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# The Right-To-Work for Rohingya in Thailand

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## **Cover Page Footnote**

Juris Doctor Candidate, Notre Dame Law School, 2019; B.B.A. Business Management, Texas State University, 2016. Thank you to my advisor Professor Christine Venter for her guidance throughout this entire process. I would also like to thank the Journal of International & Comparative Law for this opportunity and for the constant support.

**THE RIGHT-TO-WORK FOR ROHINGYA IN THAILAND: THE  
PATHWAY TO A LIFE OF DIGNITY**

LARA THIELE\*

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

—Rohingya man in Thailand<sup>1</sup>

INTRODUCTION

The importance of proper laws and standards for displaced individuals who are seeking to gain shelter in a safer environment is becoming more evident every day—with currently 68.5 million forcibly displaced<sup>2</sup> people and

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<sup>1</sup> Equal Rights Tr., *Equal Only in Name* (2014), [http://www.equalrightstrust.org/ertdocumentbank/Equal Only in Name - Thailand - Full Report.pdf](http://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Thailand%20-%20Full%20Report.pdf) [hereinafter *Equal Only in Name*].

<sup>2</sup> Forcibly displaced persons typically refer to “internally displaced persons [who] have not crossed an international frontier, but have . . . fled their homes.” *Refugees and Displaced Persons Protected Under International Humanitarian Law*, INT’L COMM. RED CROSS (Oct. 29, 2010),

25.4 million refugees worldwide.<sup>3</sup> One of the groups that has been affected by these issues in a pervasive manner since the 1970s is the stateless Muslim Rohingya population, who originated in Myanmar but has never been granted Burmese nationality.<sup>4</sup> Approximately 1.4 million Rohingya live in Rakhine State, which is a state on the western coast of Myanmar, and over one million live as refugees and migrants in other countries.<sup>5</sup> With that, the Rohingya are the largest stateless<sup>6</sup> population in the world, experiencing discriminatory “restrictions on movement; forced labor; land confiscation, forced eviction, and destruction of houses; extortion and arbitrary taxation; and restrictions on marriage, employment health care, and education” in Myanmar.<sup>7</sup> In addition to these abusive restrictions, the Rohingya have for decades been the victims of severe violence perpetrated by the government. During recent attacks in 2012, 2015, and 2017, the Burmese government and security forces beat, killed, and raped many Rohingya individuals.<sup>8</sup>

Following these incidents, thousands of Rohingya fled to other countries, including Bangladesh, Indonesia, Malaysia, and Thailand,<sup>9</sup> with over 500,000 individuals fleeing Myanmar just in September 2017.<sup>10</sup> Once they arrive in their destination, they are rarely able to enjoy basic human rights for many reasons, including the overall economic situation of the host country, the lack of government enforcement of human rights, and insufficient and sometimes hostile laws and regulations towards refugee and stateless individuals. Unlike other refugees who might eventually be able to return to their home country or can escape to another country, the Burmese government has systematically discriminated against the Rohingya since the 1970s and has left the Rohingya

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<https://www.icrc.org/en/doc/war-and-law/protected-persons/refugees-displaced-persons/overview-displaced-protected.htm>.

<sup>3</sup> *Id.* (defining refugees as people who have crossed an international frontier and are at risk or have been victims of persecution in their country of origin); see also *Figures at a Glance*, UNHCR, <http://www.unhcr.org/en-us/figures-at-a-glance.html> (last visited Nov. 17, 2017).

<sup>4</sup> See Benjamin Zawacki, *Defining Myanmar's "Rohingya Problem"*, 20 HUM. RTS. BRIEF 18, 18 (2013) (stating that the Rohingya refugees have faced severe discrimination in Myanmar since the 1970s, including especially violent events in 1978, 1992, 2001, 2009, and 2012).

<sup>5</sup> Equal Rights Tr., *The Human Rights of Stateless Rohingya in Thailand* 3 (Feb. 2014), [http://www.equalrightstrust.org/ertdocumentbank/The\\_Human\\_Rights\\_of\\_Stateless\\_Rohingya\\_in\\_Thailand%28small%29.pdf](http://www.equalrightstrust.org/ertdocumentbank/The_Human_Rights_of_Stateless_Rohingya_in_Thailand%28small%29.pdf) [hereinafter Equal Rights Tr.].

<sup>6</sup> A stateless person is defined as someone “who is not considered as a national by any State under operation of its law.” Convention Relating to the Status of Stateless Persons art. 1(1), *entered into force* June 6, 1960, 360 U.N.T.S. 117 [hereinafter Statelessness Convention].

<sup>7</sup> Zawacki, *supra* note 4, at 19.

<sup>8</sup> Engy Abdelkader, *The Rohingya Muslims in Myanmar: Past, Present, and Future*, 15 OR. REV. INT’L L. 393, 397 (2013) (stating that in 2012, 100,000 Rohingya were displaced because of sectarian violence and that security forces participated in the persecution of the Rohingya by “killing, beating and arresting the Rohingya”); see also Office of the High Comm’r (OHCHR), *Interviews with Rohingyas Fleeing from Myanmar Since 9 October 2016*, (Feb. 3, 2017), <http://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf> (summarizing interviews from Rohingya refugees about abuses by the Myanmar government, including extrajudicial and summary executions and other killings, rapes, physical assaults, looting and occupation of property, and ethnic and religious discrimination).

<sup>9</sup> Jaya Ramji-Nogales, *Under the Canopy: Migration Governance in Southeast Asia*, 21 UCLA J. INT’L L. & FOREIGN AFF. 10, 14 (2017).

<sup>10</sup> Audrey Gaughran, *Rohingya Fleeing Myanmar Face Difficulties in Thailand*, DIPLOMAT (Sept. 29, 2017), <https://thediplomat.com/2017/09/rohingya-fleeing-myanmar-face-difficulties-in-thailand/>.

stateless with nowhere to go.<sup>11</sup> Therefore, the individuals who have escaped Myanmar are in desperate need of a permanent new home that recognizes them as individuals with basic human rights. One of the most basic but fundamental rights is the right-to-work—essential for the Rohingya to integrate themselves into the host country and to enjoy most other human rights with a sense of independence and dignity.<sup>12</sup>

A significant group of the Rohingya has lived in the Kingdom of Thailand for more than twenty years.<sup>13</sup> Regardless of how long the Rohingya and other stateless refugees have stayed in the Kingdom, Thailand does not legally recognize refugees or stateless persons as legally present within its borders and does not grant them the right-to-work. Consequently, these minority groups often have to hide from the government and commit themselves to illegal, abusive employment to sustain themselves and their families. This hinders the person's ability to ever work in circumstances that provide the person with "means of survival and . . . a contribution to their sense of dignity and self-worth."<sup>14</sup>

In an effort to provide the Rohingya with the fundamental right-to-work, this Note will stress the need for Thailand to recognize stateless refugees as legally present in their country and to provide them with safe and just employment opportunities. In particular, this Note will argue that Thailand should amend its current immigration and labor laws to recognize refugees, stateless or not, as lawfully present in Thailand, and eligible to work once they have been legally recognized.<sup>15</sup> This amendment would provide the Rohingya with the right-to-work as required under the Universal Declaration of Human Rights (UDHR)<sup>16</sup> as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>17</sup> Because Thailand is bound by these two documents, the amendment would allow Thailand to fulfill its obligations under international law. In order to develop a reasonable amendment of the law, the U.N. Conventions Relating to the Status of Refugees and Stateless Persons as well as the domestic laws of the Philippines will be used to make a proposal for Thailand. This Note will then show that Thailand's economy would also benefit from the legal change because of the Rohingya's contribution to the country.

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<sup>11</sup> The 1982 Citizenship Law reserved full citizenship for anyone "whose ancestors settled in the country before the year 1823 or who are members of one of Myanmar's more than 130 recognized national ethnic groups, which do not include the Rohingya." Zawacki, *supra* note 4, at 18.

<sup>12</sup> Alice Edwards, *Human Rights, Refugees, and the Right 'to Enjoy' Asylum*, 17 INT'L J. REFUGEE L. 293, 320 (2005) (stating that the right-to-work is binding through international customary law on every United Nations Member State).

<sup>13</sup> Nicole Ostrand, *The Stateless Rohingya in Thailand*, CTR. MIGRATION STUD. (July 17, 2014), <http://cmsny.org/the-stateless-rohingya-in-thailand/>.

<sup>14</sup> Edwards, *supra* note 12, at 320.

<sup>15</sup> Six months is the duration of asylum under Thai law given to the individuals that are recognized as refugees.

<sup>16</sup> Universal Declaration of Human Rights, art. 23, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948) [hereinafter UDHR].

<sup>17</sup> International Covenant on Economic, Social and Cultural Rights, art. 6–7, *ratified* Dec. 16, 1966, 6 I.L.M. 360, 993 U.N.T.S. 3 [hereinafter ICESCR].

