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The Equal Rights Trust - Universal Periodic Review Submission: Thailand and its treatment of Rohingya boat people (14 March 2011)

1. The Equal Rights Trust (ERT) is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. ERT works from the unified perspective on equality, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome the fragmentation of the field of equality law.
2. Since May 2008, ERT has been carrying out research and advocacy on the human rights of stateless persons around the world. A focus of this research has been the treatment of stateless Rohingya in the ASEAN and SAARC regions. ERT consequently has over two years field research and advocacy experience on the treatment of Rohingya in Thailand. Over this period, ERT has documented a number of extremely concerning developments including the arbitrary and indefinite detention of Rohingya migrants, the push-backs of Rohingya by Thai authorities into the sea and allegations of informal deportations of Rohingya into Burma in violation of the customary international law principle of *non-refoulement*.
3. In this submission, ERT highlights some of the most significant concerns and challenges with regard to the treatment of Rohingya in Thailand. It is our view that Thailand's actions with regards to the Rohingya constitute a violation of its international legal obligations. In order to meet these obligations, Thailand must remedy existing human rights violations against Rohingya and review its policy with regard to the Rohingya in order to uphold its human rights obligations by them.

The Rohingya Problem

4. The Rohingya are a Muslim community of South Asian descent, closely related to the Chittagonian Bengali of neighbouring Bangladesh. An ethnic, religious and linguistic minority, approximately one million Rohingya live in the Rakhine state of Burma today, of which over 700,000 are concentrated in the northern region of the State.¹ The Rohingya are a community in flight, with possibly more Rohingya living outside Burma than within.
5. The 1982 Citizenship Law of Burma stripped the Rohingya of their nationality, making them legally stateless.² As a result, their human rights and freedoms have been systematically eroded through a series of draconian policies, arbitrary taxes, and controls.³
6. Due to this acute discrimination and persecution, many Rohingya flee Burma, mainly by boat. Many begin their journey in North Arakan, travel through Bangladesh – where they are joined by more Rohingya and some Bangladeshis continue by boat to Thailand and then go overland to Malaysia. The sea leg of the journey lasts approximately one week. While the majority of boats

¹ Chris Lewa, 'North Arakan: an open prison for the Rohingya in Burma' Page 11. FMR, Issue 32, April 2009. Accessible at <http://www.fmreview.org/FMRpdfs/FMR32/FMR32.pdf>

² See <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=3ae6b4f71b>

³ The Rohingya do not have the freedom to move within Burma. In fact, they must pay for a travel permit even to visit a neighbouring village and they are not permitted to travel beyond the three townships of northern Rakhine State. This restriction severely impedes their already limited access to employment, education, health and trade. Rohingya who leave Burma are denied the right to return; their names are struck off family lists and they face long-term imprisonment if captured upon re-entry. The *NaSaka* – Burma's border security force – also places severe controls on Rohingya marriages. A marriage permit must be obtained through a lengthy and expensive process which is rife with bribery and corruption. Marriages without a permit can result in up to ten years imprisonment. For a more detailed account of the Rohingya in Myanmar, see Lewa, note 1 above.

depart from Bangladesh, some stop en route at Maungdaw in Burma to collect additional passengers, whilst a few begin their journey in Sittwe, Burma.

Thailand's International Law Obligations

7. Thailand is party to the following international human rights treaties:
 - a. International Covenant on Civil and Political Rights (ICCPR)
 - b. International Covenant on Economic, Social and Cultural Rights (ICESCR)
 - c. Convention on the Elimination of all forms of Racial Discrimination (CERD)
 - d. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)
 - e. Convention on the Rights of the Child (CRC)
 - f. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (CAT)
 - g. Convention on the Rights of Persons with Disabilities (CRPD)
8. Thailand therefore has various human right obligations towards the Rohingya and is responsible for protecting the right to life,⁴ the rights to equality and non-discrimination,⁵ the freedom from torture, cruel, inhuman or degrading treatment or punishment,⁶ and the right to liberty and freedom from arbitrary arrest and detention,⁷ of all Rohingya on Thai territory.
9. However, Thailand has not ratified the following treaties:
 - a. Convention relating to the Status of Refugees
 - b. Convention relating to the Status of Stateless Persons
 - c. Convention on the Reduction of Statelessness
 - d. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

