

Challenges for the Rights of Refugee Children in Thailand under the UN Convention and the Reservation Withdrawals: Inclusive Policy, Exclusive Practice

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Introduction

Thailand hosts more than 670,000 displaced and stateless in shelters and in scattered areas currently. Since the military takeover in 2021, the violence in Myanmar has intensified, leading to new waves of displacement both inside Myanmar and to neighbouring countries, including Thailand. According to data from the United Nations High Commissioner for Refugees (UNHCR), as of January 2024, Thailand is home to 5,300 refugees and asylum seekers from more than 40 countries residing in urban areas, as well as 82,400 refugees from Myanmar living in nine temporary shelters along the Thai-Myanmar border. According to the Royal Thai Government (RTG) statistics, by June 2023, over 592,000 people were stateless with approximately 169,241 of them being children. This significant number of displaced people highlights how important it is to have long-lasting legal frameworks and social structures to safeguard vulnerable populations.

Thailand ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1992 and it is a signatory to other important international treaties about child rights. Thailand initially objected to Article 29 (universal access to education), Article 22 (protection for refugee children), and Article 7 (birth registration and nationality). Despite withdrawing its reservations to Articles 29 and 7 in 1997 and 2010, respectively, Thailand was the only UNCRC member state to retain a reservation on Article 22 because of national security concerns. However, on July 9, 2024, Thailand announced that it would lift its reservation on Article 22 and reaffirmed its commitment to humanitarian assistance, family reunification, and collaborations with civil groups to safeguard refugee children. Although Thailand is not a member of the 1951 Refugee Convention, this policy change shows a more comprehensive position on access to legal protections and essential services, as well as Thailand's growing alignment with international standards for children's rights.

Problem Statement

Thailand has decades of experience in managing significant refugee influx from neighbouring countries, especially Myanmar. Currently, Thailand is a party to 8 out of 9 core international human rights treaties, including the United Nations Convention on the Rights of the Child (UNCRC), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of Persons with Disabilities (CRPD) and the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED). Thailand has also set guidelines for the protection of children's rights. However, there are still significant challenges remain in translating these commitments into consistent policies and protections on the ground despite these frameworks.

Although Thailand has implemented significant policy changes, a number of restrictions continue to limit the freedom of movement, rights to work, and education access of refugees. This creates major barriers for their personal, social, and community development, especially children. Refugee children are more vulnerable to exploitation, human trafficking, and juvenile crime due to limited access to education and legal protections. In order to understand the approaches of policymakers in ensuring the welfare of refugee children, this study investigates policy implementation practices, security concerns, the levels of awareness, and challenges among beneficiaries and local level stakeholders.

Existing Policies

Birth Registration and Nationality

On December 13, 2010, Thailand notified the UN Secretary-General of its decision to withdraw the reservation on Article 7 of the UNCRC. Since 2008, all children born in Thailand can be registered at birth regardless the legal status of their parents. Under this Act, parents or guardians must report a child's birth, while officials are required to register it and issue a birth certificate based on specific birth and parental criteria. This Act aims to ensure each child's right to legal identity which is a foundational step toward achieving citizenship.

The 1972 Decree No. 337 exacerbated statelessness by restricting the right to nationality by birth (*jus soli*) for those deemed “illegal immigrants”. This decree played a critical role in statelessness issue in Thailand. Although the decree was repealed, many restrictions persist in country. The 1965 Nationality Act specifies that children born to Thai parents – whether in or outside Thailand – are entitled to Thai Nationality. However, Section 7 (b) of the Act restricts citizenship for children born in Thailand to parents with temporary or unauthorized residency creating complex and lengthy nationality application procedures. A 2008 amendment allowed individuals who lost or were unable to obtain nationality during 1972-1992 to apply for Thai nationality by providing birth and residence in Thailand. A 2016 Cabinet Resolution further grants nationality applications from children born to ethnic minorities within 15 years of residence, as well as abandoned children, provided certain documentation is available.

