

DEVELOPMENT OF CONCEPTS ON NATIONALITY AND THE EFFORTS TO REDUCE STATELESSNESS IN THAILAND¹

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INTRODUCTION

This article addresses three important issues: (1) the development of nationality laws in Thailand, (2) efforts of the Royal Thai Government (RTG) to solve problems of statelessness³ in Thai society; and (3) challenges facing the RTG in relation to stateless persons in Thailand. Sources of information used for the writing of this article include research that the writer has conducted from 1992 to the present⁴ and legal assistance that the writer has provided to stateless persons from 1994 to the present.⁵

To provide the best understanding of these three issues, this article reviews the history of Thai nationality laws and the problems of statelessness during each historical period of legal history. As well as considering the evolution of Thai law, this article reviews the efforts of the RTG to solve problems of statelessness in Thai society and provides case studies of statelessness in Thailand.

THE CONCEPT OF THAI NATIONALITY: IMPORTED FROM THE WESTERN WORLD

The concept of “Thai nationality” had not existed until Thai society was exposed to the western world. The word “Thai nationality” appeared for the first time in the *Nationality Act B.E. 2456 (1913)*. This law was enacted by King Rama VI on 10 April 1913 – prior to the establishment of the Thai Parliament in 1932.

Accordingly, when discussing the history of “Thai nationality”, we have to also mention the original “Customary Law of the Thai State related to the Concept of Being Thai” which predates the conception of the modern Thai state.

THE FIRST PERIOD OF THAI NATIONALITY: FROM THE ESTABLISHMENT OF THAI STATE TO 9 APRIL 1913

Development of Law on Nationality

The concept of “Thainess of people” (being a Thai person) originated in the Sukhothai Period, which is considered as the period when the Thai State was established – rather than the later Ratanakosin Period, which is considered as the fourth Period of the Thai State⁶.

From this time, citizenship was based on the application of the principle of *jus sanguinis*, with the “Thainess of people” being derived from the Thai blood line of either or both the father or mother. “Thainess of people” as understood by traditional Thai society was recognized as a social issue, rather than a political one.

Through Thai customary law, or “Jurisprudence” as it was referred to by King Rama VI, the “Thainess of people” was derived from:

- (1) the principle of *jus sanguinis* from the father,
- (2) the principle of *jus sanguinis* from the mother, or
- (3) royal decree.

It is worth noting that the “Thainess of people” in the first two conditions is based on the birth of a person and it is recognized as Natural Law. On the other hand, the “Thainess of people” in the third condition is the result of law legislated by humans (Positive Law).

It may be concluded that the original conception of the “Thainess of people” was identical to the concept of “nationality” in the western world.

Acquiring “Thainess” according to royal decree⁷ was the equivalent of naturalization. As King Rama VI realized that there were many aliens in Thailand who wished to acquire Thai nationality by naturalization, His Majesty ordered that the Ministry of Foreign Affairs⁸ be responsible for granting Thai nationality by naturalization. Hence, the King enacted the *Naturalization Act Ror Sor 130⁹ (1911)*¹⁰.

As a result of this law, naturalization of aliens in Thailand could occur if the alien was:

- (1) *sui juris* (legally adult) and had fully assimilated into Thai society;¹¹
- (2) *sui juris* and had socially contributed to Thailand;¹²
- (3) *sui juris* and formerly had Thai nationality;¹³
- (4) *sui juris* with parents who had obtained Thai nationality by naturalization;¹⁴
- (5) a woman whose husband had obtained Thai nationality by naturalization;¹⁵ or
- (6) a minor whose father had obtained Thai nationality by naturalization¹⁶.

It is worth noting that obtaining Thai nationality by naturalization in the first four situations required the permission of the RTG, whereas naturalization under the last two situations occurred automatically by operation of law.

It is also worth noting that, in principle, aliens who had the right to request Thai nationality had either to have fully assimilated into Thai society or had to clearly demonstrate their potential for assimilation into Thai society.

Situations of statelessness in Thailand

Was there any problem of statelessness before the *Nationality Act B.E. 2456 (1913)*? The answer is “no”.

Before 1913, no person in Thailand faced the problem of statelessness. The terms “State” or “nationality” were not known among Thai people. The ruling administration at that time established the nationality of the population by applying the principle of *jus sanguinis* and the principle of loyalty. There were

certain laws and policies enforced to determine duties and responsibilities of people from other “alien” societies. Nonetheless, these laws and policies did not grant special protection to Thai people. Thus, the problem of discrimination based on nationality did not occur during this period.