The Push-Backs of 2008/2009

10. Historically, Thailand has dealt with Rohingya boat people intercepted at sea or apprehended on land through immigration detention (mostly in Ranong Detention Centre, Thailand, but also in Phangnga). Intercepted Rohingya would be sentenced to five to seven days detention under the Thai Immigration Act, after which they would be informally deported to brokers across the Thai-Burma border. Testimony received by ERT indicates that Brokers would transport those who could pay a substantial fee back from Burma to Malaysia via Thailand. Those who could not afford the fee were beaten and sold as bonded labour to Thai fishing boats and plantations. At one point, the Thai authorities attempted to deport Rohingya formally into the hands of the Burmese immigration authorities, but these individuals were sent back into Thailand the following day. The number of people making this hazardous voyage has increased over the years. It is estimated that approximately 3,000 persons made the journey in the sailing season of 2006/07. The following year, there were approximately 6,000 departures.⁸
11. On 28 March 2008, the Thai Prime Minister announced that Thailand was exploring the option of detaining Rohingya boat people on a deserted island, stating that *“to stop the influx, we have to keep them in a tough place. Those who are about to follow will have to know life here will be difficult in order that they won't sneak in”*.⁹ This statement was followed by a change in policy. Responsibility for dealing with the boat people was transferred from Thai Immigration to the Internal Security Operation Command of the Thai Military (ISOC) in December 2008. Boat people were detained on the island of Koh Sain Daeng and then “pushed back” into the high seas. Between the end of November and mid-December 2008, six boats of Rohingya migrants were intercepted and the passengers were detained on Sai Daeng Island by the ISOC. The detainees reported being subject to beatings and torture on the island.

⁴ See Article 6 of the ICCPR.

⁵ See Articles 2(1) and 2(2) of the ICCPR and ICESCR respectively, and Article 26 of the ICCPR.

⁶ See CAT in general as well as Article 7 of the ICCPR.

⁷ See Article 9(1) of the ICCPR.

⁸ See The Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection needs of Stateless Persons*, July 2010. Available at: <http://www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf>

⁹ See www.bangkokpost.com/290308_News/29Mar2008_news03.php

12. The military forcibly put 412 people from the six intercepted boats onto an engineless barge which had little food and water; then towed the barge out into the high seas for two days and two nights, and left them to drift. In the period between December 2008 and 19 January 2009, two further push-backs occurred. A total of over 1,100 boat people were cast to sea as a result. The boats drifted in separate directions towards the Andaman Islands of India and Sabang Island and Idi Rayeuk of Indonesia, where the survivors were rescued. Over 300 people died.¹⁰ On 5 January 2009, one of the boats that were pushed-back with 81 people on board was rescued by a fishing trawler and brought back to Thailand. The boat people were re-arrested and returned to Sai Daeng Island and pushed back again, together with over one hundred others in the third round of push-backs on 19 January.
13. Thailand's actions were criticised by the international community as grave violations of human rights. Amnesty International stated that "*the Rohingya's situation has reached a critical stage over the last two months. The Thai government must stop forcibly expelling Rohingyas and provide them with immediate humanitarian assistance and cease any plans to proceed with more expulsions.*"¹¹

The 2011 Push-Backs

14. Due to growing international condemnation, Thailand stopped its practice of "push backs" after January 2009. However, there is evidence to show that the policy was reintroduced in 2011.
15. On 22 and 23 January 2011, a group of 158 Rohingya boat people arrived in Thailand in three boats, one carrying as many as 91 Rohingya.¹² Kantang District Officer Mr Visit Tungpong confirmed that 91 boat people had arrived and landed on the beach in the Kantang district of the southern coastal province of Trang. These people were arrested by Thai Marine police on charges of illegally entering the country. Mr Visit stated that these boat people were transported by truck to immigration officials in South Songkla, near the Thai-Malaysian border. He confirmed this group would be sent back to Burma by boat. Mr Visit stated that "*Although it's against humanitarian grounds, the illegal entry of foreigners must come under the (Thai) legal framework. This is to prevent a similar problem from occurring again in future,*"¹³ This statement and the action of deportation into Burma are in direct violation of Thailand's obligations of *non-refoulement* under Article 3 of CAT.
16. Another 67 boat people arrived in Satun province on 23 January. While nine children in this group have been placed in a welfare centre, the remaining 58 adults are in detention.
17. On 3 February 2011, a further 68 boat people were arrested in Phuket. While 33 of this group are in immigration detention, there is no news as to the whereabouts of the remaining 35. Phuket authorities say they have been moved to Phang Nga, but the authorities in the Phang Nga detention centre have revealed that there are no Rohingyas there.¹⁴
18. On 10 February 2011, 91 Rohingyas were found by police in India's Andaman and Nicobar islands. All of these people were suffering from serious dehydration and starvation. Around 25 were admitted to hospital. These persons informed Indian police that they had been detained for five nights by the Thai authorities in a dark room, before being set adrift by the Thai navy with minimal food and water in a boat without an engine. Thailand has denied this accusation.¹⁵

