



# The Human Rights of **Stateless Rohingya** in Thailand

The Equal Rights Trust in partnership with  
The Institute of Human Rights and Peace Studies  
Mahidol University



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. Established as an advocacy organisation, resource centre and think tank, ERT focuses on the complex relationship between different types of discrimination, developing strategies for translating the principles of equality into practice.

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## Table of Contents

1. INTRODUCTION	3
1.1. Conceptual Framework	3
1.2. Common Themes and Challenges	4
1.3. The Rohingya in Thailand	5
2. THE INTERNATIONAL LEGAL FRAMEWORK	5
2.1. Equality and Non-discrimination	6
2.2. Statelessness and Refugee Law	7
2.3. The Role of the UNHCR	8
3. DETENTION AND DEPORTATION	8
3.1. Arrests and Deportations of the Long-term Population	9
3.2. Push-back, Detention and Deportation of Boat Migrants	9
3.3. The 2012-2013 Sailing Season	10
3.4. Human Trafficking and Smuggling	11
4. THE EXCLUSION OF ROHINGYA CHILDREN	12
4.1. The Right to an Identity – Birth Registration and Nationality	12
4.2. The Right to Education	13
4.3. The Right to the Highest Attainable Standard of Health	13
5. DENIAL OF THE RIGHT TO WORK AND RESULTING VULNERABILITIES	14
6. CONCLUSION: CHALLENGES AND RECOMMENDATIONS	15





## 1. INTRODUCTION

The Rohingya are an ethno-religious minority group from the Rakhine region, which today is encompassed within the borders of Myanmar and is adjacent to Bangladesh. The majority of Rohingya in Myanmar today are stateless, having been arbitrarily deprived of their nationality in 1982.<sup>1</sup> There is an estimated population of 1.4 million Rohingya in Rakhine State, much of which is concentrated in North Rakhine State where the Rohingya are in the majority.<sup>2</sup> The remainder live in minority communities scattered throughout Rakhine State. Furthermore, over one million Rohingya live as refugees and migrants (most of them with no legal status) outside Myanmar.

The systematic discrimination, exclusion, abuse and arbitrary deprivation of nationality of the Rohingya in Myanmar over the past 40 years are well documented.<sup>3</sup> The Rohingya are now widely regarded as one of the most persecuted minorities in the world, and have travelled far and wide, seeking refuge and security. In addition to the steady flow of Rohingya refugees over several decades, there have been three mass exoduses from Myanmar into Bangladesh and beyond: in 1978, 1992 and most recently 2012-2013 as a result of organised mass scale violence against the Rohingya community in Myanmar. Bangladesh, India, Malaysia, Pakistan, Thailand and Saudi Arabia are among the countries to which the largest numbers have fled. For the vast majority, their suffering has not ended upon reaching new shores. Often these Rohingya migrants are not recognised and protected as refugees, but are marginalised and excluded; many live in poverty, often working illegally with no documentation, and are vulnerable to discrimination, violence, arbitrary treatment, exploitation, and deportation.

### 1.1. Conceptual Framework

This report takes as its conceptual framework the unified human rights perspective on equality which emphasises the integral role of equality and non-discrimination in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies.<sup>4</sup> The Equal Rights Trust (ERT) has been working on the Rohingya issue since 2008 – approaching it from this unified perspective, which is critical to developing strategies to protect the Rohingya and combat their statelessness.

In March 2011, ERT and the Institute of Human Rights and Peace Studies of Mahidol University (IHRP) began working together on a project to strengthen the human rights of Rohingya, both as stateless

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<sup>1</sup> *Burma Citizenship Law*, 15 October 1982, available at: <http://www.refworld.org/docid/3ae6b4f71b.html>.

<sup>2</sup> Médecins Sans Frontières, *10 years for the Rohingya refugees in Bangladesh: past, present and future*, MSF Holland, March 2002, available at: [http://www.doctorswithoutborders.org/publications/reports/2002/rohingya\\_report.pdf](http://www.doctorswithoutborders.org/publications/reports/2002/rohingya_report.pdf).

<sup>3</sup> See, for example, The Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*, ERT, July 2010, available at: <http://www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf>; National University of Ireland Galway, *Crimes Against Humanity in Western Burma: The Situation of the Rohingyas*, Irish Centre for Human Rights, 2010, available at: [http://www.burmacampaign.org.uk/images/uploads/ICHR\\_Rohingya\\_Report\\_2010.pdf](http://www.burmacampaign.org.uk/images/uploads/ICHR_Rohingya_Report_2010.pdf); The Arakan Project, *Forced Labour during the Arakan Crisis: an overview of forced labour practices in North Arakan, Burma*, June to August 2012, available at: [http://www.burmalibrary.org/docs14/Arakan\\_Project-FL-Arakan\\_crisis.pdf](http://www.burmalibrary.org/docs14/Arakan_Project-FL-Arakan_crisis.pdf); Human Rights Watch, *"All You Can Do Is Pray": Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, April 22, 2013; and Refugees International, *Myanmar: Protecting Minority Rights is Non-Negotiable*, May 29, 2013, available at: <http://refugeesinternational.org/policy/field-report/myanmar-protecting-minority-rights-non-negotiable>.

<sup>4</sup> The unified human rights perspective on equality is expressed in the Declaration of Principles on Equality, developed and launched by the Equal Rights Trust in 2008, following consultations with 128 human rights and equality experts from 47 countries in different regions of the world. See *Declaration of Principles on Equality*, The Equal Rights Trust, London 2008, available at: <http://www.equalrightstrust.org/ertdocumentbank/Pages%20from%20Declaration%20perfect%20principle.pdf>.

persons and as refugees. Grounded in research in six countries,<sup>5</sup> this project seeks to increase their human rights protection through advocacy, capacity building and coalition building at national, regional and international levels.<sup>6</sup> This report is one of the project's publications.

This report is informed by semi-structured interviews with over 20 stateless Rohingya living in Bangkok and six recently arrived Rohingya from Thailand in Kuala Lumpur, multiple meetings and interviews with experts working on the Rohingya issue, informal discussions with Rohingya over the course of the research and an extensive literature review and desk research.

A key aspect of the project is its regional focus: it includes not only Myanmar but also those countries in Southeast Asia and beyond to which Rohingya have fled. The long-term and widespread nature of the Rohingya crisis means that while recognising the individual responsibility of states to protect the human rights of all those who live within their territories and are subject to their jurisdictions, a just and sustainable solution can only be found if key states demonstrate a *collective* commitment to protect the Rohingya. The regional nature of the issue poses both opportunities and challenges. The opportunity is that if states act collectively, the burden will be eased: such an unprecedented process would serve as a blueprint for future regional cooperation. The challenge is both to stem irregular migration flows and ensure greater coordination among states and to ensure an increased willingness to protect the Rohingya.

## 1.2. Common Themes and Challenges

One of the advantages of conducting research in several countries has been the resultant ability to identify common trends, themes, issues and challenges. Moreover, identifying some of the key problems and issues which are faced regionally serves to contextualise the situation in Thailand.

