Protocol;
- Work with UNHCR to develop a plan for the gradual and incremental handover of refugee management activities from UNHCR to the Thai government, and ensure that the plan provides for UNHCR to have a long-term capacity building and oversight role in refugee screening and protection.

REFUGEE STATUS DETERMINATION

Until such time as the Thai government has assumed full responsibility for the screening of asylum claims:

- Provide UNHCR with unfettered access to all individuals advancing asylum claims, whether they are in IDCs, prisons, police stations, airports or any other place on Thai soil or waters; and
- Support UNHCR to exercise its mandate to conduct refugee status determination for all individuals with asylum claims, regardless of nationality or ethnicity, and ensure all asylum-seekers have access to a full, fair and efficient asylum procedure.

ARREST, DETENTION AND DEPORTATION

- Ensure that individuals are not criminalized, detained or otherwise punished solely for their method of arrival to Thailand;
- Ensure that asylum-seekers are only detained as a last resort and when strictly necessary, following an individualized assessment of their humanitarian needs and the risks if they remain at liberty, and for the least amount of time necessary;
- Exercise the discretion provided by Thai law to grant release on bail for all UNHCR-registered refugees and asylum-seekers in IDCs, and keep opportunities for release on bail open until alternatives to detention for refugees and asylum-seekers have been established by law;
- Lower the bail amount demanded for IDC detainees to a level that ensures that release on bail is accessible to all refugees and asylum-seekers;
- Establish formal alternatives to detention for refugees and asylum-seekers, possibly including regular reporting requirements, bail opportunities or sponsorship;
- Provide for the release of refugee from IDCs and other places of detention based on the recommendations of a doctor or other medical professional;
- Ensure that UNHCR, NGOs and lawyers are able to access UNHCR-registered refugees and asylum-seekers detained in IDCs and other places of detention; and
- Take immediate steps to improve conditions in IDCs and other places of detention, including by ensuring that IDCs do not operate above capacity, providing for the nutritional, psychosocial, medical and educational needs of detainees, and ending mistreatment of detainees by other detainees and immigration officials.
- Allow for an independent inspection by UNHCR, diplomats and civil society organizations of the planned new Bangkok-area IDC at the earliest possible date and at subsequent dates before and after the facility is officially opened.

FORCIBLE RETURNS

- Do not, under any circumstances, return individuals to a country where they face risk of persecution, torture, violence or other serious human rights violations or abuses;
- Continue to cooperate with UNHCR to ensure that UNHCR-registered refugees and asylum-seekers are not returned to their home countries as part of routine cross-border deportations;
- Ensure that UNHCR has prompt and unfettered access to individuals advancing asylum claims;

- Cooperate with UNHCR and resettlement countries to ensure the swift resettlement of refugees in immediate danger of abduction or other harm at the hands of foreign agents in Thailand;
- Investigate all allegations of refoulement and hold those found to be responsible to account in fair trials;
- Do not cooperate with foreign governments in the surveillance, harassment or abduction of refugees and asylum-seekers in Thailand;
- Thoroughly and transparently investigate all credible reports of surveillance, harassment or abduction of refugees and asylum-seekers by foreign agents in Thailand and hold accountable any individuals found to have violated Thai law in fair trials in line with international standards and without resort to the death penalty;
- Elevate the principle of non-refoulement in Thailand's foreign policy platform, ensuring that the principle is directly communicated to other governments that request actions that would lead to a violation of the principle; and
- Provide training on the principle of non-refoulement to government officials from the Ministry of Foreign Affairs, Royal Thai Police, Immigration Bureau and all other relevant government agencies.

“PUSH-BACKS”

- Ensure that individuals arriving by sea are able to disembark and establish a system for screening asylum claims for individuals arriving by sea;
- Develop procedures for screening asylum claims advanced at Thailand's airport and ensure that such procedures involve providing UNHCR with unfettered access to individuals advancing asylum claims; and
- Follow through on commitments, including those made as part of the Bali Process, to work with regional partners to enhance safe and legal channels of migration in order to deter irregular migration.

THE THAILAND-MYANMAR BORDER

- Continue to allow individuals fleeing violence and human rights violations in Myanmar to enter and remain in Thailand until such time that they can safely return, or, if a safe return is not possible, devise policies to provide for their continued presence in Thailand;
- Continue to collaborate with UNHCR to ensure that returns of refugees to Myanmar are only conducted in a voluntary and dignified manner;
- Refrain from taking any actions which would prompt the return of refugees to Myanmar in a matter that is not safe, dignified and voluntary;
- Begin to develop policies to deal with a residual refugee population that is unable or unwilling to return to Myanmar because of the risk of serious human rights violations, potentially by considering fast-tracked incorporation into existing migrant worker registration systems.

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info@amnesty.org



+44 (0)20 7413 5500

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BETWEEN A ROCK AND A HARD PLACE

THAILAND'S REFUGEE POLICIES AND VIOLATIONS OF THE PRINCIPLE OF NON-REFOULEMENT

Over the span of several decades, Thailand has hosted hundreds of thousands of refugees fleeing armed conflict and human rights violations in neighbouring countries and locations further afield. Today, refugee camps along the Thailand-Myanmar border provide shelter for approximately 100,000 individuals, and more than 7,000 urban refugees reside in Bangkok and elsewhere in Thailand.

Notwithstanding Thailand's significant contribution to addressing regional and global refugee crises, the Thai government has frequently failed to fulfil its obligation towards those seeking protection from violence and human rights violations.

Between a Rock and a Hard Place describes shortcomings in Thailand's policies towards refugees and asylum-seekers and the Thai government's recent violations of the principle of non-refoulement, which obliges states not to return anyone to a territory where they would be at risk of serious human rights violations. The report draws from interviews with refugees, asylum-seekers and their family members, as well as representatives of NGOs serving the refugee community in Thailand. It describes the forcible return of individuals at the request of foreign governments, the "push-back" of refugees arriving by sea and air, and the so-called "voluntary" return of refugees and asylum-seekers facing indefinite detention and other hardships in Thailand. Amnesty International urges the Thai government to provide formal legal status to refugees and asylum-seekers and to implement policies to ensure their rights are protected in practice.