Challenges facing the RTG to deal with the problems of stateless persons

In the period prior to 1913, Thailand enacted civil registration law, *Census of People in the Kingdom Act Ror Sor 128 (1909)*. Thailand had no practice of issuing documents to certify that a person was a national and there was no proposal to legislate to allow people to request permission to immigrate to the Kingdom. Therefore, classification of natural persons of the Thai State was implemented by traditional nationality law. Exercising sovereignty on nationals by means of civil registration and identity cards did not begin until 1976. However, the idea of distinguishing between race and nationality in nationality legislation did not cause many conflicts between the RTG and ethnic minorities. In comparison, conflicts in relation to this issue between the Myanmar government and ethnic minorities did escalate into armed conflict.

THE SECOND PERIOD OF THAI NATIONALITY: 10 APRIL 1913 – 12 FEBRUARY 1952

Development of law on Nationality

Thai nationality in this second period was determined by the *Nationality Act B.E. 2495 (1913)*, which was in force between 10 April 1913 and 12 February 1952. This law was enacted by King Rama VI.

Under the *Nationality Act B.E. 2456 (1913)*, which was the first written nationality law,¹⁷ Thai nationality could be granted to a person who was:

- (1) a child of a lawful father who had Thai nationality;
- (2) a child of a lawful mother who had Thai nationality;
- (3) born in Thailand;
- (4) a woman legally married to a man who had Thai nationality;¹⁸ or
- (5) eligible for naturalization under the *Naturalization Act Ror Sor 130 (in 1911)*¹⁹.

Firstly, it is worth noting that the concepts of obtaining Thai nationality based on *jus sanguinis* and naturalization remained the same as they were in the period of customary law.

Secondly, it was the first time in Thai history that nationality could be granted on the basis of the *jus soli* principle (ie. by virtue of being born in Thailand).

Lastly, it was also the first time that Thai nationality could be granted to an alien woman who married a Thai man.

It is believed that the impetus for the *Nationality Act B.E. 2456 (1913)* and *Naturalization Act Ror Sor 130 (in 1911)* came from His Majesty King Rama VI's travel to European countries during which the King noticed the conflicts among

ethnic groups in European societies. These conflicts subsequently led to violence among these groups and were considered a potential cause of the collapse of the Tsar's Government in Russia. After returning from Europe, King Rama VI aimed to prevent conflicts among the many ethnic groups in Thai society by granting them Thai nationality regardless of their ethnicity.

Hence, Thai law during this period granted Thai nationality under the *jus soli* principle to children born in Thailand to alien parents. Nationality was granted regardless of whether or not the alien parents had entered the Kingdom legally or illegally²⁰ or the alien parents had the right to reside in the Kingdom temporarily or permanently. It is worth noting that the *Nationality Act B.E. 2456 (1913)* provided for the grant of Thai nationality to aliens. Over its 39 years of operation, this law united people of different ethnicities and people who came to Thailand from other countries. Thai nationality has promoted unity among these people. This can particularly be seen when comparing Thailand and Myanmar. During the same period, despite both countries having a range of ethnicities within their respective populations, Thailand has had far greater political unity as a result of its different approach to nationality. Even though Thailand, at present, is still confronting some problems of administration in relation to population, the magnitude of the problems is comparatively less than the problems of Myanmar, where ethnic minorities have demonstrated a greater resistance to administrative control. By allowing aliens and children of aliens born in Thailand to obtain Thai nationality, a higher level of assimilation has been achieved.

Situations of stateless persons in Thailand

Most of the aliens who immigrated into Thailand during this period were from China, India and Vietnam. At the time when these people were born in their countries of origin, there was no concept of civil registration, birth registration or identification documentation issued to nationals. If modern terminology is adopted, these immigrants, who were not recognized by their countries of origin and were not registered in the civil registry of their respective countries, could be categorized as "stateless persons".

When these people arrived in Thailand, the RTG of that period had no policy to expel them from the country. On the contrary, Thai law in that period granted Thai nationality to children born in Thailand and allowed these immigrants to be naturalized as Thai nationals, if they satisfied the legal requirements. Consequently, they might have been stateless persons in their countries of origin but there was a possibility to grant them Thai nationality under the *Nationality Act B.E. 2456 (1913)* when they immigrated to Thailand. Because of this arrangement, they became "Thai nationals" but they still retained their respective ethnicities (for example, an ethnic Chinese person could have Thai nationality).

