

Joint Submission to the  
Human Rights Council

# Universal Periodic Review

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Third Cycle  
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## THAILAND

Adventist Development and Relief Agency –  
Thailand

Global Campaign for Equal Nationality Rights

Institute on Statelessness and Inclusion

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**Joint Submission**  
**to the Human Rights Council**  
at the 39<sup>th</sup> Session  
of the Universal Periodic Review

## THAILAND

### Introduction

- 1 Adventist Development and Relief Agency – Thailand (**ADRA**)<sup>1</sup>, the Global Campaign for Equal Nationality Rights (**GCENR**)<sup>2</sup> and the Institute on Statelessness and Inclusion (**ISI**)<sup>3</sup> make this joint submission to the Universal Periodic Review (**UPR**), on the right to a nationality and human rights challenges pertaining to statelessness in Thailand.
- 2 This submission focuses on:
  - Gender discrimination in the nationality law;
  - The child’s right to nationality;
  - Denial of human rights of stateless persons; and
  - The rights of Rohingya in Thailand.

### Previous UPR of Thailand under the First and Second Cycle

- 3 Thailand was previously reviewed during the 12<sup>th</sup> and 25<sup>th</sup> Sessions of the UPR, in 2011 and 2016 respectively.
- 4 In 2016, Thailand received the following recommendations, which it accepted:

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<sup>1</sup> ADRA delivers relief and development assistance to individuals in more than 118 countries regardless of ethnicity, political affiliation, gender or religious association. ADRA partners with local communities and governments to deliver culturally relevant programs and build local capabilities for sustainable change. ADRA also works with stateless communities to support access to education, healthcare, and livelihoods, through community sensitisation and advocacy.

<sup>2</sup> GCENR is coalition of national and international organizations working to end gender discrimination in nationality laws so that women and men have the equal right to acquire, change and retain their nationality and the equal right to confer nationality on their spouse and their children. Housed at steering committee member Women’s Refugee Commission, other steering committee members include Equal Rights Trust, Equality Now, Institute on Statelessness and Inclusion, and Women’s Learning Partnership. For more information, see <https://equalnationalityrights.org/>.

<sup>3</sup> ISI is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI’s mission is to promote inclusive societies by realising and protecting everyone’s right to a nationality. ISI has made over 70 country specific UPR submissions on the human rights of stateless persons. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 37th UPR Sessions. For more information, see <https://www.institutesi.org/>.

*Ensure birth registration for all children born on its territory, especially those who are not registered due to the economic status of their parents, ethnicity and immigration status (Namibia); and*

*Further strengthen efforts towards birth registration for all, with a view to effectively reaching out to disadvantaged and vulnerable groups (Turkey).<sup>4</sup>*

- 5 In 2011, Brazil and France recommended that Thailand ratify the 1954 Convention relating to the Status of Stateless Persons, as well as the UN Refugee Convention and its 1967 Protocol. These recommendations were accepted.
- 6 Thailand also received a recommendation from Canada to “ensure respect for the principle of non-refoulement with respect to asylum seekers and refugees... and meet the protection needs of vulnerable peoples, such as the Rohingya, in accordance with international law,”<sup>5</sup> and a recommendation from Vietnam regarding the protection of vulnerable groups, which it accepted.
- 7 Thailand also noted in its national report, the withdrawal of its reservation to Article 7 of the Convention on the Rights of the Child, which guarantees, the child’s right to acquire a nationality “in particular where the child would otherwise be stateless” and the right of the child to be registered immediately after birth.<sup>6</sup>

## Thailand’s International Obligations

- 8 Despite accepting the recommendations of Brazil and France in the First Cycle, Thailand has not acceded to either the 1954 or 1961 Statelessness Conventions.
- 9 Nonetheless, Thailand has international obligations to protect the right to a nationality and the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include, the:
  - International Covenant on Civil and Political Rights (**‘ICCPR’** – Article 24.3);
  - International Covenant on Economic, Social and Cultural Rights (**‘ICESCR’** – Articles 2.2 and 3);
  - Convention of the Rights of the Child (**‘CRC’** – Articles 2, 3, 7 and 8);
  - Convention on the Elimination of All Forms of Discrimination against Women (**‘CEDAW’** – Article 9);
  - International Convention on the Elimination of All Forms of Racial Discrimination (**‘CERD’** – Article 5(d)(iii));
  - Convention on the Rights of Persons with Disabilities (**‘CRPD’** – Article 18);<sup>7</sup> and

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<sup>4</sup> UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Thailand’ A/HRC/33/16 (15 July 2016), paras 158.57; 158.56.

<sup>5</sup> UN Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review: Thailand’ A/HRC/19/8 (8 December 2011), para 89.70.

<sup>6</sup> UN Human Rights Council, ‘National Report Submitted in accordance with paragraph 5 of the annex to the Human Rights Council resolution 16/21: Thailand’ A/HRC/WG.6/25/THA/1 (12 February 2016), para 64.

<sup>7</sup> On 5 February 2015, the Government of the Kingdom of Thailand informed the Secretary-General that it had decided to withdraw the following interpretative declaration made upon ratification: “The Kingdom of Thailand hereby declares that the application of Article 18 of the Convention shall be subject to the national laws, regulations and practices in Thailand.”

