# Non-Traditional Security in Asia

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# 7

# FORCED MIGRATION

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Since 2008 there have been numerous reports in the international media of Rohingya, a Muslim minority group from Myanmar, attempting to escape to Thailand and Malaysia, via perilous boat journeys. After being "pushed back" by Thai authorities, there was pressure on ASEAN and the Bali Process for People Smuggling, Trafficking in Persons and Related Transnational Crime, to address the root cause of statelessness. The aim of this chapter is to survey the current status of forced migration in Asia drawing on contemporary examples to illustrate the various manifestations of the concept. There is a particular focus on the issue of statelessness as it is a prevalent concern in the region, where post-colonial states have split ethnic groups across artificial borders and displaced many who are not recognized by the national government as part of the state. The first section of this chapter gives an overview at both global and regional levels and tracing the issue of statelessness, its causes and consequences. In addition, this chapter explains the significance of statelessness under international law, highlights cases in Southeast and South Asia, and concludes by reviewing the types of solutions that have potential for being effective.

Between 18 and 30 December 2008, the Royal Thai Navy pushed out to sea at least 992 Rohingyas who attempted to enter Thailand after fleeing Myanmar. *TIME* reported that the first group of 412 people sailed for twelve days in a contingent of two boats. The Thai navy intercepted them and moved them to a barren isle off the Thai mainland. They were later towed back to sea in a boat, which drifted for ten days and ten nights. The Indian coast guard rescued 107 of them on December 27 whereas more

than 300 of them were believed to have drowned. Another group of 580, arrested around December 30, was put into four boats whose engines were removed, then towed together and abandoned at sea. Of this group, one boat with 193 onboard was rescued in Indonesia's Sabang Island in Aceh on January 7, and another boat with 150 onboard was rescued in Tillanchang Island, Andaman and Nicobar of India, on January 10. Two boats with a total of 237 people are reportedly missing.

Rohingyas as well as other ethnic groups fleeing Myanmar to escape oppression or to find a better life elsewhere is not a new phenomenon. What was new, according to Human Rights Watch, was that between January and February 2009, the plight of Rohingyas was for the first time captured on camera and disseminated widely. These pictures captured by tourists showed hundreds of Rohingya men lying, head first, in rows along the beach guarded by armed Thai authorities, including police, navy and national park service officials. They appeared first in the *South China Morning Post* on 15 January 2009 and later in the BBC and then CNN. What followed was an international condemnation of Thailand's "push-back" policy. The Thai government, however, stood by its official policy of deporting Rohingyas, as they arrived illegally, and refused to recognize them as refugees or asylum seekers.

While issues like migration, human trafficking and transnational crime have been discussed at great length by regional multilateral forums like the Association of South East Asian Nations (ASEAN), the issue of statelessness itself has not been adequately addressed and is still poorly understood in the region. According to the United Nations High Commission for Refugees (UNHCR) in 2008, Southeast Asia has the world's largest stateless population. 4.3 million of the world's 6.6 million stateless population are to be found in the region with Thailand alone hosting an estimated 3 million stateless people. The Rohingyas are just one group of stateless people in the region.[1]

## THE PROBLEM OF STATELESSNESS

## Who are the Stateless?

For the majority of the world's population, citizenship and nationality are taken for granted. Owning a birth certificate and/or passport gives many of us access to precious economic, political and social rights, which are *supposed* to be available for all. Article 15 of the Universal Declaration of Human Rights (UDHR) states that everyone has a right to nationality and that no one shall be deprived of having a nationality or changing their nationality.

Stateless people lack identity documentation, and often live in a precarious situation, on the margins of society.

A stateless person is defined by the UNHCR as someone without nationality or citizenship. The majority of stateless persons **are not** refugees or asylum seekers, however, in some cases they can be if a state decides to recognize them as such. Often they are part of a repressed minority group within a state, for example Rohingyas in Myanmar, the Roma in Romania or the Bidun in Jordan. There are two types of stateless persons, the *de jure* and *de facto* stateless. The *de jure* stateless are not recognized as nationals under the laws of any country, whereas *de facto* stateless persons have legal nationality, but they cannot prove it either due to lack of documentation or because it is not effective.[2] *De jure* stateless persons could be members of repressed minority groups, who may have been nationals of the country they inhabit, at one time, but had their citizenship revoked during a time of political change in that country. *De facto* stateless persons are often children who were never registered at birth. *De facto* stateless persons also have problems in proving their former nationality, for lack of proper documentation or certificates. It should be noted that there are often situations when it is difficult to distinguish between *de jure* and *de facto* statelessness. UNHCR further emphasizes:

> Stateless people face numerous difficulties in their daily lives: they lack access to health care, education, property rights and the ability to move freely. They are also vulnerable to arbitrary treatment and crimes like trafficking. Their marginalisation can create tensions in society and lead to instability at an international level, including, in extreme cases, conflict and displacement.

## Why are They Stateless?

1. *Political change and discrimination*:  The persecution of ethnic nationalities in Myanmar started during the 1962 coup d'etat. It took place for two primary reasons: (1) The Myanmar military was afraid of a state break up and (2) it wanted to strengthen the socialist and economic base in Myanmar by getting rid of foreign dominance.[3] One of the ethnic groups most severely affected by this policy were *Rohingyas*, who have been systematically discriminated against to this day. As a result of the harsh treatment they face, hundreds of thousands of Rohingyas have fled to Bangladesh, Thailand or Malaysia. Within Myanmar, they are restricted to the North Arakan region, and remain stateless, as the government of Myanmar refuses to issue them citizenship.

2. ***Trafficking***:   In 2001, the United Nations Educational, Cultural and Scientific Organization (UNESCO) in Thailand identified the lack of citizenship as the "single greatest risk factor for highland minority girls and women in Thailand".[4] When a person is stateless, it is only possible to find work in the informal sector, which creates more risk, exploitation and vulnerability. In the 2009 U.S. Department of State Trafficking in Persons Report, the link between statelessness and trafficking is further elaborated upon:[5]

> Stateless populations are easy targets for forced labor, land confiscation, displacement, and other forms of persecution and exploitation. Without a nationality or legal citizenship, they may lack protection from police or access to systems of justice. In their desperate struggle for survival, stateless people often turn to human smugglers and traffickers to help them escape discrimination or government persecution. They become victims again and again as the problems of statelessness, refugee issues, and trafficking intersect.

