

# **GOOD PRACTICES FOR THE IDENTIFICATION, PREVENTION AND REDUCTION OF STATELESSNESS AND THE PROTECTION OF STATELESS PERSONS IN SOUTHEAST ASIA**

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This paper provides an overview of good practices relating to the identification, prevention and reduction of statelessness and the protection of stateless persons in Southeast Asia. It covers the following countries: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. The paper provides a description of how the laws, policies and practices of Southeast Asian countries have helped to address statelessness and highlights some of the key lessons learned. It also discusses some remaining challenges that the region's stakeholders face as they seek to fully address problems of statelessness in the future.

## 1. Introduction to statelessness in Southeast Asia

On the global scale, interest in statelessness has steadily increased over the past few years. This trend reflects the growing awareness that statelessness can have harmful consequences for the lives of individuals and the fabric of communities. Statelessness can also strain inter-State relations, for instance because it may lead to forced displacement. Moreover, statelessness is a truly global issue, with no region left unaffected, including Southeast Asia.

Thanks to the growing attention the issue is receiving from States, civil society, the international community and affected populations, there has been significant progress, for instance in terms of putting in place safeguards to prevent statelessness or resolving existing situations. Nevertheless, there are an estimated 12 million stateless persons spread across the globe (UNHCR, 2009e). In addition, policies and practices can be identified in many countries that may create new cases of statelessness or allow for perpetuation of statelessness from one generation to another.

The heightened interest in statelessness is welcomed, since further effort is evidently needed to comprehensively address the issue. To this end, it is helpful to consider what lessons can be taken from the advances made in different countries. This is the focus of the present paper: to discuss good practices for the identification, prevention and reduction of statelessness and the protection of stateless persons in Southeast Asia.

### 1.1 Terminology and definitions

Nationality is the legal bond between a person and a state, also known as citizenship. In some countries and contexts, the terms “nationality” and “citizenship” are used to refer to other characteristics. However, when it comes to discussing statelessness, the crux of the matter is whether a person enjoys a nationality in the legal-political sense. In this paper, as in most reports relating to statelessness, the terms nationality and citizenship are used interchangeably and refer to membership of a state.

A **stateless person** is a person who is not considered as a national by any state under the operation of its law.

A stateless person then, is someone who does not enjoy the legal bond of nationality with any state. In effect, a stateless person is a non-national in every country in the world. The above definition of statelessness has been codified in the 1954 Convention relating to the Status of Stateless Persons (article 1). This definition is now also recognised to be customary international law, meaning that it should be applied by all states regardless of whether they are parties to the 1954 Convention. In other words, the identification

of a person as “stateless” should always be on the basis of this definition.<sup>1</sup> This will facilitate the enjoyment by stateless persons of their rights, as set out under domestic and international law. It will also ensure that situations are comparable and that good practices become visible.

When applying the definition of statelessness in practice and deciding if a person is considered as a national by any state *under the operation of its law*, it is important to not only look at the content of relevant nationality law. How the legal provisions are interpreted and applied, by the state in a particular case, should also be considered. This means studying how the administrative authorities and the courts work with the nationality law when they apply it in practice. In some cases, but certainly not always, a stateless person may *also* be undocumented, hold an irregular immigration status or qualify for protection as a refugee. The fact that a stateless person’s circumstances can also be characterised through the use of other terms has no bearing on the finding of statelessness.

## 1.2 Stateless and at Risk Populations in the ASEAN region

This paper looks at statelessness in Southeast Asia. The focus is on the ten countries that are presently members of the Association of Southeast Asian Nations (ASEAN): Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. In terms of statistics, data suggests that this region is significantly affected by statelessness. UNHCR has flagged the existence of a stateless population in eight of the ten ASEAN states (UNHCR, 2009e). Although there are gaps in the reporting of exact figures, information from UNHCR and other sources indicates that the stateless population of several countries in the region numbers in the thousands or even tens of thousands. This initial window into statelessness in the ASEAN region suggests a problem of substantial magnitude.

Regardless of the question of numbers, it is possible to gain a sense of the problem of statelessness in the ASEAN region from various factors on the ground. To begin with, the colonial era has left a mark on Southeast Asia. As the contemporary independent states emerged, there were difficult questions of national identity and belonging to answer. The case of the Muslim population of northern Rakhine State – a group often referred to as Rohingya – is illustrative of the danger that statelessness can emerge in this context. Since gaining independence, Myanmar (also known as Burma) has not recognised this ethnically, linguistically and religiously distinct minority as full members of the state. When a new nationality law was passed in 1982, the Rohingya were not included among the 135 “national races” granted full citizenship. They also faced great difficulty establishing an entitlement to nationality under any of the other provisions of the law. When the state started to issue Citizens Scrutiny Cards to all Myanmar nationals from 1989 onwards, the Rohingya were not provided with any cards, leading to the conclusion that the government considered them to be foreigners (MRP, 2003; RI 2009). Other countries in the region have faced a similar challenge in successfully incorporating ethnic

or indigenous minorities in the body of citizens. In some cases, the state's approach has raised concerns about statelessness. In Indonesia, for instance, efforts to ensure that the country's ethnic Chinese minority are recognized as citizens and issued appropriate documentation are ongoing (RI 2009; US Dept., 2010d). Concerns have also been flagged with regards to access to nationality for ethnic Chinese in Brunei Darussalam (MRGI, 2008b; US Dept., 2009a; Freedom House, 2010). Meanwhile in Thailand, a proportion of the hill tribe community, comprising various ethnic and linguistic groups, has yet to acquire citizenship (CCPR, 2005; UNHCR, 2009b; RI 2009). Some indigenous groups in Cambodia may reportedly also have had difficulty establishing their nationality (CERD, 1998).

Historic and modern patterns of human migration, across the sometimes porous borders of ASEAN states, have added a layer of complexity to the question of access to citizenship.<sup>2</sup> In regulating access to citizenship governments need to determine which groups "belong" to the state. While conferring nationality to those with a clear, enduring link, states may decide not to include more recently arrived migrants. They are seen, instead, as a foreign presence. In practice, however, it may be difficult to differentiate between persons with a longstanding connection to the state and individuals who have settled there more recently – especially if there has not been a comprehensive civil registration or documentation system in place. Moreover, even within one or two generations after emigration, individuals may no longer be considered citizens by their state of origin. Consider the example of Vietnamese women who gave up their nationality when they emigrated to marry a foreign man and found themselves stateless when the marriage broke down (RI 2009; US Dept., 2010g). Where migrants are or have become undocumented, the risk of statelessness is heightened because it can become very difficult to establish a tie with any state – as can be seen today in the situation of children of Philippine and Indonesian migrant workers in Sabah, Malaysia (RI, 2007; UN HRC 2009a).

Another issue generating a risk of statelessness in ASEAN countries is the often inadequate coverage of birth registration systems. UNICEF has estimated that 17% of births, an equivalent of 5.1 million children per year, go unregistered in the East Asia / Pacific region (UNICEF, 2007). In some ASEAN states, the registration rate is well below even this average. For instance, UNICEF statistics point to 71.5% coverage in Lao PDR, 64.9% in Myanmar and just 55.1% in Indonesia. Moreover, particular difficulties are experienced by children born within isolated, ethnic minority, migrant or refugee communities (CRC, 2003a, 2007 and 2009). The lack of birth registration renders children significantly more vulnerable to statelessness because it leaves them without proof of place of birth, parentage and other key facts needed to establish their position under the nationality law.

