**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**

**1. Please provide information on any legislation or policy that prohibits or restricts the use of immigration detention of children and their families in your country. Grateful if you could kindly submit the original text of the legislation or policy, accompanied by an English translation if it is in a language other than English, French or Spanish.**

**Immigration Act B.E. 2522 (1979):** Section 54 of the Immigration Act stipulates that any alien (non-Thai person) entering or staying in the Kingdom of Thailand without permission, or with permission that is expired or revoked, may be repatriated from the Kingdom by the competent official. Upon the order to repatriate such alien, the competent official shall have the power to (1) allow the alien to stay in the Kingdom on the condition that such alien shall report to the official on the date, time and place as prescribed, or; (2) detain such alien for a necessary period of time.

The original text of the Immigration Act and its unofficial translation into English appears in Attachment 1 and 2.

**Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers B.E. 2562 (MOU-ATD):** The Royal Thai Government has enacted progressive immigration policies in recent years to ensure that children are not held in immigration detention, in compliance with international best practices. During the Leaders’ Summit on Refugees in New York on 20 September 2016, General Prayut Chan-o-cha, Prime Minister of the Kingdom of Thailand, made several pledges in relation to the situation of migrants including adherence to non-detention of children at the Immigration Detention Centers, considering the best interests of the child. On 21 January 2019, seven concerned Thai agencies (Royal Thai Police, Ministry of Social Development and Human Security, Ministry of Foreign Affairs, Ministry of Interior, Ministry of Public Health, Ministry of Education and Ministry of Labour) signed the MOU-ATD. The MOU stipulates the responsibilities of the concerned authorities and provides common guidelines to integrate procedures on non-detention of migrant children under the age of 18. Under the MOU, measures are put in place to provide social services and alternative care for children in accordance with their needs by placing them under the care of the Ministry of Social Development and Human Security, Immigration Detention Centers, private organizations and civil society organizations.

The original text of the MOU and its unofficial translation into English appear in Attachment 3 and 4.

**2. Please provide information on existing non-custodial alternatives to immigration detention of children in your country (e.g. community-based reception solutions) and elaborate how effective these alternatives enhance the protection of the rights of migrant children and their families.**

**Standard Operating Procedure (SOP) under the MOU-ATD:** The SOP has been agreed upon by the aforesaid seven Thai agencies with the approval of the Prime Minister. It describes procedures to protect children in immigration detention from the point of reception to repatriation, where efforts are made to avoid separation of children from their parents. Special consideration is given to vulnerable children, namely, (1) unaccompanied children (2) children separated from their parents (3) children with UNHCR’s Persons of Concern (POC) status (4) children who were victims of human trafficking and abuse (5) disabled children and children with health conditions (6) young children who still rely on breastfeeding as well as pregnant mothers (7) children with history of being incarcerated or detained for crimes (8) children without identity (9) children who were beggars or street children and (10) children with other issues that demands protection.

General principles of the SOP are:

1. Children shall not be detained, unless there is an absolute necessity in which it would be a measure of last resort and implemented with the shortest period possible;
2. The decision-making process is based on the best interests of the child and the child’s opinion must be taken into consideration;
3. Children have the rights to adequate standard of living, for the benefit of their physical, intellectual, emotional, moral and social development;
4. Family-based care is the first priority. Shelters (either public or private) shall be a measure of last resort and implemented with the shortest period possible;
5. In considering any other alternative care methods, both physical and psychological development of the children needs to be taken into account as well as identification of durable solution for the children;
6. All related agencies shall operate in a manner that ensures that children will receive appropriate protection and support.

The original text of the SOP and its unofficial translation into English appear in Attachment 5 and 6.

**Multidisciplinary Working Group (MWG):** In order to determine, monitor and evaluate the implementation of alternative measures to detention of children, a MWG is established as per the SOP, comprising of Immigration Detention Centers’ officials, competent officers under the Child Protection Act of 2003, and representatives from UNHCR, UNICEF and IOM. The MWG shall consider an alternative measure to detention and individual plan for each child.

**Case Scenario:**

1. At the first step, children and their mothers are detained at a special venue designed specially for them under the custody of the Immigration Bureau.
2. The MWG shall then determine the best alternative measure to detention based on specific condition of each child and availability of resources. Family-based and community-based care will be given priority. Reception centers of the Ministry of Social Development and Human Security or privately-run reception centers registered under relevant laws shall be a measure of last resort and implemented with the shortest period possible.
3. As for unaccompanied children and children separated from their parents, priority shall be given to placing them with foster families.
4. Children and their mothers under non-detention measure are given access to appropriate education and health services, including the rights to participate in recreation and religious activities, with support from international organizations such as UNHCR, UNICEF and IOM.

**3. Please provide information on any existing good practices or measures taken in your country to protect the human rights of migrant children and their families while their migration status is being resolved, including inter alia their rights to liberty, family life, health and education (e.g. by ensuring effective access to *inter alia* adequate reception, healthcare, education, legal advice, family reunion).**

**Child-Sensitive Screening and Referral**

- Upon identification and assessment of a child and their family members, they will be properly registered while necessary documents are collected, ensuring that they are not at risk of negative engagement with immigration authorities or their liberties being restricted.

- Children and their families at the immigration detention centers are screened, assessed and provided with appropriate services. Registered NGOs work in partnership with the Ministry of Social Development and Human Security (Department of Children and Youth) to support screening and assessment process. Service providers for health, education and recreational activities, as well as legal advisors stand ready to provide necessary services to the children and their family members.

