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THE MANY FACES OF STATELESSNESS

In December 2009, 4,300 Laotian Hmongs in Thailand were involuntarily repatriated to Laos. Their status in Thailand has often been disputed, as some have officially been recognised by UNHCR as 'refugees', others are considered 'economic migrants' or 'illegal migrants' by Thailand and as a result, many of their children are 'stateless'. The label they receive decides the treatment they get under national and international law. In our last alert, the aim was to better understand the issue of statelessness, why it occurs and what it means under international law. This alert aims to analyse the difference between stateless persons in their habitual residence and stateless persons on the move, explaining the many faces of statelessness within Southeast Asia.

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The Many Faces of Statelessness

Article 1 of the 1955 *Convention Relating to the Status of Stateless Persons* defines a stateless person as one 'who is not considered as a national by any state under the operation of its law'. However, this definition does not distinguish the different dimensions of statelessness which is two-fold: 'stateless persons in their habitual residence' and 'stateless persons on the move'. The figure below attempts to depict the many faces of statelessness with particular attention to cases in Southeast Asia.

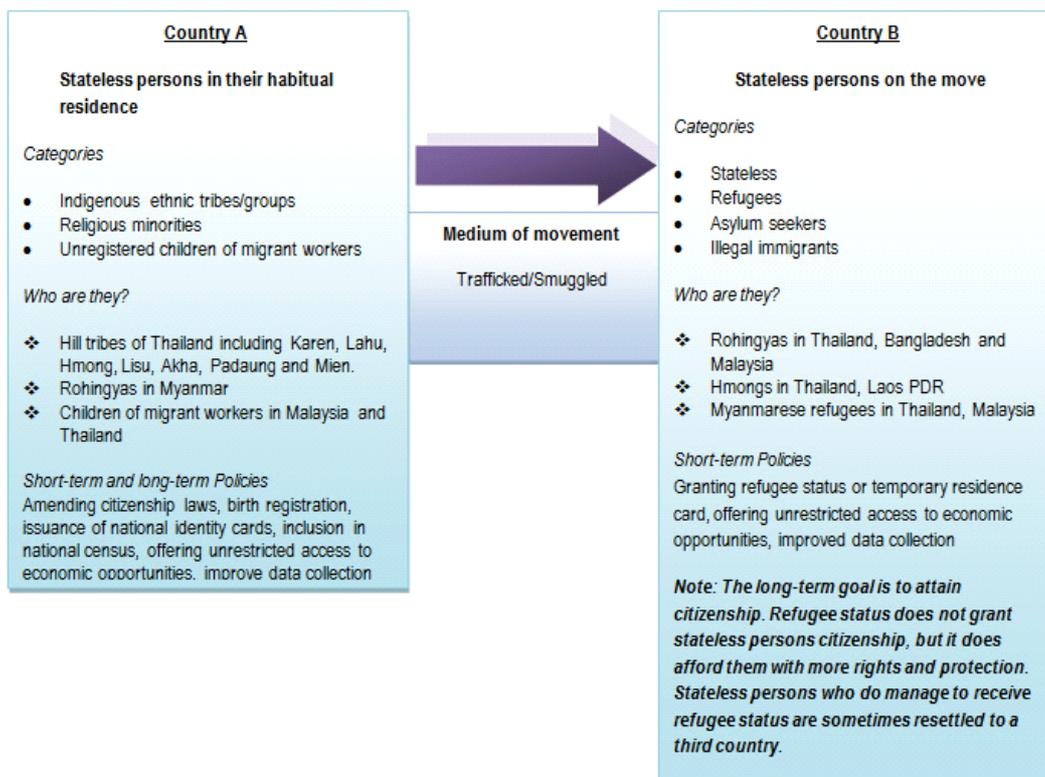
[The view towards stateless persons] varies from government to government. In general, these are individuals who are not claimed by any country. They are considered foreigners, they are discriminated against, they are simply individuals who are unwanted.

– Maureen Lynch, Senior Advocate on Stateless Initiatives, Refugees International

Lives of Stateless Persons in their Habitual Residence: Indigenous Minorities and Children of Undocumented Migrant Workers

This section gives examples of 'Stateless persons in their habitual residence', referring to individuals who are stateless in their country of residence. Specifically, this section shall focus on two types of stateless groups: indigenous minorities and stateless children of undocumented migrant workers.

Figure 1: Making sense of the many faces of statelessness



Rohingyas

The Rohingyas are an ethnic and religious minority group of Myanmar. Human Rights Watch estimated the total population, as of 2009, at about two million, of which approximately 800,000 remain in Myanmar, primarily in western Rakhine State and Yangon. About 200,000 live in Bangladesh, of which 30,000 live in squalid refugee camps. An estimated half million have migrated to the Middle East and 50,000 to Malaysia. Others are scattered throughout the region (Human Rights Watch, May 2009). They lost their political and constitutional identity when the military government, led by General Ne Win, promulgated the Citizenship Act of Burma in 1982 (Khin Maung Lay, 2009). The Act specifically stated that:

Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 BE, 1823 AD are Burma citizens.

