



## **UNHCR PROTECTION CHALLENGES FOR URBAN REFUGEES IN THAILAND: REPORT AND RECOMMENDATIONS**

**Asylum Access, Boat People SOS and Conscience Foundation  
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### **1. Introduction**

This report has been prepared by Asylum Access, Boat People SOS and Conscience Foundation to document some concerns about the work of UNHCR Thailand vis-à-vis urban refugees. It makes recommendations about areas that UNHCR Thailand can improve in the protection of this vulnerable refugee population.

Specific protection problems include:

- denial of, or delays in, the right of certain groups to seek or obtain asylum (Vietnamese Khmer Krom and Chinese Falun Gong),
- inconsistent and non-accountable application of 'extended mandate' refugee status (particularly for Somalis), and
- failure to protect extended mandate refugees (mainly Somalis, Sri Lankans and Ivorians).

Although UNHCR's new Regional Representative in Bangkok has taken steps toward addressing some of these problems, much remains to be done, in part because UNHCR Thailand may have inadequate resources to perform its adjudication and protection functions. We encourage UNHCR donor governments to urge and enable UNHCR to address these protection issues and to provide the resources necessary to do so.

### **2. Status of urban refugees in Thailand**

#### ***a. Role of UNHCR Thailand***

UNHCR is mandated with providing international protection to refugees and seeking permanent solutions for them.<sup>1</sup> UNHCR's protection obligations extend to persons found to be refugees according to the definition in the 1951 Refugee Convention and its 1967 Protocol, as well as extended mandate<sup>2</sup> refugees. Extended mandate status is granted if UNHCR considers that a refugee does not meet the Convention definition but is fleeing from serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized

<sup>1</sup> Section 1 of the *Statute of the Office of the United Nations High Commissioner for Refugees*.  
<sup>2</sup> Also called broader mandate.

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violence or events seriously disturbing public order. This most commonly applies in civil war-like situations.

UNHCR's protection obligations include:

- ensuring that refugees are recognized and granted asylum,
- when host governments fail to guarantee refuge, attempting to ensure refugees' safety and rights,
- continuing to protect refugees until they have a viable and lasting solution to their situation, and
- where repatriation is not possible without placing refugees in danger of persecution or other harm, helping them to integrate into their country of asylum or move to a third country for resettlement.<sup>3</sup>

Thailand is not a party to the 1951 Refugee Convention or its 1967 Protocol. This means that Thailand owes few obligations to refugees at international law, and, in practice, Thailand does not recognize refugees as having any special status under its domestic laws.

UNHCR Thailand undertakes refugee status determination ('RSD') for urban refugees – that is, for all non-Burmese refugees<sup>4</sup> – who are generally resident in Bangkok. Due to budgetary constraints, there are only three UNHCR Thailand RSD eligibility officers deciding refugee cases. These eligibility officers work under considerable pressure with a heavy caseload.

There are presently approximately 700 urban asylum seekers in Thailand whose claims are waiting to be determined by UNHCR and approximately 1300 urban refugees whose claims have already been accepted by UNHCR. The main urban refugee populations are from (in size order<sup>5</sup>) Laos,<sup>6</sup> Sri Lanka, China, Somalia, Iraq, Cambodia, Nepal, Vietnam, Democratic Republic of Congo, Palestine, Ivory Coast, Iran and Pakistan.

UNHCR Thailand also undertakes some protection activities for urban refugees in Thailand. UNHCR's worldwide urban refugee policy provides that assistance for urban refugees should be given in a manner which encourages self-sufficiency and does not create long term dependence on UNHCR.<sup>7</sup> However, such an approach assumes that urban refugees can develop independent lives in their country of asylum. This is not possible in Thailand, because Thailand does not give refugees any legal status.

UNHCR's implementing partner, the COERR Bangkok Refugee Center, provides basic medical care, restricted educational facilities, minimal psycho-social support and vocational training, and limited food and financial support for urban refugees. However, due to budgetary constraints, these services are inadequate for even the most basic needs of Thailand's urban refugee population.<sup>8</sup>

"We are living here without food, clothing or other facilities. After we get the UNHCR certificate, we have to wait months to get the subsistence allowance from UNHCR. And UNHCR provides money to few people – some people can only eat one time a day."<sup>9</sup>

"In our community, there are so many people who are sick. They only receive basic medical treatment, which calms the illness, but does not treat or cure it. And the monthly allowance is

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<sup>3</sup> See UNHCR, *Protecting Refugees – An Introduction*, available at <http://www.unhcr.org/protect/PROTECTION/3b950af34.html>.