***Protracted statelessness and lack of legal status*** – The Rohingya's statelessness and their lack of legal status go hand-in-hand and are mutually reinforcing. The situation is further compounded by the protracted nature of their displacement and statelessness. This protracted statelessness significantly impedes their enjoyment of rights, whether in Myanmar or in countries of flight such as Bangladesh, Malaysia and Thailand. Inside Myanmar, the Rohingya face travel restrictions, marriage restrictions, arbitrary taxation and all forms of discrimination as a result. In other countries, they have difficulties regularising their status, accessing employment, education and healthcare and face the risk of arrest, detention and deportation. With each passing year and each new generation, the disadvantage grows and the impact of malnutrition, illiteracy, lack of access to labour markets and healthcare, vulnerability to arbitrary arrest, violence and abuse, insecurity and forced migration becomes greater.

***Inequality and discrimination*** – The pervasive inequality and discrimination faced by the Rohingya is another fundamental challenge. The disadvantage of the Rohingya within Myanmar is entrenched by a system that discriminates against them on the basis of their ethnicity, religion and statelessness. The disadvantage faced by the Rohingya outside Myanmar stems from their lack of a legal status which is a direct result of, and compounded by, their statelessness. While levels of discrimination suffered by Rohingya in other countries vary both in terms of degree and substance, the following factors generally contribute to such discrimination:

- Most receiving countries have weak protection frameworks for refugees and often conflate forced migration to escape persecution with opportunistic economic migration.
- States consistently fail to recognise the Rohingya as stateless, or to respond to their protection needs accordingly.
- There is a regional stalemate as states are unwilling to take decisive protective action, as they fear it will become a "pull factor" and result in more Rohingya seeking asylum.

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<sup>5</sup> Bangladesh, Indonesia, Malaysia, Myanmar, Saudi Arabia and Thailand.

<sup>6</sup> For more about the project "Strengthening Human Rights Protection of the Rohingya", visit the Equal Rights Trust website: <http://www.equalrightstrust.org/rohingya/index.htm>.

There is a strong nexus between discrimination and other human rights violations. The majority of human rights abuses against the Rohingya either have a discriminatory basis or are exacerbated by discrimination.

***Forced migration, trafficking and smuggling*** – The majority of Rohingya, lacking documentation and unable to travel freely within Myanmar and internationally, are compelled to rely on the assistance of smugglers to escape persecution from Myanmar, which usually necessitates them making the hazardous boat journey from Bangladesh to countries in Southeast Asia. Many Rohingya who undertake the journey end up as victims of trafficking and are forced into bonded labour.

### **1.3. The Rohingya in Thailand**

For many decades, Thailand has played an important role in the Southeast Asian region providing a place of refuge for those fleeing violence and persecution – be they refugees from Cambodia, Laos and Vietnam in 1975 or those from the conflict regions in Myanmar. Additionally, hundreds of thousands of irregular migrants have entered Thailand in search of better economic prospects over the years. Consequently, Thailand has been faced with the challenging and delicate task of controlling its land and sea borders while also offering protection to victims of persecution. Perhaps as a result, the law and policy framework of both Thailand and of the entire region is focussed more on border control and less on protection, and consequently, refugees are not always identified as such and their human rights suffer as a result. The Rohingya are one such group.

The Rohingya use both land and sea routes to enter Thailand, with the sea route being the most popular. While for some Rohingya refugees Thailand is the final destination, the majority use it as a transit country on the journey from Myanmar and Bangladesh to Malaysia and Australia. In addition to those arriving by boat, Thailand is home to a relatively small yet significant population of some 3000 informally settled Rohingya, many of whom have lived in the country for over twenty years. The majority live in Bangkok with others spread around Mae Sot, Ranong and the southern provinces.<sup>7</sup>

## **2. THE INTERNATIONAL LEGAL FRAMEWORK**

Thailand is party to seven core international human rights instruments, namely: the International Covenant on Civil and Political Rights (ICCPR);<sup>8</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR);<sup>9</sup> the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);<sup>10</sup> the Convention on the Rights of the Child (CRC);<sup>11</sup> the Convention on the Elimination of All Forms of Racial Discrimination (CERD);<sup>12</sup> the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);<sup>13</sup> and the Convention on the Rights of

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<sup>7</sup> Thai Action Committee for Democracy in Burma and Sub-Committee on the Human Rights, Stateless Persons and Migrant Worker, Lawyer Council of Thailand, *Rohingyas: Stateless & Forgotten People: Fact-finding Report and Recommendations from the Roundtable Discussion on the Inhumane Push-Back of the Rohingya Boat People*, March 2009.

<sup>8</sup> International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), 1996 (ICCPR).

<sup>9</sup> International Covenant on Economic, Social and Cultural Rights, G.A. Res 2200A (XXI), 1976 (ICESCR).

<sup>10</sup> Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. A/RES/34/180, 1979 (CEDAW).

<sup>11</sup> Convention on the Rights of the Child, G.A. Res. A/RES/44/25, 1989 (CRC).

<sup>12</sup> International Convention on the Elimination of all Forms of Racial Discrimination, G.A. Res. A/RES/47/133, 2006 (CERD).

<sup>13</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. A/Res39/46, 1987 (CAT).

Persons with Disabilities (CRPD).<sup>14</sup> Thailand is also party to the UN Convention against Transnational Organised Crime (UNTOC) and its Protocols on Trafficking and Smuggling.<sup>15</sup>

As a member state of the Association of Southeast Asian Nations (ASEAN), the 2012 ASEAN Human Rights Declaration, a non-binding document which nonetheless is a reflection of the human rights consensus in the region, is relevant to Thailand.<sup>16</sup> Thailand is also an active member of the ASEAN Inter-governmental Commission on Human Rights (AICHR) and ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).<sup>17</sup>

Under these instruments, Thailand has a duty to protect the rights of refugees and stateless persons on its territory and subject to its jurisdiction. Thailand's strong treaty ratification record and the rights protections contained in the Thai Constitution are nonetheless undermined by poor implementation and the non-compliance of many of Thailand's domestic laws with its international obligations.

## 2.1. Equality and Non-discrimination

The rights to equality and non-discrimination are central and foundational principles of international human rights law. Article 2(1) of the ICCPR obligates state parties to ensure that Covenant rights are enjoyed by all without discrimination and Article 26 enshrines the right to equality and non-discrimination as "an autonomous right".<sup>18</sup> All other major international human rights treaties also have strong equality and non-discrimination provisions,<sup>19</sup> as does the ASEAN Human Rights Declaration.<sup>20</sup> Crucial to the Rohingya, the right to equality is a universal right which everyone is entitled to enjoy, regardless of their nationality or lack thereof.<sup>21</sup>

In conformity with international human rights law, Article 30 of the Constitution of the Kingdom of Thailand (2007) enshrines the right to equality and non-discrimination.<sup>22</sup> There is some disagreement among Thai constitutional law experts as to whether Constitutional rights and liberties apply to foreigners.<sup>23</sup> For the purpose of this report, the Thai Constitutional obligation to protect the right to

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<sup>14</sup> Convention on the Rights of Persons with Disabilities, G.A.Res.A/RES/61/106, 2006 (CRPD).

<sup>15</sup> United Nations Convention against Transnational Organised Crime, G.A. Res. 55/25, 2000 (UNTOC); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, G.A. Res. 55/25, 2000; Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, GA Res. 55/25, 2004.

<sup>16</sup> Association of Southeast Asian Nations (ASEAN) Human Rights Declaration, November 19, 2012, available at: <http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>.