3. Rohingyas are a prime example, as they have been victims of traffickers, while trying to escape repression in Myanmar.
4. ***Laws regulating marriage***:   In Vietnam, many women had to renounce their Vietnamese citizenship when marrying a foreigner, usually Taiwanese, South Korean or Chinese men. If the marriage resulted in divorce, they would find themselves stateless, as the old law did not require these women to gain another nationality before they had to renounce their Vietnamese one. However, a law was been passed in Vietnam, which allows dual citizenship and does not allow a Vietnamese person to renounce their own citizenship, unless they have gained a new one.[6]
5. ***Failure to register children at birth***:   There are an estimated one million stateless children in Thailand. Previously, Thai law did not allow migrants to register their children, if they were born in Thailand. However, in 2008 the Thai government amended this law, stating that all children born in Thailand, regardless of the parents' legal status, could be registered.[7]
6. ***Nationality based solely on descent***: In some countries, such as the United States, nationality at birth is based on ***jus solis***. This means that if a child is born in the U.S., they receive American nationality, regardless of the parents' nationality. In other countries, however,

nationality is based on **_jus sanguine_**, meaning that a child receives nationality based on descent and not on place of birth. Before the Nepal Citizenship Act was instated in 2006, Nepali nationality could only be passed on by the Nepali father. This rendered millions of children stateless. However, since 2006, nationality can be passed on through the Nepali mother as well, reducing some of the numbers of stateless persons in Nepal.[8]

## Table 7.1
## Typologies of Statelessness

| Denial and Deprivation of Citizenship | Withdrawal and Loss of Citizenship |
|---|---|
| **Methods:** The intentional and unintentional use of or interpretation of provisions in nationality laws so as to discriminate between groups; removal from census; gender-based legislation that prevents women from transmitting nationality. | **Methods:** The revocation of laws; forced removals following xenophobic campaigns. |
| **Cases:** Bangladesh, Dominican Republic, Federal Republic of Germany, Georgia, Kashmir, Kazakhstan, Kenya, Myanmar, Nepal, Russia | **Cases:** Bhutan, Ivory Coast, DRC, Germany (1933–45), Kuwait, Lebanon, Mauritania (pre-2007), Syria |
| **State Succession/State Restoration** | **Lack of Access** |
| **Methods:** Ill-defined nationality laws following conflict, de-federation, secession, state succession and state restoration in multinational situations. | **Methods**: Lack of opportunities to register births and marriages, the use of high fees for documents, requirements regarding the presence of witnesses to certify documents. |
| **Cases:** Bosnia and Herzegovina, Croatia, Estonia, Ethiopia, Eritrea, Latvia, Lithuania, Former Yugoslav Republic of Macedonia, Montenegro, Serbia, Former USSR, Yemen | **Cases:** Croatia, Ecuador, Fiji, India, Israel, Kyrgyzstan, Former Yugoslav Republic of Macedonia, Nepal, Panama, Russia, Serbia, Slovenia, Sri Lanka |

*Source:* Brad K. Blitz, "Statelessness, Protection and Equality", Forced Migration Policy Briefing 3, Oxford Refugees Studies Centre, 2009, p. 16.

## Statelessness as a Problem Under International Law

### Which International Legal Definitions and Instruments are Related to Statelessness?

One of the areas, rarely understood, is the standing of statelessness in the framework of international law. If the below mentioned legal instruments were more widely ratified, it would make a big difference in the status and protection of the stateless. It is important to mention that Southeast Asia has a history of rejecting international refugee law and, therefore, international law related to statelessness.[9] Scholar Sarah Davies argues in her book *Legitimising Rejection: International Refugee Law in Southeast Asia* that Southeast Asian nations have consistently been able to reject the use of international refugee law as:

- The Conventions are eurocentric in their content and do not take into account the Southeast Asian context of refugee and migrant flows.
- During the Indochinese refugee crisis (1975–96), Southeast Asian states received both material assistance and resettlement offers from the international community for individuals who were only granted temporary asylum.
- Throughout the Indochinese refugee crisis, Southeast Asian states claimed that Indochinese refugees were not "genuine" refugees, but individuals who were fleeing economic hardship, rather than widespread persecution. Till the mid-1980s the international community rejected this claim, however, in 1989, as a result of "compassion fatigue", the US, Australia and France began to accept the term of "illegal migrants" for the Indochinese asylum seekers. It also helped that states such as Thailand used the framework of international refugee law to explain their claims in pushing back Rohinghyas.

It is important to understand this background when trying to understand why Southeast Asian states not only reject the international law framework associated with refugees, but also that with stateless persons. Stateless persons, like refugees, are often labelled as "illegal migrants". The inaction of Southeast Asian states in the area of statelessness does not just have to do with the fact that statelessness, as an issue, is not widely understood, but also with the historical rejection of Southeast Asian states harbouring refugees and asylum seekers, who would potentially place a financial burden on them.

## International Conventions on Statelessness

There are two major international conventions on statelessness: **the 1954 Convention relating to the Status of Statelessness and the 1961 Convention on the Reduction of Statelessness**. Unfortunately, both conventions do not have many signatories. The 1954 convention has 65, including the Philippines as the only signatory from the Southeast Asia region (UNHCR 2009). The 1961 convention only has 37 and none are from Southeast Asia (UNHCR 2009).

1. **The 1954 convention**, while not widely ratified, especially in countries where the problem of statelessness is the greatest, this convention does provide a definition of statelessness, accepted as international customary law. It also has provisions for stateless persons to be protected, like nationals in the country they inhabit, under certain categories such as "wage earning employment", "rationing", "public education" and "public relief".[10]

2. **The 1961 convention** added some important provisions, including that one cannot be born stateless (though only individual countries national law can decide this), that one cannot lose one's citizenship because of state successions and that one should not become stateless due to renouncing one's citizenship, losing it or being deprived of it (Blitz 2009). However, both the 1954 Convention and the 1964 Convention only refer to *de jure* statelessness; there is no definition or mention of *de facto* statelessness.

   Professor Brad K. Blitz, Director of the International Observatory on Statelessness, elaborates:

   > One important failing of this convention is that it does not prohibit the possibility of revocation of nationality under certain circumstances nor does it retroactively grant citizenship to all currently stateless persons.

3. **The 1951 Convention relating to the Status of Refugees and the 1967 Protocol** has 141 signatories, including Cambodia, Timor Leste and the Philippines from the Southeast Asia region. It is technically also applicable to stateless persons. The Convention's definition of a refugee is:

   > As a result of events occurring before 1 January 1951 and 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.

