



HUMAN
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WATCH

TWO YEARS WITH NO MOON

Immigration Detention of Children in Thailand



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Prologue: Bhavani and Her Sisters

From age 8 to 10, Bhavani spent two years locked up in Bangkok's squalid, overcrowded Immigration Detention Center (IDC). She and her family, refugees from Sri Lanka, were detained because Thailand's immigration laws precluded them from gaining legal status and protection in the country.

Bhavani is the youngest of six children. She was living in hiding in Bangkok with her mother, father, three sisters, and the younger of her two brothers. Early one morning when her mother and brother were out, the police raided the apartment, apprehended Bhavani, her father, and her sisters, and sent them to the Bangkok IDC. Her older brother had already been detained there for over a year, and even though they had not been able to see him—they lacked any paperwork that would let them visit—the family had some idea of the harsh conditions inside.

When Bhavani's mother, Mathy, learned that her husband and daughters had been arrested, she was shocked. "I just thought I should surrender," she told Human Rights Watch. "I wasn't able to leave four of my girls in the IDC alone." Mathy voluntarily reported to a court, where the judge ordered her to pay a 6,000 baht (about US\$200) fine for being in the country without a visa, then let her surrender and join her daughters in the IDC. In the two days they were apart, Mathy said, "I felt like I was dreaming. I wasn't able to sleep, I'd hear them talking like they were calling me, knocking at the door."

When the sisters and their father reached the IDC—two days before Mathy arrived—the police separated the girls from their father and sent them to different holding cells. The girls were initially held in a large hall with many adults. "When they took our dad away from us, we started to cry. That's when I realized we couldn't get out of there," said Amanthi, Bhavani's sister, who was 12 at the time. "When I saw them there," said Mathy, "I was so scared."

After a few days, Mathy and her four daughters were moved to the cell where they would spend the next two years. The cell was overcrowded, sometimes with over 100 occupants. People were "sleeping all on top of each other, so crowded even right up to the toilet," said Amanthi. "At some point we couldn't sit." Mathy said she coped as best she could, but "One

of my sons was never arrested. It was really difficult. I wanted to be in the IDC with my girls, but I missed my second son.” He could not visit without risking arrest himself.

Because of the detention center’s policy of holding males in one cell and females in another, without chances to visit, the family was separated, despite being in the same facility. They were only brought together when a charity group visited once or twice per month and asked to see the whole family. “When Bhavani wanted to meet my dad or brother,” said Amanthi, “she’d really cry.”

Crammed in their cigarette smoke-filled, fetid permanent cell, the girls saw their health and education suffer. Bhavani developed a rash all over her body, but Mathy said the medication the IDC’s clinic gave her did not help. The toilets—just three for the hundred or so migrants held there—were filthy, and Bhavani’s teenage sister avoided using them because there were no doors. Though the International Organization for Migration ran a small daycare center that the girls could attend once or twice a week, there was no school. “I worried that my girls’ education stopped,” said Mathy.

Fights often broke out between women in the overcrowded cell, frustrated by their indefinite detention. “When someone behaved badly to other people, I didn’t like that,” said Bhavani. “They would shout at night.” The guards would not do very much when fighting started, and the girls would hide, explained Amanthi. “The [other migrants] are really, really strong. My mom didn’t know how to fight, she tried to take us to a corner and protect us. It was scary.”

Detained without release in sight, the family members slowly found ways to cope. “The first three to four months was really hard,” said Mathy. “It was difficult to manage and take care of my girls. I got used to it. We met people who had more problems than us.” Bhavani became friends with a Sri Lankan boy and girl detained with her. Their mothers would carve out a small space for them to play, defending the area against encroachment from others in the overcrowded cell.

Bhavani and her family were finally released on bail in the process of being resettled as refugees to the United States. Yet Bhavani, who had spent one fifth of her life in detention, had become accustomed to life in the IDC. When the family finally left, “I was so sad I had to leave my friends,” she said. “I knew they wouldn’t be coming out too.”

Now, living safely in the US, Bhavani has not seen her father in over a year. He was not cleared for resettlement alongside his wife and children, and, despite the risk of persecution, chose to return to Sri Lanka rather than remain in the IDC. The family decided that splitting up was the only way to get their children out of detention and back to regular education. Mathy still worries about the 20 or so other children left behind in her cell in the IDC: “Their education, their health, their future is spoiled.”

Summary

Every year, Thailand arbitrarily detains thousands of children, from infants and toddlers and older, in squalid immigration facilities and police lock-ups. Around 100 children—primarily from countries that do not border Thailand—may be held for months or years. Thousands more children—from Thailand’s neighboring countries—spend less time in this abusive system because Thailand summarily deports them and their families to their home countries relatively quickly. For them, detention tends to last only days or weeks.

But no matter how long the period of detention, these facilities are no place for children.

Drawing on more than 100 interviews, including with 41 migrant children, documenting conditions for refugees and other migrants in Thailand, this report focuses on how the Thai government fails to uphold migrants’ rights, describing the needless suffering and permanent harm that children experience in immigration detention. It examines the abusive conditions children endure in detention centers, particularly in the Bangkok Immigration Detention Center (IDC), one of the most heavily used facilities in Thailand.

This report shows that Thailand indefinitely detains children due to their own immigration status or that of their parents. Thailand’s use of immigration detention violates children’s rights, immediately risks their health and wellbeing, and imperils their development. Wretched conditions place children in filthy, overcrowded cells without adequate nutrition, education, or exercise space. Prolonged detention deprives children of the capacity to mentally and physically grow and thrive.

In 2013, the Committee on the Rights of the Child, the body of independent experts charged with interpreting the Convention on the Rights of the Child, to which Thailand is party, directed governments to “expeditiously and completely cease the detention of children on the basis of their immigration status,” asserting that such detention is never in the child’s best interest.

Immigration detention in Thailand violates the rights of both adults and children. Migrants are often detained indefinitely; they lack reliable mechanisms to appeal their deprivation of liberty; and information about the duration of their detention is often not released to members of their family. Such indefinite detention without recourse to judicial review amounts to arbitrary detention prohibited under international law.

Thailand requires many of those detained to pay their own costs of repatriation and leaves them to languish indefinitely in what are effectively debtors' prisons until those payments can be made. Refugee families face the unimaginable choice of remaining locked up indefinitely with their children, waiting for the slim chance of resettlement in a third country, or paying for their own return to a country where they fear persecution. Many refugees spend years in detention.

Immigration detention, particularly when arbitrary or indefinite, can be brutal for even resilient adults. But the potential mental and physical damage to children, who are still growing, is particularly great.

Immigration detention negatively impacts children's mental health by exacerbating previous traumas (such as those experienced by children fleeing repression in their home country) and contributing to lasting depression and anxiety. Without adequate education or stimulation, children's social and intellectual development is stymied. None of the children Human Rights Watch interviewed in Thailand received a formal education in detention. Cindy Y., for example, was three years older than her classmates in school when she was finally released. She said, "I feel ashamed that I'm the oldest and studying with the younger ones."

Detention also imperils children's physical health. Children held in Thailand's immigration detention facilities rarely get the nutrition or physical exercise they need. Children are crammed into packed cells, with limited or no access to space for recreation. Doug Y. wanted to play football, his favorite sport, but said, "If you kick a ball, you'd hit someone, or a little kid." Parents described having to pay exorbitant prices for supplemental food smuggled from outside sources to try to provide for their children's nutritional needs. Labaan T., a Somali refugee detained with his 3-year-old son, said, "The diet for the boy consists of the same rice that everybody else eats. He needs fruits which are neither provided nor available for purchase."

The bare and brutal existence for children in detention is exacerbated by the squalid conditions. Leander P., an adult American who was detained in the Bangkok IDC, said that one of the two available toilets in his cell, occupied by around 80 people, was permanently clogged, so “someone had drilled a hole in the side – what would have gone down just drained onto the floor.” Multiple children we interviewed described cells so crowded they had to sleep sitting up.

Even where children have room to lie down and sleep, they routinely reported sleeping on tile or wood floors, without mattresses or blankets. “The floor was made from wood, the wood was broken and the water came in,” said one refugee woman detained for months in the Chiang Mai IDC with a friend and the friend’s 6 and 8 year-olds. “While I was sleeping, a rat bit my face.”

Severe overcrowding appears to be a chronic problem in many of Thailand’s immigration detention centers. The Thai government detained hundreds of ethnic Rohingya refugees, including unaccompanied children, in the Phang Nga IDC in 2013. Television footage showed nearly 300 men and boys detained in two cells resembling large cages, each designed to hold only 15 men, with barely enough room to sit. Eight Rohingya men died from illness while detained in extreme heat with lack of medical care in the immigration detention centers that year.

Children are routinely held with unrelated adults in violation of international law, where they are exposed to violence between those detained and from guards. A Sri Lankan refugee, Arpana B., was pregnant and detained in an overcrowded cell in the Bangkok IDC with her small daughter in 2011. “One of the detainees beat my daughter,” she said. “He was crazy. There was no guard, no police to help us.”

Thailand faces numerous migration challenges posed by its geographical location and relative wealth, and is entitled to control its borders. But it should do so in a way that upholds basic human rights, including the right to freedom from arbitrary detention, the right to family unity, and international minimum standards for conditions of detention. Instead, Thailand’s current policies violate its international legal obligations, put children at unnecessary risk, and ignore widely held medical opinion about the detrimental effect that detention can have on the still-developing bodies and minds of children.

Alternatives to detention exist and are used effectively in other countries, such as open reception centers and conditional release programs. Such programs are a cheaper option, respect children's rights, and protect their future. The Philippines, for instance, operates a conditional release system through which refugees and other vulnerable migrants are issued with documentation and required to register periodically.

Children should not be forced to lose parts of their childhood in immigration detention. Given the serious risks of permanent harm from depriving children of liberty, Thailand should immediately cease detention of children for reasons of their immigration status.

Key Recommendations to the Thai Government

- Enact legislation and policies to expeditiously end immigration detention of children consistent with the recommendations of the United Nations Committee on the Rights of the Child.
- Adopt alternatives to detention, including supervised release and open centers that fulfill the best interests of the child and allow children to remain with their family members or guardians in non-custodial, community-based settings while their immigration status is being resolved.
- Until children are no longer detained, ensure that their detention is neither arbitrary nor indefinite, and that they and their families are able to challenge their detention in a timely manner.
- Drastically improve conditions in Immigration Detention Centers and any other facilities that hold migrant children in line with international standards, including by providing access to adequate education and health care and maintaining family unity.
- Sign and ratify the 1951 Refugee Convention and its 1967 Protocol.

Methodology

This report builds on two previous Human Rights Watch reports that examined Thailand's treatment of migrants: *Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers* (2012), and *From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand* (2010).

The report is based on 105 interviews conducted between June and October 2013, of people detained, arrested, or otherwise affected by interactions with police and immigration officials in Thailand. This report also uses an additional nine interviews, collected between September 2008 and October 2011 in the course of researching previous reports that refer to issues still relevant today. Interviewees ranged in age from 6 to 48, plus a grandmother who did not know her age. Fifty-five of the migrants interviewed were female. The majority of migrants interviewed were Burmese (including Rohingya); the next largest source country was Cambodia; and the remainder were from China, Nepal, Pakistan, Somalia, Sri Lanka, and the United States.

Forty-one of the interviewees were migrant children under the age of 18. Five others were adults under the age of 23 at the time of their interview who related experiences that occurred when they were children. We interviewed 10 adults who were parents of, related to, or had spent significant time detained with children below the age of 5.

We conducted some interviews in English and in Urdu, and others through the use of interpreters in a language in which the interviewee was comfortable, such as Rohingya, Burmese, Thai, or Khmer. We explained to all interviewees the nature of our research and our intentions concerning the information gathered, and we obtained oral consent from each interviewee.

Most interviews took place in Thailand, including in Bangkok, Chiang Mai, Mae Sot, Phang Nga, Ranong, and Samut Sakhon. We also interviewed, in their home country or in a third country, nine migrants and refugees who had been detained in Thailand. Most of these interviews took place in person; one took place by videoconference.

Most interviews were conducted individually and privately; this included extensive, detailed conversations with released detainees. In addition, Human Rights Watch researchers visited several immigration detention facilities and conducted group interviews with two or three of those detained at a time. In order to safeguard interviewees who were detained, our conversations took place outside the hearing of immigration staff.

Human Rights Watch researchers met eight government officials concerned with migration who worked for the police, immigration department, and the Ministry of Social Development and Human Security. We also sent letters requesting data and other information concerning immigration and detention in Thailand, on January 18, 2014, to the Office of the Prime Minister, the Immigration Division, the Minister of Social Development and Human Security, and the Thai ambassadors to the United States and to the United Nations in Geneva and in New York, and sent a summary of our findings, and requested comment on July 15, 2014, to the ministries of foreign affairs and interior.¹ Although we received a letter from the office of the ambassador to the UN in Geneva, acknowledging receipt of our letter, the office did not provide any answers to the questions we raised.

In addition, we met with representatives of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM), officials of nongovernmental organizations (NGOs), migrant community leaders, journalists, human rights lawyers, and activists.

All names of migrants interviewed, including those of all children, have been replaced by pseudonyms to protect their identity. Pseudonyms used may not match the country of origin. In cases where the interviewee was concerned about the possibility of reprisal, we have concealed the location of the interview or withheld precise details of the migrant's case. Many staff members of government agencies, intergovernmental organizations, and NGOs in Thailand are not identified at their request.

Human Rights Watch did not assess whether the migrants we spoke to qualified for refugee status. Some, perhaps many, do. This report instead focuses on how the Thai government fails to uphold migrants' human rights, regardless of whether or not those migrants have legitimate asylum claims or other protection needs.

¹ An example of this request is included in the Appendices.

On May 22, 2014, the Thai military took control of the government. Although the research for this report was completed prior to the coup, its findings remain relevant. The military government, known as the National Council for Peace and Order (NCPO), has instituted no major policy changes regarding detention of migrant children. Thailand's policy of detaining migrants has remained consistent across previous governments, including military governments.

Terminology

This report focuses on migrants, refugees, and asylum seekers in urban centers in Thailand. Most non-Burmese asylum seekers lodge refugee claims directly with UNHCR because Thailand is not party to the 1951 Convention relating to the Status of Refugees (the 1951 Refugee Convention) and its 1967 Protocol, has no procedure for determining refugee status for urban asylum seekers, and has made no commitment to provide permanent asylum. UNHCR recognizes some as refugees but has no authority to grant asylum. The Thai authorities do not allow UNHCR to conduct refugee status determinations for members of certain nationalities, including Burmese, Lao Hmong, and North Koreans.

An “asylum seeker” is a person who is trying to be recognized as a refugee or to establish a claim for protection on other grounds. Where we are confident that a person is seeking protection we will refer to that person as an asylum seeker. A “refugee,” as defined in the Refugee Convention, is a person with a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” who is outside their country of nationality and is unable or unwilling, because of that fear, to return. In this report, we use the term “refugee” when that person has been recognized as a refugee by UNHCR in Thailand, though it should be noted that UNHCR recognition of refugee status is declaratory, which means that people are, in fact, refugees before they have been officially recognized as such.

In this report, “migrant” is a broad term used to describe foreign nationals in Thailand, including people traveling in and through Thailand and passengers on boats moving irregularly. The use of the term “migrant” does not exclude the possibility that a person may be an asylum seeker or refugee.

In line with international law, the term “child” as used in this report refers to a person under the age of 18,² including children traveling with their families and unaccompanied migrant children. This report discusses these groups separately and together, and uses the term “migrant children” to refer to them together. This term includes children who are seeking asylum or have been granted refugee certificates from UNHCR.

For the purposes of this report, we use the definition of “unaccompanied migrant child” from the term “unaccompanied child” employed by the Committee on the Rights of the Child: “Unaccompanied children” are children, as defined in the Convention on the Rights of the Child, “who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.”³

² Convention on the Rights of the Child (CRC), adopted November 20, 1989, GA Res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, UN Doc. A/44/49 (1989), entered into force September 2, 1990, art. 1. Thailand ratified the CRC in 1992.

³ UN Committee on the Rights of the Child, General Comment No. 6, “Treatment of Unaccompanied and Separated Children Outside their Country of Origin,” U.N. Doc. CRC/GC/2005/6 (2005), paras. 7-8.

