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July 18, 2014

Mr. Wiboon Sa-nguanphong
Acting Minister of the Interior and Permanent Secretary
Royal Thai Government
Bangkok, Thailand

HUMAN
RIGHTS
WATCH

HRW.org

RE: Detention of Migrant Children in Thailand

Dear Acting Minister Wiboon Sa-nguanphong,

Human Rights Watch is an independent, international human rights organization that conducts research into the human rights situations in more than 90 countries globally.

We are currently preparing a report on the situation of children detained due to their immigration status in Thailand. We write you to present a summary of the report's findings and to offer your government the opportunity to provide an official written response.

We would be pleased to include your government's response to our report as an annex or on our website. In order to include your response at the time our report is released, we request it be provided no later than August 15, 2014.

Human Rights Watch on January 18, 2014 sent letters requesting data and other information concerning immigration and detention in Thailand 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. 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. No other Thai government officials responded to our letters.

Thank you in advance for your assistance in this matter and we look forward to your response.

Sincerely,



Bede Sheppard
Deputy Director
Children's Rights Division
Human Rights Watch
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Main Findings

The report is based on 105 interviews conducted by Human Rights Watch researchers between June and October 2013, of children and adults detained, arrested, or otherwise affected by interactions with police and immigration officials in Thailand. Human Rights Watch researchers visited several immigration detention facilities in Thailand. We also met with eight government officials concerned with migration working for the police, immigration department, and the Ministry of Social Development and Human Security; representatives of international organizations and nongovernmental organizations; migrant community leaders; journalists; human rights lawyers; and activists.

Our research indicates that Thailand arbitrarily and indefinitely detains thousands of children due to their own immigration status or that of their parents. The majority of these children come from Thailand's neighboring countries (Burma, Cambodia, and Laos) and are summarily deported relatively quickly; however, approximately 100 children—primarily from countries that do not border Thailand—are in long-term detention at any given time, and may be held for months or years.

Migrants arrested in Thailand 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 provided to members of their family. Thailand requires many of those detained to pay their own costs of repatriation and they are left to languish indefinitely in what are effectively debtors' prisons until those payments can be made.

Our research found that children experience needless suffering and harm in immigration detention in Thailand. Children are routinely held with unrelated adults in violation of international law, where they are exposed to violence between those detained and from immigration detention guards. Immigration detention negatively impacts children's mental health by exacerbating previous traumas 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.

The evidence we collected indicates that detention also imperils children's physical health. Children held in Thailand's immigration detention facilities rarely receive the nutritious foods they need or have the opportunity for physical exercise they need. Parents described having to pay exorbitant prices for supplemental food smuggled from outside sources to try to provide for their children's nutritional needs. Children are crammed into filthy, overcrowded immigration detention cells, with limited or no access to space for recreation. Our research suggests that severe overcrowding is a chronic problem in many of Thailand's immigration detention centers. Multiple children that we interviewed described cells so crowded they had to sleep in a sitting up position. Children experience squalid conditions in detention facilities, and interviewees described cells with insufficient toilets and leaking sewage.

Human Rights Watch recognizes that 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.

Main Recommendations

We respectfully urge the Thai government to:

- 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.
- Ensure that guardianship for unaccompanied and separated children is vested in the Ministry of Social Development and Human Security.
- 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.

URGENT



No. 56101/ 855

The Permanent Mission of Thailand to the United Nations presents its compliments to the Human Rights Watch and has the honour to refer to the latter's Note dated 18 July 2014, requesting the Royal Thai Government to respond to the summary of the Human Rights Watch report on detention of migrant children in Thailand, and that Human Rights Watch would be pleased to include such response in the report if received by 15 August 2014.

In this connection, the Permanent Mission of Thailand has further the honour to forward herewith **the Ministry of Foreign Affairs of Thailand's Note No. 1002/999 dated 14 August 2014 and information note on "Thailand's observations on the main findings of the HRW report on detention of migrant children in Thailand"** for the latter's kind information and consideration.

The Permanent Mission of Thailand would appreciate it if the said information note is to be included in the annex of the Human Rights Watch report on detention of migrant children in Thailand.