Finally, a brief examination of nationality legislation reveals that ASEAN countries generally do not uphold adequate safeguards to prevent statelessness. For example, only

half provide for any right to acquire citizenship on the basis of birth on state territory and there are inadequate safeguards in place to prevent statelessness in the context of the renunciation, loss or deprivation of nationality. These and other shortcomings in the region's nationality laws will continue to contribute to problems of statelessness in the region until they are addressed.

On the other hand, it is important to acknowledge that there have – especially over the course of the last decade – been many initiatives within the region that have had a highly positive impact. As explained, these examples of ASEAN states' response to statelessness form the central focus of this paper.

### 1.3 Building a response to statelessness

According to UNHCR, there are four aspects or “pillars” to a response to statelessness: identification, prevention and reduction of statelessness and protection of stateless persons (UNHCR, 2006). This conceptual framework is an invaluable tool in understanding how statelessness can be addressed.

- Identification:** What methods can be used to “map” the situation of stateless persons and individuals at risk of statelessness?
- Prevention:** What can be done to avoid *new* cases of statelessness?
- Reduction:** What measures can be taken to resolve *existing* cases of statelessness?
- Protection:** What is needed to ensure that stateless persons enjoy their fundamental rights, pending a comprehensive solution to their situation?

Thus, for instance, the identification of statelessness may be accomplished through a specially tailored population survey while the reduction of statelessness may be achieved by helping stateless persons to access naturalisation procedures. It is important to realise that activities in one pillar can also help to achieve objectives under another. One example is the issuance of identity documents to stateless persons. This can have an immediately positive effect in terms of *protection*, while also laying the groundwork for the *reduction* of statelessness in the future by ensuring that these individuals have proof of their existing ties to the state. As such, it can be helpful to consider whether there is scope to serve multiple objectives through the design or implementation of a particular activity. After offering a brief overview of the tools that the international legal framework provides for addressing statelessness, this paper discusses regional good practices for each of the four pillars.

## 2. International legal standards relating to statelessness

International law gives states the tools that they need to identify, prevent and reduce statelessness as well as to protect stateless persons. In terms of identification, it has already been noted that the definition of a stateless person can be found in a dedicated international instrument, the 1954 Convention relating to the Status of Stateless Persons. Moreover, this definition has become customary international law and should therefore form the basis for the identification of stateless persons in all states, regardless of whether or not they are state parties to the 1954 Convention.

Where the prevention and reduction of statelessness is concerned, the central international standard is the right to a nationality. This is now recognised as a fundamental right to be enjoyed by everyone, everywhere. Virtually all of the major, contemporary human rights instruments include a provision inspired by article 15 of the Universal Declaration of Human Rights, which simply states that “everyone has the right to a nationality”. This development means that, under international law, states are obliged to do what they can to avoid statelessness. Several concrete norms have been formulated which give further content to this ambition, including the elaborate safeguards compiled within the 1961 Convention on the Reduction of Statelessness. Therefore, while states are generally still free to regulate access to nationality as they see fit, international law now imposes certain limits on this freedom and provides important tools to ensure that no one is left stateless.

The same body of human rights law is also highly relevant to the question of protection – of how states should treat people who nevertheless end up stateless. According to international law, nationality is no longer the primary basis for the enjoyment of rights. States must respect and protect the human rights of all persons under their jurisdiction, including non-nationals. There are a few exceptions, where rights are specifically ascribed to “citizens” under international law. Stateless persons may be excluded from such rights as are reserved to citizens but should enjoy all other human rights without discrimination.<sup>3</sup> This legal framework is complemented by the 1954 Convention relating to the Status of Stateless Persons that deals specifically with a number of issues regarding the rights of stateless persons.

### 2.1 Human rights law

ASEAN states have expressed their commitment to address statelessness and its consequences through their ratification of a range of international human rights instruments. All are, for instance, state parties to the Convention on the Rights of the Child (CRC). This instrument elaborates the right of every child to a nationality – as well as the right to be registered at birth, a valuable tool in the prevention of statelessness – in its article 7. It furthermore provides for the non-discriminatory enjoyment of rights by all children, regardless of their nationality or statelessness (CRC, 2005). Similarly, all ASEAN

states have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 9 explicitly provides for the equal enjoyment of nationality rights by men and women, including in the context of marriage (paragraph 1) and in transmitting nationality to their children (paragraph 2).<sup>4</sup> In addition, more than half of ASEAN countries, namely Cambodia, Indonesia, Lao PDR, the Philippines, Thailand and Vietnam, are state parties to the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). Article 24 of the ICCPR provides for the right of every child to acquire a nationality. The CERD prohibits racial discrimination in the enjoyment of a catalogue of rights, including the right to a nationality, in its article 5.

By ratifying these key human rights instruments, ASEAN countries have not only committed to uphold the fundamental rights of persons within their jurisdiction, they have also agreed to the monitoring of their efforts by the relevant UN treaty bodies. As such, institutions such as the CRC and the CEDAW Committees have provided comments on countries' policy and practice in areas relating to statelessness. Their recommendations can show states how to more effectively ensure the enjoyment of the right to a nationality and protect the rights of stateless persons. Additional guidance may also come from the Universal Periodic Review mechanism as well as reports compiled by relevant special procedures (UN HRC, 2009a and 2010). Moreover, the same mechanisms can highlight positive developments and help to share good practices.

## 2.2 Nationality-specific instruments

ASEAN countries have been less active in ratifying international agreements that focus specifically on nationality and statelessness. In fact, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness have yet to attract any accessions within the region. It should, however, be noted that the Department of Justice in the Philippines is currently engaged with UNHCR in policy discussions on statelessness and an analysis of the national legal framework with a view to pursuing the state's accession to both statelessness conventions. Meanwhile, the Convention on the Nationality of Married Women has just two ASEAN state parties, Malaysia and Singapore.

Regardless of formal accession, the influence of these instruments and the fundamental principles that they espouse can be traced in the legislation of many ASEAN countries. For instance, several of the safeguards contained within the 1961 Convention on the Reduction of Statelessness have made their way into domestic nationality laws.<sup>5</sup>

Meanwhile, Lao PDR and Vietnam have included a definition of statelessness in their law, which has been informed by the 1954 Convention relating to the Status of Stateless Persons and customary international law. Moreover, the ratification of the human rights

instruments discussed above lays a firm foundation in the region for both protecting the rights of stateless persons and avoiding statelessness by promoting the right to a nationality.

### 2.3 Relevant regional standards and initiatives

In terms of regional initiatives, the first to mention is ASEAN itself. Promoting and protecting human rights is one of the purposes of this regional cooperation. In fact, the ASEAN Charter provides for the establishment its own human rights body. On this basis, the ASEAN Inter-governmental Commission on Human Rights (AICHR) was inaugurated in 2009. Part of the AICHR's terms of reference is to develop an ASEAN Human Rights Declaration so as to establish a regional human rights framework that is complementary to existing international obligations. ASEAN States' commitment to the right to a nationality and the non-discriminatory enjoyment of human rights may be further strengthened by such regional agreements in future.

