Legal Identity and Statelessness in Southeast Asia

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I S S U E S

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SUMMARY Millions of people worldwide are stateless or do not have proof of their legal identity. As a result, they face daily obstacles from lack of access to a range of social, political, and economic rights. Around 40 percent of the identified stateless population live in the Asia Pacific region, with the majority of them residing in the countries of Southeast Asia. While some of these people are refugees or migrants, most belong to minorities living in the country where they were born. Their lack of proof of nationality or other forms of legal identity poses significant challenges to human rights, governance, and development. International conventions aim at improving their status, but have been poorly subscribed. Much of the work to solve the problems will have to be done at the national level, where interest is increasing. Since the forced mass exodus of Rohingya from Myanmar, many have reached the shores of Malaysia and Indonesia, driving home the implications of unresolved situations of statelessness.

Legal Identity and Statelessness

Those without proof of their legal identity face struggles from lack of access to a range of rights and services, with adverse impact on their living conditions. The UN High Commissioner for Refugees (UNHCR) estimates that at least 4.2 million people around the world are not considered a national by any state.[1] This is likely to be a significant underestimate as fewer than half of all states report any data on statelessness. The Institute on Statelessness and Inclusion believes that even 15 million is a conservative estimate.[2] Around 40 per cent of the identified global stateless population live in the Asia Pacific region; of these, some of the largest stateless populations live in Southeast Asia. With over one million stateless people, the Rohingya from Myanmar—now displaced across Myanmar, Bangladesh, and other locations in the region—remain the most prominent case. The UNHCR has also reported large stateless populations in Thailand (475,009), Malaysia (108,332), Cambodia (57,444), Vietnam (30,581), and Brunei (20,863).[3] Deficiencies in data collection mean the actual number of stateless persons in the region is likely higher.

"Statelessness" is legally understood as not being recognized as a national under the operation of the laws of any state.[4] The central international legal instruments meant to protect the rights of stateless persons are the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Southeast Asian states have a poor record in ratifying these conventions: only the Philippines has acceded to the 1954 Convention, and none have become party to the 1961 Convention. However, other human rights treaties with higher accession rates in the region, such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), stipulate important safeguards against statelessness. Moreover, inspired by the Universal Declaration of Human Rights, the 2012 ASEAN Human Rights Declaration provides under Article 18 that "every person has the right to a nationality as prescribed by law".

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Over the past years, momentum has been building to tackle legal identity and statelessness as issues of global concern, and this has also reinvigorated the discourse in the region. The UNHCR has launched the ambitious "iBelong Campaign," with the goal of eradicating statelessness by 2024.[5] In 2015, UN member states also agreed to include a target in the Sustainable Development Goals (SDGs) which aims to "provide legal identity for all" by 2030. The adoption of this target (16.9) reflects a growing recognition that official proof of legal identity has become a critical factor in development. While "legal identity" is not defined in the SDGs and has no definition in international law, the United Nations has adopted an operational definition that now focuses on birth registration.[6] Birth registration is an important foundational step to establish other forms of legal identities, including nationality. Yet, birth certificates on their own are in most cases not the identity credential necessary to access rights, services, and protections. The most robust legal identity remains nationality, highlighting the prevalence of statelessness as a particular challenge.

Causes of Statelessness and Legal Identity Problems in Southeast Asia

The causes of statelessness and other legal identity problems are context-specific and interconnected. Common causes in Southeast Asia relate to colonial legacies; discrimination, including gender discrimination; weaknesses in civil registration systems; lack of protections for migrants; mobile lifestyles; and inadequate legal frameworks.