- International Convention for the Protection of All Persons from Enforced Disappearance ('ICPPED' – Article 25) (signatory only).
- 10 Furthermore, the right to a nationality is protected under Article 15 of the Universal Declaration on Human Rights.
- 11 Thailand has expressed reservations and made interpretive declarations to a number of the above treaties. Most relevantly, Thailand has made a reservation to CRC Article 22, stating that its application is subject to national law and practices. Article 22 requires States to ensure that children seeking refugee status receive appropriate protection and humanitarian assistance.
- 12 Thailand is also party to the 2012 ASEAN Human Rights Declaration, of which Article 18 protects the right to nationality.
- 13 In 2017, the Committee on the Elimination of Discrimination Against Women ('CEDAW Committee') recommended that Thailand:
- a) Adopt further legislative amendments to ensure that women and men enjoy equal rights to confer nationality on foreign spouses;
  - b) Ensure that women belonging to ethnic minority and indigenous groups have equal access to nationality by eliminating obstacles relating to language, bureaucracy, residential requirements and literacy;
  - c) Intensify efforts to facilitate the birth registration, especially in rural and remote areas; and
  - d) Ratify the 1954 and 1961 Statelessness Conventions.<sup>8</sup>
- 14 In 2017, the Human Rights Committee expressed concern about the high incidence of statelessness, particularly among indigenous and ethnic minority communities; the detrimental impact their status has on access to basic rights, such as education; and their increased vulnerability to involvement in criminal trafficking and prostitution networks.<sup>9</sup> Reports of discrimination against stateless people were also noted.<sup>10</sup> The Committee recommended that Thailand strengthen its efforts to reduce statelessness, in particular:
- a) Ensure that rural and isolated populations are informed of and have access to the procedures relating to the acquisition of nationality; and
  - b) Ensure the promotion and protection of rights of stateless persons and provide primary education to children and protection against trafficking.<sup>11</sup>
- 15 In June 2015, the Committee on Economic, Social and Cultural Rights recommended that Thailand "*continue strengthening its measures to facilitate the naturalization and integration of stateless persons, including by addressing remaining gaps in the Nationality Act, as well as to ensure the enjoyment of their economic, social and cultural rights*".<sup>12</sup>

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<sup>8</sup> Committee on the Elimination of Discrimination against Women, 'Concluding observations on the combined sixth and seventh periodic reports of Thailand' CEDAW/C/THA/CO/6-7 (24 July 2017), para. 33.

<sup>9</sup> UN Human Rights Committee, 'Concluding Observations on the Second Periodic Report of Thailand' CCPR/C/THA/CO/2 (25 April 2017), para. 41.

<sup>10</sup> Ibid, para. 11.

<sup>11</sup> Ibid, para. 42.

<sup>12</sup> UN Committee on Economic, Social and Cultural Rights, 'Concluding Observations on the Combined Initial and Second Periodic Reports of Thailand' E/C.12/THA/CO/1-2 (19 June 2015), para. 14.

- 16 At the 2019 UNHCR High Level Segment on Statelessness, Thailand committed to:
- a. Expedite processes to address statelessness among the elderly;
  - b. Promote access to education for stateless children;
  - c. Enhance social protection for stateless persons;
  - d. Enhance effectiveness of the systems to facilitate stateless persons to access civil registration services;
  - e. Enhance partnership among all sectors of society to raise awareness on the roles, duties, rights, and process regarding birth and civil registration of stateless persons, especially the hard-to-reach population;
  - f. Adjust regulations for granting nationality and civil rights to cover target groups to access naturalisation process equally and equitably; and
  - g. Promote international and regional cooperation in addressing statelessness.<sup>13</sup>

## Snapshot of Statelessness in Thailand

- 17 Thailand is home to the fourth largest known stateless population in the world with 479,943 stateless persons reported by the Government as of June 2020.<sup>14</sup> This number represents those registered with the Government in the civil registration system, and therefore, the real number is likely to be higher. Predominantly, stateless people in Thailand are: various ethnic minorities who live in the highland areas,<sup>15</sup> known as ‘hill tribe’ people; descendants of former Thai nationals who lost their nationality as a result of border demarcation; and descendants of migrants who fled from conflict or persecution in other countries.<sup>16</sup> While there is no clear statistical information, an estimated 3,000 stateless Rohingya have also settled permanently in Thailand.<sup>17</sup> In addition to children born to stateless parents, abandoned children, foundlings, and children of migrant workers, are also at risk of statelessness if they are not registered or are unable to acquire the nationality of their parents’ country.<sup>18</sup>
- 18 The main causes of statelessness are attributed to systemic discrimination and exclusion of ethnic minorities, changes and gaps in the nationality framework, lack of safeguards for otherwise stateless children, bureaucratic failures, erratic and incomplete civil registration, and complications due to language barriers, illiteracy and remote living<sup>19</sup> and displacement and migration. Although there have been steps taken to address gaps in the nationality law, significant challenges around implementation have left many undocumented refugees and migrants without protection.
- 19 Stateless people, particularly those who are undocumented, are denied many rights on account of their status and (lack of) documentation. Although many stateless people registered with the government are able to access the Thai national healthcare plan, others do not have access to health care, have limited access through non-

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<sup>13</sup> UNHCR, [‘Results of the High-Level Segment on Statelessness’](#) (October 2019).

<sup>14</sup> UNHCR, [‘Thailand: Fact Sheet’](#) (30 September 2020).

<sup>15</sup> *The Regulation of the Central Registration Bureau on the Registration of Highlanders’ Legal Status* (2000) identifies 9 ethnic minority groups (Karen, Hmong, Yao, Akha, Lahu, Lisu, Lua, Khamu and Mlabri) and defines them as ‘indigenous groups who have been living in the highlands and have their own cultural identity, belief, language and way of living.’ It recognizes that ‘other ethnic minorities or others are living in the same areas.’

