



Neighbours in Need

Examining Thailand's
Response to Mixed
Migration from
Post-Coup Myanmar



Mekong Migration Network

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from Post-Coup Myanmar**



Mekong Migration Network (MMN)

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The Mekong Migration Network (MMN), founded in 2003, is a sub-regional network of migrant support organisations, migrant grassroots groups, and research institutes. The central goal of MMN is to promote and protect the welfare, well-being, dignity, and human rights of migrant workers and their families in the Greater Mekong Sub-region (GMS), and to build mutual support and solidarity among migrants and migrant rights advocates within the GMS. To achieve this goal, MMN jointly carries out research, information monitoring, advocacy, capacity building, and networking.

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ABBREVIATIONS

ASEAN	Association of South East Asian Nations
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCSA	Centre for Covid-19 Situation Administration
CR	Cabinet Resolutions
CSO	Civil Society Organisation
EU	European Union
GCM	Global Compact for Safe, Orderly and Regular Migration
GMS	Greater Mekong Subregion
ICCPR	International Covenant on Civil and Political Rights
IOM	International Organization for Migration
KII	Key Informant Interview
MMN	Mekong Migration Network
MOU	Memorandum of Understanding
NGO	Non-Governmental Organisation
NV	Nationality Verification
OQ	Organisational Quarantine
R4V	Regional Inter-agency Coordination Platform for Refugees and Migrants from Venezuela
Refugee Convention	1951 Convention Relating to the Status of Refugees and its 1967 Protocol
SOP	Standard Operating Procedures
TPD	Temporary Protection Directive
UNHCR	United Nations High Commissioner for Refugees
USD	United States Dollars

EXECUTIVE SUMMARY

The Mekong Migration Network (MMN) is a network of migrant Civil Society Organisations (CSOs), including grassroots movements and research institutes, who work together to promote and protect the rights of migrants in the Greater Mekong Sub-region. Since the 2021 military coup in Myanmar, migrants entering Thailand from that country, whether in search of work, refuge, or both, have faced multiple risks and dangers. The post-coup violence, economic collapse and humanitarian catastrophe inside Myanmar have compelled the movement of people to Thailand. Deeply concerned about this situation, MMN has produced this research paper with the following objectives in mind. First, the paper seeks to gain a better understanding of Thailand's policy approach vis-à-vis Myanmar migrants entering Thailand since the coup; second, it seeks to develop concrete recommendations aimed at policymakers to improve the situation for these migrants; and finally, the paper aims to serve as a tool for MMN and other migrants' rights organisations to develop more effective advocacy strategies.

Methodology

In producing this research, MMN convened two collaborative consultation meetings among concerned members of our network. We then conducted 16 qualitative interviews with key informants representing a range of stakeholders both from within various branches of the Thai government and CSOs. Key informants were approached for interview on the basis of their direct knowledge of the situation on the ground and experience of migration at, or close to, the Thai-Myanmar border, or for their relevant policy expertise. Quotes from key informant interviews have been anonymised for publication. Fieldwork interviews were conducted in September and October of 2021 and supplemented by a literature review of relevant information available in the public domain.

Key Findings

Following analysis of these research materials, our study found that the Thai government's decision to tightly restrict regular migration since the coup has caused grave hardship among Myanmar migrants, pushing them further into the hands of unscrupulous agents. Those seeking to enter Thailand face perilous journeys across conflict zones and militarised borders, while the exorbitant fees charged by agents are pushing migrants deeper into debt. According to our interviews with CSOs and Thai government officials familiar with the situation post-coup, migrants pay agents anything between 15,000 and 29,000 Baht (USD 469–906) to enter Thailand clandestinely and secure employment. These sums are equivalent to between two- and four-months' salary for migrant workers, if paid at Thailand's legal minimum wage, which regrettably in MMN's experience many do not receive.

Our study also found a contradictory policy approach in operation. The Thai government in their public statements claim to "respect the principle of non-refoulement", however,

our research points to widespread use of powers to arbitrarily detain and “push back” individuals entering from Myanmar. A Thai government official interviewed by MMN in the course of the study confirmed that policies pertaining to new arrivals from Myanmar since the coup, are “under the responsibility of the National Security Council... and the [Thai] military has a policy to arrest and deport people arriving from Myanmar immediately”. Furthermore, a representative from a CSO confirmed that migrants’ “risk of arrest has significantly increased” and that “they face the real possibility that their information will be shared with the [de facto] Myanmar authorities”.

In terms of constructive policy options open to the Thai government to ameliorate the situation, our study explores the viability of implementing a form of Temporary Protection scheme for Myanmar migrants entering since the coup. Drawing on recent examples from elsewhere in the world, such an approach shows promise as it allows migrants to legally enter, work, and access social services. This would provide migrants with breathing space until more permanent solutions are found. For the Thai government, a Temporary Protection scheme offers a pragmatic solution as it may provide a boost to the domestic labour market, while allowing them to meet their non-refoulement obligations without the need for complex screening procedures. However, the research concludes that it remains to be seen whether such a scheme is practicable at present given the complex political forces at play.

Recommendations

In light of our findings, taking into account the dire humanitarian and security situation in Myanmar and in line with human rights principles, **MMN calls on the Royal Thai Government to implement an inclusive and rights orientated migration system for the protection of all migrants from Myanmar**, including:

- 1. Halting the detention and forced return** of all people entering Thailand from Myanmar whether for refuge or work. Any returns that do take place must be free of compulsion and with informed consent. Those who have fled and wish to return to assess the situation in Myanmar should not be penalised if they later re-enter Thailand;
- 2. Providing immediate adequate shelter, food and essentials** in areas safe from the Myanmar military and accessible to aid organisations to people fleeing Myanmar;
- 3. Conducting needs assessment interviews** with all incoming Myanmar migrants, in coordination with international, national and local organisations, to determine individual needs and circumstances;
- 4. Granting documentation** that provides individuals with leave to remain, access to employment, health care, education and travel within the country; and
- 5. Facilitating third country resettlement** for Myanmar nationals where needed in coordination with international agencies and embassies.

Finally, these recommendations should be part of a broader regional response in coordination with the Association of Southeast Asian Nations (ASEAN) and the wider international community to alleviate the crisis at its source by helping to restore democratic civilian rule to Myanmar.

1. INTRODUCTION

1.1 Rationale, Aims and Objectives

Since 2003, members of the Mekong Migration Network (MMN) have worked together to promote the rights and dignity of migrants and their families. As a network of migrant support organisations and research institutes from across the Greater Mekong Subregion (GMS), MMN regularly conducts collaborative research on topical thematic issues affecting the lives of migrants. Since 2020, migrants' livelihoods have been severely affected by the Covid-19 pandemic, as documented within MMN's research "Surviving the Pandemic: To Stay or Go? A study into the Decision-making of Mekong Migrants".¹ The study provides a textured account of the decisions migrants in Thailand made to survive the pandemic, as well as analysis of how their decision-making may inform policy. Since that research was conducted, the military coup in Myanmar has precipitated a new mixed migration crisis, leaving migrants with fewer and fewer options.

Given the "multi-dimensional human rights catastrophe"² unfolding in Myanmar since the coup of February 2021, MMN collectively discussed how stakeholders in Thailand and the wider GMS should respond to the concurrent crises impacting migrants from Myanmar. From our discussions it was evident that there were significant gaps in knowledge among stakeholders and that a humanitarian response had yet to be developed. As a result, migrants entering Thailand at this time, whether to seek work, refuge, or both, faced multiple risks and dangers. Hence, MMN decided to produce this research with the following objectives in mind: 1) To gain a better understanding of Thailand's policy approach with regards to Myanmar migrants entering Thailand since the coup; 2) To develop concrete recommendations addressed to key migrant stakeholders, including Thai government policymakers; and 3) To provide a tool for MMN and other migrants' rights organisations to develop advocacy strategies.

1.2 Methodology

To develop this research paper, MMN convened two consultation meetings among concerned network members, followed by a total of 16 qualitative interviews with key informants who could provide a range of stakeholder perspectives. This included two national level government officials and six provincial level officials from Thailand's Department of Employment and the Department of Health. In addition, representatives

¹ MMN, "Surviving the Pandemic: To Stay or Go? A study into the Decision-making of Mekong Migrants", September 2021, accessible at <https://mekongmigration.org/wp-content/uploads/2021/11/Full-Report-Surviving-the-Pandemic.pdf>.

² Quoting UN High Commissioner for Human Rights, Michelle Bachelet, speaking at the 47th Session of the Human Rights Council, reported in "Myanmar: From Political Crisis, to 'Multi-dimensional Human Rights Catastrophe' – Bachelet", *UN News*, 6 July 2021, accessible at <https://news.un.org/en/story/2021/07/1095392>.

from eight Civil Society Organisations (CSO) were interviewed. Once informed consent was obtained, these key informants chose either to respond in writing or by way of an oral interview conducted online in either Thai or English. Key Informant Interviews (KII) took place in September and October of 2021.

Key informants were selected on the basis of their direct knowledge of the situation on the ground and experience of migration at, or close to, the Thai–Myanmar border, or for their relevant policy expertise. Geographically, those interviewed had direct knowledge of the situation in the North of Thailand (Mae Sai–Tachilek border, Chiang Mai, Mae Sot–Myawaddy border); Central Thailand (Samut Prakarn); the West of Thailand (Kanchanburi–various natural border crossings); and the South of Thailand (Ranong–Kawthaung border).

Our KIIs comprised a series of questions relating to migration since the coup, policies regarding migrant workers during this period, and the services accessible to migrants entering Thailand from Myanmar. In relation to migrants entering, or attempting to enter, Thailand since the coup, key informants were asked about numbers and trends, their organisation's knowledge and experience of the procedures that apply when migrants enter Thailand; and the coordination between different stakeholders in executing these procedures. Some more general questions were also asked related to labour market conditions in Thailand and challenges identified by key informants in terms of responding to the current migration situation.



*Refugees cross the Moei River between Myanmar and Thailand, April 2023.
Photo courtesy of Friends Without Borders Foundation.*

To supplement our primary data collection, a literature review was undertaken of relevant information in the public domain, including documents produced by governments, CSOs, international agencies and the news media.

Research Limitations

Given the volatile political situation and the evolving Covid-19 pandemic that background this study, the following limitations should be noted. First, due to the sensitivity of the subject matter a decision was taken at the research design stage that migrants would not be directly interviewed. While this deprives the study of first-hand accounts from those entering since the coup, it was agreed that the risk of jeopardising respondents' safety and well-being was too high. However, to ensure migrants' perspectives are reflected, KIIIs with representatives of CSOs with close ties to migrant communities were prioritised.

Second, given the sensitivity of the subject matter, information from key informants has been anonymised and collated to express recurring themes, with only general locations identified.

Third, MMN has endeavoured to ensure that the law, policy and practice referred to in the report was current at the time of data collection and includes policy changes up to time of writing. Given the complexity and fast changing nature of the report's subject matter the study does not claim to present an exhaustive picture of law, policies and practices. Rather, it presents an overview of key policy and local responses and their impact on Myanmar migrants entering Thailand since the coup.

