

Statement by Asylum Access Thailand (AAT) Foundation

Re: Call on the Royal Thai Government to Review the Draft Regulations of the Office of the Prime Minister on Deportation, B.E. to Ensure Consistency with the Principle of Non-Refoulement and Thailand's International Human Rights Obligations

Following the Cabinet Resolution of 14 July B.E. 2569 (2026), which approved in principle the draft Regulations of the Office of the Prime Minister on Deportation, B.E. ..., Asylum Access Thailand (AAT) Foundation, a non-profit organization that has worked continuously since 2007 to protect the rights of, and provide legal assistance to, refugees and asylum seekers, wishes to express its serious concern regarding the information disclosed in the press release and the Cabinet meeting summary published on that date. AAT calls on the Government to hold consultations with international legal experts and relevant civil society organizations in developing the draft Regulation prior to its promulgation, so that it is consistent with Thailand's international human rights obligations and domestic law, and to establish adequate safeguards for the protection of persons who may be in need of international protection, in particular refugees and asylum seekers.

Although the Government has stated that the draft Regulation is intended to address serious crimes and unlawful conduct by aliens, AAT is of the view that the Regulation should contain clear provisions protecting persons in need of international protection, in order to prevent the risk of violating the principle of non-refoulement and the human rights obligations to which Thailand is a party. AAT, whose mission is to promote access to fundamental rights and a dignified life for all, through legal assistance, humanitarian support, and policy advocacy for systemic change, is of the view that the draft Regulation requires comprehensive review, for the following key reasons.

Part 1: The Principle of Non-Refoulement as the Most Fundamental, Non-Derogable Obligation

Before addressing specific concerns regarding the draft Regulation, AAT considers it necessary first to set out the legal framework at the core of this matter, the **principle of non-refoulement**, which prohibits a State from removing a person to a territory where there are substantial grounds to believe that person would face torture, cruel or inhuman treatment, or enforced disappearance. This principle is not merely a treaty-based obligation. It is widely recognized among legal scholars and international bodies as **customary international law**, that is, a rule arising from the consistent practice of States, coupled with a belief that such practice is legally required (*opinio juris*), and as such it binds every State, **regardless of whether that State is a party to a treaty expressly codifying the principle**. Moreover, many scholars and international bodies agree that non-refoulement, at least insofar as it relates to the risk of torture, has attained the status of a **peremptory norm (*jus cogens*)**, meaning it is a principle from which no State may derogate or contract out, whether by treaty, domestic law, or administrative regulation.

The fact that Thailand is not a party to the 1951 Refugee Convention does not exempt it from this obligation, because the principle of non-refoulement is reiterated and reinforced in other treaties to which **Thailand is already a direct party**, namely:

- The **Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**, ratified by Thailand in 2007. Article 3 absolutely prohibits a State Party from removing a person to a State where there are substantial grounds for believing that person would be in danger of being subjected to torture, and requires an individualized risk assessment prior to every removal.
- The **International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)**, ratified by Thailand in 2024, which prohibits a State Party from removing a person to a State where there are substantial grounds for believing that person would be in danger of enforced disappearance, further reinforcing Thailand's non-refoulement obligations.

As these two treaties constitute obligations to which Thailand is directly bound, they form the most important interpretive framework for assessing the consistency of the draft Regulation. Furthermore, the principle has already been expressly incorporated into Thai domestic law through **Section 13 of the Prevention and Suppression of Torture and Enforced Disappearance Act, B.E. 2565 (2022)**, which prohibits Thai state officials from expelling, returning ("refouler"), or extraditing any person to a State where there are substantial grounds for believing that person would be at risk of torture, cruel or inhuman treatment, or enforced disappearance. This provision binds any official empowered to issue a deportation order under the new Regulation, and, in terms of legal hierarchy, is an Act of legislation, superior to a Regulation of the Office of the Prime Minister, which is subordinate legislation. Accordingly, any draft Regulation that fails to expressly establish a mechanism for individualized risk assessment prior to deportation is not merely a policy shortcoming, but a genuine risk of breaching Thailand's non-derogable obligations under international law, a risk that cannot be justified by the Government on grounds of national security or administrative expediency.

Part 2: Other Relevant International Obligations and Domestic Law

In addition to the principle of non-refoulement, the draft Regulation must be assessed for consistency with the following further obligations to which Thailand is bound:

- The **International Covenant on Civil and Political Rights (ICCPR)**, to which Thailand acceded in 1996. Article 13 provides that an alien lawfully in the territory of a State Party may be expelled only pursuant to a decision reached in accordance with law and, except where compelling reasons of national security otherwise require, shall be allowed to submit reasons against expulsion and to have their case reviewed. This is reinforced by Article 2(3), which guarantees the right to an effective remedy.
- The **Convention on the Rights of the Child (CRC)**, ratified by Thailand in 1992, with Thailand's reservation to Article 22 withdrawn in August 2024. Article 22 requires States Parties to provide appropriate protection to refugee and asylum-seeking children, whether or not accompanied by parents or guardians, with the best interests of the child as a primary consideration.
- The **Constitution of the Kingdom of Thailand, B.E. 2560 (2017)**, Sections 27–28, which guarantee the rights and liberties of "every person," not limited to Thai nationals, directly bind the Cabinet and state agencies, and are judicially enforceable.

