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Thailand: Imminent risk of deportation of Cambodian and Vietnamese UNHCR-recognised refugees

Amnesty International calls on Thai authorities not to deport UN Refugee Agency (UNHCR) recognised refugees from Cambodia and Viet Nam, who would be at real risk of persecution if returned to their countries.

The concerned individuals are believed to be at imminent risk of being forcibly returned in violation of Thailand's obligations under international law, including the principle of *non-refoulement*. Amnesty International calls on the Royal Thai Government to provide both the UNHCR-recognised refugees effective and durable protection.

Labour activist and opposition political supporter Sam Sokha (f), a UNHCR-recognised Cambodian refugee, and Montagnard pastor A Ga (m), a UNHCR-recognised Vietnamese refugee, whose family fled with him from Viet Nam to Thailand, have been detained since early January 2018. All were arrested in early January 2018 by Thai police for overstaying their visas. All refugees have been visited by government officials from their respective home countries at Suan Phlu Immigration Detention Centre in Bangkok, in an attempt to pressure them to return to their respective countries. They now face a real risk of imminent deportation by Thai authorities.

Sam Sokha is a former garment worker and opposition supporter in Cambodia, who fled to Thailand in April 2017, after she was threatened by supporters of the ruling party, the Cambodia People's Party (CPP), for having twice thrown a sandal at a roadside ruling party billboard displaying Prime Minister Hun Sen and National Assembly President Heng Samrin. This incident was filmed and posted on social media. It took place in April 2017, two months before Cambodia's Commune Council Election, during which the main opposition party the Cambodia National Rescue Party (CNRP), (now since dissolved), had won a large share of the popular vote. The Commune Council Election were preceded and followed by intense crackdowns by the CPP on the political opposition, independent media and civil society.

A Ga is a Christian pastor and belongs to the Vietnamese minority group, the Jarai, a Vietnamese hill tribe (along with other hill tribes, called collectively the Montagnard), which has long faced political and religious persecution in Viet Nam. Reportedly, Montagnard refugees that were returned to Viet Nam in the last three years have faced arbitrary detention, arrest and interrogation, or were forcibly disappeared. A Ga and his family fled to Thailand in June 2013 after their home was raided by Vietnamese police in an attempt to arrest him. Vietnamese authorities continued to persecute A Ga's associates after he had fled. He was repeatedly interrogated and tortured, threatened with arrest and imprisonment, as well as harassed at his home by Vietnamese authorities, trying to force him to recant his faith.

A Ga and Sam Sokha were convicted on 11 and 6 January 2018, respectively, on the basis of a charge of 'overstay' under Section 81 of Thailand's Immigration Act and sentenced to two months in prison. Their prison sentence was suspended for one year (Section 56 of the Penal Code). They were also imposed a 3,000 Thai Baht fine. Upon pressure by Thai authorities, both had pleaded guilty, which led to a reduction of their prison sentences (Section 78 of the Penal Code). A Ga's wife was additionally convicted of 'irregular entry' under Sections 11, 62 and 81 of the Immigration Act, and pleaded guilty, leading to a reduced and suspended four months' prison sentence and a 5,000 Thai Baht fine (Sections 56, 78 and 91 of the Penal Code). While their sentences were suspended, they remain in detention due to their irregular status in Thailand (Section 54 of the Immigration Act). A Ga was also accompanied by his ten-year-old son, who is a recognised refugee but risks being deported with his parents. All are currently held in poor and overcrowded conditions at Suan Phlu Immigration Detention Centre in Bangkok.

Amnesty International is also deeply troubled by reportedly increased surveillance, harassment and intimidation by Thai police officers and agents from Cambodia and Viet Nam of asylum seekers and refugees from both Cambodia and Viet Nam. Persecuted opposition members of Cambodia's recently dissolved main opposition party, the Cambodia National Rescue Party (CNRP), and human rights defenders have reported the same. Thailand and Cambodia have an extradition agreement, which both countries signed on 6 May 1998, and in late 2016 Thai and Vietnamese authorities agreed to negotiate an extradition treaty. Amnesty International calls on Thai authorities to guarantee that these individuals are not returned to their country against their will and that, while on Thai territory, they are not subjected to surveillance and harassment by Thai, Cambodian or Vietnamese officials.

While Thailand has not ratified the 1951 Refugee Convention, it remains bound by the universal principle of *non-refoulement* and its obligations under the UN Convention against Torture not to return an individual to a place where they would be at real risk of serious human rights violations. The principle of *non-refoulement* applies in all transfers including cases of extradition and deportation. However, the Thai government has acquiesced to pressure from foreign governments and forcibly returned people to countries where their lives and well-being are at serious risk.

Different United Nations human rights mechanisms have consistently raised deep concern over Thailand's violation of the *non-refoulement* principle, which at times are without review or assessment of the protection needs of affected refugees and asylum seekers. The mechanisms have also urged that the Thai government address the continuing absence of a national legal framework regulating expulsion, *refoulement* and extradition. Amnesty International calls on the Royal Thai Government to follow through on its commitments to improve the situation of refugees and asylum seekers and protect them from *refoulement*. This includes adopting a robust administrative and legal framework that grants refugees and asylum seekers a formal legal status and protects refugees and asylum seekers in line with international human rights law. Screening procedures that authorities committed to developing for refugees and undocumented migrants in January 2017 should include the adoption of a definition of 'refugee' in line with international standards and ensure that asylum claims are processed fairly and efficiently.

In the absence of a formal legal status for refugees, asylum-seekers in Thailand are at heightened risk of *refoulement* and may be held in indefinite detention as irregular migrants under the Immigration Act, which provides authorities with broad powers to detain individuals and does not set a maximum period for administrative immigration detention. Urban refugees and asylum seekers, even those officially registered with UNHCR can be arrested at any time under the 1979 Immigration Act that criminalises irregular entry and stay in Thailand. Following arrest, most refugees and asylum seekers are sent to immigration detention centres where they can be held indefinitely in appalling conditions described by refugee rights advocates as “worse than prison”. Article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a party, also forbids arbitrary, unlawful, or indefinite detention, including of non-nationals. A state may only restrict the right to liberty of migrants in exceptional cases following a detailed assessment of the individual concerned and for the shortest time possible. Children must never be detained for immigration-related reasons.

Background

On 8 April and again on 13 June 2017, Sam Sokha was summoned for questioning by the Kampong Speu Provincial court, however she failed to appear on both dates before the judge. An arrest warrant was issued against her by the Investigating Judge. She was accused of “insult of a public official” and “incitement to discriminate” (respectively Articles 502 and 494 and 496 of the Cambodia Criminal Code). The charges carry a three years and six day prison sentence.

A Ga, based on his faith, if returned to Viet Nam, risks facing arbitrary detention, arrest and interrogation or enforced disappearance. Under Article 91 of the Viet Nam Criminal Code, those who “flee abroad or defect to stay overseas with a view to opposing the people’s administration” can be detained for three to 12 years. In early 2017, Vietnamese authorities issued an arrest warrant for A Ga related to “organising for people to flee to other country”. Viet Nam has repeatedly used people smuggling charges to target those fleeing Viet Nam due to persecution.