## I. DEFINITION OF THE RIGHT-TO-WORK

In order to understand what Thailand needs to do to provide the Rohingya with the right-to-work, a definition of the right-to-work is necessary. The UDHR and the ICESCR specify requirements for the minimum standard of the right-to-work. Article 23 of the UDHR defines it in the following manner:

- (1) *Everyone* has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) *Everyone*, without any discrimination, has the right to equal pay for equal work.
- (3) *Everyone* who works has the right to just and favourable remuneration ensuring for himself and his family existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) *Everyone* has the right to form and join trade unions for the protection of his interest.<sup>18</sup>

This definition is binding on Thailand, and all other states, because over the last seventy years the UDHR has evolved from a compilation of the thirty most fundamental human rights to be adhered by every U.N. Member State<sup>19</sup> to a universally binding document under customary international law.<sup>20</sup> Every country has therefore the obligation to respect and protect the right-to-work.<sup>21</sup> To determine whether a country has properly met its obligations, article 23(3) states that the individual's employment has to enable him or her to ensure "for himself [or herself] and his [or her] family existence worthy of human dignity."<sup>22</sup>

The right-to-work has further been defined in many other international covenants, including the ICESCR.<sup>23</sup> Under article 6 of the ICESCR, the State is required to "recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."<sup>24</sup> The fact

<sup>18</sup> UDHR, *supra* note 16, at art. 23 (emphasis added).

<sup>19</sup> United Nations (U.N.), *Universal Declaration of Human Rights*, <http://www.un.org/en/universal-declaration-human-rights/> (last visited Aug. 01, 2018).

<sup>20</sup> Katharine G. Young, *The Minimum Core of Economic and Social Rights: A Concept in Search of Content*, 33 YALE J. INT'L L. 113, 146 (2008) (recognizing that the UDHR's validity across different regimes suggests that the UDHR is international customary law).

<sup>21</sup> See ICESCR, *supra* note 17, at art. 6,7; see also UDHR, *supra* note 16, at art. 23; Convention Relating to the Status of Refugees art. 17, adopted Dec. 14, 189 U.N.T.S. 137 [hereinafter Refugee Convention]; Statelessness Convention, *supra* note 6, at art. 17.

<sup>22</sup> UDHR, *supra* note 16, at art. 23(3).

<sup>23</sup> See ICESCR, *supra* note 17, at art. 6,7; see also, UDHR, *supra* note 16, at art. 23; Refugee Convention, *supra* note 21, at art. 17; Statelessness Convention, *supra* note 6, at art. 17.

<sup>24</sup> ICESCR, *supra* note 17, at art. 6.

that the right-to-work is granted to *everyone* means that the right “applies to all workers in all settings [including] . . . workers in the informal sector, migrant workers, workers from ethnic and other minorities . . . refugee workers and unpaid workers.”<sup>25</sup> In addition to providing access to work, the right-to-work also includes certain protections that everyone is entitled to enjoy when employed. In particular, the State has to ensure just and favorable conditions of work under article 7 and has to provide in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind . . . with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.<sup>26</sup>

Under these provisions, employers ought to grant the same safeguards and benefits to aliens and nationals in similar circumstances. Even more importantly, under these provisions the government has the obligation to ensure that employers effectively implement and enforce these safeguards and benefits. This indicates that the right-to-work not only extends to access to employment but also that such employment has to meet certain requirements. This definition of the right-to-work is binding on the 168 countries that are party to the ICESCR, including Thailand.<sup>27</sup>

For the rest of this Note, the definition under the UDHR and ICESCR will be taken into consideration in determining what is necessary for Thailand to properly provide and protect the right-to-work for its stateless residents.

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<sup>25</sup> U.N. Committee on Econ., Soc. and Cultural Rts. (CESCR), *General Comment No. 23 on the Right to Just and Favorable Conditions of Work* (2016), <https://www.escr-net.org/resources/general-comment-no-23-2016-right-just-and-favorable-conditions-work> (last visited Jan. 30, 2018) [hereinafter *General Comment No. 23*].

<sup>26</sup> ICESCR, *supra* note 17, at art. 7.

<sup>27</sup> *Chapter IV Human Rights, 3. International Covenant on Economic, Social and Cultural Rights*, UNITED NATIONS TREATY COLLECTION (Aug. 07, 2018).

## II. THAILAND'S LAW ON REFUGEES AND STATELESS INDIVIDUALS

Because most often a country only extends the right-to-work to individuals whom it recognizes to be lawfully present, Thailand's immigration laws will be discussed first.

### A. THE IMMIGRATION LAWS FOR REFUGEES AND STATELESS INDIVIDUALS

Thailand has not actively engaged in any legislative or signatory attempts to recognize the status of refugees or stateless individuals.<sup>28</sup> Even though Thailand hosts refugees, often stateless, within its borders, it has not signed onto any international treaties protecting their rights. Accordingly, it has not accepted the Refugee Convention or its 1976 Protocol.<sup>29</sup> Under the Convention, Thailand would have the right to oblige the refugees to conform to Thai laws and regulations, but it would also have the duty to ensure that those individuals enjoy basic human rights, including access to wage-earning employment.<sup>30</sup> Similar rights and duties are also granted to stateless persons under the Statelessness Convention.<sup>31</sup> Like the 1951 Refugee Convention, Thailand is not a party to the Statelessness Convention.<sup>32</sup> It therefore has made a choice to avoid obligations for refugees and stateless persons under international law.

This notion translates to its regional obligations and domestic laws as well. Thailand's current immigration law is the 1979 Immigration Act. This law "considers asylum seekers and refugees as illegal immigrants and subjects them to arbitrary arrest, detention and deportation."<sup>33</sup> Even though the law itself neglects to mention the option to enter Thailand as a refugee or stateless person, it lays out strict regulations that disqualify the majority of such groups from entering Thailand through a legal immigration process.<sup>34</sup> Under section 12 of the Act, the government has chosen to exclude any person as an immigrant, who has "no valid and subsisting passport or travel document," "no appropriate means of living on entering the Kingdom," "enter[s] into the Kingdom to take earn livelihood as a labourer or to be hired to do physical

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<sup>28</sup> The discussion is expanded from stateless persons to refugees because under the Refugee Convention as well as other definitions of refugees, a stateless person often falls under the definition of refugee.

<sup>29</sup> THAI COMM. FOR REFUGEES FOUND., THAILAND: UPR 2015 REPORT ON REFUGEES 5 (2015) [hereinafter UPR 2015 REPORT]. As of April 2015, 145 countries are State Parties to the 1951 Convention and 146 countries are State Parties to the 1967 Protocol. See UNHCR, *State Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*, <http://www.unhcr.org/en-us/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html> (last visited Nov. 17, 2017).

<sup>30</sup> Refugee Convention, *supra* note 21, at art. 2, 17.

<sup>31</sup> Statelessness Convention, *supra* note 6, at art. 2, 17.

<sup>32</sup> See *Chapter V Refugees and Stateless Persons*, UNITED NATIONS TREATY COLLECTION (July 07, 2018), [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-3&chapter=5&Temp=mtdsg2&clang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=en).

<sup>33</sup> UPR 2015 REPORT, *supra* note 29, at 5.

<sup>34</sup> See Immigration Act, B.E. 2522 (1979) [Thai.], May 30, 1979, available at: <http://www.refworld.org/docid/46b2f9f42.html>.



work and not skilled” or is “of unsound mind.”<sup>35</sup> These categories eliminate almost any chance for stateless individuals, like the Rohingya, to immigrate to Thailand lawfully. Such individuals do not have passports, are often mentally unstable from the severe abuse in their home country and tend to be unskilled due to lack of access to education. Because stateless individuals are not able to legalize their status, they then remain in Thailand illegally for many years.

Besides its domestic immigration laws, Thailand is a Member State of the Association of Southeast Asian Nations (ASEAN), which has implemented the non-binding 2012 ASEAN Human Rights Declaration.<sup>36</sup> While this declaration emphasizes the right to a nationality and the right to seek refuge, it only requires its Member States to extend such rights if its own domestic law provides for it.<sup>37</sup> Hence, under Thailand’s current immigration law, lacking any acknowledgement of refugees or stateless persons, the Kingdom is not obligated to accept refugees under the declaration.

On first sight, it appears that Thailand neither has to accept stateless persons nor has to extend certain rights and protections to them under its current domestic law or any international law commitments. On second sight, it becomes apparent that this is not true. Thailand has the duty to extend certain rights under other international legal obligations, such as the UDHR<sup>38</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>39</sup> Under the UDHR, Thailand has certain undeniable obligations, particularly towards refugees and stateless persons. The Kingdom has to respect and protect basic human rights, including “the right to seek and to enjoy in other countries asylum from persecution” and the entitlement “to all rights and freedoms . . . in this Declaration, without distinction of any kind, such as . . . *birth or other status*.”<sup>40</sup> The ICCPR furthers supports this. Under article 2, the State has to make efforts to respect and ensure the rights mentioned in the Covenant for all individuals in its territory, regardless of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, *birth or other status*.”<sup>41</sup> One of the rights that falls under the protection from discrimination is the “right to recognition everywhere as a person before the law.”<sup>42</sup> Thailand therefore has a duty to implement legislation for refugees and stateless persons to grant such recognition—even if such recognition is expressed in a restrictive manner. This is even more so when the government provides certain ethnic minorities with protections and rights but not others.<sup>43</sup> The Kingdom has allowed the United Nations High Commissioner for Refugees (UNHCR) to conduct refugee status determinations for asylum seekers, except for

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<sup>35</sup> *Id.* at ch. 2, § 12.