Moreover, it was also stated that the Council of State 'may decide whether any ethnic group is national or not' and 'may, in the interest of the State, revoke the citizenship or associate citizenship or naturalised citizenship of any person except a citizen by birth'. The Act effectively denies Rohingyas recognition of their status as a Burmese ethnic minority group. They are subsequently not listed among the 135 officially recognised 'ethnic nationalities', consequently rendering them stateless.

Deprivation of citizenship has served as a key strategy to justify arbitrary treatment and discriminatory policies against Rohingyas. Severe restrictions on their movements are increasingly applied. They are banned from employment in the civil service, including in the education and health sectors. In 1994, the authorities stopped issuing Rohingya children with birth certificates. By the late 1990s, official marriage authorisations were made mandatory. Infringement of these stringent rules can result in long prison sentences. Other coercive measures such as forced labour, arbitrary taxation and confiscation of land, also practised elsewhere in the country, are imposed on the Rohingya population in a disproportionate manner.

The UNHCR is actively involved in Rakhine State trying to reduce incidence of statelessness among Rohingyas. Its primary objective is to promote the integration of persons without citizenship into Myanmar society and improve their livelihoods. The UNHCR estimated that approximately 750,000 residents of Rakhine State still remain stateless (UNHCR Global Appeal 2010-2011). The first step towards reducing statelessness among Rohingyas is to issue them with some form of identity cards, which have been denied to them since 1982. Even when the colour-coded Citizens Scrutiny Cards (CRCs) were issued to all Myanmarers in 1982, Rohingyas were not issued any cards. In 1995, the authorities started issuing Temporary Registration Cards (TRC) to Rohingyas. This process was stalled from 1998 to 2007. When it was restarted in 2007, more than 30,000 people registered to obtain TRCs just between March and June. Noor Hakim, recipient of TRC under that programme, commented that he could not only travel now but could also 'apply for marriage permission'. Under the renewed effort of the UNHCR, issuance of TRCs to all Rohingyas over the age of 10 continued on 22 August 2009. By the end of that year, more than 75 percent of those who are eligible are in possession of TRCs. The TRCs, however, do not mention a birthplace for the registered person. Moreover, Rohingyas' ethnicity is referred to as 'Bengali' on the card and their religion as 'Islam'.

Despite the issuance of TRCs, the question of the legal status of Rohingyas still remains unclear. Former UNHCR representative in Yangon, Jean-Francois Durieux, observed that 'They (the Rohingyas) are not citizens by law. We do not say this document exists in law. Under international law, it is a temporary document, proving residence not citizenship'. Interestingly, as 2010 is an election year for Myanmar, it is being speculated whether Rohingyas will be allowed to vote, as they were in 1990 and during the 2008 referendum (Interview with Chris Lewa, 2009). It is common knowledge that the majority Buddhist population of Rakhine State, with many opposition sympathisers, is unlikely to vote for the current Myanmar government. This means the Myanmar government has to build up its constituency among Rohingyas, even though they are considered 'non-citizens.' Presently, it remains unclear how Rohingyas will be allowed to vote as the 2008 Constitution states that only 'citizens' will be able to vote in the next election (Interview with Chris Lewa, 2009).

The Integrated Regional Information Network (IRIN) reported on 24 February 2010 that UN agencies and NGOs in Myanmar are consolidating humanitarian efforts in assisting needs of Rohingyas, for the first time, by working on the Common Humanitarian Action Plan (CHAP). The CHAP will be a one-year plan, with the possibility of extension, and is geared towards all residents in the Rakhine State, including Rohingyas. Bhairaja Panday, Country Representative for UNHCR in Myanmar, was quoted as saying:

We are confident that the situation will improve [for Rohingyas] in some measure; we don't know exactly how much...I think the government feels they need to address the problem now, and they do not want it to linger like this for a long time.

The final solution, however, lies in amending or repealing the 1982 Citizenship Act and granting Rohingyas full citizenship and accompanying rights. This is a long-term objective and the international community must work together to put pressure on the Myanmar Government to amend its citizenship law; the current CHAP process may be a start towards it.

Hill tribes of Thailand

The major hill tribes of Northern Thailand are Karen, Lahu, Lisu, Hmong, Akha, Lawa, Yao and Paduang. Thailand's Ministry of Interior estimated in June 2000 that there are about one million hill tribes and minority people in Thailand, of which nearly half have already obtained Thai nationality. Of the remaining, about 100,000 have qualified for Thai citizenship; about 90,000 entitled to permanent residency; an estimated 120,000 are children, who are also entitled to Thai citizenship. The remaining 190,000 tribal and minority people are permitted to stay temporarily in the country pending government's final decision on how to deal with them.