Finally, MMN recognises that journalists, politicians, activists and individuals from a range of socio-cultural sectors have been individually targeted by the Myanmar military since the coup and have fled to the border to seek asylum in Thailand or elsewhere. The government of Thailand is yet to ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (Refugee Convention) and at the time of writing has no asylum screening mechanism in place. As a result, no formal procedures exist for refugees fleeing Myanmar to apply for asylum in Thailand. The limited asylum and resettlement process currently carried out under the mandate of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) in collaboration with the Thai government are beyond the scope of this paper. That said, recommendations set out at the end of this paper regarding the provision of humanitarian assistance applies equally to all asylum seekers.

1.3 Structure of the Paper

Having briefly introduced the rationale, objectives and methodology of the study, Chapter Two provides background on the situation in Myanmar following the February 2021 coup and the cross-border movements of people into Thailand that have subsequently taken place. Drawing on our KIIIs and information in the public domain, the chapter focuses on those entering Thailand ostensibly in search of work and includes an analysis of relevant domestic and international migration frameworks. The decision to confine discussion in Chapter Two to issues surrounding labour migration was taken largely for pragmatic

reasons given the predominant, if artificial, distinction between economic and forced migration within the law and policy discourse.

Chapter Three, focuses specifically on the displacement that has seen large numbers of Myanmar asylum seekers enter Thailand to escape military attacks. However, it should be kept in mind when reading both chapters two and three that many of those entering Thailand from Myanmar since the coup have mixed motives, moving for both economic and humanitarian reasons. The chapter ends with a discussion of Thailand's law and policy response to the refugee crisis, framed within the context of its non-refoulement obligations, and explores the viability of implementing some form of temporary protection regime as a potential policy solution.

Finally, Chapter Four provides a synthesis of our empirical findings, draws some tentative conclusions on what they might mean for migrants' rights focused advocacy, and sets out recommendations to relevant stakeholders within the Thai government, to achieve a coherent and humane response towards migrants arriving from Myanmar since the coup.

2. MIGRATION FROM MYANMAR TO THAILAND: February 2021–January 2022

2.1 Background

Within days of the Myanmar military staging a coup attempting to oust the recently re-elected National League for Democracy government, protests erupted across the country. This included a civil disobedience movement with private and public sector workers participating in a general strike denouncing the military takeover and calling for federal democracy. In response, the military unleashed indiscriminate violence against civilians, suppressed freedom of speech and assembly, shutdown the internet and reversed the progress made over the last decade. As of 30 June 2022, 2,040 citizens of Myanmar have been documented as being killed directly by the military following the coup, excluding those killed in the escalating armed conflicts taking place in Myanmar's ethnic states. Furthermore, 14,402 people had been arrested allegedly in relation to protest activities, of whom four have been sentenced to death with 11,338 still detained.³

The “multi-dimensional human rights catastrophe”,⁴ unfolding in Myanmar since the coup cannot be viewed simply as an internal affair. Clashes have strayed across the border into Thailand,⁵ and the situation has negatively impacted pandemic control measures in neighbouring countries. Meanwhile, the post-coup economic collapse has devastated cross-border trade and created insecurity and precariousness. The ensuing poverty and violence have led to large numbers of people crossing borders for their own safety and survival. According to the World Bank, the economy of Myanmar is contracting significantly, with the proportion of Myanmar's population living in poverty likely to double.⁶ Families and communities in Myanmar also struggle without the regular income provided by remittances from relatives abroad. Key informants working with migrant communities in Thailand interviewed for this paper related the “challenges migrants now experience in

³ Statistics cited taken from the Assistance Association for Political Prisoners, Daily Briefing of 30 June 2022, up-to-date figures, accessible at <https://aappb.org>.

⁴ See quote of the UN High Commissioner for Human Rights at n 2 above.

⁵ See “Over 5,000 Flee Clashes along Thai–Myanmar Border to Tak”, *Bangkok Post*, 26 December 2021, accessible at <https://www.bangkokpost.com/thailand/general/2238047/over-5-000-flee-clashes-along-thai-myanmar-border-to-tak>; and Gary Boyle, Assawin Pinitwong and Wassana Nanuam, “Myanmar Fighter Jet Crosses into Thailand's Air Space in Tak”, *Bangkok Post*, 20 June 2022, accessible at <https://www.bangkokpost.com/learning/advanced/2337863/myanmar-fighter-jet-crosses-into-thai-air-space>.

⁶ World Bank, “Myanmar Economy Expected to Contract by 18 Percent in FY2021: Report”, 23 July 2021, accessible at <https://www.worldbank.org/en/news/press-release/2021/07/23/myanmar-economy-expected-to-contract-by-18-percent-in-fy2021-report>.

transferring money back to their family in Myanmar”,⁷ and the fear among migrants that “everything is breaking down” in Myanmar,⁸ with “communication systems shut and the banks not working”.⁹

The military coup in Myanmar has triggered a mixed migration crisis, both internally and cross-border, with people moving in search of work, refuge; and in many cases both. It is estimated that since the coup, as of 21 June 2022, nearly 760,000 people have been newly internally displaced.¹⁰ In southeast Myanmar alone, 217,900 people have been internally displaced as of 19 January 2022, including 91,400 in Kayah State, 42,600 in Shan State (South), 74,600 in Kayin State, 7,100 in Mon State, 1,600 in Tanintharyi Region and 600 in Bago Region. Elsewhere and in addition, 7,500 people in Shan State (North), 33,800 in Chin State, 20,100 in Magway Region and 113,900 in Sagaing Region have been internally displaced.¹¹

There are also thousands of people, mostly young women, who have left the Hlaing Thar Yar and Shwe Pyi Thar industrial zones on the outskirts of Yangon. Since the coup, these areas have become the regular target of military crackdowns.¹² Furthermore, many factories in these industrial zones have closed due to a combination of the political instability since the coup and the pandemic induced economic downturn, which has seen commodity prices soar and overseas orders dry up.¹³ Reports indicate that factories that have remained open have rolled back labour rights, with unions outlawed and a general deterioration in pay and conditions.¹⁴

For some in need of refuge, crossing international borders is a closer and safer option than moving within Myanmar. In its update of 1 June 2022, the UNHCR estimates that 60,000 people have fled across borders to neighbouring countries since the coup.¹⁵

⁷ See KII with CSO in Bangkok, October 2021.

⁸ See KII with CSO in Chiang Mai, October 2021.

⁹ See KII with CSO in Bangkok, October 2021.

¹⁰ UN Office for the Coordination of Humanitarian Affairs, “Myanmar Humanitarian Update No. 19”, 28 June 2022, accessible at <https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-19-28-june-2022>.

¹¹ Figures from UNHCR, “Myanmar Emergency Update as of 19 January 2022”, 20 January 2022, accessible at <https://data.unhcr.org/en/documents/details/90542>.

¹² Human Rights Watch, “Myanmar: Protesters Targeted in March Massacre”, 2 December 2021, accessible at <https://www.hrw.org/news/2021/12/02/myanmar-protesters-targeted-march-massacre>.

¹³ “[Myanmar] Increasing Closures of Factories and Business since February Harm the Well-being of Workers”, *The Nation*, 28 September 2021, accessible at <https://www.nationthailand.com/international/40006730>.

¹⁴ See, Ko Maung and Stephen Campbell, “Dare to Struggle, Dare to Win: Workers Resistance since the Coup”, *Frontier*, 18 February 2022, accessible at <https://www.frontiermyanmar.net/en/dare-to-struggle-dare-to-win-workers-resistance-since-the-coup>.

¹⁵ UNHCR, “Myanmar Emergency Update (as of 1 June 2022)”, 6 June 2022, accessible at <https://reliefweb.int/report/myanmar/myanmar-emergency-update-1-june-2022>.

2.2 New Arrivals of Job Seekers

Given the sharp contraction in the economy since the coup, many continue to leave Myanmar in order to rescue themselves and their families from extreme poverty and its consequences. On a daily basis, people from Myanmar are attempting to enter Thailand out of economic necessity. However, with borders closed through 2021 and the first half of 2022 due to the Covid-19 pandemic and the security situation, crossing clandestinely into Thailand was the only feasible option for most. This forced migrants into situations where they were not only in breach of immigration law, but also public health regulations, risking prosecution, arrest, detention, and deportation.¹⁶

The Thai–Myanmar border has been closely monitored and increasingly militarised since its closure in March 2020 to prevent the spread of Covid-19.¹⁷ Following the coup in Myanmar, the number of people attempting to enter Thailand clandestinely increased, such that by May 2021 the Thai authorities stepped up efforts aimed at securing the border. “Those who enter Thailand illegally will be prosecuted under the immigration law, the communicable diseases [law] and the emergency decree”, warned Police Lieutenant General Sompong in a public statement. They would also, he added, “be liable for a prison term up to 2 years and/or a fine of up to 40,000 Baht”.¹⁸ A few months later, in August 2021, he said that “the Thai authorities would liaise with Myanmar officials to repatriate the migrants as Thailand had no quarantine space left”.¹⁹ On the Thai side, teams, including immigration officers, the police, medical officials, and soldiers were set up to control the border. In December 2021, a special army unit called King Cobra, equipped with night vision monoculars and drones, joined a team of paramilitary forces, Immigration Bureau, Customs Department, and forestry officials to secure the border and monitor the natural border crossings in Prachuab Kiri Khan.²⁰ Key informants interviewed as part of this study stated that according to their understanding apprehended migrants who are to be immediately deported are generally detained temporarily at Immigration Police detention facilities, while those to

¹⁶ See among others, “42,000 Illegal Migrants Caught this Year”, *Bangkok Post*, 22 December 2021, accessible at <https://www.bangkokpost.com/thailand/general/2235699/42-000-illegal-migrants-caught-this-year>; Piyarat Chongcharoen and Panumate Tanraksa, “Migrants Arrested in 2 Provinces”, *Bangkok Post*, 17 January 2022, accessible at <https://www.bangkokpost.com/thailand/general/2248415/101-migrants-arrested-in-2-provinces>; Piyarat Chongcharoen, “264 Illegal Migrants Caught in Kanchanaburi”, *Bangkok Post*, 4 February 2022, accessible at <https://www.bangkokpost.com/thailand/general/2263187/264-illegal-migrants-caught-in-kanchanaburi>; and “Migrants Face Arrest and Exploitation in Thailand’s Shadow Economy”, *Frontier*, 26 May 2022, accessible at <https://www.frontiermyanmar.net/en/migrants-face-arrest-and-exploitation-in-thailands-shadow-economy/>.

¹⁷ On 26 March 2020, the Thai government declared a state of emergency in all areas of Thailand. Under Section 3 of the subsequently promulgated regulations, all entry points into the country were closed subject to certain limited exceptions. See the unofficial English translation of the Regulation Issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (No. 1), accessible at <https://www.caat.or.th/wp-content/uploads/2020/04/regulation16-issued-section-9-no.1-by-MFA.pdf>.

¹⁸ Quoted in “Foreign Labour Poses New Threat”, *Bangkok Post*, 10 May 2021, accessible at <https://www.bangkokpost.com/thailand/general/2112835/foreign-labour-poses-new-threat>.

¹⁹ Quoted in Wassayos Ngamkham, “44,000 Illegal Migrants Nabbed since July”, *Bangkok Post*, 6 August 2021, accessible at <https://www.bangkokpost.com/thailand/general/2160683/44-000-illegal-migrants-nabbed-since-july>.

