

## Submission by the United Nations High Commissioner for Refugees

### For the Office of the High Commissioner for Human Rights' Compilation Report

#### Universal Periodic Review: 3<sup>rd</sup> Cycle, 39<sup>th</sup> Session

## THAILAND

### I. BACKGROUND INFORMATION

Thailand is not a party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*). Neither is Thailand a party to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) or the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*). Thailand is a party to other instruments with direct and indirect impact on refugees, asylum-seekers and stateless persons including, among others: the *CAT*, *ICCPR*, *ICESCR* and *CRC* (reservation on Article 22 concerning refugee children).<sup>1</sup>

As of 31 December 2020, there were over 97,000 refugees and asylum-seekers in Thailand, including 91,803 refugees from Myanmar registered in UNHCR's database for the nine refugee camps along the border (officially referred to by the Government as "temporary shelters"), 5,261 urban refugees and asylum-seekers from over 40 countries of origin, and 146 Rohingya persons of concern to UNHCR.

Thailand does not have a specific law with respect to the rights and obligations of refugees and asylum-seekers, and the Royal Thai Government (RTG) does not undertake formal refugee status determination (RSD). Refugees from Myanmar are able to stay in Thailand and be protected from *refoulement*, pursuant to a long-standing Ministerial Order, but in principle only within the limits of the camps. In principle, the RTG's Provincial Admissions Boards (PABs) are meant to screen in Myanmar asylum-seekers who are fleeing fighting or political persecution. In practice, the PABs do not consider "new" asylum-seekers, but rather only unregistered refugees whose presence in the camps had been verified in a joint exercise by UNHCR and the RTG in 2015, and whose serious protection or medical situation needs to be addressed through resettlement. In the urban context, refugees/asylum-seekers without valid visas are subject to the *1979 Immigration Act* imposing penalties for illegal entry/stay and detention without periodic judicial review. UNHCR carries out refugee status determination under its mandate and facilitates durable solutions for the most vulnerable refugees.

The absence of any national legal framework or policy leads to a precarious protection situation for refugees and asylum-seekers, whereby despite their need for international protection, they are considered to be illegal migrants and thus unable to exercise their basic rights, including freedom of movement, as well as the right to work and access to essential services. This has been exacerbated by the socio-economic impact of the COVID-19 pandemic, which has reduced informal opportunities to improve self-reliance, as well as slowed down efforts to expand the search for solutions with respect to certain groups.

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<sup>1</sup> The text of the reservation reads: "The application of articles 22 of the Convention on the Rights of the Child shall be subject to the national laws, regulations and prevailing practices in Thailand," see: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsq\\_no=IV-11&chapter=4&lang=en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-11&chapter=4&lang=en#EndDec).

There are, however, certain provisions of various laws that can, potentially, benefit persons of concern to UNHCR despite their lack of legal status. For example, according to the Anti-Trafficking in Persons Act (ATPA), those who are screened in as Victims of Trafficking (VOTs) are granted temporary permits to stay while trafficking investigations are ongoing, during which time they have a right to work. In practice, these rights are not applied to the Rohingyas who are screened-in as VOTs, for reasons related to national security. Instead, the vast majority will continue to reside in government facilities (typically shelters run by the Ministry of Social Development and Human Security) with limited freedom of movement and with no access to work. Meanwhile, those who are screened out and determined to be illegal migrants are confined to Immigration Detention Centres (IDCs), often for prolonged periods.

Thailand had 479,943 registered stateless persons as of 30 June 2020. Many, being ethnic minorities in remote areas, have limited access to information on their rights and nationality procedures. Thailand has demonstrated strong political will to address statelessness as evidenced in the firm pledges made during the 2019 High-Level Segment on Statelessness, its support for the #IBelong campaign to end statelessness, as well as efforts made through law and policy reform to prevent and reduce statelessness and protect stateless persons. Under current circumstances, reducing statelessness in Thailand has been time-consuming and resource intensive. Approximately 57,700 stateless persons have acquired Thai nationality since 2015.