<sup>16</sup> UNHCR, [‘Good Practices Paper – Action 7: Ensuring Birth Registration for the Prevention of Statelessness’](#) (2017), page 23.

<sup>17</sup> Equal Rights Trust et al, [‘The Human Rights of Stateless Rohingya in Thailand’](#) (February 2014).

<sup>18</sup> UNHCR, [‘Good Practices Paper – Action 7: Ensuring Birth Registration for the Prevention of Statelessness’](#) (2017), page 23.

<sup>19</sup> *ibid*, pages 23–24.

governmental organizations, or have to pay high fees. Lack of citizenship restricts movement outside one's province, further narrowing opportunities to access employment and education. Stateless people are unable to join labour unions, own land, and vote in elections.<sup>20</sup>

- 20 The denial of these fundamental rights increases the vulnerability of stateless people to socio-economic exploitation, particularly exploitative labour and human trafficking.

## National Law

- 21 The 1972 Decree No. 337 (**'Decree'**) was a primary cause of statelessness in Thailand, restricting *jus soli* enjoyment of the right to nationality to exclude those considered to be "illegal immigrants".<sup>21</sup> Although this Decree was subsequently repealed, the *jus soli* restriction remains in force today. The 1965 Nationality Act B.E.2508 (**'Nationality Act'**), states that "a person born of a father or a mother of Thai nationality, whether within or outside the Thai Kingdom" can acquire nationality.<sup>22</sup> However, Section 7 b provides that those born to parents within the territory who hold temporary residency, or who have "entered and resided in the Thai Kingdom without permission under the law on immigration" are not entitled to citizenship. Although Section 7 b provides a pathway to Thai nationality by application for stateless children born in Thailand, the process is burdensome and time consuming.
- 22 A 2008 Amendment to the Nationality Act (**'Amendment'**) was passed, which provides that anyone whose nationality was revoked by the 1972 Declaration, or who failed to acquire nationality while this Declaration was in force (1972–1992) could acquire Thai nationality *if* they provide evidence of their birth, and subsequent domicile, in Thailand, and also demonstrate good behaviour.<sup>23</sup>
- 23 Children born to non-Thai parents, including stateless parents, who do not have permanent residency status, must apply for Thai nationality and meet certain eligibility criteria.<sup>24</sup> The Minister of Interior may grant Thai nationality to any person regardless of their parentage, though this is decided on an *ad hoc* basis.<sup>25</sup> Further, a person born to a non-citizen parent who obtains Thai nationality is liable to having their nationality revoked,<sup>26</sup> and the Nationality Act does not include safeguards that ensure that renunciation, loss or deprivation of nationality do not lead to statelessness.
- 24 A 2016 Cabinet Resolution states that children are eligible to apply for Thai nationality if, *inter alia*, they were born in Thailand to parents from ethnic minority groups, were registered by the Ministry of Interior, and have lived in Thailand for more than 15 years. Abandoned children whose parents are unknown can also apply if they are

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<sup>20</sup> J. Park, J. Tanagho, M. Weicher Gaudette, '[A Global Crisis Writ Large: The Effects of Being "Stateless in Thailand" on Hill-Tribe Children](#),' *San Diego International Law Journal* (2019).

<sup>21</sup> The decree provided that those born to foreign parents were unable to acquire nationality unless both parents had permanent residence. This applied not only to children born after 1972, but also applied retroactively, resulting in revocation of nationality. The hill tribe people were disproportionately affected due to civil registration, immigration and documentation issues.

<sup>22</sup> [Nationality Act B.E.2508 1965](#) (Thailand), Section 6.

<sup>23</sup> *ibid*, Section 7.

<sup>24</sup> UNHCR, '[Good Practices Paper – Action 7: Ensuring Birth Registration for the Prevention of Statelessness](#)' (2017).

<sup>25</sup> [Nationality Act B.E.2508 1965](#) (Thailand), Section 7 *bis*.

<sup>26</sup> *Ibid*, Section 17.

certified as abandoned and have lived in Thailand for 10 years. Birth registration and documentation therefore serve as important evidence of entitlement to nationality.<sup>27</sup>

- 25 Although this provision has potential to benefit those whose nationality was revoked by the 1972 Decree; in practice, there are challenges related to satisfying evidentiary requirements; particularly given historic challenges related to universal birth registration. Moreover, the criterion of ‘good behaviour’ is highly discretionary and problematic for minorities who are subject to discrimination and stigmatisation. This undermines the objective of realising the right to nationality for a large number of persons who were arbitrarily deprived of this right.
- 26 In 2012, Thailand adopted a Comprehensive Strategy on Resolving the Problems of Irregular Migrants.<sup>28</sup> However, stateless migrants and refugees from Myanmar, such as Rohingya, are not able to regularise their status in Thailand through this process and must continue to work irregularly.<sup>29</sup> This disproportionately impacts Myanmar Muslims.
- 27 Amendments to the Civil Registration Law in 2008 also entitled all children born in Thailand to have their births registered, regardless of their own or their parents’ nationality, legal status or documentation. However, birth registration remains low, and still acts as a barrier to nationality acquisition.
- 28 In 2006, Thailand introduced a ‘Nationality Verification Registration’ to regulate the status of migrants, allowing irregular migrants to receive identity documents. However, the process is complicated and lengthy. Implementation is challenging due to lack of regulation, corruption issues and complicated bureaucracy.<sup>30</sup> For migrants from Myanmar, conditions associated with processing these documents require the use of middlemen, raising the price considerably and increasing vulnerability to fraud.<sup>31</sup>
- 29 Non-Thai adults living in Thailand may apply for Thai naturalisation where they have good behaviour; a regular occupation; domicile in Thailand for a consecutive five-year period; and knowledge of Thai language.<sup>32</sup> If an adult applying for naturalisation has children, they may concurrently apply for citizenship for their children, who are exempt from the above requirements, excluding that of ‘good behaviour’.<sup>33</sup>
- 30 However, the approval rate of permanent residency and naturalisation is significantly low, and extremely lengthy and burdensome. The average case takes 30 years, which is particularly onerous for the elderly.<sup>34</sup>
- 31 On 26 January 2021, Thailand’s Cabinet approved a Resolution on the Criteria for the Determination of Legal Status and Rights of Persons Having Migrated and Stayed in