²⁰ Wassana Nanuam, “King Cobras Take on Illegals at the Border”, *Bangkok Post*, 7 December 2021, accessible at <https://www.bangkokpost.com/thailand/general/2227711/king-cobras-take-on-illegals-at-border>.

be prosecuted are detained in overcrowded police station cells that cannot comply with health and safety requirements, particularly during the Covid-19 pandemic.²¹

Throughout the study period, there have been daily reports of migrants and their brokers being arrested as they attempt to clandestinely enter Thailand. Although unofficial crossing points exist all along the 2,416-kilometre border, many of the media reports have focussed on natural border crossings in and around Kanchanaburi in Thailand.²² This area is in relatively easy reach of Bangkok, Samut Sakorn and Samut Prakan – all cities which rely heavily on migrant labour. There have also been media reports of migrants entering elsewhere, both in the north and south of Thailand. However, the numbers reported in these areas are generally lower.²³ It is not possible to ascertain from our research whether the numbers are actually lower, or if the Kanchanaburi natural border crossings were more closely monitored by the authorities at the time, possibly due to their relative proximity to Bangkok.

According to media reports and our interviews with officials and CSOs conducted for this study, most migrants pay between 15,000 and 29,000 Baht (USD 469–906) to brokers for securing safe passage and employment in Thailand.²⁴ The fees paid to brokers and smugglers are significant sums, equivalent to between two- and four-months' salary for a migrant worker, if paid at Thailand's legal minimum wage, which in MMN's experience many do not receive. The hazardous journey to enter Thailand clandestinely often involves trekking across jungles and mountains in Myanmar, while avoiding landmines and military attacks.²⁵ Numerous media reports accessed for this study also confirm that migrants are coming from states and provinces throughout Myanmar, not only those bordering Thailand. Most have been promised jobs by brokers ahead of time. *Al Jazeera* reported that Thai employers were paying brokers USD 100 per construction worker and USD 15–20 for each

²¹ KII on 9 September 2021.

²² For example see, Piyaat Chongcharoen, "Myanmar Migrants Nabbed in Kanchanaburi", *Bangkok Post*, 6 June 2021, accessible at <https://www.bangkokpost.com/thailand/general/2127699/myanmar-migrants-nabbed-in-kanchanaburi>; Piyaat Chongcharoen, "14 Illegal Migrants Caught in Kanchanaburi", *Bangkok Post*, 26 June 2021, accessible at <https://www.bangkokpost.com/thailand/general/2138867/14-illegal-migrants-caught-in-kanchanaburi>; Piyaat Chongcharoen, "14 Myanmar Migrants Held in Kanchanaburi", *Bangkok Post*, 23 September 2021, accessible at <https://www.bangkokpost.com/thailand/general/2186555/14-myanmar-migrants-held-in-kanchanaburi>; Wassana Nanuam, "Border Action to Stem Illegal Migrant Influx", *Bangkok Post*, 27 October 2021, accessible at <https://www.bangkokpost.com/thailand/general/2204523/border-action-to-stem-illegal-migrant-influx>; and Piyaat Chongcharoen, "More Myanmar Migrants Held in Kanchanaburi", *Bangkok Post*, 13 November 2020, accessible at <https://www.bangkokpost.com/thailand/general/2214895/more-myanmar-migrants-held-in-kanchanaburi>.

²³ See for example, Panumet Tanraksa, "More Illegal Border Crossers Caught in Chiang Mai", *Bangkok Post*, 4 December 2020, accessible at <https://www.bangkokpost.com/thailand/general/2226747/more-illegal-border-crossers-caught-in-chiang-mai>; Assawin Pinitwong, "Three Myanmar Migrants Nabbed in Mae Sot for Illegal Entry", *Bangkok Post*, 8 November 2021, accessible at <https://www.bangkokpost.com/thailand/general/2016083/three-myanmar-migrants-nabbed-in-mae-sot-for-illegal-entry>; Piyaat Chongcharoen, "Three Dead Migrants Dumped in Plantation after Accident", *Bangkok Post*, 6 November 2021, accessible at <https://www.bangkokpost.com/thailand/general/2210827/three-dead-migrants-dumped-in-plantation-after-accident>; and Wassana Nanuam, "Drive to Keep Illegal Migrants Out", *Bangkok Post*, 1 November 2021, accessible at <https://www.bangkokpost.com/thailand/general/2207191/drive-to-keep-illegal-migrants-out>.

²⁴ As reported by three CSO key informants in different areas in separate interviews on 9 September 2021, 27 September 2021, and 28 September 2021.

²⁵ See "Myanmar Coup Fuelled Poverty Pushes Thousands to Thailand", *Bangkok Post*, 6 January 2022, accessible at <https://www.bangkokpost.com/thailand/general/2243067/myanmar-coup-fuelled-poverty-pushes-thousands-to-thailand>; and KII with CSOs at Mae Sai-Tachilek on 28 September 2021 and Ranong-Kawthaung on 9 September 2021.

factory worker recruited.²⁶ Some migrants who left Thailand in 2020 due to the Covid-19 pandemic are attempting to return to Thailand, however many were found that they were unable to return through official channels as their passports and other documents had already expired. Thai government officials interviewed for the purpose of this study confirmed that “no procedures were currently in place to allow migrants who left the country due to the Covid-19 pandemic to return on the same documents even if still valid”.²⁷ This is because a re-entry visa is required, but these were not being issued when migrants left Thailand. However, as detailed below, some made the return journey to Thailand anyway after being requested to do so by their previous employers.²⁸ Others have used brokers in the same way as new migrants.

According to our key informants, different Thai provinces appear to be handling incoming migrants in different ways. In Tachileik, Myanmar, opposite **Mae Sai**, in Northern Thailand, some migrants are stopped and turned back before they reach the border. Migrants who are apprehended in Thailand after making it across the border are arrested and detained in state-run Organisational Quarantine (OQ) facilities. After which, they are deported in coordination with the Myanmar military authorities.²⁹ In cases where migrants had previously left Thailand due to the Covid-19 pandemic and had been asked to return by their former employers, the employers paid all fees and collected them at the border. A key informant from a CSO interviewed for the purpose of this study confirmed that they were not aware of any migrants being arrested using this process. However, migrants who had re-entered Thailand in this way reported to the CSO that they were now receiving lower wages,³⁰ which they presumed was because the costs associated with their return were being deducted from their salary.

Some migrants who live near the border and have previously entered Thailand clandestinely are able to arrange the journey by themselves, incurring costs of between 8,000 and 10,000 Baht (USD 250–312) for the border crossing alone. While some of these migrants are successful in making the onward journey to worksites, others are arrested and deported back to Myanmar. As one of our CSO key informants explained: “The risk of arrest has significantly increased... If arrested, they face the real possibility that their information will be shared with authorities in Myanmar and no guarantee that they will not be handed over – although this has not happened to date, the fear is there”.³¹ As most migrants incur debts to pay for the journey, many dare not return home, and thus stay close to the border and attempt to re-enter at a later date.³²

In the South of Thailand, at the **Kawthaung–Ranong border**, our key informants reported that apprehended irregular migrants from Myanmar were being quarantined for 14 days and then held at immigration detention centres awaiting removal.³³ As formal deportation

²⁶ See Vijitra Duangdee, “In Thailand Myanmar Exodus a Lifeline for Covid Battered Economy”, *Al Jazeera*, 30 November 2021, accessible at <https://www.aljazeera.com/economy/2021/11/30/in-thailand-myanmar-exodus-a-lifeline-for-covid-battered-economy>.

²⁷ KII with government official, Bangkok, 19 October 2021.

²⁸ KII with CSO on 28 September 2021.

²⁹ KII with government official, Mae Sai, 4 October 2021.

³⁰ KII with CSO on 28 September 2021.

³¹ KII with CSO, October 2021.

³² KII with CSO, Mae Sai border on 28 September 2021.

³³ KII with CSO on 9 September 2021.

from Thailand requires coordination with the de-facto Myanmar authorities, the process can take a long time, with some migrants reportedly spending months in detention. CSOs in Myanmar also reported in the course of our research that they have heard from the families of migrants detained in Thailand that they were being held for extended periods.³⁴ It was also noted that deportees once in Myanmar do not always have enough money for the onward journey home, as travelling within Myanmar since the coup is difficult and expensive due to the ongoing unrest and armed conflicts.³⁵

In **Mae Sot**, according to the key informants, various Thai government agencies are involved in responding to irregular entry, including the Border Security Division of the Office of National Security Council, the military, and the Immigration Department. Our key informants explained that in many cases migrants who crossed the Moei River from Myanmar to Thailand were immediately turned around, while others were temporarily kept close to the border, or in no-man's land on an island in the middle of the river, before being deported. Migrants were generally not screened prior to deportation. None of the those interviewed for this study were aware of any system in place to ensure the safety of deported migrants upon return. On 15 November 2021, the Myanmar Migrant Workers Committee-Thailand posted news that migrants returning to Myanmar officially across the Mae Sot–Myawaddy crossing on 5 November 2021 were stopped by soldiers and had their phones searched to check their movements, contacts and photos. Some were then detained for further questioning in Myawaddy town.³⁶



*IDPs along the Moei River, Mae Sot, Thailand, December 2022.
Photo courtesy of Friends Without Borders Foundation.*

³⁴ Information related during MMN's online consultation convened at the outset of the research.

³⁵ KII with CSO on 9 September 2021.

³⁶ Myanmar Migrant Workers' Committee-Thailand Facebook page, 15 November 2021.

Newly arrived migrants who reached Mae Sot city were screened by health volunteers and quarantined if necessary. The Sub-district Health Promotion Hospital is responsible for this procedure. A Thai government official interviewed for this study explained that some local CSOs provide food and relief packages to migrants in quarantine.³⁷

While there are many reports of migrants entering Thailand, being arrested and taken into police custody, there is little information in the public domain on what subsequently happens to them. The *Al Jazeera* report cited above interviewed a Myanmar broker, who said that due to the high demand for labour, migrants who are arrested for illegal entry are not subsequently being deported but “with the help of under-the-table payments are being released to employers in Samut Sakorn”.³⁸ The large number of migrants entering at certain border crossing points pose problems of overcrowding resulting in poor conditions in Thai detention centres, an issue compounded by the fact that the number of migrants who can be officially deported is limited by the number that the Myanmar authorities accept. As a CSO key informant interviewed for this study remarked: “Hundreds of migrants are still in Thai Immigration Detention Centres awaiting deportation, but the military regime [in Myanmar] is not ready to receive them... There is also the issue of quarantine which is causing more difficulties. ... Being in detention for long periods also creates greater risks of contracting Covid-19”.³⁹

2.3 Migration Law and Policy

Given the lack of a comprehensive legal framework, the situation of migrants from Myanmar in Thailand is governed by a variety of domestic and bilateral instruments. These include the Immigration Act, 1979;⁴⁰ successive Royal Ordinances Concerning the Management of Employment of Foreign Workers;⁴¹ numerous Cabinet Resolutions; and a bilateral Memorandum of Understanding (MOU) on labour cooperation, June 2016.⁴² This section briefly considers how provisions within these instruments are being applied vis-à-vis

³⁷ KII with government official Mae Sot on 23 September 2021.

³⁸ See *Al Jazeera* at n 26 above.

³⁹ KII with CSO by phone October 2021.

⁴⁰ Immigration Act B.E. 2522 (1979), unofficial English translation accessible at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=37411.