Access to Education

On April 11, 1997, Thailand withdrew its reservation on Article 29 of the UNCRC and adopted Cabinet Resolutions in 2005 to extend educational access to all non-Thai children, regardless of legal status, documentation or citizenship. A Ministerial Proclamation in 2018 made it easier for migrant children to enrol in Thai public schools by removing several documentation requirements. These policies aim to ensure the universal educational access to support the children’s development and future potential for the country.

Protection and Rights of Refugee and Asylum-Seeking Children

On August 30, 2024, the RTG notified the UN Secretary-General of its decision to withdraw the reservation on Article 22 of the UNCRC. This is the government’s reaffirmation for commitment to protect refugee children in the country. According to the UNCRC, the article does not define or endow a definition of what is meant by the word “refugee” or “asylum-seeker” but refers to applicable international or domestic law and procedures. In this regard, it does not need the State to adopt any of such definition, nonetheless to integrate it into its national legislative framework. Additionally, Thailand has not ratified the 1951 Refugee Convention, which provides a universal definition of the term “refugee” and the RTG must not applicable this definition in this case.

The RTG enacted the Child Protection Act in 2003 and it incorporates the principles of non-discrimination and interest of the children. Furthermore, on December 24, 2019, the government approved a regulation with the aim to establish a National Screening Mechanism (NSM). This mechanism aims to manage aliens in Thailand who are unable to return to their home countries. The RTG launched this mechanism in September 2023,

and the recent withdrawal of the reservation on the UNCRC can enable the RTG to ensure the protection of refugee children under this mechanism.

Findings

Inconsistent Policy Implementation at the Local Level

In recent years, Thailand has made significant reforms to its laws and regulations to provide pathways for protecting the rights of children. However, policy implementation continues to be slow and limited, particularly at the local level. Thailand has revised its Civil Registration Act and lifted its objection to Article 7 of the UNCRC, recognizing that birth registration is an essential first step toward legal identity, nationality and citizenship to prevent stateless children. Even though the RTG stipulates that children can be registered for birth regardless of the status of their parents, officials at the local level request multiple documents to register migrant children. Furthermore, the application process for nationality takes a long time and is more likely to be rejected. A study in 2015 found that the application process takes 4.5 years on average and rejection rates are higher than 30%.

In early 2024, regional offices failed to comply the orders from the Office of the Basic Education Commission to admit all migrant children to primary schools regardless of documentation. In July 2023, 126 undocumented and stateless children were deported as part of the school dean's prosecution. These cases addressed the violation of the rights guaranteed by the UNCRC and the implementation of immigration law without considering the Child Protection Act. Despite the RTG has withdrawn its recent reservation regarding Article 22 of the UNCRC, Thailand has one of the largest immigration detention systems in Asia according to data from the Global Detention Project (GDP).

National Security and National Interest

Thailand lacks a specific policy and legislative framework for the protection refugees and asylum-seekers. Thailand claims that it is not a party to the Refugee Convention and its 1967 protocol and does not recognize the existence of refugees. As a result, RTG only has a policy of providing humanitarian assistance to groups of people fleeing armed conflicts. When refugees entered the country illegally, immigration law would be applied first by government officials. Any migrants, including refugees, found in Thailand without permission are subject to prosecution and possible deportation under the Immigration Act. On the other hand, Article 17 of the Immigration Act allows the Ministry of Interior

(MOI) discretion over whether or not certain groups of people can stay in the country on an as-needed basis. MOI has applied this article to permit refugees, particularly those fleeing fighting in neighbouring countries, to remain in the country.

Refugees and displaced individuals are viewed by Thai officials primarily through the lens of security. According to the National Security Plan, refugees and asylees pose potential threats to Thailand's social welfare, national security, and international relations. Therefore, Thailand's security agencies play a crucial role in managing refugees. The committee for the National Screening Mechanism (NSM) is made up of the Royal Thai Police (RTP), the National Security Council (NSC), and the National Intelligence Agency (NIA). RTP made it clear that they were afraid of pull factors like attracting too many refugees and not being able to manage local expectations about financial responsibilities and national security. The RTG is motivated to quickly design and implement systems as a result of this security concern.