The separate ASEAN Commission on the Promotion and Protection of the Rights of Women and Children may also come to play a role in tackling issues of access to nationality and protection of stateless persons as they affect women and children. Meanwhile, the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers provides, among other things, for close cooperation between receiving and sending states to “resolve the cases of migrant workers who, through no fault of their own, have subsequently become undocumented” (article 2). Such activities may lead to the identification of stateless persons and will contribute to the prevention and reduction of statelessness.<sup>6</sup> The ASEAN Committee on Migrant Workers established to promote the implementation of the Declaration may also look at the link between statelessness and migration in its future work.

The second relevant regional body is AALCO – the Asian African Consultative Organisation – established as a forum for exchanging views and issuing advice to governments on matters of (international) law. Brunei Darussalam, Indonesia, Malaysia, Myanmar, Singapore and Thailand are also members of AALCO. Taking its lead from the International Law Commission, AALCO has dealt with a number of topics that touch upon the right to a nationality and the protection of stateless persons. For instance, in 1961 it elaborated principles on the admission and treatment of aliens, including a list of basic rights that are to be enjoyed by all non-nationals. In 1964, AALCO issued some model articles relating to dual nationality that provided, for instance, that a woman's nationality shall not automatically change upon her marriage to a person of another nationality. To date, the most pertinent initiative for addressing statelessness within AALCO has been a half-day special meeting held in 2006 on “Legal Identity and Statelessness”. This meeting culminated in the adoption of a resolution recalling the importance of avoiding statelessness and taking steps to improve the situation of stateless persons (AALCO, 2006).

Finally, it is also important to note the role of counter-smuggling and trafficking initiatives. Five ASEAN countries have ratified the “Palermo Protocol” to the UN Convention Against Transnational Organised Crime on the smuggling of migrants while four have also ratified the protocol on human trafficking. These protocols explicitly call for cooperation between states in verifying and documenting the nationality of victims of smuggling or trafficking. Such efforts can play a vital role in protecting individuals and preventing statelessness in the context of these forms of migration (UNHCR, 2006). Moreover, all ASEAN countries participate in the so-called “Bali Process” – the Bali Ministerial Conference on People Smuggling. Among the purposes of the Bali Process are several objectives relevant to statelessness. For instance, states pledge to cooperate in verifying the identity and nationality of illegal migrants and trafficking victims. More broadly, the Bali Process aims to support the provision of appropriate protection and assistance to the victims of trafficking, particularly women and children, some of whom may be stateless. Another objective is to ensure an enhanced focus on tackling the root causes of illegal migration, which include statelessness.<sup>7</sup>

### **3. Identification of stateless and at risk populations**

“Identification” of statelessness essentially means mapping stateless persons as well as at risk populations. Such mapping should be as comprehensive as possible. Compiling statistics that provide an insight into the magnitude of the problem is an important part of this, but effective identification of statelessness goes much further. It includes mapping the demographic profile of the population, establishing the cause of statelessness and highlighting any obstacles standing in the way of addressing the issue. Another component of identification is assessing problems of access to rights and services, as well as any other protection concerns. Finally, mapping all stakeholders concerned and establishing their interests will complete the identification exercise (UNHCR, 2008a).

#### **3.1 Background research, including legal analysis**

A good place to start in identifying statelessness is some form of background research. A desk review of existing reports by academics, government bodies, civil society, human rights institutions, the UN system and the media will offer a first insight into the problem in a particular country. It will also uncover gaps in information. The present paper is a case in point – the exercise of compiling existing information relating to statelessness in ASEAN countries was, in itself, informative. Some situations are relatively well documented. For example, with regard to the Rohingya, there has been widespread reporting on magnitude, underlying causes, protection concerns and efforts to tackle the issue (MRP, 2003 and 2004; RI, 2008; HRW, 2009). There has also been a substantial amount of writing on problems of statelessness in Thailand (Lee, 2005; Saisoonthorn, 2006; UNESCO, 2008; Komai, 2009). Additionally, there are sources that offer some insight into the issue in different countries as part of an overall discussion of human

rights practices, such as annual reports by the US Department of State (US Dept., 2004-2010).

Overall, however, a common theme across the region is the lack of comprehensive research into the problem of statelessness, meaning that much work still needs to be done in the area of identification.

One particular type of background study that can be carried out with relevant ease is a legal analysis. If done systematically, this will provide an immediate insight into potential problems of statelessness. By identifying gaps in the law or its implementation, where there are inadequate safeguards to prevent statelessness, it is possible to establish which sectors of a population may be stateless or at heightened risk of statelessness. For example, legal analysis may uncover that women cannot transmit nationality to their children when they are born outside the territory of the state – as is the case under Malaysian law (Section 1 b, c and d, Part II of the 2<sup>nd</sup> Schedule, Federal Constitution). This finding enables the identification of a population that is at risk of statelessness: children born abroad to Malaysian mothers. With this information as a starting point, studies can be conducted to discover the size and profile of this at risk population and to identify actual cases of statelessness. Legal analysis can also help to uncover protection concerns by establishing whether access to certain rights is barred to stateless persons.

If property ownership or the practicing of certain professions are areas reserved to citizens under the law, this can negatively affect the protection situation of the stateless. Alternatively, legal analysis may reveal an opportunity to resolve an existing situation of statelessness - for example, by revealing that stateless persons enjoy access to facilitated naturalisation.

In view of the cross-border dimension that statelessness may have, a regional approach to background research and legal analysis can be even more informative. A comparative analysis of nationality policy that incorporates, for instance, both the sending and receiving states of migrants can shed light on which persons are at risk of being left stateless. A number of such comparative exercises from different parts of the world have illustrated the value of this technique in making nationality policy more transparent and comparable and identifying good practices.<sup>8</sup> These studies help to guide further policy-making while providing inspiration for similar research processes elsewhere.

### **3.2 Extracting information from population data sources**

Certain government planning tools can also be tapped for information about statelessness. A periodic population census, for instance, may capture data about access to nationality which can be used to identify stateless or at risk populations. Other population data sources can also be helpful, such as birth, marriage and household registers or electoral lists. Analysing the information contained within existing data collections is a simple and

cost-effective way of starting to map the issue on the ground. Some form of preliminary background research, along the lines described above, will enable an understanding of what the data actually shows in terms of stateless or at risk populations.

In fact, by first establishing potential areas of concern through a background study or legal analysis, future data collections can be tailored to ensure that the details gathered are even more informative to the identification of statelessness.

Thus, the information logged as part of civil registration procedures can be augmented with data collection geared specifically to detect problems of statelessness. Introducing relevant questions into a population census will facilitate the quantification of the statelessness situation on a state's territory.

Most ASEAN States conduct a census on a ten-yearly cycle. The so-called “2010 round” of population and household censuses is now underway. Regional meetings have been held between governments' statistical divisions, including specifically in the context of this census round, to exchange good practices. To facilitate the identification of statelessness through population census and other data collections, this issue could be discussed in the development of the next round of population censuses through a devoted regional workshop. A number of UN agencies, including UNHCR, UN Population Fund and UN Statistics Division, can provide technical assistance with such an exercise as well as direct support to individual states (UNHCR, 2006).