The origin of the stateless status of these hill tribes goes back to 1956 when the first country-wide national census failed to register them because in the words of Yindee Lertcharoenchok, a consultant to UNESCO, 'the presence of highland people in remote mountainous regions was overlooked by the authorities'. Thus, the hill tribes became 'stateless minorities' in their own country. Their Thai status was recognised only when the first census of highland population was conducted in 1969-1970. Nearly 120,000 hill tribe people in 16 provinces were covered in the survey. Between 2 January 1975 and 20 March 1992, a total of 182,065 highland people in 20 provinces were registered as Thai nationals. In 1985-1988, the second census of highland population was conducted in 18 provinces and nearly 580,000 people were covered. Following the survey, the government decided to register their personal record certificates and issue a highland identity card, commonly known as 'a blue card'. In 1990-1991, nearly 250,000 were registered and given a blue card. Under the Ministry of Interiors

In May 1999, the Thai government decided to set up a committee to study the problems in categorising hill tribe and other ethnic minorities, and the process of granting legal status to these different groups. Following recommendations by the committee, the Thai Government decided on 29 August 2000 to grant Thai citizenship or 'alien status', which constitutes permanent residency, to hundreds of thousands of hill tribes and other minority groups of people in Thailand. It decided to confer Thai citizenship on hill tribe children, who were born between 14 December 1972 and 25 February 1992. The Government also agreed to allow about 190,000 hill tribe and minority people, who entered Thailand after 3 October 1985 until 15 September 1999, to stay in the country for one year pending studies on how to deal with them.

On 28 August 2001, the government of former prime minister Thaksin Shinawatra decided to grant Thai citizenship to hill tribe children, whose parents were registered as 'alien' with permanent residency, regardless of when they were born. It also allowed those 190,000 tribal and highland minorities to stay in Thailand for another year.

To further speed up the process, UNESCO launched the 'Highland Birth and Citizenship Registration Promotion Project' in 2006. The project resulted in the most extensive study ever undertaken in Thailand of the relationship between birth registration, legal status and access to social services. The study includes approximately 11,000 (out of 18,000) highland households in Chiangmai, Chiangrai, and Mae Hongson. However, UNESCO's project is still very small. In order to account for all stateless population and also to make sure that the chance of leaving anyone behind is remote, the project needs to be expanded through the infusion of more funds, professional staffs as well as more cooperation from local NGOs and relevant government agencies.

Children of undocumented migrant workers

Decades of irregular migration to Sabah in eastern Malaysia have resulted in large numbers of undocumented children of migrants from the Philippines and Indonesia who are potentially at risk of statelessness. The estimated numbers of these stateless children is between 10,000 and 30,000.

Undocumented migrants in Malaysia are frequently targeted for arrest and deportation. This resulted in the deportation of the parents leaving their children homeless and to fend for themselves. Children of migrants who are born in Malaysia may be undocumented if they do not possess a birth certificate. In addition, if a child's parents have been deported and they have no other family ties in Malaysia, it may be difficult for them to trace their roots back to their parents' country of origin in order to apply for a passport. If no government recognises these undocumented children as nationals, then the children are vulnerable to statelessness.

However, under the UN Convention relating to the Status of Stateless Persons, the term 'stateless person' refers to anyone who is not considered a national by any State under the operation of its law. The absence of a birth certificate does not mean that a child is stateless. However, when a child does not have a birth certificate and he/she has no other way of tracing her family's country of origin to apply for a passport, then the child may indeed be stateless or at risk of statelessness.

In order to obtain a birth certificate in Malaysia, it is necessary to produce a valid passport for each parent and a certificate of marriage, documents which many migrants do not possess. In addition, those who work in rural areas are sometimes not able to travel to the national registration authority to apply for a birth certificate.

Malaysia is a signatory to the Convention on the Rights of the Child, which states in Article 7 that all children have a right to acquire nationality at birth. However, Malaysia does not grant citizenship by birth, choosing not to adhere to the principle of *jus soli*. Individuals can only apply for citizenship if one parent is a citizen of Malaysia. Foreign parents can register their children for birth certificates, but the certificates are stamped *orang asing* (foreigner), reflecting the fact that the parents are not citizens of Malaysia.

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Lives of Stateless Persons on the Move: Malaysia and Thailand

This section gives examples of the problems and opportunities stateless persons on the move face, specifically in Malaysia and Thailand. 'Stateless persons on the move' refers to those who cross the border in the hope of escaping persecution and finding asylum.

Problems

Malaysia

One of the biggest and least reported problems for a stateless person on the move is the threat of getting arrested for illegally entering another country and being indefinitely detained (Perks and Clifford, 2009). The 2008 UN Working Group on Arbitrary Detention Report also states that 'a straight analysis of the statistics indicates that in some countries the numbers of non-citizens in administrative detention exceeds the number of sentenced prisoners or detainees, who have or are suspected of having committed a crime'. In Malaysia, for example, Rohingyas are considered to be 'illegal migrants' once they are on their territory. Approximately 20,000–25,000 Rohingyas live in Malaysia. Of these, 16,662 Rohingyas have registered with the UNHCR as of 1 July 2009 (UNHCR Malaysia). Malaysia does not distinguish between refugees, asylum seekers and illegal migrants under its national law.