The long shadow of colonial rule. Many situations of statelessness have deep roots in countries' colonial history. Ethnicity and nationhood are Western-derived concepts that were embraced and modified by Southeast Asian countries during the twentieth century.[7] Many state-building projects were confined to borders drawn by colonial powers and have since witnessed a dynamic reformulation of citizenship regimes, often nurtured by intercommunal tensions that had been exacerbated during colonial rule.[8] It was at this point

that social exclusion turned into the modern legal-political form of "statelessness." Today, the legal frameworks on nationality in the region are shaped by a prevalence of modes of attribution and acquisition of nationality that depend on the nationality of one or both parents (known legally as *jus sanguinis*). Single nationality remains the norm, with some exceptions.[9]

Discriminatory policies and practices. Many situations of statelessness have their roots in discriminatory regimes or practices which exclude certain groups from the citizenry. It is no coincidence that 75 percent of the known stateless populations worldwide belong to minorities.[10] The majority of stateless populations in Southeast Asia are minorities who live in the country in which they were born. Examples of such *in situ* statelessness are the Rohingya in Myanmar, so-called Hill Tribes in Thailand, certain Vietnamese minority populations in Cambodia, or former Chinese immigrants in Brunei. The discriminatory provisions in Myanmar's 1982 Citizenship Law are just the most obvious example of many in the region.[11] In other contexts, laws may be well drafted but their application has consistently shown discriminatory patterns. An example are the difficulties faced by stateless Vietnamese populations in Cambodia in accessing birth registration, not to mention nationality.[12]

Gender-discriminatory nationality laws. A specific form of discrimination are laws that do not afford equal nationality rights for men and women.[13] Brunei and Malaysia are among the countries in the region that still apply gendered nationality laws. Under the nationality law of Brunei, only fathers are allowed to confer nationality on their children. Such provisions have particularly affected children born of mixed marriages or those born outside the territory of their state. Similarly, some states have only limited safeguards against statelessness for children born out of wedlock.

Deficiencies in civil registration systems. Weak civil registration systems, including birth registration, are another factor contributing to statelessness or lack of proof of legal identity.[14] Shortcomings in civil registration expose children to risks of statelessness because they leave them without proof of parentage or birth in a country, all of which constitute vital facts for claiming nationality. The rates of birth registration vary greatly across the region, ranging in 2014 from 62 percent in Cambodia and 67 percent in Indonesia to 96 percent in Vietnam and 99 percent in Thailand.[15] Common barriers to registration include lack of awareness, inaccessibility of registration systems, or corruption. Such problems particularly affect minorities and remote communities, as well as migrant or refugee populations, highlighting the intersectional nature of legal identity challenges.

Cross-border mobility. Southeast Asia is a region with rising cross-border labor migration. It contains both countries of origin (e.g., Myanmar, Indonesia, the Philippines, and Cambodia) and destination countries (e.g., Singapore and Brunei), as well as countries of both origin and destination (e.g., Thailand and Malaysia). Irregular migration outside regulatory norms has formed around 40 percent of the total size of migration.[16] Human trafficking has also been a factor in cross-border mobility.[17] Distinctions between migrant categories, such as labor migrants, refugees, or trafficking victims, may become blurred. Prominent examples of such mixed migration movements prompted by a multiplicity of factors occur from Myanmar into Thailand, or from the Philippines and Indonesia into Sabah, Malaysia. A lack of legal protection, restrictive immigration regimes, limited rights for temporary workers, and low registration rates among migrants often create conditions where children grow up without proof of legal identity, putting them at risk of statelessness.[18]

Historical or present mobile lifestyles. Other legal identity problems associated with mobility concern populations who have lived historically mobile lifestyles. Marine mobile populations or "sea nomads" in the region include the Moken of the Andaman Sea of Myanmar and Thailand, and the Bajau Laut of the Sulu Sea. State-based nationality laws and registrations systems grounded in a

system of fixed territorial links struggle to capture the particularities of such populations, who have lived mobile lifestyles for centuries.[19] As a result of their past or present mobile lifestyle and ongoing discrimination, many Moken and Bajau Laut communities are not recognized as citizens by the states on whose territory they live.[20]

