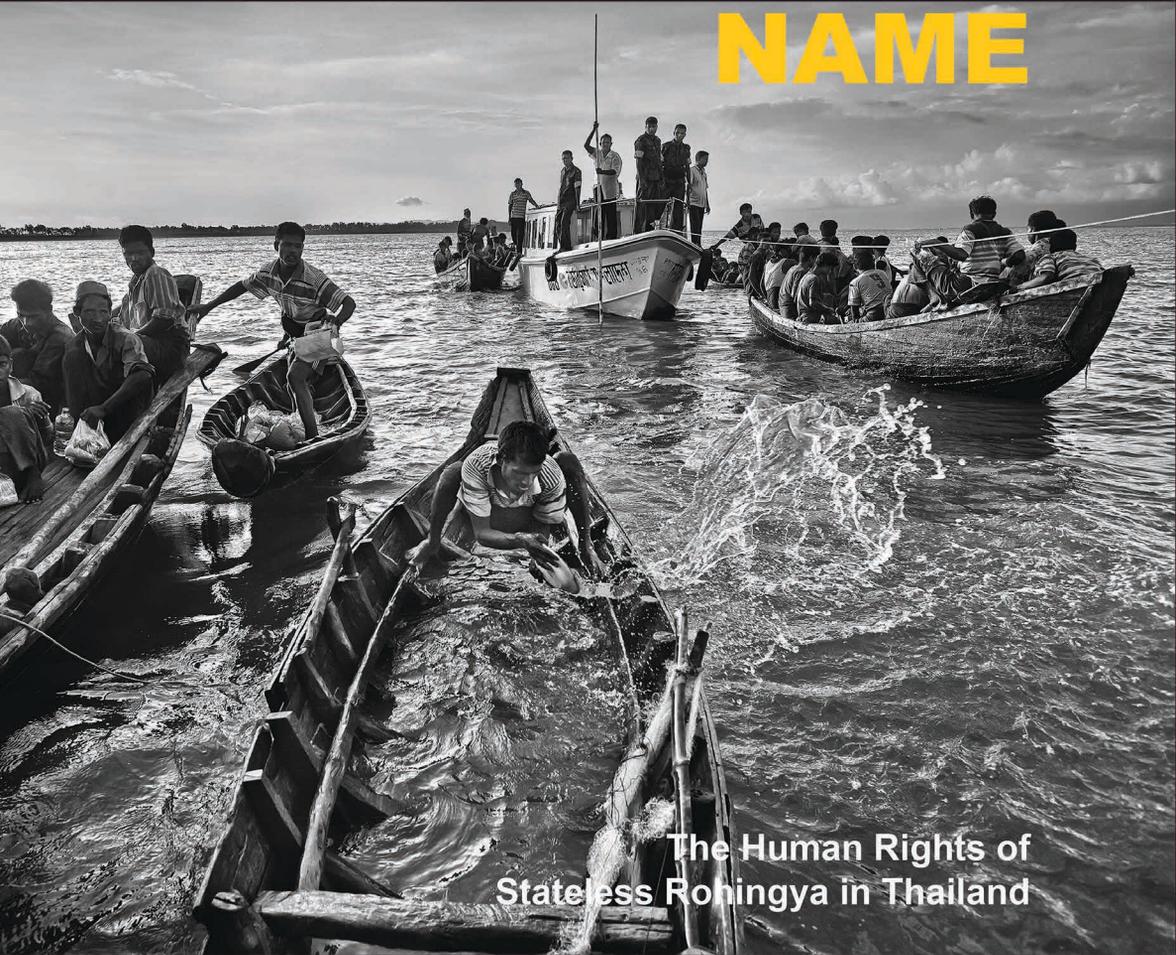


EQUAL ONLY IN NAME



The Human Rights of
Stateless Rohingya in Thailand

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

EQUAL RIGHTS TRUST IN PARTNERSHIP WITH
THE INSTITUTE OF HUMAN RIGHTS AND PEACE
STUDIES, MAHIDOL UNIVERSITY

Equal Only in Name

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

London, October 2014

The Equal Rights Trust 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. The Trust focuses on the complex relationship between different types of discrimination, developing strategies for translating the principles of equality into practice.

The Institute of Human Rights and Peace Studies (IHRP) was created by a merger between Mahidol University's Center for Human Rights Studies and Social Development (est. 1998) and the Research Center for Peace building (est. 2004). IHRP is an interdisciplinary institute that strives to redefine the fields of peace, conflict, justice and human rights studies, in the Asia Pacific region and beyond.

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[T]he pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity as defined under the Rome Statute of the International Criminal Court (...)
[E]xtrajudicial killing, rape and other forms of sexual violence, arbitrary detention, torture and ill-treatment in detention, denial of due process and fair trial rights, and the forcible transfer and severe deprivation of liberty of populations has taken place on a large scale and has been directed against the Rohingya Muslim population in Rakhine State (...)
[T]he deprivation of healthcare is deliberately targeting the Rohingya population, and (...) the increasingly permanent segregation of this population is taking place. Furthermore (...) these human rights violations are connected to discriminatory and persecutory policies against the Rohingya Muslim population, which also include ongoing official and unofficial practices from both local and central authorities restricting rights to nationality, movement, marriage, family, health and privacy.

Tomás Ojea Quintana, Special Rapporteur on the situation of human rights in Myanmar,
Human Rights Council, 25th Session, 2 April 2014,
A/HRC/25/64, Para 51

*We are not equals in Thailand. We are not safe.
But we don't have any other options.*

Rohingya man in Thailand

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Finally, we wish to thank all Rohingya who shared their stories with us. This report is dedicated to them and to all Rohingya in Thailand and elsewhere, who have suffered – and continue to suffer – discrimination and exclusion.

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ACRONYMS

ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AICHR	ASEAN Inter-governmental Commission on Human Rights
ASEAN	Association of Southeast Asian Nations
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CMW	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSC	Citizenship Scrutiny Card
EU	European Union
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDC	Immigration Detention Centre
IHRP	Institute of Human Rights and Peace Studies, Mahidol University
ILO	International Labour Organisation
NGO	Non-Governmental Organisation
NRC	National Registration Card
PAB	Provincial Admissions Board
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNTOC	UN Convention against Transnational Organised Crime
USD	United States Dollar
WHO	World Health Organisation

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1. INTRODUCTION

1.1. Purpose and Structure of this Report

*Burma is not our land anymore though I was born there.*¹

Stateless, discriminated against, treated unequally, excluded and persecuted, the Rohingya are one of the most vulnerable communities in the world. Originating from Myanmar, hundreds of thousands of Rohingya have fled the country in search of safety, security and prosperity - conditions that remain elusive to the majority who have made lives for themselves upon new shores.

The human rights challenges that the Rohingya face originate in Myanmar, but are also prevalent in other countries. Discrimination and unequal treatment are central to the human rights violations suffered by the Rohingya. This report is part of a series which provides an overview and analysis of the human rights situation of stateless Rohingya in various countries.

The purpose of this report is to highlight and analyse the discrimination and inequality faced by the Rohingya in Thailand and to recommend steps aimed at combating discrimination and promoting equality of the Rohingya. The report explores long-recognised human rights problems, and also seeks to shed light upon some less well-known patterns of discrimination against the Rohingya.

The Equal Rights Trust has been working on the human rights of Rohingya since 2008, approaching the issue from the unified human rights

¹ Interview BD 20, with a Rohingya man, Cox's Bazar, Bangladesh, 4 October 2012. Throughout this report, names and/or personal characteristics of individuals have been withheld either at the request of interviewees or because the research team determined this to be necessary in the interest of the safety and/or privacy of the individuals concerned and/or others who may face reprisal.

perspective on equality.² In January 2010, we published a short report entitled *Trapped in a Cycle of Flight: Stateless Rohingya in Malaysia*, in which patterns of detention, trafficking and deportation were described for the first time, based on original testimony.³ In March 2011, the Trust and the Institute of Human Rights and Peace Studies, Mahidol University (IHRP) began working together on a project aimed at strengthening the human rights of stateless Rohingya both within Myanmar and beyond. Grounded in research conducted in six countries (Bangladesh, Indonesia, Malaysia, Myanmar, Saudi Arabia and Thailand), this project is an endeavour to increase the human rights protection of the Rohingya through advocacy, capacity building and coalition building at national, regional and international levels.⁴

This report comprises four parts. Part 1 sets out the conceptual framework which has guided the authors' work and the research methodology. It then provides an overview of the Rohingya and concludes with an analysis and review of some of the common trends, themes and challenges that have emerged from the research in all project countries. Part 2 provides an overview and analysis of the international, regional and national legal and policy framework relevant to the discrimination, inequality and related human rights violations and challenges faced by the Rohingya in Thailand. Part 3 focuses on patterns of discrimination and inequality affecting the Rohingya in Thailand. It is important to note that Part 3 focuses on a few select issues, and is not a comprehensive overview of all forms of discrimination and inequality limiting the enjoyment of

² 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*, Equal Rights Trust, London, 2008.

³ Equal Rights Trust, *Trapped in a Cycle of Flight: Stateless Rohingya in Malaysia*, London, 4 January 2010.

⁴ For more about the project "Strengthening Human Rights Protection for the Rohingya", visit the Equal Rights Trust website at: <http://www.equalrightstrust.org/rohingya/index.htm>.

human rights for the Rohingya in Thailand. Part 4 presents conclusions and recommendations.

1.2. Conceptual Framework and Research Methodology

This report takes as its conceptual framework the unified human rights perspective on equality which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. 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. According to Principle 1 of the Declaration:

The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.⁵

The Declaration proclaims that the right to equality extends to guarantee equality in all areas of human life normally regulated by law, and should be addressed holistically. This approach recognises the interconnectedness of inequalities arising in different contexts, which makes it necessary to take a comprehensive approach to combat manifestations of discrimination arising in all areas of life.

The unified human rights perspective on equality is central to the Rohingya issue. In Myanmar, the Rohingya are a stateless, ethnic, religious and linguistic minority and in other countries, they are stateless irregular migrants, refugees and often undocumented persons. As such, they are vulnerable to many forms of discrimination, exclusion and human rights abuse.

⁵ See above, note 2, Principle 1, p. 5.

Another key aspect of the project is its regional focus. 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 persons within their territories and subject to their jurisdictions, a just and sustainable solution is only likely if the key states demonstrate a collective commitment to protect the Rohingya. The regional nature of the issue presents both opportunities and challenges. The opportunity is that if states act collectively, the burden on each state will be eased and such an unprecedented process would serve as a blueprint for future regional cooperation; the challenge is to address the causes of irregular migration flows and ensure greater coordination among states and an increased willingness to protect the Rohingya.

This report looks at Thailand's place in the regional picture of stateless Rohingya displacement and insecurity. It focuses both on recent refugees and the long-staying population. The report is informed by semi-structured individual interviews with over 20 stateless Rohingya refugees living in Bangkok and the surrounding area and six Rohingya men who arrived in Kuala Lumpur, Malaysia, via Thailand in December 2012. It is informed also by meetings and interviews with experts and those working on the Rohingya issue, and by ongoing and informal discussions with Rohingya refugees at various meetings over the course of the research.

Interviews focused on the following key themes: equality and non-discrimination, statelessness and lack of legal status, migration and displacement patterns, liberty and freedom of movement, the right to work and livelihood issues and children's rights. A comprehensive literature review and survey of existing research, news and information on the Rohingya and Thailand's legal and administrative frameworks relevant to refugees, stateless people and migrants also informed the report.

A significant research challenge has been the fast evolving situation, driven by political changes in Myanmar; violence against the Rohingya since 2012-2013; and the resultant mass flight of Rohingya refugees. The Equal Rights Trust published an emergency situation report in June 2012

and a follow-up report in November 2012.⁶ Furthermore, the researchers responded to the changing context by adapting the research focus and conducting additional research.

1.3. The Rohingya

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. There is an estimated population of between one and 1.5 million Rohingya in Rakhine State. Much of the population is concentrated in the three townships of North Rakhine State – Maungdaw, Buthidaung and Rathedaung – where the Rohingya are in the majority.⁷ Other smaller minority communities of Rohingya are scattered throughout Rakhine State.⁸ To a large extent, Rohingya have been contained in Rakhine State, through successive government policies. However, small numbers of Rohingya have settled in Yangon, the capital of Myanmar, and other places in Myanmar.

1.3.1. Ancestral Roots

The Rohingya have historical, linguistic and cultural affiliations with the local populations of Rakhine State, as well as with the Chittagonian people across the border in Bangladesh.⁹ The Rohingya are Muslims. They also draw their cultural heritage from diverse Muslim populations from the Persian and Arab world that passed through or settled around the

⁶ Equal Right Trust, *Burning Homes, Sinking Lives: A situation report on the violence against stateless Rohingya and their refoulement from Bangladesh*, London, June 2012.

⁷ The Rohingya have long been the majority ethnic group in these three townships, as recorded in Burma's official Encyclopaedia (1964). The reference is notable as it uses the term Rohingya, which is now officially rejected by the Government of Myanmar.

⁸ Since the violence of 2012, many Rohingya from these communities have become internally displaced and confined to camps.

⁹ East Pakistan before Bangladesh's independence and India before partition.

important trading hub along the coast of Rakhine State over the centuries.¹⁰ The Rohingya trace their ancestral roots in the Rakhine region back several centuries – since long before Myanmar came into existence as the clearly demarcated post-colonial nation-state of today. These roots also go back to long before racial and ethnic categories became settled in accordance with those that are recognised in today’s Myanmar.¹¹ Despite this, the history of the Rohingya and their Muslim ancestors is today largely rejected in Myanmar. The Rakhine region and its ancient historical sites are of important cultural significance to Myanmar’s Buddhist populations. Historical analyses have, thus, tended to focus primarily on the Rakhine region’s Buddhist past, as opposed to its multi-faith and multi-ethnic past.¹² Histories of the Islamic influences in Rakhine State have largely been viewed with suspicion in Myanmar.¹³

1.3.2. Ethnic Identity

The term Rohingya is derived from the word “Rohang” which is an old name for Rakhine State.¹⁴ Hence the term Rohingya has come to mean

¹⁰ See for example Ba Tha, “Rohingya of Arakan”, *Guardian Monthly Rangoon*, Vol. III No. 5, May 1960; and Ba Tha, “Rohingya Fine Arts”, *Guardian Monthly Rangoon*, Vol. VIII, Feb 1961. These articles are significant because they were published in Myanmar’s (then Burma) national magazine and were on the Rohingya in Rakhine (then Arakan) State.

¹¹ There are 135 national ethnic groups that have been recognised by the Government of Myanmar after the promulgation of the 1982 citizenship law, based on selective historical records.

¹² See, for example, Gutman, P., *Ancient Arakan*, 1976, available at: <http://hdl.handle.net/1885/47122>.

¹³ See, for example, Shwe Zan and Aye Chan, *Influx Viruses, The Illegal Muslims in Arakan*, Arakanese in United States, August 2005, available at: <http://www.networkmyanmar.org/images/stories/PDF15/Influx-Virus.pdf>.

¹⁴ For analysis of the origins of the term “Rohingya” see Charney, M.W., *Buddhism in Arakan: Theories and Histiography of the Religious Basis of Ethnonyms*, submitted to the Arakan History Conference, Bangkok, 2005, available at: <http://www.kaladanpress.org/index.php/scholar-column-mainmenu-36/58-arakan->

Muslim from Rakhine State.¹⁵ The majority of people in Myanmar and the Government of Myanmar claim that the Rohingya are not from Myanmar but are migrants from Bangladesh.¹⁶ Thus the term Rohingya has become contentious. The term is neither recognised by the Myanmar government nor much of political society in Myanmar; they instead refer to the population as “Bengali”, a term which suggests the Rohingya are migrants from Bangladesh. “Bengali” is thus strongly rejected by large sections of the Rohingya community. Today, the term Rohingya is not allowed on official documentation including identity cards, household lists and on the census of March 2014.¹⁷ The international community holds that individuals should have the right to self-identify, including as Rohingya.¹⁸ But the term “Rohingya” is rejected by the government and population of Myanmar, who associate it with claims to be indigenous, to be recognised

historical-seminar/718-buddhism-in-arakantheories-and-historiography-of-the-religious-basis-of-ethnonyms.html.

¹⁵ Interview MYA 8, with a Rohingya activist in Yangon, June 2013.

¹⁶ For example, speaking at Chatham House in London in July 2013, President Thein Sein stated “we do not have the term Rohingya”. Quoted in Inkey, M., “Thein Sein talks at Chatham House”, *New Mandala*, 17 July 2013.

¹⁷ Prior to the census of March 2014, the Government of Myanmar agreed in principal that whilst the category “Rohingya” would not be included in the list of Myanmar’s ethnic groups in the census forms, the Rohingya would be permitted to identify as “Other”, and would be allowed to declare their ethnicity to be recorded in the census. A few days before the census, the Government went back on this promise, ostensibly to appease Rakhine protestors, and decided that the Rohingya would neither be allowed to qualify the term “Other” by self-identifying as “Rohingya” in the space provided, nor would they be allowed to leave the term “Other” unqualified. This meant the Rohingya were left with the option of either identifying as “Bengali” or not participating in the census at all. Consequently, the majority of Rohingya did not complete the census. It is unclear what the repercussions of this will be. See UNFPA Myanmar, *Statement: UNFPA concerned about decision not to allow census respondents to self-identify as Rohingya*, 1 April 2014.

¹⁸ *Ibid.*

as a “national ethnic group” of Myanmar, and consequently to have a right to citizenship.

