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Dear Prime Minister,

I write on behalf of The Equal Rights Trust (ERT), 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 is deeply concerned regarding recent consistent and corroborated reports of incommunicado detention and forced expulsion of irregular Rohingya migrants originally from Myanmar. In the most recent incident reported by the BBC News today, the Thai military has forcibly expelled 126 Rohingya into international waters, despite repeated requests by the UNHCR to be given access to this group.¹ To comply with its international law commitments, Thailand must immediately mount a rescue mission and bring all the Rohingya to safety, treating them humanely and with respect for their dignity; providing them, as a first step, with adequate accommodation, sustenance and medical treatment.

This disturbing development has occurred in the wake of the much reported incommunicado detention and forcible expulsion of approximately 990 Rohingya on at least two separate occasions in December 2008. The victims of all three reported expulsions are stateless persons, who do not benefit from the protection of any state and are repeatedly discriminated against by multiple actors. The first two expulsions resulted in over 530 persons dying or being reported missing. We fear that a similar fate may befall many of the 126 victims of the most recent expulsion.

These actions of the Thai authorities raise grave concerns regarding violations of the right to equality and non-discrimination, the right to life, the prohibition of torture or cruel, inhuman or degrading treatment or punishment, the right to seek and to enjoy asylum, the principle of *non-refoulement* and the rights to basic health, food and shelter under international law.

Sequence of Events

According to reliable information available to ERT, in December, the Thai military forcibly set large groups of Rohingya adrift on international waters on two separate occasions. It is unknown if there have been any other such forced expulsions of Rohingya.

¹ Head, Jonathan. "Thailand defies UN over Migrants", BBC News, January 23, 2009, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/7846570.stm>, accessed on 23 January 2009.

The first reported forced expulsion on 11 December 2008 resulted in approximately 580 Rohingya being cast out to sea. Over 230 of them are reportedly missing or dead. The Rohingya who had travelled from Bangladesh to Thailand in several boats, were apprehended and detained incommunicado by the Thai military for two days, before being forced onto four severely overcrowded boats – the motors of which had been removed – which were cast adrift on international waters. One boat was found on 7 January 2009 by the Indonesian navy close to Sabang Island, Aceh province, with more than 190 survivors on board. A second boat with approximately 150 survivors was rescued by the Indian coast-guard on 10 January 2009 in close proximity of Tillanchang Island, Andaman & Nicobar. According to the accounts of the survivors on the second boat, about 20 persons died during this voyage. Two boats with an estimated total of nearly 220 men are reportedly missing.

Both groups of survivors who were interrogated by Indonesian and Indian authorities corroborate the account that the Rohingya were detained by the Thai military for two days before being divided and forced onto the boats, towed onto international waters and abandoned there. According to Colonel Yanuwar of the Indonesian navy, the Rohingya men had been adrift at sea for 28 days before being rescued.

The second forced expulsion involving over 400 persons took place in the same manner on 18 December 2008. This group was towed in a single barge and abandoned in international waters north of Thailand's Koh Surin Island. Over 300 of this group are presumed missing or dead. According to Indian interrogation reports of the survivors who reached the Andaman Islands, the Rohingya were forced onto an unpowered barge which was towed by the Thai military for 18 hours before being abandoned in international waters. The boat was adrift until the last week of December, during which time, six persons died. When they saw lights on a shore line, on or about 25 December 2008, approximately 300 attempted to swim for shore, of which only 13 made it alive. Those who remained onboard were later rescued by the Indian coastguard on 27 December 2008.²

The third forced expulsion which was reported today by the BBC News, was of 126 Rohingya, who were in incommunicado detention. According to ERT's sources, 46 Rohingya landed on Thailand's Andaman coast on Friday, 16 January 2009. These persons were immediately taken into custody by the Thai navy, before being handed over to the army in Ranong. The UNHCR believed that in addition to this most recent group, another 80 Rohingya boat persons were also being detained by the Thai military, bringing the total number of persons in incommunicado detention to 126. The UNHCR requested access to this group, but in an apparent act of blatant disregard of international human rights law, the Thai military have reportedly pushed this group back to sea.