I. Paths to Immigration Detention

There are approximately 375,000 migrant children in Thailand, including children who work, children of migrant workers, and refugee and asylum-seeking children.⁴ Children constitute around 11 percent of Thailand's total migrant population of 3.4 million people.⁵

Under Thai law, all migrants with irregular immigration status, even children, can be arrested and detained.⁶ Immigration authorities and police arrest migrants while they are working, at markets, or as they travel within the country or seek to cross borders.⁷

Migrants of all nationalities who are arrested—and as a practical matter unable to pay bribes—are likely to be taken to police lock-ups or Immigration Detention Centers (IDCs).⁸

Those from countries bordering Thailand tend to spend a few days or weeks in detention before they are taken to the border to be deported or otherwise released. Nationals from countries that do not border Thailand, however, can spend years in indefinite detention, being essentially held until they can pay for their own removal.⁹ Refugees can be held until they are resettled to a third country, an unlikely outcome for many refugees; and the relatively few who are resettled often spend many months, sometimes years, in detention prior to their resettlement.

Arrests of Migrant Workers and their Children

Thousands of migrant workers cross into Thailand each year from the neighboring countries of Burma, Cambodia, and Laos. Particularly those who remain unregistered with the Thai government face constant risk of arrest. These migrant workers make up a significant proportion of the workforce in Thailand.¹⁰ Some bring children with them, and

⁴ International Organization for Migration, "Thailand Migration Report 2011," Bangkok, 2011, p. 96.

⁵ Ibid.

⁶ Immigration Act BE 2522, (1979), http://www.immigration.go.th/nov2004/en/doc/Immigration_Act.pdf (accessed December 18, 2013) section 29.

⁷ Human Rights Watch, *Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers*, September 2012, <http://www.hrw.org/sites/default/files/reports/thailand0912.pdf>.

⁸ Human Rights Watch, *Ad Hoc and Inadequate*.

⁹ Human Rights Watch, *Ad Hoc and Inadequate*, p. 6.

¹⁰ A 2010 Human Rights Watch report, *From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand*, details the broad range of rights abuses faced by migrant workers from Burma, Laos, and Cambodia. They may be effectively bonded to

some give birth to children in Thailand. Infants stay in the migrant workers' camps or in other homes with relatives, and young children attend informal schools in migrant communities. Many migrant children start working around 13, 14, or 15 years old.

Prior to the military coup of 2014, Thailand had made some progress toward regularizing migrant workers, but the process of applying for and gaining migrant worker status remained prohibitively expensive for many workers.

After the military coup, large numbers of Cambodian migrant workers left Thailand in response to rumors of migrants being arrested and harassed.¹¹ In just 18 days between June 8 and 25, at least 246,000 Cambodians fled the country, according to the International Organization for Migration (IOM).¹² Cambodians in particular fear reprisals because of political tension between the two countries.¹³ However, it is possible that Burmese and other migrants are also being targeted, but are less likely to flee due to conditions in their home countries.¹⁴ The NCPO government denied that a crackdown on migrants is taking place and categorically denied all allegations of attacks and human rights violations against migrants.¹⁵ On June 25, 2014, the National Council for Peace and Order (NCPO) announced the creation of service centers to issue temporary entry permits to migrant workers and temporary work permits to their employers, both of which are required to obtain legal migrant worker status. After 60 days workers will have to verify their nationality before receiving a longer work permit. The announcement states that

their employers; police, military, and immigration officers threaten, physically harm, and extort migrant workers with impunity; migrants are frequently arrested and detained without fair process and subject to abuse in detention; and when migrant workers face abusive employers or common crime, Thai authorities are very reluctant to investigate and are sometimes complicit. Human Rights Watch, *From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand*, February 2010, <http://www.hrw.org/sites/default/files/reports/thailand0912.pdf>.

¹¹ Madison Park, "180,000 Cambodian migrant workers estimated to have fled Thailand," *CNN*, June 19, 2014, , (accessed July 7, 2014), <http://www.cnn.com/2014/06/18/world/asia/cambodia-thailand-migrants-border/>.

¹² Steve Finch, "Is the Thai Junta Targeting Cambodian Migrants?" *The Diplomat* (Japan), June 26, 2014, , (accessed July 7, 2014), <http://thediplomat.com/2014/06/is-the-thai-junta-targeting-cambodian-migrants/>.

¹³ "The exodus: Rumors drive hundreds of thousands of Cambodians back home," *The Economist*, June 21, 2014, , (accessed July 7, 2014), <http://www.economist.com/news/asia/21604585-rumours-drive-hundreds-thousands-cambodians-back-home-exodus?fsrc=dglc>.

¹⁴ Finch, "Is the Thai Junta Targeting Cambodian Migrants?" *The Diplomat* (Japan).

¹⁵ Royal Thai Government, Announcement of the National Council for Peace and Order No. 67/2557, Temporary measures in addressing migrant workers, June 16, 2014, <http://www.thaigov.go.th/en/announcement-2/item/84074-id84074.html>, (accessed July 7, 2014).

“relevant law enforcement entities shall strictly enforce the law” against migrants whose permits expire.¹⁶

Thailand routinely arrests migrant workers and their accompanying family members. Migrants, including children, report being arrested repeatedly. Nhean P., a 12-year-old Cambodian boy, said he had been arrested, detained, and deported three times in the past five years. He described his most recent arrest, in early 2012:

I was on the bus [with my mother and brother]. Police came and asked for ID – we didn’t have it. So they told us to get down and they took us to jail and sent us back to Cambodia. They sent us back in a pickup truck, without covering, open to the rain. We came right back to Thailand. [If we stayed] in Cambodia, we wouldn’t have any money.¹⁷

The lack of a legal framework in Thailand that recognizes and provides government-issued documents for refugees, and some obstacles to regularization for migrant workers, means that hundreds of thousands of Burmese adults and children are vulnerable to arrest on the street, workplace, or home. In most cases this can lead to detention and deportation.¹⁸

Police or immigration authorities raid migrant worker camps, other accommodation, or places of employment; they also stop migrants on the street or in markets. Aung M. was 13 years old in March 2013 when she went to a market in the town of Samut Sakhon with her two sisters. The police stopped them, arrested Aung, and took her to the police station as she had no papers. “I wanted to cry because I was afraid,” she said.¹⁹ Her sisters, who had work permits, ran home and told her mother. Aung’s mother told Human Rights Watch, “The moment I knew, I was terrified. I had to find my daughter; I worried [that she would be deported to Burma.]”²⁰

¹⁶ Royal Thai Government, Announcement of the National Council for Peace and Order No. 70/2557, Interim Measures in solving the problem of migrant workers and human trafficking, June 25, 2014, <http://www.thaigov.go.th/en/announcement-2/item/84207-84207.html>, (accessed July 7, 2014).

¹⁷ Human Rights Watch interview with Nhean P., Bangkok, July 10, 2013.

¹⁸ Human Rights Watch, *Ad Hoc and Inadequate*, p. 5.

¹⁹ Human Rights Watch interview with Aung M., Samut Sakhon, July 28, 2013.

²⁰ Human Rights Watch interview with Chit M., Samut Sakhon, July 28, 2013.

Parents reported fear of letting children leave their sight, in case they should be arrested. Phoe Zaw, a Burmese man in Mae Sot with a 12-year-old daughter, said, “I worry about my daughter. I’m afraid of the police. If she goes out and doesn’t come in on time, I go after her.”²¹

Police and immigration authorities frequently demand money or valuables from detained migrants or their relatives in exchange for their release, either from detention or at the time of arrest. Migrants reported paying bribes ranging from 200 to 8000 baht (US\$6 to 250) or more, depending on the region, the circumstances of the arrest, and the attitudes of the officers involved. In some cases the migrant could be forced to pay the equivalent of one to several months’ pay in one incident.²² The police sometimes tell apprehended migrants that they can pay a smaller amount directly to the police to avoid the higher fines they would be required to pay if taken to court.²³

Sometimes children with a school ID card or in a school uniform are not arrested. (Thailand revised its education policies in 2005 in line with the “Education for All” movement principles to permit migrant children to attend Thai government schools.)²⁴ Koy Mala, a 13-year-old Burmese girl who attended government school, said, “My parents say that if the police come, wear your school uniform so they won’t arrest you.” She saw her 14-year-old classmate arrested by the police in 2013 when she was not wearing her uniform.²⁵

Police arrest criteria seem arbitrary and vary considerably. Saw Lei, a Burmese man with migrant worker status who was living in Samut Sakhon, told us that in 2012 the police tried to arrest his then 10-year-old son, but when they discovered his son was a student at an unofficial migrant school, they let him go without requiring uniform or ID.²⁶ Yet Saw Lei’s

²¹ Human Rights Watch interview with Phoe Zaw, Mae Sot, July 26, 2013.

²² Human Rights Watch, *From the Tiger to the Crocodile*, section V; and Human Rights Watch, *Ad Hoc and Inadequate*, p. 6.

²³ Human Rights Watch, *Ad Hoc and Inadequate*, p. 6.

²⁴ The 2005 Cabinet Resolution on Education for Unregistered Persons guarantees the right to education of children without legal immigration status in Thailand, and allows these children to enroll in government schools. Education is compulsory for both Thai and migrant children until age 15. In 2012, the Ministry of Education’s Ministerial Regulation on Migrant Learning Centers legalized the provision of basic education through migrant learning centers run by nongovernmental organizations or individuals. For more information, see: “Right to Education for migrants, refugees and asylum seekers,” Social Division, Department of International Organizations, Ministry of Foreign Affairs, Kingdom of Thailand, <http://www.mfa.go.th/humanrights/implementation-of-un-resolutions/72-right-to-education-for-migrants-refugees-and-asylum-seekers>; “Thailand: 2012 Findings on the Worst Forms of Child Labor,” United States Department of Labor.

²⁵ Human Rights Watch interview with Koy Mala, Mae Sot, July 25, 2013.

²⁶ Human Rights Watch group interview with Saw Lei, Samut Sakhon, July 27, 2013.

daughter, who was 13 years old at the time, was arrested in a separate incident in 2012, even though she also went to the migrant school. She was released when her teacher came to the police station and vouched that she was a student.²⁷

While Thailand has made progress in enrolling migrant children in school, there are still significant gaps, leaving some children vulnerable to arrest. “Many families live far into the fields,” said Saw Kweh, a veteran community activist in Mae Sot, “and schools can’t come pick them up. There are costs for going to school and some families can’t afford it.”²⁸

Arrests of Refugees

The largest group of refugees living in Thailand is from Burma, both from the civil wars and more recently from the violence against Muslims in Burma’s western Arakan State.²⁹ Thousands still live in camps along the Burmese border. There are also around 2,000 refugees from more distant places, including Pakistan, Sri Lanka, Somalia, and Syria.³⁰

Thailand’s refugee policies are fragmented, unpredictable, and ad hoc, leaving refugees and asylum seekers unnecessarily vulnerable to arbitrary and abusive treatment.³¹ Thailand has not signed the 1951 Convention relating to the Status of Refugees nor its 1967 Protocol (the Refugee Convention) and does not have an asylum law. It therefore considers refugees and asylum seekers and their families to be irregular migrants subject to detention. The lack of a legal framework makes the status of refugees and asylum seekers unclear and renders them vulnerable to arrest and detention.

Arrests of Burmese Refugees

As of 2013, United Nations High Commissioner for Refugees (UNHCR) statistics said that there were 77,913 Burmese refugees in refugee camps in Thailand, 34,289 of whom were children.³² These figures may be low; The Border Consortium, a nongovernmental

²⁷ Human Rights Watch group interview with Ma Myo, Samut Sakhon, July 27, 2013.

²⁸ Human Rights Watch interview with Saw Kweh, Mae Sot, July 26, 2013.

²⁹ Human Rights Watch, “All You Can Do is Pray”: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State, April 2013, <http://www.hrw.org/reports/2013/04/22/all-you-can-do-pray-o>.

³⁰ UNHCR, “2014 Country Operations Profile: Thailand,” <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e489646&submit=GO#> (accessed April 11, 2014).

³¹ Human Rights Watch, *Ad Hoc and Inadequate*.

³² UNHCR 2013 Annual Statistical Report.

organization providing assistance in the border camps, estimates that there are 117,000 Burmese refugees in the 10 camps in which they work as of May 2014.³³ Most fled decades of fighting in Burma, and many children were born in Thailand to refugee parents.³⁴ Some portion of the tens of thousands of Burmese migrant workers in Thailand are, in fact, refugees, but have not been officially recognized as such, in large part because they are precluded from lodging claims with the government or with the UNHCR.³⁵

Some 92,000 Burmese refugees were resettled from Thailand to third countries between 2005 and January 2014.³⁶ Political changes in Burma since 2011, including the signing of preliminary ceasefire agreements between the Burmese government and most of the ethnic armed groups, have opened the possibility for future voluntary repatriation. However, up to now, few ethnic minority group members have opted to return.³⁷

Registered Burmese refugees in Thailand face stark decisions: they can remain in one of the refugee camps along the Burmese border, where they are relatively protected from arrest, but lack freedom to move or work, and are dependent on aid agencies, which have reduced funding since the ceasefires in Burma. Alternatively, they can live and work outside the camps (in areas such as in Mae Sot, Chiang Mai, Kanchanaburi, and Bangkok), but typically without legal status of any kind, which makes them subject to exploitation, extortion, arrest, and deportation.³⁸

³³ The Border Consortium, *Refugee and IDP Camp Populations: May 2014*, May 2014, <http://theborderconsortium.org/camps/2014-05-may-map-tbc-unhcr.pdf> (accessed July 18, 2014).

³⁴ According to Thailand's Nationality Act, children born in Thailand after February 26, 1992 do not acquire Thai nationality at birth if either or both of their parents has entered Thailand "without permission under the law on immigration" or has only temporary permission to stay in Thailand (such as a migrant worker permit). Any child born in Thailand who does not acquire Thai citizenship at birth is considered an irregular migrant. For more information, see: Nattha Keenapan, "The stateless classroom," UNICEF, http://www.unicef.org/thailand/reallives_10445.html; Nationality Act, B.E. 2508, amended by Acts B.E. 2535 No. 2 and 3, (1992) Ch. 1 § 7(2).

³⁵ Human Rights Watch, *Ad Hoc and Inadequate*. Starting in January 2004, the Thai government stopped allowing UNHCR to conduct refugee status determination interviews for Burmese refugees and directed that all Burmese refugees should live in the Thai-Burma border camps. The government refused to screen or register all but a small fraction of the new arrivals between 2004 and 2011, leaving tens of thousands of people unregistered and thus regarded as illegal. *Ibid.*, pp. 1-2. Since 2011, the government has slightly reopened the admission procedure for certain categories of persons, such as unregistered members of registered families who are in the resettlement pipeline.

³⁶ "US wraps up group resettlement for Myanmar refugees in Thailand," UNHCR news release, January 29, 2014, <http://www.unhcr.org/52e9> (accessed June 12, 2014).

³⁷ Human Rights Watch, *Ad Hoc and Inadequate*, p. 2.

³⁸ Human Rights Watch, *Ad Hoc and Inadequate*.

For decades, tens of thousands of ethnic Rohingya, a Muslim minority that is effectively denied citizenship in Burma, have fled persecution by the Burmese government. In 2012, the situation significantly worsened as a result of sectarian violence, including “ethnic cleansing,” in Arakan State, causing massive flights of even more people fleeing Burma by boat.³⁹ In 2013, Thailand permitted 2,055 Rohingya to enter the country, stating it would offer them “temporary protection,” but then treated them as undocumented migrants and detained them in IDCs and closed government shelters.

Starting in October 2013, significant numbers of the Rohingya escaped detention and traveled south through Thailand to Malaysia, with the involvement of people smugglers who detained them in jungle camps and then demanded payments to facilitate travel to Malaysia.⁴⁰ Other Rohingya were deported by Thai immigration officials in Ranong but were not sent to Burma, but rather into the hands of people smugglers who confined them in remote camps and inflicted physical torture on those who could not arrange payment for travel on to Malaysia.

