



Institute on Statelessness and Inclusion

Submission to the Human Rights Council at the
25th Session of the Universal Periodic Review

Thailand

21st September 2015

Institute on Statelessness and Inclusion

Submission to the Human Rights Council at the
25th Session of the Universal Periodic Review

Thailand

1. The [Institute on Statelessness and Inclusion](#) (the Institute) is an independent non-profit organisation dedicated to end statelessness through encouraging the human rights of stateless persons and promoting inclusion. Its work combines research, education, partnership and advocacy to promote the inclusion of the stateless and the disenfranchised.
2. This submission draws on research, both in Thailand and internationally, by the Institute and partners. The submission addresses the human rights protection of stateless persons in Thailand, of which there are several groups. These include the hill tribe people who are found mainly in the North and West of the country; the Moken (also known as 'Chao Lay' or 'Sea Gypsies'), along the Andaman coast; and Rohingya refugees from Myanmar. This submission focuses on Thailand's treatment of the hill tribe and Rohingya populations.

The Universal Periodic Review of Thailand under the First Cycle (2011)

3. Thailand was first subject to the Universal Periodic Review on 5 October 2011, at Session 12 of the First Cycle. At this review, multiple recommendations were made to Thailand in relation to strengthening the protection and improving the treatment of vulnerable groups, such as refugees, migrants, ethnic minorities and stateless persons. Following are some examples:

89.5. "Consider ratifying the conventions on refugees and on stateless persons and OP-CAT" - by Brazil, Accepted
--

89.15. "Accede to the United Nations Convention on the Status of Refugees and the 1967 Protocol as well as to the 1954 Convention on the Status of Stateless Persons" – by France, Noted ¹

88.23. "Strengthen the implementation of policies and measures to protect vulnerable social groups like women, children, poor people, ethnic minorities, migrants" – by Viet Nam, Accepted
--

89.70. "Ensure respect for the principle of non- refoulement with respect to asylum seekers and refugees, avoid a premature move to close camps on the Western border while conditions for voluntary, safe and dignified return do not exist, and meet the protection needs of vulnerable peoples, such as the Rohingya, in accordance with international law" – by Canada, Accepted
--

88.93. "Take measures with a view to preventing and combating of arbitrary arrest, violence, abuse and exploitation of migrants" – by Brazil, Accepted
--

¹ Thailand ultimately refused this recommendation.

Thailand's international obligations

4. Thailand has acceded to the core international human rights treaties such as 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 on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Thailand has made reservations and interpretive declarations to all of these treaties. Most notable for this submission is the reservation to the protection of child refugees and asylum seekers (CRC, article 22), interpretive declarations regarding the definition and criminalisation of torture (CAT, resp. articles 1 and 4) and on the freedom of movement, the right to acquire, change and not be arbitrarily deprived of nationality (CRPD, article 18).
5. Thailand has not acceded to the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness.

The hill tribe people in Thailand

6. It is estimated that over half a million of the hill tribe people living in Thailand are stateless,² making them one of the largest stateless groups in the world. Hill tribe people, also known as 'Highlanders', is a collective name for the multitude of different, ethnic and indigenous tribes that have traditionally lived in the mountainous Northern and Western areas of Thailand, primarily along the borders with Lao PDR and Myanmar.
7. The statelessness of many of the hill tribe people in Thailand stems from a combination of problems relating to the country's nationality, civil registration and immigration regulations, in particular those in force during the second half of the 20th century. In the 1950s, Thailand first started to systematically document its nationals. The people who were not registered ended up stateless. For many, the cause of exclusion was the poor enumeration of people and sometimes entire villages that were situated in remote and hard to reach areas, where there was no regular interaction with the Thai authorities. Citizenship was also an unknown concept for some people and so they did not deem it important to get registered.³
8. Surveys were later conducted to try to fill in the gaps in the enumeration of the population, but those who were not registered as Thai nationals before were not deemed to be so during these subsequent exercises either. Instead, temporary statuses were granted and different minority groups were issued with cards of different colours which identified the holder's temporary status while awaiting a more durable solution. Some, but not all, were subsequently granted permanent residence and even nationality. Those who continued to be affected by statelessness also faced difficulties accessing the civil registration system and as a consequence their children's births often went unregistered, leaving them without any proof of identity.

² As estimated by the Thai government. Via UN High Commissioner for Refugees (UNHCR), *Global Trends 2013*, Table 1, June 2014, available at: <http://www.unhcr.org/5399a14f9.html>. Note that there are also many hill tribe people who do enjoy citizenship in Thailand.

³ C Rijken, L van Waas, M Gramatikov & D Brennan, *The Nexus between Statelessness and Human Trafficking in Thailand*. Wolf Legal Publishers (2015).