⁴¹ See Royal Ordinance on the Management of Foreign Workers' Employment, B.E. 2560 (2017), English translation accessible at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=107728&p_count=4&p_classification=17; and of the Royal Ordinance on the Management of Foreign Workers' Employment (No. 2), B.E. 2561 (2018), English translation accessible at https://www.doe.go.th/prd/assets/upload/files/legal_th/e64d9efe6d8cb299501a5e07bf9da569.pdf. The supplementary law was promulgated to be read in conjunction with its predecessor. For a summary of the changes, see Ministry of Foreign Affairs of Kingdom of Thailand, “Press Release: Thailand Lifted Restrictions on Foreign Workers to Change Employers, Work Places and Types of Work”, 16 March 2018, accessible at <http://www.mfa.go.th/main/en/news3/6886/87460-Thailand-Lifted-Restrictions-on-Foreign-Workers-to.html>.

⁴² Unlike more formal international agreements between states, such MOUs do not generally carry the status of legally binding treaties under international law. Instead, they are primarily executive arrangements between respective government ministries setting out general principles of cooperation that can, if necessary, be disregarded, amended, or revoked at short notice such as in the event of the Covid-19 pandemic. For general background on their status see, UK Government, Foreign and Commonwealth Office, “Treaties and Memoranda of Understanding (MOUs): Guidance on Practice and Procedures”, Updated March 2014, accessible at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/293976/Treaties_and_MoU_Guidance.pdf.

migrants arriving from Myanmar since the coup, and briefly explores policy options in light of the situation on the ground.

As detailed in the previous section, the Thai authorities treat the vast majority of new arrivals from Myanmar since the coup as unauthorised entrants subject to immigration control. In particular, the powers of enforcement contained within Sections 54 and 81 of the Immigration Act, 1979, are being used to punish, arrest, detain and deport those who enter Thailand without authorisation, while Section 64 of the same Act can be used to criminalise those who knowingly harbour, hide or assist such persons.

However, it should be noted that current legislation provides alternatives to this punitive approach. With cabinet approval, Section 17 of the Immigration Act, 1979, grants wide ministerial discretion to allow certain aliens or groups of aliens in “special cases” to stay in Thailand when not otherwise in compliance with immigration law.⁴³ Given the post-coup violence and economic collapse within Myanmar, not to mention the strong demand for migrant workers within the Thai labour market,⁴⁴ compelling reasons exist for a more flexible approach to be adopted.

Indeed, the more recent Royal Ordinance Concerning the Management of Employment of Foreign Workers, 2017, enables such an approach. Section 63, in particular, grants further ministerial discretion to allow foreign nationals in irregular situations to apply for a work permit pending deportation with due regard to “national security, social impact and humanity”.⁴⁵ In addition, Section 64 of the same Ordinance allows nationals of countries that share a land border with Thailand, such as Myanmar, to enter on a temporary basis, or for seasonal work at designated locations.⁴⁶ While this border pass provision was originally intended to cater for frontier communities who traditionally move back and forth across the border, prior to the pandemic it was widely used to facilitate labour migration and could conceivably be used to alleviate the current mixed migration crisis.

In addition to the Section 64 border pass scheme, the Covid-19 border closures also resulted in the suspension of Myanmar-Thai labour migration under the bilateral MOU on Labour Cooperation.⁴⁷ Thai government officials interviewed in September 2021 for this study, noted that re-starting the MOU process was unfeasible at that time due to insufficient capacity within government quarantine centres. They said that prior to the pandemic, between 800 and 1,000 workers arrived daily under the MOU system, however the Thai

⁴³ See Immigration Act, 1979 at n 40 above.

⁴⁴ See study commissioned by Thailand's Department of Employment reported in Penchan Charoensuthipan, “Migrants to be Allowed Back to Work”, *Bangkok Post*, 22 August 2021, accessible at <http://www.bangkokpost.com/thailand/general/2169067/migrants-to-be-allowed-back-to-work>.

⁴⁵ See Royal Ordinance on the Management of Foreign Workers' Employment, B.E. 2560 (2017) at n 41 above.

⁴⁶ Ibid.

⁴⁷ The original MOU on Cooperation in the Employment of Workers was signed by the governments of Myanmar and Thailand in 2003 and was an attempt to develop mechanisms by which migrants could leave Myanmar and enter Thailand fully documented for work. The full text of this instrument is accessible at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/genericdocument/wcms_160932.pdf; Myanmar only began implementing the procedures established by the instrument in 2009, and an updated MOU on Labour Cooperation was subsequently signed by the two governments in June 2016, accessible at <https://icb.mol.go.th/wp-content/uploads/sites/10/2018/09/MOU-%E0%B9%80%E0%B8%A1%E0%B8%B5%E0%B8%A2%E0%B8%99%E0%B8%A1%E0%B8%B2-%E0%B8%AD%E0%B8%B1%E0%B8%87%E0%B8%81%E0%B8%A4%E0%B8%A9.pdf>.

Border Police's quarantine centres only have capacity for 80–100 people, and cannot exceed 150 people.⁴⁸ A key informant representing a CSO also raised concerns about resuming the MOU process during the pandemic, as the cost of the “required Covid-19 measures will be passed onto migrant workers”.⁴⁹ The same respondent also noted that “the MOU process does not guarantee better labour protection to migrant workers”. These concerns have been raised and are supported by research on Thailand that challenges the assumption that formal migration channels inevitably lead to better outcomes for migrant workers.⁵⁰

In September 2021, after more than a year of suspension, the Thai Ministry of Labour begun a review of guidelines to resume labour migration under the MOU system during the Covid-19 pandemic.⁵¹ At the time of the review, quarantine upon arrival was mandatory for all those entering Thailand. The proposed process was complicated and required Thai employers to arrange transportation, pay for Covid-19 testing and treatment (where necessary), as well as the quarantine costs for their migrant employees.⁵² In the event, migration from Myanmar to Thailand under the MOU system finally re-commenced in May 2022, by which time the mandatory quarantine requirement had been lifted. Between 10 May and 1 June 2022, Myanmar overseas employment agencies reported that 2,144 migrants had been deployed to Thailand, many in poultry factories in Chon Buri Province.⁵³ The deployment of workers, however, remains a slow bureaucratic process and has been disrupted due to intense fighting between the Myanmar military and anti-regime forces close to the Myawaddy border crossing.⁵⁴ Given the difficulties bringing in migrant workers, the Thai government has shown certain amount of flexibility and responsiveness. They have promulgated a series of Cabinet Resolutions to allow existing MOU workers to extend their work permits within six months of their expiry. In addition, migrant workers who were employed according to the Cabinet Resolutions of 20 August 2019 and 4 August 2020 and which expired on 31 March 2022 or those who had failed to re-register could apply for a new work permit by 30 May 2022 to be valid until February 2024.⁵⁵ On 5 July 2022, the Cabinet also passed a resolution offering opportunities to workers who entered Thailand

⁴⁸ KII with government official, Mae Sot on 9 September 2021.

⁴⁹ KII with representative of CSO, October 2022.

⁵⁰ See, for example, Maryann Bylander, “Is Regular Migration Safer Migration? Insights from Thailand”, *Journal on Migration and Human Security*, 2019, Vol. 7(1) pp. 1–18, accessible at <https://journals.sagepub.com/doi/pdf/10.1177/2331502418821855>; and MAP Foundation, “Regular Rights (second edition), A Study on the Impact of Regularization of Migrant Workers from Myanmar (Burma) in Thailand”, May 2015, accessible at <https://www.mapfoundationcm.org/eng/index.php/works-wrapper/publications/regular-rights-second-edition>.

⁵¹ Thai Ministry of Labour, “Labour Minister Meets to Prepare MOU Guideline for Submission to CCSA for Further Consideration”, 14 September 2021, accessible at <https://www.mol.go.th/en/news/mol-state-enterprise-labour-relations-committee-meets-for-no-6-2021>.

⁵² Thai Ministry of Labour, “PM Instructs Labour Minister to Resolve Influx of Migrant Workers and to Meeting on Guidelines for an MoU to Present to the CCSA this Friday”, 11 November 2021, accessible at <https://www.mol.go.th/en/news/pm-instructs-labour-minister-to-resolve-influx-of-migrant-workers-and-to-meeting-on-guidelines-for-an-mou-to-present-to-the-ccsa-this-friday>.

⁵³ “Myanmar Sends 2144 MOU Workers to Thailand on June 1”, *Eleven Media*, 3 June 2022, accessible at <https://elevenmyanmar.com/news/myanmar-sends-2144-mou-workers-to-thailand-on-june-1>.

⁵⁴ Nora Aung, “Battle for Junta Military Outpost on Thai-Myanmar Border Rages for Fourth Day”, *The Irrawaddy*, 29 June 2022, accessible at <https://www.irrawaddy.com/news/battle-for-junta-military-outpost-on-thai-myanmar-border-rages-for-fourth-day.html>.

⁵⁵ UN Network on Migration, “Impact of Covid-19 on Migrants in Thailand Situation Report”, April 2022, accessible at <https://thailand.iom.int/sites/g/files/tmzbd11371/files/documents/unnm-covid19-sitrep-april-2022.pdf>.

without documents or lost their documentation status to regularise their status.⁵⁶ See Table 1 below for further details.

Table 1: Number of documented migrant workers from Myanmar in Thailand as of January and December 2021 and June 2022 under the MOU agreement, various Cabinet Resolutions (CR), and Article 64 of the Royal Ordinance Concerning the Management of Foreign Workers, 2017.

	Jan 2021	Dec 2021	June 2022
MOU Workers	410,859	324,869	262,540
Male	241,422	184,553	146,661
Female	169,437	140,316	115,879
Regularised workers: all Cabinet Resolutions	924,152	1,138,066	1,184,365
Male	512,920	634,205	666,576
Female	411,232	503,861	517,789
Border/seasonal workers (Article 64)	0	0	11,027
Male	0	0	3,734
Female	0	0	7,293
TOTAL	1,335,011	1,462,935	1,457,932
Male	754,342	818,758	816,971
Female	580,669	644,177	640,961

Source: Official Department of Employment, Office of Foreign Workers website; monthly statistic updates for January and December 2021, and June 2022.

It should also be emphasised that the MOU process is rather more contentious following the military coup, as procedures require the de-facto Myanmar authorities to “prepare and submit a list of migrant workers to Thai employers for consideration”.⁵⁷ Given the illegitimacy of the military regime, it is problematic that the MOU process should return to business as usual. Prospective migrant workers may, understandably, be weary of joining a migration scheme run by an arm of the junta. Moreover, they may also be deterred by the increase

⁵⁶ ILO, “TRIANGLE in ASEAN, Quarterly Briefing Note, Thailand, January-March 2023”, accessible at https://www.ilo.org/wcmsp5/groups/public/---asia/---robangkok/documents/genericdocument/wcms_735108.pdf.

⁵⁷ See Thai Ministry of Labour at n 52 above.

in official fees, which on the Myanmar side have doubled since before the pandemic, from 150,000 Kyats (USD 81.55) to 300,000 Kyats (USD 163.09).⁵⁸ Labour activists point out that the military-appointed State Administration Council are taking advantage of migrant workers in a time of national instability.⁵⁹ Given these issues, it is unlikely that large numbers of migrant workers will choose to enter Thailand via this route. As can be seen from the table above, the number of MOU workers decreased by 36% (148,319 migrants) between June 2021 and June 2023, compared to migrants being regularised in country which saw a 22% (260,213) increase in the same period.