<sup>36</sup> Ass’n of Southeast Asian Nations (ASEAN), *ASEAN Human Rights Declaration*, Nov. 18, 2012, <http://www.refworld.org/docid/50c9fea82.html> [hereinafter ASEAN HRD].

<sup>37</sup> *Id.* at art. 27, 18, 16.

<sup>38</sup> Young, *supra* note 20, at 146. In addition, Thailand voted in favor of the UDHR. *Vote of the General Assembly to Adopt the Universal Declaration of Human Rights, Annex, GCC*, <http://www.gcc.ca/pdf/INT000000019b.pdf> (last visited Nov. 17, 2017).

<sup>39</sup> International Covenant on Civil and Political Rights, art. 2, *opened for signature* Dec. 19, 1966, 92 U.S.T. 908, 999 U.N.T.S. 171 [hereinafter ICCPR].

<sup>40</sup> UDHR, *supra* note 16, at art. 2 (emphasis added).

<sup>41</sup> ICCPR, *supra* note 39, at art. 2 (emphasis added).

<sup>42</sup> *Id.* at art. 16.

<sup>43</sup> *Id.* at art. 3; UDHR, *supra* note 16, at art. 2.

individuals from Myanmar.<sup>44</sup> Once the UNHCR has completed its determination, the Thai government processes the asylum seekers on a group basis.<sup>45</sup> These refugees, recognized through the UNHCR, receive assistance from domestic and international non-governmental organizations.<sup>46</sup> Moreover, even without the determinations by the UNHCR, the Thai government has allowed certain asylum-seekers from Myanmar to remain in refugee camps—without extending this privilege to the Rohingya.<sup>47</sup> As these examples demonstrate, Thailand has extended protection to certain groups, but not others. This imposes an affirmative duty on Thailand to extend similar protections for all other minority groups under the UDHR and the ICCPR. Without such protections, Thailand is violating both conventions with discriminatory conduct.

Overall, it appears that Thailand's current immigration legislation precludes the Rohingya and any other stateless individuals from being lawfully present in the Kingdom. Even if they are able to remain in the country, they are likely to endure discriminatory behavior. Therefore, without non-discriminatory legislation that recognizes stateless individuals to be lawfully present in the Kingdom, Thailand will likely also not extend the right-to-work to the Rohingya or any other stateless individuals.

## B. THE RIGHT-TO-WORK FOR REFUGEES AND STATELESS PERSONS IN THAILAND

### 1. The Right-to-Work under Thailand's Domestic Laws

Thailand has also decided not to extend the opportunity for lawful employment to refugees and stateless persons. As mentioned before, Thailand has not accepted the 1951 Refugee Convention and the 1954 Statelessness Convention. Under both, Thailand would have to make efforts to provide individuals, including stateless persons, with access to wage-earning employment, at the minimum, as they accord to other foreign nationals.<sup>48</sup> Because Thailand is not party to the Refugee Convention either, it has opted out of obligations under both Conventions regarding employment opportunities.

Under its domestic labor laws, the Kingdom has chosen to equally opt out of extending access to employment for stateless individuals. In fact, the Labor Code does not acknowledge the existence of stateless persons regarding lawful employment and has solely defined a *foreigner* as a person not having Thai nationality.<sup>49</sup> Any person who falls into that category then must not be employed without a labor permit.<sup>50</sup> If an employee violates this procedure, the

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<sup>44</sup> Ramji-Nogales, *supra* note 9, at 18.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Ostrand, *supra* note 13.

<sup>48</sup> Refugee Convention, *supra* note 21, at art. 17; Statelessness Convention, *supra* note 6, at art. 17.

<sup>49</sup> Royal Decree on Managing the Work of Foreigner, B.E. 2560 (2016) [Thai.] sec. 5, June 23, 2017 [hereinafter Royal Decree]. For a tentative translation, see *Tentative Translation Foreigners' Working Management Emergency Decree, B.E. 2560 (2017)*, DEP'T LAB. (June 22, 2017) [hereinafter *Tentative Translation-Royal Decree*], [https://www.doe.go.th/prd/assets/upload/files/bkk\\_th/3c35c06309c7e8942a8f6ea363b8b916.pdf](https://www.doe.go.th/prd/assets/upload/files/bkk_th/3c35c06309c7e8942a8f6ea363b8b916.pdf).

<sup>50</sup> *Id.* at sec. 8.

employer as well as the employee will face harsh punishments.<sup>51</sup> Because Thailand does not legally recognize refugees and stateless persons, such persons cannot fall under the definition of *foreigner*, and all work they conduct will be illegal and punishable.<sup>52</sup> Thailand has made exceptions to this provision; namely it has allowed individuals in refugee camps to work in a restricted manner. Such an exception has not been granted to persons outside the camps, including to the Rohingya.<sup>53</sup>

In 2017, Thailand enacted a new law, the Royal Decree. This law replaces the Alien Working Act of 2008 (Alien Working Act) and imposes harsher penalties on unlawful employment. Because the Royal Decree includes the core provisions of the Alien Working Act, both acts will be mentioned in this Note, and changes between those two will be highlighted.

Both under the repealed law, the Alien Working Act,<sup>54</sup> and the newly enacted Royal Decree<sup>55</sup> the government severely punishes both employees without the proper work authorization and employers. Generally, under Thai law, “work by foreigners may only be done in accordance with regulations issued by the Ministry of Labour and may not be performed in the absence of a work permit.”<sup>56</sup> In order to receive a work permit through the Alien Working Act, the alien “must have a residence in the Kingdom or must be authorized to enter the Kingdom temporarily in accordance with the Law Governing the Immigrant.”<sup>57</sup> This article has not been included in the Royal Decree. Instead under the new law, the Thai government has discretion to promulgate requirements to acquire a permit through orders and other announcements.<sup>58</sup> Since the enactment of the Royal Decree no new requirements have been announced and the prior terms under the Alien Working Act appear to be governing until further notice.<sup>59</sup> According to these guidelines, anyone who is in Thailand unlawfully will also not be able to receive a work permit, as one has to be lawfully present within the country to establish a residence. This means that even if a certain refugee or stateless person is in Thailand for twenty years, he or she will not be able to gain lawful employment and will likely participate in the informal employment sector to make a living. According to section 100 of the Royal Decree, if the government detects such illegal work and the person is unwilling to come to the police station, the police officer can arrest the individual without a warrant.<sup>60</sup> Once he or she has been reported to the police, the alien is then “liable to the imprisonment for a

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<sup>51</sup> *Id.* at ch. VIII.

<sup>52</sup> See Zach Hudson, *Stranglehold Refoulement: Fear of Constructively Forced Returns of Burmese Refugees as Consequence of Thailand's Combined Human Rights Violations*, 40 *FORDHAM INT'L L.J.* 329, 336 (2017).

<sup>53</sup> *Id.*

<sup>54</sup> Alien Working Act, B.E. 2551 (2008) [Thai.] ch. 6, Feb. 13, 2008 [hereinafter Alien Working Act].

<sup>55</sup> *Thailand: New Law on Foreign Employees and Migrant Workers*, BAKER MCKENZIE, Jun. 29, 2017 <https://www.bakermckenzie.com/en/insight/publications/2017/06/new-law-on-foreign-employees>.

<sup>56</sup> Ostrand, *supra* note 13.

<sup>57</sup> Alien Working Act, *supra* note 54, at sec. 10.

<sup>58</sup> *Tentative Translation-Royal Decree*, *supra* note 49, at sec. 59.

<sup>59</sup> *Thai Work Permit Form*, GOV'T OF THAI.: DEP'T EMP., <https://www.doe.go.th/prd/main/downloads/param/site/1/cat/14/sub/0/pull/category/view/list-label> (last visited Jan. 30, 2018).

<sup>60</sup> *Tentative Translation-Royal Decree*, *supra* note 49, at sec. 100.

term of not exceeding 5 years or fine from 2,000–100,000 THB, or both.”<sup>61</sup> If the alien is willing to participate in repatriation in less than thirty days, his or her punishment could be mitigated to only a fine.<sup>62</sup> This is only a functional compromise for non-nationals who can return safely to their home country or move to another state. Absent the availability of such compromise, the individuals have to work in the informal employment sector, where the government will less likely detect them. Even if someone then takes advantage of these individuals by trafficking or forcing them to work without proper compensation, under Thai law they would not be able to report this abuse because it will make them subject to removal or punishment.<sup>63</sup>

Now with the enactment of the Royal Decree, another hurdle to secure work in the informal sector exists. The act, officially aimed at reducing human trafficking, adopts a more narrow definition of work, which now defines work as “exerting one’s physical energy or employing one’s knowledge to perform a profession or performs work, whether or not for wages or other benefits.”<sup>64</sup> Under this definition, employers have to pay a fine of between 400,000 baht and 800,000 baht per foreigner employed without a work permit.<sup>65</sup> Comparatively, the fine under the Alien’s Work Act ranged from 10,000 baht to 100,000 baht per foreigner. Fines have therefore increased by at least 800%.<sup>66</sup> Even though this law is intended to mainly affect smaller businesses that heavily rely on the work of migrant employees, it strongly affects stateless individuals by making it virtually impossible to secure any employment—in the formal or informal employment sector—without an employment authorization. Since the enactment, employers are more likely to be very cautious to hire unapproved workers because of the costly risk factors. This is even more the case because section 50 of the Royal Decree requires the employer to report employees working illegally under its supervision.<sup>67</sup> If the employer fails to do so, it will then be sanctioned.<sup>68</sup> This system strongly incentivizes employers to report and to refrain from hiring illegal workers. Even if the stateless individuals find employment and remain undetected at first, the stricter enforcement poses constant threats of imprisonment, deportation, or monetary fines in exchange for the desire to make a living for their families.