In a recent report *Trapped in a Cycle of Flight: Stateless Rohingya in Malaysia* by the Equal Rights Trust (January 2010), raids on 'illegal migrants' by the Malaysian Royal Police, Immigration Department and Iktan Relawan Rakyat (RELA – the People's Volunteer Corps assisting the Immigration department), are described as:

Raids are generally conducted either by the police, Immigration Department or more frequently as a joint RELA-Immigration operation. They do not differentiate between refugees, stateless persons and illegal migrants and generally disregard any UNHCR refugee documentation when making arrests. Such raids are known to take place in the middle of the night and without warrants, when RELA volunteers typically bang on people's doors demanding entry and break into their lodgings...Rohingya have also been arrested in markets, work places, tea shops, metro stations etc.

It is important to explain that the RELA is a group of 'volunteer vigilantes' (Hedman, 2008), originally created in the 1960s to guard against

communists and transformed into a group for tracking down 'illegal immigrants' in 2005 (Mydans, 2007). According to *The New Straits Times*, RELA membership went up from 340,000 in 2006 to 475,000 members in 2007. Malaysia's official law enforcement in comparison has only 200,000 members nationwide (Hedman, 2008). Zaidoun Asmuni, RELA's Director-General in 2007 aptly expressed why this volunteer corps has grown so much in popularity: 'We have no more Communists at the moment, but we are now facing illegal immigrants...as you know, in Malaysia illegal immigrants are enemy No. 2 [after drugs]' (Mydans, 2007).

Raids, like the one described above, are legally permissible under article 51(1) of the Malaysian Immigration Act. Once detained, Rohingyas are unable to return to Myanmar, as they are not legally considered citizens and Myanmar does not readily want to welcome them back. Most Rohingyas also do not want to return to the persecution they are bound to face in Myanmar. With illegal status in Malaysia and no country to return to, stateless, detained Rohingyas face the challenge of being indefinitely detained or being trafficked, especially since article 34(1) of the Malaysian Immigration Act does not state a maximum detention period. The danger of being trafficked is specific to Rohingyas, as they are not formally deported back to Myanmar, but either handed over to Thai immigration officials or left at the Malay-Thai border, where they are picked up by human traffickers (De Chickera and Lewa, 2010).

Agence France Press reported in July 2009 that Malaysian Police arrested five immigration officials for being part of an international trafficking syndicate, which 'sold' Rohingyas into forced labour or handed them over to traffickers who would charge them between 300 and 600 Ringgit for their illegal journey back into Malaysia. Criminal Investigation Department head Mohammed Bakri Zinin was quoted as saying:

According to a victim, the suspects were directly involved in human trafficking, starting from the Malaysia-Thailand border [to other] exit points to international countries...upon reaching the exit point, the victims were handed over to a syndicate before being taken to a neighbouring country.

Since this scandal, the Malaysian government has requested UNHCR to assist in screening and determining the status of Myanmar nationals (including Rohingyas) in detention centres (De Chickera and Lewa, 2010). It is too recent a development to predict what effect it will have on the numbers and treatment of 'illegal immigrants' in Malaysian detention centres.

Thailand

Thailand, like Malaysia, often does not distinguish between refugees, asylum seekers and illegal migrants. Thailand has a stronger relationship with UNHCR than Malaysia does, due to its history of hosting Burmese refugees on the Thailand-Myanmar border since the Indo-Chinese refugee crisis. However, since Thailand is not a signatory to the 1951 Refugee Convention, its domestic definition for refugees is restrictive, stating that they are 'people fleeing fighting.' Like Malaysia, it would rather give the label of 'illegal migrant' than 'refugee' or 'asylum seeker' to groups outside of its official refugee camps, such as the Hmong, Rohingya and Shan. In addition, the Hmong and Rohingya are also considered as 'national security threats' (Lewa, 2010).



'Bangkok-Hmong Refugee Children'

Source: <http://www.flickr.com/photos/msnina/> / CC BY-NC-SA 2.0

When, amid much international criticism, 4,300 Laotian Hmongs were involuntarily repatriated to Laos in December 2009, the Thai Foreign Ministry stated: 'Thai authorities managed the safe and orderly return of some 4,300 Laotian Hmong illegal migrants in the shelter at Nam Khao in Patchaboon Province and in the Immigration Detention Centre in Nong Khai Province to the Lao People's Democratic Republic, in accordance with the Thai Immigration Act'.