Arrests of Urban Refugees and Asylum Seekers

UNHCR-registered refugees and asylum seekers (often from countries not neighboring Thailand) tend to live at the margins of society in Thailand’s cities, in particular in Bangkok. Without any way to regularize their status with the Thai government, they risk arrest and detention. When the Thai government detains a refugee or an asylum seeker, it argues that it is simply detaining an irregular migrant in order to deport him or her. Therefore, many remain in detention indefinitely, awaiting the limited places available for resettlement to a third country.⁴¹

³⁹ “Ethnic cleansing,” though not a formal legal term, has been defined as a purposeful policy by an ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas. In October 2012, Buddhist Arakanese political and religious leaders and ordinary citizens organized attacks against Rohingya and Kaman Muslim communities in Arakan State. The evidence indicates that they intended to drive Muslims from the state or at least relocate them from areas in which they had been residing – particularly from areas shared with the majority Buddhist population. Rohingya men, women, and children were killed, some were buried in mass graves, and their villages and neighborhoods were razed. In many cases the state security forces stood aside during attacks or directly supported the assailants. The Burmese government has taken no serious action since this violence. For more information, see: Thailand: Protect Rohingya Boat Children, Human Rights Watch news release, January 6, 2014, <http://www.hrw.org/news/2014/01/06/thailand-protect-rohingya-boat-children>; Human Rights Watch, *All You Can Do is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State*, April 2013.

⁴⁰ “Thailand: Protect Rohingya Boat Children,” Human Rights Watch news release, January 6, 2014, <http://www.hrw.org/news/2014/01/06/thailand-protect-rohingya-boat-children>.

⁴¹ UNHCR helps resettle recognized refugees from Thailand and other refugee-receiving countries to third countries when it is the only safe and viable durable solution available. Only a small number of third countries welcome refugees. Any refugee

Saleem and Shandana P., a Pakistani couple seeking asylum, were arrested early in the morning in February 2011. “The police came and did rounds,” Saleem said. “They came in three or four cars. They knocked on our door [of the apartment they shared with other asylum seekers]. They took us to the police station.” Saleem and Shandana were taken to the Bangkok IDC and detained indefinitely.⁴²

Refugees and asylum seekers outside detention live in fear of arrest and extended detention. Suvik P., a Sri Lankan asylum seeker living in hiding in Bangkok with his wife and 3-year-old son, said he rarely travels outside his apartment: “If I was alone, I’d be ready to take the risk, but I can’t now because I’m with my son... If we don’t want to go back [to Sri Lanka] we’d have to stay in the IDC for the rest of our lives.”⁴³

Nimal P., another Sri Lankan asylum seeker living in Bangkok, echoed this sentiment: “If I’m arrested, my son [who is 6 years old] will go to the IDC [with me]. I fear that even just when I go to the market and come back.”⁴⁴

Thai authorities have limited the role of UNHCR in Thailand, severely restricting the organization’s ability to protect refugees, including children, from arrest or detention. UNHCR is not allowed to conduct refugee status determinations for Burmese, Lao Hmong, or North Koreans.⁴⁵ For individuals from other countries, UNHCR attempts to process refugee status determination requests and resettle to third countries refugees who qualify and for whom there are available places. UNHCR also issues “Asylum Seeker Certificates” for asylum seekers from other countries that say the bearer is a “Person of Concern” to UNHCR. However, Thai authorities often refuse to recognize these certificates, meaning they provide scant protection when police arrest people.⁴⁶

interested in resettlement can apply to UNHCR. UNHCR, rather than the refugees, decides the country to which each case is submitted, and that country decides whether to accept the refugee for resettlement. For more information, see: “Resettlement,” UNHCR, <http://www.unhcr.org/pages/4a16b1676.html>; “Third Country Refugee Resettlement Information,” UNHCR, <http://reliefweb.int/report/nepal/third-country-refugee-resettlement-information-refugees-bhutan-living-nepal>.

⁴² Human Rights Watch interview with Saleem P., Bangkok, July 15, 2013.

⁴³ Human Rights Watch interview with Suvik P., Bangkok, July 14, 2013.

⁴⁴ Human Rights Watch interview with Nimal P., Bangkok, July 18, 2013.

⁴⁵ Human Rights Watch, *Ad Hoc and Inadequate*, p. 87.

⁴⁶ Human Rights Watch, *Ad Hoc and Inadequate*, p. 7.

Many refugees and asylum seekers in Bangkok complain about the lengthy waiting periods for UNHCR refugee status determination interviews, for UNHCR to report back on the results of the interviews, and for the appeals process to run its course. Even once UNHCR recognizes a person as a refugee, it can take years to be resettled, and only a fraction of refugees will qualify for the limited numbers of resettlement places. These delays can leave refugees and asylum seekers more vulnerable to arrest and detention.⁴⁷ While UNHCR is able to move the procedures slightly faster for people in indefinite detention, a number of refugees and asylum seekers still languish for months or years in IDCs before their cases are fully processed.

People in Thailand who have fled conditions of conflict or persecution are refugees in fact (so-called *de facto* refugees) even if Thai officials have not recognized them as refugees under the law or allowed UNHCR to do so.⁴⁸ The absence of a legal framework for refugee status recognition does not mean that these people should be denied protections owed to refugees, including protection from detention.

⁴⁷ Human Rights Watch, *Ad Hoc and Inadequate*, p. 7.

⁴⁸ Human Rights Watch, *Ad Hoc and Inadequate*.

II. Immigration Detention of Children

“My [five-year-old] nephew asked, ‘How long will I stay?’ He asked, ‘Will I live the rest of my life here?’ I didn’t know what to say.”⁴⁹

- Yanaal N., indefinitely detained with family in the Bangkok IDC for approximately six months in 2011

Migrant children—both children in families and unaccompanied children—are arbitrarily detained in squalid detention facilities in Thailand. Authorities routinely detain children from neighboring countries (Burma, Cambodia, and Laos) for relatively short periods that can range from a few days to a few weeks, while children from countries that do not border Thailand can be held for much longer periods.⁵⁰ Children of refugees and asylum seekers can be held for years. Migrants, including children, are typically detained without judicial review or bail, access to lawyers, or any way to challenge their detention. Such indefinite detention without recourse to judicial review amounts to arbitrary detention prohibited under international law.

Some IDCs, such as in Bangkok or those in towns nearer the country’s borders, are more heavily used than others. The Bangkok Immigration Detention Center (IDC) is the location for most of the long-term detainees. However, some interviewees described detainees held for months in IDCs in other parts of the country, including in Chiang Mai, Ranong, and Phang Nga.

⁴⁹ Human Rights Watch interview with Yanaal N., Bangkok, July 15, 2013.

⁵⁰ Human Rights Watch, *Ad Hoc and Inadequate*, p. 6.



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Arbitrary and Indefinite Detention of Children

Thailand routinely detains migrant children and their families without providing information on length of detention. Human Rights Watch asked, among others, the Office of the Prime Minister and the Immigration Division for details on the numbers of migrants detained, the length of detention, and the demographic details of the detainees, but the government did not provide this information. However, according to information collected from an international organization, approximately 100 children per year are detained on a long-term basis (that is, for a period of longer than one month).⁵¹ Meanwhile, at least 4,000 children are thought to move through the immigration detention system each year for shorter periods (days or weeks).⁵²

The average length of stay for refugees and asylum seekers was 298 days between 2008 and 2012.⁵³ This figure does not include migrants who do not make asylum claims. Staff with Jesuit Refugee Service (JRS), which provides assistance to some detainees, informed Human Rights Watch in 2011 that there were Sri Lankan refugees in the Bangkok IDC who had been detained for four to five years.⁵⁴

Not only does the Thai government fail to inform detainees of the length of detention, their policies mean some groups are held without any prospect of release. Refugees—who by definition fear returning home—and migrants from distant countries who cannot afford to pay their way home have no way to get out of detention. Ali A. was an Ahmadi asylum seeker who fled Pakistan in a group with several children.⁵⁵ “We left Pakistan because we were afraid of prison,” he said. “But in the IDC in Thailand, we stayed two years... We didn’t see the moon for two years.”⁵⁶

⁵¹ Data was provided to Human Rights Watch by an international organization on the condition that we do not cite its name.

⁵² Data was provided to Human Rights Watch by an international organization on the condition that we do not cite its name.

⁵³ Email from UNHCR to Human Rights Watch, June 14, 2012.

⁵⁴ Human Rights Watch interview, JRS staff, Bangkok, June 23, 2011.

⁵⁵ Ahmadis are members of the Ahmadiyya community, a religious minority in Pakistan with an estimated two million members in Pakistan. At least 87 Ahmadis, including children, were charged under various provisions of the country’s Blasphemy Law in 2009. Many face violence and persecution in Pakistan. As a result, thousands of Ahmadis have fled Pakistan to seek asylum. For more information, see: Pakistan: Massacre of Minority Ahmadis, Human Rights Watch news release, June 1, 2010, <http://www.hrw.org/news/2010/06/01/pakistan-massacre-minority-ahmadis>.

⁵⁶ Human Rights Watch interview with Ali A., [Location withheld], July 15, 2013.

Amjad P., an Ahmadi refugee detained with his wife and three sons in the Bangkok IDC from December 2010 until June 2011, said that the indefinite nature of their detention was particularly troubling: “There was no timeframe in detention. We could be there forever until someone would take us for third country resettlement.” Amjad and his family were ultimately released through a trial bail program (discussed in Chapter IV, below).

Parents worried about the impact of indefinite detention on their children. Cindy Y. and Doug Y.’s mother said, “I worried about the long time we were in the IDC... I didn’t know what their future would be. Inside they had nothing, we were losing all hope.”⁵⁷

Though the majority of our interviewees who were held indefinitely for long periods were detained in the Bangkok IDC, Human Rights Watch also received reports of indefinite detention for months or longer in the IDCs in Chiang Mai, Phang Nga, and Ranong. Most of the interviewees held for long periods were refugees or asylum seekers who feared persecution if they were to leave the IDCs and go back to their country of origin.

Some detainees are held for months or years in the IDCs because the Thai authorities rarely deport people at the government’s expense to countries that do not border Thailand. Instead, they hold them indefinitely until their family members can provide plane tickets for them to deport themselves. Migrants without financial resources are faced with very long periods of detention.⁵⁸ “People couldn’t afford to pay their way out,” said Leander P., an American who overstayed his tourist visa, who was held in a cell in the Bangkok IDC with around 80 long-term detainees. “It was a modern-day debtor’s prison. I think that’s just wrong.”⁵⁹

Arrest and detention of non-citizens, including children, is regulated by the 2009 Immigration Act, the 2008 Alien Employment Act, and official orders.⁶⁰ Sections 19 and 20 of the Immigration Act provide broad discretionary powers for detention, under which “competent officials” have the authority to detain non-citizens. There is no legal limit to

⁵⁷ Human Rights Watch interview with Linda Y., [location withheld to protect confidentiality], July 3, 2013.

⁵⁸ Human Rights Watch, *Ad Hoc and Inadequate*, p. 6.

⁵⁹ Human Rights Watch telephone interview with Leander P., September 25, 2013. Leander was held in the IDC for overstaying a tourist visa.

⁶⁰ Mekong Migration Network, *No Choice in the Matter: Migrants’ Experiences of Arrest, Detention and Deportation*, July 2013, p. 26.

the length of detention.⁶¹ Under the Alien Employment Act, a migrant's case may be processed formally through the court system, in which case the migrant could be subject to a period of imprisonment of up to five years and a fine ranging from 2,000 to 100,000 baht (approximately US\$66 to US\$3,300).⁶²

In 2010, the office of the prime minister issued an order “regarding the suppression, prosecution and arrest of migrants working underground.”⁶³ This order provides for “special cooperation” on immigration enforcement between the Ministries of Labor and the Interior, as well as the Royal Thai Police Force, the Army, and the Navy. The Mekong Migration Network asserted in a 2013 study that cooperation between the police and armed forces in immigration enforcement “lacks operational transparency and has led to concerns about the treatment of migrants in detention,” noting that after the order was issued, there was an increase in harsh crackdowns on irregular migrants.⁶⁴

Non-national children are subject to the same arrest and detention laws as adults. In 2013, the National Subcommittee on Statelessness, Migration and Displaced Persons issued a report on the rights of children in immigration detention. They found that Thai law unnecessarily criminalizes children by failing to differentiate between children and adults when arresting and detaining irregular migrants.⁶⁵

Under the 2008 Anti-Trafficking in Persons Act, if the arresting officials identify an adult or a child as a victim of trafficking, they may refer that person to a government shelter instead of sending them to detention.⁶⁶ There are no such exemptions for migrant children who are not victims of trafficking.

In 2013, the Thai government used a new form of indefinite detention: keeping women and children in closed shelters from which they were not permitted to leave. And in a break from previous practice, Thailand permitted 2,055 Rohingya migrants to stay in the country

⁶¹ Ibid.

⁶² Ibid.

⁶³ Royal Thai Government, Order of the Prime Minister's Office No. 125/2553, Re: Establishment of a Special Centre to Suppress, Arrest and Prosecute Alien Workers Who Are Working Underground, June 2, 2010.

⁶⁴ Mekong Migration Network, No Choice in the Matter: Migrants' Experiences of Arrest, Detention and Deportation, July 2013, p. 27.

⁶⁵ “Hidden Migrant Children – Is the Government prepared to look after them?” *Thai Rath* (Bangkok), September 28, 2013, <https://www.thairath.co.th/content/eco/372506> (accessed January 15, 2014).

⁶⁶ Anti-Trafficking in Persons Act B.E. 2551 (2008), section 29.

in 2013 under “temporary protection” status. Despite the fact that Rohingya are an oppressed Muslim minority in Burma and have been subject to considerable targeted violence in recent years, Thailand treated the group as “illegal migrants” and did not offer them the chance to claim protection as refugees or consider treating them as stateless persons under international law. The government separated families, holding adult men and some male children, including unaccompanied boys, indefinitely in immigration detention centers,⁶⁷ and detaining others, primarily women and younger children, in closed shelters run by the Ministry of Social Development and Human Security (MSDHS).⁶⁸

All Rohingya at government shelters interviewed by Human Rights Watch said they were not permitted to leave the facilities. Service providers, including Thai government officials, confirmed this. The Thai government made no plans to regularize detainees’ immigration status. This left the Rohingya forcibly confined in shelters they were not permitted to leave.⁶⁹

While hundreds of children such as Rohingya are indefinitely detained for months or more, much larger numbers of children are held typically days or weeks, again without a predetermined time of detention and without recourse to judicial review. An international organization estimates that at least 2,500 children from Cambodia, Burma, and Laos pass through the Bangkok IDC each year before being summarily deported.⁷⁰ Many other IDCs around the country also detain children from neighboring countries for short periods, including IDCs in Samut Sakhon, Ranong, Chiang Rai, Mae Sot, and Ubon Ratchathani.

Adults and children are also arbitrarily detained in police lock-ups. Mai M., an ethnic Mon girl from Burma without paperwork in Thailand, was arrested in the outskirts of Bangkok around December 2011, when she was 15 years old. She said she was taken to a police station with her mother, uncle, and cousin, and held for 15 days, without seeing a judge or going to court, before police took her and 30 other migrants to the Burmese border by truck to be deported.⁷¹

⁶⁷ Thailand: End Inhumane Detention of Rohingya, Human Rights Watch news release, June 4, 2013, <http://www.hrw.org/news/2013/06/03/thailand-end-inhumane-detention-rohingya>.

⁶⁸ “Thailand: Protect Rohingya Boat Children,” Human Rights Watch news release, January 6, 2014, <http://www.hrw.org/news/2014/01/06/thailand-protect-rohingya-boat-children>.

⁶⁹ Ibid.

⁷⁰ Data was provided to Human Rights Watch by an international organization on the condition that we do not cite its name.

⁷¹ Human Rights Watch interview with Mai M., Samut Sakhon, July 28, 2013.

Human Rights Watch documented cases of unaccompanied migrant children who were detained,⁷² despite international prohibitions on detention of such children.⁷³ Htee Yaw, a Burmese migrant living and working in Chiang Mai, reported that police arrested and detained his 17-year-old brother for several weeks, without any family members, in December 2010. He went to the police station and pleaded for his release: “They knew he was 17, my brother told them, I told them.... He was arrested by the police with handcuffs, even though he was young and had committed no crime.”⁷⁴ Htee Yaw said he had to pay a bribe of 5,000 baht (\$167) to secure his brother’s release.⁷⁵

Very young children and infants, who are exceptionally vulnerable and in need of nurture and care, are nonetheless detained. Labaan T., a Somali refugee and father who had been detained for two years and eight months at the time of the interview in the Bangkok IDC in 2011, emphasized just how hard it was for his young son to develop behind bars. “It is absolutely difficult for a boy of 3 years to grow up amid 50-plus grown-up men in a locked room and only allowed to go out for a short period of less than two hours in the sunshine after three days.”⁷⁶

Under Thailand’s immigration law, any migrant who enters the country without proper documentation will be regarded as an illegal immigrant and may be subject to detention awaiting deportation. Detention is permissible until the authorities execute the deportation, and where they cannot deport, indefinitely. Thailand’s laws do not give migrants or asylum seekers opportunities to challenge their detention, nor do they provide any way for them to know when they will be released.

