



**fidh**



# **OUT OF SIGHT**

## **Human rights violations in Thailand's immigration detention centers**

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# Executive summary

Thailand's 22 immigration detention centers (IDCs) are among the country's most secretive places of detention. Obtaining reliable and up-to-date information about IDCs and conditions in these facilities is extremely difficult. The Immigration Bureau of the Thai police, which administers the IDCs, does not make public the data on the number of IDCs, their locations, and the number and origin of the detainees. Access to IDCs for media and independent monitoring organizations is severely restricted.

Based on interviews with recently released detainees, this FIDH-UCL report provides a glimpse into conditions in the IDCs. Conditions in these facilities have been and remain well below relevant international minimum standards. IDCs are characterized by severe overcrowding, which is reflected in the 155% occupancy rate of the immigration detention system.

Most interviewed former detainees reported being kept in squalid cells with minimal personal living space. These conditions were compounded by: punishment, abuse, and ill-treatment of detainees; lack of access to basic hygiene supplies, particularly for women; food of poor quality; severely limited availability of adequate healthcare, which in some cases proved fatal; lack of recreational activities; and limited contact with the outside world.

The FIDH-UCL report also analyzes Thailand's failure to establish a legal framework and policies on immigration detention that comply with international human rights law and standards.

The Immigration Act, promulgated in 1979, is the primary law that governs migration management in Thailand. The Act, which is under the administration of the Prime Minister and the Minister of Interior, grants authorities sweeping discretionary powers to detain "immigrants" for unauthorized entry and stay, without having to consider their individual circumstances or other non-custodial alternatives to detention. The all-encompassing category of unauthorized immigrants includes refugees, asylum seekers, stateless persons, victims of human trafficking, and others in situations of vulnerability.

The lack of a legal framework and protection policies has led to a precarious situation for refugees and asylum seekers. They have been subject to arrest, prosecution, detention in IDCs, and deportation. They have also been denied access to basic rights guaranteed under international human rights law.

For the past several decades, Thai authorities have also violated the internationally recognized principle of *non-refoulement* on many occasions when they deported refugees and asylum seekers - including Hmong, Uyghurs, Rohingya, and Cambodians - back to their countries of origin where they faced persecution.

The Immigration Act does not define a limit to the period of detention in the context of pending deportation proceedings. This has allowed for prolonged or indefinite detention, which is considered arbitrary under international law. This situation is made worse by the fact that detainees in IDCs do not have the right to challenge the legality of their detention and/or to a judicial review of the administrative decision concerning their detention, which are fundamental safeguards against their arbitrary deprivation of liberty. Lastly, there are no legal provisions that prohibit the detention of migrant children.

Initiatives undertaken in recent years by the Thai authorities to address some of these shortcomings have fallen short of their objectives. The establishment of a National Screening Mechanism (NSM) in 2019 to provide protection to foreign nationals who are facing, or are at risk of, persecution if returned to their countries of origin, has been undermined by the exclusion of certain individuals - including migrant workers from Myanmar, Laos, Cambodia, and Vietnam. In the same year, the signature by seven Thai agencies of a Memorandum of Understanding (MoU) to end the detention of migrant children in IDCs has led to a significant reduction in the number of refugee and asylum seeker children detained in urban areas. However, migrant children have continued to be subject to arrest, detention, and deportation, as the MoU's provisions only apply once the children have been taken into custody by the immigration authorities.

On a positive note, with the entry into force of the Prevention and Suppression of Torture and Enforced Disappearance Act in February 2023, Thailand has not only codified the principle of *non-refoulement*,

but also established legal and procedural safeguards against torture, ill-treatment, and enforced disappearance, which are applicable to immigration procedures and the deportation process.

This report makes numerous recommendations to the Thai government, the National Human Rights Commission of Thailand (NHRCT), and United Nations (UN) member states aimed at improving conditions in the IDCs and establishing a robust legal framework that conforms to international human rights law and standards, including for the protection of refugees, asylum seekers, and other migrants in vulnerable situations.

## List of acronyms

CAT = Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CEDAW = Convention on the Elimination of All Forms of Discrimination against Women

CRC = Convention on the Rights of the Child

CRPD = Convention on the Rights of Persons with Disabilities

FIDH = International Federation for Human Rights

ICCPR = International Covenant on Civil and Political Rights

ICESCR = International Covenant on Economic, Social and Cultural Rights

ICRC = International Committee of the Red Cross

IDC = Immigration detention center

IOM = International Organization for Migration

LGBTIQ = Lesbian, gay, bisexual, transgender, intersex, queer/questioning

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

NGO = Non-governmental organization

NHRCT = National Human Rights Commission of Thailand

NSC = National Security Council

NSM = National Screening Mechanism

OHCHR = Office of the High Commissioner for Human Rights

SOP = Standard Operating Procedure

UCL = Union for Civil Liberty

UDHR = Universal Declaration of Human Rights

UN = United Nations

UNHCR = United Nations High Commissioner for Refugees

UPR = Universal Periodic Review

WGAD = Working Group on Arbitrary Detention

# Terminology

**Administrative detention:** Deprivation of liberty as an administrative measure pending deportation proceedings, pursuant to Article 54 of Thailand's Immigration Act.

**Asylum seekers:** Individuals who are seeking international protection and whose refugee or complementary protection status has yet to be processed, or who may not yet have requested asylum, but intend to do so.

**Children:** Individuals under the age of 18.

**Deportation:** A formal act of a state authority by which a foreign national or a stateless individual is physically removed from, or compelled to leave, the territory of that state.

**Repatriation:** The return of refugees and asylum seekers to their country of origin based on a free and informed choice.

**Immigrants:** Foreign nationals who have entered Thailand and are subject to the provisions of Thailand's Immigration Act.

**Immigration detention centers:** Facilities, operated under the administration of the Immigration Bureau of the Thai police, which are used to detain unauthorized immigrants, including individuals with pending court cases and those awaiting deportation proceedings.

**Migrants:** Individuals who move away from their place of usual residence across an international border without regard to: (a) their legal status; (b) whether the movement is voluntary or involuntary; (c) the cause of the movement; or (d) the duration of stay.

**Migrants in situations of vulnerability:** Migrants who have specific needs or who are particularly at risk of exploitation, abuse, gender-based violence, including sexual violence, or other human rights violations, including: pregnant and breastfeeding women; older persons; persons with disabilities; survivors of torture or trauma; persons who are victims of crimes such as trafficking; migrants with special physical or mental health needs; LGBTIQ persons; refugees; asylum seekers; and stateless persons.

**Refugees:** Individuals who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion, are outside the country of their nationality and are unable or, owing to such fear, unwilling to avail themselves of the protection of that country.

**Stateless persons:** Individuals who are not considered as nationals by any state under their laws.

**Unauthorized immigrants:** Foreign nationals who have entered or stayed in Thailand without permission/irregularly under Thailand's Immigration Act.



# 1. Immigration detention centers (IDCs) - Key facts and figures

Immigration detention centers (IDCs) are administered by the Immigration Bureau of the Thai police, which reports directly to the Office of the Prime Minister. The IDCs are used to detain unauthorized immigrants, including those who have been arrested and are awaiting court appearances, individuals with pending court cases, and those awaiting deportation proceedings.

The Immigration Bureau does not make public the data on the number of IDCs and their locations, as well as the total number and origin of the detainees.

According to official statistics reported by the Ministry of Public Health, as of September 2023, there were 22 IDCs in Thailand, of which 19 were in the provinces along the country's borders and three in the Bangkok metropolitan area.<sup>1</sup>

In addition, following the signing of the Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers (MoU-ATD) in 2019 [See below, 2.4. *Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers (MoU-ATD) (2019)*], the Detention Center for Mothers and Children was established in the same compound as the IDC in Bang Khen District in Bangkok. Despite being categorized as an "alternative place to detention,"<sup>2</sup> this facility is used to hold migrant children, their mothers, and/or other female family members in a detention-like environment, with little freedom of movement and limited access to basic services.<sup>3</sup>

According to statistics from the Immigration Bureau, following a request by FIDH and UCL in August 2024, the official total capacity of the Thai immigration detention system stands at 1,100 detainees.<sup>4</sup> As of 6 June 2024, there were a total of 1,710 adult detainees (1,455 men and 255 women) and 131 children, in IDCs across Thailand – an occupancy level of 155%. The Detention Center for Mothers and Children in Bang Khen District held an additional 147 detainees (34 mothers, 77 boys, and 36 girls).

As of August 2024, the five countries with the highest number of their nationals detained in Thailand's IDCs, in descending order, were: 1) Myanmar; 2) China; 3) Laos; 4) Cambodia; and 5) Vietnam.<sup>5</sup>

The Immigration Bureau reported that the current staff-to-detainee ratio is 1:185.<sup>6</sup>

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1. Division of International Disease Control Port and Quarantine, Ministry of Public Health, *Annual report of fiscal year 2023*, <https://ddc.moph.go.th/uploads/ckeditor2/files/Annau%20report%202023%20รายงานประจำปีงบประมาณ%202566.pdf>

2. International Detention Coalition, *Immigration Detention and Alternatives to Detention in the Asia-Pacific Region. Annex: Country profiles*, 17 May 2022, <https://idcoalition.org/wp-content/uploads/2024/01/Asia-Pacific-ATD-Report-ANNEX-2022.pdf>

3. International Detention Coalition, *Immigration Detention and Alternatives to Detention in the Asia-Pacific Region. Annex: Country profiles*, 17 May 2022, <https://idcoalition.org/wp-content/uploads/2024/01/Asia-Pacific-ATD-Report-ANNEX-2022.pdf>; OHCHR, *The Coalition for the Rights of Refugees and Stateless Persons (CRSP)'s Submission to the Special Rapporteur on the human rights of migrants: Ending immigration detention of children and seeking adequate reception and care for them*, <https://www.ohchr.org/en/calls-for-input/report-ending-immigration-detention-children-and-seeking-adequate-reception-and>

4. Division 3 of the Investigation Division under the Immigration Bureau, *Correspondence number 0029.843/5926: Request under the Official Information Act 1997*, 6 June 2024 [in Thai]

5. Division 3 of the Investigation Division under the Immigration Bureau, *Correspondence number 0029.843/5926: Request under the Official Information Act 1997*, 6 June 2024 [in Thai]

6. Division 3 of the Investigation Division under the Immigration Bureau, *Correspondence number 0029.843/5926: Request under the Official Information Act 1997*, 6 June 2024 [in Thai]

# Immigration Detention Centers (IDCs) in Thailand as of September 2023



## 2. Domestic laws and procedures relating to immigration detention

Below is the domestic legal framework governing immigration detention in Thailand.

### 2.1. Constitution (2017)

Article 4 of Thailand's Constitution, promulgated in April 2017, broadly stipulates that "human dignity, rights, liberties, and equality of the people shall be protected," without distinguishing between Thai citizens and non-citizens.

Chapter 3 of the Constitution contains provisions guaranteeing fundamental rights and liberties in accordance with those enshrined in international instruments, including the right to liberty and the prohibition of arbitrary detention.

### 2.2. Immigration Act (1979) and related regulations

The Immigration Act, promulgated in 1979, is the primary law that governs migration management in Thailand. The Act is under the administration of the Prime Minister and the Minister of Interior.<sup>7</sup>

Article 4 defines "immigrant" as any person who is not of Thai nationality who enters Thailand. The Act applies to all foreign nationals, irrespective of the reason for their entry. Therefore, without valid documentation, refugees and asylum seekers are considered to have entered or stayed in Thailand irregularly and are subject to the provisions of the Act.

The Immigration Bureau of the Thai police, which reports directly to the Office of the Prime Minister, is the main authority responsible for enforcing the Immigration Act, including by inspecting, permitting, or prohibiting foreign nationals from entering the country, detaining them, and deporting them. The Immigration Bureau also manages immigration detention facilities [See above, *1. Immigration detention centers (IDCs) – Key facts and figures*].<sup>8</sup>

Article 11 of the Act requires foreign nationals to enter and leave Thailand through immigration checkpoints and designated landing, stations, or areas. Article 12 outlines the criteria under which a foreign national is prohibited from entering Thailand, including having no valid passport or travel document, or a visa (when required), or representing a potential threat to public order or national security.<sup>9</sup>

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7. Article 5 of the Immigration Act states: "The Prime Minister and the Minister of Interior shall be in charge and have control for the execution of this Act and shall have power to appoint competent officials, and issue Ministerial Regulations [...] and to prescribe other activities for the execution of this Act. The Ministerial Regulations shall become effective after having been published in the Gazette."

8. International Organization for Migration, *Migration Governance Indicator: Thailand profile 2023*, 23 June 2024, <https://thailand.iom.int/sites/g/files/tmzbdl1371/files/documents/2024-05/pub2024-067-el-mgi-thailand-v06.pdf>

9. Article 12 of the Immigration Act states: "Foreign nationals falling into any of the following categories are excluded from entering Thailand:

- (1) Having no valid and subsisting passport or travel document or having the same but without a visa stamp by a Thai Embassy or Consulate in a foreign country or from the Ministry of Foreign Affairs, except in a case where a visa stamp is not required for certain types of foreigners under special circumstances. [...];
- (2) Having no appropriate means of living on entering the Thailand;
- (3) Entering to work in a job that is prohibited for foreign nationals according to the law governing the management of the work of foreign nationals;
- (4) Being of unsound mind or having any of the diseases as prescribed in the Ministerial Regulations;
- (5) Having not been inoculated against smallpox or undergone vaccination or any other medical operation for protection against communicable diseases as provided by law and having not allowed the immigration physician to do so;
- (6) Having been imprisoned by a judgment of a Thai court or by a lawful injunction or by a judgment of a court of a foreign country, except for punishment for a petty offense or offense committed through negligence or as provided as exemption in the Ministerial Regulations;
- (7) Having been indicated under certain circumstances as likely to cause disruption jeopardizing public peace or safety or the Kingdom security or being a person with a warrant of arrest issued by a foreign government;
- (8) Having been indicated under certain circumstances as likely to engage in prostitution, woman or child trafficking, drug trafficking, evasion of customs duty, or to engage in other activities contrary to public order or good morals;
- (9) Having no money or bond as prescribed by the Minister's orders under Article 14;
- (10) Being prohibited from entering the Kingdom by the Minister under Article 16;



The Immigration Act establishes provisions that allow unauthorized immigrants to remain in Thailand on a temporary basis. Article 17 of the Act gives the Minister of Interior discretionary powers to exempt foreign nationals from prosecution for violations of the Act, enabling those who fall under certain conditions to remain in Thailand [See below, *Stateless persons and victims of human trafficking*].

### Stateless persons and victims of human trafficking

Under the Immigration Act, stateless persons in Thailand are generally considered “immigrants” under Article 4 of the Act and therefore subject to arrest, detention, and deportation for any case of unauthorized entry and stay. Stateless persons claiming to have Thai nationality, but without an identity certificate or sufficient evidence, are presumed to be foreign nationals until their status can be verified, in accordance with Article 57 of the Act. In addition, lacking a passport or other travel document, a foreign national certificate, or a residence certificate, stateless persons are presumed to have entered the country without authorization, as stated in Article 58 of the Act.

Certain categories of stateless persons are given permission under Article 17 of the Act to stay in the country regularly. The Ministry of Interior Notification on the Granting of Authorized Migrant Status and Residency in Thailand, Pursuant to the Immigration Act 1979, to Persons who Have Migrated to and Resided in Thailand for a Long Time, issued on 9 December 2021, grants residency status to members of 19 groups of stateless persons who have “migrated to, and resided in, Thailand for a long time” and those belonging to ethnic minorities, if they are registered and documented by the government.<sup>10</sup> According to the Immigration Bureau’s Guidelines on Admission, Control, and Supervision of Foreign Nationals, dated 27 February 2019, in cases of arrest, stateless persons belonging to such groups should be released if they are registered with the government and can present a non-Thai identification card or relevant document.

With regard to victims of human trafficking, a Notification of the Ministry of Interior issued on 31 March 2011 exceptionally allows victims of human trafficking and their children under the age of 18 to stay in Thailand to: 1) participate in the prosecution of their traffickers according to the Trafficking in Persons Act; and 2) receive medical care, including physical and mental rehabilitation, and access to remedy.<sup>11</sup> However, the period of stay should not exceed one year, which can be extended by one-year periods. The Notification also exempts victims of human trafficking from imprisonment under Articles 62 and 81 of the Immigration Act.<sup>12</sup>

(11) Being deported by the government of Thailand or the government of a foreign country, or the right of stay in Thailand or in foreign country having been revoked, or having been repatriated from Thailand by competent official at the expenses of the government of Thailand, unless the Minister may consider exemption on a basis of special individual case.