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<sup>27</sup> UNHCR, ‘[Good Practices Paper – Action 7: Ensuring Birth Registration for the Prevention of Statelessness](#)’ (2017).

<sup>28</sup> Committee on the Elimination of Racial Discrimination, ‘Concluding observations on the first to third periodic reports of Thailand, adopted by the Committee at its eighty-first session (6–31 August 2012): Thailand’ CERD/C/THA/CO/1-3 (15 November 2012).

<sup>29</sup> Burma Human Rights Network, *Existence Denied – BHRN Report*, (2018), available at:

[file:///C:/Users/amald/Downloads/Book\\_Existence%20Denied%20-%20BHRN%20FULL%20REPORT.pdf](file:///C:/Users/amald/Downloads/Book_Existence%20Denied%20-%20BHRN%20FULL%20REPORT.pdf)

<sup>30</sup> M. Hoornick, ‘[The statelessness-trafficking nexus. A case study in Thailand](#)’, *International Institute for Asian Studies* (2020).

<sup>31</sup> ‘[Joint Submission on Migrant Workers and Their Families in Thailand for the 12th Session of the Universal Periodic Review](#)’, (October 2011), p 2.

<sup>32</sup> [Nationality Act B.E.2508 1965](#) (Thailand), Section 10.

<sup>33</sup> *Ibid*, Section 12.

<sup>34</sup> ‘[How to help the elderly and stateless](#)’ *Bangkok Post* (1 October 2020).

Thailand for a Long Period of Time. The new Resolution aims to improve access to legal immigration status and permanent residency for registered stateless long-term residents who were unable to meet previous criteria set by the Cabinet in 2010. It is expected to benefit up to 400,000 registered stateless persons who will be able to access legal immigration status and basic rights. However, specific criteria and procedures have not yet been determined.<sup>35</sup>

## Issue 1: Gender Discrimination in the nationality law

32 The Nationality Act denies women the equal right to confer nationality upon their foreign spouse. Nationality laws that discriminate on the basis of gender violate Thailand's obligations under CEDAW, Article 9 of which explicitly obliges States to guarantee equal nationality rights to women.

33 Section 9 of Thailand's Nationality Act provides:

*An alien woman who marries a person of Thai nationality shall, if she desires to acquire Thai nationality, file an application with the competent official according to the form and in the manner prescribed in the Ministerial Regulations.*

*The granting or refusal of permission for acquisition of Thai nationality shall lie with the discretion of the Minister.*

34 Section 10 provides that a foreign husband may apply for naturalisation under certain conditions. However, citizenship acquired through naturalisation is less secure than citizenship by birth – it is subject to the state's permission and can be revoked.<sup>36</sup>

35 The denial of equal nationality rights leads to both the denial of proof of legal identity and the denial of the right to a nationality. Furthermore, discrimination in nationality laws violates CEDAW Article 16 by inhibiting the ability of women to, in practice, freely choose a spouse. This further entrenches traditional stereotypes regarding the primacy of male legal identity and contributes to women's inequality within the family and society at large. Entrenchment of such stereotypes is in breach of Thailand's obligations under CEDAW Article 5(a).

36 The CEDAW Committee has noted with concern that among ethnic minority and indigenous communities, men are reportedly given priority to register for nationality.<sup>37</sup> This leaves many ethnic minority and indigenous women without nationality, with restricted freedom of movement and limited access to education, employment, healthcare and social protection.

37 Countries that deny women equal rights to confer nationality to foreign spouses threaten family unity, including the child's right to know and be cared for by their parents. For example, when foreign men are denied access to their spouses'

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<sup>35</sup> ['Criteria for determining the status and rights of immigrant and long-lived persons'](#) RYT9 (26 January 2021) [source in Thai].

<sup>36</sup> J. Cheva-Isarakul, 'Navigating the ineligible state: Everyday experiences of Statelessness among Shan youth in Northern Thailand' (2020, Victoria University of Wellington).

<sup>37</sup> Committee on the Elimination of Discrimination against Women, 'Concluding observations on the combined sixth and seventh periodic reports of Thailand' CEDAW/C/THA/CO/6-7 (24 July 2017), para. 32



nationality, they may be forced to live away from their children due to challenges in acquiring residency permits and obstacles to employment. Women whose children and husbands are denied her nationality may be forced to provide for the entire family, even once children reach adulthood.<sup>38</sup>