Ms. Chonvipat Changtrakul, First Secretary, has been tasked to be the contact person for this matter. She may be reached by phone at [REDACTED] or by email at [REDACTED] for further enquiries.

The Permanent Mission of Thailand to the United Nations avails itself of this opportunity to renew to the Human Rights Watch the assurances of its highest consideration.

Permanent Mission of Thailand to the United Nations

New York

14 August 2014



C. Chonvipat

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No. 1002/999

Ministry of Foreign Affairs,
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14 August B.E. 2557 (2014)

Dear Mr. Sheppard,

With reference to your letter dated 15 July 2014 regarding Human Rights Watch Report on the Detention of Migrant Children in Thailand, I wish to reaffirm that Thailand attaches great importance to the matter. The Ministry of Foreign Affairs regularly meets with relevant agencies concerned namely Immigration Bureau, Ministry of Social Development and Human Security, Ministry of Interior and National Security Council to discuss the matter of detention of migrants including child migrants in Thailand and explored solutions relating thereto.

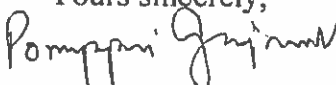
Your Office's inquiries in the letter dated 17 January 2014 were also conveyed to authorities concerned. However, the questions back then focused mainly on comprehensive quantitative rather than qualitative data which was not available at the time.

Upon receiving HRW's inquiry this time, the Foreign Ministry has conveyed to agencies concerned and has also convened meetings to look into the matter. In response to the summary of the HRW report's finding, my team has visited and met with various agencies concerned to gather necessary information, and would like to provide you with the observations with regard to the detention of migrant children in Thailand as attached herewith.

The observations are in response to your two pages of main findings, though we have yet to see the full report. We, however, pledge to remain engaged with HRW for further dialogue to work for the promotion and protection of the rights of children. The fact that Thai authorities allowed HRW team access to several Immigration Detention Centres to conduct interview of migrants as well as officials reflects a high level of openness and transparency on Thailand's part.

It is our hope that our observations will be fully reflected with the HRW report to be released shortly. We look forward to working closely with HRW in this regard.

Yours sincerely,


(Pornprapai Ganjanarintr)
Director-General

Department of International Organizations

Mr. Bede Sheppard,
Deputy Director,
Human Rights Watch,
NEW YORK.

**Thailand's Observations on the Main Findings of the Human Rights Watch Report
on Detention of Migrant Children in Thailand**

Overview

The Kingdom of Thailand has long been recognized as both destination and transit for irregular migrants from all over the world due to its geographical and economic factors. The countries of origin of these irregular migrants range from three immediate neighbouring countries of Thailand, to countries of other continents. Therefore, Thailand is not dealing with only one single group of migrants, but rather several groups with different roots and backgrounds.

The countries of origin of most of the migrants received by Thailand are from the three neighbouring countries – Myanmar, Laos and Cambodia. The Royal Thai Government has sought cooperation and has concluded arrangements specifically relating to cross border transportation, migrant labour management, immigration and counter trafficking in persons measures with these countries. Given such cooperation, illegal migrants including children from the neighboring countries are often held in Thailand for a short period (often within one week) awaiting their assisted repatriation, whose cost is funded by the Thai Government.

Besides nationals from the three neighbouring countries, Thailand also receives irregular migrants from other Asian countries, Middle East and Africa. Unfortunately, a large number of these groups of migrants end up in Thailand for a longer period of time than what normally be the case for the migrants from the three neighbouring countries. This is due to several reasons, among others, the lack of apparent legal status in the countries of origin, the lack of identification or travel document, as well as specific sensitivity and difficulties from the countries of origin.

Immigration Detention as authorized by the Law

Allegation :

1. Migrants arrested in Thailand 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 provided to members of their families.

2. Thailand requires many of those detained to pay their own cost of repatriations and they are left to languish indefinitely in what are effectively debtors' prisons until those payments can be made.

Clarification :

- Detention of illegal migrant is not carried out in an arbitrarily manner. The detention is authorized by the Immigration Act B.E. 2522 (1979), which stipulates that any alien who illegally enters the country shall be deported, and while waiting for deportation, the competent officer is empowered to detain the alien at a given place.