The examination and diagnosis of physical disease or mental disorder including preventive operations against communicable disease, shall be conducted by the Immigration Physician.

10. Gazette, *Ministry of Interior Notification on the Granting of Authorized Migrant Status and Residency in Thailand, Pursuant to the Immigration Act 1979, to Persons who Have Migrated to and Resided in Thailand for a Long Time*, 9 December 2021, <https://prt.parliament.go.th/server/api/core/bitstreams/dd0e9962-bff9-4b9b-bc2a-b76411afd092/content> [in Thai]. The 19 groups of stateless persons include: (1) members of the nine “hill tribes” (Karen, Hmong, Mien, Akha, Lahu, Lisu, Lua, Khmu, and Mlabri); (2) other highlanders or highland communities (that migrated before and after 3 October 1985; (3) former members of the Chinese Nationalist Party (Kuomintang) who fled the Chinese Communist Revolution in 1949; (4) the Yunnanese Chinese immigrants (Haw ethnic group) who migrated to Thailand between 1950 – 1961; (5) families of the former members of the Chinese Nationalist Party and the Yunnanese Chinese immigrants who migrated to Thailand between 1962 – 1978; (6) displaced persons from Myanmar; (7) unauthorized immigrants from Myanmar; (8) Vietnamese immigrants; (9) Lao immigrants; (10) Nepali immigrants; (11) former members of the Communist Party of Malaya; (12) Tai Lue people; (13) Hmong settlers in Saraburi Province’s Wat Tham Krabok; (14) unauthorized immigrants from Cambodia; (15) Thai immigrants from Cambodia’s Koh Kong Province; (16) displaced persons from Myanmar who are of Thai descents who migrated to Thailand before 9 March 1976; (17) Lao Sung (high mountain Lao) immigrants; (18) displaced persons from Myanmar who are of Thai descents who migrated to Thailand after 9 March 1976; and (19) the Moken people on the Andaman coast affected by the Tsunami in 2004. When registered and documented by the government, they are given a non-Thai identification card.

11. Gazette, *Notification of the Ministry of Interior: Permission for migrants to remain in Thailand on exceptional basis: for the victims of human trafficking*, 31 March 2011, <https://jla.coj.go.th/th/content/category/detail/id/8/cid/5784/iid/93085> [in Thai]

12. In addition, Article 41 of Thailand’s Trafficking in Person Act provides exemption from prosecution for victims of human trafficking for alleged violations of the Immigration Act as direct result of their being trafficked. Article 37 of the Trafficking in Person Act contains provisions for the assistance to the victims of human trafficking to obtain permission to stay and work in Thailand while taking part in legal proceedings against the alleged traffickers.

Article 19 provides that pending the determination of the foreign nationals' immigration status, authorities have discretionary powers to: (1) allow them to stay at a prescribed place, with or without bail; or (2) detain them "at any place."<sup>13</sup>

Under Article 36, if foreign nationals who have been given permission to stay in Thailand behave in a way that justifies revoking their stay, the Chief of police has the power to revoke their permission to stay.<sup>14</sup> The revocation of permission to stay is one of the grounds for detention and deportation under Article 54.

Unauthorized entry and stay in Thailand are punishable offenses under the Immigration Act. Article 62 prescribes a prison term not exceeding two years and a fine not exceeding 20,000 baht (approximately 531 Euros)<sup>15</sup> for those who fail to enter or leave the country through immigration checkpoints and designated landing, stations, or areas, or fail to present the travel documents prescribed in the Ministerial Regulations to the competent official assigned to the immigration checkpoints. Article 81 prescribes a prison term not exceeding two years and/or a fine not exceeding 20,000 baht (approximately 531 Euros) for those who enter or stay in the country "without permission or whose permission has expired or been revoked."

In addition to prosecution, Article 54 of the Immigration Act authorizes the deportation of foreign nationals for unauthorized entry or stay.<sup>16</sup> Article 54 also gives the authorities broad discretionary powers to manage unauthorized immigrants, including children, prior to their deportation, by: (1) ordering them to stay at any prescribed place with bail, and ordering them to report to the competent official; or (2) detaining them "at a place" for as long as it is necessary.

In practice, foreign nationals who have been arrested for unauthorized entry or stay are taken to a police station to acknowledge the charges against them and then to court to be tried. They can be held at police stations or in correctional facilities to ensure that they appear for trial.<sup>17</sup> If the defendants are found guilty of unauthorized entry and/or stay, they face imprisonment and/or a fine as prescribed in Articles 62 and 81 of the Immigration Act.<sup>18</sup> After paying the fine and/or serving the prison sentence, unauthorized immigrants would be transferred to an immigration detention center (IDC) awaiting deportation.

Nationals from Myanmar, Laos, and Cambodia are subject to a different process. According to the Thai police Memorandum No. 0029.843/Wor 17, dated 22 June 2021, on Guidelines for Handling Cases Involving Foreign Nationals as Victims or Suspects in Criminal Cases or Natural Deaths, immigrants from those three countries who are arrested for unauthorized entry or stay in Thailand under the

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13. Article 19 of the Immigration Act states: "In conducting inspection and considering whether a foreign national is prohibited from entering Thailand, the competent official shall have authority to permit said foreign national to stay at an appropriate place after the affirmation from the foreign national that he or she will come to see the competent official to acknowledge his or her order on a specified date, time, and place, or if the competent official deems appropriate he or she may call for a bond or a bond and security, or the competent official may detain said foreign nationals at any place for further actions to be carried out under this Act. [...] If there is a reasonable suspicion that any foreign national has entered Thailand for the purpose of committing acts specified in Article 12(8) or taking part therein, or any woman or child has entered Thailand for such purpose, the competent official may permit said person(s) a temporary stay in Thailand and order them to report in person and answer questions, [...]"

14. Article 36 of the Immigration Act states: "In a case where the Chief of police has revoked the permission, the foreign national whose permission has been revoked may lodge an appeal to the Commission. The decision of the Commission shall be final. In a case where the Commission has revoked the permission, the order of the Commission is final. The appeal against the order of the Chief of police mentioned in paragraph two shall be lodged with the competent official within 48 hours from the time the order of the Chief of police is acknowledged."

15. 1 EUR = 37.649 THB based on the European Commission's official exchange rates in September 2024.

16. Article 54 of the Immigration Act states: "Any foreign national entering or staying in Thailand without permission, or with permission that is expired or revoked, may be repatriated from Thailand by the competent official. If an investigation is to be conducted for repatriation [...], the provisions of Articles 19 and 20 shall apply *mutatis mutandis*. In a case where there is an order to repatriate a foreign national from Thailand, while waiting for the repatriation to take place, the competent official shall have power to permit the foreign national to reside at a place provided that such foreign national shall have to come to meet the competent official on the date, time and place as prescribed, with bond or with bond and security, or the competent official may detain such foreign national at a place for however long as is necessary. The detention expenses shall be borne by such foreign national."

17. International Detention Coalition, *Immigration detention and ATDs in Asia and the Pacific*, 17 May 2022, <https://idcoalition.org/publications/immigration-detention-atd-in-the-asia-pacific-region/>

18. iLaw, 'Immigration detention centers' – seriously high risks of COVID-19, possible alternatives to detention under the law, 11 May 2020, <https://www.ilaw.or.th/articles/4209> [in Thai]

Immigration Act are not subject to prosecution.<sup>19</sup> As a result, they are not taken to court but directly to IDCs for deportation following their arrest.

In addition, as mentioned above, Thai immigration officers have discretionary powers under Articles 19 (at border entry points) and 54 (for immigrants who have already entered the country) of the Immigration Act to grant the release on bail. For those detained in IDCs awaiting deportation, Order of the Immigration Bureau No. 45/2024 on Assignment on the Consideration of Bail for Foreign Nationals Awaiting Deportation Under Article 54 of the Immigration Act and Bail Criterion, issued on 27 February 2024, establishes the most recent guidelines and conditions for the deliberation of bail applications by the authorities.<sup>20</sup>

## 2.3. National Screening Mechanism (NSM) (2019)

In December 2019, the Thai cabinet passed the Regulation of the Office of the Prime Minister on the Screening of Foreigners who Enter Thailand and are Unable to Return to the Country of Origin (hereinafter “the Regulation”). This Regulation established a National Screening Mechanism (NSM) to identify and provide protection to foreign nationals who are facing, or are at risk of, persecution if returned to their countries of origin.<sup>21</sup> According to the Regulation, those who are granted “protected person” status<sup>22</sup> are protected from deportation - except for voluntary return or when Thailand’s national security is threatened - and are eligible to receive education and healthcare services in Thailand.<sup>23</sup>

The NSM began accepting applications in September 2023, following the Thai cabinet’s approval of the Notification of the Protected Person Screening Committee on the Criteria, Methods, and Conditions for the Screening of Protected Persons, which details the procedures and eligibility criteria for foreigners to claim protection under the mechanism.

The NSM’s main weakness is that the screening committee may refuse to grant the “protected person” status to certain foreigners, if they present a threat to Thailand’s national security – a vague and undefined expression.<sup>24</sup> In addition, according to the Notification, migrant workers from Myanmar, Laos, Cambodia, and Vietnam, as well as other individuals that are subject to “special measures or procedures” under the Ministry of Interior [See below, 4.1. *Lack of legal framework for refugee protection* and 4.6. *Uyghurs, Rohingya, and North Koreans*], are excluded altogether from the NSM and are not eligible to be granted the “protected person” status.<sup>25</sup>

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19. Police Memorandum No. 0029.843/Wor 17 on Guidelines for Handling Cases Involving Foreign Nationals as Victims or Suspects in Criminal Cases or Natural Deaths, 22 June 2021, [https://drive.google.com/file/d/12cua\\_LVp9YEuxfWThXkWH8wMdJ4RNRys/view?usp=sharing](https://drive.google.com/file/d/12cua_LVp9YEuxfWThXkWH8wMdJ4RNRys/view?usp=sharing) [in Thai]

20. Immigration Bureau, *Order of the Immigration Bureau No. 45/2567 on Assignment on the Consideration of Bail for Foreign Nationals Awaiting Deportation Under Article 54 of the Immigration Act and Bail Criterion*, 27 February 2024, <https://www.immigration.go.th/?p=33244> [in Thai]. According to the Order, the criteria for release on bail include: (1) to apply for a passport or travel document; (2) foreign nationals who have been granted refugee status and are awaiting resettlement to a third country or those who have applied for asylum in a third country, with certification documents from the UNHCR; (3) serious health conditions that require close medical supervision or continuing treatment, or life-threatening illness or severe mental distress, such as deteriorating health conditions, pregnancy, or mental disorder; (4) exceptional circumstances that make repatriation to another country impossible, such as an order from a court or competent officer prohibiting travels out of the country, or in case of a civil unrest, war, or natural disaster; (5) foreign nationals who are in the process of applying for protected person status under the 2019 Regulation of the Office of the Prime Minister on the Screening of Foreigners who Enter Thailand and are Unable to Return to the Country of Origin; and (6) unaccompanied children or children whose parents are detained under Article 54 of the Immigration Act. However, foreign nationals who have been convicted by a Thai court for drug-related, human trafficking, or national security offenses are not eligible for bail under Article 54 of the Immigration Act.

21. The Regulation was published in the Gazette on 25 December 2019 and came into force 180 days later.

22. Protected persons are any foreigners who enter, or reside in, Thailand and are unable or unwilling to return to their country of origin due to reasonable ground that they would suffer persecution as determined by the committee.

23. Article 25 of the 2019 Regulation of the Office of the Prime Minister on the Screening of Foreigners who Enter Thailand and are Unable to Return to the Country of Origin.

24. Gazette, *Notification of the Protected Person Screening Committee on the Criteria, Methods and Conditions for Protected Person Screening - Article 9*, 27 March 2023, <https://ratchakitcha.soc.go.th/documents/140D072S0000000003500.pdf> [in Thai]

25. Gazette, *Notification of the Protected Person Screening Committee on the Criteria, Methods and Conditions for Protected Person Screening - Article 2(3)*, 27 March 2023, <https://ratchakitcha.soc.go.th/documents/140D072S0000000003500.pdf> [in Thai]

## 2.4. Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers (MoU-ATD) (2019)



Pakistani refugees, including children and a baby born in detention, are released on bail following their detention in an immigration detention center in Bangkok on 6 June 2011. © Nicolas Asfour / AFP

In Thailand, there are no legal provisions that prohibit the detention of migrant children. On 27 January 2019, seven Thai agencies<sup>26</sup> signed an MoU to end the detention of migrant children at immigration detention centers (IDCs).<sup>27</sup> The general principles of the MoU include: to acknowledge that detention of children should be used as a measure of last resort only, and for the shortest period of time;<sup>28</sup> and to provide a framework for alternatives to detention for migrant children and their mothers.<sup>29</sup> The MoU also emphasizes the best interest of the child in the decision-making process and prioritizes family-based care.<sup>30</sup> Government shelters operated by the Ministry of Social Development and Human Security, or privately-run shelters are to be used as the last resort and for the shortest possible duration.<sup>31</sup>

The Standard Operating Procedures (SOPs) accompanying the MoU place a priority on the use of alternatives to detention of children in vulnerable situations, including: unaccompanied children; separated children; children who are United Nations High Commissioner for Refugees (UNHCR) persons of concern or claiming refugee status; children who are victims of human trafficking; disabled children and children with health conditions; young children who still rely on breastfeeding; children with a history

26. These are: the police; the Ministry of Social Development and Human Security; the Ministry of Foreign Affairs; the Ministry of Interior; the Ministry of Public Health; the Ministry of Education; and the Ministry of Labor.

27. Ministry of Foreign Affairs, *Signing Ceremony of the Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers*, 24 January 2019; Asylum Access, *Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers* B.E. 2562; 24 January 2019, [https://asylumaccess.org/wp-content/uploads/2021/04/Eng-Version\\_MoU\\_ATD\\_Final.pdf](https://asylumaccess.org/wp-content/uploads/2021/04/Eng-Version_MoU_ATD_Final.pdf)

28. Article 4.1 of the MoU-ATD states: "Children shall not be detained, except in necessary and unavoidable circumstances. Whereby they may be detained at the Immigration Detention Centers as the last resort and for the shortest possible duration."

29. Asylum Access Thailand, *Know Your Options: a booklet for asylum seekers and refugees in Thailand*, 2019, [https://asylumaccess.org/wp-content/uploads/2021/04/Booklet\\_AAT\\_with-cover\\_English.pdf](https://asylumaccess.org/wp-content/uploads/2021/04/Booklet_AAT_with-cover_English.pdf)

30. Article 4.2 of the MoU-ATD states: "Decisions and/or actions affecting the child shall always take into consideration his/her best interests and views."

31. Article 4.4 of the MoU-ATD states: "In determining ways to provide care for children, family-based care shall be given first priority. Reception centers of the Ministry of Social Development and Human Security, or privately-run reception centers registered under relevant laws shall be the last resort and used for the shortest possible duration."



of being incarcerated or detained for crimes; children without identity; street children; and children with other issues that require protection.<sup>32</sup>

In addition, the MoU established a multidisciplinary working group, comprised of immigration and child protection officials and representatives from United Nations (UN) agencies, tasked with finding non-custodial alternative measures and developing an individual plan for each migrant child.<sup>33</sup> The MoU prescribes that migrant children and their mothers under non-custodial measures be given access to appropriate education and health services, with support from UN agencies and civil society organizations.<sup>34</sup>

## 2.5. Prevention and Suppression of Torture and Enforced Disappearance Act (2022)

The Prevention and Suppression of Torture and Enforced Disappearance Act, which came into force on 22 February 2023, criminalizes torture, ill-treatment, and enforced disappearance.<sup>35</sup>

Article 13 of the Act codifies the internationally recognized principle of *non-refoulement* [See below, 3.3. *Non-refoulement*], by prohibiting state officials from expelling, deporting, or extraditing individuals to countries where there are substantial grounds for believing that they would be at risk of torture, cruel, inhuman, or degrading treatment, or enforced disappearance.

The Act also establishes legal and procedural safeguards against torture, ill-treatment, and enforced disappearance, which are also applicable to immigration procedures and the deportation process.<sup>36</sup> Article 22 requires responsible authorities to “continuously record audio and video throughout the arrest and detention process until the person is delivered to the inquiry official or released” and “immediately notify the public prosecutor and the chief district officer” of such arrest and detention. Article 23 further requires the authorities to prepare a detailed report of the arrest and detention, and that the information be made available to the family and lawyer of the detainee.