## **II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS**

### **Positive developments linked to the 2<sup>nd</sup> cycle UPR recommendations**

#### **Issue 1: National Screening Mechanism and legal status**

**Linked to 2nd cycle UPR recommendation nos. 159.65, 159.67 and 159.68**

The RTG adopted the *Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562* (Regulation) in December 2019. It entered into force in June 2020 but is yet to be implemented. While not a conventional asylum law, the Regulation provides a regulatory framework for the RTG to differentiate individuals in need of protection from economic migrants through the development of a National Screening Mechanism (NSM). The Regulation also provides for those screened in as Protected Persons, i.e. those unable or unwilling to return to his/her country of origin due to a reasonable ground that they would suffer danger due to persecution, to be permitted to stay in the Kingdom temporarily, under special circumstances and in conformity with the Immigration Act. Further, the Regulation provides for additional rights for Protected Persons, including *inter alia*, the right to education and healthcare, in conformity with existing laws and policies. Once implemented, the Regulation will hopefully regularize and enhance the protection space for persons in need of international protection. Clear guidance and a consistent approach, in line with established protection principles, would enhance the overall protection of and accountability to refugees and asylum-seekers. In this regard, UNHCR further welcomes the RTG pledge made at the Global Refugee Forum (GRF) in 2019 to capacitate its officers in implementing the Regulation.

#### **Issue 2: Detention**

**Linked to 2<sup>nd</sup> cycle recommendation Nos. 159.9, 159.64, 159.66 and 158.80**

UNHCR has welcomed improvements in policy and practice concerning 2<sup>nd</sup> cycle recommendations relating to detention and alternatives to detention (ATDs). In recent years, UNHCR has observed a reduction in the use of immigration detention for urban refugees and asylum-seekers which accelerated significantly in 2020. For example, whereas 207 urban-based refugees or asylum-seekers entered immigration detention in 2019, 54 entered detention in 2020. At the same time, there has been a recent increase in the use of ATDs for refugees and asylum-seekers. In January 2019, the RTG signed an inter-ministerial *Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centres* (MOU). The MOU has led to a significant reduction in the number of refugee and asylum-seeker children detained in the urban context, with over 149 being released from detention. This outcome is also in line with the RTG's 2019 GRF pledge to encourage stakeholders to implement the MOU. More broadly, the use of bail as an ATD for refugees and asylum-seekers has increased – at the end of 2019, 245 individuals were on bail, whereas at the end of 2020 the figure was 380.

### III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

#### **Issue 1: Lack of a national legal and institutional framework for refugee protection**

**Linked to 2nd cycle UPR supported recommendation no. 158.21<sup>2</sup>, and to noted recommendation nos. 159.5<sup>3</sup>, 159.65<sup>4</sup>, 159.67<sup>5</sup> and 159.68<sup>6</sup>**

Despite the remarkable progress made with the adoption of the Regulation, it is yet to be implemented. As such, individuals in need of international protection without other means of legal right to stay remain illegally in Thailand and consequently lack access to basic rights and services and are at risk of arrest and detention. With the establishment of the Screening Committee responsible for developing the NSM, the RTG now has a critical opportunity to develop the NSM in a manner consistent with international standards. In this regard, key priorities should include establishing criteria for the identification of those in need of international protection based on applicable standards including the 1951 Convention. Further, the development of a protection framework should allow for a legal right to stay, provide access to core rights and services – including *non-refoulement*, freedom of movement, protection from arbitrary arrest and detention, access to education, healthcare and livelihoods - and support efforts to find durable solutions. UNHCR is working closely with the RTG in relation to these issues and is extremely grateful for the close cooperation enjoyed to date.

One additional means to build on progress with regards to the Regulation and the NSM would be accession to the 1951 Convention. It is noted that Thailand has generously hosted more than a million refugees over the past four decades and that it continues to host more than 91,000 Myanmar refugees and more than 5,000 urban refugees and asylum-seekers at present. Accession to the *1951 Convention* would help Thailand build on its generous history as a refugee hosting country and support efforts to develop a national asylum system based on its unique context in line with international norms and standards. This would considerably enhance the protection and well-being of the asylum-seekers and refugees in the country, hence contributing to commitments of leaving no one behind, and Thailand's position as a leader in the region.