However, it remains a problematic definition, as the person "not having a nationality" has to be "outside the country of his former habitual residence". This is why only some stateless persons are considered refugees or asylum seekers. In addition, when a person is applying for asylum status, the first step is determining and verifying nationality. In Bangladesh, for example, 28,000.[11] Rohingyas live in refugee camps, as they are considered to be fleeing from a well-founded fear of persecution and they are outside their habitual country, Myanmar. Stateless persons do not have a country they can be repatriated to as is the case with refugees.

## Other Examples of International Legal Instruments

Internationally binding legal instruments worth mentioning are (1) **The UN Convention on the Rights of the Child (CRC)**, (2) **The 1966 International Covenant on Civil and Political Rights (ICCPR)**, (3) **The 1966 (ICESR)**, (4) **The 1965 Convention on the elimination of all forms of racism**, and (5) **The Convention on Elimination of all forms of Discrimination Against Women (CEDAW)**. These international legal instruments can aid in protection and social assistance measures for stateless persons including:

1. **The CRC** came into force on 2 November 1990 and has been ratified by 193 countries. All ASEAN member states are party to the CRC. It is article 7 of the CRC that is of particular importance to stateless persons, as it stipulates child registration and a right to a nationality, thus providing a child with statehood.
2. **The ICCPR** came into force on 23 March 1976, but has only been ratified by Laos and the Philippines. Cambodia, Indonesia and Thailand have all signed but not ratified. Brunei, Malaysia, Myanmar and Singapore have not signed the agreement. The ICCPR emphasizes that rights should be granted to all, regardless of nationality and citizenship. It also reiterates the importance of non-discrimination and a child's right to nationality thus providing a child with statehood.
3. **The ICESR** came into force on 3 January, 1976, and has 160 state parties. Cambodia, Indonesia, the Lao People's Democratic Republic,

the Philippines, Thailand and Vietnam are parties to the ICESR. This Covenant underlines the right to take part in cultural life, reflected in article 15.

4. **The 1965 Convention on the elimination of all forms of racism** came into force on 4 January 1969 and has 173 state parties, including Cambodia, Indonesia, Lao People's Democratic Republic, Thailand, Vietnam and the Philippines (the only Southeast Asian country to ratify). Article 2 and Article 5 are particularly significant for statelessness. Article 2 calls for state parties to not engage in any act of racial discrimination against "persons", "groups of persons", or "institutions". Article 5 lists the "right to nationality" as one of the rights that should be guaranteed by all state parties.

5. **CEDAW** came into force on 3 September 1981, and has 186 state parties. All ASEAN member states are party to CEDAW. Article 9 in CEDAW underlines that women should be granted equal rights with men to "acquire, change or retain" their nationality. In addition, this article calls for women to have equal rights to men "with respect to the nationality of their children".

Notably, in the context of Southeast Asia's rejection of international refugee law and in some cases international human rights law, the Southeast Asian countries that have signed onto the ICCPR and ICESR did not do so until the late 1990s and post 2000 — Cambodia (1992) signed post Paris Peace Accords, The Lao Peoples Democratic Republic signed the ICESR in 2007 and the ICCPR in 2009. Author Philip John Eldridge comments in his book *The Politics of Human Rights in Southeast Asia*:[12]

> Civil society groups have become stronger and better organised in the past decade. International pressures, strengthened by the economic crisis, have pushed governments towards greater formal and rhetorical accommodation with international standards, while resisting or obscuring their operational requirements. Accession by ASEAN states to UN Human Rights instruments, though improving in the 1990s, remains weak and uneven. Governments are often slow in following up policy declarations with necessary legal and administrative action (2002).

## Developments in National Law of Asian Countries

For the purposes of length, only developments in Thailand and Bangladesh shall be highlighted. In both 2008 and 2009, there have been legal

developments, which will help some stateless persons receive citizenship and prevent statelessness in other cases. In 2008, Thai law was amended so all children born in Thailand, regardless of their parents' nationality, can be registered at birth. Currently, Thailand is in the process of amending its Citizenship Act to provide citizenship to some stateless populations, such as populations living in southern provinces along the Thai-Burma border, including Ranong, Prachoub, Kirikham and Chumporn.[13] This still leaves many stateless persons out of the process, as UNHCR's most current population estimate of stateless persons in Thailand is 3.5 million.

In Bangladesh, around 300,000 Urdu-speaking Biharis, who fled to Bangladesh (then "East Pakistan") after the India-Pakistan partition in 1947, lived in 66 camps in Dhaka.[14] In 1971, when Bangladesh was formed, there was resentment by Bengalis towards the Biharis, as they had supported the West Pakistan army and were from then on referred to as "stranded Pakistanis". In 1974, Pakistan accepted 170,000 Bihari refugees.[15] However, the remaining Biharis in Bangladesh remained stateless, until recently. In 1993, an additional 300 Biharis were repatriated to Pakistan. In a landmark Bangladesh Supreme Court decision in 2003, ten Biharis were granted citizenship, on the grounds that they were either born in the camps or had been residing in Bangladesh since the time of partition.[16] This Supreme Court decision gave precedence for this ruling in May 2008, when 150,000 Biharis were granted citizenship, on the grounds that they were either born after 1971 or were minors during Bangladesh's war of independence.[17]

## OVERVIEW OF GLOBAL AND REGIONAL TRENDS

### Global Estimates of Statelessness

There has been a gradual expansion in coverage and knowledge of stateless persons. Giving due importance to the identification and reduction of statelessness, UNHCR has expanded its data collection mechanism in 2004, aiming at the more systematic identification of stateless persons. As such, UNHCR was able to identify 42 countries hosting stateless populations, out of which there were data for 30 countries with an estimated 1.5 million stateless persons on 31 December 2004. By the end of 2005, UNHCR reported the existence of stateless populations in 62 countries. For the 48 countries where data are available at the end of that year, the total number was estimated to be 2.4 million. For 2006, the number of countries with reliable estimates increased marginally to 49. However, the number of identified stateless populations more than doubled to 5.8 million.