1.3.3. Arbitrary Deprivation of Nationality

The majority of Rohingya in Myanmar today have been deprived of their nationality and are stateless. The arbitrary deprivation of their nationality and the erosion of their legal rights has occurred alongside the denial of their ethnic identity and history in the Rakhine region. This process has taken place over many decades. Following Myanmar’s independence from Britain in 1948, the Rohingya were largely allowed to participate in national affairs and contributed both politically and culturally in the nation-building process alongside other citizens of Myanmar.¹⁹ In 1962, Myanmar fell under military rule, which was to last 49 years. During this period, the process of stripping the Rohingya of their identity and rights began. This process continues in the present day.

Whilst the erosion of the rights of the Rohingya is an on-going process, there have been several significant events which have contributed to today’s situation in which at least 800,000 Rohingya inside the country have been rendered stateless.²⁰ The first of these significant events was Operation *Nagamin* which was launched in Rakhine State in 1978. The stated purpose was to “designat(e) citizens and foreigners in accordance with the law and tak(e) actions against foreigners who have filtered into

¹⁹ Some examples of this participation in nation-building, evidenced with copies of relevant original documents including lists of Rohingya MPs, Ministers and other political and state actors were compiled by the National Democratic Party for Development for a submission to parliament, entitled “*Presentation for the native inhabitants (whose faith is Islam) residing in the Rakhine State (Arakan State) as the citizen by law and by natural or birth rights as well as the indigenous national of the Republic of the Union of Myanmar*”, 4 July 2012 (on file with the Equal Rights Trust).

²⁰ UNHCR Myanmar, *2014 UNHCR Country Operations Profile*, available at: <http://www.unhcr.org/pages/49e4877d6.html>.

the country illegally”.²¹ During the operation, according to witness’ accounts, many Rohingya had their official documentation taken away from them by inter-agency teams of inspectors.²² There were reports of “brutalities and atrocities waged against the Muslim population”.²³ The news spread and over 200,000 Rohingya fled the country to newly independent neighbouring Bangladesh.²⁴ Mass forced repatriation from Bangladesh followed.²⁵ The legal status of the returnees was not reinstated.

Subsequently, the military regime under General Ne Win promulgated the 1982 Citizenship Law depriving the Rohingya of the right to citizenship. Entitlement to citizenship in Myanmar is primarily through membership of the state-defined national races/ethnicities or *Tai Yin Tha*. Prior to 1982, the categories of *Tai Yin Tha* were broadly defined and open-ended. After the 1982 law, a closed list of 135 national races/ethnicities was published and the Rohingya (and a few other minority groups including persons of Indian and Chinese origin) were excluded. Thus they did not acquire citizenship automatically and by right. It must be noted however, that under section 6 of the 1982 Law, persons who were already citizens at the

²¹ Myanmar Ministry for Home and Religious Affairs, “Naga Min Operation”, quoted in Human Rights Watch, *Burma: Rohingya Muslims: Ending a Cycle of Exodus?*, 16 November 1977, p. 12.

²² Interviews MYS 12 and UK 05, with two Rohingya elders living in Rakhine State at the time of Operation Nagamin, Kuala Lumpur, July 2013 and London, March 2014.

²³ Scully, W.L. and Trager, F.N., “A survey of Asia in 1978 Part II (Feb 1979) Burma 1978: The thirteenth year of independence”, *Asian Survey*, Vol. 19, No. 2, 1979, p. 153.

²⁴ Smith, M., *Muslim “Rohingya” of Burma*, unpublished manuscript, 2005 (on file with the Equal Rights Trust).

²⁵ Abrar, C.R., *Repatriation of Rohingya Refugees*, 1995, available at: http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo%3A50.

time the law came into force would continue to be so.²⁶ Furthermore, the law also provided for “Associate” and “Naturalised” citizenship, the former being for those whose citizenship applications were being processed at the time the 1982 Law was promulgated and the latter being those who are not citizens but can establish that they and their predecessors lived in the country prior to independence. Thus, all Rohingya for whom Myanmar was home should have been able to continue to enjoy/acquire Myanmar nationality either under section 6 of the Act, or as naturalised or associate citizens. However, while most Rohingya would be able to trace their ancestry at least to the colonial period, the lack of adequate documentation including as a result of previous mass exoduses and discriminatory and arbitrary decision making meant that the vast majority of Rohingya have not been recognised as citizens since. Most significantly, during a nationwide citizenship scrutiny exercise in 1989, Rohingya who submitted their National Registration Cards (NRC)²⁷ to the authorities with the hope of receiving new Citizenship Scrutiny Cards (CSC), were denied the new CSCs and their old NRCs were also not returned.

In 1992, the NaSaKa was established as an interagency border force by the Ministry of Defence. It was placed under direct control of the military intelligence chief, Khin Nyunt, and was commanded directly from Yangon. With the establishment of the NaSaKa came a series of local directives and policies that severely restricted the Rohingya’s movements and rights within North Rakhine State. The Rohingya’s lack of citizenship status in Myanmar became the anchor for an entire framework of discriminatory laws and practices that laid the context for coming decades of abuse and exploitation. These included stringent restrictions of travel outside of North Rakhine State and to neighbouring villages within North Rakhine State, restrictions on marriages and on having children within Rohingya communities, and arbitrary taxation and forced labour. These policies and practices have had a severe impact on both the health and education status of the Rohingya which has disproportionately affected women and

²⁶ Burma Citizenship Law, Section 6, 1982, available at: <http://www.refworld.org/docid/3ae6b4f71b.html>.

²⁷ NRCs were issued under the Residents of Myanmar Registration Act, 1949.

children.²⁸ NaSaKa implemented all measures taken towards population control. Fleeing persecution under this law and policy framework, the build-up of military forces in Rakhine State, and the abuses that accompanied them, new waves of Rohingya fled Myanmar.

The period following the 2010 election has seen the further erosion of the Rohingya's rights. Whilst a large proportion of the Rohingya are stateless, the Rohingya have continued to exercise some citizenship rights since independence and before. They have voted in and have had candidates standing in every election since 1936, including the 1990 and 2010 elections.²⁹ It is unlikely that the Rohingya will be allowed to vote or stand for election in 2015, indicating the further erosion of their rights since the political reforms of 2010.³⁰

1.3.4. Since the Violence of 2012

The Rohingya have been subject to multiple waves of mass violence since at least 1978. These waves of violence have been perpetrated by a mixture of the Myanmar security forces and groups of civilians, primarily Buddhists from Rakhine State.³¹ In June and October 2012, waves of mass violence broke out in Rakhine State, which resulted in death, forced displacement, the destruction of homes and properties, and the loss of livelihoods.³² More localised outbreaks of violence have continued throughout Rakhine State since 2012. Both Buddhist and Muslim

²⁸ See Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and Protection Needs of Stateless Persons*, July 2010, Chapter 4.3.

²⁹ See above, note 19.

³⁰ Interviews MYA 13 and MYA 15, with Rohingya politicians, Yangon, April 2014.

³¹ See for example Human Rights Watch, *All you can do is Pray*, 2013, Appendix 1: History of Violence and Abuse against Rohingya, available at: <http://www.hrw.org/node/114872/section/16>.

³² No international investigation into the violence took place. Both government and other figures relating to the violence and related casualties remain under dispute due to the lack of a credible international investigation.

communities in Rakhine State were affected by the violence, but the casualties and victims were overwhelmingly Muslim and mostly Rohingya. Evidence collected by human rights organisations demonstrated that Myanmar security forces took part in the violence and stood by as violence took place.³³ This violence, together with the economic and social ostracisation of Muslim and Rohingya communities in Rakhine State, led to the displacement of over 140,000 people into Internally Displaced Person (IDP) camps within Rakhine State. Additionally, there has been a spike in forced migration of Rohingya out of Myanmar, mostly on boats heading for Southeast Asia and beyond. The exact numbers of Rohingya who have undertaken this journey since 2012 are not known, however it is estimated that from June 2011 to May 2012 approximately 9,000 people have travelled in this way; from June 2012 to May 2013, this number is believed to have risen to over 31,000 and it is estimated that during this sailing season, since June 2013, at least 54,000 have undertaken the journey.³⁴ Between June 2012 and May 2014, as many as 2,000 Rohingya are believed to have gone missing at sea.³⁵ Since 2012, grave concerns have been raised regarding the desperate humanitarian situation for Rohingya and Muslim communities in Myanmar, both within the IDP camps and in their home communities. The health and nutrition status of Rohingya and other Muslim communities is dire. International agencies providing humanitarian assistance to Rohingya have had their efforts hampered by threats and violence against them by local populations, and by restrictions being placed on their activities by the Myanmar government and local authorities.³⁶ Since 2012, security grids have been extended to other areas in Rakhine State beyond the three townships of North Rakhine State. Under the state of emergency, restrictions of movement and population control similar to or even worse than those in North Rakhine State have

³³ See above, note 6.

³⁴ The Arakan Project, *Rohingya Maritime Movements: estimates and trends for departures up to 30 June 2014*, unpublished document, July 2014 (on file with Equal Rights Trust).

³⁵ Email correspondence with the Director of the Arakan Project, 2014.

³⁶ See UNOCHA Myanmar, *Humanitarian Lifeline cut following violence against aid agencies in Rakhine*, April 2014.

been imposed on other Rohingya populations.³⁷ As a result of this escalation in human rights violations targeted at the Rohingya, their widespread and systematic nature, the role played by state actors and the impact it has had on the population, the international criminal law framework is emerging as an important and relevant tool through which to address the situation.³⁸

1.3.5. Overseas Rohingya

It is estimated that there are more than one million Rohingya living outside Myanmar, many as migrants or refugees with no legal status. The Rohingya have settled in South and Southeast Asia, the Middle East and beyond. The largest concentrations of Rohingya are found in neighbouring Bangladesh and in Saudi Arabia, with significant numbers in Malaysia, Thailand, India and elsewhere. In addition to the steady flow of Rohingya refugees over several decades, there have been several mass exoduses from Myanmar into Bangladesh and beyond, including in 1978, 1992 and most recently 2012-2013 as a result of mass violence and persecution. Often these Rohingya migrants are not recognised and are not protected as refugees. Instead they are marginalised and excluded. Many live in poverty, often working illegally with no documentation, and are vulnerable to discrimination, violence, arbitrary treatment and exploitation.

1.4. The Rohingya in Thailand

For many decades, Thailand has played an important role in the South-East Asian region as a place of refuge for those fleeing violence and persecution – be they refugees from Cambodia, Laos and Vietnam post-1975 or those fleeing conflict and political persecution in Myanmar since the 1980s. Thailand is also home to hundreds of thousands of economic migrants,

³⁷ Interviews MYA 10–12 and 14, with UN and INGO staff in Yangon, March and April 2014.

³⁸ See, for example, UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana*, Human Rights Council, 25th Session, UN Doc. A/HRC/25/64, 2 April 2014, Para 51.

regular and irregular. Migration flows into the country are complex. Many migrants arrive in Thailand for a variety of reasons including economic concerns, persecution and experiences of human rights abuse. Policies which distinguish between camp-based refugees³⁹ and urban-based migrant workers often neglect the protection needs of refugees in non-camp based environments, such as the Rohingya who generally flee persecution, including structurally-imposed acute poverty. Thailand has been faced with the challenging and delicate task of controlling its porous borders while also offering protection to victims of persecution. The law and policy framework in Thailand and the entire region appears to focus more on border control and less on protection. Consequently, refugees are not always identified as such, do not always receive protection and remain vulnerable to human rights abuse. Many Rohingya suffer as a result of these protection gaps.

Rohingya have entered Thailand both by sea and across land. The sea routes are currently more widely accessible to Rohingya. While some Rohingya refugees treat Thailand as their final destination, the majority use it as a transit country on the journey from either Myanmar or Bangladesh to Malaysia and beyond. The treatment of the Rohingya arriving in Thailand by boat has raised human rights concerns. In early 2009, the Royal Thai Navy was publicly criticised for multiple human rights violations against Rohingya migrants, including their arbitrary detention and cruel, inhuman or degrading treatment prior to “pushing” them back out to the sea without petrol or food, putting their lives at risk.⁴⁰ A number of similar incidents have come to public attention since then. In

³⁹ The Thai government has never formally recognised the refugee status of any persons from Myanmar except those who fled the country after the 1988 “student uprising”. Consequently, Thai policy does not use the term “refugee”, but “displaced person”; and it does not use the term “camp”, but “temporary shelter”. The terms used by the Thai authorities reflect the intended temporary nature of the refugee protection framework in Thailand. This report uses the terms “refugee” and “camp” to reflect the reality on the ground and international standards, rather than the official Thai terminology.

⁴⁰ Equal Rights Trust, *ERT Urges Thai PM to Rescue 126 Rohingya Pushed Out to Sea by Thai Military*, January 2009.

2013, while an unprecedented number of boats of Rohingya fleeing violence in Myanmar's Rakhine state entered Thailand, several were not allowed to land in the country and were "pushed back" or "helped on" to Malaysia by sea.⁴¹ Other groups which landed were delivered to brokers who facilitated the onward journey to Malaysia through Thailand. These groups were generally gathered in make-shift camps in the jungle on the Thailand-Malaysia border, where the brokers would contact the relatives in Malaysia, Myanmar or elsewhere for payment after which they would be released or assisted with their onward journey. As part of this process, many became subject to physical and psychological abuse for delayed payment or non-payment. Some Rohingya that were intercepted by state authorities in Thailand were taken to the Thai/Myanmar border first in order to make contact with brokers to facilitate the onward journey to Malaysia or elsewhere.⁴² This process is sometimes known as "informal" deportation and has been an established practice for state authorities in Thailand dealing with irregular migrants from Myanmar and other countries in the Mekong sub-region for decades. From an international law perspective, where such practices involve forcibly returning persons to places where they may face persecution or other serious human rights violations, it is considered to be *refoulement*, a violation of the customary international law principle of *non-refoulement*.⁴³ From the perspective of some Thai authorities dealing with Rohingya arrivals, this practice is a

⁴¹ "Push back" 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. See, for example, Human Rights Watch, *Thailand: Release and Protect Rohingya 'Boat People'*, 20 August 2013.

⁴² Interviews MYS 11, 12, 16 and 17 with newly arrived Rohingya in Kuala Lumpur, Malaysia, between December 2012 and August 2013.

⁴³ *Refoulement* also includes the act of sending refugees and asylum seekers to a country that does not guarantee protection for refugees. In addition to its obligation under customary international law, as a state party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Thailand is bound by the principle of *non-refoulement* enshrined in Article 3 of the Convention.

pragmatic and humane way to circumvent the official Thai policy of mandatory detention of Rohingya persons that arrive on Thai soil. However, it is also a source of corruption, a means of extracting payment and earning extra money through the illegal practices of colluding with human smuggling networks.

Approximately 2000 Rohingya were officially allowed entry into the country in 2013, but were detained in immigration detention centres (IDCs) and/or shelters as “illegal immigrants”. The overcrowded conditions in the IDCs were widely criticised. These Rohingya were granted “temporary refuge/protection” by the Royal Thai Government for six months in January 2013, which provided them with a grace period before deportation. It is understood that all persons from this group have since “escaped”, been informally released or informally deported from IDCs without official handover between authorities. Many found themselves in the hands of brokers from human smuggling networks. Many of the Rohingya whose travel was facilitated, either with or without prior periods of detention in Thailand, became acutely vulnerable to exploitation and abuse by these networks, some of which had links with their villages of origin in Rakhine State, Myanmar, as well as with the destination country, Malaysia.⁴⁴ As a result, some Rohingya were arbitrarily detained on multiple occasions, first in IDCs in Thailand, then in smuggling/trafficking camps, before being intercepted in Malaysia by state authorities and detained for illegal entry into Malaysia for several months before being released.⁴⁵

These practices of detention and abuse of Rohingya in smuggling/trafficking camps came to light in the national and

⁴⁴ See for example, Szep J. and Marshall A., “Thailand secretly dumps Myanmar refugees into trafficking rings”, *Reuters Special Report*, 5 December 2013; Szep J. and Grudgings S., “Thai authorities implicated in Rohingya Muslim smuggling network”, *Reuters Special Report*, 17 July 2013; and Sidasathian C. and Morison A., “Captive Rohingya being sold by Thai officials”, *Phuketwan*, 21 October 2013.

⁴⁵ Interview MYS 26, with Rohingya refugees in Malaysia, Kuala Lumpur, 3 February 2014.

international media. In particular, award-winning Reuters and Phuketwan reports emphasised the role of the Thai authorities in this process. In response, a criminal defamation case was filed against two reporters from Phuketwan; a development that has been widely criticised, including by the UN.⁴⁶

In addition to the boat arrivals, Thailand is home to a relatively small yet significant population of informally-settled Rohingya, many of whom have lived in the country for over twenty years. It is difficult to estimate the number of Rohingya living in Thailand, given their irregular status and undocumented existence. Past government estimates placed the population at around 20,000, but more recent estimates by community leaders, NGOs and a 2008 survey by the Thai National Human Rights Commission place the number at approximately 3,000, most of whom are believed to live in Bangkok with others living in Mae Sot, Ranong and the southern provinces.⁴⁷ For years, this settled population has been navigating its own set of insecurities and human rights concerns associated with residing and working in a country that considers them to be “illegal” economic migrants, with the added insecurity of being stateless and having escaped persecution in Myanmar. Without the right of stay, they are unable in many cases to legally work, register the births of their children and access education and healthcare on their behalf. Being deprived of access to basic social services, the settled Rohingya in Thailand have been subsisting for decades in the informal labour sector, frequently risking extortion, arrest, detention and deportation. Their situation is akin to that of many irregular migrants in Thailand. However, their unique protection needs as stateless persons and their specific motivations for fleeing Myanmar have thus far rendered them unable to benefit from the

⁴⁶ Brown S. and Olarn K., “U.N. condemns Thai court case against journalists over people trafficking report”, *CNN*, 15 April 2014.