The Treatment of the Victims of the Forced Expulsion

The reports compiled from the survivors of the second forced expulsion by both the Indian authorities³ and ERT sources contain the following allegations:

The Rohingya arrived in Thailand in five separate boats. One such group was placed in incommunicado detention on or about 8 December 2008 on the island of Koh Sain Daeng after being

² Young, Ian. "A timeline of events in the Andaman Sea", *South China Morning Post*, 18 January 2009, available at <http://www.scmp.com/portal/site/SCMP/menuitem.2af62ecb329d3d7733492d9253a0a0a0/?vgnnextoid=72489ddcb75ee110VgnVCM100000360a0a0aRCRD&ss=Asia+%26+World&s=News>, accessed on 19 January 2009.

³ See for example, *South China Morning Post*. "Four people were shot dead randomly", 19 January 2009, available at <http://www.scmp.com/portal/site/SCMP/menuitem.2af62ecb329d3d7733492d9253a0a0a0/?vgnnextoid=c7889ddcb75ee110VgnVCM100000360a0a0aRCRD&ss=Asia+%26+World&s=News>, accessed on 19 January 2009.

apprehended by the Thai military. On December 17 or 18, 'senior Thai officials' arrived on the island and in their presence, the Rohingya – whose hands were tied, were forced onto a large wooden barge with no engine, sails or oars by uniformed Thai army personnel.

As they were being forcibly led onto the barge, four Rohingya were shot dead randomly, and their bodies were thrown into the sea. A child aged 14 – 15 years whose hands were tied, was also thrown into the sea where he drowned.

Over 400 persons were forced onto the barge – severely overcrowding it. Seven to eight armed uniformed personnel were also present on the barge, which was towed out to sea for approximately 18 hours, after which they were abandoned in international waters.

The people on the boat were provided with only four sacks of boiled rice and two drums of water as means of sustenance. The barge drifted with the wind and current, and as the days passed, six persons died.

Continuing Trend of Discrimination and the involvement of the Thai military

Spurned by persecution as well as poverty, the irregular immigration of Rohingya into Thailand and other countries in the region has been an ongoing reality for many years. Whilst there are other groups which enter Thailand illegally, ERT is aware that there has been a growing trend of discriminatory treatment by Thai officials towards Rohingya irregular migrants in particular. Past practices of informal deportation of Rohingya into Myanmar or Malaysia by handing them over to brokers, has been well documented.⁴ A more formal intention to detain and deport Rohingya was articulated by Thai officials in a Bangkok Post article in March 2008.⁵ According to the reported statements, the Rohingya who enter Thailand illegally would be detained in two undisclosed islands in Phangnga, they would be given one meal a day and would be deported. Then Prime Minister Samak Sundaravej buttressed this announcement with a statement of his own, according to which the navy was exploring a deserted island to use as a detention base for Rohingya who illegally enter Thailand.⁶

With the establishment of the Internal Security Operations Command (ISOC) which operates directly under the Thai Prime Minister's Office in 2008,⁷ there has been concern that the issue of irregular migration of the Rohingya would be viewed as an internal security issue and dealt with by military means instead of existing civilian administration procedures.

In the light of these past events, the recent alleged incommunicado detention and forced expulsion of Rohingya by the Thai military, is cause for grave concern. The victims of this practice are all stateless persons, who do not benefit from the protection of any state and are repeatedly discriminated against by multiple actors. Furthermore, many of the Rohingya who suffered and even died as a direct result of the implementation of this unlawful practice may have been refugees fleeing persecution and acute discrimination suffered in their homeland.

ERT sources have raised concern that the ISOC – which reports directly to the Thai Prime Minister, is responsible for the secret detention and forced expulsions of the Rohingya. Whilst the Thai military initially denied involvement in the forced expulsion, published photographic evidence establishes the extent of the role played by the military.