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<sup>2</sup> 158.21 Consider ratifying the 1951 Convention relating to the Status of Refugees (Kazakhstan);

<sup>3</sup> 159.5 Ratify the Convention Relating to the Status of Refugees and its 1967 Protocol (Portugal);

<sup>4</sup> 159.65 Ratify the 1951 Convention Relating to the Status of Refugees and implement legislation providing asylum seekers and refugees with legal status in line with international standards, especially abiding the principle of non-refoulement (Germany);

<sup>5</sup> 159.67 Provide access to legal status for asylum seekers and refugees without discrimination (Canada);

<sup>6</sup> 159.68 Give legal status to refugees and asylum seekers (France).

**Recommendations:**

UNHCR recommends that the RTG:

- a) Establish inclusive and non-discriminatory criteria for eligibility and protection from refoulement under the National Screening Mechanism, in line with international standards;
- b) Develop and implement a comprehensive protection framework for asylum-seekers and refugees, providing them with a legal right to stay and facilitating their access to basic rights and services;
- c) Ensure that all victims of trafficking, including Rohingya victims, are eligible for the full array of rights as stipulated in the Anti-Trafficking in Persons Act;
- d) Ensure that Rohingya individuals have the right to submit a request to be a Protected Person and to be protected from refoulement under the National Screening Mechanism;
- e) Accelerate efforts to ratify the Convention Relating to the Status of Refugees and its 1967 Protocol; and,
- f) Withdraw its reservation to Article 22 of the CRC and ensure that all refugee and asylum-seeking children have formal access to legal status and appropriate protection and assistance.

**Issue 2: Non-refoulement**

**Linked to 2nd cycle UPR recommendations nos. 159.64<sup>7</sup> and 159.65<sup>8</sup>**

UNHCR is aware of at least twelve cases of refoulement of persons of concern between 2016 and 2020 despite its interventions. For example, in two separate incidents in 2018, a refugee<sup>9</sup> and an individual who had just expressed a wish to seek asylum with UNHCR from the same neighbouring country, were sought after by their country of origin, arrested in Thailand on immigration grounds, and then eventually deported. Some refugees from the temporary shelters on the Thai-Myanmar border were also sent back to Myanmar after they were apprehended for being outside the camp limits and charged with illegal presence. One example from December 2020 involved six persons of concern to UNHCR, including an unaccompanied child. UNHCR is also aware of four cases of non-admission which eventually did not result in refoulement only because solutions in third countries were urgently secured. Moreover, there have been reports – consistent with Thailand’s declared “push on” policy – that vessels carrying Rohingya persons of concern were intercepted at sea by Thai authorities and escorted back towards Myanmar/international waters after they were provided with food and water. Worryingly, there were two well-documented cases in 2019 of enforced disappearances on Thai territory of nationals from neighbouring countries. In one instance, a recognized refugee who had partaken in political activities while in Thailand, disappeared one evening nearby his home and has not been seen since.<sup>10</sup>

**Recommendations:**

UNHCR recommends that the RTG:

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<sup>7</sup> 159.64 Instil a human rights-based approach regarding the protection of migrants and asylum-seekers, including the cessation of pushbacks to the sea, while refraining from deportation and formally prohibiting detention of children (Turkey);

<sup>8</sup> 159.65 Ratify the 1951 Convention Relating to the Status of Refugees and implement legislation providing asylum seekers and refugees with legal status in line with international standards, especially abiding the principle of non-refoulement (Germany);

<sup>9</sup> [UNHCR - News comment from Indrika Ratwate, Director of UNHCR's Asia bureau](#)

<sup>10</sup> [OHCHR | Thailand/Lao PDR: UN experts concerned by disappearance of Lao human rights defender](#)

