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General Anupong Paojinda
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Ministry of Interior
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**AMNESTY
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Dear Minister of Interior,

OPEN LETTER: THAILAND MUST RELEASE MONTAGNARD ASYLUM SEEKERS AND REFUGEES IMMEDIATELY

Amnesty International is alarmed by the detention and treatment of at least 168 Cambodian and Vietnamese asylum seekers and refugees in Thailand, and urges the Thai authorities to release them immediately pending the assessment of their asylum claims. Amnesty International has raised the issue of the treatment and deportation of asylum seekers and refugees with the Thai government in the past,¹ but regrettably we have seen the absence of concrete improvements in the protection of people seeking asylum in Thailand.

On 28 August 2018, the Special Branch Bureau, Internal Security Operations Command (ISOC), Immigration Bureau, Volunteer Defense Corps, and other agencies under the Ministry of Interior raided a residential complex in Nonthaburi province's Bang Yai district and arrested at least 168 asylum seekers and refugees – including people from the Montagnard ethnic minority group who have fled from political and religious persecution in Cambodia and Viet Nam – then transferred them to Bang Yai district office. Among those arrested, Amnesty International observed that at least 63 children from the age of three months old to 17 years, and two pregnant women were detained there. Many of the people arrested and detained told Amnesty International that they had been recognized as refugees by the UN High Commissioner for Refugees and provided their refugee status card to the Thai authorities, while others carried asylum seeker cards. However, arresting authorities claimed there were no UNHCR-recognized individuals.

On the same day, Thai authorities transferred 34 refugees and asylum seekers of Cambodian nationality, including 14 children, to Suan Plu Immigration Detention Centre in Bangkok where they risk deportation or indefinite detention. This centre is well known for its horrendous conditions, including but not limited to a poor sanitary environment, lack of medical assistance and excessive overcrowding.

Another 38 refugees and asylum seekers of Vietnamese nationality were then taken to the Provincial Court of Nonthaburi on 29 August to hear their charges of illegal entry and illegal stay under Articles 11, 62 and 81 of the Immigration Act, and were found guilty and sentenced to a 5,000 Baht (approx. 152 USD) fine. The rest of the refugees and asylum seekers were subsequently taken to the Court on 30 August and were sentenced to the same amount of fine. Both groups are currently serving prison term in

¹ Amnesty International, *Between a Rock and a Hard Place*, 28 September 2017 (ASA 39/7031/2017).

lieu of fine at Pathumthani Central Detention near Bangkok. Amnesty International notes that, before being taken to court, all parents reported being coerced into signing documents consenting to the separation from their children in a language they do not understand and the content of which they have not been adequately informed.

The 47 Vietnamese children, some of them with health issues that require medical assistance, are currently held in separate locations in Bangkok and its outskirts under the care of the Ministry of Social Development and Human Security. Upon serving the full sentence, all Vietnamese refugees and asylum seekers will be transferred to Suan Plu Immigration Centre, where the children will be returned to their parents. All could be detained indefinitely or forcibly returned to Viet Nam.

Children held in these centres are particularly vulnerable to irreversible psychological and physical distress and human rights violations. Placing children in immigration detention is always a violation of their human rights and may amount to cruel and degrading treatment. The detention of a child because of their or their parent's migration status contravenes the principle of the best interests of the child. The Thai government is primarily responsible for implementing the best interests principle of child protection, set out in Article 3 of the Convention for the Rights of the Child, to which Thailand is a state party. Given the work-in-progress to secure a memorandum of understanding to end all detention of children at immigration detention centres, the current detention of 56 children, including the Cambodian refugee children, at the Suan Plua centre proves more palpable efforts are urgently needed.

Under International law a refugee is a person who has been forced to flee his or her country due to imminent or real threats of persecution, war or violence. Refugees have a well-founded fear of persecution for reasons including race, religion, nationality, political opinion or membership in a particular social group.

Montagnard is a term loosely used to refer to many Christian ethnic groups living in Viet Nam's Central Highlands and Cambodia. They are among the most persecuted ethnic groups in Viet Nam, having faced a systematic, ongoing campaign of suppression against their religious and political beliefs. Their displacement and dispossession as a result of land disputes and land acquisitions has also left many with no other choice but to flee to a neighbouring country. In Cambodia, the government refers to Jarai people, one of the Montagnard tribes who live in Cambodia, as an "ethnic minority of Viet Nam". More than a hundred Vietnamese Montagnards who sought asylum in Cambodia were forcibly returned to Viet Nam.² If returned to Viet Nam, they will face grave risks of being persecuted and imprisoned indefinitely.³

Even though, the Thai government has not ratified the 1951 Refugee Convention, it still has other obligations under International law to comply with the principle of non-refoulement by ensuring that people are not returned to a country where there is a risk of serious human rights violations, and the prohibition on torture and other forms of cruel, inhuman and degrading treatment.

The Thai government has repeatedly violated its obligations under customary international law of non-refoulement. In February 2018, Thailand forcibly returned Sam Sokha, a Cambodian political opposition supporter who fled to Thailand in April 2017 and was recognized as a refugee by UNHCR. She has been imprisoned by the Cambodian authorities since her return. In July 2015, 109 asylum seekers identified as people of the Uighur ethnic group were forcibly returned to China, where they were likely to face severe persecution and possibly torture. The Thai officials also deported Chinese activists Jiang Yefei and Dong

² See more information at Amnesty International, "Cambodia Must Stop Refoulement of Montagnard Asylum Seekers to Viet Nam", 24 September 2015 (ASA 23/2516/2015) and Amnesty International, "Cambodia: End Refoulement of Montagnard Asylum Seekers", 4 March 2015 (ASA 23/1126/2015)

³ Amnesty International, "Thailand: Imminent Risk of Deportation of Cambodian and Vietnamese UNHCR-Recognized Refugees", 23 January 2018 (ASA 23/7778/2018)

Guangping in November 2015 as they awaited resettlement as refugees. A Court in China later sentenced them to six and a half years and three and a half years in jail, respectively.

Despite Prime Minister Prayuth Chan-o-cha's pledge to develop a national screening mechanism for people claiming asylum in Thailand at the Leaders' Summit on Refugees in September 2016 and a cabinet resolution to do so issued in January 2017, the Thai government has yet to translate its commitment into practical actions and results.

We urge the Thai authorities to take the following steps as a matter of priority:

- Until such time as the Thai government establishes its own fair and prompt asylum assessment process, support UNHCR to exercise its mandate to conduct refugee status determination for all individuals with asylum claims, regardless of nationality or ethnicity, and ensure all asylum-seekers have access to a full, fair and efficient asylum procedure;
- Ensure that asylum-seekers are only detained as a last resort and when strictly necessary, following an individualized assessment of their humanitarian needs and the risks if they remain at liberty, and for the least amount of time necessary;
- Establish formal alternatives to detention for refugees and asylum-seekers, possibly including regular reporting requirements, bail opportunities or sponsorship;
- Ensure that the children are never detained solely for migration-related purposes, since such detention can never be in the child's best interests. Halt the forced separation of children from their parents or guardians, in all migration-related circumstances;
- Do not, under any circumstances, return individuals to a country where they face risk of persecution, torture, violence or other serious human rights violations or abuses;
- Accede to the UN Convention relating to the Status of Refugees and its 1967 Protocol, and ensure these instruments in law, policy and practice, including by establishing a national screening mechanism for asylum seekers.

Yours sincerely,

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