<sup>4</sup> Burmese refugees are subject to a separate protection regime, not discussed in this paper.

<sup>5</sup> As at March 2009.

<sup>6</sup> The specific situation of the Laos Hmong is not considered in this paper.

<sup>7</sup> UNHCR, *Policy on Refugees in Urban Areas*, 12 December 1997.

<sup>8</sup> Documented in CCSDPT and UNHCR, *Analysis of Gaps in Refugee Protection Capacity Thailand*, November 2006, pp 27-29. See also [www.brcthai.org](http://www.brcthai.org).

<sup>9</sup> Sri Lankan extended mandate refugees, draft letter to UNHCR Thailand, December 2008.

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not enough for us to survive, especially for those of us with families.”<sup>10</sup>

Since local integration is not an option for urban refugees in Thailand,<sup>11</sup> UNHCR facilitates the resettlement of urban refugees in third countries. During 2008, 280 urban refugees were resettled, with the United States taking 124 of these.<sup>12</sup> However, this accounts for just a small proportion of Thailand’s urban refugee population, and most urban refugees remain trapped indefinitely in a hostile and difficult environment.

### **b. Hostile environment for urban refugees in Thailand**

Since Thailand does not accord any legal status to refugees, urban refugees do not enjoy the rights that derive from refugee status under international law, and under Thai law most are considered illegal immigrants. Urban refugees are thus at constant risk of arrest and detention, regardless of their UNHCR certificates showing that they are refugees. Even refugees who voluntarily repatriate or who are approved for resettlement, if they are illegal immigrants under Thai law, must pay an overstay fine of up to 20,000 THB (about US \$500), or spend time in immigration detention. This creates a challenging operating environment for UNHCR and makes it very difficult for UNHCR to fulfill its protection mandate.

“The police have arrested me three times. Each time I show them my UN certificate, but they don’t care. They tied my hands behind my back and took me to the police station, and then took all my money.”<sup>13</sup>

“If the police arrest us and we bribe them, they might release us or they might take us to immigration detention anyway. Some people have had to give their necklaces, earrings and bracelets to the police.”<sup>14</sup>

Most urban refugees in Thailand live a precarious existence: unable to work or send their children to school, financially stressed, dependent on ad-hoc charity to survive, at risk of exploitation and constantly worried about being arrested and detained indefinitely in abysmal conditions in immigration detention. Many refugees, particularly Africans, face discrimination, as well as harassment and extortion from Thai authorities.<sup>15</sup>

“The local people create problems for us – our neighbors inform the police about us and tell the police we are doing bad things. Most of the time we are treated as suspects and this makes us feel very bad. The immigration police are always following us.”<sup>16</sup>

Refugees invariably say that they would go home if it were safe for them to do so, given the misery of their daily lives in Bangkok.

“I wouldn’t have left my home to live such a difficult life here if I had a choice. Last weekend, the police tried to arrest me and then extort money from me, and it is only because I cried and begged them that they let me go. Here, I have no family, no security, no money and no one to

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<sup>10</sup> Ivory Coast extended mandate refugees, community education session, November 2008.

<sup>11</sup> Under the UNHCR’s urban refugee policy, voluntary repatriation and then local integration should be the first options for urban refugees: UNHCR, *Policy on Refugees in Urban Areas*, 12 December 1997. Refugees cannot be integrated in Thailand because Thailand does not grant them any rights or allow them to stay there.

<sup>12</sup> The other main countries that resettled urban refugees out of Thailand were: Canada (60), Netherlands (45) and Finland (25).

<sup>13</sup> Ivory Coast refugee, community education session, November 2008.

<sup>14</sup> Sri Lankan extended mandate refugees, draft letter to UNHCR Thailand, December 2008.

<sup>15</sup> Documented by the UNHCR in *Analysis of Gaps in Refugee Protection Capacity Thailand*, November 2006 pp 5, 10, 11, 14, 18.

<sup>16</sup> Ivory Coast refugees, community education session, November 2008.

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take care of me, and I don't know who I can trust. If the UNHCR can guarantee that I can live freely and safely in any part of Sri Lanka, then I am ready to go there immediately."<sup>17</sup>

While recognizing the challenges faced by UNHCR Thailand, we consider that there are some aspects of its Thailand operations where protection for urban refugees could be improved. These are discussed below.