<sup>17</sup> For more information on AICHR, see <http://www.asean.org/communities/asean-political-security-community/category/asean-intergovernmental-commission-on-human-rights-aichr>. For more information on ACWC, see <http://www.asean.org/communities/asean-socio-cultural-community/category/acwc>.

<sup>18</sup> UN Human Rights Committee, General Comment No. 18: Non-discrimination, 10/11/1989.

<sup>19</sup> See for example ICESCR, CERD, CEDAW, CRC, CAT, CRPD (see above, notes 8 to 14).

<sup>20</sup> See above, note 16, Articles 1, 2 and 3.

<sup>21</sup> See UN Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination Against Non-Citizens*, 01/10/2004; UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, Art. 2, Para. 2, E/C.12/GC/20, 25 May 2009, Para. 30; and UN Human Rights Committee, *General Comment No. 15: The position of aliens under the Covenant*, 11/04/86, CCPR, Twenty-Seventh Session, Para. 1–2.

<sup>22</sup> 2007 Constitution of the Kingdom of Thailand, Article 30, Para. 1 and 3.

<sup>23</sup> On the one hand, Dr. Yud Saeng-uthai, argues the term "Thai people" in Article 2(3) of the Constitution reflects an exclusive relationship between the state and its nationals. (See Yud Saeng-uthai, *Constitutional Law*, Thammasat University Press, 1963, p. 103.) On the other hand, Dr. Bunjerd Singkaneti argues that everyone is entitled to exercise the human rights guaranteed by the Constitution, regardless of nationality. (See Singkaneti B., *Basic Principle of Rights to Liberty and Human Dignity*, Bangkok, Winyuchon, 2009, p. 62.)



equality and non-discrimination of all persons and other fundamental rights guarantees have been interpreted in line with its international obligations. This approach leads to the conclusion that non-nationals including stateless Rohingya are entitled to the protection of Constitutional rights.

## 2.2. Statelessness and Refugee Law

The 1954 Convention Relating to the Status of Stateless Persons defines a stateless person as someone “who is not considered as a national by any state under the operation of its law”.<sup>24</sup> This definition is now part of customary international law,<sup>25</sup> and thus applies also to states not party to the Convention.<sup>26</sup> In addition to being stateless, the majority of Rohingya who have fled Myanmar are refugees and thus have a right to protection under international law, and specifically the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.<sup>27</sup>

Although Thailand is not party to either the statelessness or refugee conventions, many of the rights enshrined in these conventions are now also part of international human rights law. For example, the principle of *non-refoulement* – which prohibits the removal of persons to states where there is a substantial risk of persecution or irreparable harm – is enshrined in both the CAT and the ICCPR.<sup>28</sup> Furthermore, Article 22 of the CRC protects the rights of asylum seeking and refugee children and obligates states to protect them and cooperate with the UN in this regard.

However, over the years, the Thai government has regarded refugee situations as temporary humanitarian issues to be handled from the purview of foreign affairs, with protection being the responsibility not of Thailand but of the international community, with Thailand contributing *ad hoc* assistance as a member of that community. As such, the country lacks permanent legal and administrative frameworks for determining asylum claims and protecting refugee rights. Consequently, its response to refugees has been described as “*ad hoc* and inadequate”.<sup>29</sup>

In the absence of a domestic refugee law framework, the Immigration Act of 1979 regulates all foreigners entering the state’s territory, including refugees. While Thailand has for decades accommodated persons displaced by protracted conflict in Myanmar in temporary camps along the Myanmar-Thailand border, the country does not formally recognise refugees who live outside these camps. Instead, there appears to be an effort to move refugees and asylum seekers in other parts of the country to the border camps, including through the employment of strategies such as immigration raids and detention. Urban refugees, including the Rohingya, are thus regarded as “illegal migrants” and on this basis are subject to arrest, detention and deportation under the Immigration Act.<sup>30</sup> This policy places the Rohingya at a disadvantage vis-à-vis Burmese refugees in border camps and is therefore discriminatory. It is also inconsistent with the principle of *non-refoulement*.

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<sup>24</sup> United Nations Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, 1954, Article 1(1).

<sup>25</sup> International Law Commission, *Draft Articles on Diplomatic Protection with Commentaries*, 58<sup>th</sup> session, 2006, p. 49, available at: [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_8\\_2006.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_8_2006.pdf).

<sup>26</sup> The UN High Commissioner for Refugees, *Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, 20 February 2012, HCR/GS/12/01, available at: <http://www.unhcr.org/refworld/docid/4f4371b82.html>.

<sup>27</sup> United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, 1951.

<sup>28</sup> See Article 3 of the CAT (see above, note 13), and Article 2 in conjunction with Articles 6 (right to life) and 7 (freedom from torture) of the ICCPR (see above, note 8), as authoritatively interpreted by the Human Rights Committee in its General Comment No. 31, *The Nature of the General Legal Obligation on State Parties to the Covenant*, Eightieth Session, 2004.

<sup>29</sup> Human Rights Watch, *Ad hoc and Inadequate: Thailand’s Treatment of Refugees and Asylum Seekers*, Human Rights Watch, September 2012.

<sup>30</sup> Thailand Immigration Act, chapter 6 section 54 states that “any alien who enters or comes to stay in the Kingdom without permission or when such permission expires or is revoked, the competent official will deport such alien out of the Kingdom.”

### 2.3. The Role of the UNHCR

The UNHCR has been operating in Thailand for four decades.<sup>31</sup> However, as Thailand is not party to the refugee and statelessness conventions, the UNHCR's operations in Thailand do not have an international law basis. This has weakened the ability of the agency to provide protection to the Rohingya and other refugees and stateless persons in the country.<sup>32</sup> It must be noted that the CRC (Article 22(1) and (2)) requires states to co-operate with UN agencies to protect asylum seeking and refugee children. The extent to which Thailand has cooperated with the UNHCR in accordance with this provision is open to debate.

The Thai Provincial Admissions Board assumed sole control of refugee status determination for all asylum seekers from Myanmar in 2005. Consequently, the UNHCR is not permitted to screen and provide protection to the Rohingya.<sup>33</sup> Unfortunately, according to interviewees, the UNHCR has failed to communicate clearly to the Rohingya where they stand as a result. Responding to this situation, the UN Committee on the Elimination of Racial Discrimination recommended that Thailand give the Rohingya access to the UNHCR and to registration through Thailand's Provincial Admissions Board.<sup>34</sup>

Another issue is the non-recognition by some Thai police of UNHCR identity cards provided to refugees registered by the agency as proof that they are persons of concern to the UNHCR. For many Rohingya, this is the only form of documentation they have. Many Rohingya said that UNHCR identity cards did not protect them from arrest, harassment and extortion by the police.

### 3. DETENTION AND DEPORTATION

As irregular migrants in a country that does not recognise the rights of refugees, the Rohingya in Thailand experience constant threats to their liberty and security when entering, living, working and travelling in the country. Thailand's obligation under international law, to protect the liberty and security of all persons, is prescribed in the ICCPR.<sup>35</sup> Importantly, Article 9(4) entitles anyone deprived of their liberty to take proceedings before a court. This right applies equally to all persons regardless of their status<sup>36</sup> and regardless of the form of deprivation of liberty.<sup>37</sup> Despite Thailand's obligations in this regard, detainees in the country do not have a right of access to the courts, which increases the likelihood of arbitrary detention. Furthermore, according to international law standards, detention would be arbitrary and therefore unlawful unless it is: "(i) provided for by national law; (ii) carried out in pursuit of a legitimate objective; (iii) non-discriminatory; (iv) necessary; (v) proportionate and reasonable; and (vi) carried out in accordance with the procedural and substantive safeguards of

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<sup>31</sup> In 1975, when faced with an influx of hundreds of thousands of refugees from Cambodia, Laos and Vietnam, the Thai government invited the agency into the country.