International Law Prohibiting Detention of Migrant Children

Thailand deprives children of their liberty as a routine response to irregular entry, rather than as a measure of last resort. Yet international law places strict limits on the exceptional use of detention of children. The Convention on the Rights of the Child (CRC),

⁷² See, e.g., Human Rights Watch interview with Ma Swe, Chiang Mai, July 12, 2013 (Ma Swe was arrested in 2005; she reports that she was 25 and was held at Chiang Mai Women’s Prison for several nights with her 17-year-old female friend); Human Rights Watch group interview with Kah S., Chiang Mai, July 13, 2013.

⁷³ Committee on the Rights of the Child, General Comment No. 6, para. 61.

⁷⁴ Human Rights Watch interview with Htee Yaw, Chiang Mai, July 11, 2013.

⁷⁵ Ibid.

⁷⁶ Handwritten note and Human Rights Watch interview with Labaan T., Bangkok IDC June 24, 2011 (note on file with Human Rights Watch). Interviewed in the presence of a local NGO service provider.

to which Thailand is party, states that detention of any type should only be used against children as “a measure of last resort and for the shortest appropriate period of time.”⁷⁷

International law indicates that children should not be detained for reasons related to their migration status. In February 2013, the Committee on the Rights of the Child, the body of independent experts that interprets the CRC, urged states to “expeditiously and completely cease the detention of children on the basis of their immigration status,” concluding that such detention is never in the child’s best interest.⁷⁸ In the interim, the committee stated, while immigration detention of children remains, governments should impose strict time limits to the child’s detention in order to minimize the loss of education and impact on mental health.⁷⁹

Deprivation of liberty has a negative effect on children’s capacity to realize various fundamental rights enumerated in the CRC, including the rights to education, health, and family unity.⁸⁰

International law delineates additional protection from detention for refugee and asylum-seeking children. Refugees—who are lawfully present in a country—should not be detained.⁸¹ UNHCR’s Guidelines on Applicable Criteria and Standards Relating to the Detention state that “[a]s a general rule, asylum seekers should not be detained.”⁸² In the exceptional cases where asylum-seeking children are detained, UNHCR emphasizes that this detention must conform to the restrictive parameters expressed in the CRC.⁸³ The CRC (as well as UNHCR’s specific guidelines for asylum-seeking children) emphasizes that

⁷⁷ CRC, art. 37.

⁷⁸ UN Committee on the Rights of the Child, Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration, February 2013, www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012CRC_DGD-Childrens_Rights_InternationalMigration.pdf (accessed July 15, 2013) para 78.

⁷⁹ *Ibid.*

⁸⁰ See CRC, arts. 10, 24, and 28.

⁸¹ Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954, art. 26. Although Thailand is not a party to the 1951 Refugee Convention or its 1967 Protocol, it is a member of UNHCR’s Executive Committee, which is open to states “with a demonstrated interest in, and devotion to, the solution of the refugee problem.” (United Nations Economic and Social Council, Establishment of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, E/RES/672 (XXV) (1958), <http://www.unhcr.org/3ae69eecc.html> (accessed January 31, 2014)). As such, it should demonstrate respect for the Convention and UNHCR guidelines.

⁸² UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, www.unhcr.org/505b10ee9.html (accessed January 31, 2014).

⁸³ *Ibid.*

immigration detention of children must have at its core an “ethic of care,” prioritizing the best interest of the child above immigration enforcement.⁸⁴

Thailand’s indefinite detention regime, without the possibility of judicial review or remedy, amounts to arbitrary detention prohibited by international treaties to which Thailand is party. The International Covenant on Civil and Political Rights (ICCPR) provides: “No one shall be subjected to arbitrary arrest or detention.”⁸⁵ The CRC mandates that all children deprived of their liberty (including children in immigration detention) have the right to “prompt access to legal and other appropriate assistance” and to challenge the legality of the deprivation of their liberty before a court.⁸⁶

The United Nations Working Group on Arbitrary Detention holds that a migrant or asylum seeker placed in detention “must be brought promptly before a judge or other authority.”⁸⁷ The Working Group’s mandate to investigate arbitrary deprivation of liberty includes “[w]hen asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy.”⁸⁸ UNHCR emphasizes that asylum seekers and refugees have the rights to liberty and freedom of movement and that detention must only be in accordance with and authorized by law.⁸⁹

⁸⁴ Ibid.

⁸⁵ International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, art. 9(1). Thailand ratified the ICCPR in 1996.

⁸⁶ CRC, article 37.

⁸⁷ In 1999, the UN Working Group on Arbitrary Detention developed criteria for determining whether the deprivation of liberty of migrants and asylum seekers is arbitrary. The principles mandate that a migrant or asylum seeker placed in custody “must be brought promptly before a judge or other authority,” and that decisions regarding detention must be founded on criteria established by law. Moreover, migrants and asylum seekers in detention must be notified in writing—in a language they understand—of the grounds for detention and that remedy may be sought from a judicial authority empowered to decide promptly on the lawfulness of detention and to order release if appropriate. UN Commission on Human Rights, Report of the Working Group on Arbitrary Detention, E/CN.4/2000/4, December 28, 1999, Annex II, Deliberation No. 5, Situation Regarding Immigrants and Asylum Seekers.

⁸⁸ UN Commission on Human Rights, Report of the Working Group on Arbitrary Detention, A/HRC/16/47, January 17, 2011, Annex III, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-47.pdf> (accessed January 31, 2014).

⁸⁹ UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention 2012, <http://www.unhcr.org/refworld/docid/503489533b8.html> (accessed January 31, 2014), Guidelines 2 and 3.

II. Impact of Immigration Detention on Children

It is unfortunate that innocent children should be denied a reasonable upbringing to which they are entitled. They neither comprehend the circumstances nor had any choice to make.

- Labaan T., a Somali refugee indefinitely detained with his two children, Bangkok IDC, June 2014.

Thailand's use of immigration detention has deeply harmed children's development. Detention is not in the child's best interest as it causes lasting harm, in part by impeding children's capacity to attain the highest attainable standard of health. Exceptionally vulnerable and at key developmental points in their lives, children in immigration detention risk psychological trauma, poor physical health, and setbacks in their educational and social development.

Risk of Psychological Harm

Indefinite detention can have a devastating effect on migrants' mental health. Children, due to their ongoing development, can suffer severe mental health problems. Young people have fewer psychological resources than adults to help them manage the stress, anxiety, and poor conditions they experience in immigration detention. For many children in immigration detention, developmental immaturity is compounded by histories of trauma at home and during flight.

There is a considerable body of scientific literature describing psychological harm linked to immigration detention. In 2009, the *British Journal of Psychiatry* published a systematic review of 10 studies investigating the impact of immigration detention on the mental health of children, adolescents, and adults. The review found that all studies reported "high levels of mental health problems in detainees," including anxiety, depression, self-harm, and suicidal ideation, and that "time in detention was positively associated with severity of distress."⁹⁰

⁹⁰ Katy Robjant et al, "Mental health implications of detaining asylum seekers: systematic review," *British Journal of Psychiatry*, vol. 194 (2009), pp. 306-312.

In 2003, the medical journal *The Lancet* published research, based on a group of 70 asylum seekers aged 15 to 52 years old detained in the US, finding that “nearly all” the detainees in the study had “clinically significant symptoms of anxiety, depression, or post-traumatic stress disorder, which worsened with time in detention and improved on release.”⁹¹ The authors concluded that their findings “suggest detention of asylum seekers exacerbates psychological symptoms.”⁹²

Studies in the United Kingdom and Australia demonstrated deterioration in mental health linked to immigration detention. A 2009 study of immigration detention in the UK suggested similarly high rates of mental illness: after a median of 30 days of detention, 76 percent of detained adult asylum seekers in this study were clinically depressed, compared with 26 percent of a non-detained comparison sample.⁹³ In Australia, a 2006 study of refugees who had been detained found that immigration detention was linked to risk of ongoing Post Traumatic Stress Disorder (PTSD), depression, and mental-health related disability, even after release, and that “longer detention was associated with more severe mental disturbance.”⁹⁴

The 2009 *British Journal of Psychiatry* systematic review emphasized that children demonstrated additional problems compared to adults, while also noting that the sample sizes made the reliability of data problematic. Problems observed include separation anxiety, sleep disturbances (including nightmares, night terror, and sleep walking), impaired cognitive development, and, less often, mutism and refusal to eat or drink.⁹⁵

A 2004 Australian study cited in the systematic review found that children regularly reported anxiety regarding educational delays and a sense of shame. Eighty percent of the younger children (below 6 years old) had developmental delays or emotional disturbances. All 10 of the older children in the study (aged between 6 and 17 years) met the clinical

⁹¹ Dr. Allan S. Keller et al, “Mental health of detained asylum seekers,” *The Lancet*, vol. 362, issue 9397 (November 22, 2003), pp. 1721-1723.

⁹² Ibid.

⁹³ K. Robjant et al, “Psychological distress amongst immigration detainees: a cross-sectional questionnaire study,” *British Journal of Clinical Psychology*, vol. 48 issue 3 (September 2009), pp. 275-86.

⁹⁴ Zachary Steel et al, “Impact of immigration detention and temporary protection on the mental health of refugees,” *British Journal of Psychiatry*, vol. 188 (2006), pp. 58-64.

⁹⁵ Katy Robjant et al, “Mental health implications of detaining asylum seekers: systematic review,” *British Journal of Psychiatry*, vol 194 (2009), pp. 306-312.

criteria for PTSD, all 10 had major depression, and all expressed suicidal ideation. Eight of the older children had engaged in self-harm.⁹⁶

According to a 2009 study in the UK that conducted a psychological assessment of 11 children held in immigration detention, all 11 reported symptoms of depression and anxiety; sleep problems, poor appetite, and behavioral difficulties were common.⁹⁷ A 2011 paper examining the impact of detention of asylum-seeking and refugee children in Canada found that “the preliminary results of nearly 20 in-depth interviews with children and families are in keeping with international medical literature: detention is highly distressing for children and may have long-term consequences.”⁹⁸

During research for this report, children and their parents described to Human Rights Watch a variety of mental health problems associated with detention, including depression, sleep problems, isolation, and detachment. Doug Y. was an active 6-year-old boy when he entered detention, but he became despondent, according to his sister: “He was just sitting and lying down.”⁹⁹ Doug’s mother said he “wasn’t talking [when they were in the IDC]. It’s hard on the children, we were losing all hope.”¹⁰⁰

Cindy Y. was 9 when she entered immigration detention, and stayed for three years. “The worst part was that you were trapped and stuck,” she said. “You couldn’t go anywhere. You look to the left, it was always the same. To the right, always the same. And in front of you, just lots and lots of people, so many people. I would look outside and see people walking around the neighborhood, and I would hope that would be me.”¹⁰¹

Adults who spoke to Human Rights Watch who had been held for longer periods noted a negative impact on mental well-being. Abid A., an adult held for two years in the Bangkok IDC, said that by the end, his “mind was not working properly. If you stay in one room

⁹⁶ Sarah Mares and Jon Jureidini, “Psychiatric assessment of children and families in immigration detention: clinical, administrative and ethical issues,” *Australia and New Zealand Journal of Public Health*, vol. 28 issue 6 (December 2004), pp. 520-6.

⁹⁷ Ann Lorek et al., “The mental and physical health difficulties of children held within a British immigration detention center: a pilot study,” *Child Abuse and Neglect*, vol. 33 issue 9 (September 2009), pp. 573-585.

⁹⁸ Rachel Kronik et al., “Mandatory Detention of Refugee Children: A Public Health Issue?,” *Paediatric Child Health*, vol. 16 issue 8 (October 2011), pp. 65-67.

⁹⁹ Human Rights Watch interview with Cindy Y., [location withheld to protect confidentiality], July 3, 2013.

¹⁰⁰ Human Rights Watch interview with Linda Y., [location withheld to protect confidentiality], July 3, 2013.

¹⁰¹ Human Rights Watch interview with Cindy Y. [location withheld to protect confidentiality], July 3, 2013.

without going outside, without contact, your mind gets confused.”¹⁰² Leander P., the American held in the IDC in 2012, was detained alongside a Swedish detainee who Leander said had been there for several years. “He went into the bathroom and kept banging his head on the metal pipe. He looked totally beat, exhausted, like he’d given up. People had to pull him away from the pipe. I think he was trying to commit suicide.”¹⁰³

Interviewees said that there were very few resources available for people with mental health problems. Leander described an elderly British man in his cell who was suffering from what Leander believed was dementia. “He never went down to the doctor while I was there... There’s no way he should have been there. He thought I was a woman, he had real dementia problems. He absolutely should not have been there. He was completely confused.”¹⁰⁴

Some children remembered vividly the trauma of detention. Veata S. was 10 when we spoke with her. She described in detail her detention in the Bangkok IDC two years earlier: “They [the immigration police] had bats, they would slap people in the face... I’m scared now, I’m scared they’re going to beat me, with the bats they have.”¹⁰⁵

Adults who spoke to Human Rights Watch worried that children in immigration detention started to see detention as a normal condition. Ali A., who was detained in the Bangkok IDC for two years, said:

Some babies, if they’re born there or stay there for one or two years, they think this is life. They think this is normal... One man in our room had a child... who came in as an infant. That girl stayed four years. She will think “This is my life, this is everything.” If your children go live in the IDC their emotions will die.¹⁰⁶

¹⁰² Human Rights Watch interview with Abid A., [Location withheld to protect confidentiality], July 15, 2013.

¹⁰³ Human Rights Watch telephone interview with Leander P., September 25, 2013.

¹⁰⁴ Ibid.

¹⁰⁵ Human Rights Watch interview with Veata S., Bangkok, July 10, 2013.

¹⁰⁶ Human Rights Watch interview with Ali A., [Location withheld XX], July 15, 2013.

Risk of Harm to Physical Health

Detention of children can cause serious physical harm and exposes them to a range of potential health risks. Immigration detention facilities are rarely equipped to provide appropriate care for children's physical health. Thailand's IDCs are not designed to hold families or young children, or for that matter, anyone, for a lengthy period. Lack of exercise and adequate nutrition particularly affect children's growing bodies. Our interviewees indicated instances of children falling sick in detention.

Lack of Adequate Exercise

One of the defining experiences for children held in immigration detention is lack of adequate recreation space, exercise, and fresh air.

Many of our child interviewees held in the Bangkok IDC, for instance, were either unable to go to the recreation area, or only allowed to go there approximately once a week for one or two hours. Cindy Y., who was 9 when she entered the IDC, spent the vast majority of the time confined to an overcrowded cell, barely walking. "When I first got out, it was hard to run," she said. "I got... cramps. But I kept at it, and now I can run."¹⁰⁷

The recreation space itself was crowded and inappropriate for children. Doug Y. was 6 when he entered the Bangkok IDC. "Football is my favorite thing," he told us. "But we couldn't play football in the IDC. Even in the recreation area, there wasn't space. If you kick a ball, you'd hit someone, or a little kid. And we only had a little ball."¹⁰⁸ Leander P., the American adult held in 2012, said, "People in the exercise area could be very aggressive."¹⁰⁹

Often children held for shorter periods are not allowed outside at all. Nhean P. said he had been arrested, detained in the Bangkok IDC, and deported back to Cambodia three times between the ages of 7 and 12. Each time, he was detained for a few nights or a week without being allowed out of his cell. He said, "We don't have a place to play outside [there]. We just eat and sleep, eat and sleep."¹¹⁰

¹⁰⁷ Human Rights Watch interview with Cindy Y. [location withheld to protect confidentiality], July 3, 2013.

¹⁰⁸ Human Rights Watch interview with Doug Y. [location withheld to protect confidentiality], July 3, 2013.

¹⁰⁹ Human Rights Watch telephone interview with Leander P., September 25, 2013.

¹¹⁰ Human Rights Watch interview with Nhean P., Bangkok, July 10, 2013.

Mai M. was 15 when she was held in a police station on the outskirts of Bangkok for 15 days in December 2011; she said the cell was “always very packed” and “we weren’t allowed to go outside, we were always in the same room.”¹¹¹

Many international and national public health organizations recommend that children engage in at least one hour or more of physical activity each day.¹¹² Children should engage in a combination of activities, such as vigorous aerobic activity like running or football; muscle-strengthening activity, such as gymnastics; and bone-strengthening activity, such as jumping rope.¹¹³

Lack of Adequate Nutrition

Children, who are physically growing and changing, need age-appropriate nutrition and care. Human Rights Watch found that authorities routinely failed to provide children in immigration detention with adequate nutrition appropriate for their physical development. Parents reported that they had to supplement their children’s diet with food purchased on the black market, using precious, dwindling resources.