### **3.3 Tailor-made surveys**

A more direct approach to gathering data on statelessness is a survey which specifically seeks to uncover individuals who are stateless or at risk of statelessness. Through tailor-made questionnaires, it is possible to build a profile of the population and gather detailed statistical or even qualitative data. A survey can be supplemented by participatory assessment, such as focus group discussions (UNHCR, 1998). This will help to build a better understanding of the impact of statelessness in terms of access to rights, uncover factors that may obstruct a solution and determine the interests and capacity of different stakeholders.

#### **Survey of enjoyment of nationality and basic services among Thailand's hill tribes**

With comprehensive technical support from UNESCO, the Thai Ministry of Social Development and Human Security conducted a large-scale survey to study the link between nationality and access to services in Thailand. The survey focused on hill tribe communities, collecting information on almost 65,000 individuals in

192 border villages. Of this number, 38% were found not to hold Thai nationality. This sample survey alone identified around 25,000 persons who are either stateless or at significantly heightened risk of statelessness. The findings can be extrapolated to get an impression of the magnitude of the problem as it affects Thailand's hill tribe community as a whole.

The survey uncovered some of the effects felt by individuals who do not hold Thai nationality. Persons without Thai nationality are 99% less likely to use public healthcare and 25% less likely to be able to access loans than those who hold citizenship. Children without Thai nationality are 73% less likely than Thai citizen children to enter primary school. They are 98% less likely to progress to higher education.

The survey thereby identified the main areas in which action could be taken to improve the protection situation of these individuals, pending a resolution of their case (MRGI, 2009; US Dept., 2010f).

Information gathered through a survey can feed directly into strategies for the prevention and reduction of statelessness and the protection of stateless persons. For example, in Vietnam, a survey facilitated the development of the state's policy on naturalisation of stateless former-Cambodian refugees by providing current and accurate data on the group concerned (US Dept., 2010g). Funding has now been secured from the European Union for a new project in which Vietnam's Ministry of Labour, Invalids and Social Affairs will work with UNHCR to survey cases of statelessness that have resulted from marriages with foreigners and implement an appropriate response. Studying the objectives, approach and outcome of such surveys can be helpful in determining how to address remaining gaps in information relating to stateless persons in the region.

### **3.4 Individual registration and status determination**

Stateless persons and individuals at risk of statelessness can be identified on a case-by-case basis through registration and status determination procedures. Having established that a segment of the population is undocumented or of unknown nationality status, government authorities may proceed by requesting such persons to come forward for registration and nationality verification. This kind of exercise has been implemented, for example, in Thailand, in a bid to address the situation of the large number of undocumented migrant workers. The immediate product of registration efforts is a more accurate picture of the magnitude and profile of the population at risk of statelessness. With the subsequent verification and confirmation of nationality it becomes possible to clarify who among this group does, in fact, hold a nationality and who is stateless.

Legal assistance and community outreach programmes offer a further opportunity for identifying individuals affected by statelessness. In Malaysia, community centres operated by ERA Consumer in Kedah, Perak, Selangor and Negeri Sembilan received around 100 cases per month in which they uncovered facts relevant to the identification of statelessness. On the basis of this information, ERA Consumer was able to estimate that approximately 20,000 Indian women lack birth certificates, identity cards or marriage certificates (Koya, 2006; Tikamdas, 2006). They and their family members are at heightened risk of statelessness.

Finally, states can put in place dedicated stateless person status determination procedures that can be accessed on an ongoing basis. There are currently no examples of this practice within the ASEAN region. However, elsewhere, this approach has been very effective, especially where the individual identification of stateless persons has formed the basis for access to the protection regime of the 1954 Convention relating to the Status of Stateless Persons (Gyulai, 2007).

### 3.5 Challenges in the identification of statelessness

As shown, some encouraging examples of identification efforts can be found in the ASEAN region. However, large gaps remain in the information on stateless and at risk populations. This echoes a global trend. For instance, while UNHCR estimates that there are 12 million stateless persons worldwide, it is only able to report data on a far smaller number (UNHCR, 2009e). In many cases, a comprehensive analysis is also lacking of the causes of statelessness, protection problems experienced by stateless persons and existing capacities in building a response. UNHCR has noted that “the absence of a clear assessment in some countries impeded effective planning of responses, underlining the importance of ongoing work on surveys, registration and population censuses” (UNHCR, 2009a).

One significant challenge that arises in the context of improving the identification of statelessness is promoting a common understanding of terminology. The majority of ASEAN countries do not define statelessness in their law, so different definitions, procedures or standards of proof may be applied.

#### **Definitions of statelessness under domestic law**

Vietnam and Lao PDR are the only ASEAN countries to provide a definition of a stateless person in their law. The Law on Vietnamese Nationality provides that a *stateless person* is “a person who has neither Vietnamese nationality nor foreign nationality” (Article 3, Law on Vietnamese Nationality). While not following the formula to the letter, this definition is in general conformity with the internationally

recognised definition of a stateless person. It thereby offers Vietnam an invaluable tool in the identification of statelessness such that situations become both transparent and comparable at the international level.

According to the Law on Lao Nationality, an *apatrid* [stateless person] is “an individual residing in the territory of the Lao People’s Democratic Republic who is not a Lao citizen and who is unable to certify his nationality” (Article 7, Law on Lao Nationality). On the one hand, this definition is more restrictive than that provided under international law: only once a person is *residing* in Lao PDR can his or her statelessness be recognised under this law. On the other hand, the definition is also quite pragmatic, since it refers to persons who are *unable to certify* their nationality. This could lower the burden of proof, in practice, for persons seeking to be recognised as stateless and make it easier for them to access entitlements accordingly.

The absence of coherence of definition has somewhat muddled the picture of statelessness in the region. The term “statelessness” may be used to describe a population even though there is insufficient knowledge or capacity to ascertain whether the individuals are stateless in accordance with international law. In fact, many groups that have been described as stateless at one time or another, can more properly be labelled as *at risk of statelessness*. This is the case, for instance, where children who lack birth registration or migrants who have become undocumented are classified as stateless without further regard for their circumstances. Their situation does make them more vulnerable to statelessness and some among them may indeed lack a nationality, so it is certainly useful to identify such groups with a view to adopting strategies to prevent statelessness. However, it would be inaccurate to describe these entire populations as stateless (UNHCR, 2010a). Instead, effort is needed to fully assess the situation of individuals within these broader groups in order to verify people’s nationality and ascertain who is, indeed, stateless. For those whose nationality can be confirmed, statelessness has been avoided. For those who remain, other solutions must be pursued to address their situation. This is how identification can successfully feed into the prevention and reduction of statelessness as well as the protection of stateless persons.

#### 4. Prevention of statelessness

“Prevention” refers to any measures taken to avoid creating new cases of statelessness. Indeed, “the easiest and most effective way to deal with statelessness is to prevent it from occurring in the first place” (Guterres, 2007). Given the fundamental importance of prevention activities, it is encouraging that many ASEAN countries have begun to identify populations within their borders that are at risk of statelessness. This information can strengthen strategies for prevention in the region.