## Issue 2: Child's Right to Nationality

### Safeguards for children otherwise born stateless

- 38 There is no definition of a stateless person in Thai national law. The law lacks safeguards to ensure that children born on the territory who would otherwise be stateless are automatically granted nationality without a lengthy waiting time. This also includes foundlings. The Committee on Economic, Social and Cultural Rights has expressed concern about gaps in the laws regarding the right to nationality for children found abandoned.<sup>39</sup>
- 39 In 2019, the Civil Registration B.E. 2534 was amended,<sup>40</sup> allowing foundlings to acquire Thai nationality through naturalisation. However, this is dependent upon the child having a parent with Thai nationality, or being born in Thailand with alien parents.<sup>41</sup> Moreover, only those who have identity documents, and those with residency in the country for more than ten consecutive years, qualify for naturalisation.<sup>42</sup>

### Birth Registration

- 40 In 2008, the Government of Thailand made amendments to the Civil Registration Act (No.2) B.E.2551 that liberalised the laws on birth registration,<sup>43</sup> regardless of the legal status, nationality, or documentation of their parents.<sup>44</sup> The act was amended, with retroactive effect, permitting late birth registration of individuals who had been unable to register their birth before 2008. Further, the amendments created a more flexible birth registration procedure under which births can be registered in any District Office, regardless of where in Thailand the birth occurred.
- 41 Before the 2008 Amendment, many hill tribe members were unable to meet the conditions for birth registration — such as an ID card, household registration, and official birth notification. In the case of late registration, a witness was also required. Language difficulties, logistical challenges such as reaching civil registration offices, unfamiliarity with Thai law and procedures, limited literacy, and location of birth (those not born in medical facilities and were not issued with birth notifications) constituted various obstacles to access civil registration. Finally, there was little awareness in most communities of the importance of civil registration and some reluctance about approaching the authorities.<sup>45</sup>

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<sup>38</sup> Global Campaign for Equal Nationality Rights, '[The Problem](#)'.

<sup>39</sup> UN Committee on Economic, Social and Cultural Rights, 'Concluding Observations on the Combined Initial and Second Periodic Reports of Thailand' E/C.12/THA/CO/1-2 (19 June 2015).

<sup>40</sup> Amended by the Civil Registration Act No. 3 B.E. 2562 (2019).

<sup>41</sup> P. Ruamsuk, 'The Need for Thailand to accede to Conventions on Statelessness' (2020, Maurer School of Law: Indiana University).

<sup>42</sup> Ibid.

<sup>43</sup> *Civil Registration Act (No.2) B.E.2551 2008* (Thailand).

<sup>44</sup> UNHCR, '[Good Practices Paper – Action 7: Ensuring Birth Registration for the Prevention of Statelessness](#)' (2017), page 25.

<sup>45</sup> UNHCR, '[Good Practices Paper – Action 7: Ensuring Birth Registration for the Prevention of Statelessness](#)' (2017).

- 42 According to the Thai Bureau of Registration Administration, the reforms led to the registration of 159,831 children of stateless parents by 2017.<sup>46</sup> This included children born to minority, refugee, or asylum seeker parents,<sup>47</sup> and is seen as a first step towards acquisition of Thai nationality. However, many remain in the process of obtaining documentation. The 1972 Decree created a significant risk of statelessness for children born without permanent residence status, and despite reforms, a large number of births, particularly among ethnic groups and migrants, are not registered, for reasons outlined in the section below. This concern has been expressed by the Committee on the Elimination of Racial Discrimination, which also reminded Thailand that lack of birth registration is a contributing factor to statelessness.<sup>48</sup>
- 43 Moreover, many stateless people have been recorded as having migrated to Thailand, although they were born in the country, reportedly due to lack of understanding and knowledge, language barriers and fear of being excluded during the survey and registration scheme. There are challenges related to satisfying evidentiary requirements to modify the record in the civil registration database. This situation prevents these stateless people from applying for Thai nationality by birth. For example, in 2016, two individuals filed a petition at a provincial Administration Court, requesting for modification of their birth record to obtain a proper birth certificate as evidence to apply for Thai nationality. Their cases are still pending.<sup>49</sup>
- 44 Moreover, as outlined in paragraph 11, Thailand has made a reservation to Article 22 of the CRC (related to refugee and asylum-seeking children). The Government does not consider refugee and asylum-seeking children to be covered by the CRC and relevant national laws on children, denying these children basic rights.<sup>50</sup>

## Barriers to access to nationality

- 45 The implementation of the Nationality Act, and its amendment, suffers from many challenges in practice. Although many stateless hill tribe people are eligible for nationality under the amendment, many are unaware of, or lack the required documents to prove their entitlement, including due to previous restrictions in access to civil registration. Other barriers include costs, the travel and time required, and a lack of basic information.<sup>51</sup> This is worsened by language barriers and cultural differences, which affect the ability of officials to determine nationality; as well as resourcing issues, capacity gaps and corruption.
- 46 Extortion of persons who do not yet have identity cards is also of concern. Discrimination against minorities, the wide discretion of authorities, as well as lack of

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<sup>46</sup> Ibid.

<sup>47</sup> As of 2015, approximately 5000 new-borns in Thailand's nine refugee camps have received birth certificates. UN Rule of Law, '[Myanmar refugee babies wait for birth registration in Thailand's Mae La camp](#)' (23 April 2015).

<sup>48</sup> UN Committee on the Elimination of Racial Discrimination, 'Concluding observations on the first to third periodic reports of Thailand', CERD/C/THA/CO/1-3 (15 November 2012). According to UNHCR, "Birth registration has helped many people to acquire Thai nationality and has reduced the incidence of statelessness. For persons who are not eligible for Thai nationality, a birth certificate helps them to establish their legal identity and is a key measure in child protection." UNHCR, '[Good Practices Paper – Action 7: Ensuring Birth Registration for the Prevention of Statelessness](#)' (2017), page 25.