- a) Take all measures necessary, in law and in practice, to prevent *refoulement* of refugees and asylum-seekers, in order to fulfil its obligations under the CAT, ICCPR<sup>11</sup> and customary international law;
- b) Enhance the training of officials both at border entry/exit points and within the territory, in order to ensure that people are not forcibly returned to a country where they may face persecution, torture or other cruel, inhuman or degrading treatment or punishment;
- c) Rescue persons in distress at sea and disembark them, irrespective of their nationality or legal status; and,
- d) Allow temporary stay, without detention, of persons pending the final outcome of any Government screening process and/or UNHCR's status determination and solutions process, while ensuring their protection while in Thailand.

### **Issue 3: Detention**

**Linked to 2nd cycle UPR supported recommendation nos. 158.80<sup>12</sup> and 158.179<sup>13</sup>, and noted recommendations nos. 159.9<sup>14</sup>, 159.64<sup>15</sup>, and 159.66<sup>16</sup>**

As of 31 December 2020, 128 urban refugees and asylum-seekers were still in immigration detention. The situation for Rohingya persons of concern is more acute, with 121 of 164 persons detained at year end. Their detention is indefinite due to limited durable solutions available to them. In spite of the MOU on alternatives to immigration detention for children, 12 Rohingya children are still detained.

More broadly, the MOU does not prevent or limit the arrest and initial detention of children, and does not systematically facilitate the release of detained parents (although mothers are generally released). Bail remains the only ATD generally available to adult detainees and is often granted on a discretionary basis. Bail criteria are unclear and sureties can be prohibitively expensive, thereby limiting access to the ATD and discriminating against those with limited funds. Requiring surety in all cases for their release from detention indicates that the system is not tailored to consider individual circumstances, contrary to international standards on detention and alternatives to detention.<sup>17</sup> Sub-standard conditions of detention for refugees and asylum-seekers continue, e.g. inadequate medical care, overcrowding, inadequate sanitation, insufficient outdoor activities, lack or limited access to education for children in detention. UNHCR also notes with concern cases of Rohingya persons of concern being detained in excess of 12 months in police stations, which are ill-equipped for detention.

### **Recommendations:**

UNHCR recommends that the RTG:

- a) Consider further law and policy reform to expand the use and range of alternatives to detention available for all refugees and asylum-seekers, in accordance with the principle

<sup>11</sup> See para. 27-30 of the HRC concluding observations: [Human Rights Committee, Concluding observations on the second periodic report of Thailand, CCPR/C/THA/CO/2, 25 April 2017.](#)

<sup>12</sup> 158.80 Establish a policy that allows to decrease the high levels of overcrowding conditions in detention centres (Paraguay);

<sup>13</sup> 158.179 Address harsh living conditions in immigration detention centres (India);

<sup>14</sup> 159.9 Comply with its obligations under the International Covenant on Civil and Political Rights by putting an immediate end to the use of arbitrary detention (Denmark);

<sup>15</sup> 159.64 Instil a human rights-based approach regarding the protection of migrants and asylum-seekers, including the cessation of pushbacks to the sea, while refraining from deportation and formally prohibiting detention of children (Turkey);

<sup>16</sup> 159.66 Put an end to arbitrary detention of refugees and asylum seekers, and stop detention of children on the grounds of migration control (Luxembourg);

<sup>17</sup> See UN High Commissioner for Refugees (UNHCR), Alternatives to Detention Self-study Modules: Module 4, November 2018, available at: <https://www.refworld.org/pdfid/5bfd3f6f0.pdf>

of minimum intervention,<sup>18</sup> including through the introduction of community-based alternatives;

- b) Make further efforts to ensure that conditions of detention meet international standards, noting that this does not absolve the Government from its responsibilities under international law to ensure that detention is only used as a measure of last resort, subject to applicable restrictions and safeguards<sup>19</sup>; and,
- c) Continue efforts to ensure that the MOU on alternatives to detention benefits all children and is as effective as possible in ending child detention by providing open reception and care arrangements in the best interests of children. For children in families this also entails facilitating the release of their parents or caregivers.