#### 4.1 Legislative safeguards for the prevention of statelessness

A particularly important step towards prevention is to close gaps in nationality policy that could leave an individual stateless (UN GA, 1995). States must, for instance, find a way to balance their interest of perhaps preventing dual nationality or protecting national security with the avoidance of statelessness. For instance, rather than obliging a person to renounce their former nationality *before* applying for a new one, dual nationality can be avoided by allowing people to first acquire the new nationality then setting a deadline for the renunciation of the previous nationality. Cambodia and Indonesia provide firm guarantees against statelessness in the context of the renunciation of nationality (article 18, Cambodian Law on Nationality; article 23, Law on Citizenship of the Republic of Indonesia), while safeguards that go some way to avoiding statelessness in this context are also in place elsewhere in the region. Similar guarantees are needed to prevent statelessness from arising due to loss or deprivation of nationality. Cambodia's law is the only one in the region that does not prescribe the withdrawal of nationality under any circumstances. All others allow nationality to be lost or deprived if certain conditions have been met, which may lead to statelessness. Nationality acquired automatically at birth tends to enjoy greater protection against loss or deprivation than nationality acquired through naturalisation, registration or marriage.

Given that migration is a significant phenomenon in the region, a particular area of concern is where nationality may be lost due to long-term absence from state territory. Six countries currently provide in their law for the loss of nationality by all or some categories of citizen when they take up residence abroad, subject to certain provisions: Brunei Darussalam, Lao PDR, Myanmar, the Philippines, Singapore and Thailand. Cases of statelessness have arisen, for instance, among Indonesian émigrés under the previous nationality law that allowed citizenship to be lost after more than a 5-year absence. This was one of the key points of reform when the Indonesian nationality law was amended in 2006 and nationality can now no longer be lost in this way if it would result in statelessness (article 23). Transitional provisions also allowed those who had previously forfeited their citizenship to reacquire their nationality through simplified procedures, combining prevention with *reduction* of statelessness (article 42).

Safeguards are also needed to ensure that everyone starts out life with a nationality. Here, “one of the surest methods [to prevent statelessness] is to guarantee that individuals born on a state's territory have the right to that state's nationality *if they would not obtain any other*” (Guterres, 2007). This safeguard is laid down in the 1961 Convention on the Reduction of Statelessness and a number of human rights instruments. Today, 100 states have a clear international legal obligation to grant nationality to children born on their soil who would otherwise have none (UNHCR, 2010b).

Where children have been abandoned, their origin and parentage unknown, there is an even greater onus on the state to confer nationality so as to prevent statelessness.<sup>9</sup>

### **Examples of safeguards to ensure the child's right to a nationality in the ASEAN region**

**Malaysia:** The following persons born on or after Malaysia Day are citizens by operation of the law [...] every person born within the Federation who is not born a citizen of any country (Section 1e).

**Vietnam:** Abandoned newborns and children found in the Vietnamese territory whose parents are unknown, have Vietnamese nationality (article 18).

**Lao PDR:** In the event that one of the parents is a Lao citizen and the other parent is an apatrid, the children will be considered Lao citizens by birth without taking their place of birth into consideration (article 11).

Children born in the territory of the Lao People's Democratic Republic to apatrid parents permanently residing in the Lao People's Democratic Republic and integrated into the Lao society and culture will acquire Lao citizenship if requested by their parents (article 12).

Children found in the territory of the Lao People's Democratic Republic and whose parents identity is unknown will be considered Lao citizens (article 13).

**Indonesia:** Citizen of the Republic of Indonesia is [...] children born in Indonesian territory whose parents are of undetermined citizenship at the time of the child's birth; children newly born and found in Indonesian territory and whose parents are undetermined; [and] children born in Indonesian territory whom at the time of birth both parents were stateless or whose whereabouts are undetermined (article 4).

A further point to consider when assessing the potential for statelessness to be created is whether everyone enjoys equal protection under the law. If there are elements of discrimination on the grounds of gender, religion or ethnicity, this can increase the risk of statelessness for particular groups. Thanks to the international legal principle of non-discrimination and the influence of CEDAW, many states have now corrected any gender inequality that was previously present in their nationality laws. This trend can also be seen in the ASEAN region. In most circumstances, women can now pass on their nationality to their children on equal terms with men.<sup>10</sup> Singapore and Indonesia, for example, both amended their nationality law on exactly this point in recent years (2004 and 2006

respectively). However, there are still a number of states that have yet to provide for equality between men and women in the right to confer nationality through marriage, namely Brunei Darussalam, Malaysia, Singapore and Thailand.

In terms of other forms of discrimination, a small number of nationality laws in the region make reference to race or ethnicity. This is one of the circumstances that underlies the statelessness of the Rohingya in Myanmar (RI 2008; HRW, 2009). However, states are also moving away from this kind of distinction. For instance, in Indonesia, a differentiation between “natives” and “non-natives” based on ethnicity was also abolished with the 2006 legal reform (US Dept., 2007a; MRGI, 2008c).

Preventing statelessness requires not only introducing safeguards in the letter of the law but also ensuring appropriate interpretation and application of the law. Procedural safeguards can play an important role here. By ensuring that decisions relating to nationality are properly motivated and subject to review, there is less room for arbitrary decision-making and greater opportunity to fully assess the circumstances so as to ensure that statelessness is prevented. As yet, few ASEAN states provide in their law for an opportunity to ask for a review of nationality-related decisions. Myanmar is an exception, where decisions of the Central Body on citizenship can be appealed before the Council of Ministers (article 70, Burma Citizenship Law). In both the Philippines and Singapore, the law also provides for the possibility of a review in some cases. This is an area in which further lessons could be taken from outside the region.<sup>11</sup>

#### **4.2 Reducing the risk of statelessness by promoting birth registration**

Promoting access to birth registration is another straightforward yet highly effective measure that can help to prevent statelessness. Birth registration vouches for the child’s legal identity and provides official recognition of a child’s date and place of birth as well as parentage. These are vital facts in determining the position of the child under applicable nationality laws, thus birth registration can help to avoid nationality disputes and statelessness (UNHCR, 2010a). In the ASEAN region, there have been some major developments in this field in recent years. Progress can be traced at two levels: policy and practice.

In terms of creating a conducive legal or policy framework for birth registration, one recent example of reform is the new Civil Registration Act adopted in Thailand in 2008. Under the old law, there was some confusion as to whether children born in the state whose parents were not Thai nationals and had no right to reside in the country were eligible for birth registration (van Waas, 2007; UNESCO, 2008). This is a highly pertinent question since Thailand has a large presence of irregular migrants. In the past, children born within these communities were commonly unable to access formal birth registration procedures (CRC, 2006; van Waas, 2006). Through the new Civil Registration Act of 2008, the right of *all* children born in Thailand, regardless of their nationality or

the status of their parents, has been reaffirmed. On this basis, there has been renewed effort to facilitate the implementation of this crucial principle, including through the establishment of procedures to allow children born in the refugee camps along the Thai border to be registered at birth. Meanwhile, in Vietnam, the 2004 Law on the Protection, Care and Education of Children and the 2005 Civil Code also provide that every child has the right to be registered. Among the changes brought in was the standardisation of birth registration for all ethnic groups, while protecting the practice of specific ethnic groups with regard to the name of the child.

Changes to the law in the Philippines addressed another sociological obstacle to birth registration. The reform sought to “minimise exclusion and stigmatization of children born out of wedlock by allowing children born to register using the name of the father, regardless of the parents’ marital status” (UNICEF, 2006).