### 3. Denial of, or delays in, the right of certain groups to seek or obtain asylum

#### *a. Vietnamese Khmer Krom*

Bangkok is currently home to an estimated 260 Khmer Krom refugees and asylum seekers who have fled Vietnam by way of Cambodia. When Khmer Krom first began arriving in Thailand in early 2007, UNHCR registered Khmer Krom asylum seekers in timely fashion, providing them with asylum seeker certificates that minimized the threat of deportation.<sup>18</sup> A handful of the Khmer Krom asylum seekers were granted refugee status in 2007 after completing the RSD process.

As the situation in Vietnam and Cambodia deteriorated and increasing numbers of Khmer Krom began arriving late in 2008, however, UNHCR temporarily suspended the registration of all Khmer Krom asylum seekers, thus leaving them without the protection afforded by asylum seeker certificates.

UNHCR justified suspending registration on the grounds that it lacked sufficient interpretation capacity and was awaiting additional country of origin information. As a result of this suspension, scores of Khmer Krom asylum seekers who arrived during the latter portion of 2008 went unregistered and were forced to live in hiding in Bangkok.

"I went to UNHCR to try to register. They took my name, documents, and evidence and told me to go home. They said they would call me in again, but they never did. I wasn't given an asylum-seeker certificate and don't know if I am registered. I went back to see what happened with my case, and they said I had to come back another day. Without a UNHCR certificate, I am so afraid that I will be caught by Thai immigration police. I just stay in the apartment and never go anywhere."<sup>19</sup>

After a delay of several months, UNHCR has recently resumed registration of Khmer Krom asylum seekers on March 5, 2009, when four Khmer Krom were called in for registration interviews and subsequently given asylum seeker certificates.

Although the situation is improving, the lack of prompt registration and issuance of asylum seeker certificates has placed the Khmer Krom in danger of arrest and refoulement. A pattern of recent arrests demonstrates this danger: On the night of March 13, 2009, Thai immigration authorities raided an apartment building where a group of Khmer Krom asylum seekers were living. Twenty-six people were taken into custody, placed in a district police jail, and subsequently transferred to the Immigration Detention Center in Bangkok. Of these 26 people, 7 had not been registered by UNHCR, and were deported to Cambodia on March 19. Eighteen of the registered asylum seekers were released on March 16, after enduring three days in detention, and another asylum seeker was released on March 17.

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<sup>17</sup> Testimony of teenage male Sri Lankan asylum seeker, December 2008.

<sup>18</sup> Asylum seekers who have registered with UNHCR are issued temporary documents indicating that they are pursuing an asylum claim through UNHCR's RSD process. These are distinct from refugee identification documents, which are provided only to recognized refugees (ie, those who have completed the RSD process and are determined to meet the refugee definition or, in some cases, to fall under UNHCR's 'extended mandate').

<sup>19</sup> Khmer Krom asylum seeker, March 2009.

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Registered Khmer Krom asylum seekers have also voiced concern about delays in being called in for full RSD interviews. Khmer Krom asylum seekers have highlighted delays of up to one year between registration and initial scheduling of an RSD interview. Many noted that upon arrival at their RSD interview, they were notified that their interview had been postponed for a date several months in the future. During this waiting period, asylum seekers are not eligible for material assistance and social services from UNHCR, even though, like recognized refugees, asylum seekers cannot legally work in Thailand.

We believe the recent decision to resume registration of Khmer Krom asylum seekers is indicative of recognition by the leadership of UNHCR Thailand that the former policy represented a serious gap in fulfillment of UNHCR's protection mandate. It is important that UNHCR be encouraged to follow through by ensuring (1) immediate issuance of registration certificates to asylum seekers who present themselves to UNHCR and (2) prompt refugee status determinations for registered asylum seekers.

### **b. Falun Gong**

Since the Chinese government launched its crackdown on Falun Gong in July 1999, hundreds of Falun Gong practitioners have escaped to Thailand. Many of these practitioners have sought recognition of refugee status from UNHCR. While UNHCR Thailand apparently accepts Falun Gong practitioners' testimonies of past persecution, it nonetheless has begun to deny many practitioners' refugee status claims, raising concerns that UNHCR Thailand's reasoning is flawed and out of step with other refugee status decision makers.

#### *Flawed reasoning*

One reason UNHCR gives for rejecting Falun Gong practitioners is that they are allegedly "low-profile Falun Gong followers" rather than "prominent organizers" and therefore allegedly are not targeted by the Chinese government. UNHCR's reasoning in this regard raises a number of serious questions.

