



The management strategy for stateless persons in Southeast Asia

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Abstract—The Universal Declaration of Human Rights has affirmed the fundamental rights of every person without taking nationality into consideration. However, significant populations world-wide are unable to exercise these rights. Thus, citizenship is a prerequisite to gaining one's rights within the state. When individuals are unable to register or are rejected from registering as legal persons in the civil registration of any state on earth, this creates problems in terms of individual status certification and renders certain rights to be inaccessible. Although the Asian Intergovernmental Commission on Human Rights and the United Nations High Commissioner for Refugees, with the cooperation of each region have made efforts to help solve statelessness problems in this region, the number of stateless persons in Southeast Asia still makes up roughly 40 percent of total stateless persons world-wide. This issue reflects a considerable gap between the written law and its application. The objective of this article is to present the situation of stateless persons in Southeast Asia, analyze the causes of the problem and suggest strategic solutions for statelessness by using a conceptual framework relating to fundamental human rights and the stability of regions.

Keywords: Stateless person, human rights, Southeast Asia

Introduction

Nationality is a legal commitment of government towards an individual. The United Nations High Commissioner for Refugees (UNHCR) defines “de jure statelessness” as an individual who is not considered to be citizen under the law of a state. Stateless persons also include citizens who do not have the rights they ought to have, which

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in this case is called “de facto statelessness.” Having nationality can guarantee that persons fully possess their human rights and social participation (UNHCR 2008).

Statelessness leads to an uncertain life. It means lacking fundamental rights in all aspects of living a normal life, such as the right to be recognized as a legal person, the right to access medical treatment and services, the right to work and receive labor protection, the right to education, the right to access the judicial process, the right to an adequate standard of living, the right to travel in and outside their residence, the right to freedom of movement, the right to found a family and the right to own property (Archavanitkul 2011, 1).

Due to the statelessness issue, numbers of international treaties and resolutions have focused on this problem, which is captured in section 15 of the UDHR, “Everyone has the right to receive a citizenship and no one can repeal another’s nationality or reject the right to change citizenship.” The right of individual citizenship is affirmed in section 24 (3) of the International Covenant on Civil and Political Rights, section 7 (1) of the Convention on the Rights of the Child, section 5 (d) (3) of the International Convention on the Elimination of All Forms of Racial Discrimination and section 9 of the Convention on the Elimination of All Forms of Discrimination against Women (Nootsara and Sriprapha, n.d., 1).

The Asian Intergovernmental Commission on Human Rights (AICHR) has cooperated with the UNHCR to bring the stateless persons issue into meeting agendas at the regional level. However, the framework of the AICHR has been limited by the ASEAN non-interference policy which resulted in the efforts of the AICHR to solve the problems being more focused on the technical side. For example, the intention to improve the enrollment system for affirming existing expatriate workers and citizenship for newborn babies. Although these issues are important, they are not really connected with the root cause of stateless persons problems (Laungaramsri 2013).

The important factors related to stateless persons are presented as follows: (1) the situation of stateless persons in Southeast Asia; (2) the previous procedures for solving the issue of stateless persons in this region; and (3) a sustainable management strategy for the problem of statelessness in the region.

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The situation of stateless persons in Southeast Asia

Currently, the stateless persons issue is specifically addressed in two international conventions. The first convention is the Convention Relating to the Status of Stateless Persons, 1954. This convention has set important protective measures for stateless persons. Furthermore, it secures the identity document and the right to have a passport, which is crucial for accessing other rights. Another convention is the Convention on the Reduction of Statelessness, 1961. This convention enhances transparency in the legal process and sets the orientation for solving the stateless persons situation without affecting the sovereignty of government regarding rules for establishing citizenship. The protective measures are presented to the government in order to bring them into the nationality law for reducing stateless persons' situation. Nevertheless, neither of these conventions is acceded to by any of the countries in Southeast Asia. However, the measures are acknowledged by the countries as guidance. The Philippines will soon discuss the stateless persons issue at the policy level and is likely to accede to both conventions (the Philippines had already signed the convention in 1954). As a result, this may persuade other countries to become parties to the conventions (UNHCR 2010).

Source: UNHCR 2016.

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According to a survey of stateless persons in Southeast Asia by UNHCR in 2015, there were significant numbers of stateless persons spread across the region. The country with the highest number of stateless persons is Myanmar, followed in order by Thailand, Brunei, Malaysia, Vietnam and the Philippines (see Table 1).

Myanmar is the country with the highest number of stateless persons in the region. The refusal of government services to minority groups, human rights abuses, unrecognized ethnic groups, and a series of historical conflicts have caused Myanmar significant issues regarding the prevalence of stateless persons. As a result, both the lives and assets of stateless persons are at risk. This is a key driver of various resistance movements as well as transnational migration. An immediate example is the case of the Rohingya people, which has led to serious displacement and human trafficking (UNHCR 2017, 2).

In Thailand, according to the law concerning Thai national identity cards for every person, someone who was born and lived in Thailand, including their cousins, before 1909–1956, has a risk of becoming a stateless person because their data was overlooked when civil registration was processed. This is because the government citizenship registration procedure failed in under developed and inaccessible areas. In fact, it most hill tribes, fishermen, Chinese migrants, and foreign migrants in Thailand find that their names are not listed in the civil registration of the country (Archavanitkul 2011).