Thailand could resolve these negative consequences for stateless individuals if the government would allow refugees and stateless individuals to

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<sup>61</sup> *Royal Decree on Management of Alien Workers*, KOREAN-THAI CHAMBER COM. (July 4, 2017), [http://www.korchamthai.com/2016/en/bbs/board.php?bo\\_table=event\\_eng2&wr\\_id=258](http://www.korchamthai.com/2016/en/bbs/board.php?bo_table=event_eng2&wr_id=258). On November 17, 2017, 200 baht translated into \$60 USD, whereas 100,000 baht translated into \$3,043 USD. In 2010, the average monthly income in the informal employment sector was 4,088 baht or \$124 USD per month. It can be assumed that an unlawful employee will earn less than this average. See ILO, *Thailand—A Labour Market Profile* 38–41 (2015).

<sup>62</sup> *Tentative Translation-Royal Decree*, *supra* note 49, at sec. 101.

<sup>63</sup> Either of these options are not possible for the Rohingya because when they are deported or imprisoned they are not able to work and provide for their families.

<sup>64</sup> *Thailand: New Law on Foreign Employees and Migrant Workers*, *supra* note 55.

<sup>65</sup> *Id.* Four hundred thousand baht is approximately \$12,210 USD; 800,000 baht is approximately \$24,420 USD. Both estimations calculated by the currency exchange rate on November 21, 2017.

<sup>66</sup> *See id.*

<sup>67</sup> *See Tentative Translation-Royal Decree*, *supra* note 49, at sec. 50.

<sup>68</sup> *Id.* at sec. 102.

legally work. Then the Royal Decree could be a helpful tool in the furtherance of the right-to-work under just and safe conditions—promoting its intended purpose. Under the Decree “[a]ny employer who keeps or seizes the work permit or any personal document of alien worker [sic] shall be liable to the imprisonment of not exceeding 6 months or a fine not exceeding 100,000 THB, or both.”<sup>69</sup> Additionally, “[a]ny person who misleads others that he/she has permission to bring an alien worker to work in the Kingdom shall be liable to the imprisonment for a term of 3 to 10 years or a fine from 600,000–1,000,000 THB per one alien or both.”<sup>70</sup> With these provisions, employers would not be able to force stateless individuals to work after taking their travel documents or work permits, which usually relinquishes their ability to leave. Employers would also not be able to treat them in an abusive manner as easily as they could by pretending that they are legal employees, avoiding investigation by the police. Both of these articles, if effectively enforced, could reduce the incidents of trafficking and abuse of the workers. Unfortunately, without the legal authorization of the stateless persons and refugees, these provisions will severely foreclose the majority of employment opportunities for these groups.

## 2. *The Right-to-Work in Thailand Under International Law*

Regardless of Thailand’s strict domestic prohibition and punishment for the employment of stateless persons, Thailand has international treaty obligations that impose voluntary and obligatory duties to extend the right for employment. Voluntarily, Thailand is a signatory to the ICESCR<sup>71</sup> and accordingly, must *respect, protect, and fulfill* the rights enumerated in the covenant.<sup>72</sup> As enumerated in the definition of the right-to-work, under articles 6 and 7 the State has to recognize the right-to-work for everyone, namely the right “to the opportunity to gain his living by work which he freely chooses or accepts.”<sup>73</sup> This requires Thailand under the *respect, protect, and fulfill* framework to not only not hinder the realization of the right-to-work, through either inhibitive actions or omissions, but also to implement protections that disallow third parties from interfering with and to actively provide laws and regulations that facilitate the provision of the right-to-work.<sup>74</sup> Therefore, Thailand has a negative duty to not do anything to restrain the freedom to work but also a positive duty to actively protect such right.<sup>75</sup> How much Thailand has to do to fulfill its international obligations depends on its own capacity,

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<sup>69</sup> *Royal Decree on Management of Alien Workers*, *supra* note 61.

<sup>70</sup> *Id.*

<sup>71</sup> *Ratification on International Human Rights Treaties-Thailand*, U. MINN. HUM. RTS. LIBR., <http://hrlibrary.umn.edu/research/ratification-thailand.html> (last visited Dec. 18, 2018).

<sup>72</sup> U.N. Committee on Econ., Soc. and Cultural Rts. (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, ¶ 7, 18, 22, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006) [hereinafter *General Comment No. 18*].

<sup>73</sup> ICESCR, *supra* note 17, at art. 6.

<sup>74</sup> *General Comment No. 18*, *supra* note 72, at pt. III.

<sup>75</sup> Article 6 of the ICESCR states that “[t]he State Parties...recognize the right to work, which includes the of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.” ICESCR, *supra* note 17, at art. 6.

according to the concept of progressive realization.<sup>76</sup> The State has to show that it has done everything it could to realize the right of employment for everyone under the circumstances, using the maximum available resources.<sup>77</sup> At a minimum Thailand has to “adopt, as quickly as possible, measures aiming at achieving full employment.”<sup>78</sup> The Compliance Committee of the ICESCR has said that these measures need to be targeted towards the enjoyment of the right of “everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”<sup>79</sup> Especially in those circumstances the United Nations has asked signatory countries, including Thailand, to enact special legislation to protect these groups that are highly vulnerable to exploitation, discrimination, and abuse.<sup>80</sup> As discussed in defining the right-to-work, under the ICESCR, protection should include, at a minimum, that workers are provided with “[f]air wages and equal remuneration for work of equal value without distinction of any kind,” “[s]afe and healthy working conditions,” as well as limits on work hours and payment for overtime and holidays.<sup>81</sup> Therefore, the ICESCR establishes that the inaction by Thailand is a violation of international law and that Thailand has to actively take measures to grant equal employment authorization to stateless residents to the best of its abilities in an expeditious manner. Additionally, Thailand has an obligation under customary international law to give its best efforts to provide employment that meets article 2 of the UDHR.<sup>82</sup> Accordingly, Thailand is bound to provide safe and adequate work opportunities that allow stateless persons to sustain a life with dignity.<sup>83</sup>

Therefore, Thailand has an obligation under international law to provide proper employment opportunities to stateless persons who are residing in the Kingdom. Without proper legislation, Thailand has violated its international obligations. Besides Thailand’s lack of legislation, Part IV of this Note will analyze how Thailand has treated the Rohingya in the employment context.

### III. THAILAND’S TREATMENT OF THE ROHINGYA

The notion of inaccessibility of fundamental rights has translated to the most basic human rights for the Rohingya. Because the stateless Rohingya are not registered with the Thai government and Thailand is both a destination and transit country, it is unclear how many Rohingya refugees are actually present

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<sup>76</sup> *General Comment No. 18, supra* note 72, ¶ 19.

<sup>77</sup> *Id.* at ¶ 21.

<sup>78</sup> *Id.* at ¶ 19.

<sup>79</sup> U.N. Committee on Econ., Soc. and Cultural Rts. (CESCR), *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, ¶ 30, U.N. Doc. E/C.12/GC/20 (July 2, 2009) [hereinafter *General Comment No. 20*].

<sup>80</sup> *General Comment No. 23, supra* note 25, ¶¶ 15, 47.

<sup>81</sup> ICESCR, *supra* note 17, at art. 7.

<sup>82</sup> *See supra* note 18 and accompanying text.

<sup>83</sup> UDHR, *supra* note 16, at art. 23 (stating that “[e]veryone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment”).

in Thailand.<sup>84</sup> The refugee and stateless populations in Thailand are sizable. For example, in 2017, 486,440 individuals were stateless, 54,446 were refugees, and 50,169 were in refugee-like situations within the country's borders.<sup>85</sup> Many of these individuals came from bordering countries, including Myanmar, and have often been in the country for more than twenty years—with limited rights and unlimited fear.<sup>86</sup> Many of the Rohingya have since started families in Thailand but have not been able to provide them adequately with food, shelter, and education. For decades, “Thailand has . . . accommodated persons displaced by protracted conflict in Myanmar in temporary camps along the Myanmar-Thailand border.”<sup>87</sup> These persons typically include ethnic minorities such as the Karen, Karenni, and Mon.<sup>88</sup> Once placed into the camps, they then experience a wider form of protection by the Thai government.<sup>89</sup> The Thai Provincial Admissions Board, which is responsible for the refugee status determination of all asylum seekers from Myanmar, has determined that the Rohingya do not need protection and hence, cannot live in the camps.<sup>90</sup> Consequentially, they are considered urban refugees, who are unlawfully present in Thailand. Unlike in the camps, they do not receive any assistance from the UNHCR.<sup>91</sup> They are consistently subject to deportation by the Thai government. Even worse, due to the lack of governmental protection, they are vulnerable to smuggling and trafficking as well as labor exploitation.<sup>92</sup> In 2015, for example, a joint military-police taskforce discovered thirty buried bodies, identified as Rohingya, at a human trafficking camp close to the Thai-Malaysia border.<sup>93</sup> The cause of death was determined to be either starvation or deadly diseases.<sup>94</sup> The victims died as they were held captive by their trafficker, who had demanded payment from the victims' families.<sup>95</sup> While in 2017 the criminal court convicted sixty-two individuals for these serious crimes, few preventative measures exist to protect the Rohingya from suffering such human rights violations in the first place.<sup>96</sup> In order to receive the protection the Rohingya need to prevent the re-

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<sup>84</sup> Different estimates have been made, ranging from at least 3,000 to 20,000 Rohingya refugees that have fully settled in Thailand. See *Equal Only in Name*, *supra* note 1, at 17.