- The **Administrative Procedure Act, B.E. 2539 (1996)**, which establishes the general principle that, before issuing an administrative order affecting a person's rights, an authority must notify the relevant facts and afford that person the opportunity to contest the order and present evidence, unless otherwise specifically exempted by law.
- The **Immigration Act, B.E. 2522 (1979)**, Section 55, an existing mechanism under Thai law providing that, where a deportation order is appealed, the competent official must suspend deportation pending a decision by the Minister. This safeguard must be expressly confirmed as remaining in force for cases falling under the new Regulation.
- Although Thailand is not a party to the **1951 Refugee Convention or its 1967 Protocol**, the principle of non-penalization of refugees for unlawful entry or presence when coming directly from persecution (Article 31) remains a widely recognized international norm, and is directly relevant to the misconduct grounds in the draft Regulation concerning unlawful entry and the use of counterfeit documents. The same is true of the **Universal Declaration of Human Rights (UDHR)**, Article 14, which recognizes the right to seek and enjoy asylum from persecution, which, while not directly legally binding, reflects a foundational principle used in interpreting international protection standards.

Taken together, these obligations form the framework within which the Thai State must conduct a comprehensive review of the draft Regulation, not a review confined to considerations of national security and immigration management alone.

Part 3: The Gap Between the Stated Intent and the Actual Scope of the Draft Regulation

The Cabinet meeting summary states clearly that the measure is intended to address organized fraud, such as the forgery of documents to falsely claim Thai nationality, the use of Thai nominees to hold land and businesses on behalf of aliens, money laundering, and serious crime, a target group considerably narrower than "undocumented refugees and asylum seekers." However, when the six misconduct grounds actually drafted under Clause 4 are examined, there is no exemption distinguishing this target group from asylum seekers, **Protected Persons** under the Regulation of the Office of the Prime Minister on Criteria and Procedures for the Screening of Aliens Entering the Kingdom Who Cannot Return to Their Country of Origin, B.E. 2562 (2019) (the **National Screening Mechanism: NSM**), or refugees recognized under Refugee Status Determination (RSD) by the **Office of the United Nations High Commissioner for Refugees (UNHCR)**. These persons may fall directly within misconduct ground (1) unlawful entry to or residence in the Kingdom under the plain text, notwithstanding that this was not the Government's stated intent.

Furthermore, because the draft Regulation carries criminal consequences, it must be interpreted in accordance with the principle that **criminal law must be construed strictly**, a corollary of the principle of legality (*nullum crimen, nulla poena sine lege*), which requires that provisions restricting rights and liberties or imposing criminal liability be clear, definite, and interpreted only within the scope expressly set out in the text; such provisions may not be expanded beyond legislative intent to the detriment of the accused. The draft Regulation should therefore be drafted clearly and targeted principally at **aliens who genuinely and knowingly engage in unlawful conduct or activity for dishonest purposes**, rather than

leaving room for it to affect refugees or asylum seekers who have no intent to commit the conduct the law is meant to address.

Part 4: The "Insincere Third Country" Condition Risks a Direct Breach of Non-Refoulement

The provision AAT regards as most concerning appears in the Cabinet documents: where a foreign government or international organization requests that Thailand transfer an alien to that State or to a third country, but delays in actually receiving the alien, such delay is to be treated as evidence that the request was not made in good faith, and deportation of the alien may then proceed immediately. This provision creates a risk that delays in diplomatic or international coordination processes, matters entirely outside the alien's control, could be used as grounds to remove that person from an ongoing, safe third-country pathway, rather than protecting that pathway. The case reported this past week concerning a Chinese Falun Gong practitioner who was prevented from resettling in Canada illustrates the concrete risk posed by a provision of this kind. This is precisely where the non-refoulement obligation under Article 3 of CAT becomes most directly engaged: however reasonable the justification for diplomatic delay may be, CAT requires that the assessment always remain anchored to the individualized risk to that person, not to the pace of inter-State process.

Part 5: The Default Rule on the Country of Return for Stateless Persons Lacks Any Safety Verification

Neither the press release nor the Cabinet meeting summary contains any provision requiring judicial review or scrutiny of a deportation or removal order prior to its execution. Decision-making and enforcement authority remains entirely in the hands of the administrative branch, without any judicial check, despite deportation being a measure that severely and often irreversibly affects a person's fundamental rights and freedoms, particularly where the Regulation could be applied to remove refugees or asylum seekers in violation of non-refoulement. AAT is of the view that a mechanism for judicial review prior to enforcement of any removal order should be added in every case, as a due process safeguard against the exercise of administrative power that could affect individual rights without any check or balance.

