

Ref: TG ASA 39/2013.003
AI index: ASA 39/002/2013

Dr. Surapong Tovichachaikul
Minister of Foreign Affairs
Ministry of Foreign Affairs
Sri Ayudhya Road, Bangkok 10400
Thailand

**AMNESTY
INTERNATIONAL**



AMNESTY INTERNATIONAL INTERNATIONAL SECRETARIAT
Peter Benenson House, 1 Easton Street
London WC1X 0DW, United Kingdom
T: +44 (0)20 7413 5500 F: +44 (0)20 7956 1157
E: amnestyis@amnesty.org W: www.amnesty.org

10 June 2013

Dear Minister,

OPEN LETTER ON THE TREATMENT OF ROHINGYA ASYLUM-SEEKERS AND MIGRANTS

I am writing on behalf of Amnesty International to express concerns about the treatment of asylum-seekers and migrants, in particular those from Myanmar's Rohingya minority community, who have arrived or made attempts to arrive in Thailand by sea in recent months.

Amnesty International recognizes Thailand's role in providing temporary shelter to tens of thousands of refugees and asylum-seekers who have fled conflict or persecution, particularly from neighbouring countries. We are also mindful of the burden borne by Thailand in this respect and of your government's responsibility in managing Thailand's borders. However, Amnesty International is concerned by the Royal Thai Government's lack of effective protection, both in law and practice, of asylum-seekers and migrants, and we call on your government to take concrete steps to protect at all times the human rights of asylum-seekers and migrants, especially those arriving or attempting to reach the country by sea.

As you are aware, thousands of Rohingya, a Muslim minority from Myanmar's Rakhine state, left Myanmar and Bangladesh in boats heading for Thailand and Malaysia starting in late 2012. According to the UN High Commissioner for Refugees (UNHCR), more than 7,000 individuals are estimated to have fled western Myanmar and Bangladesh in January and February alone this year.¹ The situation of the Rohingya minority community in Rakhine state has significantly deteriorated since the eruption of violence between members of the Buddhist and Muslim communities in June 2012. The violence resulted in considerable death and injury on both sides last year. Over 140,000 internally displaced persons (IDPs) are currently living in temporary shelters in Rakhine state, many with little access to humanitarian assistance.

RIGHT TO SEEK ASYLUM

Thailand does not recognize refugees in its domestic law and is not party to the 1951 UN Convention relating to the Status of Refugees. All those who enter the country without proper documentation are considered in breach of Thai immigration laws and are at risk of arrest, detention, and deportation. However, individuals who have fled persecution in their country of origin have a right to seek and enjoy 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, including those arriving by sea, access to a full, effective and fair procedure to assess their asylum claims. Amnesty International encourages the Royal Thai Government to work with UNHCR, whose primary mandate is refugee protection, to establish a national mechanism to evaluate asylum claims and determine refugee status.

¹ UNHCR, "UNHCR concern at reports of shooting involving Rohingya boat people," 15 March 2013, ReliefWeb, weblink: <http://reliefweb.int/report/thailand/unhcr-concern-reports-shooting-involving-rohingya-boat-people>, accessed 4 April 2013.

REFOULEMENT OF ASYLUM-SEEKERS

Amnesty International is concerned by reports that Thai authorities have forcibly returned Rohingya asylum-seekers to Myanmar earlier in the year, in violation of the principle of non-refoulement. According to media sources, Thai security forces reportedly returned 73 Rohingya, including 15 women and up to 20 children, by land on 2 January 2013 after intercepting their boat off the coast of Thailand the previous day. As you may be aware, Rohingya who are returned to Myanmar continue to be at risk of human rights violations, including arbitrary detention and severe restrictions on freedom of movement. In line with the principle of non-refoulement, which is part of customary international law and binding on all states, Amnesty International urges Thailand to protect any person on its territory or under its jurisdiction from being returned to a country where they may face serious human rights violations.²

Amnesty International is further concerned that the Royal Thai Government's "helping on" policy with regard to migrants and asylum seekers arriving by boats violates the principle of non-refoulement and puts migrants and asylum seekers at risk. Under this policy, Thai authorities are returning boats to sea, preventing persons arriving by boats from landing or remaining in Thailand. The "helping on" policy potentially violates the principle of non-refoulement, which prohibits the "rejection at the frontier, interception and indirect refoulement" of individuals at risk of torture or other serious human rights violations.³

Reports also suggest that the "helping on" policy may have directly or indirectly endangered lives. In at least one incident, some 97 individuals believed to be Rohingya reportedly died at sea after their boat was intercepted and pushed out to sea by Thai authorities in late January 2013. As a state party to the International Covenant on Civil and Political Rights (ICCPR), Thailand has a responsibility to ensure that policies on border control actively respect, protect and promote the right to life, regardless of the immigration status of the individuals or their manner or arrival.⁴