<sup>32</sup> For an overview of UNHCR's operations in Thailand see the 2014 UNHCR country operations profile on Thailand, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e489646>.

<sup>33</sup> Human Rights Watch, *Thailand: End Inhumane Detention of Rohingya: Provide Asylum Seekers Access to UN Refugee Agency*, Human Rights Watch News, June 4, 2013.

<sup>34</sup> UN Committee on the Elimination of Racial Discrimination, *Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination: list of themes to be taken up in connection with the consideration of the initial to 3rd periodic reports of Thailand* (CERD/C/THA/1-3), July 2012.

<sup>35</sup> See above, note 8, Article 9. See also Article 12 of the ASEAN Human Rights Declaration in this regard (see above note 16).

<sup>36</sup> UN Human Rights Committee, *General Comment No. 32: Right to equality before courts and tribunals and to fair trial (Article 14)*, UN Doc. CCPR/C/GC/32, 2007, para. 9.

<sup>37</sup> UN Human Rights Committee, *General Comment No. 8: Article 9, Right to liberty and security of persons*, UN Doc. CCPR 1982, Para. 1; UN Human Rights Committee, *General Comment No. 15: The Position of Aliens under the Covenant*, UN Doc. CCPR, 1986, Para. 9.

international law”.<sup>38</sup> The Thai Immigration Act also allows indefinite detention, in contravention of principles of international law.<sup>39</sup> Thai law does provide for the protection of children from detention.<sup>40</sup> However, in reality, a number of Rohingya children have been detained by Thai authorities.

### 3.1. Arrests and Deportations of the Long-term Population

Almost all long-term Rohingya migrants interviewed had experienced police harassment and arrest, and most had been deported at least once during their time in Thailand. Several had been deported multiple times and had subsequently made their way back to Bangkok, illustrating the cycle of arrest and deportation that has become a common experience among the settled Rohingya community. One respondent claimed to have been arrested about 50 times in his 34 years in Thailand, while another had been deported nearly 30 times since 1995. Each time, he would stay for a few days in the forest across the border before being smuggled back into Thailand.<sup>41</sup>

### 3.2. Push-back, Detention and Deportation of Boat Migrants

Measures taken by Thai authorities to deter boat migration, including boat “push-backs”, “helping on” boats,<sup>42</sup> detention and informal overland deportations, have implications on the right to liberty and security of the person, the right to life, freedom from torture, freedom of movement, the principle of *non-refoulement* and the right to seek asylum. It must be noted that “deportation” in this context is not an official policy or legal procedure but rather an informal process.

An estimated 6,000 people made this boat journey during the 2008-2009 sailing season,<sup>43</sup> when Thailand received international condemnation for “pushing back” over 1,100 persons on several boats out to sea with little food and water and no working engines. Three hundred are said to have died.<sup>44</sup> In the midst of international criticism, Thai authorities opted to detain 79 passengers (a mixed group of Rohingya and Bangladeshis, including 12 children) of a final boat that arrived in January 2009. Two detainees aged 15 and 18 died in the Ranong Immigration Detention Centre.<sup>45</sup> The rest were transferred to the Immigration Detention Centre in Bangkok where they remained for over two years without being given any information on what would happen to them.

Subsequent years have seen more boats arriving and varying push-back, help on and land deportation policies implemented. Rohingya numbering in the low hundreds were intercepted in southern

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<sup>38</sup> The Equal Rights Trust, *Guidelines to Protect Stateless Persons from Arbitrary Detention*, Guideline 25, available at: <http://www.equalrightstrust.org/ertdocumentbank/guidelines%20complete.pdf>.

<sup>39</sup> Thailand Immigration Act 1979, chapter 6, section 54.

<sup>40</sup> Child Protection Act of Thailand B.E. 2546, Article 32 and 33, available at: <http://www.refworld.org/docid/46b2f91f2.html>.

<sup>41</sup> ERT and IHRP Interview with a 46-year-old Rohingya man and his 10-year-old daughter, May 27, 2012, Bangkok.

<sup>42</sup> “Push backs” refers to the practice of towing out into sea, boats of refugees and irregular migrants, often without adequate food and water and in some instances without engines. “helping on” refers to the similar but more humane practice of intercepting boats in the sea, not allowing them land but moving them on to other countries, often after providing them with supplies.

<sup>43</sup> The Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*, The Equal Rights Trust, July 2010, p. 160.

<sup>44</sup> For a detailed account of push-backs and their repercussions during the 2008-2009 sailing season, *ibid.*, pp. 159-165. See also: The Equal Rights Trust, *Letter to the Prime Minister of Thailand*, 23 January 2009, available at: <http://www.equalrightstrust.org/ertdocumentbank/Letter%20to%20Prime%20Minister%20of%20Thailand.pdf>.

<sup>45</sup> The Equal Rights Trust, *Stakeholder Submission to the Universal Periodic Review on Thailand*, 2011 A/HRC/WG.6/12/THA/1, available at: [http://www.equalrightstrust.org/ertdocumentbank/Thailand\\_UPR\\_Submission\\_140311.pdf](http://www.equalrightstrust.org/ertdocumentbank/Thailand_UPR_Submission_140311.pdf).

Thailand in early 2011 and detained briefly before being deported to Myanmar.<sup>46</sup> Subsequently, the UN Committee on the Elimination of Racial Discrimination expressed concern over push-backs and deportations by the Thai navy and urged the government to prevent any further expulsion of Rohingya asylum seekers.<sup>47</sup> In March 2012, the number of boat arrivals increased, and around 2,490 boat people were arrested near Ranong and Phan Nga and another 2,552 people in 25 boats were “helped on” to destinations outside of Thailand.<sup>48</sup> Those arrested were informally deported over land to Myanmar.

### 3.3. The 2012-2013 Sailing Season

On 7 February 2013, the Thai government reported that 5,899 Rohingya had arrived since October 2012,<sup>49</sup> but many more are believed to have made the journey during this time. The Arakan Project which monitors boat movements estimates that between June 2012 and June 2013, 37,000 people boarded boats from northern Rakhine, Sittwe and Bangladesh. While the majority were Rohingya, this number included a growing number of Bangladeshis as well.<sup>50</sup> This spike in boat arrivals corresponded to the heightened crisis in Myanmar’s Rakhine State since July 2012. The violence also resulted in an increase in women and children making the journey.

Understandably, the Thai authorities were not prepared for this influx and their response has been *ad hoc*, varied and unpredictable, reflecting the country’s difficulty in balancing humanitarian obligations with concerns over immigration and border security. During the 2012-2013 sailing season, boats have been subject to one of three practices: brief detention and overland deportation; interception and “help on”; or the provision of some form of shelter and detention. The practice of “helping on” usually entails interception in sea and the provision of food and water before being towed out to sea.