<sup>49</sup> *Transborder news* <https://transbordernews.in.th/home/?p=12903> (29 May 2016); <https://transbordernews.in.th/home/?p=12898> (30 May 2016) [sources in Thai].

<sup>50</sup> The 2003 Children Protection Act sets out the full range of economic, cultural and social rights that children are entitled to.

<sup>51</sup> Institute on Statelessness and Inclusion, '[Submission to the Human Rights Council at the 25th Session of the Universal Periodic Review: Thailand](#)' (2015).

understanding of the laws and procedures, also affect the ability to acquire nationality.

- 47 There are further bureaucratic obstacles, the application process involves presenting many documents, and long and expensive travel to the offices. Although since 2016, stateless persons are allowed to travel within their designated province without permission, travel outside their province, can still be challenging, undermining access to the application procedure. A 2015 study found that the average application time was over 4.5 years; and over 30% of applications were rejected. It has also been reported that in order to apply, a person's name needs to be listed in an announcement first.<sup>52</sup>

### Issue 3: Denial of human rights of stateless people in Thailand

- 48 **Right to health:** The CRC obligates states to ensure “the right of the child to the enjoyment of the highest attainable standard of health”. The right to health is also guaranteed in Article 12 of the ICESCR and Article 29 of the ASEAN Human Rights Declaration. Thailand has an established healthcare coverage scheme, which ensures free medical care to all Thai nationals. It also has a special budget allocated to provide healthcare to people with unclear status, the ‘Health Insurance for People with Citizenship Problems’ (**HIPCP**), which provides similar coverage to the scheme for nationals. Stateless persons must follow several steps to qualify, including registering with the ministry of interior, the ministry of health, and a local health clinic. Many operational problems — such as delays, insufficient collaboration between public health and interior ministries, and a lack of guidelines — have led to a failure to provide adequate healthcare to all stateless persons. Other barriers include travel time and costs, which are exacerbated in the rainy season. Although since 2016, stateless persons are allowed to travel within their province without permission, travel outside the province requires permission which can delay referral of severe cases to better equipped hospitals. Moreover, the fund merely covers medical costs, it does not guarantee stateless persons the right to healthcare, and there have been many reports of healthcare providers denying healthcare in practice.<sup>53</sup>
- 49 Stateless children insured with the HIPCP are generally in a poorer state of health, use inpatient services 29% more than nationals covered by the universal scheme, and are 34% more likely to stay in hospital.<sup>54</sup> There are approximately 80,000 undocumented students registered in school, and as of 22 September 2020, 3062 were granted permission to access healthcare.<sup>55</sup> There is also low vaccination coverage and a lack of routine immunisation, which is increasingly important, in the context of COVID-19.
- 50 **Freedom of Movement:** Stateless people need permission from the District Office to travel outside their province. Travelling without such authorisation amounts to a crime, penalised by a fine or detention. The role of community leaders is key in acquiring a travel permit and they are sometimes required to accompany the applicant to the district office. People without any identity papers cannot travel at

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<sup>52</sup> C. Rijken, L. van Waas, M. Gramatikov & D. Brennan, [The Nexus between Statelessness and Human Trafficking in Thailand](#) (2015, Wolf Legal Publishers), p. 32.

<sup>53</sup> National Health Security Office, [‘Healthcare rights of stateless people’](#) (June 2020).

<sup>54</sup> Rosa Luxembourg Stiftung, [‘Atlas of the Stateless’](#) (2020).

<sup>55</sup> UNHCR, [‘UNHCR welcomes move to strengthen healthcare for stateless students’](#) (25 September 2020).

all.<sup>56</sup> The exercise of the right to freedom of movement, protected under Article 12 of the ICCPR, is thereby significantly constrained.

- 51 **Right to education:** Children without Thai nationality are 73% less likely than Thai nationals to enter primary school, and 98% less likely to progress to higher education.<sup>57</sup> The right to education is a universal right protected under various human rights treaties (see for example, CRC Articles 28 and 29). In 2005, Thailand developed an 'Education for All' policy that allows all children to access schooling, regardless of their nationality or legal status. However, this policy has not fully resolved problems in realising the right to education, as many are not able to pay the fees for higher education, and stateless people cannot access governmental study loans. They face language barriers as well as the risk of arrest, and detention. Restrictions to movement present a challenge to physical access to appropriate schooling opportunities, and many children drop out due to schools being far away.<sup>58</sup> Moreover, even under this policy, asylum seeker and refugee children can only enrol at the discretion of local schools that often require proof of documentation for all applicants. They are often denied access due to discrimination, thus undermining the policy objective of the Resolution.<sup>59</sup>
- 52 **Right to work:** Lower levels of employment result partly from low levels of education; but also other factors such as discrimination by employers, who often prefer to hire citizens or pay stateless people less. Denial of freedom of movement prevents many from seeking higher income work away from their provinces, and village work often is seasonal and uncertain, leading to lower and less reliable income. Stateless people have to find jobs outside the formal industry, or in agriculture, where wages are low and labour rights are not always protected. The right of everyone to work is entrenched in the ICESCR, and the ASEAN Human Rights Declaration, and Thailand has obligations to protect these rights. Lack of access to **land rights** may further exacerbate the possibilities to earn an income and contribute to poverty.