<sup>85</sup> UNHCR, *Thailand*, <http://reporting.unhcr.org/node/2552> (last visited Dec. 18, 2018).

<sup>86</sup> *Equal Only in Name*, *supra* note 1, at 17; Equal Rights Tr., *The Human Rights of Stateless Rohingya in Thailand* 17 (2014), [http://www.equalrightstrust.org/ertdocumentbank/The\\_Human\\_Rights\\_of\\_Stateless\\_Rohingya\\_in\\_Thailand%28small%29.pdf](http://www.equalrightstrust.org/ertdocumentbank/The_Human_Rights_of_Stateless_Rohingya_in_Thailand%28small%29.pdf).

<sup>87</sup> Equal Rights Tr., *supra* note 5, at 7.

<sup>88</sup> *Equal Only in Name*, *supra* note 1, at 34.

<sup>89</sup> Ostrand, *supra* note 13.

<sup>90</sup> *Id.*

<sup>91</sup> Human Rights Watch, *Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers* 91 (Sept. 2012), <https://www.hrw.org/sites/default/files/reports/thailand0912.pdf> [hereinafter *Ad Hoc and Inadequate*].

<sup>92</sup> See Ostrand, *supra* note 13 (stating that the smugglers hold individuals in jungle camps or hills, where they are beaten and starved, until their families can pay for their releases). The exclusion of the Rohingya from the camps directly violates UDHR art. 2, which requires equal treatment of individuals, regardless of their background.

<sup>93</sup> *Thailand: Mass Graves of Rohingya Found in Trafficking Camp*, HUM. RTS. WATCH (May 1, 2015), <https://www.hrw.org/news/2015/05/01/thailand-mass-graves-rohingya-found-trafficking-camp>.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Thailand: Trafficking Convictions Important Step Forward*, HUM. RTS. WATCH (July 24, 2017), <https://www.hrw.org/news/2017/07/24/thailand-trafficking-convictions-important-step-forward>.

occurrence from such mistreatment, legal recognition and active protection of stateless individuals is necessary.

In addition to the physical abuse, this group has also been severely exploited in the employment context. Due to Thailand's labor laws, this group has not been able to realize the fundamental right-to-work. Under the current system, the Rohingya are not able to obtain an employment permit, necessary to lawfully work, and will often have to participate in the informal employment sector to make a living.<sup>97</sup> The government often abuses their dependence on informal work by requiring the Rohingya to pay fees and bribes when caught without formal work authorization.<sup>98</sup> Within the informal employment sectors, Thai employers sell informal work authorizations to the Rohingya that allow work for a certain period of time.<sup>99</sup> This work authorization solely buys the right-to-work for that certain employer but it does not provide protection from being sanctioned by the government.<sup>100</sup> A Rohingya street peddler who sells roti bread in Bangkok remarked about these informal work arrangements:

I pay the Thai boss for a work permit one year at a time. It only allows me to sell *roti* and only for that employer. If the police catch me selling *roti*, they will arrest me. I need to pay different levels. I pay 500 baht [about US\$15] to the street police, another 500 baht if the street policeman takes me to the police station, 5,000 [about US\$150] if I am sent to the IDC [immigration detention center], and 15,000 [about US\$450] if I am sent to the border. I have been sent to the IDC four times. The first time, I was sent to the border crossing at Ranong. The second time, I spent one year and two months at the IDC in Bangkok and they sent me to Mae Sot.<sup>101</sup>

This behavior indicates a clear abuse by the police as well as the Thai employer of the Rohingya's dependence on employment. The Rohingya has to pay money in order to even obtain employment, knowing that it is likely that he or she will have to bribe the police to be protected from deportation.

In addition to the financial exploitation, the Rohingya suffer from an abusive work environment within the informal sector. Due to the illegal nature of the informal sector, there are no legal protections in place. As a consequence, the Rohingya are then often forced to work for extremely low wages or are forced into labor. To put this into perspective, in 2010, a person employed in Thailand's formal sector earned 2.6 times more than in the

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<sup>97</sup> The informal economy describes "all economic activities by workers . . . not covered or insufficiently covered by formal arrangements. Their activities are not included in the law . . . [or] the law is not applied or enforced." ILO, *Resolution Concerning Decent Work and the Informal Economy*, ¶3, ILC90-PR25-292-En.Doc. (2002), <http://www.ilo.org/public/english/standards/reim/ilc/ilc90/pdf/pr-25res.pdf>.

<sup>98</sup> *Ad Hoc and Inadequate*, *supra* note 91, at 82.

<sup>99</sup> *Id.* at 81.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 83.



informal sector in a month.<sup>102</sup> This is barely enough to support the basic needs of the individuals and his or her family. Then, if the government detects the illegal work, the person would either have to go to prison or pay to avoid deportation. With such low wages, the Rohingya would most likely have to go to prison for sometimes up to five years because they would not have the money to pay the fine or pay the bribe to the police.<sup>103</sup> To avoid such consequences, the Rohingya will likely take any measures to remain undetected. It can be assumed that even if a Rohingya faces severe abuse and exploitation at work, he or she will most likely not report it. After all, the consequences of reporting it would either be removal to Myanmar or imprisonment for five years—either one meaning separation from family and inability to provide for family. Starting in 2004, Thailand gave some unauthorized migrants the opportunity to “regularize their status through a national verification process which allows them to obtain work permits.”<sup>104</sup> This opportunity has not been extended to the Rohingya.

#### IV. SUMMARY OF THAILAND’S CURRENT SITUATION

Overall, the Thai government does not grant the right-to-work to the Rohingya. Instead the government has enacted legislation that makes it almost impossible to work in an environment that grants the individuals the dignity and respect that are guaranteed to any human being under the UNDHR and the ICESCR. Thailand is obligated to extend such fundamental rights to them in order to fulfill its obligation to *respect, protect, and fulfill* the right-to-work. After it has knowingly let Rohingya stay within its borders for decades, it has the duty to realize the right-to-work with the maximum resources possible.<sup>105</sup> At the very least, Thailand has to commit to a system of progressive realization. As of now, Thailand has omitted to take any measures to grant the Rohingya access to just and fair employment. Unlike other groups of refugees, members of the Rohingya ethnic minority have no option to return to their original habitual residence or to go to another country because they are similarly mistreated in other bordering countries due to their statelessness.<sup>106</sup> Therefore, there is urgent need for Thailand to extend legal recognition and labor authorization to the Rohingya.

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<sup>102</sup> *Thailand—A Labour Market Profile*, *supra* note 61, at 39 (stating that a person in the informal sector earned on average 4,088 baht (\$130 USD), while a person in the formal sector earned on average 10,526 baht (\$335 USD)).

<sup>103</sup> See *Tentative Translation-Royal Decree*, *supra* note 49, at sec.101.

<sup>104</sup> Ostrand, *supra* note 13.

<sup>105</sup> Since the implementation of the *Royal Decree*, businesses have complained that they have a shortage of workers in the construction and fishing sectors. This indicates that Thailand in sectors such as fishing, agriculture, construction manufacturing, and domestic labor is reliant on migrant workers. See Panu Wongcha-um & Pracha Hariraksapitak, *Thai Junta Suspends New Labor, Extends Deadline After Exodus*, REUTERS (July 4, 2017), <https://www.reuters.com/article/us-thailand-migrants/thai-junta-suspends-new-labor-law-extends-deadline-after-exodus-idUSKBN19P1DF>.

<sup>106</sup> See, e.g., Human Rights Now, *Investigative Report of Rohingya Refugee Camps in Bangladesh* (Apr. 12, 2018).

## V. GUIDELINES FOR PROPER AMENDMENTS TO ENSURE THE RIGHT-TO-WORK

It is important to note that Thailand is not the only country that has not extended necessary rights to the Rohingya. Generally, the easiest solution to the Rohingya problem would be to require Myanmar to recognize the Rohingya as individuals with protected human rights like they have done with over 100 other Muslim minorities.<sup>107</sup> But this does not appear to be a foreseeable solution.<sup>108</sup> To make progress towards solving the issue of statelessness and the denial of a right-to-work permanently for the Rohingya, a reform of the Southeast Asian countries' laws appears to be most effective.<sup>109</sup> Because Thailand has had a steady Rohingya population for decades and has benefitted from their contribution to the economy, this Note suggests to begin with Thailand with the hope that other countries will follow.