⁴⁷ Thai Action Committee for Democracy in Burma and Sub-Committee on the Human Rights, Stateless Persons and Migrant Workers, 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.

protection regime relating to refugees in Thailand or the changes in policy and practice relating to irregular migrant workers in Thailand.

1.5. Common Themes and Challenges

One of the advantages of conducting research in several countries has been the ability to identify common trends, themes, issues and challenges. Following are some of the key problems and issues which are faced regionally:

1.5.1. Protracted Statelessness and Lack of a Legal Status

The statelessness and lack of legal status of the Rohingya in all research countries is a common problem; statelessness and discrimination go hand-in-hand and are mutually reinforcing. In Myanmar, the Rohingya have been discriminated against for many decades. The arbitrary deprivation of their nationality as a result of the implementation of the 1982 nationality law and their consequent statelessness was an act of discrimination by Myanmar. Their statelessness has since been used to justify further discrimination both in Myanmar and the countries to which they flee.

None of the countries of flight have ratified the international treaties which protect refugees or stateless persons; thus, the majority of Rohingya who should be recognised and protected as stateless persons and as refugees are not; instead they are treated as irregular, economic migrants. The resulting lack of legal status has a significant impact on their enjoyment of rights including the rights to liberty and security of the person, education, health and an adequate standard of living.

The situation is further compounded by the protracted displacement and statelessness of the Rohingya. 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. This protracted statelessness significantly impedes their enjoyment of rights, whether in Myanmar or in countries of flight such as Bangladesh, Malaysia and Thailand. While there is general international consensus that Myanmar should grant nationality to the Rohingya and

repeal or amend its 1982 citizenship law, the international community has been largely silent on the right to a nationality of stateless Rohingya children born in other countries. The extent of this problem is hidden, partly because UNHCR statistics record Rohingya who are in a refugee like situation as “refugees” and not as “stateless persons”, despite the fact that they do not possess a nationality, that their children are born into statelessness and that the majority are not protected either as refugees or stateless persons. The complex disadvantage of the Rohingya has thus been perpetuated over many generations and in multiple countries.

Equally challenging is the impunity with which acute human rights abuses have been inflicted against the Rohingya. Their protracted statelessness and lack of legal status make them easy targets for state and non-state actors alike. The mass violence in Myanmar of 1978, 1992 and 2012/13, the violent acts committed in the course of the forced repatriation of Rohingya from Bangladesh since 1994, the sometimes fatal Thai “push-backs” of Rohingya boat people into the sea in 2009, 2011 and 2013, and past practices in Malaysia of “deporting” Rohingya into the hands of traffickers are all examples of actions undertaken with almost total impunity.

1.5.2. Equality and Non-Discrimination

The pervasive inequality and discrimination faced by the Rohingya is another fundamental challenge that must be addressed both within Myanmar and in other countries. 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. Whilst human rights abuses against many ethnic minorities in Myanmar have been prevalent under military rule and continue until today, the Rohingya have suffered disproportionately. The disadvantage of 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 degree and substance, three factors generally contribute to such discrimination:

- Most receiving countries have weak protection frameworks for refugees and often conflate forced migration to escape persecution with economic migration.
- States consistently fail to recognise the Rohingya as stateless, or to respond to their protection needs as stateless persons.
- States are unwilling to take decisive – or often any - protective action either individually or regionally, as they fear it will become a “pull factor” and result in more Rohingya seeking asylum. This results in a regional “stalemate”.

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. For example, while bonded labour and land grabs were a common practice affecting numbers of people during the Myanmar military regime, the Rohingya of North Rakhine State were and continue to be more vulnerable to these kinds of abuses. Similarly, while poverty is rampant in Cox’s Bazar Bangladesh, the non-registered Rohingya refugees are in a worse position than the general population as they have no legal right to work, and this is exacerbated at times by the Bangladesh government’s refusal to permit the operations of humanitarian actors.

1.5.3. Forced Migration, Trafficking and Smuggling

The majority of Rohingya, lacking documentation and unable to travel freely within Myanmar and internationally, rely on the assistance of smugglers to flee from persecution in Myanmar and also to make the hazardous boat journey from Bangladesh to countries in South East Asia. The smuggling and trafficking networks in the region are one and the same and many Rohingya who start the journey with smugglers end up as victims of trafficking and are forced into bonded labour on Thai and Malaysian plantations and deep sea trawlers. Ties between smuggling/trafficking rings and state authorities (immigration, police etc.) in Thailand and Malaysia in particular have been widely reported.⁴⁸

⁴⁸ See, for example, above, note 3; see also Reuters, “Preying on the Rohingya”, *Reuters*, July 2013; Reuters, “Thailand’s clandestine Rohingya policy uncovered”,

It must be noted that as the majority of Rohingya are refugees, the legality of their entry into countries of asylum is irrelevant and consequently, the distinction between trafficking and smuggling should be moot. However, as stated above, the countries concerned do not have strong refugee protection frameworks in place and Rohingya refugees are rarely recognised as such. Consequently, the identification of victims of trafficking has taken on a level of importance in the region which is in itself an indication of the weakness of any existing national refugee protection frameworks.

Reuters, December 2013; BBC, “Burmese refugees sold on by Thai officials”, *BBC News*, January 2013; Phuket Wan, “Thai Officials Linked to Rohingya Trafficking Networks, Says Torture Report”, *Phuket Wan News*, April 2014.

2. THE INTERNATIONAL LEGAL FRAMEWORK

2.1. A Regional Overview

While this report provides an overview of Thailand’s national and international legal obligations relevant to the Rohingya in Thailand, the international framework is also relevant to all the project countries. All states have an obligation to protect the human rights of all persons who are in their territory and subject to their jurisdiction. This includes the Rohingya. These obligations are contained in international human rights treaties. As this table shows, these treaties have been ratified to varying degrees by the countries researched under this project (unless specified within the table, the dates referred to are those of accession or ratification).

	Bangladesh	Indonesia	Malaysia	Myanmar	Saudi Arabia	Thailand
ICERD ⁴⁹	11/6/1979	25/6/1999			23/9/1997	28/1/2003
ICESCR ⁵⁰	5/10/1998	23/2/2006				5/9/1999
ICCPR ⁵¹	6/9/2000	23/2/2006				29/10/1996
CEDAW ⁵²	6/11/1984	13/9/1984	5/7/1995	22/7/1997	7/9/2000	9/8/1985
CAT ⁵³	5/10/1998	28/10/1998			23/9/1997	2/10/2007

⁴⁹ International Convention on the Elimination of all Forms of Racial Discrimination, G.A. Res. A/RES/47/133, 1969.

⁵⁰ International Covenant on Economic, Social and Cultural Rights, G.A. Res 2200A (XXI), 1976.

⁵¹ International Covenant on Civil and Political Rights, G. A. Res 2200A (XXI), 1976.

⁵² Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. A/RES/34/180, 1979.

⁵³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. A/RES/39/46, 1987.

CRC ⁵⁴	3/8/1990	5/9/1990	17/2/1995	15/7/1991	26/1/1996	27/3/1992
CMW ⁵⁵	Signed only 7/10/1998	Signed only 22/9/2004				
CRPD ⁵⁶	30/11/2007	Signed only 30/3/2007	19/7/2010	7/12/2011	24/6/2008	29/7/2008
UNTOC ⁵⁷	13/7/2011	20/4/2009	24/9/2004	30/3/2004	18/1/2005	17/10/2013
UNTOC Trafficking Protocol ⁵⁸		28/9/2009	26/2/2009	30/3/2004	20/7/2007	17/10/2013
UNTOC Smuggling Protocol ⁵⁹		28/9/2009		30/3/2004	20/7/2007	Signed only 18/12/2001

In addition to treaty obligations, as member states of the United Nations, all states are obligated by the UN Charter to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.⁶⁰ These human

⁵⁴ Convention on the Rights of the Child, G.A. Res. A/RES/44/25, 1989.

⁵⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, UN Doc./A/RES/45/158, 18 December 1990.

⁵⁶ Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006.

⁵⁷ United Nations Convention against Transnational Organised Crime, G.A. Res. 55/25, 2000.

⁵⁸ 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.

⁵⁹ Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, 2004.

⁶⁰ Charter of the United Nations, Article 55(c). According to Article 56 of the Charter, it is the obligation of all member states of the UN to take “joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55”.

rights and fundamental freedoms are specified in the Universal Declaration of Human Rights (UDHR),⁶¹ many of which are also recognised as principles of customary international law.⁶²

2.2. Thailand's Obligations under International Law

As is evident from the above table, Thailand is party to seven core international human rights instruments, namely: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC); and the Convention on the Rights of Persons with disabilities (CRPD).⁶³ However, Thailand has made reservations and interpretive declarations with regard to all of these treaties. Most notable in the context of this report are its interpretive declarations to Articles 1 (definition of torture) and 4 (criminalisation of torture) of the CAT; its reservation to Article 22 (protection of child refugees and asylum seekers) of the CRC; and its interpretive declaration to Article 18 (freedom of movement, the right to acquire and change a nationality and not be arbitrarily deprived of a nationality) of the CRPD; stipulating that such provisions will be applied subject to national laws, regulations and prevailing practices in Thailand.

As a member state of the Association of South East Asian Nations (ASEAN), Thailand is a signatory state to the 2012 ASEAN Human Rights Declaration,

⁶¹ Universal Declaration of Human Rights, G.A. Res. 217A (III), 1948.

⁶² International Law Commission, "Draft Articles on Diplomatic Protection with Commentaries", 58th session, *Yearbook of the International Law Commission*, Vol. II, Part Two, 2006, p. 49.

⁶³ Thailand also ratified 14 Conventions of the International Labour Organization (ILO), of which, the Forced Labour Convention and the Abolition of Forced Labour Convention are particularly relevant to this report.

a non-binding document which nonetheless is a reflection of the human rights consensus in the region.⁶⁴ Thailand is also an active member of regional human rights bodies such as 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).⁶⁵

Under these instruments, Thailand has a legal duty to protect the rights of refugees and stateless persons on its territory and subject to its jurisdiction. This naturally includes the Rohingya. However, Thailand's relatively strong treaty ratification record and the rights protections contained in the Thai Constitution are undermined by poor implementation and the inconsistencies between many of Thailand's domestic laws and its international obligations.⁶⁶

2.3. Equality and Non-Discrimination

As stated in Article 1 UDHR, "All human beings are born free and equal in dignity and rights".⁶⁷ 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 to all individuals the rights recognised in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, Article 26

⁶⁴ ASEAN Human Rights Declaration, 19 November 2012.

⁶⁵ 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>.

⁶⁶ See below, section 3, Patterns of Discrimination and Inequality, for examples in this regard.

⁶⁷ See above, note 61, Article 1.

enshrines the right to equality and non-discrimination as “an autonomous right”,⁶⁸ irrespective of whether another Covenant right is involved or not:

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*⁶⁹

All other major international human rights treaties also have strong equality and non-discrimination provisions.⁷⁰ The ASEAN Human Rights Declaration also entrenches the right of all persons to equality and non-discrimination.⁷¹ Importantly for the Rohingya, the right to equality is a universal right to which everyone is entitled, regardless of their nationality or lack thereof. While states are permitted to distinguish between citizens and non-citizens in some specific circumstances, as the UN Committee on

⁶⁸ Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc. E/C.12/GC/18, 2006.

⁶⁹ See above, note 51, Article 26.

⁷⁰ See, for example, International Covenant on Economic, Social and Cultural Rights, G.A. Res 2200A (XXI) (1976); International Convention on the Elimination of all Forms of Racial Discrimination, G.A. Res. A/RES/47/133 (1969); Convention on the Elimination of All Forms of Discrimination against Woman, G.A. Res. A/RES/34/180 (1979); Convention on the Rights of the Child, G.A. Res. A/RES/44/25 (1989); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. A/Res39/46 (1987); Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106 (2006); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, U/N/ Doc./A/Res/45/158, 18 December (1990). Of these, Thailand has ratified all but the Convention on the Rights of Migrant Workers.

⁷¹ See above, note 64, Articles 1, 2 and 3.

the Elimination of Racial Discrimination (CERD) has stated, this is to be seen as an exception to the principle of equality and consequently, “must be construed so as to avoid undermining the basic prohibition of discrimination”.⁷² Similarly, the UN Committee on Economic, Social and Cultural Rights (CESCR) has asserted that:

*The ground of nationality should not bar access to Covenant rights (...) [which] apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.*⁷³

The Human Rights Committee has also stated with respect to the ICCPR that:

*In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness (...) the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens.*⁷⁴

Article 30 of the Constitution of the Kingdom of Thailand (2007) enshrines the right to equality and non-discrimination:

⁷² Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination Against Non Citizens*, UN Doc. CERD/C/64/Misc.11/rev.3, 2004, Para 2.

⁷³ Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Article 2, Para 2 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 25 May 2009, Para 30.

⁷⁴ Human Rights Committee, *General Comment No. 15: The position of aliens under the Covenant*, UN Doc. HRI/GEN/1/Rev.6, 1986, Paras 1-2.

*All persons are equal before the law and shall enjoy equal protection under the law (...) Unjust discrimination against a person on the grounds of difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religion, belief, education or Constitutional political views shall not be permitted.*⁷⁵

It should be noted, however, that there is disagreement among Thai constitutional law experts as to whether constitutional rights apply to foreigners. The late Professor Yud Saeng-uthai, for example, pointed to the term “Thai people” in Article 2(3) of the Constitution as reflecting an exclusive relationship between the state and its nationals.⁷⁶ Others, including Professor Bunjerd Singkaneti, argue that everyone is entitled to exercise the human rights guaranteed in the Constitution, regardless of nationality.⁷⁷ For the purpose of this report, the Thai Constitutional obligation to protect the right to equality and non-discrimination of all persons and other fundamental rights guarantees have been interpreted in line with its international obligations, including as a state party to the ICCPR, ICESCR, ICERD, CEDAW, CAT, CRC and CRPD. This approach leads to the conclusion that non-nationals, including stateless Rohingya, are entitled to the enjoyment of the rights guaranteed by the Constitution of Thailand. Of particular note in this regard is that when Thailand ratified ICERD in 2003, it undertook to eliminate racial discrimination in all its forms; to guarantee without discrimination the enjoyment of all other human rights; and to guarantee the right of everyone to equality before the law without distinction based on race, colour or national or ethnic origin.⁷⁸

⁷⁵ Constitution of the Kingdom of Thailand, B.E. 2550 (2007), Article 30(1) and (3).

⁷⁶ Yud Saeng-uthai, *Constitutional Law*, Thammasat University Press, 1963, p. 103.

⁷⁷ Singkaneti, B., *Basic Principle of Rights to Liberty and Human Dignity*, Bangkok: Winyuchon, 2009, p. 62.

⁷⁸ See above, note 49, Article 5. Though Thailand made two reservations on Articles 4 and 22 of the ICERD, Thailand is bound by all other obligations laid down in the ICERD. The reservations made do not infringe on the rights covered in this report.

In practice, however, Rohingya are rarely afforded these rights. Research for this report indicates that the inequality and discrimination faced by the Rohingya in Thailand flow from their irregular status. This is a result of Thailand's failure to recognise and accordingly protect the Rohingya as refugees and stateless persons. The discriminatory treatment of the Rohingya has an impact on their enjoyment of other human rights including the right to liberty and security of the person, the right to freedom of movement, the right to a nationality, the right to education, the right to work, the right to an adequate standard of living and the right to the highest attainable standard of health.

2.4. Statelessness and Refugee Law

To be stripped of citizenship is to be stripped of worldliness; (...) A man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow man (...) they could live and die without leaving any trace, without having contributed anything to the common world.⁷⁹

This was written over 60 years ago by the philosopher and writer Hannah Arendt, who was herself stateless. She was speaking about the plight of Europe's stateless in the aftermath of World War Two, but could as easily have been writing about the Rohingya today. In *The Origins of Totalitarianism*, she points to the most grotesque implications of statelessness – both for the stateless individual and for the society that he or she lives in. A few years after the publication of Arendt's seminal book, the 1954 Convention Relating to the Status of Stateless Persons was agreed by the United Nations. The 1954 Statelessness Convention defines a stateless person as someone "who is not considered as a national by any state under the operation of its law".⁸⁰ This definition is now part of

⁷⁹ Arendt, H., *The Origins of Totalitarianism*, Harcourt, Brace and Company, California, 1951.

⁸⁰ United Nations Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, 1954, Article 1(1).

customary international law,⁸¹ and thus applies to states which have not ratified the 1954 Convention,⁸² including Thailand.

Although Thailand is not party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol,⁸³ some of its provisions are principles of customary international law, notably the principle of *non-refoulement* which provides that “no Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened”.⁸⁴

Article 14(1) of the UDHR enshrines the right of everyone to “seek and to enjoy in other countries asylum from persecution.” As a member state of the United Nations, Thailand is obligated by the Charter of the United Nations to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.⁸⁵ The human rights and fundamental freedoms referred to in Article 55 (c) of the UN Charter are specified in the UDHR,⁸⁶ and include this right. Furthermore, while the UDHR is not a binding document, it is a reflection of the moral consensus of the international

⁸¹ See above, note 62.

⁸² For authoritative and detailed guidance on interpreting the Article 1(1) definition of statelessness, see UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014. This Handbook is essential reading for persons engaged on the issue of statelessness. It resulted from a series of expert consultations conducted by UNHCR. The text on interpreting the Article 1(1) definition of statelessness draws on the UNHCR, Expert Meeting – The Concept of Stateless Persons under International Law, 2010, in Prato, Italy, in which the Equal Rights Trust participated. The Summary Conclusions of this meeting are available at: <http://www.unhcr.org/refworld/docid/4ca1ae002.html>.