The approximately 2000 Rohingya who were allowed entry into the country in 2013 were treated as “illegal migrants” and were detained in immigration detention centres and shelters throughout Thailand, mostly in the country’s southernmost provinces as well as in other locations in Kanchanaburi, Mukdahan and Ubon Ratchathani.<sup>51</sup>

Conditions of makeshift, government-run shelters housing women and children have been largely acceptable, with outdoor spaces and sufficient space. However, conditions in immigration detention centres housing men are much worse. Reports from one such centre in Phang Nga have shown 276 men, crammed in two cage-like cells designed to hold only 15 people.<sup>52</sup> The men said they had been there for five months and had not been let outside. UNHCR was not allowed to carry out refugee status determination screenings, and the separation of all men from women and children has divided families, and resulted in families struggling with uncertainty about their future.

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<sup>46</sup> *Ibid.*

<sup>47</sup> See above, note 34.

<sup>48</sup> Phuket Wan News, “Thailand Lists Boatpeople Arrested or Assisted Along Phuket Holiday Coast” *Phuket Wan News*, March 18, 2012, available at: <http://phuketwan.com/tourism/thailand-lists-boatpeople-arrested-assisted-along-phuket-holiday-coast-15685>.

<sup>49</sup> Irrawaddy, “After Burma Violence, Almost 6,000 Rohingyas Arrive in Thailand”, *The Irrawaddy*, February 8, 2013, available at: <http://www.irrawaddy.org/archives/26359>.

<sup>50</sup> ERT Interview with the Director of The Arakan Project, London, 5 July 2013.

<sup>51</sup> *Bangkok Post*, “Give Rohingya more time, say aid groups”, *Bangkok Post*, July 4, 2013, available at: <http://www.bangkokpost.com/news/local/358206/give-rohingya-more-time-say-aid-groups>. Over 700 of the detainees were found during separate raids - conducted on 10 and 11 January 2013 - of smuggling camps in Sadao District, Songkhla province. In April 2013, 938 Rohingya were found in separate camp raids and subsequently detained or sheltered. In addition to those found in camp raids, approximately 1000 Rohingya who had been captured directly upon boat arrival were also being held in makeshift shelters.

<sup>52</sup> Channel 4 media report: John Sparks, Asia Correspondent, “Rohingya people crammed in filthy cages in Thailand”, *Channel 4*, 31 May 2013. Also see, Human Rights Watch, *End Inhumane Detention of Rohingya*, Human Rights Watch, 4 June 2013.

Under international law, this ongoing detention would be deemed arbitrary for multiple reasons. These include: (1) the length and indefinite nature of the detention; (2) the manner in which the decision to detain was taken (on a group basis with no provision for individual cases to be heard or particular vulnerabilities to be assessed); (3) the poor application of due process standards, including a right of appeal and/or review; and (4) the poor conditions of some detention facilities.

It is not known what type of long-term solutions will be implemented to deal with the influx of boat arrivals. In March 2013, Thailand's Prime Minister, Yingluck Shinawatar, told journalists, "Our government has a policy to take care of the Rohingya on humanitarian grounds, so they won't be pushed back."<sup>53</sup> Despite this, as practices indicate, the government's policy continues to include "push-backs", "help-ons", deportation, complicity with smuggling, detention and, in the context of women and children, the more humanitarian practice of temporary shelter.

### 3.4. Human Trafficking and Smuggling

Human trafficking and smuggling is an issue of concern throughout the ASEAN region. Thailand is party to UNTOC and its Protocols on Trafficking and Smuggling.<sup>54</sup> Thailand also has obligations under CEDAW and CRC to take appropriate measures to suppress trafficking in women and children respectively.<sup>55</sup> At a regional level, Thailand is a member of the Greater Mekong Sub-region (GMS) COMMIT anti-trafficking process<sup>56</sup> and the Bali Process.<sup>57</sup> At the national level, Thailand enacted the Anti-Trafficking Act of Thailand in 2008.<sup>58</sup>

Based on testimonies of those discovered during Thai government raids on smuggling camps in Songkhla province near the Thai-Malaysia boarder, it is evident that some Rohingya in Thailand fit the definition of trafficked persons.<sup>59</sup> According to reports, such Rohingya were confined to camps and faced the risk of being beaten and sent into forced labour if they failed to pay smugglers for their service.<sup>60</sup>

From the perspective of Thai officials, they are obligated to arrest and detain the Rohingya under the current Immigration Law.<sup>61</sup> Given Thailand's obligation not to *refoule* Rohingya to Myanmar where they are vulnerable to persecution; and given the alternative prospect of indefinite detention in Thailand, it is likely that some Thai officials feel that the most humane course of action is unofficially to allow Rohingya to travel on to Malaysia. This very real dilemma highlights the failure of the Thai and

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<sup>53</sup> Bangkok Post, "Navy accused of killing Rohingya", *Bangkok Post*, March 13, 2013, available at: <http://bangkokpost.com/news/local/340263/navy-accused-of-killing-rohingya>.

<sup>54</sup> See above, note 15.

<sup>55</sup> CEDAW (see above, note 10), Article 6: "State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." CRC (see above, note 11), Article 35: "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."

<sup>56</sup> The UNIAP COMMIT project, or the Coordinated Mekong Ministerial Initiative Against Trafficking, has strived to ensure progress in the implementation of anti-trafficking efforts in Greater Mekong Sub-Region (whose members include Cambodia, China, Lao DPR, Myanmar, Thailand and Vietnam). For more about the UNIAP COMMIT project, visit the official website: <http://www.no-trafficking.org/commit.html>.

<sup>57</sup> The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime is a voluntary forum, and includes members such as the UNHCR, the IOM, the UNODC, observer countries and international agencies. For more about the Bali Process, visit the Bali Process website: <http://www.baliprocess.net/>.

<sup>58</sup> Anti-Trafficking in Persons Act B.E. 2551 (2008).

<sup>59</sup> Aljazeera, "Myanmar Rohingya refugees rescued in Thailand", *Aljazeera*, January 11, 2013.

<sup>60</sup> See, for example, Phuketwan, *Second Rohingya Trafficking Camp Raided, Rights Group Calls for UN Intervention*, January 11, 2013, available at: <http://phuketwan.com/tourism/second-rohingya-camp-raided-rights-group-calls-intervention-17407/>.

<sup>61</sup> See above, note 39.



regional anti-trafficking framework to effectively identify and protect victims of trafficking and underscores the need for a strong regional protection-based solution for the Rohingya. It also highlights the importance of considering the implementation of alternatives to detention schemes, to end indefinite detention.

According to Thailand's 2008 Anti-Trafficking in Persons Act, the Ministry of Social Development and Human Security shall consider providing assistance when appropriate to a trafficked person.<sup>62</sup> Generally, foreign trafficked persons are returned to their country of origin. In exceptional cases, the Minister of Interior can grant the person right of stay.<sup>63</sup> Despite both this provision and a 2005 cabinet Resolution stating that foreign trafficking victims in Thailand who are stateless may be given residency status, the Thai government has yet to grant residency status to a single foreign victim of trafficking.<sup>64</sup>

#### **4. THE EXCLUSION OF ROHINGYA CHILDREN**

Importantly for the Rohingya, the CRC does not permit significant differences in treatment based on the status (or lack thereof) of a child's parents. After becoming party to the Convention, Thailand enacted new laws and amended 17 pieces of legislation to bring them into alignment with the CRC. In 2012, the Committee on the Rights of the Child congratulated Thailand on its achievements in implementing child rights, but expressed concern about the lack of protection given to asylum-seeking and refugee children.<sup>65</sup> While Thailand has several important obligations relevant to Rohingya children, this report looks at three in particular – the right to an identity (including birth registration and nationality), the right to education and the right to the highest attainable standard of health.