Under Article 26, allegations of an act of torture, cruel, inhuman, or degrading treatment can be reported to the court by the victim or those acting in the victim’s interest.

In the event of deaths in custody, Article 28 requires responsible officials to immediately inform the Committee on the Prevention and Suppression of Torture and Enforced Disappearance, an independent body established under the Act to ensure its prompt participation in the investigation into such deaths.<sup>37</sup>

On 21 September 2023, the Committee on the Prevention and Suppression of Torture and Enforced Disappearance issued a regulation governing the audio and video recording pertaining to the arrest and detention of individuals until they are handed over to the inquiry officer or released under Articles 22 and 23, as well as procedures for informing the public prosecutors and administrative officers about the arrest and the required information that must be recorded during an arrest.<sup>38</sup>

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32. Asylum Access, *Standard Operating Procedure under the Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers*, July 2020, <https://asylumaccess.org/wp-content/uploads/2021/06/The-manual-of-SOP-MOU-ATD-TH-version.pdf>

33. OHCHR, *Thailand’s response to Questionnaire of the Special Rapporteur on the human rights of migrants: Ending immigration detention of children and seeking adequate reception and care for them*, 20 July 2020, <https://www.ohchr.org/en/calls-for-input/report-ending-immigration-detention-children-and-seeking-adequate-reception-and>

34. OHCHR, *Thailand’s response to Questionnaire of the Special Rapporteur on the human rights of migrants: Ending immigration detention of children and seeking adequate reception and care for them*, 20 July 2020, <https://www.ohchr.org/en/calls-for-input/report-ending-immigration-detention-children-and-seeking-adequate-reception-and>

35. Gazette, *Prevention and Suppression of Torture and Enforced Disappearance Act 2022*, 24 October 2022, [https://drive.google.com/file/d/1oS2FCkZGht8GmXy4wFcx5wGUoyOP\\_quw/view](https://drive.google.com/file/d/1oS2FCkZGht8GmXy4wFcx5wGUoyOP_quw/view)

36. Cross Cultural Foundation, *Safeguards and enhanced legal protections for vulnerable group under Anti-Torture and Enforced Disappearance Act*, 20 June 2023, <https://crcfthailand.org/en/2023/06/20/safeguards-and-enhanced-legal-protections-for-vulnerable-group-under-the-anti-torture-and-enforced-disappearance-act-b-e-2565/>

37. The Committee on the Prevention and Suppression of Torture and Enforced Disappearance is established under Article 14 of the Prevention and Suppression of Torture and Enforced Disappearance Act. The committee is chaired by the Minister of Justice and is comprised of: the permanent secretaries of the Ministry of Defense, the Ministry of Foreign Affairs, and the Ministry of Interior; the Attorney General; the Chief of police; the Director General of the Department of Special Investigation; the President of the Lawyers’ Council of Thailand; the Chairperson of the National Press Council of Thailand; the Director-General of the Rights and Liberties Protection Department; and six independent experts.

38. Ministry of Justice, *Regulation of the Committee on the Prevention and Suppression of Torture and Enforced Disappearance on the audio and video recording during arrest and detention, the notification of detention, and the recording of information of detainees 2023*, 21 September 2023, <https://drive.google.com/drive/folders/1-1WV5RhG2q6tyor3MieOuEViJpUDwUk> [in Thai]

### 3. International standards on immigration detention

Various international human rights treaties and instruments outline the obligations and standards that are relevant to the treatment of detained migrants.

Thailand is a state party to several of these human rights treaties. They include: the International Covenant on Civil and Political Rights (ICCPR); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the Convention on the Rights of the Child (CRC).

Some of the rights guaranteed by these treaties are also enshrined in the Universal Declaration of Human Rights (UDHR), to which Thailand is a signatory.

In addition, despite being a non-binding document, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereinafter “the Body of Principles”) constitutes an authoritative set of provisions that are applicable to the situation of detained migrants.

It must be noted that Thailand has neither signed nor ratified the 1951 Convention Relating to the Status of Refugees, also known as the 1951 Refugee Convention, and its 1967 Protocol. These two key international instruments define the term “refugee” and outline the rights of refugees and the international minimum standards for their treatment and protection.

Below is a list of the relevant provisions of the above-referenced international instruments, categorized by the type of right they recognize and protect.

#### 3.1. The right to seek and enjoy asylum, and the non-criminalization of migration

Seeking asylum is a universal human right, the exercise of which must not be criminalized.<sup>39</sup> This right is set out in Article 14(1) of the UDHR, which states: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

The irregular entry and stay in a country by migrants should not be treated as a criminal offense, because the criminalization of irregular migration exceeds the legitimate interests of states in protecting their territories and regulating irregular migration flows.<sup>40</sup>

#### 3.2. Right to liberty

The fundamental right to liberty extends to all persons - including migrants, asylum seekers, refugees, and stateless persons - at all times and in all circumstances.<sup>41</sup> Article 3 of the UDHR and Article 9(1) of the ICCPR state: “Everyone has the right to life, liberty and security of person.”

In addition, Article 9 of the UDHR and 9(1) of the ICCPR specifically prohibit “arbitrary” detention. The prohibition of arbitrary detention is absolute, meaning that it is a non-derogable norm of customary international law (known as *jus cogens*).<sup>42</sup>

The UN Working Group on Arbitrary Detention (WGAD)<sup>43</sup> qualifies a deprivation of liberty as “arbitrary” when it falls under at least one of the five legal categories listed in its methods of work. Category 4 of the

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39. UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, UN Doc. A/HRC/39/45, para. 9.

40. UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, UN Doc. A/HRC/39/45, para. 9.

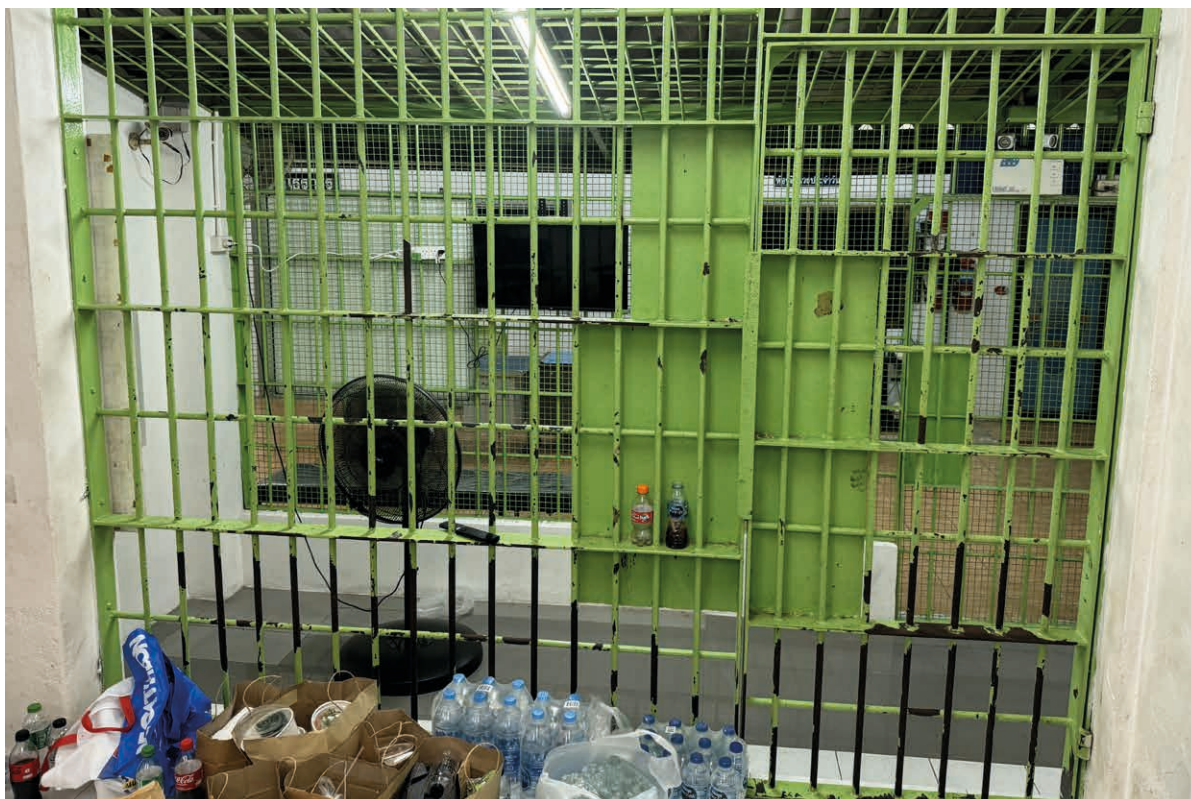
41. UN Human Rights Committee, *General comment No. 35, Article 9 (Liberty and security of person)*, 16 December 2014, UN Doc. CCPR/C/GC/35; para. 3.

42. UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, UN Doc. A/HRC/39/45, para. 8.

43. The WGAD is one of the thematic mechanism of the UN Human Rights Council, which are collectively known as Special Procedures. The WGAD has the mandate to investigate cases of deprivation of liberty imposed arbitrarily or inconsistently with the international standards set forth in the UDHR or international legal instruments accepted by states concerned.

WGAD's methods of work considers a deprivation of liberty arbitrary when "asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy."<sup>44</sup>

According to the WGAD, any form of administrative detention<sup>45</sup> or custody in the context of migration must be applied as an exceptional measure of last resort, for the shortest period, and only if justified by a legitimate purpose, such as documenting entry and recording claims or initial verification of identity if in doubt.<sup>46</sup> To establish whether detention is necessary, authorities must consider the availability and applicability of less restrictive alternative measures.<sup>47</sup>



A cell in the Phuket immigration detention center on 27 January 2024. © Handout / Bi-2 / AFP

Asylum seekers, refugees, stateless persons, and individuals in other situations of vulnerability, including pregnant women, elderly persons, persons with disabilities, LGBTIQ persons, and survivors of trafficking, should not be detained.<sup>48</sup>

The deprivation of liberty of migrant children, including unaccompanied or separated children, is prohibited.<sup>49</sup>

Article 37(b) of the CRC states: "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

44. UN Human Rights Council, 36th session, *Methods of work of the Working Group on Arbitrary Detention*, 13 July 2017, UN Doc. A/HRC/36/38, para. 8.

45. Administrative detention is the arrest and detention of individuals by state authorities outside the criminal legal proceedings.

46. UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, UN Doc. A/HRC/39/45, para. 12.

47. UN Human Rights Committee, *General comment No. 35, Article 9 (Liberty and security of person)*, 16 December 2014, UN Doc. CCPR/C/GC/35; para. 18; UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, UN Doc. A/HRC/39/45, paras. 16, 23, and 24.

48. UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, UN Doc. A/HRC/39/45, paras. 11 and 41.

49. UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, UN Doc. A/HRC/39/45, para. 11.

The detention of children because of their parents' migration status violates the principle of the best interests of the child and constitutes a violation of the rights of the child. Children must not be separated from their parents and/or legal guardians. The detention of children whose parents are detained should not be justified on the basis of maintaining the family unit, and alternatives to detention must be applied to the entire family instead.<sup>50</sup>

Article 9(1) of the CRC states: "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child." Article 3 of the CRC further stipulates: "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."

### **3.3. *Non-refoulement***

The principle of *non-refoulement* must always be respected, and the expulsion of foreign nationals in need of international protection, including migrants regardless of their status and stateless persons, is prohibited by international law.<sup>51</sup>

Article 3(1) of the CAT stipulates: "No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

### **3.4. Due process**

The right of detained migrants to bring proceedings before a court to challenge the lawfulness of their detention and obtain appropriate remedies upon a successful challenge is a human right guaranteed by international law.<sup>52</sup> Any detention of migrants that makes it impossible to mount an effective challenge to the continued detention is arbitrary.<sup>53</sup>

Article 9(4) of the ICCPR states: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." Article 9(5) of the ICCPR further stipulates: "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

Similarly, Principle 4 of the Body of Principles states: "Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority." Principle 11(1) states: "A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. Principle 11(3) further states: "A judicial or other authority shall be empowered to review as appropriate the continuance of detention." In addition, Principle 32(1) stipulates: "A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful."

With regard to children, Article 37(d) of the CRC states: "Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

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50. UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, UN Doc. A/HRC/39/45, para. 40.

51. UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, UN Doc. A/HRC/39/45, para. 43.

52. UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, UN Doc. A/HRC/39/45, para. 29.

53. UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, UN Doc. A/HRC/39/45, para. 30.



### 3.5. Conditions of detention

Detained migrants enjoy the same rights as individuals detained in the criminal justice system or other administrative context, including the rights enshrined in the Body of Principles.

Provisions of the Body of Principles related to specific aspects of detention conditions are detailed in *Chapter 5. Detention conditions below international standards*.

#### 3.5.1. Non-discrimination

Detained migrants must be treated without discrimination on any grounds that may undermine the enjoyment of human rights on the basis of equality.<sup>54</sup>

Article 1 of the UDHR states: “All human beings are born free and equal in dignity and rights.” Article 2 specifies: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 2(1) of the ICCPR imposes an obligation on state parties to guarantee the rights recognized in the Covenant “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Principle 5(1) of the Body of Principles prescribes that the Principles are applicable to all persons within the territory of any given state, “without distinction of any kind, such as race, color, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.”

#### 3.5.2. Right to be treated with dignity and humanity

Detained migrants must be treated humanely and with respect for their inherent dignity. The conditions of their detention must be humane, appropriate, respectful, and non-punitive.<sup>55</sup>

Article 10(1) of the ICCPR guarantees to all persons deprived of their liberty the right to be “treated with humanity and with respect for the inherent dignity of the human person.”

Principle 1 of the Body of Principles similarly prescribes that “all persons under any form of detention” have the right to be “treated in a humane manner and with respect for the inherent dignity of the human person.”

Article 37(c) of the CRC states: “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.” Article 37(c) further states that detained children have the right to maintain contact with their families “through correspondence and visits, save in exceptional circumstances.”

#### 3.5.3. Torture and other ill-treatment

Detained migrants must not be subjected to torture or other cruel, inhuman, or degrading treatment or punishment.

The absolute and non-derogable prohibition of torture is enshrined, almost *verbatim*, in Article 5 of the UDHR, Article 7 of the ICCPR, Article 37(a) of the CRC, and Principle 6 of the Body of Principles.

In addition, Article 2(1) of the CAT requires state parties to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” Article 16(1) of the CAT requires that state parties undertake to prevent other acts of cruel, inhuman or degrading

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54. UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, UN Doc. A/HRC/39/45, para. 32.

55. UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, UN Doc. A/HRC/39/45, para. 38.

treatment or punishment which do not amount to torture, [...] when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

Article 12 of the CAT imposes an obligation on state parties to ensure that "competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed."

#### **3.5.4. Rights to an adequate standard of living, health, and cultural life**

Detained migrants should also enjoy key socio-economic and cultural rights guaranteed by the ICESCR.

Article 11(1) of the ICESCR specifies that states party to the Covenant "shall recognize the right of everyone to an adequate standard of living [...], including adequate food, clothing and housing."

Article 12(1) provides for "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

Article 15(1)(a) guarantees "the right of everyone to take part in cultural life."

## 4. Immigration detention inconsistent with international standards

Thailand's legal framework and the Thai authorities' practice concerning immigration detention are largely inconsistent with international standards [See above, 3. *International standards on immigration detention*].

Thailand's Immigration Act [See above, 2.2. *Immigration Act (1979) and related regulations*] does not provide a clear and exhaustive list of grounds for immigration detention. Instead, the Act grants authorities sweeping powers to detain foreign nationals for unauthorized entry and stay, without having to consider their individual circumstances or other non-custodial alternatives to detention.

The Act applies to an all-encompassing category of unauthorized immigrants, which includes refugees, asylum seekers, victims of human trafficking, and those in situations of vulnerability, despite their specific need for protection.

In addition, there are neither prescribed maximum time limits nor judicial safeguards for immigration detention.

### 4.1. Lack of legal framework for refugee protection

Thailand is not a signatory to the 1951 Refugee Convention and does not have specific legislation for the protection of refugees and asylum seekers.

The Immigration Act does not afford refugees and asylum seekers legal recognition and protection. As a result, refugees and asylum seekers who enter or stay in Thailand without valid documentation are treated as unauthorized immigrants and are subject to arrest, prosecution, detention, and deportation for irregular entry and/or stay under the Immigration Act, irrespective of their asylum claim or refugee status recognized by the UNHCR.