⁸³ United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, 1951.

⁸⁴ *Ibid.*, Article 33.

⁸⁵ See above, note 60.

⁸⁶ See above, note 61.

community and is the basis for the human rights treaties that followed. For example, Article 22 of the CRC protects the rights of asylum seeking and refugee children, and places a duty on states to protect them and cooperate with the UN in this regard.⁸⁷ Lastly, the ASEAN Human Rights Declaration also recognises that “[e]very person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements;”⁸⁸ and that:

*[E]very person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.*⁸⁹

Despite such obligations, Thailand’s response to refugees has been described as “*ad hoc* and inadequate”.⁹⁰ Over the years, the Thai government has treated refugee situations as temporary humanitarian issues to be handled from the purview of foreign affairs. Protection, under this purview, is framed by Thailand as the responsibility of the international community with Thailand contributing *ad hoc* assistance as a member of that community. Thailand has no permanent domestic legal and administrative frameworks for determining asylum claims and protecting refugee rights and the international community is only able to contribute to protecting asylum-seekers and refugees in Thailand on an *ad hoc* basis, with permission of the Thai government, leading to many gaps in provision of protection, as in the case of the Rohingya.

In the absence of a domestic refugee law framework, the Immigration Act of 1979 regulates all foreigners entering the state’s territory, including

⁸⁷ As noted above, Thailand has made a reservation with regard to Article 22 of the CRC.

⁸⁸ See above, note 64, Article 16.

⁸⁹ *Ibid.*, Article 18.

⁹⁰ Human Rights Watch, *Ad hoc and Inadequate: Thailand’s Treatment of Refugees and Asylum Seekers*, Human Rights Watch, September 2012.

refugees. While Thailand has for decades accommodated refugees from Myanmar in what are termed “temporary shelters” or camps along the Myanmar-Thailand border, the country does not formally recognise those who live outside these camps as refugees or “displaced persons”.⁹¹ Instead, current policies attempt to ensure refugees or “displaced persons” are contained in camps in the border areas. Protection policies and practices are not extended to those who are either unable or unwilling to reside in the refugee camps.⁹² Large scale registration in the camps stopped around 2008 reflecting changes in the conflict situations immediately across the border in Myanmar. However, registration has continued in a restricted and exceptional manner. Practices which have affected the settlement and inclusiveness of protection for refugees in Thailand include conducting limited registration only in camp areas, containing refugees in camps, preventing travel to other areas in Thailand, conducting immigration raids in urban and rural locations outside of camps, and detaining irregular migrants. Urban refugees and refugees outside the camp confines, including the Rohingya, are regarded as “illegal immigrants” and on this basis are subject to arrest, detention and deportation under the Immigration Act.⁹³ The discrepancy between the treatment of refugees who have some level of protection in the border regions and other unprotected refugees outside the border camps (who are treated as “illegal immigrants”) perhaps is indicative of selective application of Thailand’s international obligations. This policy places the Rohingya and other groups living outside of the camps at a disadvantage vis-à-vis the

⁹¹ See above, note 39 for an explanation of Thailand’s refugee policy.

⁹² There has not been any substantial research into the social or legal barriers that prevent Rohingya from residing and registering in the camps along the Thai/Myanmar border. The camps were established primarily to house Karen and Karenni and other ethnic minorities fleeing conflict in Eastern Myanmar and have been largely administered using local Karen/Karenni and other local social and administrative structures.

⁹³ Thailand Immigration Act 1979, B.E. 2522 (1979), chapter 6, section 54 states that, in respect to “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”.

refugees inside the camps in terms of protection, and is thus discriminatory.

2.5. The Role of the UNHCR

The UNHCR has been operating in Thailand for four decades – since 1975 – when, faced with an influx of hundreds of thousands of refugees from Cambodia, Laos and Vietnam, the Thai government invited the agency to work in the country. However, despite a sustained presence in the country for such a lengthy period, UNHCR has faced many challenges in protecting refugees and asylum seekers in Thailand, including meeting the specific protection needs of stateless refugees and stateless persons. Thailand, like many countries in the region, is not party to the 1951 Refugee Convention and its 1967 Protocol or to the 1954 Statelessness Convention, and this impacts upon the ability of the UNHCR to meet the protection needs of the Rohingya and other refugees and stateless persons in the country. Thus, it can be said that UNHCR operates in a challenging environment characterised by inadequate protection space, as in other countries in the region, for many persons of concern.⁹⁴

Many of UNHCRs operations in Thailand prioritise refugee children and women, including through a focus on preventing and responding to vulnerabilities, child protection concerns and domestic and other forms of sexual and gender-based violence (SGBV).⁹⁵ In this regard, it must be noted that while Thailand has entered a reservation in relation to the application of Article 22 CRC, it still has obligations under other convention provisions. The extent to which Thailand has lived up to its obligations under the CRC, especially on the “best interests” of children on its territory in relation to the protection of refugee children, is open to debate.

The camps that were established for refugees from Myanmar in the 1980s and 1990s were largely self-organised and self-administered by refugee

⁹⁴ UNHCR, *2014 UNHCR country operations profile – Thailand*, available at: <http://www.unhcr.org/pages/49e489646.html>.

⁹⁵ *Ibid.*

community leaders. It was not until 1998-1999 that UNHCR became actively involved in the protection of refugees on the Thai/Myanmar border.⁹⁶ In 2005, Thai Provincial Admissions Boards (PABs) assumed responsibility for screening and camp registration for asylum seekers from Myanmar. They actively functioned until 2008 in the nine “temporary shelters” or border camps, primarily processing those that had arrived in the camps before 2006. Some international organisations have commended the PABs for having demonstrated provincial responsibility for screening asylum seekers from Myanmar. However, PABs were primarily set up to deal with persons fleeing conflict in the Karen, Karenni and Mon areas across the border in Myanmar. The small number of Rohingya and other minority groups from elsewhere in Myanmar who had settled in these camps prior to 2006 had equal access to screening and the PABs. However, the Thai policy of containing refugees in the border areas and carrying out screening exercises only in these areas meant that refugees from other areas of Myanmar, including Shan State and Rakhine State, could not enjoy equal access to refugee protection in Thailand. The refugees who did not settle in the camps or access the screening processes, including many Rohingya, are considered “illegal migrants” and subject to a whole set of insecurities and protection concerns. Additionally, the role of the PABs has been inconsistent in that they have not taken account of more recent waves of violence and persecution within Myanmar. Most notably, they have not extended their procedures to meet the needs for the large numbers of Rohingya fleeing violence and persecution in Rakhine State in recent years.

Several Rohingya who have settled in Thailand expressed their confusion and frustration over screening and registration processes that they hoped could provide them and newly arrived Rohingya with a greater degree of protection in Thailand. They felt UNHCR had not effectively communicated options and procedures available to them.⁹⁷ Some Rohingya persons who

⁹⁶ UNHCR, *Thailand/Myanmar border operation, UNHCR global report 1999*.

⁹⁷ Interview TH 6, with 50-year-old Rohingya man in Bangkok, 27 May 2012. The interviewee stated as follows: “I registered with the UNHCR in 2003 and renewed many times. My family had one interview and was rejected. We resubmitted but

we interviewed expressed frustration that UNHCR letters obtained when they registered with the PABs in the border areas prior to 2005 did not provide them with protection from arrest, extortion or harassment by Thai authorities. This is because the letters do not entitle them to live or travel outside the camp areas. Both of the above frustrations highlight the protection gaps for Rohingya who have made the urban areas of Thailand their home but continue to experience insecurity on a daily basis. The current system of temporary protection in Thailand does not protect their basic rights or accommodate their needs.

Temporary protection was accorded to Rohingya persons who arrived and were detained in 2013. However it was not coupled with guarantees to ensure exercise of basic rights including the right to education, liberty and security of the person, the freedom of movement and the right to work. If temporary protection had been coupled with ensuring basic rights, it would have been a viable protection alternative. 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 Boards.⁹⁸

The UNHCR, though subject to criticism for its lack of responsiveness prior to 2012,⁹⁹ has been attempting to find solutions for the Rohingya population in Thailand, most notably through attempting to register them on a fast track basis in 2013 and 2014 and make them eligible for resettlement in third countries. It is frequently noted that, unlike other

never heard back. For nine years we haven't gotten responses. Our cases have been closed. The UNHCR told us to go to the camp, but we don't want to go".

⁹⁸ 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*, UN Doc. CERD/C/THA/Q/1-3, July 2012.

⁹⁹ See above, note 90, p. 88: "[T]he UNHCR office in Bangkok has often seemed to be unwilling or unable to act quickly or assertively to monitor and intervene during push-backs and deportations at land and water borders and has been slow or unresponsive to specific refugees and asylum seekers in need of protection whether living in camps, urban centres, or in detention".

Equal Only in Name

groups of Myanmar refugees in Thailand, resettlement is often not the preferred option for Rohingya persons many of whom prefer to embed themselves in the informal social, economic and religious networks that can provide support to them in the region, particularly in Malaysia.

3. PATTERNS OF DISCRIMINATION AND INEQUALITY

Discrimination severely impedes the full enjoyment of basic human rights for Rohingya. The unwillingness to recognise the protection needs of stateless Rohingya in the country has meant that long staying populations and new arrivals continue to face human rights violations, with new arrivals especially being vulnerable to indefinite detention, trafficking and smuggling. A weak domestic legal framework that does not differentiate between irregular migrants and refugees (including asylum seekers) means that Rohingya are vulnerable to arrest and detention, have no work rights, and face significant challenges accessing other basic social services. Despite Thailand's accession to the CRC and its obligation to act in the best interests of the child, Rohingya children continue to be denied access to education, birth registration and adequate healthcare.

3.1. Displacement and Migration Patterns of the Rohingya in Thailand

Though there are not as many Rohingya in Thailand as there are in other countries in the region – in particular Myanmar, Bangladesh, and Malaysia – the country has assumed an important position, geographically and politically, in the regional picture of Rohingya displacement and insecurity. Thailand is home to both a long-staying Rohingya population and recent arrivals. For many of the recent arrivals, Thailand is a point of transit on their way to Malaysia and beyond.

3.1.1. The Sea Journeys of Rohingya “Boat People”

Prior to the violence in Rakhine State, Myanmar, in 2012, most boats used to leave from Cox's Bazar in Bangladesh, where Rohingya who had crossed the border from North Rakhine State to Bangladesh found boats operated by smuggling networks. Although passengers still leave from Cox's Bazar, the majority of Rohingya are now ferried to the boats directly from Rakhine State.

Since 2012, there has been a significant increase in the number of Rohingya fleeing Myanmar by boat. From June 2012 to June 2014, an estimated 94,000 people boarded boats from northern Rakhine, Sittwe

and the Bangladesh border, including women and children. While the majority are Rohingya, this number includes a growing number of Bangladeshi migrants as well.¹⁰⁰ For the journey, each passenger pays a negotiated fee to sail the Andaman Sea to the shores of southern Thailand or a full package on to Malaysia.¹⁰¹

The sailing season usually lasts from October to April the following year, but since 2012 there has been a new trend of large cargo boats being used, thus reducing the need to rely on winds and currents and allowing departures outside of the regular sailing season. These boats operate mainly in international waters; they are fed passengers by small boats operating on the coasts of Bangladesh and Myanmar and after journeying close to the Thai coast, unload passengers onto smaller boats run by smugglers. Each big vessel averages 350 to 600 passengers, with the largest known to have taken approximately 1,000 persons.¹⁰²

By all accounts, the boat rides are cramped and crowded with passengers unable to lie down to sleep. Food and water rations are also sparse raising risks of hunger and starvation for a journey that can take weeks, depending on the condition of the boat, the weather and navigation skills of the boatman. Poor conditions on the packed vessels along with the unreliable experience of the sailors have resulted in boats being lost at sea and consequent deaths from drowning. The Arakan Project estimates that approximately 2,000 persons (both Rohingya and Bangladeshi) died or went missing at sea while making this journey in 2012-2014. In addition to deaths caused by boat/ship accidents, there have also been alleged cases of boat crew killing passengers and raping female passengers.¹⁰³ As such, the sea route of the Rohingya is one of the most dangerous migration routes in this region of the world. As one boat migrant described:

¹⁰⁰ Interview with the Director of Arakan Project, London, 5 July 2013.

¹⁰¹ Lewa, C., *Asia's New Boat People*, Forced Migration Review, Issue 30, April 2008, pp. 40-42.

¹⁰² See above, note 100.

¹⁰³ *Ibid.* The Director of the Arakan Project maintains that this is a conservative estimate, based only on reported and known incidents.

It was an old fishing boat. There were 208 Rohingya on board and around 70 Bangladeshi and one driver. It was crammed tight with people on the boat. We were like cattle crammed onto a lorry. There was not enough space to lie down. Just to sit scrunched up. It was difficult even to find enough space to eat. Every 2 days, we were given a small portion of rice and every day we were given 2-3 cups of water. It wasn't enough. We each had also brought very light food to sustain ourselves, like small packets of sugar and sauce.¹⁰⁴

3.1.2. Overland Routes to Thailand

The long-staying Rohingya population are of less prominent international profile than the more recent boat arrivals. They mostly came to Thailand decades ago through different migration patterns that were more common in the past. Most Rohingya interviewed for the purpose of our research now live in the Bangkok metropolitan area, while some live in, or know those who live in, surrounding areas as well as the provinces of Khon Kaen (near the Lao border) and Tak (near the Myanmar border). Other Rohingya are known to be living in the Southern Provinces such as Ranong, Nakhon Si Thammarat and Songkhla.¹⁰⁵

The reasons given by interviewees for leaving Myanmar were mostly related to land confiscation, forced labour – usually as porters for the military, discrimination, persecution and an overall inability to earn their own livelihood.¹⁰⁶ Unable to live under these conditions, each left Myanmar and came to Thailand after long journeys overland from Rakhine State. Some spent time in Bangladesh and India before making their way

¹⁰⁴ Interview TH 15, with 25-year-old Rohingya man, 15 December, 2012, Kuala Lumpur.

¹⁰⁵ Interviews were confined to the Bangkok area of Thailand, thus field research reflects the views and experiences of Rohingya living in Bangkok.

¹⁰⁶ Given the small pool of interviewees, this is illustrative and may not be representative of the population as a whole.

to Thailand, and most entered the country through Mae Sot or Ranong, border towns located along the west Thailand border. The entire overland journey could take several months, sometimes over a year, depending on the route and how much time was spent in different locations. In the words of one Rohingya who has lived in Thailand since 1998:

I came to Thailand 14 years ago. My land [in Myanmar] was taken by authorities. I worked as a labourer in the local market and had a difficult time surviving. I also faced poor treatment from locals. I moved to Bangladesh and lived there for one year, then I went to India and to Mandalay, then to Thailand. I was smuggled from Mandalay to Yangon and then to Mae Sot. This took one year and a half.¹⁰⁷

This overland route is now a less common way to travel to Thailand.

Rohingya migrants who arrived in Thailand through Mae Sot and Ranong many years ago stayed in the border area for varying lengths of time. Some left immediately in search of informal labour opportunities and/or protection from the UNHCR in Bangkok, while others found menial labour in the Mae Sot/Tak area such as domestic help, farming and transporting goods. Before the early 1990s, migrants travelling between different areas of Thailand did not face the same restrictions of movement as they do today. One Rohingya man stayed in Mae Sot for a year before going to Bangkok:

I left Burma in 1978 and stayed one year in Bangladesh. From there I walked with two others through India then Burma then Mae Sot. It took three months in total. I stayed in Mae Sot for a year and worked carrying things across the border and back. Then I walked with others to

¹⁰⁷ Interview TH 10, with 55-year-old Rohingya man, 24 June, 2012, Bangkok.

*Bangkok. I did domestic work and saved money to set up a roti business.*¹⁰⁸

3.2. Detention and Deportation

As irregular migrants in a country that does not recognise the rights of refugees, Rohingya in Thailand experience on-going threats to their liberty and security when entering, living and working in and travelling through the country. With their very presence rendered illegal by discriminatory legislation that does not recognise their protection needs, vulnerability to punitive measures aimed at controlling immigration, as well as the exploitation of this vulnerability by state authorities, are constant and pervasive. Consequently the threat of discriminatory detention and deportation of Rohingya is very real. Our research showed that corrupt practices including extortion, harassment and collusion with traffickers and smugglers were prevalent among law enforcement officers.

Thailand's obligation under international law to protect the liberty and security of all persons is prescribed in the ICCPR.¹⁰⁹ Importantly, Article 9(4) states:

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

This right is not restricted to citizens but applies equally to all persons regardless of their status.¹¹⁰ It also applies to all forms of deprivation of

¹⁰⁸ Interview TH 11 with 61-year-old Rohingya man, 24 June, 2012, Bangkok.

¹⁰⁹ See above, note 51, Article 9. See also, note 64, Article 12.

¹¹⁰ 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.

liberty, including immigration control.¹¹¹ Despite Thailand's obligations in this regard, detainees in the country do not have a right of access to the courts, and thus the likelihood of arbitrary detention is increased.

The Equal Rights Trust has published detailed *Guidelines to Protect Stateless Persons from Arbitrary Detention*, which are based on principles of international law. Drawing on an analysis of international standards, the Guidelines state that detention would be arbitrary 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 international law.*¹¹²

The Thai Immigration Act allows indefinite detention, in contravention of principles of international law. According to Section 54 of the Act:

*[I]n case there is an order for deportation of the alien, while waiting for the alien to be deported, the competent officer may (...) detain the alien at any place, as long as it is necessary.*¹¹³

¹¹¹ See above, note 74, Para 9. See also, Human Rights Committee, *General Comment No. 8: Article 9, Right to liberty and security of persons*, UN Doc. HRI/GEN/1/Rev.6 at 130, 2003, Para 1.