In 2007, the total number of stateless persons reported in UNHCR statistics dropped by roughly 3 million as a result of the major breakthroughs achieved in Nepal and Bangladesh. In Nepal, new legislation was adopted, which facilitates the issuance of citizenship certificates to approximately 2.6 million people. In Bangladesh, the process of registration of adults of Bihari/Urdu-speaking communities and the issuance of national identity cards has been undertaken. There are an estimated 250,000 to 300,000 Bihari/Urdu-speaking communities in that country whose rights as Bangladeshi citizens had not been recognized following the separation of what is now Bangladesh from Pakistan in 1971. As a consequence, the number of stateless persons in UNHCR statistics dropped from 5.8 million in 2006 to slightly under 3 million people by the end of 2007. By the end of 2008, statistics on statelessness are available for 58 countries, with an estimated 6.6 million stateless persons.

It is important to note that the actual population of stateless people is expected to be much higher because UNHCR's statistics include data only on countries for which reliable official statistics or estimates of stateless populations are available. The overall global estimates of stateless population are 12 million, including countries that have significant stateless populations, but for which no reliable figures could be provided.

However, despite the expansion in coverage and knowledge of stateless persons, the number of States party to the 1954 Convention relating to the Status of Stateless Persons (the 1954 Convention) and the 1961 Convention on the Reduction of Statelessness (the 1961 Convention), two key instruments for the protection of stateless people and the prevention

**Table 7.2**

**Number of Countries Reporting Statistics on Stateless Persons**

| Year | Number of Countries Reporting Statistics on Stateless Persons | Total Numbers of Stateless Persons |
|------|---------------------------------------------------------------|------------------------------------|
| 2004 | 30 | 1.5 million |
| 2005 | 48 | 2.4 million |
| 2006 | 49 | 5.8 million |
| 2007 | 54 | 3 million |
| 2008 | 58 | 6.6 million |

*Source:* UNHCR, *2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, 16 June 2009.

and reduction of statelessness remained limited. In some cases, questions relating to nationality were viewed as sensitive and falling solely within the realm of national sovereignty, despite the legitimate interest of the international community in this issue.

## Regional Estimates of Statelessness

Southeast Asia is home to the world's largest stateless population. Of the estimated 6.6 million stateless people worldwide, Southeast Asia accounted for 4.3 million of them, with Thailand alone hosting 3 million stateless people. As noted earlier, the actual numbers of stateless population could be higher because UNHCR's statistics include data only on countries for which reliable official statistics or estimates of stateless populations are available.

As Table 7.3 indicates, in Southeast Asia, there are no reliable figures for Brunei, Cambodia, Indonesia and Philippines although significant stateless

**Table 7.3**
**Stateless Population in Southeast Asia**

| Country of Residence | Description/Origin | Population End-2008 | Of Who: UNHCR Assisted** |
|---|---|---|---|
| Brunei Darussalam | Stateless | * | _ |
| Cambodia | Stateless | * | _ |
| Indonesia | Stateless | * | _ |
| Malaysia | Stateless | 40,001 | _ |
| Myanmar | Stateless | 723,571 | 200,000 |
| Philippines | Stateless | * | _ |
| Thailand | Stateless | 3,500,000 | _ |
| Vietnam | Former Cambodian refugees | 7,200 | _ |
| **Southeast Asia Total** | | 4,270,772 | 200,000 |
| **Global Total** | | 6,572,167 | 225,488 |

*Notes:* * Significant stateless populations but no reliable figures existed.
     ** The majority of stateless people are still beyond the reach of UNHCR.
*Source:* UNHCR, *2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, 16 June 2009.

populations exist in these countries. However, with the expansion in coverage and knowledge of stateless persons increases this gap was expected to narrow in the future.

## Regional Cases

Rohingyas in Myanmar and the hill tribes in Thailand shall be highlighted in this section, as the Rohingyas are among the most vulnerable and the hill tribes of Thailand form the largest population of stateless persons worldwide, estimated at 3.5 million according to the latest UNHCR statistics. The stateless hill tribes themselves are estimated at 400,000.[18]

1.  **Rohingyas in Burma**

    It is estimated that around 725,000 Rohingyas live in the North Rakhine region, along the Myanmar Bangladesh border. They are related to the Chittagonian Bangladeshis, but were conquered by the Burmese in the early nineteenth century. Of South Asian descent and practising Sunni Islam, Rohingyas have increasingly been discriminated against since Myanmar's independence in 1948. After military rule commenced in Myanmar in 1962, numerous policies against residents of Indian and Chinese descent were instituted, causing a mass exodus, including of Rohingyas. Hundreds of thousands of Rohingyas fled to neighbouring Bangladesh in 1978 and were stripped of their Burmese citizenship under the 1982 Burmese Citizenship Act. While 28,000 Rohingyas have been accepted as refugees in Bangladesh and live in UNHCR supported camps in the Cox Bazaar district, it is estimated that 200,000 Rohingyas, who do not have refugee status and remain stateless, live in surrounding areas.[19] Rohingyas who still live in the North Rakhine region suffer under the repressive policies of the Myanmar state. Sean Garcia and Camilla Olson of *Refugees International* write:

    > The Rohingya need authorisation to leave their villages and are not allowed to travel beyond the Northern Rakhine State. They need official permission to marry and must pay exorbitant taxes on births and deaths. Religious freedom is restricted, and the Rohingya have been prohibited from maintaining or repairing crumbling religious buildings.

Increasingly, Rohingyas are also fleeing to Malaysia and Thailand by sea. However, in Thailand they have been turned away most notably in December 2008, when Thailand was criticized for its "push-back" policy. According to Thailand, Rohingyas are a "national security threat"[20] and only want to enter Thailand in order to "volunteer with Thai Muslim separatist militants".[21] In the March 2009 fact finding report on the Thai push-back phenomenon, by the Thai Action Committee for Democracy in Burma (TACDB) and the Lawyers Council of Thailand, General Manu Kongpant, Director of Internal Security Operations Command (ISOC) is quoted as saying: "Rohingyas migration is involved with human smuggling and trafficking from the beginning, during journey, until they reach the destination, which sometimes [is] connected with terrorists, drug trafficking and weapon trade."

Malaysia, which is not a signatory to the 1951 Convention Relating to the Status of Refugees or the 1954 Convention Relating to the Status of Statelessness, often targets Rohingyas for deportation under the auspice of being "illegal migrants". Approximately 13,000 Rohingyas are registered in Malaysia, but only 400 have access to primary education opportunities.[22]

A bilateral development between Myanmar and Bangladesh in December 2009, led to Bangladesh handing Myanmar a list with names of the 28,000 Rohingya refugees living in its Cox Bazaar district. Myanmar has accepted that 9,000 of the 28,000 on the list are its citizens and has stated that it will begin the process of repatriation "as soon as possible".[23] However, there are concerns by organizations advocating for the rights of the Rohingya, such as the Arakan Project, that the repatriation process may not be voluntary and, therefore, an infringement of international law.[24] This development also begs the question of what will happen to the remaining refugees in the Cox Bazaar camps and the approximately 200,000 stateless Rohingyas, who live in surrounding areas.