## Exploitation and trafficking

- 53 Thailand has been a source, destination and transit country of forced labour and sex trafficking for many years. This can take the shape of working in factories, begging on the streets or being put to work in massage parlours.
- 54 Statelessness can be a cause and consequence of trafficking. Abuse by traffickers can include the withholding of work and identity documents, which can put the person at risk of statelessness. In Thailand, this particularly applies to migrants from surrounding countries who fled conditions of poverty and/or oppression, particularly those from Myanmar, Cambodia and Laos.<sup>60</sup>
- 55 Conversely, statelessness can also leave a person more vulnerable to trafficking. Travel restrictions and limited access to the labour market combined with

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<sup>56</sup> Institute on Statelessness and Inclusion, '[Submission to the Human Rights Council at the 25th Session of the Universal Periodic Review: Thailand](#)' (2015).

<sup>57</sup> UNHCR, '[Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia](#)' (2010), page 10.

<sup>58</sup> '[Stateless children still missing school](#)' *The Nation Thailand* (21 July 2015).

<sup>59</sup> Equal Rights Trust et al, '[The Human Rights of Stateless Rohingya in Thailand](#)' (February 2014).

<sup>60</sup> M. Hoornick, '[The statelessness-trafficking nexus. A case study in Thailand](#)', *International Institute for Asian Studies* (2020).

discrimination and corruption among state officials can leave members of the hill tribes particularly vulnerable to trafficking.<sup>61</sup> Moreover, Thai law permits recruitment agencies to charge recruitment fees to those seeking overseas employment. Excessive fees make them more vulnerable to debt bondage or other exploitative conditions. Stateless children are particularly vulnerable when they are not able to access education. With few prospects of a better future, stateless persons can be forced to look for better work elsewhere and — as labour migrants — can be easily deceived by brokers/traffickers.<sup>62</sup>

- 56 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. Traumatic events, such as heavy debt or the inability to receive adequate medical treatment in moments of dire need often place an unbearable burden on a stateless person. In this regard, the COVID-19 pandemic has had devastating effects on stateless hill tribe communities, placing them at greater risk of human trafficking.<sup>63</sup>
- 57 In 2017, the CEDAW Committee recommended that Thailand address the root causes of trafficking, “including poverty, lack of economic opportunities and statelessness”.<sup>64</sup> The Human Rights Committee in the same year echoed this recommendation.<sup>65</sup>

#### Issue 4: Rights of Rohingya in Thailand

- 58 Thailand is mainly a transit country for the Rohingya on their way to Malaysia and beyond. While there is no accurate statistical information on the Rohingya population in the country, it is estimated that at least 3000 Rohingya have settled in Thailand.<sup>66</sup> Thailand has historically failed to protect Rohingya as refugees, victims of trafficking or stateless refugees.<sup>67</sup>
- 59 Thailand has no domestic refugee law framework, and all situations of foreigners entering the country are regulated by Thailand’s Immigration Act of 1979. Thailand also has not signed or ratified the Refugee Convention or its Protocol, and lacks a refugee status determination procedure. As such those fleeing persecution are treated as irregular migrants, and not granted protection as refugees.
- 60 Since the early 1990s Thailand has hosted refugees fleeing ethnic and political violence in Myanmar in displaced people’s camps along the Thailand’s western border. More than 100,000 refugees remain in these camps as Myanmar’s peace process falters. However, Thailand does not recognise refugees outside these camps; and there is currently no national legal framework in place for the specific protection of “urban” refugees and asylum-seekers. UNHCR documentation such as a Refugee or Asylum Seeker Card is not officially recognised by the government and provides no

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<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Committee on the Elimination of Discrimination against Women, ‘Concluding observations on the combined sixth and seventh periodic reports of Thailand’ CEDAW/C/THA/CO/6-7 (24 July 2017), paras. 24-5.

<sup>65</sup> UN Human Rights Committee, ‘Concluding Observations on the Second Periodic Report of Thailand’ CCPR/C/THA/CO/2 (25 April 2017), para. 41.

<sup>66</sup> Equal Rights Trust et al, ‘[The Human Rights of Stateless Rohingya in Thailand](#)’ (February 2014).

<sup>67</sup> Institute on Statelessness and Inclusion, ‘[Submission to the Human Rights Council at the 25th Session of the Universal Periodic Review: Thailand](#)’ (2015).

official protection. They are considered “illegal” in the country and are at risk of being detained on immigration grounds.<sup>68</sup>

- 61 Due to lack of recognition as refugees and stateless persons, Rohingya face permanent threats to their liberty and security when residing or travelling within the country, contrary to Thailand’s obligations under Articles 9 (liberty and security) and Article 12 (freedom of movement) of the ICCPR. Rohingya cannot be formally deported to Myanmar, where they are not recognised as Myanmar nationals. With very limited refugee registration available in immigration detention centres and no process to identify them as stateless, they often end up in situations of indefinite detention. There are around 200 Rohingya indefinitely detained in Thailand, with at least 38 detained at Songkhla detention centre. In the context of COVID-19, it is unclear whether detainees who have tested positive have been separated from other detainees, and poor sanitary conditions and overcrowding raise concerns about outbreaks within detention centres.<sup>69</sup>
- 62 Rohingya can also be quietly released into the hands of brokers and smugglers who facilitate their onward travel. However, in many instances these onward journeys have ended up in situations of exploitation or trafficking.<sup>70</sup> Based on testimonies of those discovered during Thai government raids on smuggling camps in Songkhla province, many Rohingya were confined to camps and faced the risk of being beaten and sent into forced labour if they failed to pay smugglers for their service.<sup>71</sup>
- 63 In 2019, the cabinet approved the establishment of a national screening mechanism to distinguish people in need of international protection from other migrants by creating a category of non-citizens who would be at risk if deported.<sup>72</sup> The policy resulted in a decrease in both number of arrests and numbers in immigration detention in 2020.<sup>73</sup> However, the mechanism lacks a definition of people ‘deserving of protection’ and fails to use the definition of a refugee under international law. There are concerns surrounding who will qualify, and it is yet to be seen whether Rohingya will be considered under this new mechanism. There are also concerns surrounding transparency, logistics, and mistrust of authorities. Moreover, although the mechanism was planned to be implemented in June 2020, there have been delays, reportedly due to incomplete preparation, including staffing of required structures and the subsequent determination of procedure.<sup>74</sup> Covid-19 related challenges have unofficially been cited as the primary obstacles frustrating the process.
- 64 Thailand has been accused for many years of violating its international law obligations by pushing boats of refugees back into open seas. Since 2017, Thai authorities have enforced a three-step action plan.<sup>75</sup> Under this action plan, the Thai Navy may