Indefinite Detention in Thailand and Deaths in Custody

¹⁰ For a detailed account of the push-backs and a critique of the Thai governments actions, see Annex 1 - The Equal Rights Trust. *Letter to the Thai Prime Minister*; 23 January 2009. Available at:

<http://www.equalrightstrust.org/ertdocumentbank/Letter%20to%20Prime%20Minister%20of%20Thailand.pdf>.

¹¹ Amnesty International. *Myanmar minority group in Peril*, 2 February 2009. Available at: <http://www.amnesty.org/en/news-and-updates/news/myanmar-minority-group-peril-20090202>

¹² Human Rights Watch, *Thailand: Investigate Departure of Rohingya 'Boat People'*. Available at: <http://www.hrw.org/en/news/2011/02/21/thailand-investigate-departure-rohingya-boat-people>

¹³ Thai Officials Return 91 Rohingya boat people to Myanmar. Available at: http://www.mcot.net/cfcustom/cache_page/159520.html

¹⁴ This information was provided to ERT by confidential sources.

¹⁵ Burmese Rohingya refugees accuse Thailand of towing them out to sea. Available at: <http://asiancorrespondent.com/48176/burmese-rohingya-refugees-accuse-thailand-of-towing-them-out-to-sea/>

19. After Thailand stopped its practice of “push backs” in January 2009, an additional boat with 79 passengers was intercepted by the Thai Navy. 29 of the boat people claimed to be Bangladeshi, whilst 50 were confirmed as Rohingya. All of the people on board had been severely beaten by the Burmese Navy and were badly injured. These people were not “pushed back” to sea, but taken to Ranong where medical care was provided, and several were transferred to Ranong hospital. The group, which included 12 children, was sentenced to five days imprisonment under the Immigration Act and fined. Since they could not pay the fine, the group were jailed in Ranong prison for 30 days and then transferred to the Ranong Immigration Detention Centre. Thailand allowed the UNHCR to make an assessment of the situation, but not to screen the Rohingya detainees individually. Detainees reported to ERT that they were kept in cells so overcrowded they could not move, that they could not see daylight, and that their health seriously deteriorated. Two young Rohingya died. On 1 July 2009, 18 year old Abdul Salam died of heart failure. On 13 August 2009, Hammah Tulah who was just 15 also died.
20. On 26 August 2009, four UN Special Rapporteurs and the Chairman of the UN Working Group on Arbitrary Detention sent a joint urgent appeal to the Thai Government regarding the plight of these Rohingya detainees.¹⁶ The urgent appeal referring to the two deaths stated that “*in both cases, the rapid deterioration of their health may be due to the inadequacy and inefficiency of healthcare being provided to them during their detention period and particularly during the hours preceding their deaths*”.¹⁷
21. Following these two deaths in custody, the authorities decided to transfer the remaining 77 detainees to the Bangkok Immigration Detention Centre on 19 August 2009. Though better than Ranong, the Bangkok detention centre was extremely overcrowded. The detainees were housed in two cells – sixty six in a large 40 x 12 foot room, and ten in a smaller 12 x 12 foot room. The emotional impact of their entire ordeal has been extremely strong. Many of the detainees were badly affected by the death of their two young fellow inmates. Some mentioned to ERT that they wanted to commit suicide. They were very anxious as to what would happen to them, how long they would remain in detention and whether they would ultimately be deported to Burma.
22. In February 2010, 28 of the Bangladeshi detainees were deported to Bangladesh. Two years later, the 48 Rohingya survivors and one Bangladeshi still remain in detention. This number has since increased to 54, after a few more Rohingya were detained in Bangkok. ERT sources believe that the Thai government is awaiting an opportunity to deport these detainees back into Burma in violation of their obligations of *non-refoulement*.

