

2023

December 12

To:

Mr. Srettha Thavisin
Prime Minister of Thailand
Government House 1
Nakhon Pathom Road
Dusit, Dusit District, Bangkok 10100

Joint Letter

To: Mr. Srettha Thavisin
Prime Minister of Thailand

Re: Request to exempt
National Screening Mechanism
applicants from Prosecution
under the Immigration Act

Joint

Let

“ We, the undersigned, write to you today regarding the implementation of the National Screening Mechanism (NSM) for protected person status. Specifically, we request that you and your Cabinet use the power granted under Section 17 of the Immigration Act 1979 to exempt individuals applying for, or undergoing, NSM screening from arrest, detention, and prosecution under the Immigration Act... ”

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Re: Request to exempt National Screening Mechanism applicants from Prosecution under the Immigration Act

Dear Prime Minister Srettha Thavisin,

We, the undersigned, write to you today regarding the implementation of the National Screening Mechanism (NSM) for protected person status. Specifically, we request that you and your Cabinet use the power granted under Section 17 of the Immigration Act 1979 to exempt individuals applying for, or undergoing, NSM screening from arrest, detention, and prosecution under the Immigration Act. Such a step would address the disconnect between the principle of the NSM to screen and provide “protected person” status to those who qualify and the Immigration Act’s purpose to treat all persons irregularly in Thailand as criminals to be arrested, detained, and deported.

On the eve of the Global Refugee Forum in Geneva, where we look forward to Thailand making commitments towards the realization of the Global Compact on Refugees (GCR), taking this step to exempt individuals who are seeking protection under the NSM from prosecution would signal Thailand’s commitment to the GCR framework for cooperation.

The NSM was established by the “Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562,” (the NSM Regulation) published in the Royal Gazette on December 25, 2019. According to the regulation, the government established the NSM to offer protected person status to foreign nationals in Thailand who are “unable or unwilling to return to his/her country of origin due to a reasonable ground [sic] that they would suffer danger due to persecution as determined by the [NSM] Committee.” On March 27, 2023, the government published the “Notification of the Protected Person Screening Committee on the Criteria, Methods and Conditions for Protected Person Screening,” (the NSM Notification) in the Royal Gazette, indicating that the NSM would welcome applicants as of September 22, 2023.

Although Clause 15 of the NSM Regulation defers the repatriation of individuals claiming protected person status, the regulation does not exempt NSM applicants from other actions taken under the Immigration Act. Moreover, given the legally subordinate nature of the NSM Regulation compared to the Immigration Act, in the current situation the majority of NSM applicants would face arrest, detention, and prosecution under the

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CC

Anutin Charnvirakul, Deputy Prime Minister and Minister of Interior
Parnpree Bahiddha-Nukara, Deputy Prime Minister and Minister for Foreign Affairs
Pol. Col. Tawee Sodsong, Minister for Justice
Pol. Gen. Torsak Sukvimol, Commander-in-Chief, Royal Thai Police
The Parliamentary Sub-Committee to Study Approaches to Solving Problems Related to Refugees and Those Fleeing Armed Conflict along the Thai-Myanmar Border, House of Representatives
The Parliamentary Sub-Committee to Study Approaches to Finding Sustainable Solutions to Irregular Migration, House of Representatives

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Immigration Act prior to even being considered under the NSM process. This situation not only goes against the stated aims and intentions of the NSM, but also discourages and disincentivizes potential NSM applicants, and places an unnecessary burden on Thailand's courts and system of immigration detention to cope with NSM applicants.

Section 17 of the Immigration Act states that "In a special case, the Minister [of Interior], by the approval of the Council of Ministers, may permit any alien or any group of aliens to enter and remain in the Kingdom under certain conditions, or may grant exemption from complying with this Act in any case." To rectify the current legal situation of NSM applicants and potential applicants, we request that your government exercise the power granted to it by Section 17 of the Immigration Act to exempt individuals applying for, or undergoing, NSM screening from all sections of the Immigration Act which would result in their arrest, detention, or prosecution.

As the Royal Thai Government prepares to recommit itself to the Global Compact on Refugees, we, the undersigned, look forward to working with your government to ensure a brighter future for all refugees in Thailand.

Thank you for your consideration of our request and we would welcome an opportunity to discuss this matter further with you or your staff. Please contact Patrick Phongsathorn at patrick.phongsathorn@fortifyrights.org and +66946968477 with any questions you might have about this request.



Refugee Rights Litigation Project