Inadequate legal safeguards. Laws in many states in the region have insufficient safeguards to prevent legal identity problems or statelessness. This is especially true of nationality laws. Many states' laws permit loss or withdrawal of nationality on various grounds, including provisions allowing citizens to voluntarily renounce their citizenship even if they are rendered stateless. This has caused statelessness in cross-border marriages, such as those between Vietnamese women and foreign men coming mainly from East Asia. Many Vietnamese brides became stateless when they had to renounce their own citizenship in order to acquire the nationality of their foreign husbands, but failed to attain a new nationality.[21] Children are disproportionately affected by inadequate legal safeguards, more so if the parents are unknown. Protections for foundlings is absent in the nationality laws of a number of countries in the region.[22]

The Thai government has committed to achieving 'zero statelessness' and the Philippines has launched a National Action Plan to end statelessness by 2024. However, other governments remain reluctant to take action

Responses to Statelessness and Other Legal Identity Problems

Large populations without access to their full social, political, and economic rights present significant challenges to governance, social cohesion, and development. Some governments in Southeast Asia are gradually recognizing the problem.[23] For instance, in 2016, the Thai government expressed its commitment to achieving the goal of "zero statelessness" and, in 2017, the Philippines launched a National Action Plan to end statelessness by 2024. However, other governments remain reluctant to take action. Given the low accession rates to the statelessness conventions as well as the lack of enforceable regional frameworks addressing statelessness, much of the heavy lifting to solve the problem will have to be done at the country level. Policy responses of states in

the region have focused on identifying affected persons, improving civil registration, law reforms, facilitating naturalization, and building new digital identification systems.

Identifying affected individuals and groups. Data on stateless persons or those without proof of legal identity are hard to come by due to, among other factors, lack of commonly agreed definitions, logistical barriers, or simply lack of political will to address the problem. This leads to insufficient or inaccurate statistical information and impedes the formulation of effective policies. Yet, there are also positive examples in the region, such as Thailand, the Philippines, and Malaysia, where both government and NGO-led initiatives to identify stateless or at-risk persons led to an improvement in the level of data on affected populations.

In 2005, the Thai government adopted the "National Strategy on Administration of Legal Status and the Rights of Persons" with the objective of ensuring that non-nationals obtain a legal status. The strategy covered both long-term resident stateless populations and undocumented migrant workers. Together with an amendment to the civil registration act, in 2008, this now allows stateless or undocumented persons to be recorded by the authorities and issued an identity document, which enables them to access basic rights such as health care. For undocumented migrant workers and their children, Thailand established a cross-border nationality verification scheme in cooperation with countries of origin, especially Cambodia, Lao PDR, and Myanmar.[24]

The Philippines offers another example of cross-border collaboration on identifying stateless populations. There, the government, in partnership with the Indonesian government, carried out a mapping exercise, from 2012 to 2014, to resolve the citizenship status of thousands of long-term residents of Indonesian descent. By 2019, more than 90 percent of the 8,745 registered individuals had their citizenship confirmed.[25] The Philippines has also established, in 2012, a statelessness determination procedure. As the only state in the region thus far to have established such a mechanism, it enables the identification and recognition of stateless individuals, in accordance with the country's

obligations under the 1954 Convention.[26]

An example of governmental and nongovernmental collaboration has come from Malaysia. This concerned the identification and registration of undocumented stateless Indians of Tamil descent, who had migrated to Malaysia during British colonial times. Efforts at documenting this population had been carried out by a local NGO, the Development of Human Resources in Rural Areas (DHRRA), with support from UNHCR and the Malaysian government. Since 2014, DHRRA's paralegal program documented the cases of at least 12,350 individuals and assisted with registration and nationality applications.[27] The case shows how community-based assistance programs can help to overcome fears among affected populations about certain government registration schemes.