Despite the efforts of RTG to strike a balance between human rights, international relations, and national security in protecting refugee children, local officials have ignored the nation's commitment to protecting the rights of every child. During these years, authorities raided Migrant Learning Centres (MLCs) for reasons related to national security. After spreading a viral social media of migrant students singing the Thai national anthem, followed by the Myanmar national anthem, during a flag-raising ceremony for one of the MLCs, the Ministry of Education began cracking down on learning centres across various provinces in September 2024. Netizens who view nationalism as a threat to national security reacted strongly to this clip. This month, furthermore, there was also a protest in front of the Myanmar Embassy in Bangkok. Protesters were upset about the larger number of Myanmar refugees live in Thailand. These obstacles and challenges will make it harder for the government to keep its commitment to protecting rights of the children and its ability to effectively balance human rights and national security.

Limited Awareness of Rights and Policies Among Beneficiaries

Government has policies in place to protect the rights of the children, but there is no promoting mechanism to aware these policies. It is one of the ground-level barriers in Thailand's policies that prevent migrant children from accessing their fundamental rights. Parents may not assert their children's rights because they are unaware of their significance or because they are unfamiliar with the procedures for birth registration and school enrolment. People may also have difficulty contacting authorities or understanding how to complete the necessary procedures due to literacy and language barriers. Lack of promoting mechanism and lack of clear and consistent policies can hinder the efficiency of policy implementation and the commitment of a nation.

Policy Recommendations

Enhancing Policy and Implementation Consistency

In order to address the current challenges effectively, the RTG should prioritize consistent alignment between policy and practice for birth registration, nationality application, and access to education. Government officials at local level should standardize documentation requirements to reduce disparities in application processes for minimizing delays and rejections which prevent migrant children from accessing their rights. Strengthening collaboration with civil society organizations can enhance support for non-Thai families navigating complex procedures by ensuring a broader reach and adherence to established policies.

Promoting Awareness of Child Rights and Legal Procedures

Policy maker should make sure that the policy and principle will continually be publicized through awareness campaigns (including in migrants' languages) for current and making it clear that it is a national commitment.

Enhancing Flexibility and Inclusiveness in Education and Birth Registration

The respective ministries and agencies should develop a more flexible and inclusive approach to policy implementation for stateless and migrant children, particularly in the area of education and birth registration. Education for All policy would be further safeguarded by acknowledging the significance of Migrant Learning Centres (MLCs) and supporting their incorporation into Thailand's educational system. The regulation and criteria of National Screening Mechanism (NSM) should be revised by the Ministry of Interior and the Royal Thai Police in order to be flexible and all inclusive.

Ensuring Balance Between National Security and Humanitarian Obligations

Maintaining a balance between humanitarian commitments and national security is crucial to protecting refugee children's rights in line with international norms. The RTG ought to guarantee freedom from arbitrary arrest and detention without regard to national security and adherence to the non-refoulment principle. Although Thailand is not a party to the Refugee Convention and does not officially recognize refugees, it provides

humanitarian assistance to individuals designated as “protected person”. While the definitions of “protected person” and “refugee” are not exactly the same, the RTG is still obligated to adhere to ratified international standards when implementing relevant regulations.

Conclusion

Over the past seven decades, Thailand has welcomed, hosted, and provided protection to individuals fleeing persecution and armed conflicts. The nation has recently accommodated thousands of refugees, including children, in temporary housing along the border with Myanmar. Beyond humanitarian considerations, accommodating young people from neighbouring countries aligns with Thailand’s national interests, especially given an aging population and low birth rates. Integrating these children into Thai society can yield substantial long-term benefits, fostering social cohesion and fulfilling Thailand’s commitment to upholding child rights in line with international standards.

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