Indonesia outlined its own commitment to universal birth registration in its 2002 Law on Child Protection and reaffirmed this commitment in the 2006 Law on Population Administration. However, in 2008, Indonesia was still considered to rank among the bottom 20 countries in the world in terms of birth registration coverage. This situation led the Ministry of Home Affairs to adopt the “National Strategy on Birth Registration: All children are registered by 2011”. The strategy aims to translate Indonesia’s domestic and international legal commitment to birth registration into a successful policy of universal birth registration on the ground. Similar efforts to put the law into practice using a wide variety of techniques can be seen throughout the region.

### **Lessons from Cambodia’s campaign for universal birth registration**

In 2000, the Committee on the Rights of the Child expressed concern that many births were going unrecorded in the country. In fact, at that time, only approximately 5% of the Cambodian population was registered. A pilot project was then carried out by the Ministry of Interior to test the ground for mass mobile registration. With continuing support from Plan and UNICEF, the campaign was subsequently rolled out nationwide. 1600 registration teams – some 13,000 people, many of whom volunteers, were trained. Thanks to this huge push, more than 7 million adults and children were registered during just the first 10 months of the national programme. Today, the Asian Development Bank estimates that over 90% of the Cambodian population is registered.

Numerous factors contributed to the success of this campaign. Guidelines were adopted and the law was subsequently reformed such that birth certificates could be issued free of charge throughout the campaign and thereafter no fee would

be levied for birth registration within 30 days from birth. Only a nominal fine is incurred for the “late” registration of a birth beyond this time limit. Awareness raising was another main focus, using tools such as television and radio broadcasts, information posters and leaflets, a Civil Registration Awareness Bus that visited dozens of communities and the celebration of Universal Children’s Day with a large children’s fair centred around the importance of birth registration. The campaign invested in broad partnerships, getting local people involved in spreading the word and building trust – including teachers, monks and community leaders. This allowed fears surrounding the misuse of personal information and documentation, stemming from the era of the Pol Pot regime, to be overcome. Children were also invited to help design and implement parts of the campaign, further increasing the effectiveness of awareness raising activities.

Another major focus throughout, was building the capacity of government officials to take charge of the registration process, for instance by ensuring a steady supply of civil registration materials and by arranging a trip to study registration practices in the Philippines. This will help to ensure sustainability in the long term (CCPR, 1998; Setha, 2006; UNICEF, 2006; Heap, 2009; Plan, 2009).

Many lessons can be extracted from the innovative birth registration practices in ASEAN countries. The Committee on the Rights of the Child has commended, for example, the work of the “Flying Doctor Team” in Brunei which enabled children in remote areas of the country to be registered (CRC, 2003b). The institution of computerised registration systems with online data storage in Thailand has dramatically reduced the time taken to process birth registration and made it possible for copies of missing documents to be issued instantly on site at any office (Kaewdee, 2006). This move towards computerisation is also allowing new avenues to be pursued for the promotion of birth registration through Thai hospitals, by directly linking hospital records to the civil registration system.

Village midwives can now play a role in procedures in Indonesia to allow early and easy access to birth registration. In Lao PDR, the Ministry of Security has offered training to village police officers to encourage them to support the civil registration process. The Indonesian Head of State and First Lady have taken on the role of champions and advocates for the campaign for universal birth registration in their country. And in the Philippines, a Memorandum of Understanding was settled between the National Statistics Office, Plan Philippines and a national television network allowing infomercials on birth registration to be broadcast free of charge on television and radio stations across the country (UNICEF, 2006). By sharing these and other good practices, ASEAN countries can further strengthen their birth registration systems and avoid leaving children at risk of statelessness.

### 4.3 Verification and confirmation of nationality

Where an individual or group's nationality is uncertain or undocumented, states can take action to confirm or certify their citizenship. This can also be a way to pre-empt any question of statelessness if the application of the nationality law to a particular group has been called into question by a third party. Such confirmation and certification of nationality may also take place on a case-by-case basis. Where an individual's nationality is unclear or disputed, for instance due to lack of documentation, procedures can be put in place to investigate (UNHCR, 2006).

An example of such practices can be found in Thailand – a receiving country for large numbers of migrants, principally from Myanmar, Lao PDR and Cambodia. The Thai government concluded a Memorandum of Understanding with each of these countries in a bid to address the problem of undocumented migrants and better regulate migration flows. Migrants who have their nationality verified will be entitled to stay and work legally in Thailand. Between 1 and 1.5 million irregular migrants could potentially benefit from this policy (IOM, 2009-2010). By July 2010, close to 400,000 migrants had successfully completed nationality verification and been issued with a document attesting to their nationality. This enables them to obtain a work permit in Thailand, regularising their stay and improving their enjoyment of rights in the country. It also serves to prevent statelessness among the persons concerned by ensuring that they have proof of nationality. However, there is currently no contingency in place to address the status of those persons who were unable to complete the nationality verification – i.e. individuals who submitted their application but were not confirmed to be nationals of the relevant state (IOM, 2010a). This failure to obtain nationality verification may signal a problem of statelessness. Therefore, when conducting nationality verification, it will also be important to consider the appropriate next step to address the situation of persons who remain without confirmation of nationality.

### 4.4 Challenges in the prevention of statelessness

In accordance with their human rights obligations, states across the ASEAN region are promoting the enjoyment of the right to a nationality by investing significantly in measures to prevent statelessness. However, none are state parties to the 1961 Convention on the Reduction of Statelessness.

This presents a challenge to the extent that the 1961 Convention is the only universal instrument providing concrete, detailed guidance on the avoidance of statelessness. While many of the safeguards it prescribes have nevertheless made their way into the nationality laws of ASEAN countries, accession to the 1961 Convention would help states to identify and address any remaining gaps in their legislation. The 1961 Convention outlines a harmonised framework for dealing with the specific circumstance where individuals would otherwise be stateless, while leaving otherwise in tact state parties'

freedom to regulate access to nationality in accordance with their own interests and their other international legal obligations. Regardless of the question of accession, ASEAN countries would benefit from a more detailed review of their nationality legislation to see if the right to a nationality is adequately promoted in accordance with their human rights obligations and identify areas in which the prevention of statelessness can be strengthened through the incorporation of additional safeguards.

Of equal importance is promoting the implementation of the law in a manner that takes into account the need to prevent statelessness. This may require further awareness-raising and capacity building. For instance, migrants must be kept informed of procedures that they are required to follow, while abroad, in order to retain their nationality or to secure a nationality for their children. Meanwhile, easy access to consular authorities may also need to be assured in the receiving state.

Indonesia, for instance, has therefore established consulate offices that directly service areas of Malaysia where a high concentration of Indonesian migrants can be found. The context of irregular migration poses a particular challenge. Irregular migrants may have apprehensions about travelling to or registering with any state entity because of the potential consequences for their situation. Similar fears may hamper individual verification or confirmation of nationality. Thus, for example, when migrants from Myanmar proved reluctant to apply for nationality verification, the Thai Ministry of Labour developed and circulated an information brochure to tackle the specific concerns that this community had regarding the process (IOM, 2010b). A continuous appraisal of the situation on the ground is therefore critical.