2. **Hill tribes in Thailand**

The hill tribes in Thailand are made up of many different ethnic minorities, originating from Myanmar, China, Laos and Tibet. The following nine groups are recognized by the Thai government: Karen, Mong, Yao, Lisu, Akha, Thin, Lua and Khamu. The most populous of these groups are the Karen, who fled political change and persecution in Myanmar, and the Hmong, who fled the Indo-China conflict in the 1970s. Even though hill tribes, including the nine groups mentioned above, have resided in Thailand for multiple generations, a little more than half of them have

**Table 7.4**

**Organizations Working on Preventing and Reducing Statelessness**

| Type and Name of Organization | What Issues They Work on Connected to Statelessness |
| --- | --- |
| *International Organizations* | |
| UNHCR | Since 1974, UNHCR has been the lead agency working with and providing assistance and protection for the stateless. A 2006 document by the UNHCR Executive Committee (now comprising 76 states) titled "Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons", gave UNHCR new ground to expand its work on statelessness, including a focus on:<br>• Research and statistics related to statelessness, development of a systematic method for information gathering;<br>• Working more closely and in partnership with other UN agencies such as the United Nations Fund for Children — UNICEF (for birth registration) and the United Nations Population Fund — UNFPA (for population data);<br>• Advocating strongly with countries who have still not ratified the 1954 and 1961 Conventions. |
| United Nations Secretariat | UN Special Rapporteur on Non-Citizens, Human Security Commission, Office of the High Commissioner for Human Rights (OHCHR). |
| UNICEF | Specializes in facilitating birth registrations, in conjunction with PLAN international. |
| UNFPA | Specializes in collecting population data, gives technical assistance on how to e.g. include stateless persons in census data. |
| UNESCO | Focuses on the link between statelessness and trafficking in Southeast Asia, with an emphasis on Thailand. |
| United Nations Development Program (UNDP) | Runs an "equal access to justice" programme worldwide, which has helped some stateless persons attain legal status. |

**Table 7.4**   (*Cont'd*)

| Type and Name of Organization | What Issues They Work on Connected to Statelessness |
|---|---|
| Asian Development Bank (ADB) | Conducted a study on the impact of birth registration campaigns in Asia. |

### *International NGOs and Think-Tanks*

| | |
|---|---|
| Refugees International | Refugees International advocates lifesaving assistance and protection for displaced people, and promotes solutions to displacement crises, which includes a programme on statelessness. It published the *Global Survey on Statelessness* in March 2009. |
| Open Society Institute (OSI) | The OSI seeks to shape public policies that assure greater fairness in political, legal, and economic systems and safeguard fundamental rights. It has a programme on statelessness, but currently focuses more on statelessness in African countries. |
| The Equal Rights Trust | The Equal Rights Trust is an independent international organization whose purpose is to combat discrimination and to promote equality as a fundamental human right and a basic principle of social justice. Within this mission, it addresses the issue of statelessness. |
| The International Observatory on Statelessness (IOS) | Created by Oxford Brookes University and the Oxford Refugees Studies Centre, the IOS focuses on collating national data on patterns, types and conditions of statelessness and promotes research on patterns and causes of statelessness by gathering data on a range of issues. |
| Plan International | A children's organization aiming to alleviate poverty, Plan International worked on a large birth registration campaign with UNICEF in 2006. |
| Human Rights Watch | Has written several reports on stateless persons, the most recent is "Perilous Plight: Burma's Rohingya take to the Seas". |
| Amnesty International | Has also written numerous reports and raised the issue of statelessness. |

**Table 7.4**   (*Cont'd*)

| Type and Name of Organization | What Issues They Work on Connected to Statelessness |
|---|---|
| *National Organizations in the Southeast Asia Region* | |
| The Arakan Project | Based in Bangkok, the Arakan Project focuses on raising awareness and advocacy for Rohingyas. |
| The Legal Assistance Center | Focuses on education for stateless children in the Mae Ai town of Thailand. |

Thai nationality, while the rest remain stateless.[25] It is a complicated and time-consuming procedure for hill tribe people to obtain citizenship in Thailand, as they have to follow the Central Registration on nationality acquisition regulations, based on the 1996 House Registration for Hill Tribe People.[26] As mentioned in the international law section, the proposed amendment of the Thai Citizenship Act, under the current interim government, may change some of this.

From the preceding discussion, it is clear that there is an increasing awareness of statelessness in Southeast Asia and some efforts are underway to address the issue. There are still many roadblocks ahead in finding solutions to the various problems related to statelessness. With increasing cooperation between the UNHCR, affected countries, regional bodies and civil society organizations, the plight of stateless people can become better understood.

However, it is important to note that there remains confusion over the status of stateless persons, depending on whether they are in a territory where they are supposed to be citizens versus in a territory where they are considered under a different status, such as: (a) refugees (b) asylum-seekers or (c) illegal migrants. The status that stateless persons receive considerably affects the treatment they receive under international law. For example, the majority of Rohingya are stateless, however, some are regarded as refugees in Bangladesh and others are labelled as "illegal migrants" in Thailand.

While the "stateless", "refugees" and "illegal migrants" have needs and issues that are specific to only them, they also have many cross-sectional similarities with each other, which are not analysed enough. The cross-sectional similarities between the above mentioned categories and the

policy relevance of the many faces of statelessness in Southeast Asia will be analysed in the next section.

## THE MANY FACES OF STATELESSNESS

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 recognized 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 the previous section the aim was to better understand the issue of statelessness, why it occurs and what it means under international law. This section 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.

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 below quotation 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.

## Indigenous Peoples and Minorities

### *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.[27] They lost their political and constitutional identity when the military government, led by General Ne Win, promulgated the Citizenship Act of Burma in 1982.[28] 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 recognized "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 authorizations 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.[29] 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 Myanmar people 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 ten continued on 22 August 2009. By the end of that year, more than 75 per cent 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."[30] The Myanmar government needs to build up its constituency among Rohingyas, even though they are considered "non-citizens".[31]

The Integrated Regional Information Network (IRIN) reported on 24 February 2010 that UN agencies and NGOs in Myanmar began the ongoing process of 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 recognized only when the first census of highland population was conducted in 1969–70. 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 1985–88, 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 1990–91, nearly 250,000 were registered and given a blue card. Under the Ministry of Interiors 1992/1996 regulation handbook on Thai citizenship registration for highland people, 46,555 were registered as Thai citizens.