- With support from UNICEF Thailand, social workers from the Department of Children and Youth are placed at Mae Sot Immigration Detention Center (Tak Province), and will be placed at Suanplu Immigration Detention Center (Bangkok), to assist the Immigration Bureau to pre-screen children at risk or children in need at the reception point.

**Temporary placement**

- Government shelters (Children and Families Home) serve as a temporary place where children and families who are released/referred (as per the alternative measure to detention) can benefit from a range of support services from the government and NGOs until a more suitable solution is secured. These include:

 - services to meet their immediate basic needs such as shelter, safety, security, food, health care, etc.;

 - an environment that provides the opportunity for learning, leisure and recreation for children; and

 - case managers to assist in facilitating longer-term solutions for each family.

**Appointment of case managers, legal representatives and guardians**

- The MWG will appoint a case manager from NGOs to coordinate with the service providers specified in the individual care plan for a child. Case management system will help each individual achieve a resolution to his/her case, for example, gaining refugee status, resettlement through UNHCR, returning to the country of origin or a third country, etc. The case managers also work to ensure that the basic needs of children and their families are met in the process.

**Longer-term housing options for children with families**

- Depending on the needs and strength of each child based on Best Interest Assessments (BIAs) and Best Interest Determination (BID), as well as the availability of community housing, the children and their mothers shall be transferred to private accommodation or community housing, supported by NGOs.

- Depending on the needs of each family and assisted by the case managers; each family has a care plan and is provided with regular information about their immigration case. The Department of Children and Youth and case managers shall regularly monitor the child and his/her family, while the case managers and legal advisors shall support the families through compliance with relevant immigration procedures and case resolution.

**Monitoring and Supervision**

- To ensure that the care plan is effectively implemented, regular meetings are conducted among the case managers both from Department of Children and Youth and NGOs and the service providers (including legal advisors) under the supervision of competent officers under the Child Protection Act or senior social workers from the Department of Children and Youth, to discuss relevant progress.

**4. Please indicate any challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families.**

**Bail fee for mothers/guardians:** The Immigration Act B.E. 2522 (1979) allows the competent official to give permission to the alien to reside at any place, with the condition to report to the official on the date, time and place as prescribed. But in practice, the Immigration Bureau will only allow mothers/guardians to be bailed out from detention with a fee of 50,000 baht (approx. 1,550 USD) per adult, which may pose aburden for them or for the NGOs/CSOs that intend to assist them.The authorites concerned are working on reviewing the criteria on setting the bail.

**Age Assessment:** A high number ofmigrant children, particularly unaccompanied children and separated children, are not registered with the authorities or do not have legal identification documents. Many of them have adult-like physical appearance and, therefore, are mistakenly treated as adults. For age assessment procedures, it is important to note that bone x-rays or dental evaluation are at times considered to be intrusive, unethical, and inaccurate methods, with a significant potential for error, as they do not take into account factors such as nutritional status, disease or developmental history. Thus, more accurate and internationally accepted procedures are desirable.Hence, the authorities concern are in the process of considering a more universally accepted procedure.

**Limitation of services for migrant children:** Though the Government’s policy stipulates the provision of basic services to migrant children, gaps in its implementation are still present due to the lack of human resource (workforce, knowledge, skill), limited number of public/private shelters specialized in migrant children, language barrier between officials and migrants, lack of appropriate interpreters and foster care for children, among others.

**Reduced opportunities for Resettlement:** Persons of Concern (POC) to the UNHCR, for whom resettlement opportunities have decreased, include a significant numberof migrant children and their family members. Several factors contribute to this change in resettlement policy of recipientcountries, rapid increase in number of migrants due to conflicts and emergence of COVID-19 pandemic that poses further challenges. As a result, a longer stay period in Thailand puts more pressure on the already limited resources needed for the provision of support and services to the migrants.

**5. What support could other stakeholders (other than your Government) provide to strengthen the development and/or implementation of non-custodial alternatives to immigration detention of children and their families that enhance the protection of their rights?**

The Royal Thai Government has engaged relevant stakeholders in developing the MOU-ATD and its SOP.

The Immigration Bureau and the Department of Children and Youth have been working in partnership with UN agencies, NGOs and CSOs in different areas, for example, with the Childline Thailand Foundation (CTF), the Muslim Welfare Organization of Thailand and the Satthachon Foundation for Education and Orphans (SAF) in locating foster family for migrant children.

UNHCR, IOM and UNICEF have been invited to be members of the MWG to strengthen the development and implementation of the MOU-ATD, and have been assigned specific roles as follows:

- UNHCR to support background information of migrant children, give relevant advice, provide protection and search for durable solution (e.g. resettlement, etc.) for the migrant children and their families, especially for the most vulnerable ones;

- IOM to support the Immigration Bureau and Department of Children and Youth in identifying the needs of migrant children and their families, collecting relevant information, training the case managers, providing comprehensive health check-up and organizing educational, recreational and mental care activities for migrants, and funding travel expense for those migrants who have been granted resettlement opportunity or voluntarily wish to return to their country of origin; and

- UNICEF to support knowledge and budget in the development of policies and their implementation and skills development for officers in the field, such as interpreters and protection officers.

**QR code / Link for Attachments 1-6**

**QR Code :**

**URL :** shorturl.at/yGQ78

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