#### **Issue 4: Access to health, education, and social welfare**

**Linked to 2nd Cycle UPR supported recommendations nos. 158.65<sup>20</sup>, 158.70<sup>21</sup>, 158.146<sup>22</sup>, and 158.152<sup>23</sup>.**

Thailand is applauded for its efforts to expand access to basic education, including for urban refugees and asylum-seekers, as well as stateless children, under its Education for All policy (EFA).<sup>24</sup> Further efforts are however required to ensure full participation. These children face language barriers and generally do not have access to scholarships and educational grants available to nationals which are in practice required to attend upper secondary and tertiary education. Additionally, the risk of arrest and detention for refugees and asylum-seekers can deter them from taking their children to school. Moreover, it is noted that the EFA does not extend to the Myanmar refugees in the temporary shelters, where the responsibility and administration of education is still assigned to a consortium of NGOs and remains informal in nature and subject to funding, which continues to decline. As education certificates are currently recognized by neither the Thai nor the Myanmar authorities, Thailand is commended for its pledge at the 2019 GRF to ensure mutual recognition of educational certificates and documents for children of Myanmar refugees. The formal recognition, accreditation and equivalency of these certificates would pave the way to sustainable return and reintegration of students who may decide to return to Myanmar in future.

The lack of legal status for urban refugees and asylum-seekers in Thailand is linked to continued challenges in their access to health services. Not being covered by national health insurance means they pay their own medical expenses if they could so afford or rely on UNHCR and partners to meet their medical needs. Similarly, Myanmar refugees in the temporary shelters rely on health services provided, or hospital referrals paid for, by NGOs. Given reductions in humanitarian funding, some serious medical cases remain untreated due to prohibitively high medical costs, particularly for refugees with chronic illnesses. Moreover, medical reports issued by camp health

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<sup>18</sup> Para 39, UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, available at:

<https://www.unhcr.org/publications/legal/505b10ee9/unhcr-detention-guidelines.html>

<sup>19</sup> Id. at paras. 15-17, 21-34.

<sup>20</sup> 158.65 Promote a culture of equality through the equal participation of all members of the society and, in particular the participation of women in rural areas (Djibouti);

<sup>21</sup> 158.70 Improve access to health, education and social welfare for vulnerable groups, including for those in rural areas, ethnic minorities, women, migrants and refugees (Japan);

<sup>22</sup> 158.146 Continue its efforts to ensure that the universal health-care scheme covers disadvantaged groups, including persons with disabilities and persons living in remote rural areas that still face obstacles in accessing basic health-care services (State of Palestine);

<sup>23</sup> 158.152 Facilitate access to health services for all the population in the Thai territory (Madagascar);

<sup>24</sup> Thailand expanded its Education for All Policy, which was adopted in 1990, to all children in Thailand irrespective of their nationality or legal status through the *2005 Policy and Cabinet Resolution (Education Policy)*.

facilities are not recognized by Thai justice authorities as official evidence, thereby hampering refugees' rights to seek redress or a legal remedy.

In general, registered stateless persons in Thailand have access to health insurance,<sup>25</sup> however, not all stateless persons are automatically entitled to coverage. Registered yet undocumented stateless persons, including almost 60,000 so-called "G-students" require Cabinet approval for healthcare coverage under the Healthcare Fund for Persons with Legal Status Problems. While the RTG is to be commended for recent efforts to assess and approve 3,000 G-students for health care coverage<sup>26</sup> further efforts are required to close the healthcare gap.

As the COVID-19 pandemic grips the world, universal access to health has become glaringly relevant. In its wake, the pandemic has highlighted that ill health does not distinguish based on nationality or on legal status, and for which an approach that leaves no one behind is warranted. In this respect, the inclusive approach taken so far by Thailand with respect to including refugees, asylum-seekers, and stateless persons in the national COVID-19 surveillance, response and planning is to be commended.