Main Concerns

23. The text above briefly outlines the treatment of Rohingya migrants by the Thai authorities in 2008/09 and 2011. The main concerns which arise from this treatment are violations of the right to life, the rights to equality and non-discrimination, the right to freedom from torture, cruel, inhuman or degrading treatment or punishment, the right to liberty and freedom from arbitrary arrest and detention, and the right to seek and enjoy asylum, and *non-refoulement*.
24. The right to life of all persons which is protected under article 6 of the ICCPR prohibits the arbitrary deprivation of life in any circumstances. According to the survivors’ accounts in 2009, four persons were arbitrarily shot and killed by the Thai military whilst forcing them onto boats which were subsequently set adrift. These serious allegations of extra-judicial killings highlight the lack of respect for life by the military personnel involved. Furthermore, over 300 boat people died as a result of being pushed back into sea on ill-equipped boats, with hardly any provision of food and drink. Finally, two Rohingya died while in custody in Ranong in 2009.
25. The rights to non-discrimination and equality under Articles 2(1) and 2(2) of the ICCPR and ICESCR respectively, commits States to guarantee Covenant rights to all persons without

¹⁶ The appeal was sent by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

¹⁷ See UN Human Rights Council. *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*. A/HRC/14/20/Add.1, 19 May 2010.

discrimination on grounds including race and national or social origin. Article 26 of the ICCPR provides an independent right to equal treatment and non-discrimination. The push-backs which have specifically targeted the Rohingya are a violation of these rights.

26. The right to be free from torture or cruel, inhuman or degrading treatment or punishment under Article 7 of the ICCPR and under CAT in general, is an absolute right which cannot be derogated from. Published photographic evidence from 2009 which shows the Rohingya being forcibly detained, lined up and forced to lie down at gun point; survivors' allegations that they were forced onto overcrowded ill-equipped boats, towed onto international waters with inadequate provisions and abandoned; and the indefinite detention of the 54 boat people in Bangkok for over two years are all acts which amount to torture or cruel, inhuman or degrading treatment.
27. The right to liberty and freedom from arbitrary detention as articulated under Article 9(1) of the ICCPR ensures to all persons the right to liberty and security of the person and prohibits any discrimination in the enjoyment and exercise of the right not to be subjected to arbitrary arrest or detention. The alleged secret detention of the Rohingya by the Thai army in 2009, the ongoing detention in 2011 and the indefinite detention of 54 boat people in Bangkok for over two years amounts to arbitrary and unlawful detention.
28. The rights to seek and to enjoy asylum and not to be subjected to refoulement are entrenched principles of customary international law. Furthermore, Article 3 of CAT obligates states not to *refouler* a person "to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." Accordingly, everyone has the right to seek and to enjoy in other countries asylum from persecution and no persons may be deported to a territory where they would be at risk of persecution. Many of the Rohingya irregular migrants deported back to Burma may have had legitimate asylum claims. While it is understood that Thailand has not ratified the 1951 Refugee Convention or its protocol, ERT believes that Thailand should hand over anyone seeking asylum to the UNHCR.

Recommendations

29. ERT urges the government of Thailand to review its past actions in light of its human rights obligations by the Rohingya, to rectify past violations, to bring to justice offenders and to ensure that future practice is in keeping with its human rights obligations.
30. With regard to immigration policy, ERT urges the government of Thailand to:
 - a. review the existing policy and establish and implement a new immigration policy which is consistent with Thailand's international human rights obligations, which does not discriminate against the Rohingya or any other stateless person or irregular migrant or asylum seeker and which ensures that everyone is provided with effective access to lawful immigration procedures conducted by civilian authorities;
 - b. ensure that irregular immigration and internal security are viewed as distinct issues, and that the Thai military plays no future role in detaining and expelling irregular migrants;
 - c. stop all deportations (both informal and formal) of Rohingya into Burma, and to respect the customary international law principle of *non-refoulement* in this regard; and
 - d. immediately cease push-backs into sea and take steps to ensure that this practice is not repeated.
31. With regard to detention, ERT urges the government of Thailand to:
 - a. Immediately release the 54 boat people still in detention in Bangkok; and
 - b. Review its existing policy of detaining Rohingya boat people upon arrest, and because of their failure to pay fines.
32. With regard to the equal treatment of all persons, ERT urges the government of Thailand to take steps to adopt comprehensive anti-discrimination legislation and policies.
33. With regard to other international obligations, ERT urges the government of Thailand to:
 - a. ratify the 1951 Refugee Convention or its Protocol, and in the interim, to establish a transparent system to process asylum applications and carry out status determination in cooperation with the UNHCR; and
 - b. ratify the 1954 Convention relating to the Status of Stateless Persons.