DETENTION OF ASYLUM-SEEKERS AND MIGRANTS

Amnesty International welcomes your government's announcement on 25 January 2013 that humanitarian assistance will be provided for a six-month period to almost 2,000 individuals believed to be Rohingya, including more than 300 women and children. However, we are concerned that more than 1,500 men from this group are detained at several immigration detention centres in Songkhla and other provinces in southern Thailand, some of whom have been detained since January 2013.⁵ These facilities are not intended or equipped for long-term accommodation. Some men have been separated from their wives and children, who are living in shelters managed by the Ministry of Social Development and Human Security. We note that their conditions of detention may fall short of international law and standards, particularly in relation to overcrowding. Amnesty International has received reports of at least two deaths in custody of Rohingya asylum seekers, including an 18-year old who had been sick for one month and died on 4 May 2013.

² The principle of *non-refoulement* prohibits the return in any manner whatsoever of any person to a situation where s/he is at risk of torture or other serious human rights violations. As outlined in Article 33 of the 1951 Convention Relating to the Status of Refugees and in numerous other international instruments, the principle of non-refoulement is widely regarded as a norm of customary international law and is binding on all states. Additionally, in line with Thailand's obligations under the International Covenant on Civil and Political Rights, Thailand should not return anyone to a country where they would be subjected to torture and ill-treatment.

³ In its Note on International Protection of 13 September 2001 (A/AC.96/951, § 16), the UNHCR, indicated that the principle of non-refoulement laid down in Article 33 included: "... The duty not to refoule ... encompasses any measure attributable to a State which could have the effect of returning an asylum-seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she would risk persecution. This includes rejection at the frontier, interception and indirect refoulement, whether of an individual seeking asylum or in situations of mass influx."

⁴ While states have the right to exercise authority over their borders, they also have an obligation to respect their voluntarily assumed international legal obligations, including protecting the human rights of all migrants (Special Rapporteur on the Human Rights of Migrants, Report of the Special Rapporteur, para 13, delivered to the Human Rights Council, A/HRC/7/12, 25 February 2008), including the right to life (ICCPR Art. 6(1)).

⁵ Based on Police Immigration Bureau statistics as of 25 April 2013.

The continued detention of migrant workers and asylum-seekers in these immigration detention centres and shelters may violate their right to liberty, which is protected by the ICCPR.⁶ As observed by the Human Rights Committee, the expert body tasked with overseeing implementation of the Covenant, in order not to be arbitrary, immigration detention must be (a) prescribed by law, (b) necessary in the specific circumstances and (c) proportionate to the legitimate aim pursued.⁷ Any custodial or non-custodial measure restricting the right to liberty of migrants and asylum-seekers must be exceptional and based on a case-by-case assessment of the personal situation of the individual concerned.⁸ Any decision restricting the right to liberty of migrants and asylum-seekers must always be based on a detailed and individualized assessment, including the personal history of the individual concerned. Such assessment should consider the necessity and appropriateness of any restriction of liberty, including whether it is proportionate to the objective to be achieved. The person concerned should be provided with a reasoned decision, preferably in a language that they understand. Further, the UN Standard Minimum Rules for the Treatment of Prisoners require that facilities provide separate sleeping accommodation for detainees with “due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation”.⁹

RECOMMENDATIONS

In order to protect the human rights of asylum-seekers and migrants, particularly those arriving by boat, Amnesty International recommends that the Royal Thai Government:

- Respect the principle of non-refoulement by protecting individuals from return to a country where they may face serious human rights violations;
- Discontinue the policy of intercepting and returning to sea potential asylum seekers arriving by boat and ensure that all authorities with border responsibilities permit asylum seekers arriving by boat entry to Thailand;
- Release all asylum-seekers and migrants who are detained in violation of international law and ensure the conditions of detention comply with international law and standards; and
- Become a party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and establish a fair and effective asylum system in line with international standards.

Please do not hesitate to contact us if you have any comments or questions. I look forward to discussing these matters with you.

Yours sincerely,

Isabelle Arradon
Asia-Pacific Deputy Director

Cc: Office of the Prime Minister
National Security Council Secretary General
Internal Security Operations Command
Royal Thai Embassy in London

⁶ ICCPR, Article 9 provides that “everyone has the right to liberty and security of person” and that “no one shall be subjected to arbitrary arrest or detention”.

⁷ See Human Rights Committee, communication No. 560/1993, *A. v. Australia*, Views adopted on 3 April 1997, para. 9.2.

⁸ See the Committee’s concluding observations, Bosnia and Herzegovina, 2012 (CMW/C/BIH/CO/2), para. 26(c); Rwanda, 2012 (CMW/C/RWA/CO/1), para. 24(a).

⁹ UN Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955, (A/CONF/611), Article 10.