In May 1999, the Thai government decided to set up a committee to study the problems in categorizing 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 recognizes 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.

## 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.[32] 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 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 Ikatan 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",[33] originally created in the 1960s to guard against communists and transformed into a group for tracking down "illegal immigrants" in 2005.[34] 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.[35] 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]".[36]

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.[37]

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.[38] 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".[39]

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 recognized 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.[40] 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 28 December 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 4 January 2010.[41] While some Hmongs successfully resettled in the United States in the 1990s and in 2003, during this 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 criticized "push-back policy", the Thai government on 5 February 2009 announced its official policy of deporting Rohingyas, who illegally arrive in Thailand by boat, emphasizing that refugee camps would not be opened to accept them.[42] *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.[43]

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.[44]

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 an interview with Chris Lewa, Founder and Coordinator of The Arakan Project, an organization 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 categorized as refugees. Similarly, some refugees may be stateless, but most are.[45]

**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.[46] 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.[47]

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 RM 60.

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.[48] 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.

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".[49] 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 dicretion[50] 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 2005–08 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.[51]

There are two specific cases, when decisions by the Administrative courts made a difference to stateless persons. In 2002, the District Chief,

**Table 7.5**

**Lessons and Good Practice for Effective Birth Registration**

| Lessons Learnt | 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 organizations at different levels | Civil society organizations, UN agencies, government, community based organizations, 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, immunization 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. | |

Thongchai Setthapat, of Mae Ai province in Chiang Mai, Thailand revoked the citizenship of 1,143 of its residents, rendering them stateless.[52] However, Thai administrative courts overturned this decision and reinstated citizenship for these particular individuals.[53]

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.[54] This particular decision did not offer a durable solution, but may set precedence for future court cases involving statelessness.

## 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,[55] 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.[56] In Indonesia, birth registration increased from 3 per cent to 72 per cent in one year, thanks to a major change in legislation in 2004.[57] Birth certificates were made free of charge for children less than eighteen 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.[58] 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 U.S. and the UN, may lead to a more durable solution.[59]

**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 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.

## REGIONAL CHAMPIONS — EXAMINING THE COMPARATIVE ADVANTAGES OF AICHR AND ACWC

Since 2009 Southeast Asia has witnessed the emergence of several new and promising policy entry points for the advancement of the protection of civilians (POC) in Southeast Asia. On 23 October 2009, the ASEAN Inter-governmental Commission on Human Rights (AICHR) was launched. This was followed six months later, on 7 April 2010, by the inauguration of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). This section investigates how current regional institutional developments could affect and advance the general POC agenda in the ASEAN region. It also provides some key recommendations for how the AICHR and ACWC might collaborate and coordinate more effectively with one another, thus maximizing the benefits of these institutional developments for the security and well being of peoples/populations across the region.

There have been significant prospects for further regional integration through the signing of the ASEAN Charter in Southeast Asia. However, there have also been significant challenges that have dampened these prospects. The development of AICHR was widely welcomed, but when its mandate was unveiled there was widespread disappointment that it was a "toothless tiger" that did not have a mandate equally balanced between promotion and protection of human rights.[60] That said, it did provide a wake-up call for stakeholders in the region on how much power ASEAN member states are willing to invest in a regional commission.

In November 2004, ASEAN leaders met and adopted the "Vientiane Action Programme 2004–10", which established the "strategic thrusts" of the three ASEAN communities — the ASEAN Security Community to "enhance peace, stability, democracy and prosperity in the region through comprehensive political and security cooperation"; the ASEAN Economic Community to "enhance competitiveness for economic growth and development through closer economic integration"; and the ASEAN Socio-Cultural Community to "nurture human, cultural and natural resources for sustained development in a harmonious and people-centred ASEAN". The Vientiane Action Programme included Measure 1.1.4.7, which called for the establishment of an ASEAN Commission on the Promotion and Protection of the Rights of Women and Children. Subsequently at the 14th ASEAN Summit in 2009, ASEAN leaders agreed to the "Cha-am Hua Declaration on the Road Map for the ASEAN Community, 2009–2015". This road map reiterated the establishment of the ACWC to promote and protect the rights of women and children to ensure their equitable

development in the region. The development of the ACWC will provide an important narrative as its mandate links international commitments with local realities. The regional level of governance is particularly important where the developments of AICHR and ACWC have provided fertile ground for exploring other avenues for better protection of civilians. It is important to highlight the key areas where these different institutions can cooperate in order to avoid duplication and also to encourage cooperation and information-sharing towards more robust and efficient governance in the region for the protection of civilians.

While the establishment of the ACWC is an important step for the region, analysts note that multiple avenues need to be used to promote the protection of civilians. The ACWC was born out of an action plan, which is a part of the ASEAN Socio-Cultural Community. The AICHR emerged out of the ASEAN Political-Security Community and is formally mentioned in the ASEAN Charter. It is important to highlight this key difference between the two bodies, because AICHR will be able to function cross-sectorally, having the mandate to influence and engage with all three ASEAN communities. This contrasts with ACWC which will be operating as part of the socio-cultural pillar through its reporting to the ASEAN Ministers Meeting on Social Welfare and Development (AMMSWD), with copy to the ASEAN Committee on Women (ACW) and other relevant sectoral bodies. In addition, ACWC has a much more defined focus than AICHR, as its mandate calls for a clear emphasis on women's and children's protection concerns in the region. Both of these commissions have the protection of civilians' agenda under their mandates, highlighting that no single policy avenue or community will suffice as a "lone star" for the protection of civilians. Ultimately while it is important to minimize overlap between institutions, it is also important for institutions to keep investigating new and creative ways to interact with one another and to recognize what one another's comparative advantages are.