The *Naturalization Act Ror Sor 130 (1911)* was a mechanism to naturalize the entire families of aliens. For instance, when the father or the husband was approved to be naturalized as a Thai citizen, his minor child or his wife would automatically be naturalized *ex lege*. Therefore, the whole family would become Thai citizens and it was not limited to only the person who sought Thai citizenship. Concerning

the children of aliens born in Thailand, Article 3(3) of *Nationality Act B.E. 2456 (1913)* stated that they were entitled to obtain Thai nationality by birth. As a consequence, the previous nationality status of foreigners or statelessness of these persons ceased rapidly when they immigrated to Thailand.

The *Nationality Act B.E. 2456 (1913)* was effective for such a long time that the majority of immigrants of Chinese, Indian, or Vietnamese ethnicity obtained Thai nationality. This law eliminated the problem of statelessness for many people. In fact, the Thai State at that time did not realize the impact of granting nationality on human rights. In fields of law and political science there are very limited records of this impact. Although there are many ethnicities in the country, Thailand was able to achieve national security. Ethnicity problems that led to political conflict and the weakening of the State's authority only appeared in the three southern provinces of Thailand.²¹ However, the problem of unrest in the south should not lead to the conclusion that all populations in the three provinces refused Thai nationality. In fact, there were only small radical groups there who opposed the authority of the State and sought to assert their cultural and religious identities. Only these small radical groups refused Thai nationality, with the majority of the population in the area accepting nationality and integration into Thai society.

Even though many people claimed Thai nationality under the *Nationality Act B.E. 2456 (1913)*, there were still many stateless persons. Statelessness usually resulted from circumstances where parents were absent during the survey for civil registration, conducted since 1956. Unfortunately, many of those who missed the survey were forced by governmental officials to accept an identification document called "Displaced Person with Burmese Nationality" during 1977-1979. In fact, this document was a result of a registration survey conducted for the persons who fled from fighting in Myanmar and arrived in Thailand before 19 March 1976.

For instance, consider the case of Ms. Mon Boonrueng, who is a stateless person. She was born in 1941 in the Mae Ai District, Chiangmai Province as a child of Ms. La Manchee and Mr. Phad Manchee. They were reportedly people originally from the Mae Ai District.

Ms. Mon had been facing the problem of being a stateless person since she was born until 1979. This was despite her parents being born before 1913 and being recognized as Thai nationals according to customary law by the team who conducted a survey for civil registration of the Department of Public Administration in 1956. As a result of this assessment, the survey team issued an identity card to Ms. La.

It is worth noting that, in principle, if Ms. La was recognized to have Thai nationality, Ms. Mon should have been recognized to have Thai nationality derived from her mother based on the principle of *jus sanguinis* according to article 3 (2) of *Nationality Act B.E. 2456 (1913)*. Accordingly, the authority should have issued an identity card to her during the survey for civil registration in 1956. However, because Ms. Mon was not at home on the day that the survey was conducted, she was excluded from the survey for civil registration in Mae Ai District.

It should be emphasized that Ms. La, Mr. Phad and Ms. Mon were born before the *Civil Registration Act B.E. 2499 (1956)*. Therefore, it was irrational

to require them to present their birth certificates in order to identify where they were born and who their parents are. This requirement was imposed without considering the factual situation. Even though there were no public documents to prove her connection with Ms. Mon and Thailand, there are witnesses and evidence, including her DNA, that could serve to prove her Thai nationality²².

Even though Ms. Mon had relatively clear evidence to prove that she is a Thai national by birth, the Department of Public Administration still forced her to hold a card called “Displaced Person with Burmese Nationality” in 1979. By holding this card, Ms. Mon is identified as a citizen of Thailand in the category of an alien who entered Thailand illegally but who the RTG permitted to reside in Thailand temporarily. In 1979, Ms. Mon had the status of a person under protection of the Thai State but the RTG did not recognize her Thai nationality. When it appeared that Ms. Mon was not recognized as a “national” by any State, it could be concluded that Ms. Mon was a stateless person.

There were many people in Mae Ai District facing the same problem as Ms. Mon. They had been struggling for a long time to prove their Thai nationality until they were recognized and issued their Identification Card for the first time in 1999 by the two Mae Ai district chief officers. At first glance, it could be concluded that the statelessness of Ms. Mon ended in 1999 and she could only enjoy her right to Thai nationality from that time, which is 58 years after her birth.