The lack of legal status means that refugees and asylum-seekers across the country do not have access to social welfare. At the same time, they do not have the legal right to work. Many have been displaced in Thailand for prolonged periods and have no immediate solution in sight. In the face of the economic impact of the prevailing COVID-19 pandemic, the above combination has clearly highlighted the extreme vulnerabilities among this population.<sup>27</sup>

As access to government social protection initiatives in Thailand is often based on proof of citizenship and/or the presentation of civil documentation, stateless persons – and especially those that are undocumented – are not entitled to many forms of social welfare accorded to nationals.<sup>28</sup> This has a particularly important impact in the context of the COVID-19 pandemic, whereby stateless persons are not entitled to cash subsidies rolled out to alleviate hardship caused by the pandemic, which has impacted on all segments of Thai society.<sup>29</sup>

## **Recommendations:**

UNHCR recommends that the RTG:

- a) Take concrete steps to ensure mutual recognition of educational certificates and documents for children of Myanmar refugees, in line with the Government's pledges<sup>30</sup>;
- b) Consider law and policy reform that will allow refugees and asylum-seekers access to national health system through enrolment in the national insurance schemes;
- c) Expand access to the Healthcare Fund for Persons with Legal Status Problems to all stateless persons;

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<sup>25</sup> Via the Healthcare Fund for Persons with Legal Status Problems

<sup>26</sup> UNHCR, UNHCR welcomes move to strengthen healthcare for stateless students, 25 September 2020, available at: <https://www.unhcr.org/th/en/21829-unhcr-welcomes-move-to-strengthen-healthcare-for-stateless-students.html>

<sup>27</sup> See eg, UNHCR, COVID-19 Impact Assessment: Urban Refugees and Asylum-seekers in Thailand, July 2020, available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Thailand%20Urban%20COVID-19%20Impact%20Assessment\\_July%202020.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Thailand%20Urban%20COVID-19%20Impact%20Assessment_July%202020.pdf)

<sup>28</sup> Fund for Education Loan; Universal Health Care Coverage Scheme; Subsistence Allowance for Persons with Disabilities; Subsistence Allowance for Persons with HIV AIDS; Subsistence Allowance for Older Persons; and Cash Subsidies under the COVID-19 "No one Left Behind" Project.

<sup>29</sup> See (in Thai) Ministry of Finance, Criteria for screening of eligible recipients, available at: <https://www.mof.go.th/th/detail/2020-04-03-10-20-57/2020-04-09-16-09-53>

<sup>30</sup> Pledge made by Thailand at the Global Refugee Forum (GRF) in 2019: "To continue working to ensure that children of Myanmar displaced persons who have returned to Myanmar be recognised for their educational certificates and documents issued by Thai authorities in order for them to continue their study in Myanmar."

- d) Consider law and policy reform that would expand social welfare initiatives to refugees and asylum-seekers and that would allow them the right to work; and,
- e) Consider law and policy reform that would expand social welfare initiatives to stateless persons, in line with the Government's pledges<sup>31</sup>.

### **Additional protection challenges**

#### **Issue 5: Statelessness**

Despite notable progress made to date in terms of legal and policy reforms, given the size of the population, considerable effort and resources are still required to end statelessness in Thailand. Meanwhile, stateless persons do not have full freedom of movement and cannot access all the rights afforded to Thai nationals (see Issue 4, above).

#### **Recommendations:**

UNHCR recommends that the RTG:

- a) Building on progress made so far, accede to the 1954 and 1961 Statelessness Conventions;
- b) Continue efforts to amend law and policy towards reducing statelessness in Thailand, including by continuing to address remaining gaps in the *Nationality Act* and other relevant legislation and streamlining what can be cumbersome administrative nationality procedures; and,
- c) Ensure that stateless persons have access to fundamental rights, including freedom of movement, right to work, as well as access to education, social welfare, and healthcare.

**UNHCR Thailand  
February 2021**

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<sup>31</sup> In line with the RTG's pledge at the 2019 High-Level Segment to enhance social protection for stateless persons.