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**AMNESTY  
INTERNATIONAL**



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5 November 2018

Dear Deputy Prime Minister General Prawit Wongsuwan,

## **OPEN LETTER: THAILAND MUST UPHOLD INTERNATIONAL OBLIGATIONS IN IMMIGRATION ENFORCEMENT OPERATIONS**

Amnesty International writes to respectfully request that the Royal Thai Government ensures that its current immigration enforcement “Operation X-Ray Outlaw Foreigner” upholds and safeguards the human rights of migrants, refugees and people seeking international protection from persecution, in compliance with Thailand’s international human rights obligations. Amnesty International welcomes in this regard the release on 2 November 2018 of an estimated 100 children from detention in Suan Phlu Immigration Detention Centre, Bangkok. The organization continues to call on the government to address the ongoing absence of adequate procedural and legal guarantees for refugees and asylum-seekers, which exposes them to a range of human rights violations, including in the context of immigration enforcement.

Since the inception of “Operation X-Ray” in July 2017, Royal Thai Police, including Tourist and Immigration Police, and military officials are reported to have arrested at least 2,000 foreign nationals and stateless persons from countries including Iraq, Syria, Nigeria, Uganda, Somalia, Afghanistan, Cambodia, India, Myanmar, Pakistan, Laos and Viet Nam for being in Thailand without valid permission; working illegally or for alleged criminal acts.

Amnesty International is concerned about the risk to refugees, people seeking asylum and migrants in Thailand posed by the government’s immigration enforcement activities in Operation X-Ray, including in a one-month campaign initiated in early October 2018. This latest stage of Operation X-Ray<sup>1</sup> requires security forces and police to identify and deport foreign nationals within an unspecified short time-frame – possibly as little as a month<sup>2</sup> - if found to be overstaying visas or without valid documentation. Amnesty International urges that individuals who have been

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<sup>1</sup> Bangkok Post ‘Outlaw raids snare 319 foreigners’ 6 October 2018; available at <https://www.bangkokpost.com/news/general/1552890/outlaw-raids-snare-319-foreigners>

National News Bureau of Thailand ‘One-month campaign launched to crack down on overstaying foreigners’, 8 October 2018, available at [http://thainews.prd.go.th/website\\_en/news/news\\_detail/WNPOL6110080010015](http://thainews.prd.go.th/website_en/news/news_detail/WNPOL6110080010015)

<sup>2</sup> ‘No visa, lapsed visa means deportation within a month’, The Nation (Thailand), 8 October 2018 <http://www.nationmultimedia.com/detail/national/30356023>

penalised in raids have access to a fair and efficient procedure and individualised assessment to ensure that they would not be at risk if returned to their country.

Amnesty International is further concerned by statements made by officials in the context of Operation X-Ray and associated immigration raids suggesting that enforcement measures may have discriminatorily targeted racial and ethnic groups and nationalities, including “dark-skinned” individuals and African nationals.<sup>3</sup>

In the continuing absence of a formal legal framework for asylum in Thailand, migrants, asylum-seekers and refugees detained in immigration raids are already at heightened risk of *refoulement*, which is the forcible return of individuals to places where they would have a well-founded fear of persecution or real risk of human rights violations or abuses by state and non-state actors. Such forcible return would be in violation of Thailand’s obligations under the UN Convention against Torture (UN CAT) and of the principle of *non-refoulement*, which is part of customary international law.<sup>4</sup> Deportation of an individual or groups of individuals without objectively examining the risk to individual cases could also constitute a violation of the principle. Previous violations of the *non-refoulement* principle in Thailand have occurred after authorities have either not adequately reviewed or assessed protection needs of affected refugees and asylum seekers or have flagrantly ignored both such needs and the absolute prohibition of *non-refoulement*.<sup>5</sup>

In addition, the Thai Immigration Act does not distinguish between refugees and other foreign nationals, and Immigration police may hold people in indefinite detention as irregular migrants with no set maximum period for administrative immigration detention. Thai Immigration Detention Centres do not meet international standards for conditions in detention, including with regards to provision of space. Furthermore, children also may be detained and/or separated from family members.