¹¹² Equal Rights Trust, *Guidelines to Protect Stateless Persons from Arbitrary Detention*, June 2012, Guideline 25. The Guidelines further elaborate on each of the above elements of the arbitrariness test (Guidelines 26-30), provide guidance on the implementation of alternatives to detention (Guidelines 31-36), stipulate the standards that should be adhered to when detaining a person (Guidelines 37-44), and articulate special considerations relating to vulnerable persons and groups (Guideline 45-51). See also UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, Paras 112-115.

¹¹³ See above, note 93, chapter 6, section 54.

While this provision does not prevent the authorities from implementing alternatives to detention, which would be a welcome step, alternatives have not been implemented in a meaningful manner.

Thai law does protect children from being detained. Articles 32 and 33 of the Child Protection Act stipulate that children whose parents are unable to care for them for reasons including their imprisonment and detention should be provided with the most appropriate means of welfare assistance.¹¹⁴ However, in reality, Rohingya children have been detained by Thai authorities. This includes child detainees who died in custody in 2009 aged 15 and 18.¹¹⁵

3.2.1. Arrests and Deportations of the Long-Term Population

Almost all long-term Rohingya interviewed had experienced police harassment and arrest, and most had been informally deported at least once during their time in Thailand. Several had been deported multiple times and subsequently made their way back to Bangkok, exhibiting a 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 said he had been informally 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.¹¹⁶

Respondents reported three main border points of informal deportation back to Myanmar – the most common through Mae Sot, one through Kanchanaburi province west of Bangkok and another through Ranong in Southern Thailand. Such informal deportations are part of a widely practiced process that includes varying periods of detention in IDCs before people are taken by van across the border, where they are released in a borderland area and have to pay authorities and smugglers for release and

¹¹⁴ Child Protection Act of 2003, B.E. 2546 (2003), Article 32 and 33.

¹¹⁵ See below, section 3.2.2, for a discussion in this regard. The 18 year-old was detained as a child and died in custody after reaching adulthood.

¹¹⁶ Interview TH 8, with 46-year-old Rohingya man, 27 May 2012, Bangkok.

return to Thailand. The following stories describe common deportation processes:

I've been held in the IDC for 4-5 months, and one time for a year. Now it's shorter, usually 3-4 days. I was arrested 4 months ago and held for 4 days, then sent to court at Ladphrao/Ratchada and fined 4,000 baht. After one more day I was driven to the border in a bus with 100 others (all different people from Burma) and sent to the Burma side. I had to pay money to Burma immigration – 3,000 baht – and was handed over to agents that took me back across the border. Every time I'm deported, I walk back from Mae Sot to Bangkok. I go through the jungle and mountains to avoid police.¹¹⁷

Another respondent had similar experiences. Additionally, he was subjected to physical abuse on at least one occasion:

I have been arrested at least 10 times. Three times I was deported and came back through Mae Sot. Other times they (police) just took money and released me. I was last deported three years ago. I was arrested in Bangkok and taken to Mae Sot and then Thai police dropped me off on the Burma side. I had to pay Thai authorities. First they check what you have and take it. I was beaten by military personnel after being dropped off on the Burma side. When I came back, I walked through the forest out of Mae Sot and back to Bangkok. It took 45 days in total.¹¹⁸

These accounts illustrate not only the cycle of arrest and deportation that the Rohingya are vulnerable to, but also the collusion of authorities of both countries with smugglers operating across borders to exploit these vulnerabilities. It is evident that these practices are rooted in

¹¹⁷ Interview TH 9, with 54-year-old Rohingya man, 27 May 2012, Bangkok.

¹¹⁸ Interview TH 13, with 43-year-old Rohingya man, 24 June 2012, Bangkok.

discriminatory policies of criminalisation and exclusion of irregular migrants, including those who should be recognised as refugees.

3.2.2. Pushback, Detention and Deportation of Boat Migrants

As undocumented and stateless people, the Rohingya are compelled to cross international borders using illegal means. Measures taken by Thai authorities to deter such migration, including boat “push-backs”, detention and overland deportations, amount to violations of the right to liberty and security of the person and also impact on other rights including the right to life, freedom from torture, cruel, inhuman or degrading treatment or punishment, freedom of movement and the right to seek asylum.

An estimated 3,000 people made this boat trip during the 2006-2007 sailing season. This was followed by a sharp increase to approximately 6,000 in 2008-2009, when Thailand received international criticism for “pushing back” several boats out to sea. In addition to the fact that boats were “pushed-back”, some boats were stripped of their engines and the passengers were provided with only minimal food and water. This was heavily criticised by the international community. Between December 2008 and January 2009, three push-backs occurred resulting in over 1,100 people being cast out to sea with little food and water and no working engines. They eventually ended up in the Andaman Islands of India and in Idi Rayeuk and the Sabang Island of Indonesia; 300 were said to have died.¹¹⁹

In the midst of international criticism over these push-backs, Thai authorities opted to detain 79 passengers (including 12 children) from a boat that arrived on January 26, 2009. Upon arrival, the mixed group of 79 Rohingya and Bangladeshi boat passengers were jailed for a month before being transferred to the IDC in Ranong where two detainees aged 15 and 18 died in custody.¹²⁰ In an urgent joint appeal related to this incident, four

¹¹⁹ See above, note 40; and note 28, pp. 159–165 for a detailed account of push-backs and their repercussions during the 2008-2009 sailing season.

¹²⁰ Equal Rights Trust, *Stakeholder Submission to the Universal Periodic Review on Thailand*, UN Doc. A/HRC/WG.6/12/THA/1, 2011.

UN Special Rapporteurs and the Chairman of the UN Working Group on Arbitrary Detention stated that:

[I]n both cases, the rapid deterioration of their health may be due to the inadequacy and inefficiency of healthcare being provided to them during their detention period and particularly during the hours preceding their deaths.¹²¹

The remaining detainees were eventually transferred to the IDC in Bangkok where they remained for two years. During this period, Bangladesh accepted the return of the Bangladesh nationals among the group. Finally, the remaining Rohingya were informally deported to Myanmar, across the border near Mae Sot, after which most made their way back to Thailand and on to Malaysia through the services of smuggling networks. Following is an account of one of the detainees:

We took a boat from Maungdaw; the boat started in Bangladesh. The engine broke while still in Burma's waters and we were beaten by the Burmese military for five days and then left floating. The Burmese Navy found us and towed us for one day and night towards Thai waters and left us floating.

The boat began to sink near Thailand, and we saw a group of Thai fisherman and asked for help. They towed us for 4-5 hours and then cut the tow rope. We saw a plane and signalled to it; the plane notified Thai security and a Thai Navy boat came to tow us to shore. We had sailed for 28 days total, from Maungdaw to Thailand.

Everyone had serious injuries from being beaten by the Burmese Navy. The Thai Navy sent some of us to the hospital and some to the police. Those without serious injuries were sent to the court and held in jail for 5 days,

¹²¹ See UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, UN Doc. A/HRC/14/20/Add.1, 2010.

then back to the detention centre. Two people died in detention.

We were then transferred to Bangkok. Another person died in the IDC there. About thirty people were sent to Bangladesh after the Bangladeshi government accepted them. We stayed in the IDC for two years. The food was regular but not good quality. We all slept in one big room. We could only exercise once every two weeks.

Some wanted to go to a third country, including me, and some wanted to be sent back to Burma. We were never informed about what would happen to us and never knew what was going on. One day when we were taken outside for exercise we protested. We said they could kill us, but we wouldn't stay any longer. The IDC officers called senior level officials. The senior officer, a new officer, said he didn't know about our case. He said they could release us in one month but we demanded sooner and finally agreed to two weeks.

We were released in three groups, one per week, and driven to Myawaddy and dropped off in Democratic Karen Buddhist Army (DKBA) controlled territory. Each person paid brokers in the DKBA 3,500 baht and they gave 500 to Thai immigration officers. The payment was to return to Mae Sot in Thailand. After we paid we could go where we wanted. Some stayed in Mae Sot and most eventually went to Malaysia, some went to Khon Kaen, and three ended up in China.

I tried to go back to Burma with three others but we were caught and arrested and beaten by the Burmese military. They put us in jail for a night and then released us and told us never to come back or we would be killed. We were

*taken by motorbike to near Myawaddy, then crossed the river and came back to Thailand.*¹²²

Subsequent years have seen more boats arriving and varying policies related to “push-back” and land deportation being implemented. In 2009 and 2010, only one boat was intercepted in Thai waters. In March 2010, this boat, carrying 93 people, was pushed back. However, this time they were given food rations and eventually reached Malaysia.¹²³ In January and February 2011, four boats were again intercepted in Thai waters. After being detained a few days in Thailand, 91 passengers from one boat were forced onto another engineless boat, towed out to the high seas and set adrift. They were ultimately rescued in the Andaman Islands of India. Another boat with 129 aboard had its engine disabled at sea by Thai authorities and drifted to Aceh in Indonesia. The other two boatloads of passengers were detained in Thai IDCs and were informally deported in Ranong in August 2011.

A Thai official stated that:

*Although it's against humanitarian grounds, the illegal entry of foreigners must come under the (Thai) legal framework. This is to prevent a similar problem from occurring again in future.*¹²⁴

Subsequently, the UN Committee on the Elimination of Racial Discrimination expressed concern over push-backs by the Thai navy and urged the government to prevent any further expulsion of Rohingya asylum seekers.¹²⁵

¹²² Interview TH 14, with Rohingya man, 13 July 2012, Bangkok.

¹²³ People's Empowerment Foundation, *Refugee Protection in ASEAN: National Failures, Regional Responsibilities*, November 2010.

¹²⁴ See above, note 120.

¹²⁵ See above, note 98.

As a new sailing season started in late September 2011, the Thai government started implementing a “help on” policy. Officially this policy involved providing some humanitarian assistance to boats intercepted in Thai waters and allowing them to continue to their destination (Malaysia). However, in reality, many intercepted boats were brought ashore by Thai authorities and immediately transferred to smugglers working in collusion with them for transportation across land borders.

By March 2012, the number of recorded boat arrivals had increased again. Reportedly, 2,490 boat people were arrested near Ranong and Phang Nga and another 2,552 people in 25 boats were “helped on” to destinations outside of Thailand.¹²⁶ In reality, those boats were not “helped on” in the sea, but the people on them were handed over to brokers to transport them across land to Malaysia, during which process they were detained in jungle camps along the Thailand-Malaysia border. Those arrested were informally deported through land crossings to Myanmar, where they could pay brokers to be taken to Malaysia through the same overland process.

On February 7, 2013, the Thai government reported that 5,899 Rohingya had arrived since October 2012,¹²⁷ but many more are believed to have boarded boats to Thailand from Bangladesh and Myanmar during this time. Over the course of 2013 and early 2014, there have been noticeable changes in the demographics of new Rohingya arrivals, with increasing numbers of women and children now making the journey.¹²⁸ It is estimated that women and children make up between 5 to 15% of passengers overall.¹²⁹ This includes a growing number of unaccompanied minors. Although reasons for this change are numerous, it is likely to have

¹²⁶ Phuket Wan, “Thailand Lists Boatpeople Arrested or Assisted Along Phuket Holiday Coast,” *Phuket Wan News*, 18 March 2012.

¹²⁷ Irrawaddy, “After Burma Violence, Almost 6,000 Rohingyas Arrive in Thailand”, *The Irrawaddy*, 8 February 2013.

¹²⁸ Szep, J. and Grudgings, S., “Myanmar Exodus: Preying on the Rohinyga”, *Reuters Special Report*, Thailand, 17 July 2013.

¹²⁹ The Director of the Arakan Project as quoted in Associated Press, “Desperate Rohingya children flee to horrors and despair”, *Taipei Times*, 4 May 2014.

been influenced by the increasing violence in Rakhine state, resulting in women leaving to reunite with their husbands already in Malaysia.¹³⁰ Additionally, there have been a number of women and a smaller number of child brides who have arrived by boat through Thailand to enter into marriages arranged by their parents or future husbands, with the latter often paying for their journey to Malaysia.¹³¹ With the increasing number of women making this journey, there have been reports of incidences of rape on board these vessels.¹³²

On 10 and 11 January 2013, Thai security forces conducted raids in at least three brokers' camps and warehouses, and arrested about 1,000 Rohingya detained there by smugglers. At the same time, Thai authorities intercepted all new boats found in Thai waters and arrested another 1,000 individuals. These 2,000 arrestees were then detained in various IDCs and shelters across Thailand. On 28 January 2013, the Thai government declared that the 2,000 detainees would be allowed to remain in Thailand (in detention) for six months and also that no new boats would be allowed in from that day. In February 2013, boats continued to enter Thai waters and were immediately pushed back: 11 boats ended up in Malaysia where they were intercepted by Malaysian Maritime Marine Agency, two were ultimately rescued in Sri Lanka (after 98 died aboard of starvation) and at least one landed in Aceh. As the push-backs became an international issue, overland transfer to brokers' camps on Thai mainland had restarted by late February 2013.

Conditions in government-run shelters housing women and children have been found to be reasonably satisfactory, with outdoor spaces and enough room to move around.¹³³ However, conditions in IDCs housing men are

¹³⁰ Skype interview with the Director of the Arakan Project, 12 May 2014.

¹³¹ Interview with UNHCR Malaysia Office, Kuala Lumpur, 12 May 2014.

¹³² Lee, Y.K., "Malaysia: Rohingya refugees left with nowhere to go", *Green Left Weekly*, 2 July 2013.

¹³³ Information collected through multiple visits to detention centres in Thailand by IHRP's senior researcher.

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.¹³⁴ The detainees claimed that during a period of five months of detention, they had not been let outside. Eight Rohingya detainees died of health-related problems due to detention conditions. UNHCR faced challenges in carrying out screenings, with access in 2013 limited to some people in IDCs who identified themselves as Rohingya. In 2014, this access increased. The separation of all men from women and children has resulted in families struggling with greater uncertainty about their future.¹³⁵

Whilst the processes in dealing with Rohingya arrivals in Thailand have been *ad hoc*, in most situations the treatment of Rohingya and the response to their arrivals have resulted in informal deportation and collaboration of authorities with brokers and smugglers who facilitate onward travel. While not associating themselves with these informal deportations, UNHCR and other humanitarian agencies have advocated with the authorities to consider minimum safeguards in the context of such “voluntary” deportation. These safeguards include: Ensuring (informed) voluntariness of any request for “deportation”; Rohingya detainees should be counselled and be informed fully of other viable options (such as resettlement for the most vulnerable), all unaccompanied/separated children should undergo Best Interest Determinations and be protected against deportation, and family members should not be split through these deportations; authorities should ensure maximum mitigation measures against risks of smuggling/trafficking once a person is “released” from detention.

In January 2013, a Thai official said to be closely linked with Rohingya issues admitted to BBC journalists that working with brokers to transport the Rohingya to Malaysia was regarded as the only short-term solution to the influx of refugees, because deportation to a country where they are

¹³⁴ Channel 4 media report: John Sparks, Asia Correspondent, “Rohingya people crammed in filthy cages in Thailand”, *Channel 4*, 31 May 2013. See also Human Rights Watch, *End Inhumane Detention of Rohingya*, 4 June 2013.

¹³⁵ See above, note 133.

denied citizenship (Myanmar) is difficult and Malaysia is more willing and able to deal with them.¹³⁶ From the perspective of the Thai officials, they are obligated to arrest and detain the Rohingya under the current Immigration Law. Given the obligation to not *refoule* Rohingya to Myanmar where they are vulnerable to persecution, irrespective of the likely refusal of Myanmar to accept Rohingya returnees, and given the alternative prospect of detention in Thailand, it is likely that some Thai officials feel that the most humane course of action is to unofficially allow Rohingya to travel onto Malaysia, whereas others may financially benefit from the process. However, as the testimonies in this report indicate, in addition to being a violation of international law, such informal solutions add to the vulnerability of Rohingya refugees and place them directly in the hands of human smugglers, where their situation may, in some cases, evolve into human trafficking.

The conundrum for Thai authorities noted above highlights the failure of the Thai legal framework, which does not adequately protect refugees, asylum seekers and stateless persons in a migration context and does not provide a viable alternative to the prolonged detention of Rohingya in Thailand. The prosecution-focused anti-trafficking framework has not been effectively implemented. In particular, the elements that should protect victims of trafficking, who may also be refugees, are not applied in the situation relating to fleeing Rohingya. This highlights the need for a strong regional protection based solution for the Rohingya.¹³⁷

As described above, the smuggling of Rohingya boat migrants across the Thailand-Malaysia land border, often involving cooperation between Thai authorities and smugglers, occurred frequently during the 2012-2013 sailing season. While such practices are likely to have been happening prior to 2012, the media spotlight on the situation after 2012 has resulted in increased reporting of it. Such practices result in various human rights violations, including of the right to liberty and security of the person, the right to freedom from torture, cruel, inhuman or degrading treatment or punishment, the right to seek asylum, the right to freedom of movement,

¹³⁶ BBC, "Burmese refugees sold on by Thai officials", *BBC News*, 21 January 2013.