The broad discretionary powers granted to the authorities under the Act have enabled the Thai government to develop and implement *ad hoc* policies on refugees and asylum seekers that vary depending on their nationalities.<sup>56</sup>

For example, the National Screening Mechanism (NSM), established in December 2019 [See above, 2.3 *National Screening Mechanism (NSM) (2019)*], raises concerns due to: 1) the arbitrary exclusion of migrant workers from Myanmar, Laos, Cambodia, and Vietnam, from this mechanism;<sup>57</sup> and 2) the lack of legal provisions to exempt from criminal prosecution, detention, and deportation under the Immigration Act individuals awaiting the outcome of their application for "protected person" status.<sup>58</sup> In addition, according to Article 15 of the Regulation, individuals belonging to Uyghur and Rohingya communities and North Korean nationals could be excluded from the NSM on national security grounds, as they are currently under the purview of the National Security Council under "special measures or procedures."<sup>59</sup>

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56. Amnesty International, *Between a Rock and a Hard Place: Thailand's refugee policies and violations of the principle of non-refoulement*, 28 September 2017, <https://www.amnesty.org/en/documents/asa39/7031/2017/en/>; Asylum Access, Asia Pacific Refugee Rights Network (APRRN), Fortify Rights, Human Rights Development Foundation (HRDF), Jesuit Refugee Service (JRS), Migrant Working Group (MWG), and People's Empowerment Foundation (PEF), *Joint submission for the Universal Periodic Review of Thailand - 2nd Cycle*, 21 September 2015, <https://asylumaccess.org/wp-content/uploads/2019/12/UPR-2016-Thailand-NGO-Submission.pdf>

57. Gazette, *Notification of the Protected Person Screening Committee on the Criteria, Methods and Conditions for Protected Person Screening*, 27 March 2023, <https://ratchakitcha.soc.go.th/documents/140D072S0000000003500.pdf> [in Thai]

58. Human Right Watch, *Letter to Prime Minister Srettha Thavisin Re: Implementation of the National Screening Mechanism*, 13 December 2023, <https://www.hrw.org/news/2023/12/13/letter-prime-minister-srettha-thavisin-re-implementation-national-screening>

59. Articles 15 of the 2019 Regulation of the Office of the Prime Minister on the Screening of Foreign Nationals who Enter Thailand and Are Unable to Return to the Country of Origin; Office of the Council of State, *Nor Lor 0907/ 449: Important laws that urgently need to be amended or drafted (Draft Immigration Act ...)*, 18 December 2019, [https://resolution.soc.go.th/PDF\\_UPLOAD/2562/9933420829.pdf](https://resolution.soc.go.th/PDF_UPLOAD/2562/9933420829.pdf) [in Thai]

Rohingya who were identified as survivors of trafficking have been held at shelters run by the Ministry of Social Development and Human Security. Rohingya who were not identified as survivors of trafficking, or failed to identify as such, and Uyghurs have been detained indefinitely in IDCs.<sup>60</sup> North Korean asylum seekers have been generally subject to special arrangements made between the governments of Thailand and South Korea to deport them to South Korea [See below, 4.6. *Uyghurs, Rohingya, and North Koreans*].

The lack of a legal framework and protection policies has led to a precarious situation for refugees and asylum seekers. They have been subject to arrest, prosecution, detention in IDCs, and deportation under the Immigration Act. They have also been denied access to basic rights guaranteed under international human rights law.

In addition, for the past several decades, Thai authorities have on many occasions deported refugees and asylum seekers back to their countries of origin, where they faced risks of persecution, in violation of the principle of *non-refoulement* [See above, 3.3. *Non-refoulement*].

For example, in 2009, over 4,000 Hmong refugees detained in a camp in Petchabun Province were deported to Laos, where they had long faced persecution.<sup>61</sup> In 2013, the Thai police forcibly deported a large group of Rohingya refugees from IDCs and left them off at sea to human traffickers.<sup>62</sup> In July 2015, Thai authorities forcibly returned 109 Uyghur men from IDCs across the country to China at the request of the Chinese government.<sup>63</sup> Between 2018 and 2021, Thai authorities also arrested, detained, and deported a total of at least six Cambodians who had fled the Cambodian government's crackdown on the political opposition.<sup>64</sup>

## 4.2. Authorities' broad discretionary powers

The Immigration Act gives Thai authorities discretion in ordering the detention of unauthorized immigrants, without requiring them to conduct an individualized assessment that justifies the necessity of detention and to consider non-custodial alternatives to detention.

The Act does not restrict the use of detention to specific or exceptional circumstances or as a measure of last resort, and does not impose on the authorities an obligation to consider non-custodial alternative measures.

According to Article 54 of the Act, detention is provided as an alternative to the temporary release on bail (with a periodic reporting requirement) for unauthorized immigrants awaiting deportation [See above, 2.2. *Immigration Act (1979) and related regulations*].

In practice, detaining unauthorized immigrants in the IDCs is the norm rather than an exception. Release from detention is granted primarily through bail and guarantors, including for refugees, asylum seekers, and those belonging to vulnerable groups.<sup>65</sup>

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60. Asylum Access Thailand, Asia Pacific Refugee Rights Network, Coalition for the Rights of Refugees and Stateless Persons, Fortify Rights, *Joint Submission to the UN Committee on the Elimination of Racial Discrimination on Thailand's Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination*, 10 August 2021, <https://asylumaccess.org/submission-to-the-u-n-committee-on-the-elimination-of-racial-discrimination-on-thailands-compliance-with-the-international-convention-on-the-elimination-of-all-forms-of-racial-discrimination/>

61. Guardian, *Thailand begins deportation of more than 4,000 Hmong asylum seekers*, 28 December 2009, <https://www.theguardian.com/world/2009/dec/28/thailand-deportation-hmong-laos>

62. BBC, *Thailand send Rohingya Muslims back to Burma*, 13 February 2014, <https://www.bbc.com/news/world-asia-26167676>

63. Human Rights Watch, *Thailand Should Free Detained Uyghur Asylum Seekers*, 8 March 2024, <https://www.hrw.org/news/2024/03/08/thailand-should-free-detained-uyghur-asylum-seekers>

64. UNHCR, *UNHCR condemns deportation of Cambodian refugees by Thai authorities*, 12 November 2021, <https://www.unhcr.org/asia/news/news-releases/unhcr-condemns-deportation-cambodian-refugees-thai-authorities>; Human Rights Watch, *Thailand: Cambodian Refugees Forcibly Returned*, 12 November 2021, <https://www.hrw.org/news/2021/11/12/thailand-cambodian-refugees-forcibly-returned>; UNHCR, *UNHCR dismayed by deportation of a third Cambodian refugee by Thai Authorities this month*, 22 November 2021, <https://www.unhcr.org/news/news-releases/unhcr-dismayed-deportation-third-cambodian-refugee-thai-authorities-month>; Freedom House, *Thailand: Transnational Repression Host Country Case Study*, June 2022, <https://freedomhouse.org/report/transnational-repression/thailand>

65. International Detention Coalition, *Immigration Detention and Alternatives to Detention in the Asia-Pacific Region. Annex: Country profiles*, 17 May 2022, <https://idcoalition.org/wp-content/uploads/2024/01/Asia-Pacific-ATD-Report-ANNEX-2022.pdf>; UNHCR, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 2<sup>nd</sup> Cycle, 25<sup>th</sup> session - Thailand*, May 2016, <https://www.refworld.org/>



Despite the Immigration Bureau's guidelines for release on bail [See above, 2.2. *Immigration Act (1979) and related regulations*], the bail consideration process is discretionary and precarious, and assumes only repatriation or, in cases of refugees, resettlement, as a solution.<sup>66</sup> In 2016, Thai immigration authorities ceased granting bail to refugees and asylum seekers in the vast majority of cases, as a result of the government's adoption of a more restrictive policy regarding irregular migration in late 2015.<sup>67</sup> Particular groups of detainees have continued to be denied bail. For instance, Uyghur detainees,<sup>68</sup> including elderly and ill persons, who have been systematically placed under the purview of the National Security Council (NSC) instead of the immigration authorities,<sup>69</sup> have been generally denied access to bail [See below, 4.6. *Uyghurs, Rohingya, and North Koreans*].<sup>70</sup>

Bail rates can also be prohibitive for those with limited financial resources.<sup>71</sup> According to the Order of the Immigration Bureau No. 45/2024 on Assignment on the Consideration of Bail for Foreign Nationals Awaiting Deportation Under Article 54 of the Immigration Act and Bail Criterion, bail for refugees and asylum seekers detained in IDCs has been typically set at 50,000 baht (approximately 1,328 Euros), with a requirement to report to immigration authorities every two weeks.<sup>72</sup> Following the signing of the Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers (MoU-ATD) in 2019 [See above, 2.4. *Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers (MoU-ATD) (2019)*], costs related to bail has been increased to between 100,000 and 200,000 baht (approximately 2,656 – 5,312 Euros) for those who are not covered by the MoU.<sup>73</sup> The broad discretion afforded to immigration authorities has also led to some instances of bribery in exchange for the release on bail.<sup>74</sup> In addition, access to bail is primarily granted to detainees in IDCs Bangkok, and not those in provincial areas.<sup>75</sup>

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[policy/upr/unhcr/2016/en/123790](https://www.refworld.org/policy/upr/unhcr/2016/en/123790)

66. UNHCR, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 2<sup>nd</sup> Cycle, 25<sup>th</sup> session - Thailand*, May 2016, <https://www.refworld.org/policy/upr/unhcr/2016/en/123790>; Amnesty International, *Between a Rock and a Hard Place: Thailand's refugee policies and violations of the principle of non-refoulement*, 28 September 2017, <https://www.amnesty.org/en/documents/asa39/7031/2017/en/>; Refugee Rights Network in Thailand, *Joint Submission Universal Periodic Review of Thailand Cycle 3, 39<sup>th</sup> Session*, 15 June 2021, [https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand\\_en.pdf](https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand_en.pdf); Asylum Access Thailand, Asia Pacific Refugee Rights Network, Coalition for the Rights of Refugees and Stateless Persons, Fortify Rights, *Joint Submission to the UN Committee on the Elimination of Racial Discrimination on Thailand's Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination*, 10 August 2021, <https://asylumaccess.org/submission-to-the-u-n-committee-on-the-elimination-of-racial-discrimination-on-thailands-compliance-with-the-international-convention-on-the-elimination-of-all-forms-of-racial-discrimination/>
67. Amnesty International, *Between a Rock and a Hard Place: Thailand's refugee policies and violations of the principle of non-refoulement*, 28 September 2017, <https://www.amnesty.org/en/documents/asa39/7031/2017/en/>; Kanoknit Tankulratana and Suthep Janamporn, *Research on Alternatives to Detention (ATD) of Asylum Seekers and Urban Refugees in Thailand*, 13 February 2017, <http://lms.nhrc.or.th/ulib/document/Fulltext/F09221.pdf> [in Thai]; Bangkok Post, *Detention centres stuck in past century*, 18 February 2018, <https://www.bangkokpost.com/thailand/special-reports/1414047/detention-centres-stuck-in-past-century>
68. Refugee Rights Network in Thailand, *Joint Submission Universal Periodic Review of Thailand Cycle 3, 39<sup>th</sup> Session*, 15 June 2021, [https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand\\_en.pdf](https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand_en.pdf)
69. Bangkok Post, *UN 'rebuffed requests to help Uyghurs' in Thailand*, 4 May 2024, <https://www.bangkokpost.com/thailand/general/2786797/un-rebuffed-requests-to-help-uyghurs-in-thailand>
70. Refugee Rights Network in Thailand, *Joint Submission Universal Periodic Review of Thailand Cycle 3, 39<sup>th</sup> Session*, 15 June 2021, [https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand\\_en.pdf](https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand_en.pdf)
71. UNHCR, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 3<sup>rd</sup> Cycle, 39<sup>th</sup> Session – Thailand*, February 2021, <https://www.refworld.org/policy/upr/unhcr/2021/en/123963>
72. Immigration Bureau, *Order of the Immigration Bureau No. 45/2567 on Assignment on the Consideration of Bail for Foreign Nationals Awaiting Deportation Under Article 54 of the Immigration Act and Bail Criterion*, 27 February 2024, <https://www.immigration.go.th/?p=33244> [in Thai]
73. Asylum Access Thailand, Asia Pacific Refugee Rights Network, Coalition for the Rights of Refugees and Stateless Persons, Fortify Rights, *Joint Submission to the UN Committee on the Elimination of Racial Discrimination on Thailand's Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination*, 10 August 2021, <https://asylumaccess.org/submission-to-the-u-n-committee-on-the-elimination-of-racial-discrimination-on-thailands-compliance-with-the-international-convention-on-the-elimination-of-all-forms-of-racial-discrimination/>
74. Asylum Access Thailand, Asia Pacific Refugee Rights Network, Coalition for the Rights of Refugees and Stateless Persons, Fortify Rights, *Joint Submission to the UN Committee on the Elimination of Racial Discrimination on Thailand's Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination*, 10 August 2021, <https://asylumaccess.org/submission-to-the-u-n-committee-on-the-elimination-of-racial-discrimination-on-thailands-compliance-with-the-international-convention-on-the-elimination-of-all-forms-of-racial-discrimination/>
75. International Detention Coalition, *Immigration Detention and Alternatives to Detention in the Asia-Pacific Region. Annex: Country profiles*, 17 May 2022, <https://idcoalition.org/wp-content/uploads/2024/01/Asia-Pacific-ATD-Report-ANNEX-2022.pdf>

### 4.3. Indefinite detention

The Immigration Act does not define a limit to the period of detention in the context of pending deportation proceedings. This has allowed for prolonged or indefinite detention, which is considered arbitrary under international law [See above, 3.2. *Right to liberty*].

Article 20 of the Act stipulates that foreign nationals who enter Thailand through its land borders may be detained for no more than 48 hours for inspection and consideration of whether they are forbidden from entering the country. The initial period of 48 hours can be extended, if necessary, for a period of not exceeding seven days, after which a court order is required for further detention of up to 12 days at a time. Nonetheless, Article 20 also allows the court to order a provisional release.

This judicial process applies to the initial detention pending the determination of immigration status under Article 19 [See above, 2.2. *Immigration Act (1979) and related regulations*]. However, following a conviction for irregular entry or stay by the court, there is no prescribed time limit for the detention of unauthorized immigrants who are detained awaiting deportation under Article 54 of the Act, and authorities can detain them for a potentially indefinite period.

In practice, the duration of detention differs depending on the granting of bail and deportation proceedings. There are primarily two channels for deportation adopted by the authorities: (1) through land borders for those from Thailand's neighboring countries - Myanmar, Laos, Cambodia, and Malaysia; and (2) by airplane for those from non-neighboring countries, a process known as "self-deportation."<sup>76</sup> The typical length of detention for IDC detainees has ranged from three days to 12 years.<sup>77</sup>

Authorities arrange the deportation of detainees to neighboring countries through land borders, typically without charge.<sup>78</sup> The process can take two to four weeks from the start of the detention.<sup>79</sup> IDC detainees from countries that do not share a border with Thailand are held until they pay for a return flight to their countries of origin.<sup>80</sup>

However, asylum seekers and refugees have been often held for extended periods in IDCs, or, in some cases, in indefinite detention because they have been unable to return to their home countries due to fear of persecution, lack of financial resources to pay for their deportation or bail, or lack of opportunities to resettle in a third country.<sup>81</sup>

Some detainees remain in IDCs for extended periods due to Thailand's national security policy. For instance, as of February 2024, 43 Uyghur men, who entered Thailand to flee persecution and other serious human rights violation in China's Xinjiang Uyghur Autonomous Region, had been detained since March 2014 at Suan Phlu IDC in Bangkok [See below, 4.6. *Uyghurs, Rohingya, and North Koreans*].<sup>82</sup>

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76. Amnesty International, *Between a Rock and a Hard Place: Thailand's refugee policies and violations of the principle of non-refoulement*, 28 September 2017, <https://www.amnesty.org/en/documents/asa39/7031/2017/en/>; Human Rights Watch, *Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers*, 12 September 2012, <https://www.hrw.org/report/2012/09/13/ad-hoc-and-inadequate/thailands-treatment-refugees-and-asylum-seekers>

77. Bangkok Post, *Detention centers stuck in past century*, 18 February 2018, <https://www.bangkokpost.com/thailand/special-reports/1414047/detention-centres-stuck-in-past-century>

78. However, some Cambodian detainees reportedly had to pay for the transportation. Information obtained by FIDH from a person with knowledge of the issue, 13 October 2024

79. Information obtained by FIDH from a person with knowledge of the issue, 13 October 2024

80. Amnesty International, *Between a Rock and a Hard Place: Thailand's refugee policies and violations of the principle of non-refoulement*, 28 September 2017, <https://www.amnesty.org/en/documents/asa39/7031/2017/en/>

81. UNHCR, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 2<sup>nd</sup> Cycle, 25<sup>th</sup> session - Thailand*, May 2016, <https://www.refworld.org/policy/upr/unhcr/2016/en/123790>; Human Rights Watch, *Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers*, 12 September 2012, <https://www.hrw.org/report/2012/09/13/ad-hoc-and-inadequate/thailands-treatment-refugees-and-asylum-seekers>

82. OHCHR, *AL THA 2/2024*, 22 February 2024, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28775>



An immigration detention center in Bangkok on 31 January 2024. © Jack Taylor / AFP

#### 4.4. No right to challenge the legality of the detention

Detainees in Thailand's IDCs do not have the right to challenge the legality of their detention and/or to seek a judicial review of the administrative decision concerning their detention. These are fundamental safeguards against their arbitrary detention.