The same is true for birth registration. Arguably the greatest remaining challenge for the ASEAN region lies not in the legal framework, but in its implementation. A variety of factors underlie the enduring difficulties in putting universal birth registration into practice across the region. These include: lack of public awareness on the procedures, inadequate decentralisation of the system, insufficient prioritisation of birth registration, insufficient capacity of civil registry offices, prevalence of home births, cultural traditions that are not conducive to immediate registration and language barriers (UNICEF, 2006). Several groups are also seen to be especially vulnerable non-registration – such as abandoned children and people living in rural areas. Identifying specific constraints and dissecting relevant good practices, such as those presented earlier, will enable states to make even greater strides in preventing statelessness in future.

## **5. Reduction of statelessness**

“Reduction” of statelessness describes any efforts taken to find solutions to *existing* cases. One way to achieve this is through a large-scale reduction campaign of some kind. Various techniques have been employed across the world over the last few years. The global impact is impressive, as “more than 3.5 million people were able either to acquire

or confirm a nationality between the end of 2004 and the end of 2008” (UNHCR, 2009a). Less immediately visible, yet of great importance, is a second avenue for the reduction of statelessness: individual naturalisation (UNHCR, 2006).

### 5.1 (Re)acquisition of nationality following legislative reform

As previously mentioned, numerous countries within the region have amended their nationality laws in recent years. In some cases, these changes have brought an opportunity for people who had been rendered stateless under previous laws to now (re)acquire a nationality.

#### **Legislative reform opens doors for the reduction of statelessness in Indonesia**

Indonesia adopted a new nationality law in 2006 which brought important changes for the state’s citizenship policy. Previously, nationality could only be passed from *father* to child. Such gender inequality created a heightened risk of statelessness – particularly among children of mixed-nationality parentage. Meanwhile, a person who resided abroad for more than 5 years would lose their nationality if they did not declare their intention to remain a citizen, regardless of whether this would render someone stateless. Given the large numbers of Indonesian migrant workers dispersed around the world, the threat of statelessness under this provision was very real. By the turn of the 21<sup>st</sup> century, this 1958 nationality law was considered “philosophically, judicially and sociologically no longer compatible to the development of the people and the civic administration of the Republic of Indonesia”. Thus, Indonesia reformed the law to introduce gender equality and prevent statelessness from loss of nationality following long-term residence abroad.

Critically, transitional clauses were added to the new law in order to address any existing problems. Under article 41, a child born before the entry into force of the law, whose mother is Indonesian, was given four years to register for Indonesian nationality. Similarly, under article 42, a person who lost their nationality due to long-term residence abroad under the old law could apply for reacquisition of Indonesian citizenship within three years. Unofficial sources reported that several hundred children of Indonesian mothers and non-national fathers were granted nationality within a few months after the new law entered into force. Meanwhile, several thousand migrants in Malaysia alone have successfully re-acquired their Indonesian nationality. In particular among this latter group, it is likely that this policy has had a significant impact in terms of reducing cases of statelessness.

In Vietnam, legal reform presented an opportunity to both reduce existing cases of statelessness and prevent new ones. There, problems stemmed from the lack of adequate safeguards under the previous law to protect women from statelessness in the context of marriage and divorce. Many women who married foreigners – principally Chinese, Korean and Taiwanese men – renounced their Vietnamese citizenship in order to apply for their husband's nationality. If the marriage broke down before the new nationality was granted, the women were left stateless. The numbers are significant, with more than 50,000 marriages contracted between Vietnamese women and foreign men from 1995 to 2002 and up to 10% of these marriages failing. The government estimated that at least 3,000 women were rendered stateless in these circumstances (RI 2009; US Dept., 2010g). This is why a particular focus of the new nationality law passed in 2008 was to allow such women to have their citizenship restored (article 23f).

Moreover, in order to reduce statelessness in accordance with this legal reform, the government now plans to conduct a full survey of the beneficiary population and develop an appropriate strategy for awareness-raising and legal assistance.

## 5.2 Citizenship campaigns

Whether in the context of the adoption of a new nationality policy or as a separate initiative, states may determine that the time is right for a citizenship campaign geared specifically towards the reduction of statelessness. Such a campaign can take shape in different ways. One possibility is the large-scale naturalisation of stateless persons residing on the state's territory, as seen in Indonesia, for instance, in addressing the situation of stateless ethnic Chinese. Following Indonesia's independence, the citizenship status of Chinese migrants residing on Indonesian soil was unclear. Many lacked the necessary documents to establish a longstanding tie to Indonesia and claim nationality under the law. However, nor did they adopt Chinese citizenship. Later, approximately 110,000 of these persons successfully petitioned for Indonesian citizenship and were granted nationality collectively by Decree (Sidel, 2007; RI, 2009). Similarly, in the Philippines, successive Presidential decrees passed in the 1970s provided for the "granting of citizenship to deserving aliens". The principal beneficiaries were ethnic Chinese – tens of thousands of applicants and their dependents were naturalised (See, 2004; Palanca, 2004). These policies played an important part in preventing and reducing statelessness at that time and for successive generations. A more recent example is an initiative launched this summer by the Thai Senate: DNA testing will be offered to around 1,000 stateless persons, allowing them to access Thai citizenship by confirming their blood ties to a person who already holds Thai nationality.

Beyond the ASEAN region, numerous additional examples of dedicated citizenship campaigns can be identified. In Nepal, nearly 2.6 million citizenship certificates were issued as part of a mammoth nationwide programme in 2007, dramatically reducing the incidence of statelessness in the country (Gurung, 2007; White, 2009; UNHCR, 2009a).

In Sri Lanka, the “Grant of Citizenship to Persons of Indian Origin Act” was passed in 2003. This conferred nationality to a population of around 300,000 “Hill Tamils” who were left stateless under the nationality law adopted at the time of independence (Perera, 2007; Manly, 2009).

Elsewhere, Bangladesh, Iraq, Mauritania, the Russian Federation, Ukraine, the United Arab Emirates and Kyrgyzstan are among the growing list of states that have taken steps specifically to reduce statelessness (IDMC, 2008; Manby, 2009; Hussein, 2009; Manly, 2009). Therefore, there are now many sources of inspiration for the development of citizenship campaigns if states find that a situation of statelessness within their borders demands a dedicated reduction exercise.

### 5.3 Facilitated naturalisation

Individual cases of statelessness can also be resolved over time through regular naturalisation procedures. In view of the importance of ensuring that everyone enjoys a nationality, international law now calls for the naturalisation of stateless persons to be *facilitated*. In other words, it should be easier for stateless persons to qualify for naturalisation and process an application than is perhaps the case for other non-nationals. Just one country in the ASEAN region makes explicit reference to stateless persons in its regular provisions for naturalisation: Lao PDR. The required period of residence that must be met prior to applying for naturalisation is reduced if the applicant is stateless.<sup>12</sup>

#### Facilitated naturalisation for stateless persons in Vietnam

One objective of Vietnam’s 2008 nationality law was to create conditions for “stateless persons permanently residing in Vietnam to acquire Vietnamese nationality” (article 8). The law does not establish lasting procedures for the facilitated naturalisation of stateless persons. However, it does instruct the government to institute a dedicated procedure for the naturalisation of stateless persons who had already been residing in Vietnam for at least twenty years when the law was passed. Applications may be submitted by “stateless persons who do not have adequate personal identification papers but have been stably residing in the Vietnamese territory since July 1, 1989, or before”. Importantly, to further facilitate access to these simplified procedures, applicants are exempt from the regular fees associated with naturalisation.

