

January 21, 2019

BANGKOK, THAILAND

Joint Statement
on the signing of the

MEMORANDUM OF UNDERSTANDING

on the Determination of Measures
and Approaches Alternative
to Detention of Children in
Immigration Detention Centers

Asia Pacific
Refugee Rights
Network

asylumaccess
THAILAND
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Thailand edges closer to respecting refugee and migrant rights with the signing of a Memorandum of Understanding (MoU) ending the detention of refugee and migrant children

We, the undersigned refugee and human rights organizations in Thailand, welcome today's commitment by the Government of Thailand to stop detaining migrant and refugee children. This commendable step brings Thailand closer to international standards for the treatment of refugee and migrant children and recognizes their fundamental rights under international law.

We urge the authorities to immediately release all refugees arbitrarily detained in Thailand and fully protect the rights of refugees and children, including by reuniting separated families and prioritizing the best interests of the child.

Joint Statement

Asia Pacific Refugee Rights Network (APRRN)

Asylum Access Thailand (AAT)

Center for Asylum Protection, (CAP)

Coalition for the Rights of Refugees and Stateless Persons (CRSP)

Fortify Rights

Human Rights Watch

Migrant Working Group (MWG)

Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers

Today, Deputy Prime Minister General Prawit Wongsuwan, representatives of the Royal Thai Police, the Ministries of Social Development and Human Security, Foreign Affairs, Interior, Health, Education, and Labour signed the *Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers*. The MoU acknowledges that children should only be detained as a measure of last resort and any detention period should be as brief as possible. The MoU prioritizes the best interests of the child and affirms the government responsibility to ensure children remain under their family's care. Children should only be transferred into privately-run shelters or government custody as a measure of last resort. The government is in the process of adopting detailed procedures to implement these provisions.

The MoU reflects a first step towards ending the immigration detention of children, but further efforts are necessary to protect the best interests of the child and to bring Thai policy and practice in line with basic international standards. The MoU fails to address family separation, and migrant mothers are only granted release from immigration detention following a cash bail payment of 50,000 Thai Baht (US\$1,500) to reunite with children in holding shelters. The bail rate is exorbitant for most migrants and, particularly, refugees, who are prohibited from working in Thailand. Furthermore, the bail provision does not extend to fathers of migrant and refugee children, undermining the rights of a child to family life as enshrined in international law and best-interest practices. Bail is further restricted to mothers with children who are also in immigration custody.

Thai authorities continue to conduct immigration raids that result in the arrest and arbitrary detention of children and refugees. Since October 2018, immigration enforcement operations have continued to take place throughout Bangkok and other cities across Thailand. Thai authorities have arrested hundreds of refugees recognized by the United Nations High Commissioner for Refugees (UNHCR), including children. These arrests violate international legal norms regarding the protection of refugees and undermine the government's stated commitments to respect basic human rights.

We note with alarm that children remain detained at Bangkok's Suan Phlu Immigration Detention Center. Thailand is party to the UN Convention on the Rights of the Child, which prohibits the arbitrary or unlawful detention of a child. The CRC allows for the separation of a child from his or her parents against their will *solely* in cases where "competent authorities subject to judicial review determine . . . that such separation is necessary for the best interests of the child." Article 22 of Thailand's Child Protection Act of 2003 requires the best interest of the child to be

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given primary importance when considering the treatment of a child. The continued arrest and detention of refugees has not demonstrated adherence to Thailand's commitments under international law.

Although Thailand is not a party to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, the Thai government has repeatedly expressed a commitment to protect refugees in Thailand, including by adopting the *Global Compact for Safe, Orderly and Regular Migration* and endorsing the *Global Compact on Refugees* during the UN General Assembly in December 2018. The Thai government also affirmed a commitment to "humanitarianism and to take care of various groups of irregular migrants" during the UN Human Rights Committee review of Thailand's obligations under the International Covenant on Civil and Political Rights in March 2017. On January 10, 2017, the government also adopted a cabinet resolution to develop a legal framework to identify and recognize refugees. However, at present, the Thai government has yet to enact legislative measures to advance this resolution.

Despite the commitments made by the government, Thai law still fails to recognize or provide protection for refugees, and all migrants found in Thailand without permission are subject to imprisonment and a fine in addition to deportation. In the case of refugees, this is in violation of non-penalization protections underscored in international law and basic protections underscored in multiple human rights covenants.

We urge the Thai government to:

- End the detention of all refugees held solely on the basis of their immigration status.
- Ensure that migrants are never arbitrarily detained, and migrants are only detained in exceptional circumstances following an individualized assessment and after the exhaustion of all alternatives to detention in line with international law.
- Undertake meaningful, formal consultations with groups representing refugees, other civil society organizations, and refugees where possible to develop a legal framework to recognize and protect refugees in line with international standards and ensure the right to work so that they have a proper standard of living while awaiting resettlement or repatriation.
- Withdraw the reservation to Article 22 of the Convention on the Rights of the Child, which addresses the proper protection of refugee children.
- Accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and the Convention on the Protection of All Migrant Workers and Members of Their Families.