¹³⁷ For a discussion on trafficking, see section 3.2.3. below.

and the right to life on both sides of the border, as the following account indicates:

After we landed in Thailand, we were brought to the jungle. I stayed in a big hut for five days. People told me "this is Thailand". Otherwise, I would not have known where I was. I think I stayed with Thai people. When I told them that I could not pay money to them, they sent me to a place in Malaysia. In Thailand they didn't beat me. But I did not have enough food – only one meal per day. On my third day in Malaysia, they started to beat me. They beat me every morning and every night. They used a big stick and kicked me with boots. [He shows the scars on his back and ankles]. I was there for eight days in total. One time they pushed me. I fell to the floor. They dragged me because I could not contact a relative in Malaysia to pay for the trip. I fell unconscious. I don't know exactly what happened. That is where the scars on my face came from. I also got a big cut in my head. Now I have stitches in it. One man took me to the clinic. I don't know who he was. I think he was a Malay man, but I don't know if he was one of the guards or another person. After they stitched it, the same man took me back to the place in the jungle.

That place in the jungle had a zinc fence around it to stop us from leaving. The guards had pistols. There were four of them minding the camp. They had big boots to kick us with and sticks to beat us. There were about 20-30 of us. We were all Rohingya.

[When asked how he got out, his relative takes over explaining]

Relative: I received a phone call from a Malay man. He told me, "your relative is already dead. You have to come and pick up his body", so I went to Tanah Merah. From there I was taken into the jungle. I was told I have to pay 5500

RM. Then I brought him back with me to KL. I don't know why the traffickers told me he was dead.

It is a big problem for me. I had to borrow money from friends to pay the brokers. The brokers wait for maximum 4-5 days to get their money. We worry that if people cannot pay, they will send them to the fishing boats in Thailand to work. I had to pay for the other brother too. They don't have any other relatives. I don't know what to do about the third brother. They called me from Thailand just yesterday and told me I need to pay money for him too.¹³⁸

Deportation back to Myanmar (from where Rohingya are smuggled/trafficked to Malaysia), whether as a result of a judicial process or not, violates the principle of *non-refoulement*. In addition, many Rohingya who have been pushed to sea have faced threats to their right to life. Furthermore, Thailand has failed to conduct independent investigations into incidents in 2008, 2009 and 2011 when the Thai Navy pushed and towed boats filled with Rohingya migrants out to international waters, resulting in hundreds of deaths.¹³⁹

3.2.3. Human Trafficking and Smuggling

The Anti-Human Trafficking and Smuggling Framework

Human trafficking and smuggling is an issue of concern in the ASEAN region, and there is considerable political support for anti-trafficking action in countries in the region including Thailand in terms of the ratification of international treaties; the implementation of domestic laws and national plans of action; and international and regional cooperation. Thailand is party to the UN Convention against Transnational Organised

¹³⁸ Interview MYS 7, with 21-year-old Rohingya man (and relative), 15 December 2012, Kuala Lumpur.

¹³⁹ See above, note 120.

Crime (UNTOC) and its Protocols on Trafficking and Smuggling.¹⁴⁰ Thailand also has obligations under CEDAW and CRC to take appropriate measures to suppress trafficking in women and children respectively.¹⁴¹ At a regional level, Thailand is a member of the Greater Mekong Sub-region (GMS) COMMIT anti-trafficking process which includes the development of Sub-regional Plans of Action and bilateral MOUs (including between Thailand and Myanmar).¹⁴² Thailand is also part of the Bali Process, which is an Asia Pacific regional process which addresses human trafficking and smuggling.¹⁴³ At the national level, Thailand enacted the Anti-Trafficking Act of Thailand in 2008.¹⁴⁴

According to the UNTOC and its protocols, “trafficking in persons” is defined as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or

¹⁴⁰ See above, notes 57, 58 and 59.

¹⁴¹ See above, note 52. According to Article 6 of the CEDAW, “State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”. See also above, note 54. According to Article 35 of the CRC, “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”.

¹⁴² 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 the 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>.

¹⁴³ 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 United Nations Office of Drugs and Crime, observer countries and international agencies. For more information about the Bali Process, visit the Bali Process website: <http://www.baliprocess.net/>.

¹⁴⁴ Anti-Trafficking in Persons Act, B.E. 2551 (2008).

*other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include (...) forced labour or services, slavery or practices similar to slavery.*¹⁴⁵

And the “smuggling of migrants” as:

*the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.*¹⁴⁶

While smuggling is considered to be a consensual agreement between the migrant and the smuggler, trafficking involves force or coercion on the part of the trafficker, thus the trafficking frameworks tend to contain wider provision for protective mechanisms.¹⁴⁷ This hierarchical protection system is not necessarily based on levels or experiences of exploitation, but rather on technicalities that exclude large populations of vulnerable migrants. In practice, the categories of trafficking and smuggling overlap and interplay. Migrants who enter into agreements with smugglers are not aware that they will end up being trafficked. Of the migrants using the same irregular migration routes and agents, some will end up trafficked and some will not.

According to Thailand’s Anti-Trafficking in Persons Committee, a trafficked person is an individual “who has been directly subjected to an act of trafficking in persons, in accordance with section 6 of the Anti-

¹⁴⁵ See above, note 58, Article 3.

¹⁴⁶ See above, note 59, Article 3.

¹⁴⁷ Bhabha, J. and Zard, M., “Smuggled or Trafficked?”, *Forced Migration Review* 25, Refugee Studies Centre, 25 May 2006.

Trafficking in Persons Act B.E. 2551 [2008]”.¹⁴⁸ Notably, exploitation under Thai law includes "forced labour or service", which is defined as:

*[C]ompelling the other person to work or provide service by putting such person in fear of injury to life, body, liberty, reputation or property, of such person or another person, by means of intimidation, use of force, or any other means causing such person to be in a state of being unable to resist.*¹⁴⁹

Smuggling and Trafficking of New Boat Arrivals

Thailand has long been a source, destination, and transit country for victims of trafficking who are commonly exploited by the sex industry, the commercial fishing industry, plantations, low-end garment production factories and as domestic workers. The Malaysia-Thailand border has been a hot-spot for smuggling and trafficking in both directions, and the Rohingya have been subject to both practices. In 2009, the United States Senate Committee on Foreign Relations reported that “a few thousand” migrants from Myanmar, including Rohingya, had been taken from detention centres in Malaysia to southern Thailand and forced to pay smuggling fees to return to Malaysia or be sold to Thai fishing boats as

¹⁴⁸ Office of Anti-Trafficking in Persons Committee, *Scope and Element of Identification of Trafficked Persons*, n.d., available at: http://www.no-trafficking.org/reports_docs/legal/thailand/se_vicid_pamph_en.pdf. According to Section 6: “Whoever, for the purpose of exploitation, does any of the following acts: (1) procuring, buying selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving any person, by means of threat or use of force, abduction, fraud, deception, abuse of power, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or (2) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving a child: is guilty of trafficking in persons”.

¹⁴⁹ See above, note 144, section 4.

bonded labourers.¹⁵⁰ While these practices have reportedly been phased out, with the UNHCR in Malaysia reporting that no such deportations have occurred since 2009,¹⁵¹ they illustrate the extent to which the Rohingya and other irregular migrants are vulnerable to exploitation and abuse at the border.¹⁵²

Based on testimonies of those among the nearly 800 Rohingya discovered during Thai government raids on smuggling camps in Songkhla province near the Thailand-Malaysia boarder,¹⁵³ it is evident that some Rohingya may have been transported through Thailand for the purpose of exploitation – most notably those who end up in forced labour or slavery-like situations – and, thus, would fit the international definition of trafficked persons.¹⁵⁴

Trafficked persons are entitled to certain protections under the 2008 Anti-Trafficking in Persons Act. For example, under the Act, the Ministry of Social Development and Human Security has to consider providing assistance when appropriate to a trafficked person, and a competent

¹⁵⁰ United States Senate, Committee on Foreign Relations, *Trafficking and Extortion of Burmese Migrants in Malaysia and Southern Thailand*, 3 April 2009, p. 7.

¹⁵¹ See above, note 123.

¹⁵² See above, note 3, for more on exploitation and vulnerability of irregular migrants at the Thailand-Malaysia border.

¹⁵³ Aljazeera, “Myanmar Rohingya refugees rescued in Thailand”, *Aljazeera*, 11 January 2013.

¹⁵⁴ See above, note 58. The definition of trafficking found in the UNTOC protocol can be broken down into **the Act** (What is done – “Recruitment, transportation, transfer, harbouring or receipt of persons”), **the Means** (How it is done – “Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim”) and **the Purpose** (Why it is done – “For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs”).

official may place the trafficked person in the care of a primary shelter or other government or private welfare centre.¹⁵⁵

The Thai government refers victims of trafficking to one of nine regional shelters, run by the Ministry of Social Development and Human Security, where they receive counselling, limited legal assistance and medical care.¹⁵⁶ Victims of trafficking cannot leave or choose to reside outside of these shelters, and their stays can be lengthy due to time consuming repatriation and court processes. As a result, migrant victims have reportedly fled from shelters in order to avoid deportation, which in turn makes them vulnerable to further exploitation *en route*.¹⁵⁷

Generally, foreign trafficked persons identified in Thailand are returned to their country of origin, even if against their will, except when such persons are allowed permanent residence according to Thailand's immigration law. Notably, in exceptional cases where a person is not eligible for permanent residence, the Minister of Interior can grant the person a right of stay.¹⁵⁸ Despite both this provision and a 2005 cabinet resolution stating that foreign trafficking victims in Thailand who are stateless may be given residency status on a case-by-case basis, the Thai government is yet to grant residency status to a single foreign victim of trafficking.¹⁵⁹

Furthermore, as elaborated above, there are problems associated with the Thai government's anti-trafficking efforts such as local police corruption (including direct involvement in and facilitation of human trafficking), biases against migrant labourers and a lack of a human rights-based approach adopted by courts in relation to labour abuse cases.¹⁶⁰

¹⁵⁵ See above, note 144, section 33.

¹⁵⁶ United States Department of State, *Trafficking in Persons Report*, June 2011, pp. 351-355.

¹⁵⁷ *Ibid.*

¹⁵⁸ See above, note 144, section 38.

¹⁵⁹ See above, note 156, pp. 351-355.

¹⁶⁰ *Ibid.*

3.3. The Exclusion of Rohingya Children

Thailand acceded to the Convention on the Rights of the Child in 1992.¹⁶¹ Of the many principles enshrined in the CRC, five are particularly relevant to this report; namely, the right to non-discrimination (Article 2); that in any action taken, the best interests of the child shall be a primary consideration (Article 3); the right to life, survival and development (Article 6); the right to an identity, including nationality (Article 7); and respect for the views of the child (Article 12).

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. Furthermore, as stated above, Article 22 of the CRC entrenches the right of the child to seek asylum and obligates states to protect child asylum seekers and refugees in accordance with principles of human rights and humanitarian law. Article 22 also obligates states to cooperate with the efforts of the UN and other competent INGOs and NGOs in this regard. Thailand has made a reservation with regard to Article 22. However, it is still obligated under the principles of non-discrimination and the best interests of the child to afford equal protection to Rohingya children.

After becoming party to the Convention, Thailand enacted new laws and amended 17 pieces of legislation to bring them in alignment with the CRC. Among them, the Child Protection Act of 2003 stipulates the provision of physical and psychological protection for any person below the age of 18 through assistance, rehabilitation, welfare and development. This law prescribes rights based standards of treatment for children and aims to strengthen family relations. It also seeks to prevent torture, abuse,

¹⁶¹ Thailand also ratified the CRC optional protocols on the sale of children, child prostitution and child pornography; and on the involvement of children in armed conflict.

exploitation and discrimination of children in addition to developing better cooperation between the state and NGOs.¹⁶²

In 2012, the Committee on the Rights of the Child congratulated Thailand on its achievements in strengthening child rights legislation, but expressed concern about the lack of protection given to asylum-seeking and refugee children.¹⁶³ While Thailand has several important obligations relevant to Rohingya children, this report looks at three in particular, where some of the most significant discrimination related challenges can be found – the right to an identity (including birth registration and nationality), the right to education and the right to the highest attainable standard of health. Though Thailand has put in place several initiatives to address these rights, in practice they have not reached many of the vulnerable children in Thailand, including refugees, asylum seekers and irregular migrants.

While access to these three sets of rights is relevant to both the long-staying population and new arrivals, the section below focuses primarily on the position of the long-staying Rohingya community. This population has lived in the country for decades and as a result of difficulties accessing such rights, their problems have carried over to younger generations who were born in the country. As the section below indicates, insecurity is consequently being passed on to new generations of stateless Rohingya children born and living in Thailand.

¹⁶² See above, note 114.

¹⁶³ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention*, UN Doc. CRC/C/THA/CO/3-4, 17 February 2012, p. 7.

3.3.1. The Right to an Identity – Birth Registration and Nationality

The 1961 Convention on the Reduction of Statelessness requires states parties to grant their nationality to anyone born on their territory who would otherwise be stateless.¹⁶⁴

Article 7(1) of the CRC provides a similar though less specific obligation by asserting that every child has a right to birth registration and to acquire a nationality, without saying which state is responsible. Interpreting Articles 3 and 7 of CRC together, UNHCR has stated that:

*[A] child must not be left stateless for an extended period of time: a child must acquire a nationality at birth or as soon as possible after birth. The obligations imposed on States by the CRC are not only directed to the State of birth of a child, but to all countries with which a child has a relevant link, such as through parentage or residence.*¹⁶⁵

Article 8 of the CRC also obligates all states to protect and assist children who have been illegally deprived of their identity (including nationality), with a view to re-establishing speedily their identity – an obligation relevant to Thailand with regard to stateless Rohingya children born on its territory. The right of every child to acquire a nationality is also prescribed by ICCPR Article 24(3). Furthermore, ICERD 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”. Article 18 of the ASEAN Human Rights Declaration

¹⁶⁴ United Nations Convention on the Reduction of Statelessness, U.N.T.S. 989, 1961, Article 1(1).

¹⁶⁵ UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04, Para 11. See also UN Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, 14 December 2009, UN Doc. A/HRC/13/34, Para 36; and UN Human Rights Council, *Arbitrary deprivation of nationality: report of the Secretary-General*, 26 January 2009, UN Doc. A/HRC/10/34, Para 64.

also recognises the right of every person to a nationality and prohibits the arbitrary deprivation of nationality.¹⁶⁶

In 2008, Thailand enacted a new Civil Registration Act which provides the right to birth registration for all children born in the country regardless of the nationality or immigration status of their parents.¹⁶⁷ Thailand also withdrew its reservation to Article 7 of the CRC in December 2010, thereby reinforcing its obligation to provide birth registration to every child born in the country.¹⁶⁸

Unfortunately, the Civil Registration Act has not been effectively implemented due to lack of knowledge and understanding on the part of many local officers. The lack of awareness among parents living in Thailand about the civil registration process and the fear of irregular migrants that contact with authorities may result in their arrest, also hinder the effective implementation of this Act.¹⁶⁹ There have also been reported constraints in remote areas where villagers do not have easy access to district offices and there have been reports of inconsistent implementation. At the beginning of 2012, around five percent (45,000) of all children born each year in Thailand were not being registered, including some Rohingya children.¹⁷⁰ Thus, while the Committee on the Elimination of Racial Discrimination welcomed the enactment of the Civil

¹⁶⁶ See above, note 64, Article 18.

¹⁶⁷ 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.

¹⁶⁸ See above, note 54. Article 7 of the Convention on the Rights of the Child guarantees the right of the child to be registered immediately after birth, the right to a name, the right to acquire nationality, and, as far as possible, the right to know and be cared for by his or her parents.

¹⁶⁹ Information gathered by the IHRP senior researcher during a meeting organised by the National Human Rights Commission of Thailand with local officers in Mae Sot, 28 November, 2012.

¹⁷⁰ OHCHR, *Committee on Rights of Child Reviews Reports of Thailand on the Sale of Children and on Children in Armed Conflict*, 25 January 2012, Summary.

Registration Act, it noted that a large number of children, especially children of ethnic minorities and migrants, had not yet been registered.¹⁷¹

The lack of birth registration and documentation is a major problem for many Rohingya children. While the few who are born to Thai mothers are able to obtain birth certificates, many Rohingya children are not registered at birth. Some respondents reported a reluctance to register home births out of fear of being penalised for irregular immigration. Others reported being rejected when they applied for birth certificates because they had no nationality documentation themselves. The latter example is demonstrative of Thai officials being unaware of the full scope of the Civil Registration Act.

In addition to being a violation of Article 7 of the CRC, non-registration also results in the perpetuation of discrimination against Rohingya. For example, non-registered children are unable to access other core rights necessary for their development, such as access to education and health, as described below.

According to our interviews, a few Rohingya have successfully registered the births of their children in accordance with the Act. However, even those children remain vulnerable as birth registration in itself does not necessarily provide access to education and healthcare.¹⁷²

While Thailand has taken the legislative steps necessary for universal birth registration in the country, its position with regard to access to nationality for those who would otherwise be stateless is more conservative. According to the 2008 amendment to Thailand's Nationality Act, persons born to a Thai parent, whether born in or outside Thailand, can acquire Thai nationality.¹⁷³ Additionally, children born to non-nationals can acquire nationality if both parents are "legal" migrants. However, the children of irregular migrants have no access to nationality, even if this

¹⁷¹ See above, note 98.

¹⁷² See below, sections 3.3.2 on the right to education and 3.3.3 on the right to the highest attainable standard of health.