##### **4.1. The Right to an Identity – Birth Registration and Nationality**

While Thailand is not a party to the 1961 Convention on the Reduction of Statelessness, it is worth bearing in mind Article 1(1) of the convention, which obligates states parties to grant their nationality to anyone born on their territory who would otherwise be stateless.<sup>66</sup> The CRC provides a similar though weaker obligation by asserting that every child has a right to birth registration and to acquire a nationality,<sup>67</sup> but it does not say which state is ultimately responsible to grant its nationality to a stateless child. Nevertheless, the CRC does obligate all states to protect children who have been illegally deprived of their identity (including nationality).<sup>68</sup> This obligation is particularly relevant to Thailand with regard to stateless Rohingya children born on its territory.<sup>69</sup>

The 2008 amendment to the Civil Registration Act gives a right to birth registration to all children born in the country regardless of the nationality or immigration status of their parents.<sup>70</sup> Unfortunately, the

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<sup>62</sup> Anti-Trafficking in Persons Act B.E. 2551 (2008), section 33.

<sup>63</sup> *Ibid.*, section 38.

<sup>64</sup> US Department of State, *Trafficking in Persons Report*, June 2011, pp. 351-355.

<sup>65</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention*, 13 August, 2012, p. 7.

<sup>66</sup> Convention on the Reduction of Statelessness, G.A. Res. 896 (IX), 1961.

<sup>67</sup> See above, note 11, Article 7(1).

<sup>68</sup> *Ibid.*, Article 8. The right of every child to acquire a nationality is also prescribed by ICCPR Article 24(3) (see above, note 9). Furthermore, CERD Article 5(d)(iii) guarantees "the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... the right to nationality" (see above, note 12); and Article 18 of the ASEAN Human Rights Declaration recognises the right of every person to a nationality and prohibits the arbitrary deprivation of nationality (see above, note 16).

<sup>69</sup> See above, note 16, Article 18.

<sup>70</sup> Civil Registration Act (No. 4), B.E. 2551 (2008). The new act entered into force on July 24, 2008 and made revisions to clarify birth registration procedures.

Act has not been effectively implemented due to lack of knowledge and understanding as well as resistance on the part of many local officers. The lack of awareness among parents about the civil registration process and the rights it entails, and irregular migrants' fear that contact with Thai authorities might result in their arrest, also contribute to ineffective implementation. At the beginning of 2012, around five percent (45,000) of all children born each year in Thailand were not being registered, including many Rohingya children.<sup>71</sup> Thus, while the Committee on the Elimination of Racial Discrimination welcomed the amendment to the Civil Registration Act, it noted that a large number of children, especially of ethnic groups and migrants, had not yet been registered.<sup>72</sup>

Thailand's position with regard to access to nationality for those who would otherwise be stateless is more conservative. The 2008 amendment to Thailand's Nationality Act does not provide a path to nationality for children of irregular migrants.<sup>73</sup> Consequently, the majority of Rohingya children born in Thailand – barring those who have one Thai parent – are unable to acquire nationality and remain stateless. Significantly, such children are themselves branded “illegal migrants” despite being born in the country. In addition to not having access to key rights such as education and healthcare, they are also liable to be detained and deported under the Immigration Act.

#### **4.2. The Right to Education**

Article 28 of the CRC guarantees the right of all children to education. In this regard, states have an obligation to provide compulsory and free primary education to all (irrespective of legal status),<sup>74</sup> and to take steps to make secondary education free and accessible to all children.<sup>75</sup>

Thailand has respected its duty under the CRC by implementing the Education for All policy (1999) which allows every child in Thailand to access primary and secondary education free of charge. A 2005 Cabinet Resolution on Education for Unregistered Persons allows children who do not have legal status to enrol at public schools certified by the Ministry of Education.<sup>76</sup> Despite these developments, Rohingya children who lack birth registration and/or citizenship continue to have difficulties accessing education. One reason for this is that even under this policy, asylum seeker and refugee children can only enrol at the discretion of local schools that often require proof of documentation for all applicants, thus undermining the policy objective of the Resolution. Of the Rohingya interviewed, some had children who were able to attend primary and secondary schooling, but general access is inconsistent and usually obtained through the intervention and financial assistance of NGOs.

#### **4.3. The Right to the Highest Attainable Standard of Health**

The CRC obligates states to ensure “the right of the child to the enjoyment of the highest attainable standard of health”.<sup>77</sup> Article 12 of the ICESCR and Article 29 of the ASEAN Human Rights Declaration also guarantee the right to health.

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<sup>71</sup> Agnes-akosua Aidoo, Committee Expert acting as Rapporteur for the report of Thailand on the Convention on the Rights of the Child, at the Committee on the Rights of the Child reports on the sale of children and on children in armed conflict, 25 January 2012. Summary (available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11778&LangID=E>).

<sup>72</sup> See above, note 34.

<sup>73</sup> Thailand Nationality Act (No. 4) B.E. 2551 (2008), section 7.

<sup>74</sup> CRC (see above, note 11), Article 28(1)(a).

<sup>75</sup> *Ibid.*, Article 28(1)(b). See also Article 13 of the ICESCR (see above, note 9) and, Article 31 of the ASEAN Human Rights Declaration (see above, note 16).

<sup>76</sup> Social Division, Department of International Organizations, Ministry of Foreign Affairs, Kingdom of Thailand, *Right to Education for migrants, refugees and asylum seekers*, 2011, available at: <http://www.mfa.go.th/humanrights/implementation-of-un-resolutions/72-right-to-education-for-migrants-refugees-and-asylum-seekers->.

<sup>77</sup> See above, note 11, Article 24(1).

Thailand has an established healthcare coverage scheme, which ensures free medical care to all Thai nationals. It also has a special budget allocated to provide healthcare to people with unclear status.<sup>78</sup> Nevertheless, in practice, refugees, including children, have had difficulty accessing healthcare. The UNHCR in Bangkok provides some health assistance to refugees, but asylum seekers generally do not receive any assistance. Some NGOs provide limited support and help negotiate treatment with hospitals, but only a small handful of those interviewed have received such assistance. Instead, when a family member is sick, they must rely on pharmacy treatment or pay for private health services.

## 5. DENIAL OF THE RIGHT TO WORK AND RESULTING VULNERABILITIES

The right of everyone to work is entrenched in the ICESCR,<sup>79</sup> and the ASEAN Human Rights Declaration.<sup>80</sup> Despite Thailand's obligations under international law, most Rohingya cannot enjoy their right to work in Thailand. Under the Alien Working Act (2008), foreigners require a work permit and can only be employed in accordance with regulations issued by the Ministry of Labour.<sup>81</sup> Importantly, a migrant applying for a work permit must either be a resident or authorised to enter Thailand, a stipulation which excludes most irregular migrants.<sup>82</sup>

Since 2004, some irregular migrants have been able to regularise their status through a Nationality Verification process which allows them to obtain work permits.<sup>83</sup> However, just as the Thai refugee policy – focused on the border camps – excludes the Rohingya, the Nationality Verification process also excludes them as it only applies to those with a nationality.