2.4 International Framework on Labour Migration

The international legal framework on migration provides various normative principles pertinent to the situation of Myanmar nationals entering Thailand following the 2021 coup. For ease of reference, the analysis below focuses on provisions that apply to migrants entering Thailand primarily for the purpose of employment, with those relating to refugees and asylum seekers discussed in Chapter Three. This follows the general, if rather crude, distinction made within treaties and other international instruments between economic migrants on the one hand and refugees and asylum seekers on the other. This is somewhat of a legal fiction,⁶⁰ as migrants typically have mixed motives, moving for a combination of economic, social, political, and humanitarian reasons. With this in mind, the paragraphs below provide a brief review of how relevant parts of the international legal framework on labour migration may apply to Myanmar migrant workers entering Thailand since the coup.

While Thailand is yet to become party to the International Convention on the Protection of Migrant Workers and Members of Their Families, it has signed up to the most recent international instrument regarding labour migration governance, namely the UN Global Compact for Safe, Orderly and Regular Migration (GCM), 2018. Although the GCM is explicitly a non-legally binding international cooperation framework,⁶¹ i.e., not of treaty status, it is underpinned by pre-existing legal obligations, including those owed by Thailand under the various UN human rights and ILO treaties to which it is party. The commitments within the GCM also carry significant political and moral weight given the instrument's

⁵⁸ Reported in "Burmese Workers Entering Thailand under MOU System Paying More than Double", *Karen News*, 23 May 2022, accessible at <https://www.karennews.org/2022/05/burmese-workers-entering-thailand-under-mou-system-paying-more-than-double/>.

⁵⁹ *Ibid.*

⁶⁰ As partially acknowledged within the UNHCR Handbook, which notes that: "The distinction between an economic migrant and a refugee is, however, sometimes blurred in the same way as the distinction between economic and political measures in an [asylum] applicant's country of origin is not always clear. Behind economic measures affecting a person's livelihood there may be racial, religious or political aims or intentions directed against a particular group. Where economic measures destroy the economic existence of a particular section of the population (e.g. withdrawal of trading rights from, or discriminatory or excessive taxation of, a specific ethnic or religious group), the victims may according to the circumstances become refugees on leaving the country". See UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees", January 1992, HCR/IP/4/Eng/REV.1, para 64.

⁶¹ See GCM, para 7, within UN General Assembly, "Resolution adopted by the General Assembly on 19 December 2018", A/RES/73/195, accessible at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_73_195.pdf.

endorsement by the UN General Assembly.⁶² Moreover, the Thai government have made public undertakings to abide by its GCM commitments, adopted a National Plan of Action, and established an inter-agency working group to follow up on implementation.⁶³ They have also volunteered to join GCM implementation efforts as a “Champion Country”, and in so doing promised to share insights, lessons learned and positive practices.⁶⁴

While the GCM is focused, as its name clearly states, on “regular migration”, it recognises the difficulties migrants face in terms of falling into irregular situations,⁶⁵ and promises to “respect, protect and fulfil the human rights of all migrants, regardless of their migration status”.⁶⁶ This is important, as through its adoption, Thailand publicly acknowledges that its international human rights obligations apply equally to migrants. The GCM also serves as an authoritative benchmark of international standards by which Thai policy and practice can be effectively measured.

In light of our discussion in the previous section, and the failure of Myanmar to fulfil its commitment under Objective 2 of the GCM to “Minimize the adverse drivers and structural factors that compel people to leave their country of origin”,⁶⁷ four of the GCM’s 22 objectives are of particular relevance to the situation of Myanmar migrants entering Thailand since the 2021 coup.

First, under Objective 5 of the GCM entitled, “Enhance availability and flexibility of pathways for regular migration”, Thailand has committed to “Develop flexible, rights-based and gender-responsive labour mobility schemes for migrants in accordance with local and national labour market needs and skills supply at all skills levels, including temporary, seasonal, circular and fast-track programmes in areas of labour shortage”.⁶⁸ A May 2021 study commissioned by Thailand’s Department of Employment found that the Thai economy requires a further 424,703 migrant workers, of whom Thai employers requested a further 256,029 Myanmar workers, with the agriculture, livestock, construction, textile and service sectors reporting particularly acute labour shortages.⁶⁹ To meet its commitments in this regard, the Thai government could make greater use of the flexibility built into its legislation to allow more Myanmar migrants to enter Thailand and join the workforce.

⁶² Ibid.

⁶³ See Kingdom of Thailand, Ministry of Foreign Affairs, “Deputy Prime Minister and Minister of Foreign Affairs Underscored a Role of Migrants as Essential Partners for Sustainable Development at the Opening Session of the Asia-Pacific Regional Review of Implementation of the Global Compact for Safe, Orderly and Regular Migration (GCM)”, 15 March 2021, accessible at <https://www.mfa.go.th/en/content/ioden?cate=5d5bcb4e15e39c306000683e>.

⁶⁴ See confirmation letter from the Director-General of the Department of International Organizations at the Thai Ministry of Foreign Affairs to UN Resident Coordinator in Thailand dated 28 August 2020, accessible at https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/docs/thailand_confirmation_letter_gcm_implementation_champion_country_dg_signed.pdf.

⁶⁵ GCM, para 23 (h).

⁶⁶ GCM, para 11, also see para 15 (f).

⁶⁷ See GCM, para 18. As a Member State, Myanmar, has committed “to create conducive political, economic, social and environmental conditions for people to lead peaceful, productive and sustainable lives in their own country and to fulfil their personal aspirations, while ensuring that desperation and deteriorating environments do not compel them to seek a livelihood elsewhere through irregular migration”.

⁶⁸ GCM para 21 (d).

⁶⁹ See *Bangkok Post* at n 44 above.

Also under Objective 5 of the GCM, the Thai government has committed to “Develop or build on existing national and regional practices for admission and stay of appropriate duration based on compassionate, humanitarian or other considerations for migrants compelled to leave their countries of origin owing to sudden-onset natural disasters and other precarious situations, such as by providing humanitarian visas, private sponsorships, access to education for children, and temporary work permits, while adaptation in or return to their country of origin is not possible”.⁷⁰ The Thai government’s current policy, detailed in the previous section, falls short of fulfilling these commitments in failing to take into consideration the post-coup violence, economic collapse and humanitarian catastrophe that compel migrants to leave Myanmar. As the UN Special Rapporteur on the situation of human rights in Myanmar points out: “The military junta has driven Myanmar into a humanitarian catastrophe marked by crumbling health infrastructure, half the nation falling into poverty, rampant inflation, fuel price increases, the COVID-19 pandemic and obstruction of aid delivery”.⁷¹ In recognising its commitments under Objective 5 of the GCM in light of the situation in Myanmar, the Thai authorities should provide humanitarian visas and temporary work permits to those in need.

Second, in accordance with Objective 7 of the GCM, entitled “Address and reduce vulnerabilities in migration”, Thailand has committed to “respond to the needs of migrants who face situations of vulnerability, which may arise from the circumstances in which they travel or the conditions they face in countries of origin, transit and destination, by assisting them and protecting their human rights, in accordance with our obligations under international law”.⁷² This commitment includes establishing “comprehensive policies and develop partnerships that provide migrants in a situation of vulnerability, regardless of their migration status, with necessary support at all stages of migration, through identification and assistance, as well as protection of their human rights”.⁷³

Third, in relation to the detention of migrants, Objective 13 of the GCM commits Thailand “to prioritize noncustodial alternatives to detention that are in line with international law, and to take a human rights-based approach to any detention of migrants, using detention as a measure of last resort only”.⁷⁴ Based on our research and public statements by government officials,⁷⁵ these commitments appear to be disregarded as Myanmar migrants entering Thailand without authorisation are routinely subject to arbitrary detention for extended periods in overcrowded facilities. In light of Objective 13 and Thailand’s international obligations under Article 9 of the International Covenant on Civil and Political Rights (ICCPR), the Thai government should end the practice of arbitrary detention. Furthermore, policymaking powers in this area should be returned to the civilian authorities and community-based alternatives to detention implemented as a matter of urgency.

⁷⁰ GCM para 21 (g).

⁷¹ See UN Press Release, “UN expert: Myanmar People Betrayed with ‘Vague Declarations’ and ‘Tedious, Endless Wait’ for Action”, 21 March 2022, accessible at <https://www.ohchr.org/en/press-releases/2022/03/un-expert-myanmar-people-betrayed-vague-declarations-and-tedious-endless>.

⁷² GCM, para 23.

⁷³ GCM, para 23(b).

⁷⁴ GCM, para 29.

⁷⁵ See Thai Police Statement at n 18–19 above.

Finally, in accordance with Objective 21 of the GCM, Thailand has re-affirmed its obligation to abide by the principle of non-refoulement, in committing to “facilitate and cooperate for safe and dignified return and to guarantee due process, individual assessment and effective remedy, by upholding the prohibition of collective expulsion and of returning migrants when there is a real and foreseeable risk of death, torture and other cruel, inhuman and degrading treatment or punishment, or other irreparable harm, in accordance with our obligations under international human rights law”.⁷⁶ These commitments and the legal obligations that underpin them are examined further in the next section.

⁷⁶ GCM, para 37.

3. ARRIVAL OF REFUGEES AND ASYLUM SEEKERS

3.1 Overview

The escalation of internal armed conflict following the February 2021 coup has resulted in mass displacement among Myanmar's civilian population. Of the areas most severely impacted, Kayin and Kayah States have seen large numbers of people fleeing attacks by the Myanmar military, with many seeking refuge in the neighbouring Thai provinces of Mae Hong Son and Tak.

At a press conference on 21 March 2021, the Provincial Governor of Mae Hong Son, Sithichai Jindaluang, stated that "refugees have been crossing the border since March 11 as the situation in Myanmar started to escalate, and there are now about 2,000 Karen refugees in Mae Sariang and Khun Yuam districts".⁷⁷ The Governor said that "Thai officials have not only provided shelter and other necessities to the refugees but are also negotiating with those who can return to Myanmar to leave voluntarily".⁷⁸ He added that "if the situation in Myanmar worsens and more refugees enter Thailand, the province may consider building a refugee centre".⁷⁹ He also insisted that: "The province has been following humanitarian principles and international laws in dealing with the Myanmar refugees".⁸⁰

However, according to subsequent reports there has been little evidence of this humanitarian approach. On 27 March 2021, airstrikes were carried out on three ethnic Karen villages in Papun District, in southeast Myanmar,⁸¹ (also known as Mutraw in Karen). It was reported that 7,000 villagers fled to Thailand, but were pushed back by the Thai authorities despite the ongoing attacks. Approximately 500 asylum seekers, mostly children, mothers and the elderly were allowed to stay temporarily, but only on the understanding that they would return to Myanmar within a week. It was reported that those who had to return were unable to reach their homes or farms due to the ongoing fighting and had to hide in the jungle on the Myanmar side of the border.⁸²

⁷⁷ Quoted in "Mae Hong Son Governor Clarifies on Myanmar Refugees", *The Nation*, 21 March 2021, accessible at <https://www.nationthailand.com/news/30404344>.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ "The Worst Myanmar Airstrikes on Civilians", *The Irrawaddy*, 18 January 2022, accessible at <https://www.irrawaddy.com/news/burma/the-worst-myanmar-regime-airstrikes-on-civilians.html>.

