

Report No. 5/2560 on right to benefit from public health service and welfare from the state related to right and personal status in case of access to public health service of urban refugees and asylum seekers

Complainant: -

The National Human Rights Commission of Thailand saw that the case claimed in the petition should be checked.

The Accused: -

Even if Ministry of Public Health has taken actions according to a resolution of the government cabinet dated 15th January 2013 to provide medical and public health services to all aliens who are not in the social security system, so that they have access to health service. This implies that Thailand adheres to international obligations, including in particular the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which require state parties to take actions to guarantee that everyone has physical and mental health at the highest standards as possible by giving everyone equal rights under the law to receive public health services, medical care, social security and social services without any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin. However, many problems have been found in practice: Firstly, aliens who are not in the social security system would only pay to buy a health security card when they are sick. Therefore financial risk is not distributed evenly; resulting in some hospitals have to face financial problems. Secondly, practitioners in some state hospitals still have discrepant understanding about their actions concerning health check and health insurance of aliens. Alien laborers who are in the social security system do not have right to, and benefit from, vaccination service if they have not insured themselves by purchasing a health security card. In order to promote and protect the right to public health and welfare related to personal rights and status, the NHRCT then came up with recommendations and sent them to related agencies, using authority according to Section 15 (5) of the National Human Rights Commission B.E. 2542 (1999).

Referring to a case that the Director of Asylum Access Thailand, which is a group of persons who have no access to public health service, presented information about refugees in Thailand through electronic newsletter claiming that Thailand has been a living place of transnational labor, displaced people, stateless people and asylums seekers or refugees from wars with the highest number of migrants in South East Asia, 3.7 million in total of which 130,000 are refugees from war. Because they have no legal status, these war refugees are facing the problem of unfair discrimination, being forced to face dangers, exploitation, restriction of right to access the justice process, and restriction of right to public health service and welfare from the state. A proclamation of the Public Health Ministry on aliens' health check and health insurance dated 30th March 2015 gives opportunities to all aliens to buy health insurance with hospitals under the Public Health Ministry, hospitals under

Bangkok Metropolitan Administration and other state hospitals that join this project. However, in practice, there are problems, that are some staff of these hospitals do not know about this Public Health Ministry's proclamation, and some staff could not sell health insurance card to aliens because of technical problems. These problems result in those war refugees could not access health service at ordinary hospitals because of expensive medical expenses and their illnesses get worse. Moreover, detention centers for aliens are crowded with bad hygiene. Epidemic of tuberculosis and skin diseases often occur, affecting health of war refugees who are being detained, and when they are released on bail, they could spread the diseases to their communities. At present, physicians from Public Health Ministry and civil society organizations regularly visit these detention centers 2-3 days per week because they have limited number of medical personnel. Therefore, in order to provide aid more systematically and more sustainably, it is proposed that the NHRCT check this matter and consider giving assistance to make this Public Health Ministry's proclamation really implementable, and war refugees or asylum seekers could access public health service in various areas and state hospitals provide knowledge on disease prevention to all groups of people.

The NHRCT took this case into consideration and saw that Ministry of Public Health had taken actions according to the government cabinet's resolution dated 15th January 2013. In order to provide all aliens who were not in the social security system access to health care and public health service and for effective control of diseases that may spread out from foreign labor, Public Health Ministry then issued a proclamation on health check and health insurance of aliens dated 30th March 2015 which required Public Health Ministry to provide health check and health insurance to all aliens who were not in the social security system by selling them health security card that was valid for one year through service units under Public Health Ministry, state hospitals not attached to Public Health Ministry and other medical facilities that had joined this project according to measures and guidelines for aliens' health check and health security in a proclamation of the Public Health Ministry 2015 which can be considered as taking actions according to international obligations, both the ICESCR and ICERD which requires state parties to take actions to guarantee right to good physical and mental health to the highest possible standards for all by giving everyone equal right under the law to receive public health services, medical care, social security and social services without any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin. However, in practice, several problems could be found as follows:

- (1) Aliens who are not in the social security system could buy health insurance card only when they fall ill, financial risk therefore is not distributed evenly, resulting in some hospitals have to face financial problems and these hospitals had bad attitude towards the scheme and some hospitals and medical facilities refuse to sell health security cards to this group of aliens.
- (2) Staff in some state hospitals still do not have correct understanding about how to take actions according to the Public Health Ministry's proclamation on health check and health insurance for aliens dated 30th March 2015, and Public Health Ministry's

measures and guidelines for health check and health insurance 2015; they understand that they could sell health insurance card only to aliens with Myanmar, Lao and Cambodian nationality who are not in the social security system, their children aged not more than 15 and their dependents. Target groups according to this policy are, moreover, not clearly defined, such as foreigners who have health insurance in their country of origin may not qualify to be able to buy health insurance card, resulting in many hospitals and medical facilities do not sell health insurance card to foreigners with other nationalities.