The ongoing risk of violations of the rights of migrants, refugees and men, women and children seeking international protection in Thailand highlights the need for your government to not only protect the rights of individuals affected by the ongoing immigration raids under Operation X-Ray, but also to address long-standing underlying systemic gaps in migrant and refugee protection. Amnesty International welcomes pledges Thai authorities have already made to improve the protection of refugee and migrant rights – including a resolution passed by the Thai Cabinet to

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<sup>3</sup> ‘Bangkok Raid Targeting Black People’, Khaosod 10 October 2017, available at <http://www.khaosodenglish.com/news/crimecourtscalamity/crime-crime/2017/10/16/52-arrested-bangkok-raid-targeting-black-people/>

‘Soldiers Cops Target Black People Soi Nana’, Khaosod 14 July 2017, available at <http://www.khaosodenglish.com/news/crimecourtscalamity/2017/07/14/raid-soldiers-cops-targets-black-people-soi-nana/>

‘Thailand’s Tourist Police Investigating all 1400 Nigerians Residing in Thailand after Resent Romance Scams’ <https://www.chiangraitimes.com/thailands-tourist-police-investigating-all-1400-nigerians-residing-in-thailand-after-resent-romance-scams.html>

<sup>4</sup> ‘UN General Assembly, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, art. 3. T

<sup>5</sup> See ‘Between a Rock and a Hard Place: Thailand’s Refugee Policies and Violations of the Principle of Non-refoulement’, Amnesty International, September 2017, available at <https://www.amnesty.org/en/latest/news/2017/09/refugees-in-thailand-forcibly-returned-to-danger/>, with reference to Thailand’s forcible return of some 109 Uighurs to China on 9 July 2015; of recognized refugees Jiang Yefei and Dong Guangping to China in November 2015; as well as ‘ Activist Immediately Jailed after Return: Sam Sokha’, Amnesty International, 13 February 2018, available at <https://www.amnesty.org/en/documents/asa23/7866/2018/en/>

finalize and implement a screening mechanism for undocumented immigrants and refugees - and urges their swift implementation.<sup>6</sup>

With respect to Operation X-Ray and the protection of refugee and migrant rights more broadly, Amnesty International recommends that the Royal Thai Government comply with its international human rights obligations by ensuring that:

### **Non-discrimination**

- Police powers and immigration enforcement activities are implemented without discrimination on racial grounds or the basis of supposed origin and uphold the principle of equality and right to non-discrimination;

### **Legal framework and procedures**

- Refugees and asylum-seekers are not penalised for their immigration status or their manner of arrival on Thai territory;
- Anyone in need of international protection from persecution may have their claim individually and independently examined in a fair, prompt and transparent process, with both the right to appeal, and a suspensive effect of appeal on deportation, with the right to remain in Thailand as long as such risk persists;
- Further to the Royal Thai Government's 10 January 2017 Cabinet resolution, a mechanism is developed for screening refugees and other undocumented foreigners, which includes a definition of a refugee consistent with international law;
- A robust administrative and legal framework is created that enshrines protection of the rights of refugees and migrants.

### **Non-refoulement**

- Individuals are not returned to a country where they face a real risk of persecution, torture, violence or serious human rights violations and abuses by state or non-state actors;
- Refugees and asylum-seekers detained for irregular migration status are released from detention and pending their release UNHCR has prompt and unfettered access to anyone advancing asylum claims;
- Alternatives to detention for the purposes of immigration enforcement are sought, and detention is used only as an exceptional measure based on an individual assessment of humanitarian needs and risks if they remain at liberty, subject to regular review and for the least amount of time necessary;
- Alternatives to detention are sought that allow children to remain with their family members or guardians in non-custodial, community-based settings while their immigration status is being resolved.

### **Conditions of Detention**

- Conditions of detention in Immigration Detention Centres meet international standards, including provisions for adequate space, humanitarian needs and medical care.

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<sup>6</sup> These include commitments to end the detention of child refugees, and undertakings to strengthen the prohibition of refoulement by incorporating it in domestic law (See Amnesty International and the International Commission of Jurists: '*Recommendations Concerning the Draft Prevention and Suppression of Torture and Enforced Disappearance Act (2016)*', November 2017, <https://www.amnesty.org/en/documents/asa39/7829/2017/en/>, with reference to provisions prohibiting refoulement in the Draft Act).

Thank you in advance for your consideration of these recommendations. We remain at your disposal for any further information that you might require.

Yours sincerely,

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*Cc:*

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