In Brunei, children of both Chinese Bruneians and local ethnic groups who have been settled in Brunei for many years, whose births have not been notified to the government, do not receive citizenship (United States Department of State 2013). Moreover, government policy poses barriers to obtaining citizenship. The Brunei Nationality Act, 1961, declared that “The requirements for persons who live in Brunei and want to be processed in civil registration, Brunei nationality” are as follows: (1) a good command of Malay language; (2) fluently communicating using the Malay language; (3) certification by the language council; (4) having a pleasant personality; and (5) swearing to adore the nation. The conditions are overly vague in practice. For example, the Malay language is used in educational contexts but not in daily life for the aforementioned minorities. Failures like these imply that these groups cannot access the citizenship registration procedure (Tolman 2016).



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The problem of stateless persons in Malaysia occurred after the colonial period. Great Britain imported laborers from India. After Malaysia was granted independence, these groups did not acquire Malaysian citizenship under the constitution of federal government. However, the UNHCR and an NGO, Development of Human Resources for Rural Areas (DHRRA), provided assistance for stateless persons who lived in West Malaysia. Currently, 2,168 persons of this group have acquired citizenship and the UNHCR will file a request for the rest within 2018 (UNHCR n.d.).

In Vietnam, statelessness occurred in 1970 after thousands of Cambodians fled from the civil war against the Khmer Rouge to Vietnam, after which they were no longer considered Cambodian citizens. Furthermore, stateless persons in Vietnam included women who married foreigners but returned after divorce and were subsequently denied their original citizenship (Center Intelligence Agency 2016).

In the case of the Philippines, over 7,000 stateless persons are children of Indonesian migrant workers who were not registered at birth.

The stateless persons issue has been emphasized by the ASEAN Community, especially in the social justice and human development of the ASEAN Socio-Cultural Community. Although the AICHR and the UNHCR have continuously made efforts to solve this problem, 1.4 million stateless persons in this region are still a critical issue that affects international security. For this reason, this problem must be addressed by every country concerned in a sustainable manner.

Previous procedures for solving stateless persons in this region

The UNHCR has prioritized the procedure for solving the stateless persons problem in a meeting report of regional experts “best practices to set scope for stateless person prevention and stateless persons protection in Southeast Asia” on October 28–29, 2010.

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Table 2. Best practices to set the scope for stateless person prevention and stateless persons' protection in Southeast Asia, 2010.

<p>In 2004, Singapore reformed the stateless persons' problem, so that new born babies can acquire citizenship from their mother as from their father.</p>	<p>In 2006, Indonesia amended nationality law by aborting sex and racial discrimination and augmenting more defensive measures for the potential stateless situation of Indonesians working aboard.</p>	<p>In Myanmar 2007, stateless persons in North Rakhine State acquired identity evidence with the support of the UNHCR.</p>
<p>In 2003, the Children Rights Council urged Brunei "Mobile health units" to give service in undeveloped areas and to promote birth certificates.</p>	<p>In 2004–5, mobile volunteering units in Cambodia have taken only 10 months in birth certificate processing for over 7 million Cambodians. This activity is part of a birth certificate campaign.</p>	<p>In Thailand 2006, the nationality proving procedure was conducted using a cooperation framework for Cambodian and Laotian workers.</p>
<p>In 2008, Vietnam amended nationality laws in order to provide citizenship to stateless persons who had lived in Vietnam for a long time and to women who had been disqualified after getting married to a foreigner.</p>	<p>In Thailand 2009, the nationality proving procedure was conducted within a cooperation framework of both governments for Burmese workers.</p>	<p>In 2010, the Philippines began the accession process convention on stateless persons (1954).</p>



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In 2008, Thailand amended the nationality act and civil registration act for the rights of children to a birth certificate and reorganized the procedure in order to avoid statelessness.

In 2010, the first group of stateless Cambodians who lived in Vietnam acquired the Vietnam citizenship.

In 2010, Malaysia initiated a special education project for stateless children.

Source: NHRCT and UNHCR 2010.

In the discussion meeting of “The right of citizenship and the end of stateless persons’ situation in ASEAN region” in Jakarta, Indonesia, in November 2016, the UNHCR reported the operational progress that the governments in this region regarding practical solutions had made. Over 2,957 Indonesian Filipinos had been affirmed for citizenship by the Philippine government. In Malaysia, over 700 stateless persons had been assisted by the DHRRA which had allied with the UNHCR in order to affirm Malaysian citizenship (UNHCR 2016).

The important keys that will make Thailand successful in solving problems regarding individual right and status are as follows: (1) strengthening the cooperative mechanism of related sectors in order to prove rights and solve the stateless persons problems; (2) building a linkage system with the birth certificate service—the government service sector recognizing the need to conduct additional procedures (around 100 places) and the private service sector (around 81 places); (3) amending the law or conflicted policies which are not consistent with the current situation; (4) enhancing knowledge about the importance of birth certification (Thor.Ror 1/1), birth certificate request forms (Thor.Ror 20/1), and birth certification for every Thai citizen, including personnel in every organization; and (5) standardizing the production system and birth certification (National Human Rights Commission 2016).