¹⁷³ Thailand Nationality Act (No.4) B.E. 2551 (2008), Section 7.

means they are stateless. Thus, the majority of Rohingya children born in Thailand – barring those who have one Thai parent – are unable to acquire nationality, leaving them stateless and vulnerable to a lifetime of discrimination and exclusion. 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 liable to be detained and deported under the Immigration Act.¹⁷⁴

3.3.2. The Right to Education

Article 28 CRC guarantees the right to education for all children. In this regard, states have an obligation to provide compulsory and free primary education to all (irrespective of legal status),¹⁷⁵ and to take steps to make secondary education free and accessible to all children.¹⁷⁶ The ICESCR also entrenches the right of everyone to education and imposes similar obligations on the state with regard to access to primary and secondary education.¹⁷⁷ Article 31 of the ASEAN Human Rights Declaration adopts this same approach.¹⁷⁸

Thailand has respected its duty under the CRC and ICESCR 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

¹⁷⁴ *Ibid.* See section 7 of the Act, according to which a person who is born in Thailand and has not acquired Thai nationality under the Nationality Act shall be deemed to have entered and resided in the country without permission under the law on immigration, unless an order is given otherwise according to the law on that particular matter.

¹⁷⁵ See above, note 54, Article 28(1)(a).

¹⁷⁶ *Ibid.*, Article 28(1)(b).

¹⁷⁷ See above, note 51, Article 13.

¹⁷⁸ See above, note 64, Article 31.

the Ministry of Education.¹⁷⁹ 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, which often impose documentation requirements on all applicants, thus undermining the policy objective. As one interviewee stated:

*None of my four children got birth certificates, no documentation. We have tried to get birth certificates but are always rejected. My first two children went to school for 3 years, but the younger kids couldn't go to school because both parents are from Burma. Instead, they work in a market, informal labour that is not consistent, and sometimes they get arrested.*¹⁸⁰

Another shared a similar story:

*My children cannot attend school. I have tried, but since they don't have birth certificates they were not accepted. The kids stay at home. They want to go to school but there is no way. They were born at home, so there was no way to get documents. The only documentation we have for them are the UNHCR slips for two of the four children.*¹⁸¹

Of those interviewed, some had children who were able to attend primary and secondary schooling, but access is inconsistent and usually obtained through the intervention and financial assistance of NGOs.

¹⁷⁹ Social Division, Department of International Organisations, Ministry of Foreign Affairs, Kingdom of Thailand, *Right to Education for migrants, refugees and asylum seekers*, 2011.

¹⁸⁰ See above, note 117.

¹⁸¹ See above, note 116.

3.3.3. The Right to the Highest Attainable Standard of Health

Article 24 of the CRC obligates states to ensure:

[T]he right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.¹⁸²

In addition to this general duty, Article 24 specifies the obligation to diminish infant and child mortality, develop primary healthcare, combat disease and malnutrition, ensure pre-natal and post-natal care for mothers, provide health education, develop preventative healthcare and abolish traditional practices detrimental to the health of the child.¹⁸³ Article 12 of the ICESCR also entrenches the right of all persons to “the enjoyment of the highest attainable standard of physical and mental health”, as does Article 29 of the ASEAN Human Rights Declaration.

Thailand has in place a healthcare coverage scheme, which ensures free medical treatment for most diseases to all Thai nationals. It also has a special budget allocated to ensure healthcare for people with unclear status.¹⁸⁴ Nevertheless in practice, refugees, including children, have had difficulty accessing healthcare. The UNHCR, through a partner organisation in Bangkok, provides some health assistance to refugees and asylum seekers. Some NGOs provide limited support and help to negotiate treatment with hospitals, but only some of those Rohingya interviewed

¹⁸² See above, note 54, Article 24(1). In addition to this general duty, Articles 24 (2) and (3) specify the obligation to diminish infant and child mortality, develop primary healthcare, combat disease and malnutrition, ensure pre-natal and post-natal care for mothers, provide health education, develop preventative healthcare and abolish traditional practices detrimental to the health of the child.

¹⁸³ *Ibid.*, Article 24(2) and (3).

¹⁸⁴ Promphat, S., *Ministry of Social Development and Human Security in Thailand's presentation of the country report*, available at: <http://www.unog.ch/>.

had received such assistance. Normally, when a family member is sick, they rely on pharmacy treatment or pay for private health services. As with birth registration, our research found that one of the reasons for poor access to healthcare was the fear of being arrested upon admission to hospital.

3.4. Denial of the Right to Work and Resulting Vulnerabilities

The right to work is entrenched in Article 6 ICESCR, according to which:

*The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*¹⁸⁵

Similarly, the ASEAN Human Rights Declaration states that “[e]very person has the right to work, to the free choice of employment, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed”.¹⁸⁶ 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.¹⁸⁷ Related to these work related rights is “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.¹⁸⁸ In addition to its obligations under the ICESCR, Thailand has also ratified 14 Conventions of the International Labour Organisation (ILO).

¹⁸⁵ See above, note 50, Article 6(1).

¹⁸⁶ See above, note 64, Article 27(1).

¹⁸⁷ See above, note 50, Article 7.

¹⁸⁸ *Ibid.*, Article 11(1).

Despite Thailand's obligations under international law, under the current Immigration Act, as is the case for all irregular migrants, the Rohingya have no right to work in Thailand. Under Section 9 of 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.¹⁸⁹ 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.¹⁹⁰

Since 2009, irregular migrants from Myanmar have been able to regularise their status, obtain work permits and improve their access to rights. As part of this process, individuals are required to have their nationality verified by relevant state authorities.¹⁹¹ This process was initiated under the framework of bilateral MOUs between the Thai Government and three neighbouring countries to address the legal status problems of large numbers of irregular migrants from Cambodia, Lao PDR and Myanmar.¹⁹² However, the practice of verifying nationality as part of this regularisation process effectively excludes stateless Rohingya and is discriminatory. 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, which allowed them to work legally in certain districts.¹⁹³ However, following a Thai cabinet decision in

¹⁸⁹ See the Thailand Law forum, the Alien Working Act, B.E. 2551 (2008), which 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.

¹⁹⁰ *Ibid.*, section 10.

¹⁹¹ See above, the discussion in section 3.2.1.

¹⁹² Chamrathirong, A., Huguet, J. and Richter, K., *Thailand Migration Profile*, Thailand Migration Report, International Organization for Migration, 2011.

¹⁹³ Starting in 2004, bilateral Memorandums of Understanding (MOUs) on Cooperation in Employment of Workers were signed between Thailand and the governments of Cambodia, Lao PDR 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

December 2008 all migrant workers must now go through the Nationality Verification process in order to get a work permit.¹⁹⁴ One roti vendor described his problem:

*I have had nearly 12 temporary work permit cards, lasting 6 months to one year each. When they expire, they are taken and I have to apply for another. Now when you apply for cards, they ask for a passport, but I can't get a passport so I can no longer have a card.*¹⁹⁵

Hundreds of thousands of migrants from Myanmar work in the urban and rural areas of Thailand, many of whom remain irregular and work in the informal economy. There have been challenges and criticisms of the way in which this scheme, which extends to many workers from Myanmar, not just the Rohingya, has been implemented.¹⁹⁶ For example, the scheme requires workers to be tied to a Thai employer, but many Rohingya are self-employed in the informal sectors of Thailand's economy, for example, as Roti sellers in urban areas. Their self-employment is likely a result not only of economic specialisation but also because of the lack of opportunities open to them in other sectors of the economy.

Many Rohingya, along with large numbers of other migrants from Myanmar, Lao PDR, Cambodia and elsewhere who are not able to access work in the formal economy are vulnerable both to extortion by police and to arrest, detention and possible deportation. Some in the settled community, mainly the women, find domestic work, while others work on farms, on construction sites, helping to clean up and carry goods in local

migrant workers are allowed to access basic health insurance and protection under three laws: the Labour Protection Act, B.E. 2541 (1998), the Social Security Act, B.E. 2533 (1990), and the Workmen's Compensation Act, B.E. 2537 (1994).

¹⁹⁴ Asian Human Rights Commission, *Thailand: the impact of National Verification on migrant workers must be re-assessed*, Asian Human Rights Commission, 12 February 2010.

¹⁹⁵ Interview TH 12, with 53-year-old Rohingya man, 24 June 2012, Bangkok.

¹⁹⁶ See, for example, Hall, A., *Experiences of Myanmar Workers in Thailand with the MoU import process*, Mahidol Migration Centre, 2012.

markets, selling tea and other temporary and unstable forms of work. Others scavenge goods to salvage and sell in order to supplement their income.

The most visible common livelihood strategy for Rohingya in Bangkok, according to our interviewees, is selling roti – a fried South Asian bread. According to one Rohingya community leader, starting an individual roti business was relatively easy in the past. Newly arrived Rohingya could procure a cart and basic materials from an established Rohingya vendor and immediately begin selling, paying off the cart after earning 3,000 baht (approximately 90 USD). In turn, they would be in the position to help another Rohingya in the future. Now, with fewer Rohingya in the city, there are fewer people selling roti, and this system has been replaced by one in which a new vendor must work in a designated area to pay his ‘boss’ 10,000 baht for the cart before being able to choose where he can operate.¹⁹⁷

Income from selling roti depends on location. One vendor said he makes about 300-400 baht per day (approximately 9-12 USD), while another earns around 160-200 (approximately 56 USD) per day. While such an income is generally enough for most of the vendors to survive, their irregular status, combined with the necessity to sell roti out in the open, makes them insecure and vulnerable to harassment, extortion, arrest and deportation. 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 to police in the district in which they sell roti. These bribes can constitute a large chunk (15-30%) of a roti vendor’s income. Furthermore, occasional bribes must be paid whenever roti sellers are harassed by police from another district. As one roti vendor reported:

Tourist police from another area arrested me last year. They demanded 5,000 baht and I tried to offer 3,000. I was

¹⁹⁷ Interview TH 4, with Rohingya community leader, 18 May 2012, Bangkok.

*then taken to the police station and then to the court and spent 5 days in jail. I was released, then was arrested again and put in jail again. I was not deported because I had the pink card (migrant work permit) at the time.*¹⁹⁸

As these examples show, although the Rohingya in Thailand have been able to carve out livelihood opportunities in Bangkok's informal labour sector, their status as irregular migrants renders them constantly vulnerable to arrest for working illegally. Only a change in policy which takes into consideration the special needs of stateless refugees, most of whom are willing and able to work, will improve their circumstances.

When Thailand underwent its Universal Periodic Review process with the UN Human Rights Council, several member states urged the Thai government to continue to address the lack of rights protection for migrant workers, asylum seekers and refugees.¹⁹⁹ Thailand accepted some of the recommendations made, including on strengthening efforts to promote and protect the right to work; strengthening the legal rights framework and enforcement of rights for migrants, asylum seekers and victims of trafficking; and strengthening law enforcement in order to provide adequate protection, guarantee a minimum wage and ensure access to health services and justice for migrant workers.²⁰⁰ These are important commitments, but have not yet been put into effect.

¹⁹⁸ Interview TH 7, with 52-year-old Rohingya man, 27 May 2012, Bangkok.

¹⁹⁹ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Thailand*, UN Doc. A/HRC/WG.6/12/THA/2, 8 December 2011.

²⁰⁰ *Ibid.*, Recommendations 18, 19 and 24.

4. CONCLUSIONS 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, and makes an argument for their strengthened human rights protection, both within Thailand and regionally. Though there are not as many Rohingya in Thailand as there are in other countries in the region, the country has assumed an important geopolitical position in the regional picture of Rohingya displacement and insecurity. Thailand has a relatively strong human rights treaty ratification record compared to the other countries with significant Rohingya populations. Furthermore, many of its domestic law and policy initiatives have the potential to strengthen protection for the Rohingya, if implemented in an effective, consistent and non-discriminatory manner.

It must be acknowledged that if Thailand does act on the recommendations below, concern that this will result in an increase in new arrivals are legitimate and must be addressed. Therefore, active engagement of the country of origin and a balanced regional approach would be needed. There is a perception that any one country which – in isolation – strengthens its protection framework for refugees will be disproportionately burdened as a result. In practice, Rohingya refugee movements are not necessarily driven by the protection framework available at the destination but rather by the necessity to escape violence or persecution and reach safety. While strengthening protection may bring new challenges, failing to do so comes at a cost as well. The present status quo is damaging, untenable and unsustainable. The individual human cost is documented by this report and others. There are also national and regional costs to stability, international relations and reputation. The present regional stalemate only serves to worsen the situation over the long-term. Thailand is well placed to take a leadership position at the regional level to break this stalemate by championing a rights-based response to the Rohingya issue and encouraging other states to do so as well. Given the regional dimension of the issue, it is only if states take individual responsibility while also working collectively to protect the Rohingya that effective protection is likely to be achieved.

The lack of an adequate refugee and/or statelessness protection framework in Thailand has resulted in 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 accordingly protect them has a discriminatory impact on the Rohingya and their enjoyment of human rights. Violations of the right to liberty and freedom of movement, as well as the right to work, are everyday concerns for most Rohingya, and fear of police harassment, arrest, detention and deportation affects the lives of all Rohingya living in Thailand. With inconsistency in birth registration for Rohingya children, and without guaranteed access to public schools and healthcare, there is also significant concern among the settled Rohingya community that their children have no future. While there have been some positive steps such as transfer of Rohingya women and children to shelters, the *ad hoc* response of Thailand to the influx of Rohingya boat people in 2012-2013 has largely resulted in human rights violations, including lengthy detention in inhuman and degrading conditions for some men, the informal deportation of others into the hands of smugglers and traffickers, and the implementation of a “help on” policy which transfers the protection burden to Malaysia and other states.

Despite the human rights challenges in Thailand, Rohingya do not face the acute discrimination and persecution they experience in Myanmar. Many of those interviewed stated that they would be happy to stay in Thailand, particularly if they had better security and if they could work without being arrested. 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. This reflects the shortcomings of the temporary protection system relating to refugees 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 their children and provide them with education, and freedom from exploitation, harassment, extortion, arrest, detention and deportation at the hands of police and other authorities were common requests made by most interviewees. Older Rohingya, in particular, expressed the desire for security, especially in terms of accessing basic services in Thailand, rather than resettlement to a new country.

Ultimately, the Rohingya in Thailand want recognition as members of a society with the ability to live in dignity and contribute to the communities they live in. If they are unable to receive this in Myanmar, their hope is that Thailand, their adopted country, will offer them such futures. While many accept their plight, they do have aspirations on behalf of their children who they hope will have better, more stable futures.

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

Equality and non-discrimination - The inequalities and discrimination faced by the Rohingya in Thailand have a fundamental impact on the enjoyment of all of their other human rights. In part, the discrimination they face in Thailand is a result of their stateless status which in turn has been caused by discriminatory law in Myanmar. For example, the Rohingya cannot regularise their status in Thailand due to the nationality verification aspect of the process. This is directly linked to their statelessness and places them in a position of vulnerability and disadvantage. The discriminatory attitudes of some Thai authorities towards irregular migrants also has an impact on enjoyment of rights, and is the reason why many Rohingya have not benefited from the Thai policies of universal birth registration and access to primary education. Rohingya (and other refugees outside the border camps) also face discrimination compared to other refugees from Myanmar in the border camps, who receive greater protection. These are some examples of the types of discrimination faced by the Rohingya in Thailand.

It is recommended that Thailand should, in accordance with its constitutional and international obligations, treat the Rohingya equally, with respect and without discrimination, and ensure their equal access to the protection and enjoyment of 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 indirectly discriminatory – such as the Nationality Verification process, the dual standards of refugee protection (for those in border camps and those outside the camps), and the immigration detention policies. Action to strengthen the rights of the Rohingya will also help contribute to

addressing the historic disadvantage of the community. In particular, it is recommended that Thailand:

1. Review and repeal all discriminatory laws.
2. Ensure that all laws and policies are implemented in a non-discriminatory manner.
3. Adopt comprehensive and effective national equality legislation, containing the essential elements for such legislation required under international law and summarised in the Declaration of Principles on Equality.

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

1. Other irregular migrants stand to benefit from positive developments aimed to strengthen the rights of irregular migrants – such as being granted the right to work after going through a Nationality Verification process, but the Rohingya do not benefit from this.
2. As stateless persons with no place to go, the Rohingya who are dealt with through formal procedures and detained are likely to have to endure unreasonably lengthy and arbitrary detention, as was the case with those detained in 2009, and those detained in 2012-2013.
3. As stateless persons, many long-staying Rohingya have fewer options with regard to their futures. And thus, while the insecurities and difficulties faced by “economic migrants” may be temporary, those faced by the Rohingya are more likely to be life-long.

While the statelessness of the Rohingya who migrate to Thailand is the result of discriminatory and arbitrary law in Myanmar, Rohingya children born in Thailand are also stateless because they have no access to Thai nationality. Thailand has obligations under Articles 7 and 8 of the CRC to protect against statelessness and protect those who have illegally been deprived of their identity and nationality.

Consequently, it is recommended that Thailand should implement a protective framework for the treatment of stateless Rohingya, register births and provide documentation and legal stay rights for stateless Rohingya, ensure that statelessness does not result in further disadvantage and protect the rights of stateless Rohingya children born in its territory, in accordance with Articles 7 and 8 of the Convention on the Rights of the Child.

Refugees and asylum seekers – Rohingya arriving in Thailand should have access to status determination to be recognised as refugees. Thailand has a significant refugee and asylum seeking population with which it is struggling to cope. A protection-based approach to accommodating refugees will ultimately ease the burden on the system, transforming irregular migrants with no stay rights or associated rights to work into productive members of society who are no longer a burden on the system.

In particular, it is recommended that:

1. 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 contains refugees in the border camps and does not allow refugees to live outside designated camps should be replaced with a comprehensive, non-discriminatory, refugee protection policy. Asylum seekers should have access to refugee status determination in all parts of the country, and refugees should have freedom of movement to travel to and reside in all parts of the country.