The Immigration Act does not provide unauthorized immigrants detained in IDCs pending deportation proceedings a judicial review or appeal mechanism of detention orders following a conviction for irregular entry or stay.<sup>83</sup> Once held in IDCs, detainees do not have access to a regular, formal channel to challenge or review the necessity and proportionality of their detention.<sup>84</sup>

However, in cases of prolonged or indefinite detention, mistreatment, or poor conditions in IDCs, detainees can now seek redress under the Prevention and Suppression of Torture and Enforced Disappearance Act [See above 2.5. *Prevention and Suppression of Torture and Enforced Disappearance Act (2022)*].

#### 4.5. Detention of migrants in situations of vulnerability

Thailand's immigration law and policies do not explicitly prohibit the use of detention for migrants in vulnerable situations, including children and their families, certain groups of stateless persons, and victims of human trafficking. These individuals are at risk of exploitation, abuse, gender-based violence, and other human rights violations.

In some cases, they have faced arbitrary detention due to the lack of a comprehensive and robust screening mechanism to identify vulnerabilities and provide appropriate humanitarian protection. Other

83. UNHCR, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 2<sup>nd</sup> Cycle, 25<sup>th</sup> session - Thailand*, May 2016, <https://www.refworld.org/policy/upr/unhcr/2016/en/123790>

84. UNHCR, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 2<sup>nd</sup> Cycle, 25<sup>th</sup> session - Thailand*, May 2016, <https://www.refworld.org/policy/upr/unhcr/2016/en/123790>; UNHCR, *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 3<sup>rd</sup> Cycle, 39<sup>th</sup> Session – Thailand*, February 2021, <https://www.refworld.org/policy/upr/unhcr/2021/en/123963>



detainees in vulnerable situations, such as pregnant women and persons with disabilities, including children, have also been detained in IDCs and subjected to substandard treatment [See below, 5. *Detention conditions below international standards*].

#### 4.5.1. Migrant children and their mothers

Despite attempts to limit the use of immigration detention for children, the Thai government's policies have continued to allow for the administrative detention of children and their families in IDCs, a practice that is inconsistent with international standards relating to the treatment of migrant children [See above, 3.2. *Right to liberty*].

In recent years, the Thai government has taken significant steps towards reducing the detention of migrant children, most notably by signing the Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers (MoU-ATD) in January 2019 [See above, 2.4. *Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers (MoU-ATD) (2019)*], and by withdrawing the reservation on Article 22 of the Convention on the Rights of the Child in July 2024.<sup>85</sup>

The MoU-ATD has led to a significant reduction in the number of urban refugee and asylum seeker children detained in IDCs. Between the signing of the MoU-ATD and June 2021, 304 migrant children and their families were released from immigration detention and allowed to live in the community, with support from civil society organizations, while awaiting repatriation or resettlement to a third country.<sup>86</sup>

Despite the adoption of the MoU-ATD, migrant children have continued to be subject to arrest, detention, and deportation for violation of the Immigration Act. While the MoU-ATD requires that detention be used as a measure of last resort and for the shortest time possible, it does not prohibit the arrest and initial detention of children.<sup>87</sup> In fact, the MoU-ATD provisions only apply once the child has already been taken into custody by the immigration authorities.<sup>88</sup> Children who are released under the MoU-ATD are also at risk of being detained again once they turn 18.<sup>89</sup>

In practice, the Immigration Bureau has complete discretion to decide whether to arrest, detain, deport, or refer children and their mothers to the protection mechanism under the MoU-ATD. Migrant children have frequently been detained in IDCs pending deportation proceedings. According to official statistics, as of 6 June 2024, 131 migrant children were detained in IDCs across the country.<sup>90</sup>

Some categories of children have been excluded from community-based alternatives, including Rohingya, children whose asylum claims have been rejected by UNHCR, and children whose parents cannot afford bail, who have been instead held in shelters run by the Ministry of Social Development and Human Security.<sup>91</sup> In addition, migrant children from Myanmar, Laos, and Cambodia are not referred to the MoU-ATD as they often voluntarily return to their home countries, and the deportation process typically does not take long.<sup>92</sup> As a result, migrant children from these three countries have continued to

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85. Article 22 of the Convention on the Rights of the Child establishes the rights of refugee and asylum-seeking children to protection, humanitarian assistance, and access to support and other services equal to those of children who are nationals; UNICEF, *Statement on Royal Thai Government's announcement that it will withdraw its reservation on Article 22 of the Convention on the Rights of the Child*, 15 July 2024, <https://www.unicef.org/thailand/press-releases/statement-royal-thai-governments-announcement-it-will-withdraw-its-reservation>

86. Asylum Access, *3<sup>rd</sup> ATD MOU anniversary in Thailand*, 21 January 2022, <https://asylumaccess.org/atd-mou-implemented-for-3-years-in-thailand/>

87. International Detention Coalition, *Immigration Detention and Alternatives to Detention in the Asia-Pacific Region. Annex: Country profiles*, May 17 2022, <https://idcoalition.org/wp-content/uploads/2024/01/Asia-Pacific-ATD-Report-ANNEX-2022.pdf>

88. International Detention Coalition, *Immigration Detention and Alternatives to Detention in the Asia-Pacific Region. Annex: Country profiles*, May 17 2022, <https://idcoalition.org/wp-content/uploads/2024/01/Asia-Pacific-ATD-Report-ANNEX-2022.pdf>

89. International Detention Coalition, *Immigration Detention and Alternatives to Detention in the Asia-Pacific Region. Annex: Country profiles*, May 17 2022, <https://idcoalition.org/wp-content/uploads/2024/01/Asia-Pacific-ATD-Report-ANNEX-2022.pdf>

90. Division 3 of the Investigation Division under the Immigration Bureau, *Correspondence number 0029.843/5926: Request under the Official Information Act 1997*, 6 June 2024 [in Thai]

91. Refugee Rights Network in Thailand, *Joint Submission Universal Periodic Review of Thailand - Third Cycle, 39<sup>th</sup> Session*, 15 June 2021, [https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand\\_en.pdf](https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand_en.pdf)

92. International Detention Coalition, *Gaining Ground Annex: Country Profiles*, 16 May 2022, <https://idcoalition.org/wp-content/uploads/2024/01/Gaining-Ground-Annex-2022.pdf>



be held in IDCs, the Detention Center for Mothers and Children, or other shelters for women and children until they are deported.<sup>93</sup>

The MoU-ATD has failed to prevent family separations, as it does not systematically provide non-custodial alternative measures for the parents or guardians, in violation of the children's right to family and best interest practices. Adult detainees with accompanied children continue to be subjected to the provisions of the Immigration Act [See above, 2.2. *Immigration Act (1979) and related regulations*].

In practice, bail remains the only possible non-custodial alternative granted at the authorities' discretion and is restricted to mothers and fathers with children who are also in immigration detention. While mothers are generally released with their children, they are required to pay 50,000 baht (approximately 1,328 Euros) for bail.<sup>94</sup> Arrested parents (primarily fathers) without children in the IDCs are not typically considered for release on bail under the MoU-ATD, which has resulted in family separations. The mothers are left to take care of their children on their own while being prohibited from working in Thailand.<sup>95</sup>

Other alternatives to immigration detention of migrant children and their mothers implemented by the Thai authorities have included: allowing children and their mothers to stay in the Child Assistance Centers operated by the Department of Child and Youth Affairs under the Ministry of Social Development and Human Security; searching for foster families for unaccompanied children; or referring children and their mothers to the Detention Center for Mothers and Children in Bangkok's Bang Khen District under the administration of the Immigration Bureau.<sup>96</sup>

However, these measures have been criticized by civil society for being restrictive and failing to uphold the best interest of the child.<sup>97</sup> In particular, children and their mothers held in the Detention Center for Mothers and Children, located in the same compound as Bang Khen IDC, have continued to be deprived of their liberty, with restrictions of movement within the facility and limited access to basic services [See below, 5. *Detention conditions below international standards*].<sup>98</sup>

#### 4.5.2. Stateless persons

In Thailand, stateless persons are vulnerable to arbitrary and indefinite detention due to their precarious status as unauthorized immigrants.<sup>99</sup>

Under international law, the deprivation of liberty of stateless persons is prohibited and the inability to carry out deportation of an individual due to statelessness cannot justify indefinite detention [See above, 3. *International standards on immigration detention* and 3.2. *Right to liberty*].<sup>100</sup>

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93. International Detention Coalition, *Gaining Ground Annex: Country Profiles*, 16 May 2022, <https://idcoalition.org/wp-content/uploads/2024/01/Gaining-Ground-Annex-2022.pdf>

94. OHCHR, *Report on ending immigration detention of children and seeking adequate reception and care for them – Inputs received: Thailand*, 2020, <https://www.ohchr.org/en/calls-for-input/report-ending-immigration-detention-children-and-seeking-adequate-reception-and>; Human Rights Watch, *Thailand: Joint Statement on MoU to End Immigration Detention of Children*, 21 January 2019, <https://www.hrw.org/news/2019/01/21/thailand-joint-statement-mou-end-immigration-detention-children>

95. OHCHR, *Report on ending immigration detention of children and seeking adequate reception and care for them – Inputs received: Thailand*, 2020, <https://www.ohchr.org/en/calls-for-input/report-ending-immigration-detention-children-and-seeking-adequate-reception-and>; Human Rights Watch, *Thailand: Joint Statement on MoU to End Immigration Detention of Children*, 21 January 2019, <https://www.hrw.org/news/2019/01/21/thailand-joint-statement-mou-end-immigration-detention-children>

96. Asylum Access, *3<sup>rd</sup> ATD MOU anniversary in Thailand*, 21 January 2022, <https://asylumaccess.org/atd-mou-implemented-for-3-years-in-thailand/>; Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Thailand*, 17 August 2021, UN Doc. A/HRC/WG.6/39/THA/1, <https://documents.un.org/doc/undoc/gen/g21/225/87/pdf/g2122587.pdf>

97. Refugee Rights Network in Thailand, *Joint Submission Universal Periodic Review of Thailand - Third Cycle, 39<sup>th</sup> Session*, 15 June 2021, [https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand\\_en.pdf](https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand_en.pdf)

98. OHCHR, *Report on ending immigration detention of children and seeking adequate reception and care for them – Inputs received: Thailand*, 2020, <https://www.ohchr.org/en/calls-for-input/report-ending-immigration-detention-children-and-seeking-adequate-reception-and>

99. Article 1 of the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as someone “who is not considered as a national by any State under the operation of its law.”

100. UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018, UN Doc. A/HRC/39/45, para. 11.

Thailand is a regional hub for migration for those seeking better economic opportunities or safety from conflicts and/or persecution in their countries of origin. In many cases, these individuals lack legal identity documentation from their countries of origin and arrive in Thailand without the necessary proof of citizenship, such as Rohingya.<sup>101</sup> In addition to arrest and arbitrary detention due to their immigration status, stateless persons face the risk of becoming victims of human trafficking and other forms of exploitation [See below, 4.5.3. *Victims of human trafficking*].<sup>102</sup>

According to the statistics from the Immigration Bureau, as of 6 June 2024, there were 44 stateless detainees in IDCs.<sup>103</sup> In addition, 14 stateless persons were detained in the Detention Center for Mothers and Children, representing nearly 10% of the total number of detainees at the facility.<sup>104</sup>

Stateless persons are particularly vulnerable to indefinite detention in IDCs, as the Immigration Bureau does not have regulations regarding those who cannot be deported because of the lack of documentation of their countries of origin.<sup>105</sup>

### 4.5.3. Victims of human trafficking

Victims of human trafficking may be placed in immigration detention as a result of ineffective identification processes that lead to victims being misidentified as unauthorized immigrants or criminalized for engaging in illegal activities in the course of being trafficked, such as irregular entry, prostitution, unauthorized work, and presenting false documentation.

For example, Rohingya from Myanmar, many of whom are survivors of trafficking, have been routinely arrested and held in detention facilities, including IDCs, on the basis of their migration status despite evidence of trafficking.<sup>106</sup> Such routine practice has been the result of inconsistent and ineffective victim identification processes that left many victims misidentified and penalized solely for immigration violations and other criminal acts committed in the course of being trafficked.<sup>107</sup>

In addition, it was reported that other asylum seekers from Myanmar and foreign victims of human trafficking in connection with online scam operations in neighboring countries who entered Thailand after escaping exploitation also faced difficulties accessing the identification process for victims of trafficking.<sup>108</sup>

Only a few Rohingya arrested in Thailand in 2022 were believed to have been screened and identified as victims under the Trafficking in Person Act 2008.<sup>109</sup> Among those identified as victims, particularly women and children, many have been held in government-run shelters and subjected to restrictions on their freedom of movement. In 2020, Thai authorities detained at least 35 Rohingya men, women, and children, who were believed to be survivors of human trafficking, in an IDC in Tak Province without undergoing victim identification process.<sup>110</sup>

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101. International Organization for Migration, *Compendium of Good Practiced in Enabling Access to Legal Identity for Undocumented Migrants - Case study: Thailand*, 3 June 2024, <https://thailand.iom.int/sites/g/files/tmzbd11371/files/documents/2024-06/thailand-section.pdf>

102. International Institute for Asian Studies, *The statelessness-trafficking nexus. A case study in Thailand*, 30 October 2020, <https://www.ias.asia/the-newsletter/article/statelessness-trafficking-nexus-case-study-thailand>

103. Division 3 of the Investigation Division under the Immigration Bureau, *Correspondence number 0029.843/5926: Request under the Official Information Act 1997*, 6 June 2024 [in Thai]

104. Division 3 of the Investigation Division under the Immigration Bureau, *Correspondence number 0029.843/5926: Request under the Official Information Act 1997*, 6 June 2024 [in Thai]

105. Apichaya Panprom, *The Problems of the Repatriation of Detainees under the control of the Immigration Detention Center, Sub-Division 3, Crime Investigation Division, Immigration Bureau*, 2020, <https://digital.car.chula.ac.th/chulaetd/7534/> [in Thai]

106. Bangkok Post, *Rohingya treatment a violation of human rights*, 29 July 2020, <https://www.bangkokpost.com/opinion/opinion/1959091/rohingya-treatment-a-violation-of-human-rights>

107. US Department of State, *2023 Trafficking in Persons Report: Thailand*, <https://www.state.gov/reports/2024-trafficking-in-persons-report/thailand/>

108. US Department of State, *2023 Trafficking in Persons Report: Thailand*, <https://www.state.gov/reports/2024-trafficking-in-persons-report/thailand/>

109. Protecting Rohingya Refugees in Asia (PRRiA) Partners, *Submission to OHCHR: Trafficking in persons and protection of refugees, stateless persons and internally displaced persons (IDPs)*, <https://www.ohchr.org/sites/default/files/documents/issues/trafficking/cfi-idp/Submission-by-Asia%20Displacement%20Solutions%20Platform.pdf>

110. Fortify Rights, *Thailand: Protect Rohingya Refugees from Forced Return, Indefinite Detention*, 5 June 2020, <https://www.fortifyrights.org/tha-inv-2020-06-05/>

Rohingya who were identified as victims of trafficking have generally been held indefinitely in shelters, pending repatriation to their countries of origin or resettlement in third countries. However, if the holding capacity of the shelters is full, the victims of human trafficking may be redirected to IDCs.<sup>111</sup>

## 4.6. Uyghurs, Rohingya, and North Koreans

Thai authorities have generally placed refugees and asylum seekers belonging to certain ethnic groups or nationalities, such as Uyghurs, Rohingya, and North Koreans, under the purview of the National Security Council.<sup>112</sup>

These individuals could be ineligible to access the country's National Screening Mechanism (NSM) [See above, 2.3. *National Screening Mechanism (NSM) (2019)*] and have been excluded from UNHCR refugee status determination, bail application, and any special procedures that allow them to temporarily stay in Thailand.