⁴ See for example Lewa, Chris. "Asia's new boat people", *Forced Migration Review*, Issue 30, April 2008, pp 40 – 42, available at <http://www.fmreview.org/FMRpdfs/FMR30/FMR30.pdf>, accessed on 22 January 2009.

⁵ Nookaew, Wimon & ChuenniranAchataya. "Rohingya to face crackdown", *Bangkok Post*, 13 March 2008.

⁶ Nanuam, Wassana. "Samak wants Rohingya put on an island", *Bangkok Post*, 29 March 2008.

⁷ Act on Internal Security 2008, unofficial translation of the Act as published in the Government Gazette, 125, 39 a, 27 February 2008, pp. 33-44.

Indeed, Thai army officers have repeatedly stated that the Rohingya pose an internal security threat, due to the speculated likelihood of them joining the ongoing so-called southern Muslim insurgency. However, as far as ERT is aware, no evidence has been made public to validate this claim. Furthermore, even in the event of an established link between some Rohingya irregular migrants and the southern insurgency being proven, this does not in any way justify the illegal detention and inhuman, cruel, degrading and ultimately life threatening treatment meted out to the Rohingya irregular migrants by the Thai military.

Violations of International Human Rights Law

The treatment of the Rohingya – their arbitrary and unlawful detention, forced expulsion and abandonment at sea with insufficient provisions in a dangerously overcrowded and ill-equipped vessel – is in direct and serious violation of Thailand’s obligations under international law. Thailand’s accession to the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of all forms of Racial Discrimination (CERD) signifies a strong commitment towards promoting, protecting, fulfilling and upholding the human rights of all persons within the territory of Thailand, and imposes binding obligations on the government of Thailand to shape accordingly its legislation, policies, attitudes and conduct.

The alleged conduct of the Thai military points to their blatant disregard and violation of established international human rights law. Significantly, all the human rights provisions cited below are of universal application, the benefits of which are not limited to citizens of Thailand, but to all persons within the territory and subject to the jurisdiction of Thailand.

The right to non-discrimination and equality under Articles 2(1) and 2(2) of the ICCPR and ICESCR respectively, commits States to guarantee Covenant rights without discrimination on various grounds including race and national or social origin. Furthermore, Article 26 of ICCPR provides for an independent right to equal treatment and non-discrimination.

The right to be free from torture or cruel, inhuman or degrading treatment or punishment under Article 7 of the ICCPR is an absolute right which cannot be derogated from in any circumstances. The published photographic evidence which shows the Rohingya being forcibly detained, lined up on the beach and forced to lie down at gun point in the presence of onlookers including tourists, as well as the survivors’ allegations that they were forced onto overcrowded ill-equipped boats, towed onto international waters with little provisions and abandoned there, are all acts which collectively have undermined the dignity of the victims and would amount to torture or cruel, inhuman or degrading treatment.

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. Furthermore, Article 9(5) articulates that any persons unlawfully detained have an enforceable right to compensation. The alleged secret detention of the Rohingya by the army amounts to arbitrary and unlawful detention in violation of Thailand’s human rights obligations.

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, four persons were arbitrarily shot and killed by the Thai military whilst forcing them onto the boats and a fifth child was thrown overboard with his hands tied. These serious allegations of extra-judicial killings would highlight the lack of respect for life by the military personnel involved.

Furthermore, the personnel involved in allegedly abandoning the groups of Rohingya in ill-equipped boats, with hardly any provision of food and drink, and forcing them adrift, could not but have been unaware that those on board would have little chance of survival.

The right to food and shelter is protected by Article 11 of the ICESCR. The act of allegedly severely overcrowding a barge and forcing it on an indefinite sea voyage with insufficient provision of food and drink, would be in contravention of Thailand's obligations under this right.

The rights to seek and to enjoy asylum and not to be subjected to refoulement are entrenched principle of customary international law. Accordingly, everyone has the right to seek and to enjoy in other countries asylum from persecution and no persons may be expelled into a territory where they would be at risk of persecution. Many of the Rohingya irregular migrants may have had legitimate asylum claims. Whilst 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. Although the Thai military did not directly expel the Rohingya into a territory where they would face persecution or the threat of *refoulement*, the alleged act of abandoning them in international waters, with a realistic possibility of the boat entering, or any survivors drifting into, territorial waters of neighbouring Myanmar where they would be at risk of persecution, was an act which blatantly violated the spirit of the principle of *non-refoulement*.