Prior to the National Verification process, some Rohingya were able to take advantage of earlier migrant worker registration schemes in order to obtain temporary work permits. However, following a Thai cabinet decision in December 2008, all migrant workers must now go through the Nationality Verification process in order to get a work permit.<sup>84</sup>

This being said, some Rohingya spoke of having obtained documentation issued to irregular persons under the Civil Registration Act (2008) pending determination of their nationality. With this “white card”, they have a right to temporary residence, but they are not allowed to work and do not receive health benefits. This white card is issued to irregular migrant workers under the National Verification scheme, while their nationality is pending verification. It is unclear how Rohingya have obtained this card and how long it will provide protection as they are stateless.

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<sup>78</sup> Promphat, S., Ministry of Social Development and Human Security in Thailand's presentation of the country report, available at: <http://www.unog.ch/>.

<sup>79</sup> See above, note 9, Article 6(1). According to Article 7 ICESCR, states also have an obligation to protect the rights of workers and ensure just and favourable conditions of work including fair and equal wages sufficient for a decent living, safe and healthy working conditions, equal opportunity within work and the limitation of work hours and adequate paid holidays, rest and leisure.

<sup>80</sup> See above, note 16, Article 27(1).

<sup>81</sup> The Alien Working Act 2008, section 9. The Alien Working Act also imposes punishments of imprisonment for up to five years and/or a fine from 2,000 to 100,000 baht for an alien working without a work permit. See Thailand Law Forum, Alien Working Act BE 2551, 19 February 2009, available at: <http://www.thailawforum.com/database1/Alien-Working-Act.html>.

<sup>82</sup> *Ibid.*, section 10.

<sup>83</sup> Starting in 2004, bilateral Memorandums of Understanding (MOUs) on Cooperation in Employment of Workers were signed between Thailand and the governments of Cambodia, Lao People's Democratic Republic and Myanmar. These MOUs regularise migrant worker status through registration processes administered by the Ministry of the Interior and the Ministry of Labour. After completion of the process, registered migrant workers are allowed to access basic health insurance and protection under three laws: the 1998 Labour Protection Act, the 1990 Social Security Act, and the 1994 Workmen's Compensation Act.

<sup>84</sup> Asian Human Rights Commission, *Thailand: the impact of National Verification on migrant workers must be reassessed*, Asian Human Rights Commission, February 12, 2010.

The Rohingya are thus driven into the informal work sector, and are vulnerable both to extortion by police and to arrest, detention and possible deportation. Some in the settled community, mainly women, find domestic work, while others work on farms or construction sites, help to clean up and carry goods in local markets, sell tea and engage in other temporary and unstable forms of work. Others scavenge goods to salvage and sell. The most common livelihood strategy is selling roti – a kind of fried South Asian bread – on the streets of Bangkok. Income from selling roti depends on the location. One vendor said he makes about 300-400 baht per day (approximately 9–12 USD), while another earns around 160-200 (approximately 5–6 USD) per day. Extortion is a common problem for Rohingya roti sellers, and most have to pay regular bribes to local police in order to avoid arrest. Typical bribes include monthly payments of 500 baht (approximately 15 USD) to tourist police, 500 baht to immigration authorities, and 500 baht to police in the district in which they sell roti.

When Thailand underwent its Universal Periodic Review process with the UN Human Rights Council in October 2011, several member states urged the Thai government to continue to address the lack of rights protection for migrant workers, asylum seekers and refugees.<sup>85</sup> Thailand accepted some of the recommendations, including to strengthen efforts to promote and protect the right to work; to strengthen the legal rights framework and to enforce the rights of migrants, asylum seekers and victims of trafficking; and to strengthen law enforcement in order to provide adequate protection, to guarantee a minimum wage and to ensure access to health services and justice for migrant workers.<sup>86</sup> However, these important commitments have not yet been put into effect.

## 6. CONCLUSION: CHALLENGES AND RECOMMENDATIONS

As Thailand continues in its endeavour to strike the right balance between protecting vulnerable migrants and effectively controlling its porous borders, this report provides an insight into the human rights situation of both the long-staying and recently arrived Rohingya population in the country. Though there are not as many Rohingya in Thailand as there are in some other countries in the region, Thailand has assumed an important geopolitical position in the regional picture of Rohingya displacement and insecurity. Thailand has the strongest human rights treaty ratification record amongst those countries with significant Rohingya populations. Furthermore, many of its domestic law and policy initiatives would strengthen protection for the Rohingya, if implemented in an effective and non-discriminatory manner.

If Thailand does act on the recommendations below, it will become a safer, more attractive destination for Rohingya refugees. Concerns that this will result in an unmanageable increase in new arrivals are legitimate and must be addressed. There is a danger that any country which – in isolation – strengthens its protection framework will be disproportionately burdened. While strengthening protection may bring new challenges, continuing to fail to do so also comes at a cost, and is damaging and unsustainable. The individual human cost is documented by this report. Other national and regional costs include damage to stability, international relations and reputation. The present regional stalemate – of no country taking decisive protection action – only serves to worsen the situation over the long-term. Thailand is well placed to break this stalemate by championing a rights-based response to the Rohingya issue and encouraging other states to do so.

The lack of an adequate refugee and/or statelessness protection framework in Thailand has resulted in the Rohingya being treated as irregular migrants with no access to basic human rights protection. The failure to recognise the vulnerabilities of Rohingya as refugees and stateless persons and to protect them has a discriminatory impact on them and their enjoyment of human rights. Violations of the rights to liberty, freedom of movement and work are everyday concerns for most Rohingya, as is fear of police harassment, arrest, detention and deportation. With difficulties registering the births of

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<sup>85</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Thailand*, A/HRC/WG.6/12/THA/2, December 8, 2011.

<sup>86</sup> *Ibid.*, pp. 18, 19, and 24.

Rohingya children, and with limited access to public schools and healthcare, there is also significant concern among the settled Rohingya community that their children will have no future. The *ad hoc* response of Thailand to the influx of Rohingya boat people in 2012-2013 has also resulted in human rights violations including lengthy detention in inhuman and degrading conditions for some and the informal deportation of others into the hands of smugglers and traffickers.

Despite the human rights challenges in Thailand, Rohingya there do not face the acute discrimination and persecution they experience in Myanmar. Consequently, it is not surprising that few interviewees expressed the desire to go back to Myanmar. Many stated that they would be happy to stay in Thailand, particularly if they had better security and the right to work. Some also raised the prospect of resettlement to a third country, but only if there are no prospects of a safe and secure future in Thailand. In specific terms, some form of legal stay rights, the right to work and access healthcare, the right to register the births of and educate their children and freedom from exploitation, harassment, extortion, arrest, detention and deportation at the hands of authorities were common requests made by most interviewees. Ultimately, the Rohingya in Thailand wish to have the ability to live in dignity and contribute to the communities they live in. If they are unable to access this in Myanmar, their aspiration is that Thailand, their adopted country, will offer them such a future. While many parents accept their plight, they do aspire for their children to have a better and more stable life than themselves.

In light of the information presented in this report, the following recommendations are made:

***Ensuring equality and non-discrimination*** – The inequalities and discrimination faced by the Rohingya in Thailand have a fundamental impact on their enjoyment of all other human rights. In part, the discrimination they face in Thailand is a result of their stateless status. For example, the inability of the Rohingya to benefit from the Nationality Verification process is directly linked to their statelessness. Discriminatory attitudes of Thai authorities towards irregular migrants also have an impact on their enjoyment of rights, and are the reason why many Rohingya have not benefitted from Thailand’s policies of universal birth registration and access to primary education.