⁸² Nuttaphol Meksobhon, "War Displaced People/Refugees and Diplomatic Proposals for Human Security in Myanmar", *Prachatai*, 1 February 2022, accessible at <https://prachatai.com/english/node/9677>.



*Thai authorities repatriating people to Myanmar, October 2022.
Photo courtesy of Friends Without Borders Foundation.*

A further 2,633 Karen villagers fled across the border to Thailand on 15 April 2021 and were again returned by the Thai authorities, who only allowed the elderly and children to remain in Thailand temporarily. On 27 April 2021, further attacks by the Myanmar military in Kayin State on Dagway village resulted in more than 3,000 people fleeing to Thailand. Again, they were immediately returned across the border by the Thai authorities. However, due to ongoing air and ground attacks they fled back to Thailand two days later, only to be returned again over the following week.⁸³ In some of these cases, asylum seekers consented to return to Myanmar in order to check on their farms and homes and assess for themselves if it is safe to stay. Often, however, returnees have found that everything has been destroyed or stolen, leaving them destitute, while also being at risk of further attacks.⁸⁴

In May 2021, UNHCR reported that 6,900 Myanmar nationals had sought safety in Mae Hong Son province of Thailand, with 1,800 asylum seekers accommodated in Thai government-managed temporary “safe zones” along the Thai–Myanmar border.⁸⁵ However, media reports suggest that the Thai government’s response has been ad-hoc and inconsistent. Some asylum seekers crossing the Salween River in Mae Hong Son were provided humanitarian assistance,⁸⁶ while in other cases there were reports that the Thai

⁸³ Ibid.

⁸⁴ See presentation by Sally Thompson, Director of the Thai Border Consortium, speaking at the Foreign Correspondents Club Thailand’s panel discussion, “Borderline Crisis: Human Cost of the Tatmadaw’s War”, 20 April 2022, Video stream accessible at <https://www.youtube.com/watch?v=QHr2RzTqtV4>.

⁸⁵ UNHCR, “Regional Bureau for Asia and Pacific Myanmar Emergency – External Update”, 19 May 2021, accessible at <https://reliefweb.int/report/myanmar/unhcr-regional-bureau-asia-and-pacific-rbap-myanmar-emergency-external-update-19-may>.

⁸⁶ See “Aid, Shelter Given to over 2,000 Refugees at Border”, *Bangkok Post*, 10 May 2021, accessible at <https://www.bangkokpost.com/thailand/general/2112935/aid-shelter-given-to-over-2-000-refugees-at-border>.

authorities had blocked humanitarian aid to those seeking protection,⁸⁷ while Karen asylum seekers who crossed the Thai border were pushed back by the Thai military despite the ongoing air strikes.⁸⁸

On 16 December 2021, the Myanmar military raided Lay Kay Kaw new town in Karen State. This settlement, also known as “Peace Town”, was developed in 2015 with support from the Nippon Foundation for the repatriation of Karen refugees from Thailand as part of Myanmar’s now defunct peace process.⁸⁹ The UNHCR reported that 4,700 people, mostly women and children, had crossed into Thailand following the incident.⁹⁰ When an artillery shell from Myanmar exploded on the Thai side of the border where the people were sheltering, the Thai authorities moved the asylum seekers to safety. According to the *Bangkok Post*, The Naresuan Force, in cooperation with the Border Patrol Police Company 346, territorial defence volunteers and administrative officials in Mae Sot provided humanitarian assistance.⁹¹ Local refugee and migrant groups set up kitchens and offered meals and emergency supplies to the asylum seekers through the Thai authorities. However, it should be noted that the UNHCR and international aid agencies were not granted access to these areas to provide assistance.⁹² Within days, it was being reported that the asylum seekers were being returned to Myanmar. Thai authorities arranged boats for between 100 and 200 people to return every day.⁹³

Nevertheless, the fighting intensified and on 22 December 2021, reports emerged that 1,000 villagers, including children who were fleeing conflict in the border areas, were prevented by the Thai authorities from crossing the river from Myanmar into Thailand and were in immediate need of food, water and other essential aid.⁹⁴ The military offensive continued and by 26 December 2021 the governor of Tak Province, Somchai Kitcharoenrungraj, reported that 5,358 villagers from Myanmar had crossed the Moei River to seek refuge in Thailand,⁹⁵ and were sheltered in schools, temples and cattle sheds under the control of Royal Thai Army.⁹⁶

⁸⁷ Mark Cogen, “Thailand Has Serious Policy Problems on Two Fronts in Myanmar”, *Thai Enquirer*, 2 April 2021, accessible at <https://www.thaienquirer.com/26058/thailand-has-serious-policy-problems-on-two-fronts-in-myanmar/>.

⁸⁸ Pratch Rujivanarom, “Stranded Refugees Need Urgent Aid”, *Bangkok Post*, 31 May 2021, accessible at <https://www.bangkokpost.com/thailand/general/2124179/stranded-refugees-need-urgent-aid>.

⁸⁹ Laignee Barron, “Japan’s Gamble to Help Myanmar’s Peace Process”, *Nikkei Asia*, 20 March 2017, accessible at <https://asia.nikkei.com/Politics/Japan-s-gamble-to-help-Myanmar-s-peace-process>.

⁹⁰ UNICEF, “Myanmar Humanitarian Situation Report No. 9-2021”, December 2021, accessible at <https://www.unicef.org/myanmar/reports/unicef-myanmar-humanitarian-situation-report-no-9-2021>.

⁹¹ See Wassana Nanuam, “War Refugees Returning across Border to Myanmar”, *Bangkok Post*, 19 December 2021, accessible at <https://www.bangkokpost.com/thailand/general/2234395/war-refugees-returning-across-border-to-myanmar>.

⁹² UNHCR, “Thailand: Inter-Agency Update – December 2021 (Myanmar Emergency – Tak Province)”, 31 December 2021, accessible at <https://data.unhcr.org/en/documents/details/90306>.

⁹³ See “War Refugees Returning Across Border to Myanmar”, *Bangkok Post*, at n 91 above.

⁹⁴ See Joint NGO Statement, “Thailand: Protect People Fleeing Violence in Myanmar”, 24 December 2021, accessible at <https://www.theborderconsortium.org/wp-content/uploads/2021/12/Eng-NGO-Joint-statement-24-December-2021-final.pdf>.

⁹⁵ See “Over 5,000 Flee Clashes Along Thai–Myanmar Border to Tak”, *Bangkok Post*, at n 5 above.

⁹⁶ See UNHCR at n 92 above.

Air attacks by the Myanmar military have increased throughout the first half of 2022, with areas under intensive attack including Chin State, Sagaing Region, Kayin and Kayah State. In June 2022, after a week of heavy fighting in Kayin State bordering Thailand, a Myanmar armed military plane entered Thai airspace. Local schools and villagers in Tak's Phrop Phra district, Thailand, had to be evacuated from the area.⁹⁷ A few days later, the governor of Tak Province visited the estimated 250 Myanmar villagers who were taking refuge at an evacuation centre in Ban Wao Lay Nua village in Phop Phra village.⁹⁸

3.2 Thai Asylum Policy & Practice

In response to the arrival of asylum seekers from Myanmar, detailed above, the Thai government have publicly expressed their commitment to protect those fleeing across the border. Notably, Prime Minister Prayut Chan-o-cha told the UN Secretary-General's Special Envoy for Myanmar, Noeleen Heyzer, that Thailand "will not push back refugees fleeing the violence in Myanmar",⁹⁹ and that a "humanitarian area" had been established along the border incorporating strict Covid-19 measures. Moreover, those deemed by the government to be "Myanmar Persons Fleeing Unrest" would only be returned on a voluntary basis, with Thai agencies providing assistance based on international humanitarian principles.¹⁰⁰

In terms of procedure, on 25 December 2019, the Office of the Thai Prime Minister promulgated a "Regulation on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin".¹⁰¹ This followed pledges made to the international community by the Thai government before the coup in Myanmar to do more to assist displaced persons.¹⁰² The Regulation provides for the creation of a "Protected Person Screening Committee",¹⁰³ charged, inter alia, with determining whether non-Thai nationals who claim that they would suffer persecution if repatriated have reasonable grounds to qualify as a protected person.¹⁰⁴ It, however, conspicuously avoids any reference to Thailand's non-refoulement obligations, with the stated aim given to "reach sustainable solutions for Thailand's alien management problem".¹⁰⁵

⁹⁷ See "Myanmar Fighter Jet Crosses into Thailand's Air Space in Tak", *Bangkok Post*, at n 5 above.

⁹⁸ "Refugees Head for Border", *Bangkok Post*, 4 July 2022, accessible at <https://www.bangkokpost.com/thailand/general/2338992/refugees-head-for-border>.

⁹⁹ Mongkol Bangprapa, "Prayut: No Forced Return for Myanmar Refugees", *Bangkok Post*, 17 January 2022, accessible at <https://www.bangkokpost.com/thailand/general/2248895/prayut-no-forced-return-for-myanmar-refugees>.

¹⁰⁰ Royal Thai Government, "PM and UNSG Special Envoy on Myanmar Agree to Push Forward for Peaceful Solutions to Myanmar Situation", *Government News*, 17 January 2022, accessible at <https://www.thaigov.go.th/news/contents/details/50614>.

¹⁰¹ Office of the Prime Minister, Regulation on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin (B.E. 2562), 25 December 2019, unofficial English translation accessible at <https://www.refworld.org/docid/5e675a774.html>.

¹⁰² See Ministry of Foreign Affairs, "Thailand Pledged Additional Assistance to Alleviate the Plights of Displaced Persons", 21 September 2016, accessible at <https://www.mfa.go.th/en/content/5d5bd05815e39c306001eacf?cate=5d5bcb4e15e39c3060006834>.

¹⁰³ See Regulation on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin., cl 5 at n 101 above.

¹⁰⁴ Ibid., cl 15.

¹⁰⁵ Ibid., headnote.

The Regulation was due to come into effect on the 22 June 2020,¹⁰⁶ subject to the development of Standard Operating Procedures (SOP). However, at the time of writing, SOPs have not been finalised and the screening mechanism is not operational.¹⁰⁷ Furthermore, it has later transpired in the form of a Draft Notification of the Protected Person Screening Committee, considered by the Thai Cabinet, that regularised migrant workers will be excluded from submitting claims.¹⁰⁸ This leaves a protection gap and various questions unanswered as to the nature and extent of protection the new Regulation might provide.¹⁰⁹ In the short-term, asylum seekers entering Thailand without authorisation, who may well be eligible for some form of protected status will continue to remain liable to arrest, detention and deportation.¹¹⁰

The Thai government's humanitarian policy narrative, including the, yet to be implemented, Regulation to establish a screening mechanism, has been described by some commentators as "political performance".¹¹¹ There are credible reports that the Thai government's actual policy is, in fact, one of "push back". Sangkhom Khadchiangsae, chief of Mae Sariang District, reportedly told a local meeting that: "All agencies should follow the policy of the National Security Council which is to block those that fled and maintain them along the border".¹¹² Adding that the "military has the main responsibility in managing the situation on the ground and we must not allow officials from UNHCR, NGOs or other international organisations to have direct contact and communication. This is absolutely forbidden".¹¹³

¹⁰⁶ Kingdom of Thailand, "National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21", 17 August 2021, para 111, accessible at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/225/87/PDF/G2122587.pdf?OpenElement>.