North Korean refugees in a locked van arrive at an immigration detention center in central Bangkok on 27 October 2006. © Saeed Khan / AFP

In 2022, 470 Rohingya were detained in various IDCs, with no access to UNHCR refugee status determination procedures.<sup>113</sup>

Most of the Uyghurs who remain detained in IDCs in Thailand are part of a group of around 350 Uyghurs who were arrested and detained in 2014 for irregularly entering the country. In the following year, 170

111. Protecting Rohingya Refugees in Asia (PRRiA) Partners, *Submission to OHCHR: Trafficking in persons and protection of refugees, stateless persons and internally displaced persons (IDPs)*, <https://www.ohchr.org/sites/default/files/documents/issues/trafficking/cfi-idp/Submission-by-Asia%20Displacement%20Solutions%20Platform.pdf>

112. Office of the Council of State, *Nor Lor 0907/ 449: Important laws that urgently need to be amended or drafted (Draft Immigration Act ...)*, 18 December 2019, [https://resolution.soc.go.th/PDF\\_UPLOAD/2562/9933420829.pdf](https://resolution.soc.go.th/PDF_UPLOAD/2562/9933420829.pdf) [in Thai]; APRRN and CRSP, *National Screening Mechanism Assessment Report: The Overview and Situation Analysis of the NSM's Implementation*, <https://aprrn.org/media/Publications/files/NSM-Assessment-Report-EN.pdf>

113. Human Rights Watch, *Thailand: Allow Newly Arrived Rohingya Access to Asylum*, 7 June 2020, <https://www.hrw.org/news/2022/06/07/thailand-allow-newly-arrived-rohingya-access-asylum>

women and children from the group were released to Turkey for resettlement, while a group of 109 men were deported to China.<sup>114</sup> Most of the others have remained in IDCs for over 10 years with no access to bail and refugee status determination process.<sup>115</sup> As of February 2024, 43 Uyghurs remained in Suan Phlu IDC in Bangkok.<sup>116</sup>

On the contrary, North Korean refugees are subject to an unofficial arrangement for resettlement between the governments of Thailand and South Korea to allow them to be repatriated to South Korea.<sup>117</sup> North Korean refugees who have entered Thailand have been normally arrested and prosecuted for irregular entry before being repatriated to South Korea.<sup>118</sup> As of June 2024, there were 19 North Korean immigrants in IDCs in Thailand.<sup>119</sup>

In addition, North Korean refugees arrested for irregular entry have been able to seek a certain level of protection from the South Korean Embassy in Bangkok, including by having embassy officials to visit them and supply them with food and non-food items while being detained in IDCs awaiting repatriation to South Korea.<sup>120</sup>

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114. Bangkok Post, *UN 'rebuffed requests to help Uyghurs' in Thailand*, 4 May 2024, <https://www.bangkokpost.com/thailand/general/2786797/un-rebuffed-requests-to-help-uyghurs-in-thailand>

115. Refugee Rights Network in Thailand, *Joint Submission Universal Periodic Review of Thailand Cycle 3, 39<sup>th</sup> Session*, 15 June 2021, [https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand\\_en.pdf](https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand_en.pdf)

116. OHCHR, *AL THA 2/2024*, 22 February 2024, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28775>

117. Reuters, *Surge in North Koreans slipping into Thailand: immigration*, 1 August 2017, <https://www.reuters.com/article/world/surge-in-north-koreans-slipping-into-thailand-immigration-idUSKBN1AH3SQ/>; Bangkok Post, *North Korea defectors a 'dilemma'*, 26 January 2016, <https://www.bangkokpost.com/thailand/general/838792/north-korea-defectors-a-dilemma>

118. Reuters, *Surge in North Koreans slipping into Thailand: immigration*, 1 August 2017, <https://www.reuters.com/article/world/surge-in-north-koreans-slipping-into-thailand-immigration-idUSKBN1AH3SQ/>

119. Division 3 of the Investigation Division under the Immigration Bureau, *Correspondence number 0029.843/5926: Request under the Official Information Act 1997*, 6 June 2024 [in Thai]

120. Bangkok Post, *North Korea defectors a 'dilemma'*, 26 January 2016, <https://www.bangkokpost.com/thailand/general/838792/north-korea-defectors-a-dilemma>



## 5. Detention conditions below international standards

Conditions in Thailand's immigration detention centers (IDCs) have been and remain well below relevant international minimum standards and the Immigration Bureau's own guidelines.<sup>121</sup> FIDH interviewed five former detainees (two women and three men) who had been detained in three IDCs in Bangkok (Suan Phlu IDC, Bang Khen IDC, and the Detention Center for Mothers and Children) and were released at various times between 2020 and 2023.

Obtaining reliable and up-to-date information about conditions in Thailand's IDCs is extremely difficult for various reasons, including: the scarcity of official information; the lack of access to IDCs by independent human right organizations and media; the reluctance of family members of the detainees to talk about their relatives' plight for fear of reprisals against the latter; and challenges in contacting former detainees once they have been deported or resettled.

### 5.1. Overcrowding causes poor detention conditions

Most interviewed former detainees reported they were kept in squalid cells where they were confined to the minimal personal living space, which was well below the internationally recommended minimum standard of 3.4 square meters per detainee.<sup>122</sup>



Detainees stand behind bars at an immigration detention center in Bangkok on 21 January 2019. © Romeo Gacad / AFP

The Immigration Bureau's 2019 Guidelines on Admission, Control, and Supervision of Foreign Nationals prescribe that: 1) male and female detainees must be detained separately; 2) detainees with history of

121. Division 3, Investigation Division, Immigration Bureau, *Order 89/2019 Regarding the Guidelines on the Admission, Control, and Supervision of Foreign Nationals*, 27 February 2019, [https://drive.google.com/file/d/1o7sDNqDqaUrFcK\\_IJzW5yqU3RLb3e-K/view](https://drive.google.com/file/d/1o7sDNqDqaUrFcK_IJzW5yqU3RLb3e-K/view) [in Thai]

122. This is the minimum standard recommended by the International Committee of the Red Cross (ICRC) to ensure the dignity and safety of detainees.



serious criminal convictions or displaying troubled behavior should be separated from general detainees; and 3) detainees should be grouped by nationality and religion to “avoid tension arising between people of different nationalities and religious beliefs.”<sup>123</sup>

However, according to interviews with former detainees, all adult detainees, including those with disabilities, were held together regardless of their nationality, religion, and disability, unless they had a physical disability that rendered them unable to move unaided.<sup>124</sup>

High numbers of detainees have resulted in inadequate accommodation space and degrading living conditions. According to interviewed former detainees, detainees were confined for almost 24 hours a day to a specific space in the cells where they ate and slept.<sup>125</sup> Most interviewed former detainees also reported the cells were fully occupied most of the time, without space for them to move.<sup>126</sup>

An interviewed former detainee at Suan Phlu IDC recalled that he shared a cell with 250 other detainees, and had to sleep all night on his side to fit in the limited space.<sup>127</sup> Another former detainee at Suan Phlu IDC recalled he shared a cell with 200 other detainees and they each had around half a meter of space.<sup>128</sup> One former detainee at Bang Khen IDC said he shared a 20-square-meter cell with more than 100 detainees, including Rohingya children who had been separated from their mothers or guardians. One interviewed former female detainee at the Detention Center for Mothers and Children shared a cell “about the size of two standard bedrooms” with 23 other detainees, including children.<sup>129</sup> According to the National Human Rights Commission of Thailand (NHRCT), mothers and children detained at Songkhla IDC shared cramped cells with other female detainees, in which the space per person was well below 2.25 square meters.<sup>130</sup>

With regard to the availability of bedding material, mattresses and pillows were not provided in IDCs where interviewed former detainees were detained. All interviewed former detainees said they received only one blanket per person and had to sleep on the bare concrete floor.<sup>131</sup> At Suan Phlu and Bang Khen IDCs, relatives or friends were allowed to send detainees bed sheets and blankets from outside, unlike at the Detention Center for Mothers and Children, where a former interviewed detainee said she could neither buy nor receive bedding materials from outside.<sup>132</sup> According to an interviewed former detainee at Bang Khen IDC, the blankets distributed by the IDC authorities were not clean and caused his skin to itch.<sup>133</sup>

## 5.2. Abuse and ill-treatment of detainees

The use of punishment that amounted to ill-treatment and verbal mistreatment by IDC officers was common, according to all interviewed former detainees. In addition, LGBTIQ detainees experienced forms of sexual harassment by other detainees.

Punishment, including the use of force, solitary confinement, and the use of ankle shackles, was

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123. Division 3, Investigation Division, Immigration Bureau, *Order 89/2019 Regarding the Guidelines on the Admission, Control, and Supervision of Foreign Nationals*, 27 February 2019, [https://drive.google.com/file/d/1o7sDNqDqaUrFck\\_LdJzW5yqU3RLb3e-K/view](https://drive.google.com/file/d/1o7sDNqDqaUrFck_LdJzW5yqU3RLb3e-K/view) [in Thai]

124. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 21 June 2024

125. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

126. FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

127. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 21 June 2024

128. FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024

129. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

130. Thai Post, *NHRCT calls on Prime Minister Srettha to improve Songkhla IDC to meet international standards*, 12 October 2023, <https://www.thaipost.net/general-news/465503/>

131. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDC*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024; FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

132. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024; FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024

133. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

common in cases involving fights between detainees or arguments with IDC officers.<sup>134</sup> Other forms of punishment reported by interviewed former detainees included transfer to other cells or assignment of tasks, such as cleaning dishes or toilets.<sup>135</sup>

According to some interviewed former detainees, fights often broke out over encroachment of personal space, which was aggravated by overcrowding.<sup>136</sup> In response, IDC officers, usually with the help of detainees who were designated as “cell leaders,” primarily resorted to force by using a baton to stop the fights.<sup>137</sup> A former detainee at Suan Phlu IDC recalled that one detainee who was involved in a fight was punished by being placed in a toilet and chained with an ankle shackle.<sup>138</sup> Other former detainees at Suan Phlu and Bang Khen IDCs noted that, most of the times, staff avoided using direct force against detainees themselves, but they instead used other detainees to carry out punishments for them.<sup>139</sup>

Verbal abuse by officers was another form of degrading treatment reported by all interviewed former detainees. A former detainee at the Detention Center for Mothers and Children recalled an incident in which an officer shouted at a pregnant detainee when she asked when she would be released.<sup>140</sup>

The lack of gender-sensitive operating procedures made LGBTIQ detainees vulnerable to forms of verbal and sexual harassment by other detainees. According to a former detainee at Suan Phlu IDC, LGBTIQ detainees were housed according to their biological sex, instead of their gender identity. A former detainee at Suan Phlu IDC witnessed other detainees catcalling one transgender detainee, making inappropriate comments about her wearing bras, and asking her to show her breasts.<sup>141</sup> The same former detainee recalled another LGBTIQ detainee who decided to hide their gender identity for fear of harassment.<sup>142</sup>

### 5.3. Privileged detainees

Wealthy detainees and detainees who were selected to assist IDC officers enjoyed a range of privileges.

According to the interviewed former detainees, “cell leaders” were detainees who had spent enough time in the IDCs to be able to communicate with the officers in Thai. They were generally trusted by the officers to maintain order inside the cells and impose disciplinary sanctions on other detainees, including the use of force or tasking other detainees with laborious work [See above, 5.2. *Abuse and ill-treatment of detainees*].<sup>143</sup> Some former detainees at Suan Phlu IDC said they had to pay cell leaders for unknown reasons upon their admission.<sup>144</sup> One interviewed former detainee reported such payment amounted to 50 baht (approximately 1.30 Euros).<sup>145</sup>

According to interviewed former detainees at Suan Phlu IDC, cell leaders and wealthy detainees received special treatment, such as living in less crowded cells, having access to TV, mobile phones, and the internet, and receiving better food.<sup>146</sup> An interviewed former detainee at Suan Phlu IDC reported there

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134. FIDH, *Interview with former at Suan Phlu IDC*, 7 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 21 June 2024

135. FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 21 June 2024

136. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024

137. FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024

138. FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024

139. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024

140. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

141. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

142. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

143. FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

144. FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024

145. FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024

146. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDC*, 1 September 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDC*, 21 June 2024

were “VIP cells,” which offered more comfortable conditions, including various choices of food and alcoholic beverages, to wealthy detainees who could pay for such arrangement. In addition, the same former detainee at Suan Phlu IDC observed that officers treated Caucasian detainees better than other detainees, in terms of being more responsive to their requests. “If you are from Myanmar and you asked for medicine from officers, they would say no,” he recalled.<sup>147</sup>

## 5.4. Sub-standard sanitary conditions

Overcrowding and the insufficient availability of basic hygiene supplies have negatively affected the sanitation situation in IDCs. Female detainees faced particular challenges to maintain personal hygiene.

Detainees had 24-hour access to toilets and a water tank that were located within the cell. However, according to most of the interviewed former detainees, the availability of toilets was seriously insufficient, considering the high number of detainees sharing the same cell. Interviewed former detainees at Suan Phlu IDC recalled that their cells had four toilets and one water tank for showers to share among 200-300 detainees.<sup>148</sup> At the Detention Center for Mothers and Children, there was only one squat toilet that worked properly in a cell that accommodated 24 people, including pregnant detainees and children.<sup>149</sup> Moreover, access to running water in the toilet was sometimes interrupted at Bang Khen and Suan Phlu IDCs.<sup>150</sup> According to a former detainee at Bang Khen IDC, running water was available twice a day, which was not enough for flushing and washing purposes.<sup>151</sup>

In all IDCs where interviewed former detainees were detained, detainees showered together standing around a water tank that was located in a corner of the cell, next to the toilet. There was no partition to separate the shower area from the living area, providing no privacy for detainees who took a shower.<sup>152</sup> In addition, at the Detention Center for Mothers and Children, the cell where female detainees and children were held was under CCTV surveillance, including part of the shower area. Therefore, female detainees usually showered with their clothes on to guard their privacy.<sup>153</sup>

The lack of privacy and inadequate supply of water disproportionately affected female detainees, barring them from sustaining hygienic practices, especially during menstruation. A former female detainee at the Detention Center for Mothers and Children said she usually showered every three days, including during menstruation. She recalled: “It was hard all the time, but it was particularly hard during my period because sometimes I had blood stains on me.”<sup>154</sup>

Regarding the availability of basic hygiene supplies, interviewed former detainees at Suan Phlu IDC said they received packages of toiletries, including soap, toothpaste, and shampoo, from the IDC once a month.<sup>155</sup> A former detainee at Bang Khen IDC said he had to buy the hygienic supplies himself.<sup>156</sup> A former detainee at the Detention Center for Mothers and Children reported that she received a package of toiletries from non-governmental organizations (NGOs) after one month from her admission. The same former detainee also reported that she only received four pieces of sanitary pads per month, supplied by NGOs, which were not enough to cover her whole cycle.<sup>157</sup>

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147. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDC*, 1 September 2024

148. FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDC*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024

149. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

150. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDC*, 1 September 2024

151. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDC*, 1 September 2024

152. The ICRC recommends that the location and partitioning of toilets should provide detainees with the maximum possible level of privacy and that the use of toilets by prisoners should not be in full view of other detainees. ICRC, *Water, sanitation, hygiene and habitat in prisons: Supplementary guidance*, 11 June 2020, <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4083.pdf>

153. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

154. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

155. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024

156. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

157. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

## 5.5. Food of poor quality

All interviewed former detainees complained about the food, saying it was of poor quality and nutritionally inadequate.