- For such purpose, all of the immigration detention facilities are designed to shelter aliens who will eventually be deported out of the Kingdom and therefore stay in the detention only temporarily until deportation can take place. In view of related law and regulations, some obstacles hindering a migrant's travel home are, for example, the lack of identification or travel document, the lack of viable solution, and the cost of travel.

- As stipulated by the Thai law, travel cost shall be borne by the alien him/herself. In practice, in cases of migrants under arrangements with the three neighbouring countries, the Thai authorities would assist in their repatriation. Furthermore, all of the illegal migrants have access to telephone, can be visited by their relatives, and are entitled to consular assistance. Embassies and consulates located in the country usually offer consular assistance to migrants for their return to the country of their nationality, or in some cases their relatives will help with the travel expenses. In addition, the International Committee of the Red Cross (ICRC), in accordance with its mandate, has access and assists the migrants in reconnecting with their families at home. There have also been occasional donations and assistances from civil society organizations and philanthropists. A number of migrants who have married and have families in Thailand also prefer to stay in detention center in Thailand than going back to their country of origin.

- According to Immigration Act B.E. 2522 Section 22, migrants who are found having entered the Kingdom illegally have the right to challenge such finding by filing for an appeal within 48 hours after having been notified (*In practice, this usually takes place at the port of entry*). Once detained, migrants are also entitled by the Immigration Act B.E. 2522 Section 19 to apply to be released on bail. The decision to allow migrants to be bailed is made by the immigration authorities based on a number of factors including the credibility of the bail organizations as well as the possibility of the foreseeable solutions. Jesuit Refugee Service

(JRS) is among the NGOs, which has been permitted to bail migrants in the care of Immigration Bureau. One of the grounds to grant bail is also the recognition by UNHCR as asylum seeker. Although Thailand has not yet signed or ratified Refugee Convention and its Protocol, the Government works closely with UNHCR to address the problems relating to asylum seekers, especially those who are believed to have fled their country because of fear of persecution.

Migrant Children in Thailand

- All children in Thailand including migrant children are protected by Child Protection Act B.E. 2546 (2003). As a party to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child, Thailand is well aware of its obligations under international law to accord children, regardless of their nationality, fundamental human rights and rights of the child as enshrined in the Convention on the Rights of the Child.

Living Arrangement

- Migrant women and children awaiting deportation are provided shelter by the Ministry of Social Development and Human Security (MSDHS). Equipped with facilities and skilled social workers, MSDHS is tasked to provide support to various vulnerable children and women, namely victims of human trafficking or domestic violence in Thailand. MSDHS has also looked after the groups of migrant women and children upon the Government's instruction. Although taking care of women migrants and their children have affected how the Ministry performs their normal duty and responsibility, MSDHS still continues to assist these migrants without discrimination against race or nationality.

- Screening process takes place once illegal migrants are received by the competent immigration officers. Migrants who travel in family will be interviewed and age-screening process will be conducted by specially trained officials. The age can also be tested in ranges by medical technology if needed. There are some cases of migrant children, who are not able to tell their real ages or intentionally lie about it wanting to stay with their fathers or male migrants, and then end up being held in immigration detention centres (IDC). There have also been cases in the past of adolescent boys under the age of 18, who were sent to MSDHS

shelters, but then had to be transferred back to IDC due to their aggressive and harassing behavior towards women and child migrants at the shelters.

Allegation :

Children are routinely held with unrelated adults in violation of international law, where they are exposed to violence between those detained and from immigration detention guards.

- Migrant children who travel with their mother are usually placed in the custody of the MSDHS shelters so they can stay with their families. However, there are cases where the father does not wish to let go of his child thus prefers to keep the child in the IDC. In some cases, parents are detained in the IDC and they prefer to have their children stay with them. As of 6 August 2014, the numbers of migrant children in the main IDCs of the country namely in Bangkok and Songkhla are 114 and 30 respectively.

- The Government is aware that overcrowded detention can still be found in immigration detention facilities outside Bangkok. This happens at times due to seasonal large influx of irregular migrants into the country. These facilities were originally designed to temporarily shelter irregular migrants awaiting their deportation. But given the fact that in many cases, migrants found themselves in a protracted situation as they have no legal status back in their country or they have no consular assistance from their country of origin, the Government is therefore working towards improving detention facilities to accommodate increasing number of irregular migrants. In particular, an extra budget was approved by the Government for an expansion and improvement of one IDC facility in Songkhla Province and additional budget will be allocated to improve other IDC facilities.