9. Originally, Thailand had a generous *jus soli* regime, allowing people to acquire nationality by birth on Thai soil which would prevent statelessness being transferred across generations. However, an amendment to the Nationality Act in 1972 excluded from *jus soli* nationality anyone whose parents were considered to be illegally residing in the country.⁴ Accordingly, the children of many hill tribe people were precluded from acquiring Thai nationality, as the temporary status of many was not considered to be lawful residence. The Declaration was also applied retroactively, thereby enabling the revocation of people's nationality and causing further statelessness. Although the Declaration was withdrawn in 1992, its *jus soli* restriction was incorporated into the Thai nationality law proper and is still in force.⁵
10. In 2008, Thailand passed a crucial and highly promising amendment to the Nationality Act, which should pave the way for the resolution of many cases of statelessness. As explained below, significant challenges remain in the implementation of this new law.

Human rights enjoyment by stateless hill tribe people in Thailand

11. The statelessness of many hill tribe people has a detrimental impact on their enjoyment of human rights. One of the most significant challenges is the travel restrictions imposed: in order to travel beyond their district, stateless hill tribe people first need to acquire a permit. Travelling without a permit means risking arrest and charges. Yet acquiring a permit can be difficult due to the costs and need to invoke the help of the community leader. Moreover, people without identity papers cannot travel as they are not entitled to permits. The exercise of the right to freedom of movement, protected under Article 12 of the ICCPR is thereby constrained. This also impacts the enjoyment of other human rights by stateless hill tribe people.
12. Research shows that compared to citizens, stateless hill tribe people have poorer levels of schooling. The right to education is a universal entitlement protected under different human rights conventions (see for example, Articles 28 and 29 of the CRC) and as of 2005, Thailand has an 'Education for All' policy that allows all children to access schooling, regardless of citizenship. However, this policy has not fully resolved problems in realising the right to education for stateless hill tribe people. Many are not able to pay the costs involved in pursuing higher education and stateless people cannot access governmental study loans. The aforementioned travel restrictions also present a severe challenge in physical access to appropriate schooling opportunities.
13. The income level of hill people is also lower than that of citizens. There are many difficulties for stateless people to find jobs in comparison to Thai citizens. In part, this stems from the issue of lower education levels as set out above. However, employers also discriminate on the ground of citizenship, preferring to hire citizens or paying less and not respecting the labour rights of stateless persons. Lastly, the lack of freedom of movement forces many hill tribe people stay in their village for work, whereas higher income can be made from work outside the villages and village work often is seasonal and uncertain, leading to lower and less reliable income.
14. The ability of hill tribe people to cope with crises is also affected by their statelessness and this can expose them to a risk of exploitation. Statelessness has been found to limit the person's ability to deal with, for instance, an acute financial crisis such as finding funds to pay for a relative's medical treatment. This can affect people's willingness to take risks. As such, crises can become a trigger

⁴ Revolutionary Party Declaration (1972), No. 337.

⁵ Thai Nationality Act (1965), Section 7bis.

for risky coping strategies, such as migration outside the village through contact with a middleman, which may lead to a situation of trafficking. Stateless people feel less able to rely on the police and other state structures for help, including in situations of crisis or dispute, which can also aggravate the risk of becoming trapped in exploitation.⁶

Efforts to resolve statelessness for Thailand's hill tribe people

15. As mentioned, in 2008, Thailand amended its Nationality Act, determining that anyone whose nationality was revoked by the Revolutionary Party Declaration between 1972 and 1992, or who failed to acquire Thai nationality because of this Declaration, can acquire Thai nationality if they provide evidence of their birth and subsequent domicile in Thailand as well as demonstrate good behaviour.⁷ There are some concerns related to the requirement to demonstrate 'good behaviour', which is a discretionary and unnecessary condition that undermines the object of realising the nationality of a significant population (and their descendants) whose right to Thai nationality was arbitrarily deprived through the Declaration. However, this law brings enormous potential for positive change. The amendment can provide Thai nationality to those who were previously unable to access it due to the 1972 Declaration, as well as their children. If implemented in full, this would allow the resolution of statelessness on a large scale, contributing significantly to the global *#ibelong* campaign to end statelessness by 2024 spearheaded by UNHCR.⁸ However, implementation of the amendment suffers from many difficulties.
16. A substantial segment of the stateless hill tribe people is eligible for nationality under the amendment. Yet, many believe they are not eligible or do not have the required documents to prove that they are, including due to previous restrictions in access to civil registration. Other reasons hill tribe people have not (yet) pursued nationality are the costs, the travel and time required, or that people simply do not know what to do.⁹
17. The application process itself is also problematic: it involves the presenting of many different documents, hours of queuing and long and expensive travel to the office of application. The travel restrictions imposed on stateless hill tribe people reinforce problems of access to the application procedure. It has also been reported that in order to apply, a person's name needs to be listed in an announcement first. Applying outside this personal slot is possible but said to be risky, as that means too many people are applying and documents might get lost. A survey found the average pending time for applications to be 55 months. This significant delay means that many are still waiting for a decision on their application more than four years after it was submitted. These problems must be tackled if Thailand is to effectively remedy the problems relating to the right to a nationality for its hill tribe population.