According to the Immigration Bureau's 2019 Guidelines on Admission, Control, and Supervision of Foreign Nationals, clean drinking water and nutritious meals must be provided to all detainees. In addition, authorities should provide food that meets the religious practices of detainees, when requested.<sup>158</sup>

All interviewed former detainees reported that three meals were provided per day. According to former detainees who shared the same cell with children at Bang Khen IDC and the Detention Center for Mothers and Children, children received the same kind of food as adult detainees in both facilities.<sup>159</sup> According to all interviewed former detainees, the food was unpalatable and monotonous, usually consisting of rice and soup that contained bruised or partially rotten vegetables and a few pieces of meat or bones.<sup>160</sup> Fresh fruits were extremely rare. "It was like chopped vegetables that people feed pigs with," a former detainee at Suan Phlu IDC recalled.<sup>161</sup> A former detainee at the Detention Center for Mothers and Children said detainees there would receive better meals with portions of chicken for each person once a week.<sup>162</sup> Interviewed former detainees at Suan Phlu IDC said they received a meal with proper portions of meat, fish, or chicken once or twice a month.<sup>163</sup>

In addition to being unappetizing and non-nutritious, the food was sometimes unclean, according to a former detainee at the Detention Center for Mothers and Children, who reported that it was not uncommon to find insects or parts of cockroaches in the food.<sup>164</sup>

According to interviewed former detainees, better food was available for sale at the shops at Suan Phlu and Bang Khen IDCs. However, such shops were not available at the Detention Center for Mothers and Children, so detainees could not buy food or non-food items beyond those provided by the facility's officers.<sup>165</sup>

According to most of the interviewed former detainees, drinking water was available from a dispenser in the cells. However, a former detainee at Suan Phlu IDC said that detainees filled the water dispenser with unpotable tap water.<sup>166</sup> A former detainee at the Detention Center for Mothers and Children recalled that sometimes detainees did not have water to drink for almost a day because the water dispenser was broken.<sup>167</sup>

According to NGOs' reports, although the IDC authorities are required to provide meals that accommodate a person's religious principles,<sup>168</sup> in practice, no halal food for Muslim detainees was provided.<sup>169</sup> Some IDCs may allow outsiders to send halal food to Muslim detainees during Ramadan.<sup>170</sup>

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158. Division 3, Investigation Division, Immigration Bureau, *Order 89/2019 Regarding the Guidelines on the Admission, Control, and Supervision of Foreign Nationals*, 27 February 2019, [https://drive.google.com/file/d/1o7sDNqDqaUrFcK\\_IdJzW5yqU3RLb3e-K/view](https://drive.google.com/file/d/1o7sDNqDqaUrFcK_IdJzW5yqU3RLb3e-K/view) [in Thai]

159. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

160. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024; FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

161. FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024

162. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

163. FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 21 June 2024

164. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

165. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

166. FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024

167. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

168. Division 3, Investigation Division, Immigration Bureau, *Order 89/2019 Regarding the Guidelines on the Admission, Control, and Supervision of Foreign Nationals*, 27 February 2019, [https://drive.google.com/file/d/1o7sDNqDqaUrFcK\\_IdJzW5yqU3RLb3e-K/view](https://drive.google.com/file/d/1o7sDNqDqaUrFcK_IdJzW5yqU3RLb3e-K/view) [in Thai]

169. Refugee Rights Network in Thailand, *Joint Submission for the Universal Periodic Review of Thailand - Third Cycle 3*, 15 June 2021, [https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand\\_en.pdf](https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand_en.pdf)

170. Refugee Rights Network in Thailand, *Joint Submission for the Universal Periodic Review of Thailand - Third Cycle*, 15 June 2021, [https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand\\_en.pdf](https://asylumaccess.org/wp-content/uploads/2021/06/Refugee-Rights-Network-in-Thailand_en.pdf); NHRCT, *Examination report No. 167/ 2566 on right to life and health regarding the call for investigation of the death of Uyghur detainees who died at the Immigration Detention Center*, 24 October 2023, <https://static.nhrct.or.th/file/content/pdf/31321/167-1725528565.pdf>



## 5.6. Severely limited availability of adequate healthcare

Interviewed former detainees reported the unavailability of timely and adequate physical and mental healthcare, a situation that may amount to cruel, inhumane, and degrading treatment. Article 54 of Thailand's Immigration Act implies that detainees must bear the cost of medical care they receive outside of the IDCs.<sup>171</sup>



A medical personnel sorts medicine at the clinic for detainees in an immigration detention center in Bangkok on 21 January 2019. © Romeo Gacad / AFP

According to an October 2023 report by the NHRCT concerning Suan Phlu IDC, a general practitioner from a hospital outside the IDC went to the facility once a week and visited up to 35 detainees each time. Detainees with more serious illnesses or in critical conditions would be transferred to the Police Hospital in Bangkok for treatment.<sup>172</sup>

According to an interviewed former detainee at Suan Phlu IDC, a nurse was on duty at the facility every day to provide basic medical care to detainees. In order to see a doctor, detainees had to fill in a request form in advance.<sup>173</sup> Interviewed former detainees stressed the IDC officers' failure to handle medical emergencies. A former detainee at Suan Phlu IDC stated: "If there was an emergency before 11pm, the officers might come to check on us, but if it happened after 11pm, they would only come the next morning."<sup>174</sup> In addition, an interviewed former detainee at the Detention Center for Mother and Children reported witnessing a pregnant woman who was crying out of pain for two hours until an officer went to check on her, but she was not visited by a doctor.<sup>175</sup> The same former detainee added that some of the officers would only come to check on detainees two or three days after they reported an illness.<sup>176</sup> One

171. Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that "a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge."

172. NHRCT, *Examination report No.167/ 2566 on right to life and health regarding the call for investigation of the death of Uyghur detainees who died at the Immigration Detention Center*, 24 October 2023, <https://static.nhrc.or.th/file/content/pdf/31321/167-1725528565.pdf> [in Thai]

173. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

174. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 21 June 2024

175. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

176. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

former detainee at Suan Phlu IDC confirmed that detainees had to bear the costs of treatment received at hospitals outside the IDC.<sup>177</sup>

Specialized treatment, medication, and follow-up care were unavailable, according to all interviewed former detainees. Dentistry and psychological counseling services were not provided by the authorities. Detainees who were under treatment for pre-existing medical conditions had to interrupt the treatment while they were being detained. One interviewed former detainee at the Detention Center for Mothers and Children said that her two female relatives, who were eight and nine months pregnant and were detained in the same facility, did not receive any prenatal care, except for receiving a mattress to sleep on, and were not allowed to be visited by the outside hospital's doctor despite having made an appointment.<sup>178</sup> Instead, the facility's officers went to take photos of her pregnant relatives every five days without bringing a doctor or asking about their health.<sup>179</sup> The same former detainee further recalled that a child with disabilities who was on an IV drip was not provided solid food by the IDC, so acquaintances outside the IDC bribed the IDC officers in order to deliver food.<sup>180</sup>

In addition, it was not uncommon for detainees to develop serious health conditions or to experience a worsening of pre-existing conditions, including chronic illnesses.<sup>181</sup> An interviewed former detainee at Suan Phlu IDC said he developed muscular atrophy due to lack of movement, but he never received any treatment for such condition while he was in the IDC.<sup>182</sup>

While there have been increasing numbers of IDC detainees with mental health issues,<sup>183</sup> interviewed former detainees reported a lack of psychiatric services and mental healthcare.<sup>184</sup> One interviewed former detainee at Suan Phlu IDC reported his request for psychological counseling was rejected.<sup>185</sup> Another former detainee at Suan Phlu IDC explained that the decline in her mental health was aggravated by uncertainty about the duration of her detention and the threat of deportation.<sup>186</sup> The same former detainee stated: "I was so anxious that I wanted to find something to hang myself to death. I felt that I could not keep my sanity." She further recalled that her fellow detainee attempted to commit suicide in the toilet.<sup>187</sup> An interviewed former detainee at the Detention Center for Mothers and Children recalled: "There was a time that we were not talking to each other anymore and we were sad and cried on our own. No one was able to console another person."<sup>188</sup>

In some cases, the lack of timely and adequate medical care resulted in the death of detainees. Between 2014 and 2024, there were at least nine documented cases of detainees who died in IDCs as a result of inadequate medical care or the authorities' failure to respond to medical emergencies in a timely manner.<sup>189</sup> Among them, Abdullah Abduweli, a three-year-old boy, died at a local hospital after suffering from tuberculosis for about two months at Sadao IDC in Songkhla Province.<sup>190</sup> In 2023, two Uyghur detainees died from pneumonia and liver failure after being detained at Suan Phlu IDC for more than nine years. Their medical conditions were consistently neglected by the Thai authorities.<sup>191</sup>

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177. FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024

178. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

179. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

180. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

181. OHCHR, *AL THA 2/2024*, 22 February 2024, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28775>

182. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 21 June 2024

183. NHRCT, *NHRCT calls the indefinite detention of Uyghur detainees, which resulted in illnesses and death among them, the human rights violation and calls on actions from relevant authorities*, 26 October 2023, <https://www.nhrc.or.th/th/NHRC-News-and-Important-Events/10375> [in Thai]

184. FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024; FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

185. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDC*, 1 September 2024

186. FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024

187. FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024

188. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

189. FIDH and UCL, *Joint submission for the United Nations Committee Against Torture (CAT), 81<sup>st</sup> session*, 30 September 2024, <https://www.fidh.org/en/region/asia/thailand/thailand-report-on-torture-and-ill-treatment-submitted-to-un-body>

190. Radio Free Asia, *Illnesses, Deaths among Uyghurs Refugees in Thai Detention Centers*, 7 January 2015, <https://www.rfa.org/english/news/uyghur/filmmaker-visits-detention-centers-01072015171346.html> [in Thai]

191. Al Jazeera, *Uyghur refugee dies after nine years in detention in Thailand*, 27 April 2023, <https://www.aljazeera.com/news/2023/4/27/uyghur-refugee-dies-after-nine-years-in-detention-in-thailand>

## COVID-19 outbreaks in Thailand's IDCs

During the COVID-19 pandemic, Thai authorities failed to take adequate measures to prevent the spread of infection in IDCs.

IDCs, like other places of detention in Thailand,<sup>192</sup> were not spared by severe outbreaks of COVID-19. For example, in May 2020, more than half of the 115 detainees in Sadao IDC in Songkhla Province tested positive for COVID-19, including one child and one pregnant woman.<sup>193</sup> In March 2021, a total of 400 detainees tested positive for COVID-19 in Bangkok's Suan Phlu and Bang Khen IDCs.<sup>194</sup>

In 2020, the Immigration Bureau ordered the transfer of infected detainees to field hospitals, a 15-day quarantine requirement for newly admitted detainees, and the suspension of visits to IDCs.<sup>195</sup> However, authorities continued to detain unauthorized immigrants and failed to adopt non-custodial alternatives to detention.<sup>196</sup> Only detainees with serious medical conditions and migrant children and their mothers were able to obtain a release on bail.<sup>197</sup> In March 2021, the Immigration Bureau announced that IDCs would stop receiving new detainees to reduce the spread of infection and use police stations as places of detention for new detainees.<sup>198</sup>

Overall, the government failed to fully implement the specific measures recommended by the UN Office of the High Commissioner for Human Rights (OHCHR) in the early stages of the pandemic. OHCHR recommended that governments: 1) prioritize the release of detainees from immigration detention and implement alternatives to detention; 2) urgently release children and their families from detention; and 3) ensure that those released are granted access to adequate basic needs and support services.<sup>199</sup>

## 5.7. Lack of recreational activities and limited contact with the outside world

All interviewed former detainees reported they had very little or no time outside the cells.<sup>200</sup> They also reported that contact with the outside world was extremely limited.

According to most interviewed former detainees, detainees spent almost 24 hours in the cells. According to a former detainee at Suan Phlu IDC, time outside the cells was limited to one to two hours per day, twice a week, including for children. During that time, detainees were allowed to buy items at the IDC shop, do physical exercise, and make phone calls. An interviewed former detainee at Suan Phlu IDC

192. FIDH, *Thailand: Joint Letter on Prison Conditions and Covid-19*, 19 July 2021, <https://www.fidh.org/en/region/asia/thailand/joint-letter-on-prison-conditions-and-covid-19>

193. BBC Thai, *Covid-19: At Sadao Immigration Detention Center, the number of detainees at who tested positive for Covid increased from 42 to 60 in less than two weeks*, 28 April 2020, <https://www.bbc.com/thai/thailand-52451271> [in Thai]  
Human Rights Watch, *Thailand Should Free Detained Migrants Amid Pandemic*, 8 May 2020, <https://www.hrw.org/news/2020/05/08/thailand-should-free-detained-migrants-amid-pandemic>

194. BBC Thai, *Covid-19: Immigration Bureau to deport detainees and stop receiving new detainees to reduce the overcrowding in IDCs*, 23 March 2021, <https://www.bbc.com/thai/thailand-56494294> [in Thai]

195. Immigration Bureau, Department of Children and Youth, and UNICEF, *Standard Operating Procedures on child protection at the immigration Detention Centers in Thailand during COVID-19 Pandemic*, Annex 4, 3 June 2020, <https://www.unicef.org/thailand/media/8736/file/Operation%20Guide%20on%20child%20protection%20in%20Immigration%20Detention%20Center%20amid%20the%20COVID-19%20pandemic.pdf>

196. International Detention Coalition, *Covid-19 Impacts on Immigration Detention Global Responses*, 2020, <https://idcoalition.org/wp-content/uploads/2024/01/COVID-19-Impacts-on-Immigration-Detention-Global-Responses-2020.pdf>

197. International Detention Coalition, *Covid-19 Impacts on Immigration Detention Global Responses*, 2020, <https://idcoalition.org/wp-content/uploads/2024/01/COVID-19-Impacts-on-Immigration-Detention-Global-Responses-2020.pdf>

198. BBC Thai, *Covid-19: Immigration Bureau to deport detainees and stop receiving new detainees to reduce the overcrowding in IDCs*, 23 March 2021, <https://www.bbc.com/thai/thailand-56494294> [in Thai]

199. OHCHR, *Covid-19 and the human rights of migrants: guidance*, 7 April 2020, [https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHRGuidance\\_COVID19\\_Migrants.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants.pdf)

200. Principle 28 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: "A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment."



reported that there was a yard for detainees to do physical exercise, such as weight lifting, football, and basketball.<sup>201</sup> An interviewed former detainee at the Detention Center for Mothers and Children said that children were kept with female adults in the cells for almost 24 hours and were allowed to go out of the cells only once a week when International Organization for Migration (IOM) representatives went to the IDC.<sup>202</sup> An interviewed former detainee at Bang Khen IDC reported that detainees there, including children, were not allowed to spend any time outside of the cells.<sup>203</sup>

According to the Immigration Bureau's 2019 Guidelines on Admission, Control, and Supervision of Foreign Nationals, detainees are allowed to send letters and parcels to relatives, friends, lawyers, and embassies, but the cost has to be paid by the detainees.<sup>204</sup> Phone calls should also be made available with charges. Newspapers, TV, or other forms of media should be made available to detainees so that they can stay in contact with the outside world.<sup>205</sup>

However, an interviewed former detainee at Suan Phlu IDC recalled that no phone cards were sold at the IDC shop, so he had to pay another detainee to use his mobile phone.<sup>206</sup> Another former detainee at the Detention Center for Mothers and Children said she could not send any letter outside the IDC.<sup>207</sup>

According to an interviewed former detainee at the Detention Center for Mothers and Children, there was a TV in the cell that showed news and Thai drama series.<sup>208</sup> According to an interviewed former detainee at both Suan Phlu and Bang Khen IDCs, there was a smart TV in the cell that was connected to the internet. The same former detainee said he could read newspapers that were supplied by NGOs.<sup>209</sup>



Visitors stand in line at the receiving area of an immigration detention center in Bangkok on 21 January 2019. © Romeo Gacad / AFP

201. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 21 June 2024

202. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

203. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

204. Division 3, Investigation Division, Immigration Bureau, *Order 89/2019 Regarding the Guidelines on the Admission, Control, and Supervision of Foreign Nationals*, 27 February 2019, [https://drive.google.com/file/d/1o7sDNqDqaUrFcK\\_IdJzW5yqU3RLb3e-K/view](https://drive.google.com/file/d/1o7sDNqDqaUrFcK_IdJzW5yqU3RLb3e-K/view) [in Thai]

205. Division 3, Investigation Division, Immigration Bureau, *Order 89/2019 Regarding the Guidelines on the Admission, Control, and Supervision of Foreign Nationals*, 27 February 2019, [https://drive.google.com/file/d/1o7sDNqDqaUrFcK\\_IdJzW5yqU3RLb3e-K/view](https://drive.google.com/file/d/1o7sDNqDqaUrFcK_IdJzW5yqU3RLb3e-K/view) [in Thai]

206. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

207. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

208. FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024

209. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024



Regarding visiting arrangements, visitors must be either Thai nationals or foreigners with a valid Thai visa. One visitor can only visit one detainee at a time.<sup>210</sup> According to most interviewed former detainees, visits were held in the common visiting room with a partition separating visitors from detainees. Detainees were allowed to receive cash from visitors.<sup>211</sup> Interviewed former detainees reported a lack of privacy in the visiting rooms, which were cramped and noisy to the point that they had to yell to talk to one another.<sup>212</sup> However, meetings between detainees and UNHCR officers or lawyers were arranged in separate rooms that were more private.<sup>213</sup>

In October 2023, the NHRCT reported that the right to visitation and to connect with the outside world had been arbitrarily restricted for Uyghur and Rohingya detainees.<sup>214</sup> Members of these two groups were subject to special security arrangements put in place and overseen by Thailand's National Security Council, including restrictions on visits, no access to phones, and no cash.<sup>215</sup>

## 5.8. Lack of complaint mechanisms and independent monitoring

Immigration authorities failed to provide detainees with information regarding their rights and detention rules, including the right to make complaints to internal and external monitoring bodies. In addition, access to IDCs for independent monitoring of detention conditions and the treatment of detainees has been severely restricted.