Interviewees told Human Rights Watch about the poor quality and insufficient quantity of food provided to them. Cindy Y. turned 9 when she was held in the Chiang Mai IDC for three months. “We were just lying down all day, without enough to eat or drink.”¹¹⁴ In the Bangkok IDC, detainees were generally given food three times per day, but several detainees reported they were provided insufficient amounts of food and that they were often hungry. Arunny P. had been detained in the Bangkok IDC at least three times by the time we interviewed her at 10 years old, deported each time to Cambodia. “The food wasn’t good,” she said. “Just a little rice, I was not full.”¹¹⁵ “The food was only rice and soup,” said

¹¹¹ Human Rights Watch interview with Mai M., Samut Sakhon, July 28, 2013.

¹¹² See, e.g., World Health Organization, “Global recommendations on physical activity for health,” http://www.who.int/dietphysicalactivity/factsheet_recommendations/en/ (accessed January 20, 2014), p. 20; US Centers for Disease Control and Prevention, “How much physical activity do children need?” <http://www.cdc.gov/physicalactivity/everyone/guidelines/children.html> (accessed January 20, 2014); US Department of Health and Human Services, “Physical Activity Guidelines for Americans,” <http://www.health.gov/paguidelines/factsheetprof.aspx> (accessed January 20, 2014).

¹¹³ See, e.g., World Health Organization, “Global recommendations on physical activity for health,” http://www.who.int/dietphysicalactivity/factsheet_recommendations/en/ (accessed January 20, 2014), p. 20; US Centers for Disease Control and Prevention, “How much physical activity do children need?”, <http://www.cdc.gov/physicalactivity/everyone/guidelines/children.html> (accessed January 20, 2014).

¹¹⁴ Human Rights Watch interview with Cindy Y. [location withheld to protect confidentiality], July 3, 2013.

¹¹⁵ Human Rights Watch interview with Arunny P., Bangkok, July 10, 2013.

Saleem P., a Pakistani asylum seeker held in the Bangkok IDC with several boys in 2011. “Sometimes chicken [in the soup], but mostly bones.”¹¹⁶

Labaan T., a Somali refugee, was detained in 2011 in the Bangkok IDC in a cell with his 3-year-old son, while his wife and year-old child stayed in another cell. He worried about nutrition: “The diet for the boy [in my cell] consists of the same rice that everybody else eats. He needs fruits which are neither provided nor available for purchase.”¹¹⁷

Some detainees reported insufficient potable water. Abid A., an adult held for two years in the Bangkok IDC alongside refugee boys, said, “We didn’t have filtered water, we’d have to drink water from [the same sink as they used for] washing clothes. Sometimes they’d turn off the water for 15 to 18 hours.”¹¹⁸

Some interviewees reported concerns that the unsanitary conditions tainted the food. For instance, one interviewee said that in the Bangkok IDC, detainees washed their own food trays in the toilet areas, using the same water source as was used for the toilets themselves; the detainees used the same trays for the next meal without other opportunities to wash them.¹¹⁹

Some detainees reported supplementing their diet or that of their children by buying food and water from the outside. Peter X., a Chinese refugee who was detained in the Bangkok IDC with his parents, said people had to drink water from the wash area, “unless they buy bottles” at “five times the price” of shops in Bangkok.¹²⁰ Leander P. reported that it was possible to buy food, such as fresh chicken or noodles, from other detainees who were friendly with the guards, for a mark-up of about 50 percent on street prices.¹²¹

Parents struggled to ensure adequate and nutritious food for their children. For example, Mathy S., a Sri Lankan asylum seeker who was held in the IDC for two years with her four

¹¹⁶ Human Rights Watch interview with Saleem P., Bangkok, July 15, 2013.

¹¹⁷ Handwritten note and Human Rights Watch interview with Labaan T., Bangkok IDC, June 24, 2011 (note on file with Human Rights Watch). Interviewed in the presence of a local NGO service provider.

¹¹⁸ Human Rights Watch interview with Abid A., [Location withheld to protect confidentiality], July 15, 2013.

¹¹⁹ “Life in IDC: Written by an African refugee who was being resettled to the USA about his experiences in the Bangkok Immigration Detention Centre,” diary of Diederik O. (pseudonym), on file with Human Rights Watch.

¹²⁰ Human Rights Watch interview with Peter X., California, United States, September 25, 2013.

¹²¹ Human Rights Watch telephone interview with Leander P., August 30, 2013.

daughters, the youngest of whom was 8 when they were arrested, said, “I worried my girls would develop real health problems... I’d spend 500-600 baht (about US\$17-20) [each week] to buy food for the girls. It was hard to say no to what they needed.” Mathy had to scramble to find money: “We’d sell land in Sri Lanka and send the money to Thailand [so a family member] could buy things for us.”

Major governmental and intergovernmental authorities such as the Food and Agriculture Organization, the World Health Organization, the US Department of Agriculture, and the US National Institutes of Health, recommend a balanced diet for children of nutrient-dense foods, including vegetables, fruits, and cereals.¹²² Healthy food is essential for child development;¹²³ physical development, including bone development, requires particular nutrients to ensure healthy growth.¹²⁴ The UN Standard Minimum Rules for the Treatment of Prisoners mandate that prison officials ensure detainees regularly have food of “nutritional value adequate for health and strength, of wholesome quality and well prepared and served[,]” as well as adequate drinking water.¹²⁵

Poor Health and Insufficient Medical Care

Children’s right to the highest attainable standard of health is compromised by detention. Interviewees reported persistent medical problems due to detention and lack of access to care. Children and families in detention are entirely dependent on Thai authorities for medical care, yet interviewees reported insufficient access to medical services and inadequate treatment. Care for pregnant women and newborns was also lacking.

A number of studies indicate endemic health problems and lack of access to appropriate healthcare services in Thailand’s immigration detention facilities. The Thai National Subcommittee on Statelessness, Migration and Displaced Persons found in a 2013 study

¹²² See, e.g., Center for Nutrition Policy and Promotion, United States Department of Agriculture, “Dietary Guidelines for Americans,” 2012, <http://www.cnpp.usda.gov/dietaryguidelines.htm> (accessed January 20, 2014); Food and Agricultural Organization and World Health Organization, “Living well with HIV/AIDS: A manual on nutritional care and support for people living with HIV/AIDS,” 2002, <http://www.fao.org/docrep/005/y4168e/y4168e00.HTM>, pp. 13-18.

¹²³ World Health Organization, “Global strategy for infant and young child feeding,” 2003, http://www.who.int/nutrition/topics/global_strategy/en/ (accessed January 20, 2014), p. 5.

¹²⁴ Center for Nutrition Policy and Promotion, United States Department of Agriculture, “Dietary Guidelines for Americans,” 2012, <http://www.cnpp.usda.gov/dietaryguidelines.htm> (accessed January 20, 2014).

¹²⁵ United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, para. 20.

that children in immigration detention suffer from skin diseases, respiratory diseases, and malnutrition.¹²⁶ A World Health Organization-sponsored meeting noted low rates of tuberculosis screening in 2012 in the Bangkok IDC.¹²⁷ A 2012 paper in the Oxford Monitor of Forced Migration found that among 96 interviewees (one third of whom were children) who had been detained in the Bangkok IDC for at least several months in 2011, “everyone, especially the children, suffered physically” from detention conditions. Interviewees reported skin allergies, itching, asthma, and fever.¹²⁸

Interviewees for this report described poor general conditions that could lead to disease. Peter X., a Chinese refugee who was detained in the Bangkok IDC with his parents, said, “The biggest problem was the air quality. There was no ventilation. A quarter of the people in the room were smoking. The whole place, it was suffocating. I wore a mask but I still got sick after two to four days.”¹²⁹ Labaan T., a Somali refugee held with his 3-year-old son, said, “The room has 50 occupants, most of whom are smokers. The conditions are not hygienic for the boy. The room is hot and dirty which has caused the boy to be sick frequently.”¹³⁰

Interviewees also reported chronic health problems that were not resolved by medical care. Bhavani S., who was 8 years old when she entered the Bangkok IDC for two years and was held in a fetid cell, developed a persistent rash, according to her mother, Mathy.¹³¹ Mathy added that several of the other young children, including toddlers, developed a similar rash.¹³² Mathy consulted the nurse at the clinic in the Bangkok facility, but said that the rash persisted for years despite the prescribed medication.¹³³

¹²⁶ “Hidden Migrant Children – Is the Government prepared to look after them?” *Thai Rath* (Bangkok), September 28, 2013, <https://www.thairath.co.th/content/eco/372506> (accessed January 15, 2014).

¹²⁷ WHO, “Forum on international migration and health in Thailand: status and challenges to controlling TB,” Bangkok June 4-6, 2013.

¹²⁸ Louise Collewet, “Inhuman Detention Conditions in Bangkok?” *Oxford Monitor of Forced Migration*, vol. 2 issue 1 (June 2012), pp. 28-33.

¹²⁹ Human Rights Watch interview with Peter X., California, US, September 25, 2013.

¹³⁰ Handwritten note and Human Rights Watch interview with Labaan T., Bangkok IDC, June 24, 2011 (note on file with Human Rights Watch). Interviewed in the presence of a local NGO service provider.

¹³¹ Human Rights Watch group interview with Mathy S., Sunnyvale, California, September 26, 2013.

¹³² *Ibid.*

¹³³ *Ibid.*

Abid A., an adult who was held in the Bangkok IDC for two years, acquired sores on his legs. “It hurt so much I couldn’t walk or pray ... The nurse told me to keep clean. But how could I keep clean?”¹³⁴

Peter X. described an incident in which medical care was slow, despite serious illness:

[A 30-year old man in my cell] started having fits, like epilepsy ... He’d been in the cell, having fits, lying in his own puke, for hours. [Eventually, detainees and guards] put him outside the cell on a low bench and used a water hose.... Then he lay on that table. It was probably 10 hours before they took him outside the center for some treatment. The doctor never came, it was the nurse from the clinic who came, but no one else, no one with medical equipment. He was half naked, just in his boxers. He was unconscious, [both] in the cell and outside on the table.¹³⁵

Medical care for pregnant women and young infants was lacking. Saleem and Shandana P., Pakistani asylum-seekers, were expecting a baby when they were detained in the IDC for several months in 2011. Saleem said, “My wife... had no check-ups. I asked the guards four or five times for check-ups, but nothing.”¹³⁶ Shandana was enormously relieved when she and Saleem were released prior to her due date: “I saw one woman who was pregnant, in her last month, at the IDC. They took her [to a local hospital handcuffed] to deliver the baby.... I was scared it would be the same for me.”¹³⁷

Women were brought back to the IDC with their newborn infants a few days after giving birth. However, several interviewees complained that authorities made inadequate provisions for the most basic needs of young infants. Sithara P., a Sri Lankan asylum seeker, was held in the Bangkok IDC with her husband and three children for at least three years. Her youngest child was 10 months when they entered the facility. “We didn’t have diapers for the baby [in the IDC],” she said. “The baby would wake up soaked in urine.”¹³⁸

¹³⁴ Human Rights Watch interview with Abid A., [Location withheld to protect confidentiality], July 15, 2013.

¹³⁵ Human Rights Watch interview with Peter X., California, United States, September 25, 2013.

¹³⁶ Human Rights Watch interview with Saleem P., Bangkok, July 15, 2013.

¹³⁷ Human Rights Watch interview with Shandana P., Bangkok, July 15, 2013.

¹³⁸ Human Rights Watch interview with Sithara P., [location withheld to protect confidentiality], July 30, 2013.

Social and Developmental Harm

Children in immigration detention are denied the chance to realize rights central to their social, emotional, and educational development. They are frequently deprived of contact with their families, whether by separation into different cells in the same detention facility, or by family outside not being able to visit. Many children in immigration detention do not have sufficient access to education, or to services that would enrich their growth and allow them to fulfill their potential. Some refugee children who are resettled to third countries may encounter further difficulties integrating into a new life after years in detention.

Denial of Family Contact

Children held in Thailand's immigration detention facilities were routinely separated from family members and denied opportunities to see them. Mui, who runs a shelter for street children in Bangkok, commented on her years of experience working with Cambodian children who are deported through the Bangkok IDC: "If the children are big enough to play, they might be separated [from their parents]."¹³⁹ If children are housed in a different cell from one parent, they are not necessarily given any visitation opportunities.

A number of interviewees told Human Rights Watch that one of the most painful aspects of being detained for long periods was being separated from family members. Amjad P., an Ahmadi refugee who was detained in the Bangkok IDC from December 2010 until June 2011, said he was in one cell with his two older boys; his wife and youngest child were in another cell. "It was painful for us to be separated from our wives and children," he said of his own family and other Ahmadi asylum seekers in the same situation. "Our family life was destroyed."¹⁴⁰

Kah, a 17-year-old Burmese boy without paperwork, was detained for one month in Chiang Mai, northern Thailand, without his parents or another guardian, before being deported to Burma. He was kept in a filthy cell with about 50 men and one 5-year-old boy. The 5-year-old's mother, who was in a different cell and could only see her son for one hour every day, spent much of the rest of the time sitting by the cell door and calling his name. Meanwhile, Kah said of the distraught little boy, "We tried to make him laugh."¹⁴¹

¹³⁹ Human Rights Watch interview with Mui, Bangkok, July 10, 2013.

¹⁴⁰ Human Rights Watch interview Amjad P., Bangkok, June 21, 2011.

¹⁴¹ Human Rights Watch group interview with Kah S., Chiang Mai, July 13, 2013.

Our interviewees reported that children were visibly affected by these enforced separations. Yanaal N. was detained with his 5-year-old nephew, who he said struggled, wanting to see both his parents. “[My nephew] was with his mother for the first 10 or 12 days. Then he said he wanted to be with his father and me, so they moved him to our cell [where he couldn’t see his mother].” Yanaal’s nephew was periodically allowed to attend the IOM-run daycare center in the IDC. “After, [my nephew] would sneak up to his mother’s cell with his sister to wave ‘bye’ to his mother. If the guards saw this and caught him he would be in trouble.”¹⁴²

Without visitation opportunities arranged by immigration officers, many detainees were dependent on interventions from outside groups for visits to take place. When outsiders visit the Bangkok IDC, they can request to see a particular detainee (identified by their detention center registration number) and that detainee is brought to the visitors’ room. Volunteers from church or community service groups are able to coordinate their visits so family members can be brought to the room at the same time, and have the opportunity to see each other.

Dwight Turner, an American living in Bangkok who has volunteered at the IDC, described the loud, chaotic atmosphere during these visiting periods, which last for less than an hour. “There’s a fence that separates visitors and those visited, but at least families could meet and touch,” he said.¹⁴³ Without these coordinated visits from volunteer groups, families have few other chances to meet.

Denial of Adequate Education

Children in immigration detention typically have no meaningful access to education or to other enriching experiences. Yet these children are often held for weeks, months, or even years at a time when their education is crucial to their development. None of the children interviewed for this report described adequate schooling during their time in detention, and parents repeatedly cited the lack of education as a key concern.

¹⁴² Human Rights Watch interview with Yanaal N., Bangkok, July 15, 2013.

¹⁴³ Human Rights Watch interview with Dwight Turner [real name], July 10, 2013.

Mathy S. was detained for two years in the Bangkok IDC in the same cell as her four daughters. “When we were in Sri Lanka, the girls were healthy and had a good education,” she said. “The biggest problem [in the IDC]: I worried that my girls’ education stopped.”¹⁴⁴

Cindy Y. was held in various IDCs for three years, starting at age nine. When she was finally released, she was behind in school: “I missed some years, and now... I’m in younger classes. I feel ashamed that I’m the oldest and studying with the younger ones.”¹⁴⁵

Unlike most other immigration detention facilities, the Bangkok IDC does have a daycare center (run by IOM), which some children (typically longer-staying children) can attend. While the daycare center is a welcome break for children, it does not fulfill the Thai government’s obligation to provide education. The center has limited capacity, so children can only attend a few times per week, and less if the IDC is crowded and there are more children in detention.¹⁴⁶ Children from Laos, Cambodia, and Burma (who are typically detained for shorter periods) rarely, if ever, are allowed to go to the daycare center.