Further, according to the Government's press release, where a deportee's nationality is uncertain or cannot be confirmed, the deportee shall be sent to "the last country in which the alien resided before entering the Kingdom," with no mechanism to verify whether that country of destination is safe. Where neither judicial review before enforcement nor safety verification of the destination country exists, the risk compounds twofold: not only does the deportation order proceed without judicial scrutiny, it may also result in a person being returned to an area of conflict, or into the hands of the very State responsible for their persecution, with no safeguard whatsoever, a direct breach of non-refoulement.

Part 6: Impact on Humanitarian Support Networks from the "Instigator/Facilitator" Ground

The final misconduct ground, which extends liability to any person who "causes, orders, or supports" conduct under the other grounds, is drafted broadly enough to potentially capture

employers, landlords, family members, or community networks who provide assistance to a person falling within those grounds without knowledge of the relevant facts. Absent a clear definition of "supports" limited to persons who genuinely act with dishonest intent, this ambiguity risks a chilling effect, deterring individuals and organizations from providing humanitarian assistance to refugees and asylum seekers in affected areas.

Part 7: Absence of Due Process Safeguards and the Right to Be Heard

Neither the press release nor the Cabinet meeting summary discloses any mechanism for individualized risk assessment prior to issuing a deportation order, nor any right for the person concerned to be informed of the allegations against them and to contest the order before removal, as generally required under Article 13 of the ICCPR and the Administrative Procedure Act, B.E. 2539. In addition, the instruction for relevant agencies to formally object, in writing, to bail for aliens facing prosecution, combined with the requirement that deportation proceed "without any delay", may substantially limit a person's opportunity to access legal counsel, lodge an appeal, or seek interim protection from the Administrative Court in time. It also remains unclear whether the appeal mechanism under Section 55 of the Immigration Act, B.E. 2522, will continue to apply to cases arising under the new Regulation. Nor is there any child-specific protection measure, contrary to the best-interests-of-the-child principle under Article 22 of the CRC.

Part 8: Additional Obligations as a Member of the UN Human Rights Council for the 2025–2027 Term

Beyond the treaty and domestic-law obligations set out above, AAT considers that the draft Regulation must also be assessed in light of Thailand's membership of the **UN Human Rights Council (HRC)** for the 2025–2027 term, which commenced on 1 January 2025. This status carries both diplomatic honor and a heightened responsibility to serve as a model for the promotion and protection of human rights, both domestically and internationally. Under the UN's criteria for HRC membership, member States' human rights record, as well as the **Voluntary Pledges and Commitments** submitted as part of their candidacy, must be taken into account.

In its candidacy campaign for a seat on the HRC, the Royal Thai Government made a number of pledges, including a commitment to develop and improve domestic law, policy, and regulations to align with the international human rights treaties to which Thailand is a party, and to ensure their effective implementation domestically. The Government's continued pursuit of a draft Regulation that lacks due process safeguards and risks breaching non-refoulement, as set out above, is therefore not only inconsistent with international law, but also inconsistent with the commitments Thailand made to the international community in seeking HRC membership, and will have a direct impact on Thailand's credibility internationally, particularly at a time when Thailand is preparing its report for the fourth cycle of the **Universal Periodic Review (UPR)**.

Recommendations

In light of the above concerns, AAT calls on the Royal Thai Government to:

1. Uphold the principle of non-refoulement as the most fundamental, non-derogable obligation, at every stage of drafting and implementing this Regulation.
2. Suspend the drafting of this Regulation and hold consultations with international legal experts and relevant civil society organizations before proceeding further.
3. Expressly incorporate exemptions in the Regulation for persons granted Protected Person status under the NSM, refugees recognized by UNHCR, and cases falling under Section 13 of the 2022 Act.
4. Remove or revise the "delay by a third country" condition, which risks deporting a person from an ongoing, safe third-country pathway.
5. Require verification of the safety of the country of destination before returning stateless persons, rather than automatically applying the "last country of residence before entering Thailand" rule.
6. Clearly define the scope of "instigator/facilitator" liability and limit it to persons who genuinely act with dishonest intent, so as not to affect those who provide humanitarian assistance in good faith.
7. Establish minimum safeguards consistent with international human rights standards, including individualized risk assessment prior to removal, the right to be informed of and contest a removal decision, the right to an interpreter and legal counsel, an appeal mechanism with suspensive effect, and specific protective measures for children and families.
8. Confirm that the appeal mechanism under Section 55 of the Immigration Act, B.E. 2522, will continue to apply, without any diminution, to cases arising under the new Regulation.
9. Add a mechanism for judicial review prior to the enforcement of any removal order, in order to protect due process rights and prevent the exercise of power that could affect individual rights and freedoms, particularly where such power might be used, contrary to non-refoulement, to remove refugees under this Regulation.

Finally, AAT stands ready to support relevant agencies with legal information and field experience, so that Thailand's deportation process can achieve its goals of national security and public order while strictly upholding the international human rights obligations to which Thailand is bound. AAT firmly believes that clear, fair law consistent with international standards is not an obstacle to national security, on the contrary, it is a critical foundation for strengthening Thailand's international credibility, and for assuring the international community that Thailand can manage this issue effectively without abandoning humanitarian principles and human dignity, which will ultimately serve the nation's best long-term interests.

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