According to the Immigration Bureau's 2019 Guidelines on Admission, Control, and Supervision of Foreign Nationals, the authorities are required to provide orientation to all newly admitted detainees. This orientation includes imparting information about the rights of detainees, IDC regulations, routine activities, and complaint mechanisms, both in oral and written form. Regarding the complaint mechanisms, detainees may lodge complaints to the head of the IDC or the facility's officers, either orally or in writing. Detainees should receive a response to complaints (although no timeframe is provided for a reply) and be able to appeal to the facility's senior officers. In addition, a guidebook for detainees should be provided to new detainees in a language they understand.<sup>216</sup>

However, all the interviewed former detainees said that they did not receive any information about their rights - including the right to file complaints - and the rules of detention, either orally or in writing.<sup>217</sup> In addition, there were no procedures for lodging a confidential complaint in the detention facilities where the interviewed former detainees had been held. They also reported that fear of retaliation discouraged them from filing complaints.<sup>218</sup>

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210. Immigration Bureau, *Public Handbook: Detainee Visiting According to Section 54 of Immigration Act*, <https://bangkok.immigration.go.th/wp-content/uploads/2021/06/17Public-Handbook.pdf>

211. FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024

212. FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

213. FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024

214. NHRCT, *Examination report No. 167/ 2566 on right to life and health regarding the call for investigation of the death of Uyghur detainees who died at the Immigration Detention Center*, 24 October 2023, <https://static.nhrc.or.th/file/content/pdf/31321/167-1725528565.pdf> [in Thai]

215. VICE, 'Wholly Negligent': Uyghur Asylum Seekers Keep Dying in Thailand's Detention Centers, 25 April 2023, <https://www.vice.com/en/article/uyghur-asylum-seeker-dies-in-thai-detention/>

216. Division 3, Investigation Division, Immigration Bureau, *Order 89/2019 Regarding the Guidelines on the Admission, Control, and Supervision of Foreign Nationals*, 27 February 2019, [https://drive.google.com/file/d/1o7sDNqDqaUrFck\\_IdJzW5yqU3RLb3e-K/view](https://drive.google.com/file/d/1o7sDNqDqaUrFck_IdJzW5yqU3RLb3e-K/view) [in Thai]

217. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDC*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024; FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDC*, 1 September 2024

218. FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 21 June 2024; FIDH, *Interview with former detainee at Suan Phlu IDC*, 7 June 2024; FIDH, *Interview with former detainee at the Detention Center for Mothers and Children*, 15 August 2024; FIDH, *Interview with former detainee at Suan Phlu and Bang Khen IDCs*, 1 September 2024

Access to IDCs for independent monitoring bodies has been severely restricted,<sup>219</sup> except for the NHRCT, which has been able access those facilities with certain limitations.<sup>220</sup> In 2022, the NHRCT conducted a visit to Suan Phlu IDC, an IDC in Tak Province, and Sadao IDC in Songkhla Province. In 2023, NHRCT representatives visited Suan Phlu IDC following the death of two Uyghur detainees, but they were not allowed to see the cell where the Uyghur detainees were being held.<sup>221</sup> On various occasions, NGOs and United Nations (UN) agencies providing humanitarian support for refugees and asylum seekers were granted limited access to IDCs to offer a range of services to detainees, including food assistance, medical check-ups, and distribution of hygienic supplies and other non-food items.<sup>222</sup>

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219. Principle 29 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: "In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment." Principle 29 (2) stipulates: "A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places."

220. NHRCT, *NHRCT visited Suan Phlu IDC as part of its program on monitoring places of detention to protect human rights*, 23 February 2023, <https://www.nhrc.or.th/th/NHRC-News-and-Important-Events/9519> [in Thai]

221. NHRCT, *Examination report No.167/ 2566 on right to life and health regarding the call for investigation of the death of Uyghur detainees who died at the Immigration Detention Center*, 24 October 2023, <https://static.nhrc.or.th/file/content/pdf/31321/167-1725528565.pdf> [in Thai]

222. International Detention Coalition, *Immigration Detention and Alternatives to Detention in the Asia-Pacific Region. Annex: Country profiles*, 17 May 2022, <https://idcoalition.org/wp-content/uploads/2024/01/Asia-Pacific-ATD-Report-ANNEX-2022.pdf>; IOM, *IOM Thailand: Humanitarian assistance to migrants in detention centers and shelters in Thailand*, <https://thailand.iom.int/sites/g/files/tmzbd11371/files/documents/iom-infosheet-humanitarian-assistance-to-migrants-in-detention-centers-and-shelters.pdf>

## 6. Recommendations

### 6.1 Recommendations to the Thai government

#### *General recommendations*

- Accede to the 1951 Refugee Convention and its 1967 Protocol.
- Ratify the Optional Protocol to the ICCPR (OP-ICCPR).
- Ensure effective implementation of the Prevention and Suppression of Torture and Enforced Disappearance Act in the context of immigration detention.
- Amend the Immigration Act 1979, including by:
  - Decriminalizing irregular entry and stay, as it exceeds the legitimate interests of Thailand in regulating irregular migration flows.
  - Prescribing that detention in the course of migration proceedings must be ordered or approved by a judge or another judicial authority.
  - Clearly defining the grounds for detention, such as the necessity of identification of a migrant in an irregular situation, the risk of absconding, or facilitating the deportation of a migrant.
  - Mandating an individualized assessment of individual circumstances, risks, and other humanitarian needs of migrants.
  - Establishing legal safeguards against arbitrary detention, including a reasonable maximum period of detention and a judicial review of detention.
  - Prohibiting the immigration detention of migrant children and migrants in situations of vulnerability.
- End the indefinite detention of migrants and ensure that any form of administrative detention in the context of migration is only carried out when strictly necessary and as an exceptional measure of last resort and for the shortest period.
- Ensure that all refugees and asylum seekers in IDCs regardless of nationality and ethnicity are able to access UNHCR representatives for the purpose of refugee status determination process and other protection measures.
- Ensure that conditions in the immigration detention centers (IDCs) and the treatment of detainees comply with Thailand's obligations under international human rights treaties to which it is a state party, including: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); and the Convention on the Rights of Persons with Disabilities (CRPD).
- Ensure that detention conditions in IDCs are in line with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- Ensure that all detainees are treated equally, without discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status, while taking into account the individual needs of those in situations of vulnerability, including women, children, LGBTIQ, persons with physical or mental disabilities, and the elderly.
- Ensure that officers in all IDCs receive adequate training on international standards, notably the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- Allow independent inspection bodies, including the National Human Rights Commission of Thailand (NHRCT) and the Ombudsman, unfettered access to all IDCs.
- Allow non-governmental organizations with a relevant mandate to conduct visits to IDCs, interview detainees, and assess conditions without undue hindrance.
- Publish regular and comprehensive figures about detainees in IDCs, disaggregated by gender, nationality, and location.
- Publish regular and comprehensive statistical information on deaths in IDCs and their causes.
- Conduct thorough, impartial, and independent investigations into all cases of deaths in IDCs and publicly release the findings of such investigations.
- End the detention of migrant children in IDCs and ensure that they are not detained again once they

turn 18.

- Fully implement the MoU-ATD and its Standard Operating Procedures (SOPs) without discrimination, including by:
  - Ensuring that migrant children are not excluded on grounds of nationality or ethnicity.
  - Prioritizing the use of non-custodial alternatives to detention for all migrant children and their parents or guardians, taking into account the best interest of the children and family unity.
  - Ensuring that holding migrant children at shelters operated by the Ministry of Social Development and Human Security or other privately-run shelters is used as the last resort and for the shortest period of time.
- Extend an invitation for a country visit to relevant special procedures of the UN Human Rights Council, including: the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Working Group on Arbitrary Detention (WGAD); the Special Rapporteur on the right to food; the Special Rapporteur on the human rights to safe drinking water and sanitation; the Special Rapporteur on the right to physical and mental health; the Special Rapporteur on the right to adequate housing; the Independent Expert on sexual orientation and gender identity; the Independent Expert on the enjoyment of all human rights by older persons; and the Special Rapporteur on the rights of persons with disabilities.
- Ensure that the National Screening Mechanism (NSM) is applicable to all foreign persons seeking protection in Thailand, including by:
  - Amending the eligibility criteria to ensure full and equal access to the NSM for all individuals seeking protection in Thailand, regardless of their legal status, nationality, or ethnicity.
  - Ensuring that NSM applicants are exempt from arrest, detention, and prosecution under the Immigration Act.
  - Ensuring that the NSM includes a provision that explicitly stipulates that the “national security” exception is defined in line with international human rights law and is not based solely on the legal status, nationality, or ethnicity of the applicants.
  - Ensuring that judicial safeguards, including the right to appeal, are available to NSM eligible applicants whose application is rejected.

### *Specific recommendations*

#### Overcrowding

- Establish non-custodial alternatives to detention.
- Exercise the discretion provided by the Immigration Act to grant release on bail for unauthorized immigrants pending the deportation process and refugees awaiting resettlement.
- Lower the bail amount demanded for IDC detainees to a level that ensures that release on bail is accessible to everyone, particularly refugees and asylum seekers.
- Ensure that vulnerable detainees, including elderly detainees and detainees with chronic physical and mental health conditions, are prioritized as beneficiaries of the alternative measures to detention as outlined in the Order of the Immigration Bureau No. 45/2024 on Assignment on the Consideration of Bail for Foreign Nationals Awaiting Deportation Under Article 54 of the Immigration Act and Bail Criterion, dated 27 February 2024.

#### Accommodation space

- Ensure that detainees are provided with a minimum living space required of 3.4 square meters per person, as recommended by the International Committee of the Red Cross (ICRC).
- Ensure that cells have sufficient natural light and adequate ventilation supplied by fresh air.
- Ensure that detainees are provided with clean and sufficient bedding suitable for the climate.



### Punishment and ill-treatment

- Ensure that all detainees are treated with dignity and humanity and are not subject to any forms or acts of discrimination.
- Ensure that no disciplinary sanction or other penalty for violations of the IDC's rules amounts to torture or other cruel, inhuman, or degrading treatment or punishment.
- Refrain from using force against detainees, unless as an exceptional response to the three situations permitted by international standards: legitimate self-defense; attempted escape; and active or passive resistance to a lawful order.
- Refrain from placing detainees in solitary confinement, except as a last resort and then only for as short a time as possible and subject to independent review.
- Conduct thorough, impartial, and independent investigations into all allegations of torture and ill-treatment in IDCs and ensure that perpetrators are punished in accordance with existing laws, rules, and regulations, and that victims receive adequate redress and compensation.

### Respect of religious practices

- Ensure that detainees can observe their religious precepts, including those related to food, clothing, and hygiene.

### Detainees with disabilities

- Make appropriate structural modifications and adjustments in IDCs, including to toilets and shower areas, to ensure that detainees with physical, mental, or other disabilities have full and effective access to basic amenities.
- Ensure the physical and psychological health needs of detainees with physical and mental disabilities are addressed and met.

### Water and sanitation

- Ensure a sufficient water supply for personal hygiene and provide an adequate flow of water in the showers and toilets throughout the day, particularly at times of heavy demand.
- Ensure that detainees have unrestricted access to toilets at all times and with the maximum possible level of privacy.
- Ensure that female detainees are provided with the necessary items to meet their specific hygiene needs, particularly an adequate provision of sanitary pads that are of good quality and free of charge.

### Food and water

- Improve the overall quality and nutritional value of food served to detainees.
- Ensure that food is provided to detainees in accordance with their medical needs and religious and cultural principles.
- Ensure that pregnant and breastfeeding detainees receive food and nutritional support that meets their specific dietary requirements.
- Ensure detainees are provided with clean eating utensils that are similar to those used outside IDCs.
- Ensure clean drinking water is available from a tap or a tank continuously 24 hours a day.

### Healthcare services

- Ensure regular inspections with the assistance of physicians or competent public health officials to examine and address issues that may impact the health of detainees, including: the quantity, quality, preparation, and service of food; the hygiene and cleanliness of the facilities and the detainees; and the sanitation, temperature, lighting, ventilation, and bedding arrangements of the facilities.
- Ensure that detainees have immediate access to medical attention in urgent cases, and that detainees who require specialized treatment are transferred to institutions or hospitals outside IDCs.
- Ensure the provision of adequate specialized medical services, including dental, psychological, and psychiatric care, for detainees.
- Ensure that the provision of mental healthcare entails the treatment of mental illness, the promotion of mental well-being of detainees, and the prevention of violence, self-harm, and suicide.

- Ensure that pregnant detainees have access to adequate and quality prenatal care.

#### Access to recreational activities and contact with the outside world

- Ensure that detainees are able to effectively communicate with their families, friends, and lawyers at regular intervals through visits, correspondence, and telecommunications.
- Ensure there is no unlawful or arbitrary interference with detainees' privacy during both in-person and remote visits from their family members.
- Ensure the privacy and confidentiality of all communications between detainees and their lawyers.
- Ensure that detainees have regular access to daily newspapers, magazines, books, and other cultural, recreational, or educational material.
- Ensure that adequate recreational and cultural activities are provided for the detainees' well-being.
- Continue to allow non-governmental organizations and intergovernmental organizations to provide services to vulnerable detainees in IDCs.

#### Complaints procedures

- Ensure that, upon admission, detainees are provided with information about their rights, IDC rules, and complaint procedures.
- Ensure that the complaint system entails both internal and external mechanisms.
- Ensure that detainees can file complaints anonymously and that all complaints are examined, thoroughly investigated, and adequately resolved in a timely manner.
- Ensure that detainees are not subjected to any acts of reprisals from IDC officers or fellow detainees in connection with complaints they filed.
- Publish regular and comprehensive statistical information concerning the number of complaints filed against IDC officers, investigations conducted, and disciplinary or other measures taken against wrongdoers.

## **6.2. Recommendations to the National Human Rights Commission of Thailand (NHRCT)**

- Request and perform regular visits to all IDCs to assess conditions and make recommendations to relevant authorities to bring conditions of detention into line with international law and standards.
- Publish findings related to visits to IDCs in a timely manner and provide public regular updates on issues raised during such visits.
- Ensure that all complaints made to the NHRCT about IDCs are investigated and resolved promptly and with appropriate remedies.
- Provide technical assistance in the training of IDCs officers on international standards on detention conditions and the treatment of detainees.

## **6.3. Recommendations to UN member states**

- Urge the Thai government to increase efforts to address and resolve the issue of overcrowding in IDCs by finding effective solutions for resettlement of refugees and asylum seekers.
- Urge the Thai government to improve detention conditions in IDCs to bring them into line with international human rights law and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- Urge the Thai government to honor commitments made during its second and third UPR, including by granting the NHRCT and the Ombudsman unfettered access to all places of detention.
- Provide the necessary technical assistance and training to IDC officers on Thailand's international human rights obligations and relevant international standards relating to detention conditions and the treatment of individuals deprived of their liberty.



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The Worldwide Movement for Human Rights acts at national, regional and international levels in support of its member and partner organizations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

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**Union for Civil Liberty (UCL)** is the first human rights organization in Thailand. It was founded in 1973 to advocate for, promote, and protect human rights and democracy. It has been working to: monitor human rights violations, government policies, laws, and actions; study and disseminate human rights knowledge and information; provide legal aid to disadvantaged and marginalized people through a nationwide network of human rights lawyers; and conduct campaigns for human rights and democracy, together with other human rights groups, organizations, and networks.

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