The Hmong are a complicated case in terms of status in Thailand, as some of them have officially been recognised as refugees by UNHCR, while others, who were born in Thailand, are considered stateless. Many of the Hmong originally fled from Laos to Thailand in the 1970s. The American Central Intelligence Agency (CIA) had trained thousands of Hmongs between 1960 and 1973 to fight communists in Laos. However in 1975, after the Communist takeover in Laos, the government has been accused of purposefully discriminating against ethnic Hmongs and Hmong families associated with the CIA from 1960-73, creating an environment of persecution (McCartan, 2010). Author Brian McCartan writes in the *Asia Times*:

There is longstanding controversy over the Hmong's status in Thailand. Both the Thai and Lao governments claim they are mainly economic migrants, an assessment that some human rights workers and observers of the Hmong situation confirm. However, they say several hundred from the Huay Nam Khao camp, and certainly the 158 people held in Nong Khai already recognised by the UNHCR, would be at a clear risk of government reprisals if they were repatriated to Laos (2010).

On December 28, 2009, the Thai military deported 4,371 Hmong from the Huay Nam Khao camp and 158 Hmong, who had been in Thai detention since 2006. These individuals were forcibly repatriated to Laos by January 4, 2010 (McCartan, 2010). While some Hmongs successfully resettled in the United States in the 1990s and in 2003, during this recent event, international concerns and requests for resettlement by the United Nations, several governments and NGOs were blatantly ignored.

Opportunities

Being granted refugee status is better than being stateless, but it is hard to acquire. According to the 1951 *Convention Relating to the Status of Refugees*, the term 'refugee' applies to any person who...

...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result

of such events, is unable or, owing to such fear, is unwilling to return to it.

In theory, stateless persons who qualify as a refugee within this definition must be eligible for protection under this Convention. However, in Southeast Asia, stateless persons often do not enjoy the status of refugee under the Refugee Convention.

For example, in response to its widely criticised 'push-back policy', the Thai government on 5 February 2009 announced its official policy of deporting Rohingyas, who illegally arrive in Thailand by boat, emphasising that refugee camps would not be opened to accept them (Mizzima, 2009). *Mizzima* quoted the Deputy Prime Minister, Suthep Thaugsuban, as saying that 'we have no plan to open refugee camps for them. We cannot afford to shoulder the extra burden of accommodating 300,000 refugees on our soil. We will deport them to Burma, which is their country of origin'. Thailand's position contrasted with that of UNHCR, which considers Rohingyas as refugees and hence urged the Thai government to offer them protection. Moreover, Thailand, just like most Southeast Asian countries, is not party to the Convention relating to the Status of Refugees (Human Development Report, 2009).

Authors Katherine Perks and Jarlath Clifford write in their article 'The legal limbo of detention':

When a stateless person is a refugee, he or she cannot be penalised for illegal entry or presence. Stateless persons who are not refugees do not enjoy such protection under the 1954 Convention relating to the Status of Stateless Persons and are therefore potentially at greater risk of detention for breach of immigration regulations (Forced Migration Review no. 32, 2009).

For example, in Bangladesh, 28,000 Rohingyas have refugee status and live in formal UNHCR run camps, where they have access to basic rights and services they would not have if they were stateless. Living in refugee camps, Rohingyas have access to healthcare, education, food and shelter because they are registered as an existing person. There is no danger of being indefinitely detained. However, for the approximately 200,000 Rohingyas in Bangladesh, who do not have refugee status and live in squatter camps near the formal refugee camps, life is even more complicated as they do not exist on paper anywhere. Their names, which may have been on family lists in Myanmar at some point in time, are no longer there, and in Bangladesh, they are also undocumented persons. In a recent interview with Chris Lewa, Founder and Coordinator of *The Arakan Project*, an organisation advocating on behalf of the Rohingyas, Lewa expressed:

[The] main problem with Rohingya outside of the camp...if they are abused, they cannot seek redress, because that means they have to enter the justice system and they would then be charged for illegal entry...Once in jail, they are likely to remain there indefinitely as Bangladesh does allow access to UNHCR and Burma would not re-admit them...so some of these individuals remain in jail for nearly 20 years!

It is clear from the forgoing discussion that the problems of refugees and statelessness often overlap. If a person is forced to leave a country of habitual residence because of well-founded fears of persecution, as laid down in the Refugee Convention, they are eligible to apply for refugee status. However, there are stateless people who do not have a well-founded fear of persecution, as well as many who never leave their long-term homes and are therefore not categorised as refugees. Similarly, some refugees may be stateless, but most are not (The World's Stateless People: Questions and Answers, UNHCR).

Small legislative and administrative changes can make a big difference, however there is potential for more. Malaysia and Thailand have made some small legislative and administrative changes, regarding the status, situation and treatment of stateless persons. This section highlights both the positive and negative aspects of these decisions.

