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Thailand: Thai government must not fail Lao Hmong refugees and asylum seekers

The Thai government should reconsider its decision to return around 5,000 Lao Hmong people to Laos until they have had access to a full and fair asylum procedure, Amnesty International said today.

Any returns to Laos should also be contingent on the presence of an independent and authoritative monitoring of the returnees inside Laos.

On 16 January 2009 Kasit Piromya, Thailand's new Minister of Foreign Affairs, publicly confirmed that some 5,000 Lao Hmong individuals living in a camp in Huay Nam Khao in northern Thailand may be returned to Laos by mid-2009. The vast majority of the camp population has not had the opportunity to seek asylum through full and fair procedures, and Amnesty International is concerned that there are people among them who may be at risk of serious human rights violations inside Laos.

Amnesty International is calling on the Royal Thai Government:

- to allow Lao Hmong individuals in Huay Nam Khao camp, and elsewhere, to exercise the right to seek asylum through full and fair procedures. The forcible return of asylum-seekers before their asylum claims have been heard and processed in a full and fair asylum procedure violates the principle of non-refoulement;
- not to return individuals at risk of serious human rights violations, including torture and other ill-treatment, as well as arbitrary and indefinite detention, to Laos;
- to make independent monitoring of returnees inside Laos a prerequisite for any further returns;
- to unconditionally and immediately release the group of 158 refugees arbitrarily detained at Nong Khai Immigration Detention Center, and allow them to resettle in third countries.

In a letter to the Thai authorities dated 15 January, Sam Zarifi, Amnesty International's Asia-Pacific Director, recalled that individuals who have fled persecution in their country of origin have a right to seek asylum abroad, as enshrined in Article 14 of the Universal Declaration of Human Rights. All states, including Thailand, must give all individuals who wish to seek asylum access to full and fair procedure to assess their asylum claims. Amnesty International is concerned that the majority of Lao Hmong asylum seekers in Thailand have not been allowed to access such procedures. Instead, the authorities refer to them as "illegal migrants" as a matter of course.

Thailand also has an obligation under the principle of customary international norm of non-refoulement, not to forcibly return individuals to any country where they would be at risk of serious human rights abuses. The forcible return of asylum-seekers before their asylum claims have been heard and processed in a full and fair asylum procedure violates the principle of non-refoulement.

Forcible returns

The Thai authorities have forcibly returned Lao Hmong asylum-seekers, in contravention of international human rights law and standards. Five young men and one woman, forcibly returned to Laos in December 2005, remain unaccounted for, despite international pressure on the Lao government to provide information on their fate and whereabouts. Over 20 girls and young women

forcibly returned at the same time were “discovered” in Laos after spending around one and a half years in arbitrary detention. Several of them have, since their release, reported that they were tortured in detention in Laos.

At least four people who the Thai authorities claimed have returned to Laos “voluntarily” in June 2008, were held in arbitrary detention for around three months in a remote province. At least one of them was returned without one of her children, who remained in the Huay Nam Khao camp. Another child, a boy with a mental disability, was reportedly returned with her and also arbitrarily detained.

In June 2008 Thai authorities returned more than 800 people following a mass protest at the Huay Nam Khao camp. The lack of transparency around the circumstances of the return, with hundreds of families forced on to buses from the side of the road, raises serious concerns that in this case too people were returned forcibly and in violation of international human rights law and standards.

Recognized refugees

One hundred and fifty eight Lao Hmong individuals at the Immigration Detention Centre (IDC) in Nong Khai, including over 90 children, are recognized refugees. They have now been detained for over two years.

To comply with international law and standards, the Royal Thai Government must provide those granted refugee status with protection in Thailand and allow them to resettle in third countries. Like all non-nationals on Thailand’s territory or under its jurisdiction, recognized refugees must be protected from refoulement. They must never be detained for immigration reasons.

Amnesty International welcomes improvements in IDC conditions, including the daily presence of medical staff and an English teacher, and a new building extension, which provides more space. However, these detainees are only allowed out of their overcrowded cells for three hours per day.

The 158 individuals have been arbitrarily detained for over two years. Their continued detention is a violation of the refugees’ rights to liberty and freedom of movement, which are protected by the several human rights treaties to which Thailand is a state party, including the ICCPR and the Convention on the Rights of the Child (CRC). Article 9(1) of the ICCPR provides that “everyone has the right to liberty and security of person” and that “no one shall be subjected to arbitrary arrest or detention.” Over 90 recognized refugees at the IDC are under the age of 18. Under Article 37 of the CRC, children must not be “deprived of [their] liberty unlawfully or arbitrarily”. The CRC provides that detention of a child “shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”. The CRC also provides that children must be “treated with humanity”, the particular needs of persons of their age taken into account, and also provides for “the right to prompt access to legal and other appropriate assistance.”

The detention of this group in chronically overcrowded conditions, may amount to a violation of the prohibition of inhuman or degrading treatment or punishment (Article 7 of the ICCPR) and the right to enjoy humane treatment during detention (Article 10)).

Indefinite detention entails inhuman treatment and in certain circumstances it may even constitute a form of torture. The recurring incidents in this refugee population of threats of suicide and hunger strikes, and protests within the immigration detention centre are symptomatic of the desperation of people who are arbitrarily detained with no access to an effective remedy.

Amnesty International has long acknowledged Thailand’s role over the last several decades in providing temporary protection to hundreds of thousands of people who have fled persecution and conflict in Cambodia, Myanmar and Laos. The organization calls on the Royal Thai Government to maintain this role and to uphold its obligations under international law.

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