First, in denying protection, UNHCR appears to downplay applicants' past persecution. UNHCR decisions take the position that, despite past persecution, these applicants lack a well-founded fear of future persecution. This position, however, is inconsistent even with UNHCR's own procedural standards.<sup>20</sup>

Moreover, the blanket distinction between "low profile Falun Gong followers" and "prominent organizers" suggests that, instead of considering each applicant's claim independently, UNHCR Thailand is simply denying all claims from all applicants other than "prominent organizers," regardless of the facts of an individual applicant's case. Because refugee status is generally determined with regard to the facts of each individual applicant's claim, such a blanket pre-determination is inappropriate.

Third, UNHCR's conclusion that "low-profile Falun Gong followers" are not targeted by the Chinese government is not grounded in fact. Most of the over 3,000 Falun Gong practitioners who have been tortured to death have "low profiles" similar to those who have been denied protection by UNHCR Thailand.<sup>21</sup>

Finally, UNHCR process for determining whether a Falun Gong practitioner is high or low profile also appears flawed. UNHCR Thailand has indicated that there has been no change in policy, only a change in interpretation of policy to render Thailand consistent with other offices. UNHCR's 2005 document *The Falun Gong Movement in China* states that "although membership of Falun Gong alone would not give rise to refugee status, a prominent role in certain overt activities (such as proselytising or organising demonstrations)

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<sup>20</sup> See *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/4/Eng/REV.1; *Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, HCR/GIP/04/06.

<sup>21</sup> For an example of Falun Gong practitioners who were persecuted when they returned to China, see <http://www.falunhr.org/index.php?option=content&task=view&id=1188&Itemid=>.

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which bring the membership to the attention of the authorities, may do so.” However, some applicants whose claims were rejected because they were allegedly “low profile” have engaged in overt activities that should give rise to refugee status.

For example, one applicant was responsible for teaching others the Falun Gong exercise at her local practice site, and was labeled as a key person of Falun Gong by her local Party boss after July 1999. Another was responsible for running a clandestine Falun Gong material printing shop to expose the Chinese government’s violent persecution of Falun Gong practitioners. However, UNHCR Thailand’s rejection letters deemed both applicants “low-profile Falun Gong follower[s].”

Another common reason UNHCR rejects Falun Gong practitioners is by stating that they are no longer treated as harshly as before, or are no longer treated harshly enough to warrant refugee protection. This also raises the question of how UNHCR assesses past persecution and future fear.

UNHCR Thailand accepts Falun Gong practitioners’ testimonies of repeated detention and torture. However, it then finds that these events have not had any “negative impact” and that Falun Gong practitioners can now live “largely free of persecution.”<sup>22</sup> For many Falun Gong practitioners, now living “largely free of persecution” means use of a false identity, frequent moves, employment difficulties, and harassment of self and family members.

Leaving aside the horrors of past persecution and arguments about the definition of the right to freedom of religion and belief, there is reliable country of origin information to indicate that current and former Falun Gong practitioners continue to be arrested, re-arrested and detained for as little as possessing Falun Gong literature in their homes.<sup>23</sup> If this does not warrant refugee protection, what does?

A final reason UNHCR rejects Falun Gong practitioners is that they held Chinese passports and were able to exit China through normal travel channels. In practice, many Falun Gong practitioners resort to connections or bribery to obtain passports or exit China surreptitiously. However, UNHCR Thailand appears to take the view that anyone who was able to leave the country legally must necessarily be safe from persecution should he or she return. This position is not only illogical, but also inconsistent with UNHCR’s guidelines, which clearly state that the mere possession of a valid national passport is no bar to refugee status.<sup>24</sup>

### *Anomalous decision-making*

UNHCR decisions regarding Falun Gong practitioners frequently suffer from overly-hasty rejections and factual errors, both of which contribute to arbitrary and inconsistent determination processes and the erroneous denial of asylum. Additionally, there is evidence of inappropriate bias on the part of a few UNHCR staff involved in refugee status determination. UNHCR has taken steps recently to address this latter problem; however, further efforts are needed to ensure that decisions originally made by or involving these staff receive adequate review.

UNHCR Thailand rejected over a dozen Falun Gong practitioners between July and October 2008. At first instance, one applicant was rejected five days after the RSD interview. On appeal, some applicants were rejected before they could turn in supplemental information packages.<sup>25</sup> These quick rejections are highly unusual.

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<sup>22</sup> UNHCR defines persecution as “a threat to life or physical freedom” or “other serious violations of human rights”: *Self-Study Module 2: Refugee Status Determination. Identifying Who is a Refugee*, p. 31 [emphasis deleted].