However, on 5 February 2002, another district officer deregistered Ms. Mon from the civil registry of Thai nationals, claiming that he had received an order from the Department of Public Administration that Ms. Mon did not have Thai nationality. Ms. Mon and another 1,242 persons in the Mae Ai District were deregistered from the civil registry of Thai nationals without the opportunity to defend themselves. All of them decided to file a case against the district chief officer at the administrative court.²³ In the case of Ms. Mon’s family, academics intervened to assist them and advised them to prove their relationship by having a DNA test. In the case of Ms. Mon and Ms. La, the DNA test results verified that they are indeed mother and daughter. Therefore, the Mae Ai district office agreed to re-register Ms. Mon and her family in the civil registrar as Thai nationals by birth. However, it is noted that it took over 8 months from when the results of the DNA test were verified for the academics to convince the Department of Public Administration to recognise the right to Thai nationality of Ms. Mon and her family.

The case of Ms. Mon Boonruang is a case-study of statelessness that occurred in Thai society because of the incomplete civil registration survey conducted by the Thai State in 1956. There is also a problem of lack of understanding of nationality laws among officials of the Department of Public Administration. This case is a very clear example of *de facto* statelessness.

Challenges facing the RTG regarding the administration of stateless persons

Nowadays, there are many persons who obtained Thai nationality pursuant to the *Nationality Act B.E. 2456 (1913)* but who continue to face problems of statelessness. It is recommended that all concerned parties coordinate to solve the

problem urgently. It is unfortunate that the Department of Public Administration has not already established effective procedures to solve this problem. However, responsibility for this situation is shared by the Department of Public Administration as well as the academics who should have conducted further research on indigenes who missed the survey on civil registration. The possibility for public sector and academic sector cooperation is a challenge facing the RTG at present. There is an immediate need for the RTG to find a solution to this problem so that there will not be any person who has to face the same problem of statelessness as Ms. Mon.

THE THIRD PERIOD OF THAI NATIONALITY: 13 FEBRUARY 1952 – 4 AUGUST 1965

Development of nationality law during this period

The nationality law which was in effect in this period was the *Nationality Act B.E. 2495 (1952)*. This Act is the second written law on nationality of Thailand and replaced the *Nationality Act B.E. 2456 (1913)*.

Those who obtained Thai nationality during this period are categorized as Thai nationals in the third period. Thai nationality during this period could be obtained under the same five circumstances as in the second period (see above).

However, in this third period, nationalism began to emerge and was reflected in the new nationality legislation. The legislation introduced an element of discrimination against aliens, especially Chinese people. There was a concept introduced to the legislation to limit acquisition of Thai nationality based on *jus soli*. For instance, it was legislated that the RTG would only grant Thai nationality based on *jus soli* where the mother had Thai nationality. It was also legislated that any person who obtained Thai nationality based on *jus soli* would immediately lose Thai nationality if that person accepted an identity card issued to an alien. However, the Ministry of the Interior annulled these two provisions in 1957 in response to the growing influence of the ethnic Chinese.

Situations of statelessness in Thailand

Nonetheless, the *Nationality Act B.E. 2495 (1952)* provided the opportunity to some aliens born outside Thailand to request Thai nationality by naturalization. In addition, some children born of naturalised Thai citizens could obtain Thai nationality based on *jus soli*. Some of the aliens and the children who obtained Thai nationality during this period were Chinese. These Chinese were not registered in the civil registry of China and it could be said that they were stateless persons if not accepted as Thai citizens.

A very clear case where a situation of statelessness was averted is that of Mr. Zong. He was born in Thailand in 1960 from Chinese parents who were born in China. However, his parents were not registered in the civil register of China. When his parents entered into Thailand in 1934, they accepted identity cards of aliens according to the *Alien Registration Act B.E. 2479 (1936)*. His parents were naturalized in 1958. Considering these facts, it could be concluded that

Mr. Zong was born after his parents obtained Thai nationality. Therefore, he has Thai nationality based on the application of both principles of *jus sanguinis* and *jus soli*.

Challenges facing the RTG on the administration of stateless persons

It is worth noting that there are many Chinese families in the same condition as Mr. Zong's family, but they have not been as fortunate in solving their problem of statelessness. For instance, there is the case of Mr. Au-Im, who entered Thailand at the same period as Mr. Zong's parents, prior to 1936. He also accepted the identity card of aliens, but he did not request to be naturalized. Therefore, Mr. Au-Im only had the status of an alien with rights to permanent residency in Thailand. As a consequence, Mr. Kittiphong, who is the son of Mr. Au-Im, became a stateless person, though he was born in Thailand. Even though the parents of Mr. Mr. Zong and Mr. Kittiphong have the same ethnic background, their right to nationality by naturalization and limited application of the principle of *jus soli* differed. Thai law does not provide the opportunity to solve the problem of statelessness for Mr. Au-Im and Mr. Kittiphong. However, Thai law did solve the problem of statelessness for Mr. Zong and his parents.