Recommendations

In view of the life-threatening situation that the most recent group of 126 Rohingya has been subjected to by the Thai military, ERT would like to remind you that under international law the well-being and safety of these persons remains the responsibility of the Thai government. Therefore, ERT urges you, in the strongest terms, to immediately begin search and rescue operations to find and bring back to safety the victims of this forced expulsion. Once rescued, the victims should immediately be:

- transferred into the custody of civilian authorities;
- provided with immediate access to legal representation;
- provided with adequate shelter, food and medical care;
- granted full access to UNHCR officials, to enable appropriate status determination.

With regard to the immigration policy of Thailand, ERT urges you to:

- 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;
- 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.

ERT urges you, as host in Bangkok of next month's summit of the Association of Southeast Asian Nations (ASEAN), to address this issue of continuing discrimination of the stateless Rohingya with the intention of achieving regional consensus and commitment towards ensuring that the internationally warranted rights of the Rohingya and other migrant workers, asylum-seekers and stateless persons are effectively protected.

ERT welcomes statements made by your government expressing your commitment to investigate the reported events. As all circumstances of the alleged extrajudicial killings, incommunicado detention, forced expulsion and discrimination need to be fully established, international law

requires that your investigation must be prompt, impartial, thorough and independent.⁸ This investigation should particularly focus on the following:

- the full extent of the role of the Thai military, including the role of all superior officers, in the reported events as well as in the practice of secret detention of Rohingya;
- all circumstances in which the reported extrajudicial execution of five Rohingya by military personnel took place;
- all conduct and instances which amount to torture or cruel, inhuman or degrading treatment or punishment.

The report of this investigation should be made public and anyone found responsible should be brought to justice. You must ensure that all victims are fairly compensated. Compensation should also be provided to the families of those who died or are presumed missing.

ERT notes that Thailand is not a signatory to the 1951 Refugee Convention or its Protocol. Consequently, ERT urges Thailand to accede to the Convention and its Protocol, and in the interim, to establish a transparent system to process asylum applications in cooperation with the UNHCR.

According to ERT sources, more boats carrying Rohingya have left the coast of Bangladesh for Thailand in the first weeks of January. Given the likelihood that they could reach Thai waters in the coming days, ERT urges you to publicly give your assurance that everyone will be treated humanely and in accordance with Thailand's international human rights obligations.

Finally, The Equal Rights Trust believes that the democratic processes, the peaceful and equitable development of all people in Thailand and the treatment of irregular migrants would be strengthened by the adoption of a comprehensive and holistic anti-discrimination legislation in line with the ERT Declaration of Principles on Equality.⁹ Please find a copy of this document enclosed for your information. We would urge you to ensure that all relevant civil society organizations, and all those directly affected by discriminatory practices and acts effectively participate, through information, consultation and engagement in the drafting of the legislation. The Trust would be willing to extend its expertise and technical assistance to your government and civil society organisations in Thailand to facilitate your efforts in developing comprehensive and effective national anti-discrimination legislation.

Yours sincerely,

Dimitrina Petrova
Executive Director

⁸ See for example, United Nations. "Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions", adopted by the Economic and Social Council in its resolution 1989/65 of 24 May 1989, Principles 9 – 17, available at <http://www.unhchr.ch/html/menu3/b/54.htm>, accessed on 22 January 2009.

⁹ *The Declaration on the Principles of Equality* contains 27 principles on 6 key themes: equality, non discrimination; scope and rights-holders; obligations; enforcement; prohibitions. *The Principles* were drafted by 128 prominent legal practitioners, academics and human rights activists from 44 countries. The Principles are available at <http://www.equalrightstrust.org/endorse/index.htm>, accessed on 22 January 2009.