Expanding civil registration. A specific form of registration is civil registration, which records vital events in an individual's life, including birth and death. Birth registration can play an important role in preventing or reducing statelessness and other legal identity problems, as acknowledged through the incorporation of a birth registration indicator for measuring the implementation of the SDG target 16.9. Recognizing the importance of civil registration, in 2014 states in the region proclaimed the Asia Pacific Civil Registration and Vital Statistics (CRVS) Decade with the goal of improving civil registration systems by 2024, including achieving universal birth registration.[28] Further initiatives emerged from the ongoing Bali Process on People Smuggling and Trafficking in Persons and Related Transnational Crime, which designed a civil registration assessment toolkit.[29]

These initiatives have invigorated CRVS efforts in Southeast Asia, and most states in the region are now aiming for universal birth registration. After reforming its civil registration law and providing a more flexible registration system, Thailand now has the highest birth registration rate in the region. Vietnam and the Philippines follow closely by recording similarly high levels of birth registration. Yet, replicating this success in other states in the region has been challenging, especially in those with high income disparities, such as Indonesia, Cambodia, and Myanmar.[30] Even in countries

with high registration rates, persistent pockets of low registration exist, mostly affecting marginalized, hard-to-reach or stateless populations. Discrimination, inequalities, hidden costs, linguistic and logistical barriers, as well as difficulties with late birth registration, all pose challenges for achieving universal birth registration.

Reforming laws and improving legal protections. Tackling deficient or discriminatory laws through legislative reforms can improve protections for those affected by statelessness or a lack of proof of legal identity. For instance, a number of Southeast Asian states have amended their nationality laws. Indonesia's post-Suharto nationality law reform, in 2006, removed a differentiation between "natives" and "non-natives" in the law and thereby reduced barriers faced by long-term resident minorities of Chinese and Indian descent in confirming their nationality. This law reform also addressed the situation of Indonesian migrants living overseas, who would no longer lose their citizenship if that would render them stateless. In 2008, Vietnam instituted legal reforms in response to the problems faced by women marrying foreign nationals. The Vietnamese government enabled restoration of Vietnamese nationality to affected women and their children, and also enacted a condition requiring renunciation of citizenship to be subjected to confirmation that the applicant had obtained a new nationality.[31]

While several countries in the region have reformed their nationality laws to bring them closer to compliance with obligations under CEDAW, gender-discriminatory nationality laws remain a problem in some states, especially Brunei and Malaysia. Moreover, many children still struggle to acquire a nationality due to the *jus sanguinis* nationality laws dominant in the region, especially when they are born to unknown or stateless parents. A number of states have enacted laws that protect foundlings against statelessness, including Lao PDR, Cambodia, Indonesia, Malaysia, Singapore, Thailand, and Vietnam. Finally, regional human rights instruments, such the ASEAN Convention Against Trafficking in Persons (ACTIP), have provided entry points for developing protection standards for some affected persons.[32]

Community-based assistance programs can help to overcome fears among affected populations about government registration schemes

Reducing statelessness through naturalization. Given the scale of statelessness in Southeast Asia, prevention alone will not suffice to reduce it. One solution entails facilitating the acquisition of nationality either through naturalization or recognition of another robust legal status in the countries where affected populations reside. This is particularly true for cases of *in situ* statelessness, where the only viable solution is the acquisition of the nationality of the country in which people have resided for generations. Effective responses to situations of *in situ* statelessness, such as in Myanmar and Cambodia, have yet to be developed. Since 2015, Cambodia has embarked on a census among its Vietnamese minority population, although it remains unclear whether this will result in a pathway to Cambodian nationality or a new legal status with better protections than currently available.[33]

Vietnam provides an example for how situations of long-term refugee populations of undetermined nationality could be resolved. During the 1970s, hundreds of thousands of refugees fled from atrocities in neighboring Cambodia. More than 10,000 refugees, who were not considered nationals by the Cambodian government, remained in Vietnam. After living more than three decades in limbo, the Vietnamese government eventually considered naturalization for the remaining population. After the requirements for documentary proof were eased in 2010, these former displaced populations and their children have been able to acquire Vietnamese nationality.[34]