It is clear that Article 9 of the *Nationality Act B.E. 2495 (1952)* provided an opportunity to both families to request Thai nationality by naturalization, but Mr. Au-Im did not take that opportunity. However, it may not be concluded that it was the fault of Mr. Au-Im or the RTG. The reason may be the fact that the Eastern world did not seem to comprehend the concept of nationality. The case of Mr. Kittiphong should be taken as a learning process for the RTG and encourage a more proactive role in solving today's problems of statelessness. Another challenge facing the RTG is to solve the problem for Mr. Kittiphong, who was born in Thailand and has not ever left the country. It is noted here that the Cabinet of the RTG passed a resolution on the Strategy on the Administration of Personal Legal Status and Rights of Persons,²⁴ which aimed to solve the problem of stateless people such as Mr. Kittiphong, whose parents had missed the opportunity to resolve their statelessness problem.

THE FOURTH PERIOD OF THAI NATIONALITY: 5 AUGUST 1965 TO THE PRESENT

Development of nationality law

The *Nationality Act B.E. 2508 (1965)* is the third written law on nationality of Thailand, which replaced the *Nationality Act B.E. 2495 (1952)*. This law becomes effective in recognizing Thai nationality for the persons who have a connection with Thailand from 5 August 1965. The people who obtained Thai nationality as a result of this law are categorized as Thai nationals in the fourth period. Thai nationality is determined under the same five circumstances as the former two nationality laws (see above).

In this period, the law on Thai nationality is even more rigid. It appeared that the law tended to solve problems of statelessness for some groups while also creating problems of statelessness for others.

Whenever studying the problem of statelessness in Thailand, one could not ignore “the *Regulation of Revolutionary Party no. 337 (called Por Wor 337)*” because this regulation has resulted in many cases of statelessness since it was proclaimed on 14 December 1972.

Por Wor 337, dated 13 December 1972:

- (1) revokes the Thai nationality of persons who were born in Thailand before 14 December 1972 of an alien father with non-permanent residence, or an alien mother with non-permanent residence, in circumstances where the lawful father is absent; and
- (2) refuses to grant Thai nationality to any person born during 14 December 1972 – 25 February 1992 of an alien father with non-permanent residence, or an alien mother with non-permanent residence, in circumstances where the lawful father is absent.

Situations of statelessness in Thailand

Por Wor 337 was introduced because of the fear of communism in Southeast Asia during that period. The intention of this regulation was to prevent children of people from the communist countries gaining Thai nationality. However, *Por Wor 337* affected all aliens, which meant that there were negative consequences also in relation to many people who came from non-communist countries.

The worst consequence of *Por Wor 337* was on Chinese, Indian and Vietnamese people who had left their respective countries and immigrated to Thailand. These people were not registered in the civil registry of their respective countries. Even though it could be considered that the problems of statelessness for them and their children should have been solved by the above-mentioned nationality laws, *Por Wor 337* revoked Thai nationality of these children as their father or mother did not have permanent residence status or Thai nationality by naturalization by the time these children were born. It could be said that *Por Wor 337* destroyed the hospitality shown by the Thai State during 1913 – 1972, which was experienced by many children of aliens who were born in Thailand.

A very clear case study is Ms. Suda. She was born at Sawangdandin District, Sakonnakorn Province, Thailand on 1 January 1949. Her parents were ethnic Vietnamese, but they were not registered in the civil registry of Vietnam. Even though her parents were not registered in Vietnam, the fact that Ms. Suda was born in Thailand is sufficient for her to obtain Thai nationality based on the application of the *jus soli* principle under Article 3 (3) of the *Nationality Act B.E. 2456 (1913)*. Under this law, the fact of her parents being illegal immigrants or stateless had no negative effect on Ms. Suda’s ability to obtain Thai nationality when she was born. However, these facts became a valid basis for revoking her Thai nationality under *Por Wor 337* on 14 December 1972.

The situation of Ms. Suda deteriorated further due to the application of Article 11 of the *Nationality Act (Second Edition) B.E. 2535 (1992)*, which

stated that “aliens born in Thailand are illegal immigrants unless there is an order under Immigration Law specified otherwise.” As a consequence, Ms. Suda’s Thai nationality which had been granted by birth in 1949, was revoked 23 years later in 1972. She was considered as “an alien born in Thailand” during 1972-1999. Consequently, she has become an “illegal immigrant” since 26 February 1992.

It should be noted that when the Thai nationality of Ms. Suda was revoked, she immediately became a stateless person. However, she continued to benefit from protection because the Thai State still allowed her to be registered in civil registry as a temporary resident under the category of *Tor Ror 13*.