- (3) All Thai people and aliens who are in social security system would not have rights and receive benefits to cover vaccination for disease prevention. However, the National Health Security Office as the main agency for promoting good health among Thai people provides financial supports to cover expenses for providing vaccination service to all Thai people by Public Health Ministry. However, when aliens who should be under strict infectious disease control are taken into consideration, it turns out to be that aliens in the social security system do not benefit from vaccination service if they have not insured themselves by purchasing the health insurance card. Even if Public Health Ministry does not intend to discriminate against some persons, but its negligence in this matter is against humanitarian principle and is considered to be unfair treatment against persons according to international treaties that Thailand as a state party is obliged to act accordingly.

For benefits of human rights promotion and protection in case of access to public health service and welfare from the state related to personal rights and status, the NHRCT therefore saw that it should come up with recommendations for agencies involved, using its authority according to Section 15 (5) of the National Human Rights Commission Act B.E. 2542 (1999) which provided that “the Commission has authority and duty to promote cooperation and coordination between government agencies, private organizations and other organizations working on human rights”, as follows:

- (1) Recommendations for Ministry of Public Health

- (1.1) The Ministry should clearly define measures and guidelines for actions concerning health insurance of aliens according to the Public Health Ministry’s proclamation on health check and health insurance for aliens dated 30th March 2015 which was issued following intention of a government cabinet’s resolution dated 15th January 2013, such as interpretation of target groups who can buy health insurance card, for example. The Ministry then should conduct public relations to disseminate these measures and guidelines to its personnel and people involved in all sectors, especially in state hospitals in Bangkok, to have correct understanding and can do their works effectively.

- (1.2) The Ministry should improve measures and guidelines for actions concerning health insurance of aliens by studying structure of appropriate public health system and management of medical service system which must consider forms of medical service that war refugees or asylum seekers would use and capacity of hospitals or medical facilities in urban areas that may be able to provide such medical service in order to share workload / burden from large hospitals which have originally had many people going to receive services

and are consistent with residential areas, such as public health service center in each area, for example. To do this, Public Health Ministry needs to coordinate with other service providers in the public sector in urban areas, such as Bangkok Metropolitan Administration.

(1.3) The Ministry should cooperate with other organizations/agencies in public, private and civil society sector at both national and international level, such as measure to sell health insurance card to war refugees or asylum seekers while showing up to seek consideration and endorsement of their refugee status from Office of the United Nations High Commissioner on Refugees (UNHCR). This measure would reduce financial risk of concerned hospitals because they would have insurance for the whole families, both well and unwell persons, in case of war refugees or asylum seekers living in Thailand who lack finance to buy health security. To implement this measure, negotiation may be initiated to seek financial supports from the UNHCR in Thailand.

(1.4) The Ministry should direct and follow up with the Aliens Health Security Fund Management Committee and the Health Insurance Group in Office of the Public Health Ministry Permanent Secretary, ensuring that they take actions according to the Public Health Ministry's measures and guidelines for aliens' health check and health insurance B.E.2558 (2015) which were issued according to intention of a government cabinet's resolution dated 15th January 2013, especially concerning attitude of administrators and practitioners. Moreover, issuing health insurance cards does not imply that illegal entry into Thailand is acceptable. Its two main objectives are to provide non-discriminatory humanitarian aid which is an action according to international obligations that Thailand is a state party, and to significantly prevent and control some contagious diseases that have already been wiped out from Thailand.

(2) Recommendations for the National Security Council, Ministry of Labor, Ministry of Interior and the Immigration Bureau. These government agencies should coordinate and cooperate with related agencies to take actions to urge all foreign workers and their dependents in Thailand to have registration, identity card and a kind of health insurance according to the Public Health Ministry's proclamation on aliens' health check and health insurance dated 30th March 2015 and Public Health Ministry's measures and guidelines for aliens' health check and health insurance B.E. 2558 (2015).

(3) Recommendations for Ministry of Foreign Affairs and Ministry of Social Development and Human Security. The two ministries should coordinate with the UNHCR to speed up their process to identify third countries for war refugees with clear timeframe because at present waiting to be interviewed for consideration to approve refugee status takes more than four years and to provide financial supports from its fund to share burden from governments and related organisations and reduce burden related to war refugees and asylum seekers' living in Thailand. The Ministry should direct to seek supports may be Thailand who lack finance to buy health security. HCR). asylum seekers while