Malaysia: Article 14 in the Constitution and the IMM13 Permit

Even though Article 14 in the Malaysian Constitution entitles any person born within the Malaysian Federation citizenship, including individuals who were not born citizens of any other country, the implementation of this article has been partial at best (De Chickera and Lewa, 2010). For example, children of mixed Malaysian-Rohingya marriages have been able to receive citizenship on a much more consistent basis than stateless Rohingya born in Malaysia (Sadiq, 2008).

Malaysia is also supposed to issue birth certificates to the children of refugees and undocumented migrant workers. However, in the case of stateless children in Sabah, eastern Malaysia, whose parents are undocumented Philippino and Indonesian migrant workers, it has been a complicated situation. In the 2009 report by the Asia-Pacific Mission for Migrants titled *Narrative Report: Fact Finding Mission on Undocumented Migrant Workers and Their Families in Sabah, Malaysia*, it is pointed out:

Public health services are not allocated to undocumented [migrant workers] while private hospitals charge very high. For children born in private clinics, they have to pay RM 1000 for a birth certificate. Migrant workers with legal documents only need to pay RM60.

In addition, children born to undocumented Philippino and Indonesian migrant workers in Sabah, who have received birth certificates, are categorized by the Malaysian government as *orang asing* (foreigner) and, therefore, do not have access to public education (Lynch and Teff, 2008). In many instances, it is not easy for the parents of stateless children in Sabah to obtain birth certificates for their children, as:

- They are undocumented migrant workers and fear being detained if they try to register their child
- Birth certificates are expensive
- Birth registration sites are difficult to reach

Table 1: Lessons and good practice for effective birth registration

Lessons learned	Examples
Changes in policy and legislation by governments	In 2008, Thailand passed a legislation so that all children born in Thailand, regardless of their parents' nationality can be registered
Partnering with a diverse range of organisations at	Civil society organisations, UN agencies, government,

different levels	community based organisations, can all be valuable partners in different steps of the process
Involving children and communities	Young volunteers in Cambodia have educated friends and elders by holding children's fairs and explaining the importance of birth registration through posters
Birth registrations systems need to be flexible	In Thailand, Plan International has helped create a network of local authorities, NGOs and community representatives in provinces with large hill tribe populations
Free registration and birth certification	Indonesia provides free birth registration
Retrospective registration may be necessary	Some countries' governments facilitate retrospective court hearings through free local court hearings, reducing the number of unregistered children
Integration of birth registration into the broader child rights agenda	Belgium has successfully linked the child registration issue to child soldiers and child trafficking
Integration of birth registration into existing public services	Linking it to primary healthcare, immunisation and school enrollment
Training and capacity building of birth registration officials	Sri Lanka has developed a toolkit to help officials carry out mobile registration
Monitoring is essential	National governments should have information systems for birth registration
Sustainability is best ensured by government ownership	

Source: Adapted from the article 'The Universal Birth Registration Campaign' by Simon Heap and Claire Cody (Forced Migration Review no. 32, 2009)

While far from a durable solution, **Malaysia also has temporary residence permits called IMM13**, permissible under section 55(1) of its Immigration Act, which states that the Home Minister can exempt 'any person or group of persons from the provisions of the Act' (De Chickera and Lewa, 2010). These permits are renewable on an annual basis for 90RM and allow access to public services, including healthcare and public education. Most importantly, permit holders are allowed to work. However, these permits can also be cancelled anytime at the Home Minister's discretion (De Chickera and Lewa, 2010) and according to the International Observatory on the Status of Statelessness:

The government issued temporary stay permits in the form of the IMM13 document, an immigration pass for stateless people. These documents do not represent a durable solution for ending the Rohingyas' statelessness. The government has not fulfilled its promise to grant the Rohingyas identity cards and temporary work permits.

Thailand: The administrative court system

As the Thai National Human Rights Commission does not have access to the national court system, an alternate legal space for stateless persons to have their voices heard is in the Thai Administrative Courts. Thai Administrative courts were set up by the 1997 Constitution and officially created in March 2001. They are composed of a Supreme Administrative Court and Administrative Courts of First Instance. Their mission from 2005-2008 was:

- To try and adjudicate administrative cases impartially and swiftly, in order to assure the protection of rights, liberties, and administer justice to the parties in dispute
- To set precedents in the area of administrative law as the guidelines for good practice in public administration for State agencies and officials (<http://www.admincourt.go.th>)

There are two specific cases, when decisions by the Administrative courts made a difference to stateless persons. In 2002, the District Chief, Thongchai Setthapat, of Mae Ai province in Chiang Mai, Thailand revoked the citizenship of 1,143 of its residents, rendering them stateless (Dangkrueng, 2001). However, Thai administrative courts overturned this decision and reinstated citizenship for these particular individuals (Keenapan, 2009).

In September 2009, Thong Mongdee, a stateless boy of Burmese origin and residing in Thailand, received a temporary Thai passport so he could attend an origami competition in Japan. This one-time travel permission was granted by the Administrative Court (Ahuja, 2009). This particular decision did not offer a durable solution, but may set precedence for future court cases involving statelessness.