Most of the academic sector and civil society opposed *Por Wor 337* as it revoked Thai nationality based on *jus soli* that had been granted to children of aliens who were fully assimilated into Thai society. There are many academic articles explaining the negative impact of this regulation on the national security of Thailand. As a consequence, the RTG attempted to resolve the negative impact of *Por Wor 337* and the Article 11 (1) of the *Nationality Act (Second Edition) B.E. 2535 (1992)*, which caused personal legal status problems for aliens, and especially the problem of statelessness.

Subsequently, there was a Cabinet Resolution on 17 March 1992 permitting Vietnamese immigrants and their children born in Thailand (as the case of Ms. Suda and her parents) to request to be lawful immigrants and permanent residents of Thailand. The Cabinet also approved the grant of Thai nationality based on *jus soli* to Ms. Suda by the Minister of Interior. But, it is noted that it took seven years for Ms. Suda to enforce the policy following the Cabinet Resolution of 17 March 1992. Ms. Suda was only approved by the Minister of Interior to obtain Thai nationality on 22 October 1999.

As well as Vietnamese immigrants, the Cabinet established a clear policy to recognize the status of lawful immigrants and right to permanent residence of stateless minorities who immigrated into Thailand and fully assimilated into Thai society as follows:

- (1) immigrants of Thai ethnicity from Kong Island, Cambodia who immigrated into Thailand before 15 November 1977 (Cabinet Resolution on 5 February 1980);
- (2) ex-militants of the Chinese National Army (Cabinet Resolution on 12 June 1984);
- (3) civilians of Hor Chinese immigrants (Cabinet Resolution on 12 June 1984);
- (4) ex-communist Chinese bandits (Cabinet Resolution on 30 October 1990);
- (5) Lue Thai ethnic group (Cabinet Resolution on 17 March 1992);
- (6) displaced persons of Thai Ethnicity with Burmese Nationality (Cabinet Resolution on 27 May 1997);
- (7) Free Hor Chinese Group (Cabinet Resolution on 29 August 2000);
- (8) Nepali immigrants (Cabinet Resolution on 29 August 2000); and
- (9) displaced persons with Burmese nationality (Cabinet Resolution on 29 August 2000)

Moreover, the above-mentioned policies of the Cabinet also authorized the Minister of Interior to grant Thai nationality based on *jus soli* to the children of the groups mentioned if they are born in Thailand.

It is worth noting that Cabinet Resolutions determined a very clear policy. But, the implementation of the policy to grant Thai nationality to ethnic minorities which are stateless is very slow. In addition, some administrative arrangements for granting nationality are affected by corruption.

Challenges facing the Royal Thai Government regarding the administration of stateless persons

The last challenge facing the RTG in solving the problem of stateless persons is to attempt to enforce the existing laws and policies to their utmost effectiveness.

It could be concluded that the *Nationality Act B.E. 2508 (1965)* included all concepts and principles to solve the problem of stateless persons. Although these laws established the conditions for granting Thai nationality to the children born in Thailand from alien non-permanent resident parents, the request of these children to obtain Thai nationality needed the approval of the RTG and Ministry of the Interior.

Although there are more conditions than previous laws for granting Thai nationality according to the *Nationality Act B.E. 2508 (1965)*, there are many instances that showed the efforts of the RTG to reduce the problem of stateless persons in Thailand.

Firstly, on 29 October 1996, the RTG acceded to the 1966 International Covenant on Civil and Political Rights (ICCPR)²⁵. Article 24 (2) of ICCPR states that “Every child shall be registered immediately after birth and shall have a name.”, and the Article 24 (3) states that “Every child has the right to acquire a nationality.” Hence, accession to the ICCPR suggests that the RTG is trying to play a more proactive role in solving the problem of stateless persons for everyone in society, especially for children.

Secondly, the RTG, according to the suggestion of the National Security Council, has had more humanitarian policies from 1979 until now. The most significant Cabinet Resolution was passed on 18 January 2005, which aimed to issue a Proper Document²⁶ (Identity Document) to every stateless person in Thailand. It means that the undocumented persons will be registered in civil registry and have identity cards while they are in the process of determining their personal legal status. Although it is impossible for Thailand to grant Thai nationality to everyone in Thailand, the RTG promised to recognize “the right to personal legal status” for all human beings in Thailand.