¹⁰⁷ See Asia Pacific Refugee Rights Network, "Press Release: Thailand Quietly Delays Implementation of Refugee Screening Mechanism", 25 June 2020, accessible at <https://reliefweb.int/sites/reliefweb.int/files/resources/200624-Press-Release-NSM-Implementation-Delay.pdf>.

¹⁰⁸ See details reported in Fortify Rights News Release, "Thailand: Ensure "National Screening Mechanism" is Accessible to All Refugees", 15 December 2022, accessible at <https://www.fortifyrights.org/tha-inv-2022-12-15/>; See section 2 of the Announcement of the Committee on Screening of Protected Persons, 14 March 2023, unofficial translation available on file.

¹⁰⁹ For discussion see, Waritsara Rungthong and Caroline Stover, "Thailand's National Screening Mechanism: Key Issues", *Opinio Juris*, 28 January 2020, accessible at <http://opiniojuris.org/2020/01/28/thailands-national-screening-mechanism-key-issues/>; and Jittawadee Chotinukul, "Thailand and the National Screening Mechanism: a Step Forward for Refugee Protection?", Global Migration Research Paper No. 25, 2020, Geneva, Graduate Institute of International and Development Studies, Global Migration Centre, accessible at https://repository.graduateinstitute.ch/record/298475?_ga=2.251120262.104050666.1649658044-1414660742.1649658044.

¹¹⁰ See Immigration Act, 1979, s 54 at n 40 above.

¹¹¹ Gene Ryack, "Thailand's New Asylum Law Leaves Refugees with More Questions, Few Protections", *ASEAN Today*, 2 April 2020, accessible at <https://www.aseantoday.com/2020/04/thailands-new-asylum-law-leaves-refugees-with-more-questions-few-protections/>.

¹¹² Panu Wongcha-um and Panarat Thepgumpanat, "Thailand Denies Forcing Back Myanmar Refugees Blocked at Border", *Reuters*, 29 March 2021, accessible at <https://www.reuters.com/article/us-myanmar-politics-karen-idUSKBN2BLIJY>.

¹¹³ *Ibid.*

3.3 Thailand's International Non-Refoulement Obligations

While not party to the Refugee Convention, Thailand is nonetheless obliged to respect the principle of non-refoulement, both as a norm of customary international law, and as variously enshrined within the human rights treaties to which it is party. In October 2007,¹¹⁴ Thailand acceded to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which places an obligation on the Thai government not to: “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”.¹¹⁵ This has recently been incorporated into Thai law by way of the Prevention and Suppression of Torture and Enforced Disappearance Act, 2022, which came into force on 22 February 2023.¹¹⁶ Section 13 of the Act provides that: “No government organizations or public officials shall expel, deport, or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of torture, cruel, inhuman, or degrading treatment, or enforced disappearance”.¹¹⁷

In addition to this express domestic law obligation, Thailand has a further non-refoulement obligation under the ICCPR, which Thailand became party to in October 1996.¹¹⁸ This is wider than that owed under the CAT, as made clear by the UN Human Rights Committee, the body established to monitor the ICCPR's implementation. In a General Comment the committee held that “the article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 [right to life] and 7 [prohibition of torture or inhuman or degrading treatment] of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed”.¹¹⁹

The principle thus applies to all individuals in Thailand, irrespective of their immigration status, where substantial grounds exist for believing that there is a real risk of harm on return. Given the ongoing armed conflict and volatile political situation in Myanmar, it is likely to apply to a significant number of those who have entered Thailand since the coup.¹²⁰ Indeed, on 1 April 2021, the UN Human Rights Office for South East Asia called on states

¹¹⁴ UN Treaty Body Database, “Ratification Status for Thailand”, accessible at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN.

¹¹⁵ CAT, art 3.

¹¹⁶ See statement of the Thai Ministry of Justice, “The Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565 (2022) Officially Comes into Force”, 23 February 2023, accessible at <https://www.moj.go.th/view/81367>.

¹¹⁷ An English translation of the Thailand's Prevention and Suppression of Torture and Enforced Disappearance Act, 2022, is accessible at https://drive.google.com/file/d/1oS2FCkZGht8GmXy4wFcx5wGUoyOP_quw/view.

¹¹⁸ See UN Treaty Body Database at n 114 above.

¹¹⁹ UN Human Rights Committee, “General Comment 31 on Article 2 of the Covenant: The Nature of the General Legal Obligations imposed on States Parties to the Covenant”, 26 May 2004, UN Doc CCPR/C/21/Rev.1/Add.13, para 12, accessible at <https://www.refworld.org/docid/478b26ae2.html>.

¹²⁰ See generally, UN Office of the High Commissioner for Human Rights, “Technical Note: The Principle of Non-refoulement under International Human Rights Law”, accessible at <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

in the region “to protect all those fleeing violence and persecution in Myanmar and ensure that refugees and undocumented migrants are not forcibly returned given the rapidly deteriorating human rights situation inside the country”.¹²¹

In public statements, the Thai government claims that it “respects the principle of non-refoulement” and that they work “systematically with all sectors in the country to protect those who fled conflict and those who sought asylum, in accordance with applicable international standards”.¹²² However, the reports of “push-backs”, and voluntary returns under duress documented in this paper, as well as a failure to formally incorporate all of its non-refoulement obligations into domestic law leaves much to be desired in terms of bringing the Thai government’s rhetoric into practice.

3.4 Temporary Protection as a Response to Mass Mixed Migration

To uphold its non-refoulement obligations, in the absence of ratifying the Refugee Convention and implementing an asylum screening process, the Thai government may consider other constructive policy options, such as implementing some form of temporary protection regime. Drawing on recent examples from around the world, this section explores this type of policy response to mass mixed migration situations.

In its guidelines, the UNHCR explains that temporary protection is “complementary to the international refugee protection regime, being used at times to fill gaps in that regime as well as in national response systems and capacity, especially in non-Convention States.”¹²³ They note that such arrangements are particularly suited to: “(i) large scale influxes of asylum-seekers or other similar humanitarian crises; (ii) complex or mixed cross-border population movements...; (iii) in fluid or transitional contexts...; and in other exceptional and temporary conditions in the country of origin necessitating international protection and which prevent return in safety and dignity”.¹²⁴ These scenarios chime with the situation documented in this report, i.e., the post-coup violence, economic collapse and humanitarian catastrophe that have driven large numbers of people from Myanmar. Indeed, the UNHCR have called on Thailand not to return undocumented migrants to Myanmar given the “deteriorating human rights situation”.¹²⁵

In terms of what temporary protection should look like, the box below sets out the UNHCR’s minimum standards of treatment.

¹²¹ See UN News Release, “UN Human Rights Office Urges Suspension of Returns to Myanmar”, 1 April 2021, accessible at <https://bangkok.ohchr.org/myanmar-returns/>.

¹²² UN Committee Against Torture, “Second Periodic Report Submitted by Thailand under Article 19 of the Convention Pursuant to the Simplified Reporting Procedure, due in 2018”, 21 December 2021, para 50 accessible at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTHA%2f2&Lang=en; also see Kingdom of Thailand at n 106 above, para 108.

¹²³ UNHCR, “Guidelines on Temporary Protection or Stay Arrangements”, February 2014, para 3, available at <https://www.refworld.org/docid/52fba2404.html>.

¹²⁴ Ibid., para 9.

¹²⁵ See, UN News Release at n 121 above.

“Temporary Protection Stay Arrangements are guided by the following...:

- Recognized and documented permission to stay for the designated period;
- Protection against arbitrary or prolonged detention;
- Non-discriminatory, humane and dignified treatment, including guarantees of shelter/housing, access to health and other basic services and education;
- Freedom of movement, except as may be warranted by national security, public order or public health considerations;
- The registration of births, deaths and marriages;
- Physical security, including protection against sexual and gender-based violence and exploitation;
- Special care for separated and unaccompanied children, guided by the best interests of the child;
- Respect for family unity and tracing, and opportunities for reunification with separated family members;
- Particular attention and special arrangements for persons with special needs, including persons with disabilities;
- Self-sufficiency or work opportunities; and
- Access to UNHCR and, as appropriate, other relevant international organizations and non-governmental organizations and civil society”.¹²⁶

Recent real-life examples offer further insight. The case of **Turkey** over the past decade is instructive as it hosts a large mixed migrant population uprooted by an armed conflict in a neighbouring state. As of February 2022, Turkey hosted 3.7 million Syrians under its temporary protection arrangements.¹²⁷ The scheme grants registered individuals the right to remain until a more permanent solution is found, and provides access to the formal labour market and basic services, including education and healthcare.¹²⁸ Reports from the field, however, suggest that Syrians living in Turkey under temporary protection experience various difficulties accessing these services,¹²⁹ and face discrimination and scapegoating with little prospect of being able to safely return to Syria.¹³⁰

¹²⁶ See UNHCR, “Guidelines on Temporary Protection or Stay Arrangements”, para 8 at n 123 above.

¹²⁷ UNHCR Turkey, “Fact Sheet February 2022”, accessible at <https://reliefweb.int/report/turkey/unhcr-turkey-fact-sheet-february-2022-entr>.

¹²⁸ See English translation of Turkey’s Temporary Protection Regulations, 22 October 2014, accessible at <https://www.refworld.org/docid/56572fd74.html>.

¹²⁹ See generally, Elise Daniaud, “Syrian Refugees in Turkey: Legal Frameworks and Recent Developments”, The Tahrir Institute for Middle East Policy, 21 November 2022, accessible at <https://timep.org/2022/11/21/syrian-refugees-in-turkey-legal-frameworks-and-recent-developments/>; In terms of accessing the healthcare system, the three main challenges currently experienced are difficulties with the registration procedure, navigation of the system, and language barriers. See, Basak Bilecen and Dilara Yurtseven, “Temporarily Protected Syrians’ Access to the Healthcare system in Turkey: Changing Policies and Remaining Challenges”, January 2018, *Migration Letters*, accessible at <https://www.migrationletters.com/ml/article/view/344>.

¹³⁰ See Diego Cupolo, Syrian Refugees Becoming Scapegoats for Turkey’s Troubles, *Al-Monitor*, 11 July 2019, accessible at <https://www.al-monitor.com/originals/2019/07/turkey-syrian-refugees-scapegoats-economic-troubles.html>.