It is recommended that Thailand, in accordance with its constitutional and international obligations, treat the Rohingya without discrimination, and ensure their equal access to the protection and enjoyment of all human rights. While this can be achieved in part through the proper implementation of existing laws and policies, it also requires changes to laws and policies which are discriminatory – such as the Nationality Verification process, the dual standards of refugee protection (for those within and outside border camps), and immigration detention policies.

***Addressing statelessness and lack of legal status*** – As with inequality and discrimination, the statelessness of the Rohingya and their resultant lack of legal status in Thailand is a core problem that impacts generally on their protection and the enjoyment of their human rights. While the statelessness of the Rohingya is the result of discrimination in Myanmar, the resultant lack of legal status in Thailand is largely because the country does not have a protection framework in place for stateless persons. Furthermore, the statelessness of the Rohingya places them at a disadvantage with regard to other irregular migrants in at least three ways:

1. Other irregular migrants benefit from policies aimed at strengthening their rights – such as being granted the right to work after going through a Nationality Verification process, but the Rohingya do not.
2. As stateless persons with no place to go, the Rohingya detained for immigration purposes are likely to have to endure unreasonably lengthy detention.
3. As stateless persons, many long-staying Rohingya have no option but to remain in Thailand, and thus, while the insecurities and difficulties faced by “economic migrants” who have a nationality may be temporary, those faced by the Rohingya are life-long.



Additionally, Rohingya children born in Thailand remain stateless because they have no access to Thai nationality. Thailand has obligations under the CRC to protect those who have illegally been deprived of their identity and nationality.

Consequently, it is recommended that Thailand implement a protective framework for the treatment of stateless Rohingya, register the births of all Rohingya children, provide Rohingya with legal stay rights, ensure that statelessness does not result in further disadvantage and protect the rights of stateless Rohingya children born in its territory.

***Protecting refugees and asylum seekers*** – Rohingya arriving in Thailand should have access to status determination procedures to be recognised as refugees. A protection based approach to refugees will ultimately ease the burden on the system, transforming irregular migrants with few rights into productive members of society. In particular, it is recommended that:

1. The UNHCR be granted access to all refugees including the Rohingya and be allowed to conduct refugee status determination and fulfil its protection mandate. Importantly, documentation provided by UNHCR to refugees and asylum seekers should be recognised by all police and other officers of the state as valid protection documents.
2. The present two-tiered framework which accommodates refugees in the border camps but not those living outside should be replaced with a comprehensive, non-discriminatory, refugee protection policy which applies in all parts of the country.
3. Thai refugee and immigration policy should distinguish between asylum seekers, refugees, stateless persons and irregular migrants, and respond to each group according to their specific needs, within a wider framework of immigration control. Furthermore, Thailand should consider enhancing the stay rights of all asylum seekers and refugees.
4. Durable solutions must be sought for the Rohingya and all refugees in Thailand. For the Rohingya, repatriation is not an option as it would violate the principle of *non-refoulement*. Furthermore, in practice there are very few opportunities for resettlement. While the international community should accept more refugees from Thailand for resettlement, Thailand should work towards more flexible solutions for the Rohingya and allow local integration, especially for Rohingya children born in the country.

***Accession to statelessness and refugee treaties*** – It is recommended that Thailand accede to the Convention Relating to the Status of Refugees and its Protocol, the Convention Relating to the Status of Stateless Persons, and the Convention on the Reduction of Statelessness. This would be a significant step towards improving the protection of refugees and stateless people in the country – including the Rohingya. These conventions require states parties to protect the rights of refugees and stateless persons and to reduce statelessness. They also provide the legal basis for the UNHCR to exercise its protection mandate. Accession to these treaties and the introduction of domestic law and policy mechanisms for their implementation would be a significant breakthrough in protection terms. Accession will also bring benefits to Thailand as these treaties promote “responsibility sharing” between states, which could help Thailand handle the perceived burden of its refugee population.

***Ensuring liberty and security of the person*** – The irregular status of the Rohingya has a significant impact on their enjoyment of the right to liberty and security of the person. The detention of stateless Rohingya is discriminatory and arbitrary if it fails to take into consideration their vulnerabilities, including difficulties in removing them within a reasonable period of time, or without violating the principle of *non-refoulement*. Consequently, it is recommended that Thailand’s immigration detention policy is reviewed and brought in line with international law. ERT’s *Guidelines to Protect Stateless Persons from Arbitrary Detention* which are based on existing international standards may be a useful resource in this regard.<sup>87</sup> Thailand should additionally stop deporting Rohingya into Myanmar in violation of the principle of *non-refoulement*. As both these practices violate human rights principles, Thailand is encouraged to provide stay rights to Rohingya since they cannot be removed.

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<sup>87</sup> See above, note 38.

***Protecting the rights of the child*** – Rohingya children, particularly those born in Thailand are entitled to greater protection. It is recommended that in addition to ensuring the effective and universal implementation of Thailand's birth registration and education policies, Rohingya children are granted free and easy access to healthcare. Furthermore, Rohingya children should not be detained. Instead, they should benefit from protection as stipulated in the Child Protection Act of Thailand. However, authorities should always act in the best interests of the child, which in most cases would require non-separation from their parents. Thus, Thailand should consider initially implementing alternatives to detention for family units and vulnerable persons but eventually for other groups as well.

***Ensuring the rights to work and to an adequate standard of living*** – The difficulties faced by Rohingya in accessing labour markets have a significant impact on their lives. It is therefore recommended that Thailand reviews and amends the Nationality Verification process in order to ensure that stateless persons are also entitled to register and work.

***Combatting smuggling and trafficking*** – Smuggling and trafficking are significant problems that Thailand and the entire region must address. It is recommended that Thailand make use of existing international, regional and national standards and frameworks<sup>88</sup> to enhance protection for victims of trafficking and to also ensure access to such mechanisms for all victims including the Rohingya. Thailand should also continue to take effective steps to crack down on links between people smugglers and traffickers and police and immigration authorities.

***Improving on the response to 2012-2013 boat migration*** – The response of Thailand to the 2012-2013 influx of boat people has not been adequate. While Thailand took the unprecedented step of offering a grace period for new arrivals, its response has not been grounded in a protection framework. The “help-on” policy and the prolonged detention of arrivals have raised international concern. It is difficult for any country to deal with such a large and unpredictable number of migrants, and distinguishing Rohingya refugees from Bangladeshi migrants also poses a challenge. It is recommended that Thailand approach this situation from a humanitarian and human rights perspective, to ensure the integrity of its borders while also protecting the rights of all vulnerable persons.

***Promoting a regional approach*** – As has been made evident throughout this report, the Rohingya issue is a regional one which concerns a number of countries. It is recommended that Thailand foster more collaboration with states in the region and seek to collectively address the issue, while also acknowledging its individual responsibility in this regard. Importantly, any regional approach should be grounded in human rights and humanitarian principles of equality, non-discrimination and protection. Thailand is well placed to take a leadership role in promoting such an approach and should use its place within regional mechanisms such as ASEAN, AICHR, ACWC and the Bali Process to good effect in this regard.

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<sup>88</sup> See above, chapter 3.4.