In order to develop a proposal for Thailand, this Note will first look at the Refugee Convention and the Statelessness Convention and will then describe how the Philippines has reacted to stateless individuals in a more progressive manner.

### A. THE U.N. CONVENTIONS ON REFUGEES AND STATELESSNESS

#### 1. *Convention Relating to the Status of Refugees*

Under the Refugee Convention, a refugee is an individual with a nationality who is unwilling to avail himself or herself of the protection of a country or an individual without a nationality, who is unwilling to return to the former residence because of “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”<sup>110</sup> A refugee under such definition does not need to have a nationality as long as she or he possesses a well-founded fear of being persecuted for reasons of nationality or, more applicably, the lack thereof. The reason for granting asylum to an individual is not because he or she has a nationality but because the individual is suffering in his or her home country and can no longer remain there. The Rohingya people fall squarely into this definition and should therefore be protected by asylum. It might be the case that sometimes, even though the individual meets the criteria, he or she poses a severe threat to the host country. In such circumstances, the country is not required to accept a refugee if severe harm could threaten the host country. In fact, the Convention expressly states that it does not apply to persons who

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<sup>107</sup> See Alec Paxton, Comment, *Finding a Country to Call Home: A Framework for Evaluating Legislation to Reduce Statelessness in Southeast Asia*, 21 PAC. RIM. L. & POL'Y J. 623, 643–644 (2012).

<sup>108</sup> *Id.* (stating that under Burma's 1982 Citizenship Law, the Council of State has decided to not designate the Rohingya as Burmese citizens).

<sup>109</sup> U.N. High Comm'r for Refugees (UNHCR), ABE Kohki, *Overview of Statelessness: International and Japanese Context* 63 (Apr. 2010), <http://www.refworld.org/pdfid/4c344c252.pdf> (stating that the problem of statelessness cannot be solved by one single nation).

<sup>110</sup> Refugee Convention, *supra* note 21, at 3.

“have committed war crimes or crimes against humanity, serious non-political crimes, or are guilty of acts contrary to the purposes and principles of the United Nations.”<sup>111</sup> This provides protection to the host country and only extends asylum to individuals who will not threaten the country for security purposes. To further ensure that no harm will follow if a refugee is granted status, article 2, as mentioned previously, imposes a duty on every refugee to follow the laws and regulations of the host country.<sup>112</sup> Even if all of these conditions are met, granting asylum does not bind the host country forever. In fact, the refugee status for stateless persons ceases to exist if the circumstances that cause the individual to seek refuge have changed and now allow the refugee to return to his or her habitual residence.<sup>113</sup>

Once it has been determined that the refugee should be granted asylum, articles 17 and 18 universally grant the right to wage-earning employment and self-employment.<sup>114</sup> The refugee generally should be afforded the same treatment as other foreign nationals in the same circumstances.<sup>115</sup> Most importantly, under article 17(2)(a), the refugee should be granted access to the labor market without any restrictions once he or she has completed three years of residence in the country.<sup>116</sup> This not only protects the host country from granting unlimited labor authorization to anyone entering temporarily, but also ensures that persons who cannot return to their home country are granted the opportunity to establish a productive and dignified life. Additionally, article 18 allows a refugee to engage in self-employment in agriculture, industry, handicrafts and commerce, and to establish commercial and industrial companies, under conditions as favorable as possible and not less favorable than those accorded to aliens in the same circumstances.<sup>117</sup> In order to not only grant access to the labor market, but also ensure favorable and just conditions, article 24 states that the State should extend to all lawfully present refugees the same conditions as granted to nationals pertaining to hours of work, overtime arrangements, and apprenticeship and training.<sup>118</sup> This would ensure the State's compliance with the UDHR's definition of the right-to-work.

Overall, the Refugee Convention expressly encompasses the rights and duties of a person without a nationality as long as that individual has a well-established fear of returning to his or her habitual residence. Therefore, a State that has accepted this Convention would have to extend the listed rights to stateless individuals but would also be protected sufficiently from threat-posing individuals.

## *2. Convention Relating to the Status of Stateless Persons*

The Statelessness Convention incorporates many of the rights and duties found in the Refugee Convention. Under the Statelessness Convention, the

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<sup>111</sup> *Id.* at 4.

<sup>112</sup> *Id.* at art. 2.

<sup>113</sup> *Id.* at art. 1(C)(6). *See generally id.* at art. 1.

<sup>114</sup> *Id.* at art. 17, 18.

<sup>115</sup> *Id.* at art. 17(2).

<sup>116</sup> *Id.* at art. 17(2)(a).

<sup>117</sup> *Id.* at art. 16.

<sup>118</sup> *Id.* at art. 24.

definition of *stateless person* means “a person who is not considered as a national by any State under the operation of its law.”<sup>119</sup> Persons falling under this definition should be granted the protections listed in the Convention. Similar to the Refugee Convention, Member States do not have to provide such protections to stateless persons if there are serious concerns that (1) “[t]hey have committed a crime against peace, a war crime, or a crime against humanity,” (2) “[t]hey have committed a serious non-political crime outside the country of their residence prior to their admission to that country,” or (3) “they have been guilty of acts contrary to the purposes and principles of the United Nations.”<sup>120</sup> Once granted legal presence under the status of a stateless person, the person has a duty to conform to the country’s laws and regulations.<sup>121</sup>

As long as the stateless person conforms to the receiving country’s laws and cannot return to his or her home country, the State should make efforts to naturalize the stateless persons in an expeditious and efficient way.<sup>122</sup>

Similar to the Refugee Convention, the Statelessness Convention also grants a right to wage-earning employment.<sup>123</sup> Thereunder, the stateless individual is to be treated as favorably as possible but never less favorably than aliens in the same circumstances.<sup>124</sup> Unlike the Refugee Convention, the Statelessness Convention does not require the State to lift all restrictive employment measures after three years but solely requires “sympathetic consideration to assimilating the rights of all stateless persons . . . to those of nationals.”<sup>125</sup> Because the Convention urges naturalization, which would lift any restriction, this does not give the contracting State unlimited freedom on imposing limitations but grants more flexibility on when to lift them. Even with certain restrictions, under the Statelessness Convention, equal treatment to nationals regarding the hours of work, overtime arrangements, and apprenticeship and training cannot be restricted by the State in any way.<sup>126</sup> Lastly, the Convention implements the same right to self-employment.<sup>127</sup>

### 3. Overall Guidance Under the Conventions

According to the Refugee and Statelessness Conventions, countries can choose to include protections for stateless persons through a special stateless persons provision or by simply including it under the definition of refugee. Regardless of which option the country chooses, the State only has to accept a stateless person seeking lawful presence if he or she has not committed any severe crimes. Once admitted, the person then has the duty to follow the laws and regulations of the country. In exchange, under both conventions the State has to extend most favorable working conditions as well as most favorable

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<sup>119</sup> Statelessness Convention, *supra* note 6, at art. 1.

<sup>120</sup> *Id.* at art.1(2)(iii).

<sup>121</sup> *Id.* at art. 2.

<sup>122</sup> *Id.* at art. 32.

<sup>123</sup> *Id.* at art. 17.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at art. 17(2).

<sup>126</sup> *Id.* at art. 24.

<sup>127</sup> *Id.* at art. 18.

opportunities on becoming self-employed. Hence, the adoption of either of these conventions creates valuable guidance on solving the issue of the right-to-work for stateless persons, particularly the Rohingya.

### B. THE PHILIPPINES AS AN EXAMPLE

The Philippines is an example of a country that has signed onto the Statelessness Convention and has adopted many of its provision but has not adopted the Refugee Convention yet. The following analysis will provide one of many ways how Thailand could amend its laws to grant legal recognition and the right-to-work to the Rohingya.

#### 1. Legal Status of Stateless Individuals

The Philippines provides numerous protections for stateless individuals. It is the only country in Southeast Asia that has signed onto the Statelessness Convention.<sup>128</sup> The country has adopted the international definition of a *stateless person* in its domestic laws.<sup>129</sup> Once it has been established that the individual falls under the definition of a stateless person, he or she can then apply for a L-2 visa (a visa category for stateless persons).<sup>130</sup> This non-immigrant visa can be granted to such individuals who are otherwise admissible and whose admission is “for humanitarian reason and not inimical to public interest.”<sup>131</sup> Cancellation of the statelessness status shall only occur if the individual acquires a nationality.<sup>132</sup> The L-2 falls under a similar category as a regular asylum visa (L-1).<sup>133</sup> It usually needs to be approved by the Director General or the President.<sup>134</sup>

Hence, the Philippines has officially recognized stateless individuals and has extended protection to them through a special non-immigrant visa. It appears that in addition to the L-2 visa, the stateless individual could also apply for refugee status.<sup>135</sup> In fact, under section 8 of the Establishing The Refugee and Stateless Status Determination Procedure, if an individual files a refugee request in addition to a request for determination of statelessness, the application for asylum takes priority.<sup>136</sup> The government automatically suspends the statelessness determination and will continue to process it only if the asylum application was denied.<sup>137</sup> To determine whether the individual

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<sup>128</sup> Michael Caster, *Eliminating Statelessness in Southeast Asia*, DIPLOMAT (May 24, 2016), <https://thediplomat.com/2016/05/eliminating-statelessness-in-southeast-asia/>.