<sup>23</sup> See e.g. USCIRF Annual Report 2008 – People’s Republic of China (1 May 2008); Amnesty International, *People’s Republic of China: The Olympics countdown – broken promises*, July 2008 (ASA 17/089/2008), pp. 7-8.

<sup>24</sup> *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/4/Eng/REV.1

<sup>25</sup> Appeal applications have a 30-day deadline.

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Moreover, UNHCR Thailand's rejection letters contain far too many factual errors. In one case, to support a "largely free of persecution" argument, the letter stated that the applicant's husband had been allowed to hold a government university teaching position. In fact, he had lost it. In another case, the letter stated that an applicant who had been arrested multiple times was "released without any legal action being taken against you" and allowed to exit through Shanghai. In fact, he variously managed to run away, was bailed out by his family, and bought his way out – through Guangzhou.

Finally, we have noted apparent bias in at least one refugee status determination interviewer and one interpreter. The interviewer, who we understand no longer works with UNHCR, reportedly told several Falun Gong practitioners, "The Chinese government is pretty good. The Chinese police are quite civil. I have lived in China before." In interviews, he often showed visible displeasure when Falun Gong practitioners described their torture and mistreatment, cut them off from stating more, conducted interviews without an interpreter, and failed to read back his interview notes. Similarly, one interpreter is very unfriendly to Falun Gong practitioners and has been seen occasionally having lunch or dinner with Chinese Embassy officials. While we commend UNHCR's proactive measures to remove the inappropriate interviewer, we note that, to ensure fairness, decisions made by this interviewer should receive a *de novo* review.

### 4. Extended mandate refugees

#### *a. Inconsistent and non-accountable application of 'extended mandate' refugee status*

Refugee Status Determination (RSD) is an integral part of UNHCR Thailand's protection role. It is vital that refugees receive high quality, fair and impartial RSD as a first step towards protection. Yet in some instances, UNHCR Thailand appears to be adopting a pre-determined, rather than an individual, approach to RSD.

In particular, decision making appears problematic in the context of 'extended mandate' determinations.<sup>26</sup> Whereas 'Convention' refugees – those who satisfy the 1951 Refugee Convention definition – are referred for resettlement, 'extended mandate' refugees are not. These 'extended mandate' refugees remain in limbo, lacking formal legal status under Thai law, yet with no way to regularize their status in Thailand, no ability to go home, and no opportunity to move on to a permanent resettlement country.

#### *Inconsistent decision making*

In Thailand, virtually no Somalis are being accepted as Convention refugees, even when Convention status is warranted. Some Somalis appear to have genuine well-founded claims of Convention-based persecution. Because of what appears to be a general policy of granting extended mandate status to Somalis, however, even those with strong Convention claims are relegated to extended mandate status.

Moreover, we are aware that some other UNHCR offices have been regularly granting Convention status to Somalis. Many Somalis are aware of this fact, which compounds their sense of injustice. It is difficult to reconcile how such conflicting approaches are compatible with UNHCR's protection mandate.

#### *Non-accountable decision-making*

Until June 2008, UNHCR Thailand gave asylum seekers reasons for its decision if they were accepted as extended mandate refugees but rejected for Convention status, and allowed them the right to appeal

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<sup>26</sup> As discussed above, an 'extended mandate' refugee is one who is found not to satisfy the 1951 Refugee Convention definition but is nonetheless determined to be a person of concern to UNHCR, thus falling within UNHCR's 'extended mandate.'

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from that decision. However, since June 2008, UNHCR Thailand is no longer giving reasons for, or allowing the right to appeal from, extended mandate decisions.<sup>27</sup>

We are aware of many cases where asylum seekers (including extended mandate refugees) do not feel that they have had a fair opportunity to have their case considered by UNHCR Thailand. For example, rejected asylum seekers frequently claim that they were cut off during their interviews and prevented from explaining their stories properly, that they had problems with the interpreter, or that the eligibility officer misunderstood what happened to them. Many asylum seekers from Sri Lanka and the Ivory Coast who have been granted extended mandate status have similar complaints about the RSD process and their treatment by UNHCR Thailand.

“We are not satisfied with our interviews. The interviewers ask unrelated questions. There is no opportunity to tell the UN our problems in detail. We don’t know why we got extended mandate status. The interpreters interpret incorrectly. When we try to answer in detail, they ask for yes/no answers.”<sup>28</sup>

We are not in a position to verify all of these asylum seekers’ accounts, but we consider that, having looked at the circumstances of many of these cases, at least some of these complaints are well-founded. The eligibility officers have high caseloads, and many of them are not trained lawyers, so it is predictable that some failures to accord procedural fairness will occur and that these will sometimes result in unjust RSD decisions.