For instance, in an interview, AICHR Commissioner, Mr Rafendi Djamin[61] highlighted that since AICHR is mandated to provide technical advice on human rights to all ASEAN sectoral bodies, it can help ACWC in mainstreaming important women's and children's issues under both the political-security and economic pillars of ASEAN. ACWC, in turn, can aid AICHR in providing specialized technical expertise on women's and children's protection issues in the region. There are many issues that AICHR and ACWC could work together on. Two key areas of potential collaboration for AICHR and ACWC may include:

- Raising awareness on reservations held by ASEAN member states on substantive articles of the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).[62]
- Violence rooted in economic issues (for example, violence against women due to economic related causes).

During the last AICHR meeting in March 2010, it was decided that the two areas of focus for its five-year work plan would be (1) migration, and (2) business and human rights. Although the AICHR's rules of procedure have not been adopted as yet, its commissioners are scheduled to meet for five days at the end of June, where it is hoped the rules of procedure be formally adopted; AICHR activities from July to December 2010 will be defined (for example, commissioning of studies on specific issues, stock-taking, mobilization of funds and technical advisory activities to ASEAN sectoral bodies); and taskforces for (1) migration, (2) business and human rights, and (3) the procedure for an ASEAN Human Rights Declaration, will be set up.

The Terms of Reference (TOR) for the ACWC were agreed upon by the ASEAN Ministers Responsible for Social Welfare and Development prior to the 15th ASEAN Summit in 2009. The TOR includes promoting the implementation of internationally agreed-to standards such as those included in CRC and CEDAW. Each ASEAN member state has two appointed representatives in ACWC, one for women's rights and another for children's rights. During the selection process, the TOR mandates that potential commissioners possess competence in the fields of women's and children's rights, and that member states exercise integrity and equality when appointing their representatives (Article 6.3). The TOR also outlines that each member state shall conduct, in respect to their respective internal processes, a transparent, open, participatory, and inclusive selection process (Article 6.4). This process allows for more specific accountability than does the selection process of AICHR. AICHR only calls for member states "to consult if required by their respective internal processes, with appropriate stakeholders" (Article 5.4).

The ACWC will meet for the first time in August 2010. There is a chance that member states will change the TOR during this meeting. It should also be noted that the ACWC has not adopted its rules of procedures as yet. Realistically, the first time AICHR and ACWC commissioners will be able to meet will be after both have finalized their respective TORs, adopted rules of procedures and defined activities for the coming months.

Once both bodies meet, they will have to clearly define what each body is responsible for in overlapping issue areas, such as human trafficking. In addition, if there is to be an "alignment" of the two commissions, this needs to be clearly defined in terms of day-to-day practice.

While there are various differences between the AICHR and ACWC mandates, both commissions will ultimately work together to achieve progress in areas of mutual interest if they are to maximize their effectiveness in furthering the protection of civilians' agenda. With this in mind, it is also important to understand the larger role of ACWC, which is not only for it to work alongside and in collaboration with AICHR, but also to assist individual member states in developing their institutional capacity to implement the necessary changes to advance, protect and promote the rights of women and children in the region. It is through the identification of partners at both the national and local levels that implementation of these rights can take place. This can be accomplished through regular interaction with individuals and communities as well as formal state structures. In this vein, civil society will provide an important informal resource to ensure that regional institutions and mechanisms respond to the issues that matter to those whose situations it is mandated to improve.

AICHR and ACWC are able to work with civil society partners in the region; one potentially instrumental partner from the region is the Southeast Asia Women's Caucus on ASEAN. It is coordinated by two regional organizations: the International Women's Action Watch Asia Pacific (IWRAW Asia Pacific) and Asia Pacific Forum on Women, Law and Development (APWLD). It represents a network of women's human rights groups from Myanmar, Cambodia, Indonesia, Lao PDR, the Philippines, Malaysia, Thailand and Vietnam, engaging with key ASEAN structures and in key processes towards ensuring the realization and protection of women's rights on a regional level. The Thai ACWC Commissioner, Dr Saisuree Chutikul agreed in a interview[63] that the Southeast Asia Women's Caucus on ASEAN has consistently done good work on a macro and regional level, but needs to make more of an effort to connect with local partners in ASEAN member states.

The following sections give suggestions for adapting current tools and indicators that would be helpful to the ACWC, in particular, when assessing the situation of women and children in ASEAN member states. Such tools and indicators include the Gender-related Development Index (GDI) developed by the United Nations Development Programme (UNDP), the ASEAN Economic Community Scorecard, and the Key Children

and Young Persons Indicators (KCYPI) developed by the United Nations
Children's Fund (UNICEF).

## Gender-Related Development Index

Since 1995, the UNDP *Human Development Report* has disaggregated its data
when compiling the Human Development Index and has produced the GDI,
which is the Human Development Index accounting for gender inequality.
Table 7.6 shows the results from the UNDP *Human Development Report
2009*. The results illustrate, where available, that there is not a regional norm
on gender inequality and it remains quite diverse across the region. This is
best represented by the world rankings of ASEAN member states (with data
available for analysis) ranging from 15th in the world out of 155 countries
down to 104th in the world.

   From these collated findings, we are able to rank the member states in
the region according to their GDI scores. Using the data collected by the
UNDP will assist the ACWC in evaluating the progress that member states
have made since the inauguration of the ACWC. Indeed, the table compares
the annual levels of gender inequality and human development in ASEAN
member states. According to the table, some states score highly on the HDI
World Ranking but fare poorly when the data is disaggregated; likewise other

**Table 7.6**
**ASEAN Gender Inequality Rankings**

| ASEAN GDI Rank | Member State | GDI | GDI World Ranking/155 | HDI | HDI World Ranking/182 |
|---|---|---|---|---|---|
| 1 | Thailand | 0.999 | 15 | 0.783 | 87 |
| 2 | Vietnam | 0.997 | 31 | 0.725 | 116 |
| 3 | Philippines | 0.996 | 40 | 0.751 | 105 |
| 4= | Cambodia | 0.992 | 75= | 0.593 | 137 |
| 4= | Lao PDR | 0.992 | 75= | 0.619 | 133 |
| 6 | Malaysia | 0.993 | 76 | 0.829 | 66 |
| 7 | Indonesia | 0.989 | 90 | 0.734 | 111 |
| 8 | Brunei | 0.906 | 104 | 0.92 | 30 |
| n/a | Singapore | n/a | n/a | 0.944 | 23 |
| n/a | Myanmar | n/a | n/a | 0.586 | 138 |

*Source*: UNDP, *Human Development Report 2009*.

states score poorly on the overall HDI but fare better in the disaggregated GDI. Through the information available, it is evident that while a country's overall HDI score may be high, it does not necessarily impact on individual human development areas such as gender inequality. One observation that remains constant is that development does not necessarily lead to less gender inequality; rather there are other significant factors which need to be accounted for and investigated in the region to better understand the root causes of gender inequality.

