



FORTIFY RIGHTS

Prime Minister Prayut Chan-o-cha
Office of The Permanent Secretary, Prime Minister Office
Royal Thai Government
1 Government House, Phitsanulok Road
Dusit
Bangkok, Thailand 10300

September 26, 2017

Dear Prime Minister,

We write to raise our concerns about the renewed violence against the ethnic Rohingya Muslim population in Myanmar and its potential impacts on Thailand and the region. To mitigate these impacts, we recommend that the Thai Government exercise urgent diplomacy with the Government of Myanmar, particularly the military, to encourage an immediate end to attacks on Rohingya civilians. We further call on the Thai Government to ensure the right to seek asylum and refugee protections for Rohingya already in Thailand and any new arrivals fleeing persecution in Myanmar.

Fortify Rights recognizes Thailand's recent attempts to meet international standards for the protection of refugees—in particular, its commitment to develop a screening mechanism to identify and provide protection to refugees as well as provide work permits to survivors of human trafficking. However, the Thai authorities' recent reiteration of a commitment to uphold the "help-on" policy—intercepting and preventing boats of migrants from landing in Thailand as well as pushing potential refugees back out to sea—with regard to refugees arriving by sea raises concerns. We call on you to take concrete steps to ensure the protection of all Rohingya refugees encountered by Thai authorities or entering Thai territory in line with international law.

During the last several weeks, Myanmar state security forces and others have attacked Rohingya villages in northern Rakhine State, following an attack by Rohingya militants on August 25, 2017 that killed 12 officials. Since then, Fortify Rights has documented mass killings and arson attacks on Rohingya households, leading to the displacement of hundreds of thousands of Rohingya. The United Nations estimates that more than 400,000 Rohingya have crossed into Bangladesh since August 25. An earlier attack in October 2016 displaced more than 90,000 Rohingya. The Myanmar Army's attacks on Rohingya constitute a threat to international peace and security. As the attacks continue, the exodus of Rohingya refugees from Myanmar may extend to the region, including Thailand.

Thailand must be prepared to respect the rights of refugees. The news outlet *Khaosod English* quoted the spokesperson of Internal Security Operations Command Colonel Peerawat Saengthong as saying, "If [a] boat has yet to enter territorial waters" and "[i]f their intention is not to enter Thailand, [the Navy] may provide food and water on humanitarian grounds," but "if they intend [to enter] we will act according to the law by pushing the boat away." He

also said that “if they are discovered on shore, we must detain them.” These practices may violate the principle of non-refoulement and the right to liberty under international law.

Preventing Entry of and Returning Refugees Violates International Law

Under customary international law, the principle of *non-refoulement* prohibits states from returning any person on its territory or under its jurisdiction to a country where they may face persecution. The principle extends to “rejection at the frontier, interception and indirect refoulement.”¹ It also applies not only in respect of return to the country of origin but to any place where a person has reason to fear threats to his or her life.² As noted by the United Nations Special Rapporteur on the Human Rights of Migrants, “although it is the sovereign right of all States to safeguard their borders and regulate their migration policies, States should ensure respect for the human rights of migrants while enacting and implementing migration laws.”³

Thailand’s “help-on” or “push-back” policy has involved intercepting and preventing boats from landing in Thailand as well as pushing ill-equipped boats of potential refugees back out to sea. In 2015, Thailand refused to allow the disembarkation of thousands of Rohingya refugees and Bangladeshi nationals, contributing to a regional crisis and greatly endangering the lives of those stranded at sea. Thai courts prosecuted and convicted Thai officials who contributed to human trafficking networks in part by handing Rohingya refugees and Bangladeshi nationals over to traffickers. Fortify Rights documented how perpetrators appeared to commit these violations in the name of the “help-on” or “push-back” policy.

Recognizing the potential for new refugee arrivals from Myanmar, the Thai government should abandon its “help-on” or “push-back” policy, allow boats to disembark, and ensure the protection of refugees arriving to Thailand, including the right to seek asylum.

Detaining Refugees in Government Shelters Constitutes Arbitrary Detention

According to government sources, some 121 Rohingya refugees remain indefinitely detained in government-run shelters in Thailand, where their movement is restricted and liberty denied. Customary international law and Article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a party, forbid arbitrary, unlawful, or indefinite detention, including of non-nationals.⁴ A state may only restrict the right to liberty of migrants in exceptional cases following a detailed assessment of the individual concerned.⁵ Any detention must be necessary and proportionate to achieve a legitimate aim. Failure to consider less coercive or restrictive means to achieve that aim may also render the detention arbitrary.

¹ Executive Committee of the High Commissioner’s Program, Note on International Protection, U.N. Doc. A/AC.96/951, September 13, 2001, para. 16.

² *Ibid*

³ U.N. Human Rights Committee, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, U.N. Doc. A/HRC/7/12, February 25, 2008, para. 10

⁴ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, Article 9.


⁵ See U.N. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Concluding Observations of the Committee on the Second Periodic Report of Bosnia and Herzegovina, U.N. Doc. CMW/C/BIH/CO/2, September 26, 2012, para. 26(c); CMW, Concluding Observations of the Committee on the Initial Periodic Report of Rwanda, U.N. Doc. CMW/C/BIH/CO/2, September 26, 2012, para. 24(a).

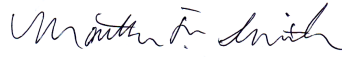
During its review of Thailand's obligations with the ICCPR in March 2017, the U.N. Human Rights Committee raised concerns with Thailand's indefinite detention of refugees and recommended that the Thai authorities "refrain from detaining refugees, asylum seekers and migrants and implement alternatives to detention, including before deportation."⁶ Fortify Rights reiterates this call and urges the Thai government to immediately release Rohingya refugees and implement procedures to prevent the detention of all refugees.

To ensure the protection of Rohingya refugees in line with international standards, Fortify Rights recommends that the Government of Thailand:

- Immediately abolish the "help on" or "push-back" policy and instead directly assist refugees to disembark from boats in Thai waters;
- Develop and effectively implement national legislation establishing procedures for granting refugee status in line with international standards;
- Ensure all individuals wishing to seek asylum in Thailand have access to asylum procedures, regardless of the manner, place, or date of entry;
- Prevent the *refoulement* of individuals whose life or freedom would be threatened upon return to their home countries;
- End the arbitrary and indefinite detention of all migrants, including refugees, and ensure migrants are detained only in exceptional circumstances, following an individualized assessment, and after all less invasive alternatives to detention have been exhausted;
- Facilitate access to legal documentation, work permits, healthcare, educational opportunities, and other forms of assistance for refugees; and
- Accede to the 1951 Refugee Convention and its 1967 Protocol, the Convention on the Protection of All Migrant Workers and Members of Their Families, and other key human rights treaties.

Sincerely,


Amy Smith
Executive Director


Matthew Smith
Chief Executive Officer

cc: Secretary-General of the National Security Council
Admiral of the Royal Thai Navy, Ministry of Defense
Commissioner of the Immigration Bureau, Royal Thai Police
Ambassador of the Royal Thai Embassy, Washington, D.C.
Chair of the National Human Rights Commission of Thailand
Asia Bureau Chief, United Nations High Commissioner for Refugees, Asia Bureau

⁶ U.N. Human Rights Committee, *Concluding Observation on the Second Periodic Report of Thailand*, U.N. Doc CCPR/C/THA/CO/2, April 25, 2017 para.27-30.