However, usually, if asylum seekers are rejected, they have the opportunity to appeal – giving them some chance of remedying their situation.<sup>29</sup> But for extended mandate refugees, even if their cases have not been fairly determined, they have no opportunity to have any mistakes corrected, and they do not even know why their claim for Convention status has been rejected. The result is that many extended mandate refugees justifiably feel that UNHCR Thailand is not treating them fairly.

UNHCR’s justification for removing the ability to obtain reasons and to appeal is that extended mandate refugee status is equivalent to Convention status, so that these refugees really have nothing to complain about. But this reasoning is clearly fallacious, as discussed below.

### ***b. Failure to protect extended mandate refugees***

In theory, extended mandate refugees are entitled to the same rights as Convention refugees, but the vital difference is that, in practice, they are extremely unlikely to be resettled in a third country, since resettlement countries will generally not accept extended mandate refugees, according to UNHCR.<sup>30</sup> As a result, where UNHCR Thailand grants extended mandate status to refugees, these refugees are left in an indefinite limbo. And because of the harsh and unwelcoming environment at an official level for refugees in Thailand, they have no possibility of leading a normal life there.

“Our UN certificate is not useful. It is only temporary. Extended mandate refugees get arrested and imprisoned and there is no solution. There is no security, no facilities, no release from immigration detention – some people have been there for 2 or 3 years and the UN doesn’t do

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<sup>27</sup> We understand that this was the result of a policy directive from UNHCR Geneva, so that the decision was not taken by UNHCR Thailand.

<sup>28</sup> Sri Lankan extended mandate refugees, draft letter to UNHCR Thailand, January 2009.

<sup>29</sup> Asylum Access has general concerns about the lack of independence of UNHCR’s appeal processes, but this is not an issue that we will discuss here. For further details, see [http://www.rsdwatch.org/index\\_files/Page1004.htm](http://www.rsdwatch.org/index_files/Page1004.htm).

<sup>30</sup> Extended mandate refugees are still eligible for resettlement: see UNHCR, *Resettlement Handbook*, November 2004, p. III/2.



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anything.”<sup>31</sup>

Convention refugees face an equally miserable existence in Thailand. But at least they have some possibility of being resettled, which is a psychological lifeline, if not always a realistic one. Detained Convention refugees can be released for purposes of resettlement; the prospect of indefinite or unending detention is tempered by the potential availability of resettlement.

Extended mandate refugees, on the other hand, have little hope for their future. Their only chance for a normal existence is that, one day, the situation in their home country might become sufficiently stable for them to be able to be repatriated – but how long can they be expected to wait before this becomes a reality?

“We came here because of problems, we can’t return. How long will extended mandate last? How long can we live without peace? We can’t be referred for resettlement, we have to stay here a long time, but we can’t because of police problems, financial problems and insufficient financial assistance from the UN.”<sup>32</sup>

For many urban refugees in Thailand, they believe that living in a refugee camp would give them a better standard of living than living in the Thai community.

“Because of our suffering here in Thailand, if the UN cannot resettle us to somewhere where we wouldn’t have these safety problems, we are asking the UN to send us to a refugee camp, since at least then we could walk around freely, which would be better than living like this.”<sup>33</sup>

UNHCR Thailand cannot provide extended mandate refugees with effective protection while they are in Thailand, or provide a durable solution for them outside Thailand. UNHCR Thailand itself has been telling urban refugees in Thailand that they should consider going home, because UNHCR Thailand cannot protect them. UNHCR Thailand is thus failing to fulfill its protection mandate for extended mandate refugees.

### 5. Recommendations

#### To UNHCR

- Issue asylum seeker certificates to all asylum seekers upon initial contact with UNHCR
- Ensure that RSD interviews occur promptly after registration
- Promptly refer recognized refugees to the US and other countries for resettlement processing
- Investigate the anomalous Falun Gong decision-making and re-open the cases of affected applicants
- Develop a consistent and fair approach to the granting of Convention and extended mandate refugee status across different UNHCR offices, particularly for Somalis
- Reinstate the right to appeal from, and the giving of reasons for, extended mandate refugee status
- Increase the level of subsistence allowances and other assistance provided to urban refugees in

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<sup>31</sup> Sri Lankan extended mandate refugees, draft letter to UNHCR Thailand, January 2009.

<sup>32</sup> Sri Lankan extended mandate refugees, draft letter to UNHCR Thailand, January 2009.