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Conclusion: The Prevention and Reduction of Statelessness in Southeast Asia

Despite Southeast Asia's historical rejection of international legal instruments relating to UNHCR's 'persons of concern' including refugees, asylum seekers, returnees, the internally displaced and the stateless (Davies, 2008), it would be wrong to claim that there have not been some positive developments for stateless persons in this region. **A key aspect in preventing and reducing statelessness is to distinguish between problems of statelessness** that can be easily solved, such as ensuring that a child is registered at birth, versus problems of statelessness that are more protracted and complex, such as the situation of the Rohingyas.

Resolving more protracted situations of statelessness is almost easier for governments. In most cases what is lacking is political will. It can be done. It is just a matter of a government initiative to resolve the problem...it is not that one situation is easier than the

other...taking an example of integration such as the Bangladesh High Court decision, which granted citizenship to thousands of stateless Biharis, is a great one. These individuals now need to be integrated fully into society, which is happening very slowly. Regional processes, such as the Bali Forum on Trafficking or the ASEAN Intergovernmental Commission on Human Rights, can be useful in calling attention to the issue, but one must not forget to work with particular governments.

– Maureen Lynch, Senior Advocate on Stateless Initiatives, Refugees International

In the area of increasing birth registrations globally, UNICEF and Plan International have managed to have worldwide impact with their Universal Birth Registration Campaign, which started as a pilot project in 1998 but was continued by Plan International till 2009. For example, in Cambodia, Plan International managed to facilitate the registration of 12.14 million children between 2005 and 2009 (Plan International, 2009). In Indonesia, birth registration increased from three per cent to 72 per cent in one year, thanks to a major change in legislation in 2004 (Plan International, 2009). Birth certificates were made free of charge for children less than 18 years and the birth registration process was simplified by making it less bureaucratic and allowing for it to be carried out at the village level.

Another key aspect in preventing and reducing statelessness is change in legislation. For example, Malaysia and Thailand should re-examine the period of detention listed in their Immigration Acts

A third key aspect in preventing and reducing statelessness is advocacy for more bi-lateral and multi-lateral agreements between states in the Southeast Asia region. For example, in December 2009, Myanmar agreed to repatriate 9,000 Rohingyas, who have refugee status in Bangladesh (Paul, 2009). However, it should be noted that this particular bi-lateral agreement deals with involuntary repatriation, which is illegal under international law. It has often been suggested by scholars and practitioners that multi-lateral agreements may be more successful for problems of statelessness that are more protracted. In the case of the Rohingyas, it has been suggested that an agreement among Bangladesh, Myanmar, Thailand, the US and the UN, may lead to a more durable solution (Muntarhorn, 2009).

A fourth key aspect in preventing and reducing statelessness is the potential for a solution emerging from a regional body such as the Association of Southeast Asian Nations (ASEAN), the ASEAN Intergovernmental Body on Human Rights or the Bali Process for People Smuggling, Trafficking in Persons and Related Transnational Crime. With the recent establishment of the ASEAN Intergovernmental Commission on Human Rights, it is hoped that international human rights issues, such as statelessness, would be part of its mandate.

The treatment of stateless persons in their habitual residence versus stateless persons on the move needs to be further analysed. Particularly the issue of indefinite detainment and successful best practices on how to reduce and prevent statelessness, deserve more attention.

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References

Ahuja, Ambika, 'Stateless boy gets Thai Passport for origami event', *Taiwan News*, 4 September 2009. Available at: http://www.etaiwannews.com/etn/news_content.php?id=1049164&lang=eng_news&cate_img=logo_world&cate_rss=WORLD_eng

Berkeley, Bill, 'Stateless People, Violent States', *World Policy Institute*, 2009.

Burma Citizenship Law, UNHCR, 15 October 1982. Available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b4f71b>

Convention Relating to the Status of Stateless Persons, 1955. Available at <http://www.unhcr.org/3d4ab67f4.pdf>

'Count Every Child,' *Plan International*, 2009.

Davies, Sarah, 'Legitimising Rejection: International Refugee Law in Southeast Asia', Leiden, Boston: Martinus Nijhoff, 2008.

Dangkrueng, Supattat, '1,143 Villagers Made Stateless,' *Chiangmai Mail*, Volume I, 27 December 2002.

Garcia, Sean and Camilla Olsen, 'Rohingya: Burma's Forgotten Minority', *Refugees International Field Report*, 19 December 2008.

Hedman, Eva-Lotta, 'Refuge, Governmentality and Citizenship: Capturing 'Illegal Migrants' in Malaysia and Thailand', *Government and Opposition*, vol. 43, no. 2, 2008.

'Hill Tribes of Northern Thailand', Chiangmai Chimes, Available at <http://www.chiangmaichimes.com/hilltribe.html>

Human Development Report 2009, p. 164. Available at http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf Interview with Chris Lewa on December 16, 2009 in Bangkok, Thailand.