Lessons may also be learnt from **Colombia**, where ten-year immigration status has been granted to Venezuelans fleeing persecution and extreme poverty brought about by a political crisis that has seen Venezuela's economy shrink drastically in recent years.¹³¹ Colombia's temporary protection scheme was announced on 8 February 2021 and benefits Venezuelans already in the country, notwithstanding their immigration status. The scheme also benefits new arrivals who enter via official channels and register before 1 July 2023.¹³² As in Turkey, temporary protection provides migrants with official documentation that grants them the right to work and access to social services. The scheme has been heralded as a "historic gesture" by the UN's High Commissioner for Refugees, Filippo Grandi, who praised Colombia "for its extraordinary generosity".¹³³ Gomez Lucas, Adviser to the Colombian president on border matters explained that: "By granting Venezuelan migrants temporary protected status for 10 years, we gave them room to breathe and a licence to dream. We're hoping that it will create a domino effect and that other countries like Ecuador, Peru and Chile will follow in our footsteps".¹³⁴

Colombia's example was indeed followed by other countries in the region, including Peru, Ecuador, Brazil, and the Dominican Republic, who have also adopted fast-track protection systems. Hence, a key takeaway from the handling of the mass movement of people from Venezuela is the need for a **coordinated regional response**. In Latin America, interstate solidarity has been facilitated by mechanisms, such as the Quito Process,¹³⁵ and the Regional Inter-agency Coordination Platform for Refugees and Migrants from Venezuela (R4V),¹³⁶ which is inclusive of states, multi-lateral organisations and civil society. Such initiatives have been particularly important given the scale of the challenges faced. Venezuelan migrants often arrive with few belongings and are in need of assistance of various kinds. Having left a country with a collapsed healthcare system, some require urgent medical treatment, while the arrival of large numbers of migrant children has placed added strain on education systems.¹³⁷ To help meet such socio-economic challenges, donor meetings have been organised and mechanisms, such as the "Group of Friends of the Quito Process" which includes the European Union (EU), the United States and Canada among others,

¹³¹ See Marco Arena, Emilio Fernandez Corugedo, Jaime Guajardo, and Juan Francisco Yopez, "Venezuela's Migrants Bring Economic Opportunity to Latin America", *IMF Country Focus*, 7 December 2022, accessible at <https://www.imf.org/en/News/Articles/2022/12/06/cf-venezuelas-migrants-bring-economic-opportunity-to-latin-america>; also see Anatoly Kurmanaev, "Venezuela's Collapse is the Worst Outside War in Decades, Economists Say", *The New York Times*, 17 May 2019, accessible at <https://www.nytimes.com/2019/05/17/world/americas/venezuela-economy.html>.

¹³² UNHCR, "Temporary Protection Status in Colombia", November 2021, accessible at <https://reliefweb.int/report/colombia/unhcr-s-support-temporary-protection-status-colombia>; and Global Compact on Refugees, "Good Practices on Asylum in the Americas-Colombia-Temporary Protection Statue for Venezuelans", accessible at <https://globalcompactrefugees.org/good-practices-asylum-americas-colombia-temporary-protection-statute-venezuelans>.

¹³³ Vanessa Buschschlüter, "We Gave Venezuelan Migrants a Licence to Dream", *BBC News*, 17 May 2021, accessible at <https://www.bbc.com/news/world-latin-america-57070813>.

¹³⁴ Ibid.

¹³⁵ The Quito Process is a multilateral state initiative to promote coordination between Latin American and Caribbean countries receiving Venezuelan refugees and migrants. For further details see the Quito Process webpage accessible at <https://www.procesodequito.org/en/member-states>.

¹³⁶ For further details see the R4V website accessible at <https://www.r4v.info/en>.

¹³⁷ According to Colombian authorities nearly half a million Venezuelan children are registered in Colombian schools. Cited in Natalie Alcoba, "Venezuelan Migrant Children Struggle to Access Education", *Al Jazeera*, 4 July 2022, accessible at <https://www.aljazeera.com/news/2022/7/4/venezuelan-migrant-children-struggle-to-access-education>.

formed to provide assistance to the Regional Refugee and Migrants Response Plan for Venezuelans.¹³⁸

A final example of temporary protection worth noting can be found in the **EU** approach to sheltering people fleeing the war in Ukraine. The decision to activate the EU's Temporary Protection Directive (TPD) was unprecedented, given that it is the first time since its adoption in 2001 that it has been used.¹³⁹ This, despite the EU facing several situations where it might conceivably have done so, most notably the refugee crisis of 2015.¹⁴⁰ Notwithstanding the politics surrounding such decisions, the activation of the TPD in 2022 granted Ukrainian nationals, their family members, and a limited number of others,¹⁴¹ the right to live, work, access healthcare, housing and education in EU countries for up to a year,¹⁴² without having to go through lengthy asylum procedures. At the time of writing, this had been extended until March 2024,¹⁴³ and in light of the ongoing conflict may well be extended further. It is worth remarking that the Thai government has endorsed the EU's approach. At the UN General Assembly, Suriya Chindawongse, Thailand's Permanent Representative to the UN, stated that "Thailand commends Ukraine's neighbouring countries and other states for their prompt actions in mobilising assistance for those with increasing humanitarian needs".¹⁴⁴

The forms of temporary protection described above provide food for thought in terms of Thailand's policy response to the mass mixed migration triggered by the coup in Myanmar. From a migrant's perspective, they offer a humanitarian solution by allowing them to legally enter, work, and access social services, thus providing breathing space until more permanent solutions are found. From the host country's perspective, they are pragmatic as they dispense with the need for complex asylum procedures and may provide a boost to the domestic labour market.¹⁴⁵ However, temporary protection schemes are not a cure-

¹³⁸ For further details on the Group of Friends of the Quito Process, see <https://www.procesodequito.org/en/member-states>.

¹³⁹ See Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof, accessible at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0055>; and Council Implementing Decision (EU) 2022/382 of 4 March 2022 Establishing the Existence of a Mass Influx of Displaced Persons from Ukraine within the Meaning of Article 5 of Directive 2001/55/EC, and Having the Effect of Introducing Temporary Protection, accessible at https://eur-lex.europa.eu/eli/dec_impl/2022/382/oj.

¹⁴⁰ In 2015 the EU saw close to a million people arrive having fled conflict and persecution in Syria, Afghanistan and Iraq. See William Spindler, "2015: The Year of Europe's Refugee Crisis", *UNHCR News*, 8 December 2015, accessible at <https://www.unhcr.org/news/stories/2015/12/56ec1ebde/2015-year-europes-refugee-crisis.html>.

¹⁴¹ See Council Implementing Decision (EU) 2022/382, art 2(1) at n 139 above.

¹⁴² For a summary of the obligations of EU countries towards persons enjoying TP under the directive see the European Commission webpage on the scheme accessible at https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en.

¹⁴³ See European Council, Joint Statement Following the 24th EU-Ukraine Summit, 3 February 2023, para 20, accessible at <https://www.consilium.europa.eu/en/press/press-releases/2023/02/03/joint-statement-following-the-24th-eu-ukraine-summit/>.

¹⁴⁴ See "Thailand Expresses Grave Concern Over Ukraine Crisis at UN General Assembly", 4 March 2022, accessible at <https://www.thaibpsworld.com/thailand-expresses-grave-concern-over-ukraine-crisis-at-un-general-assembly/>.

¹⁴⁵ Meghan Benton and Andrew Selee, "The Ukrainian Conflict Could Be a Tipping Point for Refugee Protection", Migration Policy Institute, May 2022, accessible at <https://www.migrationpolicy.org/news/ukrainian-displacement-refugee-protection>.



*A temporary shelter for Myanmar refugees in Thailand, April 2023.
Photo courtesy of Friends Without Borders Foundation.*

all for handling complex mass mixed migration situations. As the circumstances of Syrian nationals in Turkey exemplify, they can leave migrants in limbo for prolonged periods with minimal social protection. They can also be costly for the host country in the short term, who may also have legitimate security concerns about hosting large numbers of people from a conflict zone beset with atrocities and human rights abuses. From a wider perspective, the nature of decision-making within regional organisation and the complex political forces at play can make such schemes difficult to implement.

4. CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusions

This paper provides a fuller understanding of Thai government policy towards Myanmar nationals entering Thailand since the 2021 military coup. Given the multi-dimensional human rights catastrophe unfolding in Myanmar, there is an urgent need for Thailand to adopt a coherent and humane response towards newly arriving migrants. From our review of relevant migration law and policy, supplemented by news reports and key informants with detailed knowledge of the situation on the ground, it appears that newly arriving migrants are being failed in various ways.

Our study found that while Thailand maintains a flexible, if rather confusing, approach to documenting migrants already in the country, such flexibility is rarely shown to new arrivals. Those seeking to enter Thailand since the coup face perilous journeys across conflict zones in Myanmar and must negotiate increasingly militarised borders. The lack of any clear legal or humanitarian response to their plight, has only increased dependency on brokers and smugglers who opportunistically charge extortionate fees for their services. As a consequence, migrants are pushed deeper into debt, while border areas become zones of corruption, further eroding the rule of law.

For irregular migrants apprehended at or close to the border, our study shows that the Thai authorities are making liberal use of their powers of arrest, detention and deportation, which afford no differential treatment to asylum seekers. Given the escalating armed conflict inside Myanmar, along with the ever-worsening economic crisis, the return of migrants at this point in time is likely to be in breach of Thailand's non-refoulement obligations. It is unfortunate that at the time of writing, the Thai government is yet to hold inclusive consultations on its domestic Regulation on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin.

Our study found that in border areas where Myanmar nationals are entering Thailand to escape the ongoing armed conflict, the Thai government's stated humanitarian policies are barely put into practice. The UNHCR and other international humanitarian organisations are not allowed to provide direct assistance, resulting in delays to basic essential services reaching migrants. Moreover, asylum seekers are reportedly being subject to "push backs" and "voluntary returns" without due regard for their safety. In one case reported in this study, migrants were subject to questioning by the Myanmar authorities upon return. Considering the nature of the military regime in Myanmar, there is a real likelihood that migrant returnees could be targeted by the authorities.

On the basis of these findings, our research provides a strong evidence base to advocate for greater coherence in the policy-making process, together with greater emphasis on human security. To ameliorate the complex mixed migration crisis facing Thailand, policymakers should reduce reliance on ad-hoc solutions and implement policies that take into account the mixed motivations underlying current movements of Myanmar nationals. Thus, one potential policy approach explored in this study, would be to implement some form of temporary protection mechanism. Thailand's legal framework on migration provides sufficient flexibility to do so, while recent experience elsewhere suggests that such a mechanism as part of a coordinated regional response would be effective. A temporary protection mechanism would grant Myanmar migrants in Thailand the right to work and provide immediate documentation granting access to essential social services. Considering Thailand's present labour shortage, such a scheme could potentially boost productivity while providing migrants with incomes, independence and dignity. The MMN recommends that the Thai government explores this option further through national multi-stakeholder consultations, research and discussions with relevant ASEAN members.

4.2 Recommendations

In light of our findings, taking into account the dire humanitarian and security situation in Myanmar and in line with human rights principles, **MMN calls on the Royal Thai Government to implement an inclusive and rights orientated migration system for the protection of all migrants from Myanmar**, including:

1. **Halting the detention and forced return** of all people entering Thailand from Myanmar whether for refuge or work. Any returns that do take place must be free of compulsion and with informed consent. Those who have fled and wish to return to assess the situation in Myanmar should not be penalised if they later re-enter Thailand;
2. **Providing immediate adequate shelter, food and essentials** in areas safe from the Myanmar military and accessible to aid organisations to people fleeing Myanmar;
3. **Conducting needs assessment interviews** with all incoming Myanmar migrants, in coordination with international, national and local organisations, to determine individual needs and circumstances;
4. **Granting documentation** that provides individuals with leave to remain, access to employment, health care, education and travel within the country; and
5. **Facilitating third country resettlement** for Myanmar nationals where needed in coordination with international agencies and embassies.

Finally, these recommendations should be part of a broader regional response in coordination with the ASEAN and the wider international community to alleviate the crisis at its source by helping to restore democratic civilian rule to Myanmar.

The Mekong Migration Network (MMN), founded in 2003, is a sub-regional network of migrant support NGOs, migrant grassroots groups, and research institutes. The central goal of MMN is to promote the welfare, well-being, dignity, and human rights of migrants in the Greater Mekong Subregion (GMS), and to build mutual support and solidarity among migrants and advocates within the sub-region.



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