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<sup>68</sup> UNHCR, [‘Thailand: Fact Sheet’](#) (30 September 2020). Thailand Immigration Act, chapter 6 section 54 states that “any alien who enters or comes to stay in the Kingdom without permission or when such permission expires or is revoked, the competent official will deport such alien out of the Kingdom.”

<sup>69</sup> Institute on Statelessness and Inclusion, Rights for Rohingya, Free Rohingya Coalition et al [‘Human Rights and COVID-19: What now for the Rohingya?’](#) (August 2020).

<sup>70</sup> Equal Rights Trust et al, [‘The Human Rights of Stateless Rohingyas in Thailand’](#) (February 2014).

<sup>71</sup> S. Banerjee, [‘Myanmar: Trafficking issues, plight of Rohingyas in Thailand’](#), Observer Research Foundation, (21 January 2021).

<sup>72</sup> [Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562](#) (25 December 2019); Bangkok Post, [‘A new era for refugee protection in Thailand?’](#) *Bangkok Post* (19 March 2020).

<sup>73</sup> UNHCR, [‘Thailand’](#).

<sup>74</sup> Asia Pacific Refugee Rights Network, [‘Press release: Thailand quietly delays implementation of refugee screening mechanism’](#) (25 June 2020).

<sup>75</sup> Human Rights Watch, [‘Thailand Needs to Stop Inhumane Navy ‘Push-Backs’](#), (22 September 2017).

intercept Rohingya boats nearing the coast and, only after ensuring the occupants will travel further to Malaysia or Indonesia, provide essential supplies. However, passengers on any boat that lands on Thai shores are detained.<sup>76</sup>

- 65 Between April and October 2020, hundreds of Rohingya were stranded at sea. Border closures and entry restrictions related to the COVID-19 response in Southeast Asia continued to prevent Rohingya from disembarking from boats and seeking asylum. Indonesian and Bangladeshi authorities disembarked the stranded boats and discovered they had attempted entry into Thailand and Malaysia where authorities had pushed boats back out to sea. Testimony from those aboard the boat detail the abuse endured: *“We suffered miserably [the crew] tortured us all the time, beating and cutting us”*.<sup>77</sup>

## Recommendations

- 66 Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to Thailand:
- I. Ensure the right to nationality of stateless persons in Thailand by facilitating access to citizenship in accordance with the 2008, 2012, and 2019 amendments, eliminating obstacles relating to language, bureaucracy, literacy, and awareness; and ensuring that women belonging to ethnic minority and indigenous groups have equal access to nationality.
  - II. Further improve efforts to ensure birth registration for all, through addressing barriers to access such as lack of awareness, language, logistical challenges, and fear to approach authorities.
  - III. Amend the Nationality Act to ensure that women have the equal right to confer nationality upon their non-citizen spouses.
  - IV. Amend the Nationality Act to include safeguards to ensure that otherwise stateless children born in the territory, including foundlings, are automatically granted nationality. Ensure that this is applied with retroactive effect.
  - V. Ensure freedom of movement for stateless persons by lifting travel restrictions imposed on them, thereby, also facilitating equal access to education and the labour market, safe migration and reducing the risk of trafficking.
  - VI. Ensure that stateless children have access to secondary and/or tertiary education, by *inter alia* amending the 2005 Policy and Cabinet Resolution to guarantee stateless children’s access to scholarships and educational grants, in line with Articles 2, 4 and 28 of the CRC, and providing assistance in navigating loan application procedures.
  - VII. Ensure adequate implementation of the HIPCP Scheme, including through improving collaboration between public health and interior ministries, and

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<sup>76</sup> S. Banerjee, [‘Myanmar: Trafficking issues, plight of Rohingyas in Thailand’](#), Observer Research Foundation, (21 January 2021).

<sup>77</sup> Institute on Statelessness and Inclusion, [‘Monthly Bulletin’](#) (May 2015).



issuing clear guidelines, to ensure all stateless persons have equal access to healthcare.

- VIII. Ensure respect for the principle of *non-refoulement*, end the push backs of boat refugees, and meet the protection needs of the Rohingya, and other vulnerable groups, in accordance with international law.
- IX. End the arbitrary detention of stateless Rohingya, combat their trafficking across borders, and protect them according to international human rights law.
- X. Accede to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol; and strengthen the domestic refugee law framework, either through amending the 1979 Immigration Act, or adopting a national refugee law.
- XI. Accede to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, and implement enabling legislation to ensure the full implementation of the Conventions in Thailand.
- XII. Remove Thailand's reservations to Article 22 of the CRC, to ensure that all refugees and asylum seekers, particularly children, have access to a full set of rights, regardless of legal status, as set out in the Child Protection Act.