Thirdly, civil society was very pleased on 31 March 2005 when the Department of Public Administration announced “*the Regulation of Central Registration Bureau on Conducting a Survey and Registration for the Undocumented Persons B.E. 2548 (2005)*”. This regulation established the procedures for issuing identity documents to undocumented persons who are not recognized in any civil registry of any State. These persons are stateless persons. In addition, according to this new regulation, there is an effort by the Ministry of Education to cooperate

on locating every stateless student. All stateless students will be registered and issued with an identity card containing a 13 digit number. This project began on 1 July 2005.

Fourthly, the international community should congratulate the RTG on another impressive effort to reduce the problem of stateless persons. On 5 July 2005, the Cabinet recognized “the right to education for all human beings in Thailand” under the project called “Education for All”, the Cabinet approved the following procedures:

- (1) expanding education opportunities for undocumented and stateless persons.
- (2) allocating funds to support the academic institutions that provide education to undocumented and stateless persons.
- (3) ordering the Ministry of Interior to establish a database (using the 13 digit identity number) for undocumented and stateless students in order to facilitate the status determination process and also to grant permission to travel outside the designated areas for education so that they may study until graduation, without requesting temporary travel permission. These procedures excluded “Displaced Persons Fleeing Fighting”²⁷ and other persons of concern to UNHCR.
- (4) ordering the Ministry of Education to provide appropriate education programs to children and youths who are “Displaced Persons Fleeing Fighting” in order to improve their quality of life and peaceful integration into society.

Fifthly, on 10 January 2006, the Cabinet approved in principle the proposal of the Ministry of Interior to implement the Strategy on the Administration of Personal Legal Status and Rights of Persons as approved by the Cabinet on 18 January 2005, which are as follows:

- (1) conducting a survey on civil registration and issuing identity documents to undocumented persons; and
- (2) expediting the recognition of personal legal status to persons who resided in Thailand for extended periods of time according to the Strategy on the Administration of Personal Legal Status and Rights of Persons.

CONCLUSION

To recapitulate, research conducted from 1992 to the present confirms that laws and policies of Thailand assisted in solving the problems of stateless persons. Although it is clear that there is a minor law that caused negative impact, these could be resolved through legislation and public policy responses of the RTG. Judicial proceedings have usually solved the problems of stateless persons in Thai society.

Both academics and civil society have great expectations of the admirable policies of the RTG on solving the problems of stateless persons. However, there are valid concerns found in the case studies which seem to contradict the generally positive approach of laws and policies in attempting to solve the problems.

For example, Ms. Aryu Namthep, who is a distinguished music teacher and has taught at least 100 students per year for more than 30 years, is still a stateless person. She has been complaining about her problem for over one year. Even though the problem has been discussed with the advisors of the Prime Minister and National Security Council, it is perceived that the Provincial Office does not recognize the existing laws.

Another example is that of Ms. Lun-Hom, a stateless student who requested to travel outside a designated district in accordance with Cabinet Resolution of 5 July 2005. However, she was informed by the district chief officer that he would only follow the Cabinet Resolution after there is an instruction from the Provincial Governor.

According to the weight of legal and political science opinion, Cabinet Resolutions take precedence over provincial orders. However, field research might indicate that the reverse is true in practice.

It should be reemphasized in this conclusion that it may be for this reason that the Cabinet Resolution, intended by the RTG to solve the problem of statelessness in Thailand, has not been fully effective.

Even Ms. Mon, who has Thai nationality based on the principle of *jus sanguinis*, was stateless for 65 years from the day she was born. This problem may be due to a tendency among some officials to disregard the law.

If RTG is determined to solve the problem of statelessness, there are two important approaches that needed to be implemented as follows:

- (1) sending instruction to regional and local governmental offices on the seriousness with which the RTG views this issue, and
- (2) supporting stateless persons, who directly suffer the effects of this situation, to learn the legal provisions and policies that serve to guarantee the enjoyment of their basic human rights.

These two approaches could prevent injustices from being perpetrated against stateless persons.

Notes

¹ This article was written in Thai and translated into English by Bongkot Napaumporn (a researcher of Professor Kanung Foundation) and Pongthep Yangsomcheep (a doctoral student with major in Integrated Sciences at Thammasat University and working as Assistant Field Officer of UNHCR at Regional Office in Thailand).

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³ In this article the term “stateless” is used to refer to *de jure* and *de facto* stateless persons as the terms are understood at the international level. A *de jure* stateless person is defined in the 1954 Convention relating to the Status of Stateless Persons as “a person who is not considered as a national by any State under the operation of its law” while *de facto* stateless generally refers to persons who do not enjoy an effective nationality. The author wishes to note, however, that in Thailand a distinction is commonly made between two subgroups of stateless persons. On the one hand, a Thai term that translates in English as “nationalityless” is used to refer to persons who are habitually resident in Thailand and whose rights are protected by the Thai State but who have neither Thai nor any other nationality. On the other hand, the term “stateless” is used in Thailand to refer to persons who are *de jure* or *de facto* stateless but who do not enjoy the protection provided to persons who are “nationalityless”.