Nutrition, Health Care and non-formal Education

Allegation :

1. Immigration detention negatively impacts children's mental health by exacerbating previous traumas 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.

2. Children held in Thailand's immigration detention facilities rarely receive the nutritious foods they need or have the opportunity for physical exercise they need. Parents described

having to pay exorbitant prices for supplement food smuggled from outside sources to try to provide for their children's nutritional needs.

- In addition to budget allocated specifically for food allowance of illegal migrants, the Government works closely with international organizations (e.g. UNHCR, IOM, ICRC, UNICEF), NGOs and private donors to respond to children's basic needs. This includes recreation, non-formal education, health care and nutrition supplements. For children under the custody of the Immigration Bureau, the central IDC in Bangkok has facilities including a children's day-care center, a clinic, and exercise area. Daytime activities are provided for children with help from related international organizations and NGOs.

- Admittedly, the IDCs outside Bangkok are not as well-equipped yet, as they are primarily not designed for children or families. Efforts are made to improve facilities for children within these IDCs too. For those under the care of the MSDHS, women in MSDHS shelters with their children are sometimes given opportunity to cook their own food and provide it to their children. This method of provision of food is designed especially to serve those with religious diet restriction. Local Muslim communities in Thailand have also played an active role in supporting the Government in looking after the groups of Muslim irregular migrants.

Preliminary responses to main recommendations

- Thailand finds many of HRW's main recommendations already in line with the principles and the policies we have upheld in dealing with migrant children.

- Detention of some small number of migrant children in Thailand is not a result of the Government's policies but rather the preference of their migrant parents themselves (*family unity*) and the logistical difficulties as mentioned above. While appeal and bail options are available under certain conditions according to the law, efforts have also been made by the Government and relevant partners to minimize the duration of stay and to ensure the well-being for the cases who still need to be in detention. For other cases including unaccompanied children, Immigration Bureau has always worked in cooperation with MSDHS to transfer these migrant children to be under the care of the Ministry.

- Although Thailand is not a party to the 1951 Refugee Convention and its 1967 Protocol, the country has proved by its track record as the place that has provided shelter for

millions of asylum seekers from our neighbouring countries for decades. There have been constant reviews and discussions among relevant agencies concerned on the possibility of becoming a party to such Convention. Though Thailand is not yet at the stage of becoming state party to the Convention yet, our actions should speak louder than words.

- With regard to the group of asylum seekers usually categorized by the UNHCR as the urban caseloads, there has been an increasing trend of this group in recent years. Many have spent years waiting for their status to be approved by the UNCHR. A large number of them have waited further for a long time for their resettlement applications to be considered. Some cases never got to be resettled in the end. Therefore, Immigration Bureau still has to maintain that the office needs to use discretion in its determination on who should be released on bail based on factors such as foreseeable solution.

- As for the travel costs for return to country of origin, explanation has been given above.

Other Challenges

- Although the Government has received generous support from interested partners, there are still needs for more as offers are usually targeted for certain groups leaving others with less of the assistances. Shortage of professional and trustworthy interpreters is one of the key challenges posing difficulties as well as risks in addressing the needs of various groups of migrants who speak different languages and dialects.

- The Royal Thai Government is well aware of issues and problems relating to illegal migrants especially migrant children. Like in many other countries, this is not a trivial task. The Thai Government is trying its best to address and accommodate the needs of migrant children bearing in mind the humanitarian consideration and fundamental human rights. In addition, it is worth to mention the Thai officers who work tirelessly amidst all constraints to help sheltering these migrants. Their work deserves understanding as well as recognition.

- Thailand is of the view that migration problems should not be shouldered by any country alone. It must be shared responsibility of all concerned. In most cases, problems need

to be effectively addressed at the root cause in the countries of origin. Constructive criticism should also come with tangible assistance and durable solution for these unfortunate people.

- Thailand welcomes all the support. In the meantime, Thailand will continue to work closely with various international partners to assist in any way we can to end the plight of irregular migrant children.