The National Subcommittee on Statelessness, Migration and Displaced Persons found in a 2013 study that children in immigration detention in Thailand are routinely denied education, and this puts Thailand in violation of its obligations under the Convention on the Rights of the Child.¹⁴⁷

¹⁴⁴ Human Rights Watch group interview with Mathy S., Sunnyvale, California, September 26, 2013.

¹⁴⁵ Human Rights Watch interview with Cindy Y., [location withheld to protect confidentiality], July 3, 2013.

¹⁴⁶ Human Rights Watch interview with Linda Y., [location withheld to protect confidentiality], July 3, 2013.

¹⁴⁷ “Hidden Migrant Children – Is the Government prepared to look after them?” *Thai Rath* (Bangkok), September 28, 2013, <https://www.thairath.co.th/content/eco/372506> (accessed January 15, 2014).

III. Abusive Conditions for Children in Immigration Detention

The Bible talks about hell. This is one part of hell.

- Sunil K., a Nepalese man detained in the Bangkok IDC, June 2011

Children, for whom the potential harm of immigration detention is great, have that harm magnified by the appalling conditions in Thailand's immigration detention facilities. Children and parents alike consistently reported horrendous conditions of detention—including severe overcrowding, putrid sanitation, and an atmosphere of violence—that fall far short of international standards.¹⁴⁸ The poor conditions of the facilities make it even less likely that detained children can grow and thrive.

Human Rights Watch was not allowed sufficient access to the Bangkok IDC—the facility that holds the majority of long-term detainees, as well as significant numbers of those detained for short periods—or to other facilities to make a first-hand assessment of conditions of detention. Nonetheless, detainees and former detainees gave consistent accounts of overcrowded, unhygienic, and sometimes violent conditions inappropriate and damaging for children.

The poor conditions stem in part from the fact that the IDCs were not built to house large numbers of detainees for long periods of time. The government has acknowledged this issue but has failed to address it. In 2011, Vijavat Isarabhakdi, director general of the Department of International Organizations in the Thai Ministry of Foreign Affairs, told Human Rights Watch: “We acknowledge that the IDCs were not built to house such large numbers.”¹⁴⁹

A second key reason for Thailand's abysmal detention conditions is that Thailand considers it the detainees' responsibility, rather than the government's, to provide for basic needs in detention. Thailand's immigration law requires that “the expense of detention shall be charged to the alien's account,”¹⁵⁰ in clear violation of international standards.¹⁵¹

¹⁴⁸ See generally, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

¹⁴⁹ Human Rights Watch interview with Vijavat Isarabhakdi, director general, Department of International Organizations, Ministry of Foreign Affairs, Bangkok, June 20, 2011.

¹⁵⁰ Immigration Act, B.E. 2522 (1979).

International law binding on Thailand prescribes appropriate treatment of detained children, as well as adults. The International Covenant on Civil and Political Rights (ICCPR) provides that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person,”¹⁵² while the Convention on the Rights of the Child (CRC) specifies that “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age.”¹⁵³

Thailand’s immigration detention facilities fail to meet minimum international standards. The UN Standard Minimum Rules for the Treatment of Prisoners set the international standard for minimally acceptable conditions for detention, which include basic standards of hygiene, provision of food, the separation of men and women, and children and adults, access to natural light and fresh air, and recreation.¹⁵⁴ UNHCR’s guidelines on detention of asylum seekers notes that states must adhere to UN standards on conditions of confinement, including by segregating children from unrelated adults where it is in their best interest, and by always providing education. Where children in families are subject to immigration detention, states should ensure that the child should not be separated from his or her parents against his or her will.¹⁵⁵

<http://www.unhcr.org/refworld/docid/46b2f9f42.html> (accessed January 30, 2014), section 54.

¹⁵¹ As no other detainees in Thailand, including ordinary criminals, are required to bear the costs of their detention, forcing immigration detainees, who by definition are non-Thai citizens, to do so is tantamount to discriminatory treatment. The committee that oversees the Convention for the Elimination of All Forms of Racial Discrimination, a treaty to which Thailand is party, notes that “any differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.” (Committee on the Elimination of Racial Discrimination, General Recommendation No. 30: Discrimination against Non Citizens, January 10, 2004; International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, GA Res. 2106, annex 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, acceded to by Thailand on January 28, 2003.) Under this test, singling out immigration detainees as the sole detainees who have to bear the costs of incarceration constitutes unlawful discrimination. (The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, reflects the consensus that differential treatment for migrants in detention is not acceptable. The Migrant Workers Convention provides that: “Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation”; and “if a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.” (International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Migrant Workers Convention), adopted December 18, 1990, G.A. Res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003 arts. 17(7) and (8)).

¹⁵² ICCPR, art. 10(1).

¹⁵³ CRC, art. 37(c).

¹⁵⁴ See generally, Standard Minimum Rules.

¹⁵⁵ UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, www.unhcr.org/505b10ee9.html (accessed January 31, 2014) para 52.

Abusive Conditions for Children in the Bangkok IDC

The first day I thought, wow, this is really where I have to stay? ... People have been here months and years.... If I had been standing at that door taking a picture, just looking at everyone lying down, body after body – it was an awful sight.

- Leander P., an American detained in the Bangkok IDC in 2012

The Bangkok IDC deals with thousands of children every year, including some 2,500 who are processed for deportation to neighboring countries. Generally the facility with the most detainees nationwide, the Bangkok IDC also hosts the vast majority of the long-term detainees, including around a hundred children as of October 2013. The government does grant some domestic and international nongovernmental organizations access to provide basic assistance, but this does not cover all needs.

The Bangkok IDC has large cells that are designed to hold around 80 people, but which, according to nearly all of our interviewees, are often overcrowded. Detention officials divide detainees by gender and by nationality, though there can be many nationalities grouped in one room. Long-term detainees described being held in the same cell as other long-term detainees, though they also describe short-term detainees joining them at particularly crowded times.

Failure to Separate Children from Non-Relative Adults

Children are typically held in the same room as one of their parents, with other unrelated adults, while unaccompanied children are held in cells with adults of their gender, in violation of international standards on detention.¹⁵⁶ The National Subcommittee on Statelessness, Migration and Displaced Persons found in 2013 that this practice puts Thailand in violation of its obligations under the Convention on the Rights of the Child.¹⁵⁷

According to the interviewees, younger children, including infants and nursing toddlers, tend to be in the same cell as their mother. Boys can be sent to live in the same room as

¹⁵⁶ CRC, art. 37(c); ICCPR, art. 10(b); Committee on the Rights of the Child, General Comment No. 6, para. 63.

¹⁵⁷ "Hidden Migrant Children – Is the Government prepared to look after them?" *Thai Rath* (Bangkok), September 28, 2013, <https://www.thairath.co.th/content/eco/372506> (accessed January 15, 2014).

their fathers at varying ages. One long-term detainee reported that boys were sent to the male room around 12 years of age.¹⁵⁸ Yet we also received reports of boys being separated from their mothers and sent to the male room as young as 2 years.¹⁵⁹

Whether unaccompanied or with a family member in their cell, children held with unrelated adults, who themselves are under the stress of detention, are exceptionally vulnerable to abuse and neglect. For instance, Amanthi S., a Sri Lankan refugee detained in a cell with her mother and three sisters, reported being afraid of a Russian detainee who, she said, “hit me – it was really scary.”¹⁶⁰

Degrading Treatment in Initial Holding Cells

Some detainees reported that when they initially entered the IDC, they were held in transit, or processing, cells for several days before being allocated more permanent space. These cells were hectic and inappropriate for children. Amanthi, who was 12 years old when she entered the IDC, described the initial large cell as “a big hall, with people with diseases.”¹⁶¹

Diederik O., a Ugandan refugee held in the IDC in 2010, described the initial holding cell. He slept in a small place on the tiled floor, with a “bright light that is never turned off just above my eyes.” The first day, “through the night, detainees were brought in and out, causing a few stirs as they lined them up, men, boys, women and girls, with guards shouting out sit down, line-up orders in Thai.”¹⁶² Diederik, who was awaiting resettlement to the United States, described groups of “women, girls and their children lined up and made to squat in lines and then stayed for about an hour before [the initial registration] process was over.” He added, “I did not really enjoy the sight of all this, people [were] treated like animals.”¹⁶³

Diederik described the deterioration in his cell’s conditions. With more than 100 people in his cell, including a boy he estimates was seven years old, he wrote in his diary, “We were full to the max ... packed in like sardines[.] I could ... just sleep in one position all night

¹⁵⁸ Human Rights Watch interview with Linda Y., [location withheld to protect confidentiality], July 3, 2013.

¹⁵⁹ Human Rights Watch interview with Abid A., [Location withheld to protect confidentiality], July 15, 2013.

¹⁶⁰ Human Rights Watch interview with Amanthi S., Sunnyvale, California, September 26, 2013.

¹⁶¹ Ibid.

¹⁶² “Life in IDC: Written by an African refugee who was being resettled to the USA about his experiences in the Bangkok Immigration Detention Centre,” diary of Diederik O. (pseudonym), on file with Human Rights Watch.

¹⁶³ “Life in IDC: Written by an African refugee who was being resettled to the USA about his experiences in the Bangkok Immigration Detention Centre,” diary of Diederik O. (pseudonym), on file with Human Rights Watch.

long.... Before dawn, then the detention cell ... was a sauna in itself, dripping with sweat, as I moved to and from the dirty stinky washroom to wet my body, shirt and face. [With] inmates packed over each other in an attempt to sleep ... it looked like a ... body dumping corner.”¹⁶⁴

Children in Overcrowded, Squalid Cells

Children barely had room to sleep or walk, let alone room to run or play, in cells they were held in for months or years. Cindy Y. was held in a women’s cell for three years starting at the age of nine. “There were so many people in the room, we slept sitting and leaning on each other,”¹⁶⁵ she said, while demonstrating that sleeping position with her younger brother. Nimal P., a Sri Lankan asylum seeker, was held in a cell for several months in 2013 with his seven-year-old son, with a varying population between 55 and 120 people. “At 120 [people] the boy can’t lie down,” he said. “There’s no room for him to play.”¹⁶⁶

According to the Mekong Migration Network (MMN), a regional coalition of NGOs that engaged in an extensive study of Thailand’s arrest and deportation practices in 2013, the Bangkok IDC has cells of different sizes, the smallest being approximately 12 meters by 8 meters, and the largest around 50 meters by 50 meters.¹⁶⁷ MMN estimates that at times there are 400 detainees held in a single cell.¹⁶⁸ Similarly, a 2012 study interviewing those held and released from the Bangkok IDC, cited interviews with women and girls asserting “300 to 400 persons had to stay in a room built for 40 to 50 persons.”¹⁶⁹

The World Health Organization, in the course of a study on tuberculosis in 2013, found there to be approximately 880 to 1,000 people detained in the Bangkok IDC, with approximately 3 square meters per person.¹⁷⁰ The International Committee of the Red Cross (ICRC) recommends at least 3.4 square meters per detainee (and 5.4 meters per detainee in newly constructed prisons).¹⁷¹

¹⁶⁴ Ibid.

¹⁶⁵ Human Rights Watch interview with Cindy Y., [location withheld to protect confidentiality], July 3, 2013.

¹⁶⁶ Human Rights Watch interview with Nimal P., Bangkok, July 30, 2013.

¹⁶⁷ Mekong Migration Network, “No Choice in the Matter: Migrants’ Experiences of Arrest, Detention and Deportation”, July 2013, p. 53.

¹⁶⁸ Ibid.

¹⁶⁹ Collewet, Louise, “Inhuman Detention Conditions in Bangkok?”, *Oxford Monitor of Forced Migration*, vol. 2 issue1 (2012), p. 29.

¹⁷⁰ WHO, iForum on international migration and health in Thailand: status and challenges to controlling TB, Bangkok (June 4-6, 2013), p. 36.

¹⁷¹ International Committee of the Red Cross (ICRC), *Water, sanitation, hygiene and habitat in prisons: Supplementary guidance*, (Geneva: ICRC, 2012), p. 35.

Ali A., a Pakistani asylum seeker who was detained for two years in the Bangkok IDC, said that “we’d have to hang our bags on strings because the room was full, there wasn’t space to keep them on the floor.”¹⁷² Abid A., who was detained alongside Ali, added, “The guards would cut our strings so the things would fall down about two times per month” to search for contraband or smuggled property.¹⁷³

Leander P. also described such conditions persisting in 2012: “When I got in there were 83 people listed in the room [I was assigned to]. That was really tight. There’s almost no way to walk around... If I rolled to the right, I’d lie on someone. If I rolled to the left I’d roll on someone else. I’d get elbowed all the time. I had to hang my bag by a string or use it as a pillow—there was no room anywhere else.”¹⁷⁴

Not only did children report that they had no room to sleep, they also reported that they frequently did not have mattresses or blankets. Arunny P., from Cambodia, had been detained at the Bangkok IDC three times by the time she was 10 years old. When describing the most recent time, she said, “We slept on tiles and had to sleep in rows all next to each other because there were lots of people.”¹⁷⁵ Veata S., a Cambodian girl, was eight years old when she was detained at the Bangkok IDC in 2011. She was held with her mother and younger sister in a cell where “we had nothing, we just slept on the floor, on the hard floor.”¹⁷⁶

Rosa H. stayed in the Bangkok IDC for almost two years with her friend Linda Y. and Linda’s two children. “We never had any mattresses,” she said. “They never gave us clothes.”¹⁷⁷ Linda added, “One winter, [a humanitarian NGO] gave blankets for everyone.”¹⁷⁸

Interviewees described appalling sanitation conditions, with limited water, filthy wash areas, tainted food, and insufficient numbers of toilets.

¹⁷² Human Rights Watch interview with Ali A., [Location withheld to protect confidentiality], July 15, 2013.

¹⁷³ Human Rights Watch interview with Abid A., [Location withheld to protect confidentiality], July 15, 2013.

¹⁷⁴ Human Rights Watch telephone interview with Leander P., August 30, 2013.

¹⁷⁵ Human Rights Watch interview with Arunny P., Bangkok, July 10, 2013.

¹⁷⁶ Human Rights Watch interview with Veata S., Bangkok, July 10, 2013.

¹⁷⁷ Human Rights Watch interview with Rosa H., [location withheld to protect confidentiality], July 3, 2013.

¹⁷⁸ Human Rights Watch interview with Linda Y., [location withheld to protect confidentiality], July 3, 2013.

Labaan T., a Somali refugee indefinitely detained with his three-year-old son in 2011, reported that the appalling conditions took their toll on his son's health. "He bathes in the same water as the rest of us in the room and sometimes there is no water at all."¹⁷⁹

Saleem P., a Pakistani Ahmadi asylum seeker held in a cell with children in 2011, reported that "the water would only run for four hours, during which so many people, 60 people, had to shower, do anything."¹⁸⁰ Sunil K., a Nepalese refugee, had been detained for three years and nine months when Human Rights Watch interviewed him in 2011. He said, "We also can't get hot water. We use a naked [electrical] wire to heat the water."¹⁸¹

Cindy Y., the girl held for three years starting at the age of nine, told us that her cell, shared with at least 40 other people, "smelled like a rubbish bin, like near a toilet. People smoked and I didn't like that... I'd put mint under my nose to block the smell."¹⁸² Veata, the Cambodian girl who was eight when she was last detained said, "The toilet was really bad, the smell was really bad."¹⁸³

Leander P. described the shower area in his cell as "awful". He said that of the three toilets—for approximately 80 people—one was "just a storage area, for cleaning stuff." One of the other two toilets was permanently clogged:

As a solution, someone had drilled a hole in the side, so what would have gone down just drained onto the floor.... After every meal you'd have to go into the bathroom to use the water and sponges there to clean your tray. If someone was in that toilet, there'd be shit in the water you'd wash your tray in.... The sponges were on the floor, in the shit. That was the only way the trays were washed.¹⁸⁴

¹⁷⁹ Handwritten note and Human Rights Watch interview with Labaan T., Bangkok IDC, June 24, 2011 (note on file with Human Rights Watch). Interviewed in the presence of a local NGO service provider.

¹⁸⁰ Human Rights Watch interview with Saleem P., Bangkok, July 15, 2013.

¹⁸¹ Human Rights Watch interview with Sunil K., Phlu Suan IDC, Bangkok, June 24, 2011. Interviewed in the presence of a local NGO service provider.

¹⁸² Human Rights Watch interview with Cindy Y., [location withheld to protect confidentiality], July 3, 2013.