<sup>129</sup> Philippine Immigration Act of 2009, Senate Bill No. 3404 (Aug. 24, 2009) (Phil.), <http://www.senate.gov.ph/lisdata/12213107291.pdf> (defining “stateless person” as a person who is not considered a national by any state under the operation of its laws).

<sup>130</sup> *Id.* at sec. 32(1).

<sup>131</sup> *Id.*

<sup>132</sup> Department Circular No. 058—Establishing the Refugees and Stateless Status Determination Procedures, sec. 26 (Oct. 18, 2012) (Phil.), <http://www.refworld.org/docid/5086932e2.html> [hereinafter Department Circular No. 058].

<sup>133</sup> Philippine Immigration Act of 2009, Senate Bill No. 3404, sec. 32(1) (Aug. 24, 2009) (Phil.).

<sup>134</sup> *Id.*

<sup>135</sup> Department Circular No. 058, *supra* note 132, at sec. 8.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

should be granted refugee status, the Board determines whether the applicant (1) has committed a crime against peace, a war crime, or a crime against humanities; (2) has committed a non-political serious crime outside of the Philippines; or (3) has been guilty of an act contrary to the purposes and principles of the United Nations.<sup>138</sup> Once refugee status is granted, the status for a stateless person will only cease if the person “returned to his or her country of habitual residence due to changed circumstances.”<sup>139</sup> Hence, a stateless individual arriving in the Philippines has the option to apply for a visa as an asylum-seeker or as a stateless individual seeking to receive a non-immigrant visa.

Under either a L-1 or L-2 visa, the government will only order removal of the individual “where he or she has been convicted with finality of a serious offense and is considered a danger to the community after having served his or her sentence; or . . . on grounds of national security or public order.”<sup>140</sup> Therefore, the government allows the individual to remain in the Philippines as long as necessary while at the same time protecting the country from social threats.

If the stateless individual resides in the Philippines for ten years on a continuous basis, he or she would then also be eligible to apply for naturalization, as long as he or she meets the other requirements laid out in section 2 of the Revised Naturalization Act.<sup>141</sup>

## 2. *The Right-to-Work for Refugees and Stateless Individuals*

According to the Department of Justice of the Republic of the Philippines, the recognition of a person’s stateless or refugee status further ensures “them the enjoyment and exercise of rights and privileges provided for by the United Nations Conventions on refugees and stateless persons”<sup>142</sup>—arguably committing the country to the implementation of article 17 Gainful Employment<sup>143</sup> and article 18 Self-Employment<sup>144</sup> of the Statelessness Convention as a signatory. Under article 17 Gainful Employment, the Philippines then has to give at a minimum “sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals.”<sup>145</sup> Additionally under article 18, the Philippines also agrees to granting a right to self-employment under the same

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<sup>138</sup> *Id.* at sec. 19(c) (adopting the U.N. Convention Relating to the Status of Refugees criteria for determining refugee status).

<sup>139</sup> *Id.* at sec. 24(f).

<sup>140</sup> *Id.* at sec. 30.

<sup>141</sup> *Commonwealth Act No. 473*, sec. 2 (June 17, 1939), LAWPHIL PROJECT, [http://www.lawphil.net/statutes/comacts/ca\\_473\\_1939.html](http://www.lawphil.net/statutes/comacts/ca_473_1939.html) (last visited Jan. 30, 2018).

<sup>142</sup> *DOJ Formalizes Rules and Mechanisms for the Protection of Refugees and Stateless Persons*, REPUBLIC PHIL. DEP’T. JUST. (Oct. 22, 2012), <https://www.doj.gov.ph/news.html?title=DOJ+FORMALIZES+RULES+AND+MECHANISMS+FOR+THE+PROTECTION+OF+REFUGEES+AND+STATELESS+PERSONS&newsid=138>.

<sup>143</sup> Statelessness Convention, *supra* note 6, at art. 17 (stating that “[t]he Contracting States shall accord to stateless persons lawfully staying in their territory treatment *as favourable as possible* and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage in *wage-earning employment*”) (emphasis added).

<sup>144</sup> *Id.* at art. 18.

<sup>145</sup> *Id.* at art. 17(2).

conditions that another alien would enjoy.<sup>146</sup> In order to ensure that these rights are extended to the stateless individuals, the Philippines has launched a plan to end statelessness by 2024. Even if the right-to-work has not been fully implemented yet, the Philippines Government's Chief State Counsel has said that "[w]ithout nationality, stateless persons are divested of protection and access to education, housing, *employment*, and other rights necessary for the survival of an individual."<sup>147</sup> This statement not only shows full dedication to ensuring the right-to-work but also the awareness of the Chief that employment is an important right—one that he calls necessary for the survival of an individual.

Besides the strong commitment, the right-to-work is also already implicitly granted for stateless persons under Philippine labor regulations, particularly Labor Code of the Philippines PD 442. Under the regulation, refugees can apply to the Department of Labor and Employment (DOL) for an Alien Employment Permit.<sup>148</sup> The DOL will grant a non-resident alien a work permit after the agency has determined that no competent and willing Philippine citizen is able to fill the opening.<sup>149</sup> If there is no Philippine worker, a stateless person would then be eligible to apply for the Alien Employment Permit (AEP) as long as he or she has a refugee visa. In order to receive an AEP, the refugee has to submit his or her Certificate of Recognition along with other documents.<sup>150</sup> The issue that currently arises with the application process is that the application requires a photocopy of a passport.<sup>151</sup> Because stateless persons do not have a passport, it is unclear how the government officials react to an application without a photocopy of the passport. This depends on whether the Philippines provides these groups with a supplemental form of identification, as Myanmar refuses to do so. There are two possible applicable exceptions that would exempt the stateless individual from having to obtain a AEP: (1) Congress could grant a special law for the stateless individuals, or (2) if the person is considered a resident foreign national or a temporary resident seeking employment.<sup>152</sup> Depending on how the government enforces these provisions, the law might or might currently not be sufficient to grant stateless individuals the right-to-work. With the Chief's determination to provide open employment, this is, at the very least, a good start.

### C. CONSIDERATIONS FROM THE CONVENTIONS AND THE LAWS IN THE PHILIPPINES

After looking at the two applicable Conventions and the application of one of them in the Philippines, it becomes clear that there are certain key factors to

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<sup>146</sup> *Id.* at art. 18.

<sup>147</sup> *Philippines Launches Plan to End Statelessness*, DEP'T FOREIGN AFF. (Dec. 13, 2017), <https://dfa.gov.ph/dfa-news/dfa-releasesupdate/15022-philippines-launches-action-plan-to-end-statelessness> (emphasis added).

<sup>148</sup> Department Order No. 75-06, Revised Rules for the Issuance of Employment Permits to Foreign Nationals (May 31, 2006) (Phil.), [http://www.laborlaw.usc-law.org/download/department\\_advisory/DO\\_75\\_06.pdf](http://www.laborlaw.usc-law.org/download/department_advisory/DO_75_06.pdf) [hereinafter Department Order No. 75-06].

<sup>149</sup> LABOR CODE, PD 442, art. 40, as amended (Phil.).

<sup>150</sup> Department Order No. 75-06, *supra* note 1488, at r. II.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at r. I(2).

ensure stateless individuals the right-to-work. First and foremost, recognition is a necessary pre-requisite for the extension of important human rights, especially in situations where the individual cannot return to his or her home. In those circumstances, legal status should be granted. Second, amended laws should allow access to the labor market, contingent on factors that a stateless individual is capable of fulfilling. Third, a supportive government should endeavor to grant the stateless individuals legal recognition and access to safe and just employment opportunities. Taking into consideration the factors above, Thailand should consider the following five overarching components for the amendment of its laws:

- (1) adoption of a definition for *stateless person* that is similar to the internationally developed definition—under the Refugee or Statelessness Convention;
- (2) implementation of a legal provision for temporary lawful presence for stateless persons the host country;
- (3) creation of a path for stateless persons to remain in the host country permanently under certain circumstances—such as naturalization or permanent resident status;
- (4) permission to gainful employment after lawful status is granted with certain restrictions; and
- (5) adoption of provisions regulating the work environment—such as work hours, overtime arrangements and minimum wages.

These factors could also be used as guidance for other countries that have not yet provided legal recognition to stateless individuals and hence, have not extended the right-to-work.

## VI. AMENDMENT PROPOSAL FOR THAILAND'S IMMIGRATION AND LABOR LAWS

In Thailand's particular situation, it is clear that there is a necessity to amend the Thai laws. The necessity arises not only out of humanitarian concerns but also because it could benefit Thailand's economy. Some of the Rohingya have been in Thailand for over twenty years and have been contributing to the economy through their work in the informal sector. With sufficient legal recognition, the Kingdom could use this labor in a more efficient way.

Above all, Thailand should adopt the Refugee or Statelessness Convention. Regarding the particular concern of providing the right-to-work, Thailand would then be bound by a definition encompassing stateless persons as well as the articles on Gainful Employment and Self-Employment into the domestic law. This would give the country strong guidance on fulfilling their international obligations as well as ensuring the Rohingya's ability to establish themselves in Thailand and to contribute to the economy to the fullest extent.