Vietnam and Laos have defined stateless persons in the law at the national level. The Nationality Law of Vietnam defines stateless persons as “Persons who do not have Vietnam citizenship and others.” The definition is consistent with the international definition, so it is the most valuable instrument to identify stateless persons in Vietnam.

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According to the Lao Nationality Law, stateless persons are “persons who live in Lao territory but do not acquire Lao citizenship and are unable to identify their nationality” (UNHCR 2010, 12).

According to the resolution from regional expert meeting attendants about “best practices to set the scope for stateless persons’ prevention and stateless persons protection in Southeast Asia” in 2010, solutions for stateless situation are as follows:

(1) identify stateless persons by collecting data from various sources in order to analyze violence related to the problem and related factors of regional problems;

(2) analyze legal provisions in the region to improve transparency in the procedures of the stateless situation in order to establish the citizenship of migrant workers and prevent human trafficking;

(3) conduct regional meetings with civil registry authorities in order to exchange ideas of best practices for birth certification and other procedural matters related to preventing statelessness;

(4) provide individual documents to stateless persons to ensure that every person has self-identification (for example, the document is issued during data collection during surveys of stateless populations);

(5) carry on bilateral and multilateral cooperation under the principles that “no single method can solve every problem”, “The methods derived from idea exchanging are applied”, and “the idea is adjusted to fit the current situation in the country”;

(6) support the ASEAN Intergovernmental Commission on Human Rights (AICHR) in dealing with the migration process and commitment to the ASEAN Declaration of Human Rights;

(7) give stateless persons the opportunity to share their ideas in international and regional conferences to improve strategies and policies that related to them;

(8) publish data and present the real problems via mass media to raise awareness; and

(9) continue tracking the best practices in this region in order to improve policy (UNHCR 2010, 26-27).

In conclusion, the solution to the stateless persons situation is to identify how many group of stateless persons live in a given territory, and then consider how they became stateless persons. Moreover, it is critical to understand how existing institutions effect the situation, including the presentation of possible solutions.



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The sustainable management strategy for stateless persons problems in Southeast Asia

In the current situation, although there are significant efforts to solve the stateless persons problems, it remains a major issue. For the most part, the nations rejected the existence of minorities, especially ones who live near the border, even though they have been living in the country for generations, because of past conflicts over politics, race, or religion. These have resulted in people having no basic rights in the nation and having to flee the conflict to neighboring countries. Previous solutions have focused on citizenship and deserved rights. Although these issues are important, this approach is not directly linked to the cause of problem. The best solution for stateless person problems is to prevent the stateless condition. According to the UNHCR, the government is the principal agency responsible for stateless person prevention because the government can consider how people acquire, change, or repeal citizenship. Consideration of nationality is limited in international law. Establishing citizenship is the responsibility of national governments.

Moreover, because of the significant numbers of stateless persons, methods for preventing abuse of national level law and policy are required. The rights of citizens should be respected regardless of their minority status. Independent persons should be assisted in accordance with the Covenant on Economic, Social and Cultural Rights, including Civilian Rights.

There is another important obstacle which is national security. Many countries may have their own national law which addresses statelessness but, in practice, there are a lot of limitations to slow down the process or make it very hard to gain nationality. Even if they have already proven that they have been born and have lived in the nation or already have nationality, they are still treated differently from the other citizens in that country.

And even though the AICHR is in charge of dealing with statelessness problems in South East Asia, it is not likely that big changes will happen in the region because of the ASEAN principle of non-interference in other countries' domestic matters.

In order to successfully and sustainably address the problem, each country in Southeast Asia must proceed with the following actions:

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(1) lay emphasis on solving the stateless person condition; population surveys in each country should be conducted to analyze the legal status and access to rights of stateless persons; (2) understand that migrants are at risk of becoming human trafficking victims; (3) government officers, rights holder representatives, the civil society sector, academics and the mass media have to be supported by the government to enhance the transparency of the legal procedure; (4) academics from educational institutions should emphasize knowledge integration to enhance the ability of stateless persons' leaders, the civil society sector and the mass media, to examine legal procedures and suggest policy setting properly; and (5) every sector should promote public communication to promote practical results in accordance with government policy and international covenants on equality.

Conclusion

The stateless persons survey in Southeast Asia conducted by the UNHCR found that there are stateless persons in every country in the region. The country with the highest number of stateless person is Myanmar, followed in order by Thailand, Brunei, Malaysia, Vietnam, and the Philippines. According to stateless persons management in this region under the international cooperative framework, the number of stateless persons is decreasing each year. Therefore, the UNHCR has set the objective to end the stateless persons problem by 2024. A number of the obstacles are encountered practically, especially in citizen discrimination towards and rejection of some ethnic groups. Apart from acquiring citizenship for fundamental rights, the most sustainable solution is to prevent the stateless condition in the first place. Each country must cooperate in the development of practical operational plans, promote working groups from other related sectors, and promote public communication for collaboration regarding the problem of statelessness.