Conceiving inclusive digital identification systems. Following a global trend, many states in Southeast Asia have been making use of the spread of new technologies to implement digital identification management systems, often in combination with biometric identifiers.[35] This has involved both new national-level digital ID systems, and also systems for specific purposes, such as the provision of social assistance or health services. Some examples in the region include Malaysia's "MyKad" system for citizens and permanent residents (introduced in 2001) and Indonesia's national ID system "e-KTP" that records in separate versions both citizens and

other residents (launched in 2011). Coverage and eligibility for inclusion in such systems varies across the region. In Cambodia, for instance, most long-term Vietnamese residents remain excluded from the national ID system, although the country is now planning a more ambitious integrated population identification system. There is potential for these new identification systems to assist with expanding the reach of government services, as well as reducing abuse in service provision. However, there are also risks, especially when new digital identification systems are coupled with rules that make proof of legal identity mandatory for accessing rights and services. In contexts with discriminatory laws or practices, such an approach may risk intensifying exclusion from rights and protections for certain populations.[36]

Discussion and Outlook

Statelessness and other legal identity problems remain a widespread problem in Southeast Asia. However, growing interest by states in ameliorating the problem is an acknowledgment of the detrimental effects such exclusion has on economic development, social cohesion, and stability. The initiatives and reforms undertaken during the past decade or so have led to the reduction of statelessness in some states. While the Philippines has thus far been the only state in the region which has aligned itself with relevant international legal frameworks, Thailand and Vietnam both show that determined government action is the key to resolution. However, enhanced efforts at identification are also making more affected populations visible. Persistent problems remain, especially regarding protracted situations of *in situ* statelessness—often nurtured by longstanding social exclusion and discrimination, such as in Myanmar and Cambodia—and the continuous growth of intra-regional migration. Addressing these problems calls for upscaling many of the responses identified in this paper, including further awareness-raising to tackle deeply held views about identity and belonging, capacity development among officials and more generous naturalization programs for long-term resident populations without proof of nationality.

Following a global trend, many states in Southeast Asia have been making use of new technologies to implement digital identification management systems

Such action requires political will, long-term strategies, and the mobilization of a broader coalition of actors. Regional fora could provide one avenue for cross-border learning and collaboration on legal identity and statelessness. The ASEAN human rights bodies, especially the ASEAN Intergovernmental Commission on Human Rights and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, have stated that regional cooperation and action is needed to tackle the problem.[37] Regional knowledge exchange on CRVS is already well-advanced. Moreover, in the context of its campaign to end statelessness, the UNHCR has become a partner for technical assistance to governments and NGOs in the region. Nongovernmental actors have also moved closer together, including by forming the Statelessness Network Asia Pacific in 2015.[38] The attention of these actors will now have to focus on addressing the more intractable and politically sensitive situations that cannot be resolved through technical assistance and law reform alone. In a region where state sovereignty frequently prevails over international frameworks, collective efforts need to be tailored to specific country contexts and engage states' underlying concerns and sensitivities with respect to the social inclusion of particular individuals and communities.

Notes

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[2] Institute on Statelessness and Inclusion, *The World's Stateless 2020: Deprivation of Nationality* (March 2020).

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[4] Convention Relating to the Status of Stateless Persons, 1954, article 1(1).

[5] See more at https://www.unhcr.org/ibelong/ (accessed 4 August 2020).

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[9] There is some acceptance of dual nationality in Indonesia (for children reaching the age of 18), Vietnam (for "Overseas Vietnamese"), Cambodia, the Philippines, and Thailand. See Olivier Vonk (2017), *Comparative Report: Citizenship in Asia*, Comparative Reports 2017/04, GLOBALCIT.

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