Even if Thailand decides against adopting the Conventions at this time, the following factors should be implemented into its domestic law:



### A. *FACTORS GRANTING LAWFUL PRESENCE*

- adopt the international definitions of *stateless persons* and *refugees*;
- amend the 1979 Immigration Act by adding a provision encompassing stateless persons—either by granting them a separate visa or by adding a refugee provision that includes stateless persons;
- if Thailand does not want to create an extra visa category for refugees and stateless persons, the Kingdom should amend section 13 of 1979 Immigration Act to allow for an exception for stateless individuals having to flee their habitual residence because of a well-founded fear;
- to protect itself from threats to the Kingdom, Thailand should add a provision to its Immigration Act limiting the grant of lawful status to persons that (1) cannot return to their home country, (2) agree to follow Thailand's regulations and laws, and (3) have not committed serious crimes, such as a war crime;
- to further protect itself, Thailand may add a provision that states that the lawful presence shall cease when the circumstances in the individual's home country have returned to a safe environment or when the individual commits a serious crime;
- in light of the Rohingya's permanent stay in Thailand, Thailand's immigration law should allow stateless individuals to naturalize or at least be granted a permanent resident status after they have continuously resided in Thailand for longer than five years.

### B. *FACTORS GRANTING THE RIGHT-TO-WORK*

- limit the enforcement of punishment for illegal employees under the Royal Decree until a new, amended law is enacted;
- amend the current Royal Decree or enact a new law that allows for refugees and stateless persons to engage in gainful employment;
- after approval of legal status, an individual should receive the most favorable treatment regarding employment access and at least as favorable as other non-nationals in similar circumstances;
- after a maximum five years of continuous residency, any restrictive measures should be lifted, and the individual should receive the same treatment as nationals regarding employment access. If Thailand is unwilling to do so, it

- should at least give sympathetic consideration to grant stateless persons the same employment rights as nationals;<sup>153</sup>
- amend the current Royal Decree or enact a new law that allows for refugees and stateless persons to engage in self-employment;
  - after approval of legal status, the individual should receive the most favorable treatment regarding opportunities to begin his or her own business and at least as favorable as other non-nationals in similar circumstances. The right to conduct self-employment should extend to agriculture, industry, handicrafts, commerce, and to establish commercial and industrial companies;
  - once stateless individuals and refugees have been legally allowed to procure work authorization, enforce punishment against companies that thereafter subject individuals to forced labor and inhumane working condition. In that aspect, the Royal Decree shall be enforced;
  - ensure that stateless individuals are not discriminated against, unless unavoidably necessary. Anti-discrimination protections should implement regulations of work hours, overtime arrangements, and minimum wages that match the regulations of Thai employees.

These factors should establish the baseline for the fundamental recognition of the Rohingya and other stateless minorities in Thailand and ensure that they have the right-to-work for a business or for themselves. This will allow the Rohingya to finally lawfully settle in a country that recognizes them and that allows them to sustain themselves in a dignified way. It would allow them to seek employment that pays them according to the law but more importantly, it would give them the opportunity to report abusive behavior in the workplace—two important elements of the right-to-work. In order to provide Thailand with a justification for the need of a change, other than its binding international legal obligations, the next section will briefly introduce the economic necessity of allowing the Rohingya to lawfully remain and work in Thailand.

## VII. ECONOMIC BENEFITS

Overall, Thailand has been experiencing positive economic growth over the last decades. It has projected GDP (gross domestic product) growth of 25.9% over the next four years and an unemployment rate of 0.62%.<sup>154</sup> This clearly indicates that Rohingya individuals would not enter a saturated

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<sup>153</sup> This is according to the Statelessness Convention, giving Thailand more flexibility than the Refugee Convention would give the State.

<sup>154</sup> Asylum Access & Refugee Work Rights Coal., *Global Refugee Work Rights Report* at 6, 16 (2014), [https://asylumaccess.org/wp-content/uploads/2014/09/FINAL\\_Global-Refugee-Work-Rights-Report-2014\\_Interactive.pdf](https://asylumaccess.org/wp-content/uploads/2014/09/FINAL_Global-Refugee-Work-Rights-Report-2014_Interactive.pdf).

economy but rather could further fuel the growth through added productivity. Even more, the Thai economy is highly dependent on the Rohingya's labor. This was illustrated by the 1997 economic crisis as well as the mass deportation of Burmese refugees in 2003. In 1997, Burmese and other migrants were blamed for taking Thai jobs and were then largely deported.<sup>155</sup> After the deportation, there was a steep increase in bankruptcies because no Thai workers wanted to fill the vacant positions.<sup>156</sup> A similar result occurred in 2003, after a wave of deportations had removed Burmese nationals from a district close to Chiang Mai. The removal caused a shortage in agriculture and tourism—two sectors on which Thailand is highly reliant.<sup>157</sup> This is further supported by that fact in 2016 an official request was made to register 1,333,703 foreign workers.<sup>158</sup> These examples not only show that Burmese workers, including Rohingya, are contributing to the economy, but also that Thailand needs their labor in key industries. This dependency is significant, considering that no Thai workers were available or willing to do the work the Burmese were doing. The Rohingya were not taking other people's jobs but instead, were and still are filling employment gaps.

Besides this direct contribution to the economy through their labor, it is very important to note that their presence enlarges the market for local suppliers and attracts international aid. It enlarges the market for local suppliers because the more financial compensation the Rohingya are able to gain, the more money they will be able to invest in food and other necessities. A lot of the Rohingya moved to Thailand with their families. The access to lawful wage-earning employment would directly allow them to reinvest in the Thai economy. Even more importantly, the current Rohingya crisis is a major concern of numerous international organizations. If Thailand is willing to amend its laws to enable the Rohingya to realize their fundamental human rights, it is highly likely that organizations will offer as much support as possible. The European Commission, for example, has already provided Thailand with 119.7 million Euro since 1995 to help refugees on the Thai-Myanmar border.<sup>159</sup> These funds could help Thailand to integrate the Rohingya properly and to invest in other areas requiring funding.

## CONCLUSION

To conclude, the Rohingya are a minority population that has been abused for many decades in their originating country of Myanmar. Many of them have

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<sup>155</sup> Inge Brees, *Burden or Boon: The Impact of Burmese Refugees on Thailand* 41, WHITEHEAD J. DIPL. & INT'L REL. (2010), [http://blogs.shu.edu/wp-content/blogs.dir/23/files/2012/05/06-Brees\\_Layout-1.pdf](http://blogs.shu.edu/wp-content/blogs.dir/23/files/2012/05/06-Brees_Layout-1.pdf).

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at 41. Other sectors include textile, fishing and agriculture.

<sup>158</sup> Int'l Org. of Migration, Rosalia Sciortino & Sureeporn Pungpung, *International Migration in Thailand 2009*, at 59, <https://thailand.iom.int/sites/default/files/document/publications/EN - International Migration in Thailand.pdf>.

<sup>159</sup> European Commission (Eur. Comm'n), *Refugees in Thailand* (May 2017), [http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/refugees\\_thailand\\_en.pdf](http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/refugees_thailand_en.pdf). 119.7 million Euro approximately convert to 148.3 million USD on January 29, 2018.

fled to bordering Southeast Asian countries, such as Bangladesh or Thailand, in the hope of a better life, only to be further deprived of their fundamental human rights. Living a life of dignity and respect is an important right. Some of the Rohingya have spent over 20 years in Thailand—unfortunately without legal recognition or work authorization. The individuals have had to work in the informal sector in order to support their own lives. While these circumstances currently do not violate Thai domestic laws, the Kingdom is not in compliance with important binding, international law agreements. Under the UDHR and ICESCR (at a minimum) Thailand has the duty to recognize the individuals and to grant them access to gainful employment under safe conditions. Particularly, the Kingdom has a universal duty to extend free choice of employment under “just and favourable conditions of work...without any discrimination [and] the right to equal pay for equal work.”<sup>160</sup> Additionally, Thailand has been benefitting from the undocumented labor within its country. In order to cease fulfill its international obligations and to be able to fully enjoy the economic benefits of the Rohingya and other undocumented individuals, Thailand should be urged to amend its Immigration Act and Royal Decree. It has to legalize the lawful presence for stateless persons as well as provide for work authorization for such individuals.

Once Thailand has successfully recognized the Rohingya and has given them the right-to-work, it is likely that other neighboring countries, like Bangladesh, would follow. Therefore, Thailand’s first step is a first piece in the puzzle to solve the issue of the Rohingya and abuse of statelessness. In order to relieve the burden from one country alone, other affected Southeast Asian countries should consider commencing negotiations for a bilateral or multilateral agreement regarding the distribution and treatment of the Rohingya and other stateless individuals within their borders.<sup>161</sup> Then these countries could realize the full benefit from the Rohingya’s presence, while granting them a chance to a new life. Because after all, “a satisfactory solution of a problem...cannot...be achieved without international co-operation.”<sup>162</sup>

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<sup>160</sup> UDHR, *supra* note 16, at art.23.

<sup>161</sup> See *General Comment No. 23*, *supra* note 25, at ¶¶ 66–76.

<sup>162</sup> Refugee Convention, *supra* note 21, at pmb1.