¹⁸³ Human Rights Watch interview with Veata S., Bangkok, July 10, 2013.

¹⁸⁴ Human Rights Watch telephone interview with Leander P., August 30, 2013.

Peter X., who fled China aged 17 and was detained in the Bangkok IDC before being resettled to the US, said that “the whole cell’s covered in this cage, with an opening at the bottom. They’d slide food through the opening. I felt like they were feeding animals.”¹⁸⁵

Abid A., said, “There were many times some creatures.... Lots of cockroaches.”¹⁸⁶ Ali A. added that “there were some insects like lice that sucked blood. Anywhere we have hairs, they’d come and suck, and if the blankets weren’t clean, they’d live there.... It was itchy, itchy from the dirty blankets.”¹⁸⁷

The toll on children’s mental and physical health from being held in such appalling conditions is high. Detention is inherently problematic for the realization of children’s right to health.

Children Exposed to Violence

The Bangkok IDC appears to operate with an atmosphere of violence that renders the environment even more unsuitable for children. Interviewees repeatedly reported fights breaking out in the overcrowded cells; sometimes excessive force used by guards to break up those fights, including with batons; and occasionally young children physically hurt in the violence.

Children of all ages said that they were witness to episodes of violence, underscoring the unsafe and unhealthy environment of detention. The psychological harm of immigration detention is exacerbated by the stress of violence and fear of attack.

International law binding on Thailand prohibits corporal punishment and cruel, inhuman, and degrading treatment in detention facilities, whether criminal or civil.¹⁸⁸ Similar standards prohibit the use of force against children in detention except in exceptional circumstances to prevent self-injury, injury to others, and destruction of property.¹⁸⁹

¹⁸⁵ Human Rights Watch interview with Peter X., California, US, September 25, 2013.

¹⁸⁶ Human Rights Watch interview with Abid A., [Location withheld to protect confidentiality], July 15, 2013.

¹⁸⁷ Human Rights Watch interview with Ali A., [Location withheld], July 15, 2013.

¹⁸⁸ ICCPR art. 3; Standard Minimum Rules, art. 31.

¹⁸⁹ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rules for the Protection of Juveniles), adopted December 14, 1990, G.A. Res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990), art. 63.

Many interviewees described the Bangkok IDC as a loud and violent place. Even though Leander P. was an adult—25 years old—when he was detained, he still found the environment difficult: “I was really scared, when I first walked in. People were pounding on the walls, yelling at us.”¹⁹⁰

Interviewees such as Yanaal N., a Pakistani asylum seeker detained in the Bangkok IDC, described “fights every five or six days, with other prisoners.”¹⁹¹ Leander explained how guards would respond: “They’d hit people with sticks, the people in the fight... they’d punish people in the fight even if the fight was over.”¹⁹² Ali A. said, “The guards would hit with their hands, slap, and punch”¹⁹³ in addition to using batons.

This environment left children terrified. Cindy Y. was ten when she was taken to the Bangkok IDC and held there for almost two years. She said, “I saw people fighting and I was scared, I was scared of the guards. You know, they have sticks. What if they hit me? I’m really scared of fighting.”¹⁹⁴

One adult detainee described one particular incident witnessed by a ten-year-old girl detained with her: “Some Cambodian women were fighting.... [Six or seven] guards came in... they were beating the women with their sticks.... The guards hit [one woman] on the face. Her eye swelled up, all over that side of her face.”¹⁹⁵

Veata S., from Cambodia, was detained in the Bangkok IDC when she was eight years old. Two years later, when Human Rights Watch interviewed her, she vividly remembered a particular incident: “They [the guards] hit a woman who was pregnant. She was playing cards. I was with my mom, about to go to sleep. I heard a scream.”¹⁹⁶

Some children ceased to be afraid and started to see the guards’ violence as normal. Nhean P. said he had been detained in the Bangkok IDC, and deported back to Cambodia three

¹⁹⁰ Human Rights Watch telephone interview with Leander P., August 30, 2013.

¹⁹¹ Human Rights Watch interview with Yanaal N., Bangkok, July 15, 2013.

¹⁹² Human Rights Watch telephone interview with Leander P., August 30, 2013.

¹⁹³ Human Rights Watch interview with Ali A., [Location withheld], July 15, 2013.

¹⁹⁴ Human Rights Watch interview with Cindy Y., [location withheld to protect confidentiality], July 3, 2013.

¹⁹⁵ Human Rights Watch interview [name, location, and precise date withheld to protect confidentiality], July, 2013.

¹⁹⁶ Human Rights Watch interview with Veata S., Bangkok, July 10, 2013.

times between the ages of seven and twelve. He told us that “when someone does something wrong, the guards hit people. Like if those people fight... I think that’s normal.”¹⁹⁷

Human Rights Watch received some reports of children themselves receiving blows, including in one case from a guard. Veata said that a guard at the Bangkok IDC slapped her in the face when she was eight.¹⁹⁸ Arpana B., a 31-year-old Sri Lankan woman who was pregnant at the time of her detention in the Bangkok IDC in 2011 and who had a small daughter with her, told Human Rights Watch: “One of the detainees beat my daughter. He was crazy. There was no guard, no police to help us.”¹⁹⁹

The immigration detention system has no comprehensive regulations governing staff behavior, nor disciplinary or punitive measures for immigration staff who violate migrants’ rights.²⁰⁰ We requested, on multiple occasions, information from the Office of the Prime Minister, the Police Immigration Division, and the ambassadors to the US and to the UN in Geneva and in New York regarding procedures regulating staff behavior or providing accountability for abuse or other violations of migrants’ rights. Although we received a letter from the office of the ambassador to the UN in Geneva, acknowledging receipt of our letter, the office did not provide any answers to the questions we raised.

Abusive Conditions in Other Immigration Detention Centers

While this report does not offer a comprehensive survey of all facilities used to detain migrant children, Human Rights Watch received reports of problematic conditions in a number of other IDCs around the country in addition to the Bangkok IDC, including in Phang Nga, Chiang Mai, Chiang Rai, Nong Khai, and Mae Sot.

Gross overcrowding led to appalling conditions at the Phang Nga IDC in 2013, when the Thai government detained hundreds of ethnic Rohingya refugees, including unaccompanied children. Television footage from ITN showed some 280 men and boys detained in the Phang Nga facility in two cells resembling large cages, each designed to hold only 15 men, with barely enough room to sit. Some suffered swollen feet and

¹⁹⁷ Human Rights Watch interview with Nhean P., Bangkok, July 10, 2013.

¹⁹⁸ Human Rights Watch interview with Veata S., Bangkok, July 10, 2013.

¹⁹⁹ Human Rights Watch interview with Arpana B., Bangkok, June 23, 2011.

²⁰⁰ Immigration Order 148 B.E. 2553 (2009), Guidelines on Standards in Immigration Detention Centers.

withered leg muscles. In July 2013, men reported they had not been let out of the cells in five months.²⁰¹

In response to international pressure to protect a large influx of Rohingya migrants in 2013, the Thai government made some efforts to separate Rohingya migrant children and place them in closed shelters instead of IDCs. However, Human Rights Watch found that the government failed to adequately screen to identify children.²⁰² Children, including unaccompanied migrant children, were among the Rohingya migrants from Burma held in the immigration detention centers. Not only should children not be kept in such conditions, but detaining them alongside unrelated adults violates international law.

Hakim A., a 12-year-old unaccompanied Rohingya boy, told Human Rights Watch that he was detained at the Phang Nga Immigration Detention Center in June 2013: “I was put in the same room with other Rohingya. But I just went by myself in the corner of the room. I didn’t know anybody there... It’s not a good place: the toilet’s right here, you live right here, you eat right here. It’s all very close.”²⁰³

Human Rights Watch’s visits to the Ranong IDC and the Samut Sakhon IDC in July 2013 raised further concerns about the conditions of the facilities. Our visual observation of the women’s cell in the Ranong IDC showed that the areas around the toilets were filthy, with the tiles covered in black dirt. The 10 or so women held there had only thin rubber mats to sleep on.

An immigration officer on duty at the Samut Sakhon IDC told Human Rights Watch that he had concerns about the conditions for children in the facility, which included temporary cells less well constructed than those in other IDCs he had worked in. For instance, he said, “The toilet needs to be improved, the cleaning. I see that it’s not really comfortable when they need to clean themselves... I’m concerned for the girls, no privacy to wash.” The officer said that children who passed through the facility—typically for a few days or a week—had no sleeping mats and slept on the floor.²⁰⁴

²⁰¹“Thailand: End Inhumane Detention of Rohingya,” Human Rights Watch news release, June 4, 2013, <http://www.hrw.org/news/2013/06/03/thailand-end-inhumane-detention-rohingya>.

²⁰² “Thailand: Protect Rohingya Boat Children,” Human Rights Watch news release, January 6, 2014, <http://www.hrw.org/news/2014/01/06/thailand-protect-rohingya-boat-children>.

²⁰³ Human Rights Watch interview with Hakim A., Phang Nga, July 17, 2013.

²⁰⁴ Human Rights Watch interview with immigration official, Samut Sakhon, [date withheld to protect confidentiality].

Human Rights Watch has documented problems in IDCs going back for more than five years.²⁰⁵ For instance, 158 Lao Hmong recognized as “persons of concern” to UNHCR were held for three years in the Nong Khai IDC before being deported to Laos in December 2009; six babies were born in detention.²⁰⁶ Several detainees at Nong Khai IDC in 2009 passed information to Human Rights Watch that their rooms had no windows, no light, and no beds.²⁰⁷ Rice rations were meager and of poor quality, supplemented by local residents who brought or sold them food.²⁰⁸

One of the Lao Hmong detainees told Human Rights Watch in September 2008:

There is not enough place to sleep ... it is very hot. Some of us have to take off our clothes.... If the water is working, we drink from the water pipe in the toilet. If it is broken, the officials bring us water from the outside. This water is not very clean and people get sick.... So we have no choice, we have to stay in the darkness and we cannot use the toilet for many hours because of the very bad smell and the heat inside.²⁰⁹

Rosa H., a refugee from a southeast Asian country, was held in the Chiang Mai IDC for three months in 2010 with a friend and her friend’s two children, aged six and eight at the time. She said:

It was very, very dirty. The floor was made from wood....There was no air coming in at all. The wood was broken and water came in. There were lots of insects, and cockroaches, and rats – the rats were as wide around as this [indicating the circumference of her upper arm.] It was very dirty, smelly, stinky, with... no air. We didn’t have mattresses, we didn’t have anything.... We didn’t have water, no shower. When I was sleeping, a big rat bit my face, I had a sore. And we had sores, I had sores all over my body from not washing. The children slept with us. They got sick.²¹⁰

²⁰⁵ See, e.g., Human Rights Watch, *Ad Hoc and Inadequate*, Section VI, pp. 108-120.

²⁰⁶ Human Rights Watch, *Ad Hoc and Inadequate*, pp. 115-116.

²⁰⁷ Email to Human Rights Watch (source and date omitted for reasons of confidentiality).

²⁰⁸ *Ibid.*

²⁰⁹ Human Rights Watch telephone interview, Nong Khai IDC, September 4, 2008.

²¹⁰ Human Rights Watch interview with Rosa H., [location withheld to protect confidentiality], July 3, 2013.

Linda Y. was held in the Chiang Rai IDC with her two children for two weeks in 2010 before they were all transferred to another facility. She said, “We couldn’t sleep because water came in from the hole in the roof, the floor was wet.”²¹¹

Human Rights Watch interviews in 2011 with migrants who had been held at the Mae Sot IDC raised similar concerns about the quality of facilities there. For example, Moe Moe, a 28-year-old woman from Arakan State in Burma, spent seven days in the Mae Sot IDC: “We had to share a few blankets and mattresses, not enough for all the people.... The IDC had a very bad smell from the toilet... the Thai police [immigration officials] provided no food... for seven days.”²¹²

Abusive Conditions in Police Lock-ups

Children held in police stations also reported worrisome conditions. Mai M., a Burmese girl, was 15 when she was detained for a little over two weeks in a police station outside Bangkok in December 2011. She said, “There was nothing. No pillows, no mattresses. We just slept on the floor, a [tiled] floor... There was no soap. We just wore the same clothes the whole time... it was always very packed and we had to sleep lined up side-by-side. The toilet was inside this room, with nothing separating.”²¹³

Saw Bway, from Burma, was 17 when he was arrested during a raid on the prawn factory where he worked. He said he was initially taken to a shelter for boys, and then sent to an overcrowded police station in Samut Sakhon for several nights in preparation for deportation to Burma. “There was no space to lie down or stretch out,” he said. “You couldn’t bend your knees.”²¹⁴

Kah S. was 17 when he was held in a police lock-up in Chiang Mai for 25 days. Despite being in a room with approximately 70 migrants, he said there was “only one small bowl for washing... nobody cleaned it, nobody gave us cleaning products.”²¹⁵ They had no

²¹¹ Human Rights Watch interview with Linda Y., [location withheld to protect confidentiality], July 3, 2013.

²¹² Human Rights Watch interview with Moe Moe, Mae Sot, June 14, 2011.

²¹³ Human Rights Watch interview with Mai M., Samut Sakhon, July 28, 2013.

²¹⁴ Ibid.

²¹⁵ Human Rights Watch group interview with Kah S., Chiang Mai, July 13, 2013.

mattresses, said Kah. “We would sleep on the floor, we would lie very close, we had to because it became very crowded.”²¹⁶

Htee Yaw, a Burmese man living in Chiang Mai, told us his brother was arrested when he was 17 years old, in 2012. Htee Yaw went to visit him at the police lock-up: “About 50 men were there, some men, some my brother’s age.... From the visiting room I could see inside. It was smelly, crowded, without good facilities and without enough blankets.”²¹⁷

²¹⁶ Ibid.

²¹⁷ Human Rights Watch interview with Htee Yaw, Chiang Mai, July 11, 2013.

IV. Alternatives to Detention

Detention is Thailand's default option for irregular migrants, including children. Every year thousands of children are detained in conditions that put them at great risk of physical, psychological, and developmental harm. Yet immigration detention is not only abusive, it is also unnecessary. Thailand's own National Subcommittee on Human Rights, Statelessness, Migration and Displaced Persons (under the National Human Rights Commission) has detailed the harm immigration detention has on children and suggested alternative reception arrangements for undocumented families.²¹⁸

Alternatives to immigration detention are used successfully in a number of other countries. Such alternative measures focus on facilitating the resolution of immigration and asylum claims within community settings, thus preserving children's right to liberty. There are a number of alternatives to detention available to Thailand, which, if implemented, would not only prevent the abusive and unnecessary immigration detention of children, but could also make Thailand's immigration system less costly, more humane, and more efficient.

Thailand's Limited Recognition of Children's Right to Liberty

In recent years, Thailand has undertaken two small pilot programs that may indicate some willingness to shift from the default position of detention. However, the programs affect at most a few hundred of the thousands of children detained and apply only to very narrow categories.

Beginning in 2011, a limited bail program allowed for the release from the Bangkok Immigration Detention Center (IDC) of slightly more than 100 refugees (children and their families), the majority of whom had been cleared for resettlement to a third country. Secondly, in 2013, after permitting 2,055 Rohingya migrants to enter the country, the government separated families, sending women and younger children to shelters run by the Ministry of Social Development and Human Security (MSDHS), while adult men and some male children, including unaccompanied boys, were sent to IDCs. Much can be done to improve on these models and to expand efforts to move children out of detention.

²¹⁸ "Hidden Migrant Children – Is the Government prepared to look after them?" *Thai Rath* (Bangkok), September 28, 2013 <https://www.thairath.co.th/content/eco/372506> (accessed January 15, 2014).

The government defends its extensive and costly detention network by claiming that irregular migrants pose a risk to national security,²¹⁹ that detention acts as a deterrent to those who seek to migrate irregularly,²²⁰ and that detention of irregular migrant children is somehow protective of the children's interests.²²¹

Thailand allowed a small number of recognized refugees, most cleared for resettlement, and very occasionally, asylum seekers, to leave the Bangkok IDC. The fee set was very high for people in their position: 50,000 baht (\$1,700) per person.²²² Families would need to raise that amount for each individual member. Most detained families could not do that and instead relied on external donors. In addition, each "bailee" needed a guarantor, typically provided by an NGO. (In the limited instances where bail has been used, different NGOs in Thailand served as guarantors for separate groups of bailees). With complicated and unclear bureaucratic rules and no clear pattern for releasing children and their families, Thailand's bail program, according to UNHCR, offers only "a very limited remedy to immigration detention."²²³

Invoking the use of shelters for migrant children can be seen as a positive step, because open shelters can provide appropriate conditions for children. Yet in relation to the Rohingya cases in Thailand in 2013, there were serious flaws in the use of shelters as an alternative to detention. First, families were separated, and some children, including unaccompanied children, were left in detention. Unaccompanied children should never be detained.²²⁴ All immigration decisions should be taken in the child's best interest, and children have the right to family unity. Effective alternatives to detention should prioritize the maintenance of family unity. In this example, moving intact families, including parents of both genders, to shelters would have been a better option.