<sup>33</sup> Ivory Coast extended mandate refugees, community education session, November 2008.

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### Thailand

- Continue to urge the Thai Government to ratify the 1951 Refugee Convention and its 1967 Protocol, or at least to recognize UNHCR refugee certificates and waive the overstay fine for refugees
- Continue to work with the UN Human Rights Council and other UN bodies to encourage the Thai Government to recognize basic refugee rights
- Urge resettlement countries to consider accepting extended mandate refugees for resettlement – particularly those living in insecure and unsafe environments – when it is apparent that there is no realistic prospect for their repatriation in the near future

### To UNHCR donor countries

- Provide adequate funding to ensure that UNHCR can fulfill its protection-related obligations, and in particular to ensure that it has adequate resources to conduct independent, impartial, high-quality RSD consistent with international standards of fairness, justice and due process
- Insist on benchmarks for the improvement of UNHCR's protection functions as a condition of increased funding
- Urge the Thai Government to ratify the 1951 Refugee Convention and its 1967 Protocol, or at least to recognize UNHCR refugee certificates and waive the overstay fine for refugees

### To UNHCR resettlement countries

- Consider accepting extended mandate refugees for resettlement – particularly those living in insecure and unsafe environments – when it is apparent that there is no realistic prospect for their repatriation in the near future

April 9, 2009

Dear Sir/Madam,

This is a request letter from the Sri Lankan refugees who are getting extended mandate refugee certificate from UNHCR Thailand. We would like to tell you about the problems we are facing and to request your consideration and assistance.

### **Why We Left Sri Lanka and Why We Can't Go Home**

We left Sri Lanka because there is a war. We are here because of racial problems in our country. More than 10 Tamils are killed every day. This is why we left, and we are orphans and refugees. We can't go home. UNHCR Sri Lanka knows our situation, and even they can't stay. In Vavuniya, Human Rights Commission staff were threatened. In Jaffna, ICRC staff were shot. If this is the situation for NGOs, what is the situation for us?

### **Extended Mandate Refugee Certificate**

Except for a few people, we are getting extended mandate refugee certificate. We can't go home because there is a war, we can't stay in Thailand because of police and financial problems, and we can't be resettled because, unlike Convention refugees, we are not being referred for resettlement. The UNHCR process is not fair, and the certificate is not useful. It is temporary – we want permanent. How long will extended mandate last? How long can we live without peace?

### **Problems with the UNHCR Refugee Status Determination (RSD) and Review Process**

We are not satisfied with our RSD interviews. There is no opportunity to tell UNHCR our problems in detail. The Eligibility Officers (EOs) ask unrelated questions. When we answer in detail, they ask for yes/no answers. There are interpretation mistakes.

UNHCR does not give us any reasons for extended mandate, or any opportunity to appeal or to meet with the EO or with any other decision maker to discuss. If we give a complaint, if we give even new evidence, there is no response. If we meet with any other UNHCR officer, they are giving us different explanations, each and every officer giving us a different response.

### **Police Problems in Thailand**

There is no security. We are getting arrested and imprisoned and there is no solution. UNHCR used to tell us to contact UNHCR by telephone if we have any problems with the police. When we are arrested, UNHCR tells us they will negotiate with the police. But the police ask us for money or take us to prison.

If we bribe the police, they might release us or else they will take us to prison. Like this, some people have given even their jewellery, necklaces, earrings, bracelets. Other people have been arrested leaving the wife and children outside, so the husband is in prison, and the wife and children are living alone. There is a woman whose baby son died. Her husband is in the Immigration Detention Centre (IDC) and he could not come out even to see his baby son or to attend the funeral.

There is no release from IDC – some people have been there 2-3 years. They can't eat, they can't sleep, there is no proper food or other facilities to be happy. Even the toilets are not so clean. If we ask UNHCR about release, UNHCR tells us they are talking with the Thai authorities. This is the answer we have been getting from UNHCR for more than 2 years.

### **Financial Problems in Thailand**

We are living here without food, clothing, or any other facilities. After we get the extended mandate refugee certificate, after 4-5 months only we get the subsistence allowance from UNHCR. For some people only the subsistence allowance is approved. For other people, UNHCR is saying, "You have enough, we won't approve." Like this, our people are facing difficulties to meet daily needs. Even the residence where they live is not so good. Some people are eating only one time – even the wife and children are eating only one time. We can't work, the children can't study, and there is no medical care, only the Bangkok Refugee Centre (BRC).