3. Thai refugee and immigration policies should distinguish between asylum seekers, refugees, stateless persons and irregular migrants, and respond to each group according to their specific protection needs, within a wider framework of immigration control. Furthermore, Thailand should consider enhancing the stay rights of all asylum seekers and refugees. In particular, they should benefit from the rights to work and education, which are essential for their long-term survival and development in a manner that is conducive to individual dignity and not burdensome to the state.
4. Thailand should remove its reservation to Article 22 CRC, and until it does so, should always act in the best interest of refugee children and in a non-discriminatory way towards them (in compliance with Articles 3 and 2 CRC).
5. Durable solutions must be sought for the Rohingya and all refugees in Thailand. International refugee norms assume three durable solutions: voluntary repatriation, local integration, and resettlement. For the Rohingya, whilst their persecution in Myanmar continues, repatriation is not an option, as in this context it would violate the principle of *non-refoulement*. While resettlement has been effectively used as a durable solution for registered refugees from Myanmar in Thailand – primarily those that are camp-based – the opportunities for Rohingya to resettle from Thailand to a third country through the UNHCR have been very limited. The constraint placed on UNHCR in terms of screening and registering refugees outside of camp settings may account in part for this. Constrained by limited resources and capacity, the Thai government has had a difficult task of hosting refugees for over four decades. The Thai government should allow access to the international community to all vulnerable persons fleeing persecution and human rights abuses. The international community should continue to take a share of this responsibility and extend protection and assistance to groups in non-camp settings and beyond the existing refugee camps. The international community should also increase the number of resettlement places available to the Rohingya. Furthermore, Thailand should work towards more flexible solutions for the Rohingya and allow local integration or at least temporary stay permits, especially for Rohingya children born in Thailand.

Accession to statelessness and refugee treaties – A significant step that will help improve the protection of refugees and stateless people in the country, including the Rohingya, would be to 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. These conventions require state parties to protect the rights of refugees and stateless persons and to reduce statelessness. Accession to these treaties and the introduction of domestic law and policy mechanisms for their implementation would be a significant breakthrough in the protection of refugees and stateless persons. This is likely to have a positive impact not only in Thailand, but also in the ASEAN region, which at present has a poor ratification record of these treaties. In addition to benefiting individual stateless persons, asylum seekers and refugees, accession will also bring benefits to Thailand as these treaties promote “responsibility sharing”, which can help Thailand carry the perceived burden of handling refugees.

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, due to the likelihood of them being detained and/or deported. Such detention is discriminatory and arbitrary if it fails to consider their vulnerabilities, including difficulties in removing them within a reasonable period of time. Similarly, the deportation of Rohingya refugees to Myanmar is a violation of the principle of *non-refoulement*.

Consequently, it is recommended that Thailand’s immigration detention policy should be reviewed and brought in line with international law. The Equal Rights Trust’s *Guidelines to Protect Stateless Persons from Arbitrary Detention* which are based on existing international standards may be a useful resource in this regard. Thailand should also 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 who cannot be removed.

The rights of the child – Rohingya children deserve greater protection. In addition to ensuring the effective and universal implementation of Thailand’s birth registration and education policies, children should be

granted free and easy access to healthcare. Furthermore, Rohingya children who accompany their parents should not be detained. Instead, they should benefit from protection as stipulated in the Child Protection Act of Thailand. Steps should also be taken to always act in the best interests of the child, which in most cases would require them not to be separated from their parents. Thus, Thailand should consider implementing alternatives to detention, perhaps beginning with family units and vulnerable persons but eventually including other groups as well.

The right to work and an adequate standard of living – The difficulties faced by Rohingya in accessing labour markets has a significant impact on their lives. These can be effectively addressed by reviewing and amending the Nationality Verification process in order to ensure that stateless persons are also entitled to register and work.

Smuggling and trafficking – It is recommended that Thailand make use of existing international, regional as well as its national standards and frameworks to enhance protection for victims of trafficking and to also ensure access to such mechanisms for all victims, including the Rohingya. Thailand should ensure that any collusion between traffickers and police and immigration authorities is immediately halted and perpetrators brought to justice.

However, it should be noted that smuggling and trafficking frameworks do not provide a viable alternative in the absence of refugee and statelessness protection frameworks.

Response to boat migration – The response of Thailand to the post-2012 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. Thailand has an obligation to provide humanitarian assistance to those in distress at sea. The “help on” policy and the prolonged detention of arrivals have raised international concern. Distinguishing between Rohingya refugees and Bangladeshi migrants can pose a challenge. However, Thailand is urged to 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 migrants including asylum seekers and stateless persons.

In this regard, it must be noted that over the past few years, Thailand has gradually begun introducing more policies which provide protection to vulnerable persons. The state is urged to continue to protect its sovereignty and borders in a manner which increasingly prioritises the human rights protection of vulnerable persons. Such a human rights-based approach to sovereignty is a difficult but achievable goal which will strengthen human rights protection and serve as an example to other nations.

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 states in the region foster more collaboration and seek to collectively address the issue, while also acknowledging their 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 on regional mechanisms including ASEAN, AICHR, ACWC and the Bali Process to good effect in this regard. Strategically, the rights of Rohingya children may be a useful entry-point, and Thailand is in a position to lead by example through better implementation of its existing policies on universal birth registration and access to education, and also establishing pathways to nationality for Rohingya children born in the country.

BIBLIOGRAPHY

INTERNATIONAL AND REGIONAL TREATIES, AUTHORITATIVE INTERPRETATIONS AND GUIDELINES

United Nations Treaties

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. A/RES/39/46, 1987.

Convention on the Elimination of All Forms of Discrimination against Woman, G.A. Res. A/RES/34/180, 1979.

Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006.

Convention on the Rights of the Child, G.A. Res. A/RES/44/25, 1989.

International Convention on the Elimination of all Forms of Racial Discrimination, G.A. Res. A/RES/47/133, 1969.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, UN Doc. A/RES/45/158, 18 December 1990.

International Covenant on Civil and Political Rights, G. A. Res 2200A (XXI), 1976.

International Covenant on Economic, Social and Cultural Rights, G.A. Res 2200A (XXI), 1976.

Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, 2004.

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.

United Nations Convention against Transnational Organised Crime, G.A. Res. 55/25, 2000.

United Nations Convention on the Reduction of Statelessness, U.N.T.S. 989, 1961.

United Nations Convention Relating to the Status of Refugees, 189 U.N.T.S. 150, 1951.

United Nations Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117, 1954.

United Nations, Charter of the United Nations and Statute of the International Court of Justice, 1945.

Universal Declaration of Human Rights, G.A. Res. 217A (III) 1948.

Other International Treaties

International Labour Organisation, Abolition of Forced Labour Convention (ILO No. 105), 320 U.N.T.S. 291, 1959.

Declarations and Resolutions

ASEAN Human Rights Declaration, November 19, 2012.

General Comments, General Recommendations, Concluding Observations and Concluding Comments

Committee on Economic, Social, and Cultural Rights, *General Comment No. 18: The Right to Work*, UN Doc. E/C.12/GC/18, 2006.

Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Article 2,*

Para 2 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/20, 2009.

Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination Against Non Citizens*, UN Doc. CERD/C/64/Misc.11/rev.3, 2004.

Committee on the Rights of the Child, *Consideration of reports submitted by States parties under Article 44 of the Convention*, UN Doc. CRC/C/THA/CO/3-4, 17 February 2012.

Human Rights Committee, *General Comment No. 6: Article 6, Right to Life*, UN Doc. HRI/GEN/1/Rev.6 at 127, 2003.

Human Rights Committee, *General Comment No. 8: Article 9, Right to liberty and security of persons*, UN Doc. HRI/GEN/1/Rev.6 at 130, 2003.

Human Rights Committee, *General Comment No. 15: The position of aliens under the Covenant*, UN Doc. HRI/GEN/1/Rev.6, 1986.

Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc. E/C.12/GC/18, 2006.

Human Rights Committee, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009.

Human Rights Committee, *General Comment No. 27: Equality of rights between men and women*, UN Doc. HRI/GEN/1/Rev.6 at 179, 2003.

Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 2004.

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.

Special Procedures and Other Reports by International Governmental Organisations

Committee on the Elimination of Racial Discrimination, *Consideration of report submitted by state parties under Art.9 of the Convention*, UN Doc. CERD/C/TH/CO/1-3, 6-31 August 2001.

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* UN Doc. CERD/C/THA/Q/1-3, July 2012.

International Law Commission, "Draft Articles on Diplomatic Protection with Commentaries", 58th session, *Yearbook of the International Law Commission*, , Vol. II, Part Two, 2006.

United Nations Human Rights Council, *Arbitrary deprivation of nationality: Report of the Secretary-General*, UN Doc. A/HRC/10/34, 26 January 2009.

United Nations Human Rights Council, *Human rights and arbitrary deprivation of nationality: report of the Secretary-General*, UN Doc. A/HRC/13/34, 14 December 2009.

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

United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Thailand*, UN Doc. A/HRC/19/8, 8 December 2011.

UNHCR, *2014 UNHCR country operations profile – Thailand*.

Equal Only in Name

UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, 21 December 2012, HCR/GS/12/04.

UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014.

UNHCR, *Summary Conclusions of Expert Meeting - The Concept of Stateless Persons under International Law*, Prato, Italy, 2010.

Documents of Best Practice

Declaration of Principles on Equality, Equal Rights Trust, London, 2008.

Equal Rights Trust, *Guidelines to Protect Stateless Persons from Arbitrary Detention*, London, June 2012.

NATIONAL LAW

Thailand

Alien Working Act, B.E. 2551 (2008).

Anti-Trafficking in Persons Act, B.E. 2551 (2008).

Child Protection Act of 2003, B.E. 2546 (2003).

Civil Registration Act (No. 2), B.E. 2551 (2008).

Constitution of the Kingdom of Thailand, B.E. 2550 (2007).

Immigration Act 1979, B.E. 2522 (1979).

Labour Protection Act, B.E. 2541 (1998).

Nationality Act (No.4), B.E. 2551 (2008).

Social Security Act, B.E. 2533 (1990).

Workmen's Compensation Act, B.E. 2537 (1994).

Myanmar

Burma Citizenship Law [MMR-130], 15 October 1982.

NATIONAL POLICIES AND STATE REPORTS

Promphat, S., *Ministry of Social Development and Human Security in Thailand's presentation of the country report*.

Social Division, Department of International Organizations, Ministry of Foreign Affairs, Kingdom of Thailand, *Right to Education for migrants, refugees and asylum seekers*, 2011.

BOOKS, ARTICLES, REPORTS AND STUDIES

Arakan Project, *Forced Labour during the Arakan Crisis: an overview of forced labour practices in North Arakan, Burma*, June to August 2012.

Arakan Project, *Rohingya Maritime Movements: estimates and trends for departures up to 30 June 2014*, unpublished document, July 2014. On file with the Equal Rights Trust.

Arendt, H., *The Origins of Totalitarianism*, Harcourt, Brace and Company, California, 1951.

Asian Human Rights Commission, *Thailand: the impact of National Verification on migrant workers must be re-assessed*, Asian Human Rights Commission, 12 February, 2010.

Bhabha, J. and Zard, M., *Smuggled or Trafficked?* FMR 25.

Buangam, T., *New Registration Act and the guaranty of legal personality of person*, Prachatai, 11 November, 2008.

Equal Only in Name

Chamrathirong, A., Huguet, J., and Richter, K., *Thailand Migration Profile*, Thailand Migration Report, International Organization for Migration, 2011.

Equal Rights Trust, *Burning Homes, Sinking Lives*, London, June 2012.

Equal Rights Trust, *Emergency Report: Urgent Action Essential to Protect Muslims in Myanmar*, London, 2 November 2012.

Equal Rights Trust, *ERT Urges Thai PM to Rescue 126 Rohingya Pushed Out to Sea by Thai Military*, January 2009.

Equal Rights Trust, *Stakeholder Submission to the Universal Periodic Review on Thailand*, 1/HRC/WG.6/12/THA/1, 2011.

Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*, London, July 2010.

Equal Rights Trust, *Trapped in a Cycle of Flight: Stateless Rohingya in Malaysia*, London, January 2010.

Human Rights Watch, *Ad hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers*, September 2012.

Human Rights Watch, *All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State*, 22 April 2013.

Human Rights Watch, *Thailand: Don't Deport Rohingya 'Boat People'*, *Human Rights Watch*, 2 January 2013.

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

Human Rights Watch, *Thailand: Fleeing Rohingya Shot in Sea by Navy*, *Human Rights Watch*, 13 March 2013.

Human Rights Watch, *Thailand: Release and Protect Rohingya 'Boat People'*, 20 August 2013.

Lewa, C., *Asia's New Boat People*, Forced Migration Review, Issue 30, April 2008.

The Lawyers Forum, *Alien Working Act BE 2551*, 19 February 2009.

Médecins Sans Frontières, *10 years for the Rohingya refugees in Bangladesh: past, present and future*, MSF, March 2002.

The National University of Ireland Galway, *Crimes Against Humanity in Western Burma: The Situation of the Rohingyas*, Irish Centre for Human Rights, 2010.

People's Empowerment Foundation, *Refugee Protection in ASEAN: National Failures, Regional Responsibilities*, November 2010.

Refugees International, *Myanmar: Protecting Minority Rights is Non-Negotiable*, 29 May 2013.

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.

Singkaneti, B., *Basic Principle of Rights to Liberty and Human Dignity*, Bangkok: Winyuchon, 2009.

United States Senate Committee on Foreign Relations, *Trafficking and Extortion of Burmese Migrants in Malaysia and Southern Thailand*, April 3, 2009.

United States Department of State, *Trafficking in Persons Report*, June 2011.

Yud Saeng-uthai, *Constitutional Law*, Thammasat University Press.

NEWSPAPER, MAGAZINE AND ELECTRONIC MEDIA PUBLICATIONS

Aljazeera, “Myanmar Rohingya refugees rescued in Thailand”, *Aljazeera*, 11 January 2013.

BBC, “Burmese refugees sold on by Thai officials”, *BBC News*, 21 January 2013.

Bangkok Post, “145 Rohingya found off Trang”, *Bangkok Post*, 3 February 2013.

Bangkok Post, “96 Rohingya found crammed in a boat”, *Bangkok Post*, 27 January 2013.

Bangkok Post, “Give Rohingya more time, say aid groups”, *Bangkok Post*, 4 July 2013.

Bangkok Post, “Navy accused of killing Rohingya”, *Bangkok Post*, 13 March 2013.

Bangkok Post, “Rohingya can stay 6 more months”, *Bangkok Post*, 5 January 2013.

Bangkok Post, “Rohingya shelter boss struggling to quiet tensions”, *Bangkok Post*, 17 February 2013.

Channel 4 media report: John Sparks, Asia Correspondent, “Rohingya people crammed in filthy cages in Thailand”, *Channel 4 News*, 31 May 2013.

Irrawaddy, “After Burma Violence, Almost 6,000 Rohingyas Arrive in Thailand”, *Irrawaddy*, 8 February 2013.

Phuket Wan, “Second Rohingya Trafficking Camp Raided, Rights Group Calls for UN Intervention”, *Phuket Wan News*, 11 January 2013.

Phuket Wan, "Thai Officials Linked to Rohingya Trafficking Networks, Says Torture Report", *Phuket Wan News*, 28 April 2014.

Phuket Wan, "Thailand Lists Boat people Arrested or Assisted Along Phuket Holiday Coast," *Phuket Wan News*, 18 March 2012.

Reuters, "Preying on the Rohingya", *Reuters*, July 2013.

Reuters, "Thailand's clandestine Rohingya policy uncovered", *Reuters*, December 2013.

Reuters, "Smugglers and security forces prey on Asia's new boat people", *Reuters Special Report*, 17 July 2013.

Sidasathian C. and Morison A., "Captive Rohingya being sold by Thai officials", *Phuketwan*, 21 October 2013.

Szep, J. and Grudgings, S., "Myanmar Exodus: Preying on the Rohinyga", *Reuters Special Report*, Thailand, 17 July 2013.

Szep, J. and Grudgings, S., "Thai authorities implicated in Rohingya Muslim smuggling network", *Reuters Special Report*, Thailand, 17 July 2013.

Szep, J., and Marshall, A., "Thailand secretly dumps Myanmar refugees into trafficking rings", *Reuters Special Report*, 5 December 2013.

OTHER SOURCES

Project Interview Archives, 2012 – 2014.

Project Email Archives, 2012 – 2014.

The Equal Rights Trust 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. The Trust focuses on the complex relationship between different types of discrimination, developing strategies for translating the principles of equality into practice.

The Institute of Human Rights and Peace Studies (IHRP) was created by a merger between Mahidol University's Center for Human Rights Studies and Social Development (est.1998) and the Research Center for Peace building (est. 2004). IHRP is an inter disciplinary institute that strives to redefine the fields of peace, conflict, justice and human rights studies, in the Asia Pacific region and beyond.

Stateless, discriminated against, excluded and persecuted, the Rohingya are one of the most vulnerable communities in the world. Originating from Myanmar, hundreds of thousands of Rohingya have fled the country in search of safety, security and prosperity - conditions that remain elusive to the majority who have made lives for themselves upon new shores.

This report is part of a series which provides an overview and analysis of the human rights situation of stateless Rohingya in various countries. It highlights the human rights situation of both the long-staying and recently arrived Rohingya population in Thailand. The failure to recognise the vulnerabilities of Rohingya as refugees and stateless persons and to accordingly protect them has a discriminatory impact on the Rohingya, denying them equal rights. Violations of the rights to liberty and freedom of movement, as well as the right to work, are everyday concerns for most Rohingya, and fear of police harassment, arrest, detention and deportation affects their lives. Without access to public schools and healthcare, there is also significant concern among the settled Rohingya community that their children have no future.



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