Rohingya in Thailand

18. The Rohingya are an ethno-religious minority from the Rakhine/Arakan region in Myanmar, adjacent to Bangladesh. The Rohingya have been arbitrarily deprived of their nationality in Myanmar and suffer from persecution, discrimination, exclusion and violence. As a consequence,

⁶ See above, note 3.

⁷ Note that in the same year, Thailand also reformed its civil registration procedures to guarantee access to birth registration for *all* children born on the territory, regardless of the status of their parents.

⁸ UNHCR, *#ibelong campaign*, available at <http://ibelong.unhcr.org/en/home.do>, last accessed 15-09-2015.

⁹ See above, note 3.

many have fled and it is estimated that presently more than one million Rohingya live outside Myanmar.

19. Thailand is one country to which Rohingya refugees have fled. There is a long-term population, most of whom came to Thailand decades ago. This submission focuses, however, on recent developments regarding Rohingya boat refugees.

Thai treatment of Rohingya boat refugees

20. Between May and June 2015 Thai authorities pushed back boats full of Rohingya refugees and Bangladeshis, leaving between 6000 and 8000 people adrift at sea for weeks. The traffickers and smugglers had abandoned ship to escape arrest by Thai authorities. Between January – June 2015, an estimated 25,000 persons embarked on the hazardous boat journey, and at least 1,050 have died at sea.¹⁰ In previous years as well, Thailand has pushed back Rohingya refugees in violation of international law and received severe international criticism for doing so.¹¹ Many recommendations under Thailand's UPR in the first cycle addressed this issue, including Recommendation 89.70 by Canada which was accepted by Thailand (see above).
21. Thailand has no domestic refugee law framework. All situations of foreigners entering the country are regulated by the Immigration Act of 1979. This includes the detention of Rohingya in Immigration Detention Centres internationally criticised for being overcrowded¹², and camps, or 'temporary shelters',¹³ along the border with Myanmar. People are arbitrarily detained in these camps for months to years on end.
22. The trafficking of Rohingya refugees is another significant problem, with refugees being informally deported collusively by authorities and brokers/smugglers who facilitate the onward travel. The Rohingya are typically kept captive by smugglers in appalling conditions, until they arrange for payment for their release.

Recommendations

23. While the Human Rights Council has stated that "[t]he second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the developments of the human rights situation in the State under review",¹⁴ in light of the fact that Thailand did not accept all related recommendations and failed to satisfactorily implement those it did, these recommendations build on the previous recommendations but also introduce new recommendations in response to the current situation:

¹⁰ Institute on Statelessness and Inclusion, *Statelessness Monthly Bulletin*, May 2015, available at: http://www.institutesi.org/stateless_bulletin_2015-05.pdf

¹¹ The Equal Rights Trust (ERT), *Equal Only in Name. The Human Rights of Stateless Rohingya in Thailand* (2014).

¹² For example Human Rights Watch (HRW), *Two Years with no Moon. Immigration Detention of Children in Thailand* (2014).

¹³ Thai government does not use the term 'camp', but uses 'temporary shelter'. Also have not formally acknowledged the status of 'refugee' since acknowledging those who fled the country after the 1988 Myanmar student uprising. Instead they use 'displaced person'.

¹⁴ Human Rights Council, *Resolution 16/21: Review of the work and functioning of the Human Rights Council*, UN Doc. A/HRC/RES/16/21, April 2011, Annex 1, Para 6.

- I. Lift the travel restrictions imposed on stateless persons. This makes safe migration possible and lowers the risk of being trafficked. It also opens access to education and fair access to the labour market.
- II. Facilitate access citizenship in accordance with the 2008 amendment, including by reducing simplifying procedures, disseminating information and reducing waiting times, thus ensuring the hill tribe people can exercise their right to a nationality and all other human rights hampered by their statelessness.
- III. Make education truly *available* for all, including by providing equal access to educational loans for stateless students.
- IV. Ensure respect for the principle of *non-refoulement* and meet the protection needs of the Rohingya, and other vulnerable groups, in accordance with international law.
- V. End the arbitrary detention of stateless Rohingya and their trafficking across borders. Instead, protect them according to international human rights law.
- VI. Ratify the United Nations Convention Relating to the Status of Refugees and the 1967 Protocol and strengthen the domestic refugee law framework.
- VII. Accede to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
- VIII. Remove Thailand's reservations and interpretive declarations to the CRC Article 22, CAT Articles 1 and 4, and CRPD Article 18.