Keenapan, Nattha, 'The stateless classroom', *Bangkok Post*, 23 June, 2009.

Khin Maung Lay, 'Burma Fuels the Rohingya Tragedy', *Far Eastern Economic Review*, 6 March 2009. Available at <http://www.feer.com/essays/2009/march/burma-fuels-the-rohingya-tragedy>

Lewa, Chris "Asia's new boat people," *Forced Migration Review*, vol. 30, April 2008, pp. 40-42.

Interview with Chris Lewa conducted by the Centre for Non-Traditional Security Studies on 16 December 2009

Interview with Maureen Lynch conducted by the Centre for Non-Traditional Security Studies on 23 February 2010

Lewa, Chris, 'North Arakan: An open prison for the Rohingya in Burma', *Forced Migration Review*, vol. 32, pp. 11-13, April 2009.
'List of ethnic groups in Burma' Available at http://en.wikipedia.org/wiki/List_of_ethnic_groups_in_Burma

Lay, Khin Maung, 'Burma Fuels the Rohingya Tragedy', *Far Eastern Economic Review*, 6 March 2009. Available at <http://www.feer.com/essays/2009/march/burma-fuels-the-rohingya-tragedy>

Lertcharoenchok, Yindee, 'Searching for Identity', *Step-by-Step*, UN Inter-Agency Project on Trafficking in Women and Children in the Mekong Sub-region, Fourth Quarter, Issue 5, 2001. Available at <http://www.un.or.th/TraffickingProject/volume5.pdf>

Lynch, Maureen and Melanie Teff, 'Futures Denied: Statelessness among Infants, Children and Youth', *Refugees International*, October 2008.

'Malaysia: Undocumented Children in Sabah Vulnerable to Statelessness', 'The lost Children of Sabah'. Available at <http://www.gregconstantine.com/stories/sabah.swf>

McCartan, Brian, 'Fallen pawns in US's strategic game', *Asia Times*, 8 January 2010.

Mydans, Seth, 'A Growing Source of Fear for Migrants in Malaysia', *The New York Times*, 10 December 2007.

Muntarbhorn, Vitit, 'Human Rights: Burma's Rohingyas in flight and the solutions to their plight', *Bangkok Post*, 11 March 2009.

'Nationality and Reduction of Statelessness: International, Regional and National Perspectives', *Refugee Survey Quarterly*, vol. 25, 2006.

'Over 500 ethnic Rohingya boat people still missing at sea', *Asiaone*, 20 January 2009. Available at: <http://www.asiaone.com/News/Latest%2BNews/Asia/Story/A1Story20090120-115871.html>

Paul, Ruma, 'Bangladesh says Myanmar to take back 9,000 refugees', *Reuters India*, 29 December 2009. Available at <http://in.reuters.com/article/southAsiaNews/idINIndia-45038920091229>

'Perilous Plight: Burma's Rohingyas Take to the Seas', *Human Rights Watch*, May 2009.

Phiri Prytz, Pia, 'Rohingyas and refugee status in Bangladesh', *Forced Migration Review*, vol. 30, p. 35, January 2009.

Pichai, Usa, 'Thai citizenship to grant stateless near Burma border', *Mizzima*, 25 August 2009. Available at <http://www.mizzima.com/news/regional/2671-thai-citizenship-to-grant-stateless-near-burma-border.html>

'Press Release: Launch of UNESCO project on Birth Registration and Citizenship for Thailand's Hill Tribes', 27 April 2006. Available at http://www.unescobbk.org/fileadmin/user_upload/library/OPI/Documents/Press_Releases/CLT_HighlandMin_27.04.06.pdf

'Rohingyas face "slow-burning genocide": Activist', *Mizzima*, 26 January 2009. Available at <http://www.mizzima.com/news/regional/1604-rohingyas-face-slow-burning-genocide-activist.html>

Sadiq, K, 'Paper Citizens: How illegal immigrants acquire citizenship in developing countries', Oxford University Press US, 2008.

'Thailand discloses official policy to deport Rohingya refugees', *Mizzima*, 5 February 2009. Available at <http://www.mizzima.com/news/regional/1657-thailand-discloses-official-policy-to-deport-rohingya-refugees.html>

The International Observatory on Stateless, <http://www.nationalityforall.org/nepal>

The 1951 Convention Relating to the Status of Refugees p. 16.

'The lost Children of Sabah'. Available at <http://www.gregconstantine.com/stories/sabah.swf>

The World's Stateless People: Questions and Answers, United Nations High Commission for Refugees (UNHCR), 2006. Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=452611862&query=stateless>

UNHCR Global Appeal 2010-2011. Available at <http://www.unhcr.org/ga10/index.html#/asia/pacific>

'What is Statelessness?', UNHCR. Available at <http://www.unhcr.org/pages/49c3646c158.html>

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