²¹⁹ International Organization for Migration, "Thailand Migration Report 2011," 2011, p. 31.

²²⁰ UNHCR, "Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum Seekers, Stateless Persons and Other Migrants," 2011, p. 202.

²²¹ See, for example, Anti-Trafficking in Persons Act B.E 2551 (2008), section 29.

²²² Thai Committee for Refugees, "Refugee Freedom Fund," <http://www.thaiforrefugees.org/refugee-freedom-fund/> (accessed December 12, 2013).

²²³ UNHCR, "Alternatives to Detention of Asylum Seekers and Refugees," 2006, accessed June 10, 2014, <http://www.refworld.org/docid/4472e8b84.html>, p. 198.

²²⁴ Committee on the Rights of the Child, General Comment No. 6, para. 61.

A second problem with the use of MSDHS shelters for Rohingya in 2013 was that those shelters were closed; they effectively became places of detention, albeit with better conditions than the IDCs. All Rohingya at government shelters interviewed by Human Rights Watch said they were not permitted to leave the facilities. Service providers, including Thai government officials, confirmed this. The Thai government, which refuses to consider Rohingya asylum claims, made no plans to regularize detainees' immigration status. This left the Rohingya essentially forcibly confined in shelters they were not allowed to leave (though many did escape), and thus constituted a form of indefinite detention. Migrant families held in shelters should be able to move freely.

Thailand should place asylum-seeking children and their families, like this group of Rohingya, in open shelters with guaranteed freedom of movement, and provide children access to education.

Successful Use of Alternatives to Detention Elsewhere

Anxiety over irregular migration is not unique to Thailand. Many countries are now coming to realize, however, that they are able to manage migration concerns without the high financial and human costs that detention incurs.²²⁵

For example, the Philippine government operates a recognizance release system (albeit in a context where refugees are recognized by the government). Refugees, asylum seekers, and vulnerable migrants are issued with appropriate documentation and released on the condition that they comply with the refugee status determination process,²²⁶ or periodically renew their registration with the Department of Justice.²²⁷ Children in immigration detention are “released as a matter of course following referral to the Department of Social Welfare and Development, who... provide social work, shelter and healthcare services” and can act as responsible guardians for unaccompanied or separated children.²²⁸ According to UNHCR, “the Philippines’ system is an example of one

²²⁵ International Detention Coalition, “There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention,” 2011, p. 6.

²²⁶ Ibid. p. 25.

²²⁷ UNHCR, Alternatives to Detention of Asylum Seekers and Refugees, 2006, <http://www.refworld.org/docid/4472e8b84.html>, (accessed June 10, 2014), p. 167.

²²⁸ The International Detention Coalition, “There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention” 2011, p. 43.

that does not regard detention as the norm, but has managed to function well for many years on the basis of open reception arrangements.”²²⁹

Since 2008, Belgium has operated a network of “Family Identification and Return Units,” also known as “Return Houses,” which have been identified as best practice by alternatives to detention experts.²³⁰ These return houses, typically used during deportation, consist of basic temporary accommodation units for undocumented families. Upon entering a return house, families are allocated a case-worker, known as a coach, who works with them and the authorities to resolve their immigration cases, provide food vouchers, and ensure that families abide by the conditions of the program.²³¹ Between October 2008 and November 2011, 249 families with a total of 452 children have been accommodated for an average of 24 days in return houses.²³² Compliance rates (people completing the program) fluctuate between 75 and 80 percent,²³³ and although comparative figures for detention are not published, the director of Belgium’s agency for the reception of asylum seekers has confirmed that return houses are cheaper than the detention of families.²³⁴

The success of the return houses has been explained by the early access to free legal advice, transparent communication, and trust between families and “coaches”, which characterizes the program.²³⁵ Other shared elements of successful alternatives to detention such as this include the provision of adequate material support and a case management system that keeps migrants informed at every stage of the process of status resolution.²³⁶

²²⁹ UNHCR, *Alternatives to Detention of Asylum Seekers and Refugees*, 2006, accessed June 10, 2014, <http://www.refworld.org/docid/4472e8b84.html>, p. 167.

²³⁰ “Alternatives to immigration detention prove cheaper, more humane,” *IRIN*, August 30, 2013, <http://www.irinnews.org/report/98666/alternatives-to-immigration-detention-prove-cheaper-more-humane> (accessed January 15, 2014).

²³¹ These conditions include certain restrictions on freedom of movement and a requirement that they stay overnight at the return houses. Jesuit Refugee Service, “From Deprivation to Liberty: Alternatives to Detention in Belgium, Germany and the United Kingdom”, 2012, pp. 20-21.

²³² *Ibid.*, p. 21.

²³³ *Ibid.*, p. 21.

²³⁴ UNHCR, “Alternatives to Detention of Asylum Seekers and Refugees, 2006,” accessed June 10, 2014, <http://www.refworld.org/docid/4472e8b84.html>, p. 48.

²³⁵ Liesbeth Schockaert, “Alternatives to Detention: Open Family Units in Belgium”, *Forced Migration Review*, vol. 44, (September 2013), p. 54.

²³⁶ “Alternatives to immigration detention prove cheaper, more humane,” *IRIN*, August 30, 2013, <http://www.irinnews.org/report/98666/alternatives-to-immigration-detention-prove-cheaper-more-humane> (accessed January 15, 2014).

In Toronto, Canada, a government-funded charitable organization called the Toronto Bail Program was established to assist migrants to meet the financial and social conditions of the bail program. While in the program, individuals abide by strict requirements including reporting to Toronto Bail Program offices twice weekly, social counselling, and frequent unannounced visits.²³⁷ In return, the program provides housing and financial support, and assistance to navigate Canada's asylum and social welfare systems.²³⁸ The Toronto Bail Program has achieved impressive compliance rates. In 2009-2010, of the 250 to 275 individuals released to the Toronto Bail Program, less than 4 percent absconded, and since then compliance rates have improved further.²³⁹ The program has also made significant savings for the Canadian government. Whereas detention costs US\$163 per person per day, the cost to the state of the Toronto Bail Program is \$9 to 11 per person per day—a saving of around \$152 per person per day.²⁴⁰

For bail programs to play an efficient role in preventing unnecessary immigration detention, bail must be set at levels appropriate to the individual's financial situation (and refugees and asylum seekers should be released without bail).²⁴¹ Funds, such as the Toronto Bail Program, should be created and made available to detainees who cannot otherwise access bail programs. As the Toronto Bail Program example shows, government support for such release funds can prove to be very cost-effective.

Successful alternatives to detention, such as the recognizance release program in the Philippines, are founded on the dignity of the individual migrant, refugee or asylum seeker. Recognisance release is a particularly effective and sustainable alternative to detention due to the self-reliance it engenders. Thailand should look to the example set by the Philippines, a fellow ASEAN state, when reforming its immigration and asylum procedures.

²³⁷ Global Detention Project, "Canada Detention Profile,"

<http://www.globaldetentionproject.org/countries/americas/canada/introduction.html> (accessed December 19, 2013).

²³⁸ UNHCR, "UNHCR urges states to avoid detaining asylum-seekers," UNHCR news release,

<http://www.unhcr.org.uk/resources/monthly-updates/june-update/alternatives-to-detention.html>, (accessed December 19, 2013).

²³⁹ UNHCR, "Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants," April 2011, <http://www.unhcr.org/4dc949c49.pdf>, p. 57.

²⁴⁰ *Ibid.*, p. 85.

²⁴¹ International Detention Coalition, "There are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention," p. 43.

A Five-Step Process to Avoid Detention of Children

The International Detention Coalition, an association of over 250 NGOs and individuals in more than 50 countries working to protect the rights of migrants in immigration detention, proposes a five-step process for countries to avoid the detention of children. First, they advocate for governments to adopt a presumption against the detention of children, prior to any migrants' arrivals. Next, when a migrant child arrives, with or without their family, the authorities should screen the individual to determine their age, allocate a case worker, and place the child (and family) into a community setting. Third, the case manager works with the child or family to resolve the individual migration case (an incentive to comply with the program). Fourth, the child or family's placement in an alternative to detention is reviewed periodically, and an assessment is made of the risk of the child or family absconding prior to departure. Finally, the child or family is granted the right to stay, or deported.²⁴²

²⁴² International Detention Coalition, "Captured Childhood," 2012.

V. Recommendations

To the Thai Government

- Enact legislation and implement policies to expeditiously end the immigration detention of children consistent with the recommendations of the United Nations Committee on the Rights of the Child.
- Adopt alternatives to detention, including supervised release and open centers, that fulfill the best interests of the child and allow children to remain with their family members or guardians in non-custodial, community-based settings while their immigration status is being resolved.
- Until children are no longer detained, ensure that their detention is neither arbitrary nor indefinite, and that they and their families are able to challenge their detention in a timely manner.
- Drastically improve conditions in immigration detention centers and any other facilities that hold migrant children to meet international standards, including by providing access to adequate education and health care, and maintaining family unity.
- Ensure that guardianship for unaccompanied and separated children is vested in the Ministry of Social Development and Human Security.
- Immediately release from IDC detention all refugees recognized by the United Nations High Commission for Refugees.
- Immediately discontinue policies requiring migrants to meet the cost of their detention or deportation; never detain irregular migrants indefinitely for the purpose of compelling them or their families to pay for their own deportation.
- Sign and ratify the 1951 Refugee Convention and its 1967 Protocol, and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- Remove Thailand's reservation to article 22 of the Convention on the Rights of the Child, concerning child refugees.

To the Parliament

- Amend the 2009 Immigration Act to ensure that children are not detained simply for reasons of their immigration status.
- Enact a law that establishes criteria and procedures for recognizing refugee status and providing asylum and other forms of protection, in line with international legal standards.
- Until a refugee law is enacted, amend the 2009 Immigration Act to authorize persons that UNHCR designates as a “person of concern” to stay legally in Thailand without being threatened with arrest and detention while they await a status determination or a durable solution for those found to be in need of international protection.

To the Police Immigration Division

- Implement, in conjunction with the Ministry of Social Development and Human Security and relevant civil society organizations, (alternatives to detention such as open shelters and conditional release programs that prioritize the child’s best interests and family unity, and ensure that children are referred to the Ministry of Social Development and Human Security for appropriate care.
- Immediately bring detention conditions in line with international standards, including standards relating to overcrowding, water and sanitation, nutrition, and access to recreation, among others.
- Before reforms are enacted to ensure migrant children are no longer detained, ensure that families are kept together as long as it is in the child’s best interest. In the rare instances when children are separated from family members, ensure that they have routine opportunities to visit with those family members.
- Immediately cease detaining children with unrelated adults.
- Provide appropriate, age-specific education to all children of compulsory primary education age being held in detention facilities, and make secondary education available and accessible to every child.

- Take appropriate measures to ensure that children are not subjected to violence or placed in situations where they witness violence in detention facilities.
- Ensure that migrants in detention have the means to communicate with family members, UNHCR, and legal representatives.

To the Ministry of Social Development and Human Security

- Implement, in conjunction with the Immigration Division, alternatives to detention such as open shelters and conditional release programs that prioritize the child's best interests and family unity. Adopt practices that allow children to remain with family members and/or guardians if they are present in the country.
- Ensure that guardianship for unaccompanied and separated children is vested in the Ministry of Social Development and Human Security.

To the Ministry of Interior

- Adopt and publicize a policy that ends detention of children for reasons of their immigration status, and order immigration police to faithfully implement that policy.
- Direct police and immigration officers not to arrest on immigration enforcement grounds asylum seekers who have been issued "person of concern" certificates issued by UNHCR.
- Provide budgetary resources to upgrade immigration detention facilities in order to bring conditions into line with international standards.

To the National Human Rights Commission of Thailand (NHRCT)

- Closely monitor immigration detention facilities, including by making regular visits to IDC facilities around the country to ensure adequate conditions for children being held in immigration detention.
- Respond to this report by conducting public hearings on the detention of children in IDC facilities and demand government authorities articulate how

they will address the issues raised by this report, and the NHRCT's own investigations and findings.

- Urge the Royal Thai government to revise the 2009 Immigration Act to ensure that children are not detained for reasons of their immigration status.

To the UN Resident Coordination and UN Country Team

- Prioritize advocacy action to end arbitrary detention, including in immigration detention facilities, and publicly communicate concerns about arbitrary detention, and the failure of current laws and regulations to meet international standards, to the Thai authorities on a continuous basis.
- Publicly call upon the Thai government to end detention of all children for reasons of their immigration status.
- Support UN agency efforts to comprehensively address the issue of children in detention in Thailand through appropriate advocacy and services.

To UNHCR

- Continue to urge the Thai government to cease detaining children solely for reasons of their immigration status.
- Speed up refugee status determination in Thailand, especially for detainees.
- Ensure that UNHCR officials intervene promptly to seek the immediate release of refugees and asylum seekers when they are arrested.
- Educate Thai government authorities on their obligations to respect the status of asylum seekers and not detain asylum seekers or refugees recognized by UNHCR.

To the International Organization for Migration (IOM)

- Monitor conditions of confinement for all asylum seekers and children in immigration detention facilities, and report issues and concerns to all appropriate Thai government officials including, but not limited to, Thailand's Immigration Division.

- Urge the Immigration Division to improve conditions of detention and bring them into compliance with international human rights standards.

To UNICEF

- Urge the Thai government to end the detention of migrant children, and work closely with other UN agencies to make this a priority issue for the UN Country Team.
- Urge the Thai government to make issues affecting migrant children, including refugee and asylum-seeking children, a priority in Thailand's child protection programs and activities, and use UNICEF's programming in Thailand to assist these efforts.

To the Association of Southeast Asian Nations (ASEAN)

- Uphold refugee rights in all regional immigration enforcement policies and practices.
- Make children's rights a priority in immigration enforcement, including by providing specialized protection for unaccompanied migrant children, and by urging states to cease the detention of migrant children.
- Request that the ASEAN Commission for the Protection and Promotion of the Rights of Women and Children (ACWC) conduct immediate research on detention of children in immigration facilities, and develop recommendations on best practices to end such detention practices.
- Prioritize ending immigration detention of children in formal discussions at the Bali Process on People Smuggling, Trafficking in Persons, and Related Transnational Crime.

To Donor and Resettlement Governments

- Urge the Thai government to cease the detention of children solely for reasons of immigration status.

- Facilitate and provide support for the development of alternatives to detention, including open reception centers and conditional release programs for migrant children and their families.
- Encourage the development of refugee law in Thailand according to international standards.
- Call on the Thai government to cease detaining migrants who are UNHCR “persons of concern.”

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TWO YEARS WITH NO MOON

Immigration Detention of Children in Thailand

Every year, Thailand arbitrarily detains thousands of children, including infants and toddlers, in squalid immigration facilities and police lock-ups. About 100 children each year—primarily from countries that do not border Thailand—may be held for months or years, due to their immigration status or that of their parents. Thousands more children—from Thailand’s neighboring countries—are summarily deported with their families to their home countries within days or weeks. But no matter how long the period of detention, these facilities are no place for children.

Two Years With No Moon describes the needless suffering and permanent harm that migrant children experience in Thai immigration detention. It examines the abusive conditions children endure in detention centers, particularly in the Bangkok immigration detention center, one of the most heavily used facilities, where children are held in filthy, overcrowded cells without adequate nutrition, education, or exercise space. Thailand’s use of immigration detention violates children’s rights under international law, risks their health and wellbeing, and imperils their capacity to mentally and physically grow and thrive.

Children should not lose any of their childhood in immigration detention. Alternatives to detention exist and are used effectively in other countries, such as open reception centers and conditional release programs. Such programs, generally a cheaper option, respect children’s rights and protect their future. Given the serious risks of permanent harm from depriving children of liberty, Thailand should immediately cease detention of children because of their immigration status.



Rohingya women and children who arrived by boat from Burma pass the time at a closed shelter in Phang Nga, Thailand, in October 2013.

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