⁴ The most important studies are as follows: (1) Status of Thai Nationality based on *Jus Soli*, research presented to the Research Committee on Supporting Curriculum, Thammasat University, in 1992; (2) The Evolution of Concept of Thai Nationality based on *Jus Soli*, an article for the Academic Fair of Thammasat, in 1994; (3) Recognition of Aliens to Assimilate to Thai Society: Legal Analysis, Problems and Policy Alternatives, a study conducted for the National Office of Research Support, in 1997; (4) Legal Status of Ethnic Minorities in Thailand, a study conducted for the National Office of Research Support, in 1998; (5) Evolution of Laws on

- Thai Nationality Based on *Jus Sanguinis* from Paternal Side, an article in the annual book of Ra-Pe Day; and (6) Thai Nationality by Naturalization, a study conducted for the Institute of the Education of Thai Subjects, Thammasat University, in 2000.
- ⁵ Phunthip Kanchanachittra Saisoonthorn, Personal Legal Status to the Right to Obtain Thai Nationality of Children with Problems of Proving their Identities, *Human Rights Review*, Year 1, No. 2, Office of the National Human Rights Commission, April-June 2003, p. 1136. http://www.archanwell.org/autopage/show_page.php?t=1&cs_id=275&cd_id=274 <http://www.archanwell.org/office/download.php?id=401&file=375.pdf&fol=1>
- ⁶ It is generally recognized that there are four historical periods of the Thai State, namely, (1) Sukhothai Period in which Sukhothai was the capital city, (2) Ayutthaya Period in which Ayutthaya was the capital city, (3) Thonburi Period in which Thonburi was the capital city, and (4) Rattanakosin Period during which Bangkok has been the capital city.
- ⁷ An example of this condition was the case of Mr. Fonstantins Forkon, a Greek coming into Thailand in Ayutthaya period. King Narai issued a royal decree granting him "Thainess" and the noble name "Chao Phraya Vitthayen".
- ⁸ At present, the authority is granted to the Minister of Interior, not Minister of Foreign Affairs.
- ⁹ In the 130th year of the Ratanakosin Period (Ror Sor 130).
- ¹⁰ This law was effective from 18 May 1911 to 12 February 1952.
- ¹¹ Article 6 of the *Naturalization Act in 1911*.
- ¹² Article 7 (1) of the *Naturalization Act in 1911*.
- ¹³ Article 7 (2) of the *Naturalization Act in 1911*.
- ¹⁴ Article 7 (3) of the *Naturalization Act in 1911*.
- ¹⁵ Article 12 of the *Naturalization Act in 1911*.
- ¹⁶ Article 13 of the *Naturalization Act in 1911*.
- ¹⁷ Note that the *Naturalization Act Ror Sor 130*¹⁸ (1911) was a general law rather than a specific nationality law.
- ¹⁸ The nationality law in this period automatically granted Thai nationality to an alien woman who legally married a husband of Thai nationality.
- ¹⁹ This law became effective along with the *Nationality Act B.E. 2456 (in 1913)* and both laws were replaced by the *Nationality Act B.E. 2495 (in 1952)*.
- ²⁰ Thailand passed the *Immigration Act B.E. 2470 (in 1927)* on 11 July 1927 in order to establish a regulation for aliens to request permission to enter the Kingdom.
- ²¹ These are Yala, Narathiwat and Pattani provinces.
- ²² It is noted that the Supreme Court had never required the persons who were born in Thailand before 1956 to present birth certificates or copies of civil registration in order to prove that they were born in Thailand (Supreme Court decision no. 5834/2537).
- ²³ It took 3 years for an Administrative Court to conduct the trial on this case before the Court handed down a judgment that supported the rights of the people in Mae Ai not to be deregistered from civil registration without providing the opportunity to defend themselves. The Administrative Court also held that the Mae Ai district chief officer who gave the order was in breach of the procedures of administrative law.
- ²⁴ Cabinet Resolution of 18 January 2003.
- ²⁵ The International Covenant on Civil and Political Rights has been in force in Thailand since 30 January 1997.
- ²⁶ The term "Proper Document" was used by the Prime Minister, which means identity document.
- ²⁷ "Displaced Persons Fleeing Fighting" is a term used by the RTG to refer to "refugees". These refugees are living in camps along Thai-Myanmar border.