### **Request**

We face many problems in our country, but we are facing the same problems here also. We came here to save our lives, but the extended mandate refugee certificate makes us want to kill ourselves or go crazy. We would like to request:

- From UNHCR, please send the EOs or any other decision maker to meet with us, to discuss about our cases and our problems in Thailand, and to find a solution
- From other organizations or NGOs, please support and speak for us, please take concern about these matters and help us to live and to have a good future

Thank you,

Your faithful Sri Lankan Tamil refugees



# UNHCR

United Nations High Commissioner For Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

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HCR/BKK/MISC/1133

UNHCR Regional Office in Thailand would like to thank you for sharing the final report of Asylum Access, Boat People SOS and Conscience Foundation, entitled "*UNHCR Protection Challenges for Urban Refugees in Thailand: Report and Recommendations*" (April 2009). Whilst appreciating the collective interest of your organizations in the situation of asylum seekers and refugees in Thailand particularly in the capital, allow us to say that the report in its entirety fails to factor in or even acknowledge in the barest minimum sense the fundamental fact that asylum is a primary responsibility of the host State. UNHCR undertakes refugee status determination in the country by virtue of the Statute of the Office, in the absence of a national asylum framework and concomitant national refugee status determination system. This, therefore, needs to be borne in mind when looking at the various limitations and constraints that the Office continues to face amidst a challenging environment of what could be regarded as constricting protection space.

Against the above backdrop, we would also like to draw your attention to a number of inaccuracies and/or mistakes in the report which would warrant rectification. They include the following:

- UNHCR, with four (4) Eligibility Officers, is processing applications for refugee status, including timeframe, quality and output, in accordance with the Office's Procedural Standards.
- Regarding "260" Khmer Krom refugees and asylum seekers in Bangkok, UNHCR is only aware of asylum seekers and refugees who have formally approached the Office.
- In view of some constraints experienced by the office in the identification and recruitment of a suitable and duly qualified interpreter, for a short period of time, there was a temporary interruption in the registration of Khmer Krom cases allegedly coming from Vietnam from 24 December 2008 to 17 February 2009. Registration for individual cases from this group re-commenced on 18 February 2009.
- Consistent with UNHCR's Policy, asylum seekers do not automatically receive material assistance except those who following full assessment are deemed to be extremely vulnerable and/or have special needs. In the spirit of responsibility-sharing, apart from UNHCR's implementing partner COERR-BRC, other non-governmental organizations such as JRS, AMAN provide some assistance to asylum seekers.
- UNHCR has not issued a document and is aware of a document entitled "*The Falun Gong Movement in China, 2005*".

Asylum Access  
Thailand

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- Duly qualified and suitable interpreters are essential to UNHCR's work in discharging its core mandate functions. The quality of interpretation impacts on the quality of UNHCR work. Therefore, an applicant for an interpreter's post undergoes several checks and if recruited, every UNHCR interpreter has to sign UNHCR's Code of Conduct. UNHCR provides continuous training for interpreters in relevant aspects of their tasks and employment. On a regular basis, their performance is evaluated by using a standard form. Interpreters do not have access to general and individual case files. UNHCR remains open to receive complaints through proper channels including through the complaints box located at the entrance of UNHCR Reception and whenever deemed necessary, the office undertakes an investigation.
- UNHCR recognized seventeen (17) mandate refugees from Somali in 2008 and 2009.
- In line with UNHCR's Procedural Standards, *"Every rejected applicant has a right to appeal a negative RSD decision."* Given that refugees recognized by UNHCR under the extended definition are already recognized refugees, there is no basis to appeal.
- UNHCR's Eligibility Officers have met all required qualifications under UNHCR's relevant rules and standards. They undergo regular training in various aspects of their job and are supervised by a professional lawyer.
- There is an UNHCR hotline which aims at providing more protection tools for refugees and asylum seekers in urban settings to reduce the number of arrest and deportation by Thai authorities. All asylum seekers and refugees can call the hotline after working hours and during weekends and UNHCR ensures immediate follow up action with relevant authorities.
- All registered asylum seekers are issued asylum seekers certificate in their first approach to UNHCR.

We trust that constructive dialogue between UNHCR and your organizations would enable us collectively to contribute meaningfully to the improvement of refugee protection in the country. We have complementary albeit distinctive roles to perform and need to exert our level best, in a genuine spirit of cooperation and partnership, if we are to rise above an ever challenging environment. Only then could we achieve together the goal of ensuring and even more effective protection of asylum-seekers and refugees in the country.



UNHCR Regional Office in Thailand  
20 May 2009