## Gendered Policy Directions

It would be useful for the ACWC to borrow ideas from another branch of the ASEAN community — the ASEAN Economic Community, which has produced an ASEAN Economic Community Scorecard in March 2010 to track the developments of the association in implementing the road maps towards realizing an integrated ASEAN community. This scorecard approach can be developed based on information provided by supporting institutions and civil society, to track development on the level of implementation of internationally-agreed to standards on women's and children's rights by member states'. This scorecard can highlight the inequalities present in the region and offer some areas for cooperation between member states. This can be achieved through information-sharing to learn how different states develop policies to address these inequalities. Efforts such as this will assist the region to integrate further as envisioned in 1997 under the ASEAN Vision 2020:

> We see vibrant and open ASEAN societies consistent with their respective national identities, where all people enjoy equitable access to opportunities for total human development regardless of gender, race, religion, language, or social and cultural background.

A significant challenge that faces those engaged in the promotion and protection of the rights of women and children is the challenge to turn words into deeds. As the United Nations Development Fund for Women (UNIFEM) has pointed out, the challenge is to "define and enact gender 'mainstreaming', 'women's empowerment', and 'gender equality'" UNIFEM.[64] It further notes that even though legal changes have been made, these changes still fall significantly short of making an impact on the ground. In other words, these efforts "fall short because of poor enforcement, limited capacity, and weak accountability" UNIFEM.[65]

## "Key Indicators" on Children and Young Persons

UNICEF documents the status of the provisions and protection of children the world over in an annual report titled *The State of the World's Children 2009*. The findings in this report can assist the ACWC to target the key areas of concern in the region and allow for region-wide data collection and analysis in a further effort to assist member states to realize their ASEAN Vision 2020:

> We envision a socially cohesive and caring ASEAN where hunger, malnutrition, deprivation and poverty are no longer basic problems, where strong families as the basic units of society tend to their members particularly the children, youth …

Table 7.7 is a snapshot of some of the data available in the UNICEF report that illustrates some of the challenges faced in the region and highlights some areas of concern.

According to data in Table 7.7, it is clear that there remain wide differences in ASEAN over the provisions and protection of children. Indeed, there are significant areas that need to be addressed in order for the ASEAN Vision 2020 of "reducing the social risks faced by children, women, the elderly and persons who are disabled" to be realized. Most notably, there is a large variation in child mortality rates across the region, ranging from countries like Singapore which has the lowest regional child mortality rate of 3 deaths per 1,000 live births and which is placed 188th out of 193 countries in a global ranking of the mortality rate of children under the age of 5, to Myanmar which has the highest regional child mortality rate of 98 deaths per 1,000 live births and a global ranking of 35 out of 193. While statistics only reveal part of the picture, they offer a basis for regional and global comparison that allows for the identification of areas of concern and areas worthy of further investigation as to the causes of these variations within the region and around the world.

Some other areas not illustrated in the table but recognized by UNICEF as challenges in the region are the growing disparities within countries between the rich and the poor; the need to maintain poverty reduction strategies; environmental issues; the escalation of HIV infections and the growing number of AIDS orphans; the limited social protection that allows for the occurrence of violence, abuse and human trafficking; and recurrent natural disasters. These are the issues that can be assessed at the regional level to further investigate why some member states fare better than others

### Table 7.7
### ASEAN Children and Young Persons Core Benchmark

| Member State | Under 5 Mortality Rate Rank/193 | GNI Per Capita (US$) | Total Adult Literacy (%) 2003–2008* | Primary School Enrolment/ Attendance (%) 2003–2008 * |
|---|---|---|---|---|
| Brunei | 153 | 26740 | 95 | 93 |
| Cambodia | 41 | 600 | 76 | 89 |
| Indonesia | 66 | 2010 | 91 | 85s |
| Laos PDR | 54 | 750 | 73 | 84 |
| Malaysia | 158 | 6970 | 92 | 100 |
| Myanmar | 35 | 220x | 90x | 84s |
| Philippines | 81 | 1890 | 93 | 91 |
| Singapore | 188 | 34760 | 94 | – |
| Thailand | 125 | 2840 | 94 | 94 |
| Vietnam | 125 | 9230 | 90x | 93x |

*Note:* – : Data unavailable.
  x : Data refer to years or periods other than those specified in the column heading, differ from the standard definition or refer to only part of a country. Such data are not included in the calculation of regional and global averages.
  s : National household survey data.
  * : Data refer to the year available during the period specified in the column heading.
*Source*: UNICEF — The State of the World's Children 2009.

in international comparisons and how member states can learn from one another's experiences in this regard. It will be important for the ACWC to facilitate this process and investigate ways and means to realize the ASEAN Vision 2020 of a regional integrated community.

Despite a lack of implementation in regional human rights related instruments, the years 2009 and 2010 have established some positive entry points for the protection of civilians to be improved in the ASEAN region. In 2008, both AICHR and ACWC constituted just a part of discussions surrounding the ASEAN Charter. Now, both exist as official bodies. Just as it takes time for norms to be accepted and institutionalized, it will take time before both bodies become fully functioning, have finalized TORs and adopt rules of procedures, but ASEAN member states are better off with AICHR and ACWC, rather

than without them. Both bodies have key comparative advantages, which can only be strengthened and mainstreamed into all ASEAN sectoral bodies, if both work together on a consistent basis.

Ms Wathshlah Naidu, Programme Officer with the International Women's Rights Action Watch Asia Pacific (IWRAW Asia Pacific), emphasized in a written response:

Both bodies should coordinate, complement and ensure the collaboration in areas such as standards setting; producing thematic reports; conducting "exchanges of visits"; building capacity of member states on issue [sic] related to women and children; and ensuring constructive engagement with civil society representatives which includes participation and representation of women and children from all sectors and marginalized groups (May 2010).

It will be vital for AICHR and ACWC commissioners to meet as soon as the ACWC August meeting is over, in order for both bodies to define a working relationship and ensure that there is not an excessive overlap in the issues each body is mandated to address. It is also recommended that both bodies take into consideration the other suggested tools and indicators, such as the GDI and KCYPI, when finalizing the framework of their working relationship to establish policy recommendations for consideration at the ASEAN Summits, where they have access to key decision-makers in the region.

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