Long before the ultimate application deadline, the positive impact of these dedicated procedures in terms of the reduction of statelessness is already evident. The first naturalisation ceremony was held in July 2010 in Ho Chi Min City. At this event, 287 stateless, former-Cambodian refugees were granted Vietnamese

nationality. A second ceremony marked the completion of the naturalisation process for a further group of 142 persons in Mihn Long Commune at the start of October. It is expected that over the coming months, a total of around 2000 persons with the same profile will also be naturalised.

Regardless of the availability of *facilitated* procedures, there is evidence that some situations in the region are gradually being appeased as stateless persons naturalise. In Indonesia, the recent legal reform simplified the overall requirements and procedure for naturalisation (Sidel, 2007). In Brunei, the progressive resolution of cases through naturalisation appears to have been the principal approach to reducing statelessness among long-term ethnic Chinese residents and others. According to a 2010 news report in the country, over 30,000 people have been granted citizenship since the nationality law was adopted in the early 1960s. This figure was announced in the context of the 28<sup>th</sup> “presentation of citizenship certificates ceremony” at which 283 persons were naturalised.

Although separate statistics are not given, it is likely that a significant proportion of this group was previously stateless.<sup>13</sup> Moreover, programmes can be implemented to help stateless persons develop the capacity to meet conditions for naturalisation. For instance, in Myanmar, UNHCR has been funding language classes for Rohingya.

#### 5.4 Challenges in the reduction of statelessness

Encouraged by recent efforts by different countries to reduce statelessness, UNHCR set a target for the world of confirming or granting nationality to at least a further 500,000 stateless persons during 2010 and 2011 (UNHCR, 2009d). The developments highlighted above show how the ASEAN region is playing its part in meeting this target. However, no comprehensive data is available on the overall impact of the laws and policies discussed, making it difficult to determine the exact scope of advances made in the region in terms of the reduction of statelessness.

In fact, the overall lack of detailed and reliable information on current situations of statelessness may be hampering the further development of reduction strategies in the region. As previously discussed, many countries have identified populations that are at heightened risk of statelessness, but the number and profile of persons who are stateless *at present* is unclear. This can form an obstacle to the reduction of statelessness. For example, incomplete identification can result in inflated figures that may discourage stakeholders from taking up the issue. Even with the required will to begin to resolve cases of statelessness, the population concerned must be fully mapped before an appropriate strategy can be developed. Therefore, until the identification of statelessness is tackled in a more consolidated fashion, reduction efforts may not be fully effective and may neglect some potential beneficiaries. Nevertheless, the growing catalogue of examples

of substantial reduction efforts both within and outside the region is evidence of what can be achieved. These examples, when explored in detail, provide valuable guidance as to how similar results can be accomplished in comparable situations elsewhere – what steps are involved, what obstacles may come up and what solutions can be implemented.

While a comprehensive reduction campaign is the most direct way to achieve results when a stateless population has been identified, the importance of individual naturalisation procedures should not be underestimated. There is a danger that by developing a strategy that only addresses the known situations of statelessness some persons may be overlooked by what is essentially an *ad hoc* policy.

Or, indeed, the adoption of such a strategy may currently be out of reach. By providing in the law for the facilitated naturalisation of stateless persons, states are able to reduce statelessness over time without needing to fully map situations of statelessness within their borders. Legislation in the ASEAN region remains underdeveloped in this area and states should give renewed thought to facilitating the naturalisation of stateless persons – as a stand-alone reduction strategy or a compliment to other ongoing reduction efforts. Here, article 32 of the 1954 Convention relating to the Status of Stateless Persons provides guidance that can be informative whether a state has acceded to this instrument or not.<sup>14</sup>

## 6. Protection of stateless persons

Where stateless persons have been identified, it is important to ensure that they enjoy their fundamental rights as set out under international law until their situation is resolved. This is what “protection” means: respecting, protecting and fulfilling the rights of stateless persons. These include the right to education, to work, to healthcare, to marry, to access courts, to travel and many others. In accordance with their human rights obligations, states bear a responsibility to protect these rights for all persons within their jurisdiction, including those who are stateless.

### 6.1 Status determination and access to an appropriate legal status

A dedicated stateless person status determination procedure enables states to establish who is entitled to benefit from any special protection regime that has been put in place in response to statelessness. Recognising a person as stateless and granting an appropriate legal status can therefore facilitate the implementation of other protection measures. To determine if a person is stateless, an examination must be made of the nationality legislation of relevant countries and how the law has been interpreted and applied in the context of the case at hand. This may require contacting the authorities of the respective countries.<sup>15</sup> As such, a provision like article 39 of Vietnam’s nationality law can be helpful. According to that article, among the “responsibilities of the Government for nationality”

is to “enter into international cooperation on nationality”. This, along with the definition of a stateless person provided under the same law (article 3(2)), gives the authorities the basic tools for status determination.

As mentioned earlier, no ASEAN country currently offers access to a dedicated stateless person status determination procedure on an ongoing basis. In terms of principles and procedures that could be established, the practices of countries outside the region that do conduct status determination can be informative.<sup>16</sup> Yet, even without a dedicated procedure for stateless person status determination in place, states may identify individual cases of statelessness through a variety of avenues. One outcome of nationality verification for undocumented migrants – such as that conducted in Thailand, as discussed above – may be the identification of a residual group for whom no nationality can be confirmed. Where this is the case, providing for the possibility of recognising these individuals as stateless will help to stabilise their situation and promote protection. In states where asylum claims are processed, among the applicants for refugee status there may be persons who have no nationality. This process can therefore offer an opportunity to attribute stateless person status accordingly. Alternatively, a state may simply be able to recognize a person as belonging to a known stateless population within its territory, without the need for formal status determination in individual cases.

Perhaps more important than the question of how statelessness is determined, is the question of what effect is given to recognition as a stateless person. Ideally, recognition will lead to the conferral of an appropriate legal status – one that guarantees stability and access to rights (Batchelor, 2003). Unfortunately, none of the domestic laws currently in force in the ASEAN region provide specifically for the legal status of “stateless person”. As a consequence, the status of stateless persons often remains ambiguous or is dealt with on an *ad hoc* basis as cases come to the attention of the state. Thus, in Malaysia for instance, the Immigration Act (Act 1959/63) does not differentiate between refugees, asylum-seekers and stateless persons (UN HRC, 2009a). However, section 55 (1) of the Immigration Act gives the Home Minister the power to exempt any person or group from the provisions of the Act. This section provides a legal basis for promoting the protection of certain groups and individuals by offering them a temporary residence permit called the IMM13. In 2006, the government announced it would use this avenue to improve the legal status of Rohingya who had settled in Malaysia, whose situation is characterised by both statelessness and asylum-related concerns. A registration exercise was initiated to issue IMM13 permits to Rohingya in order to allow them to work, attend school and live in the country legally. This exercise was later suspended, but it nevertheless illustrates what steps could be taken to provide a stateless population with a stable legal status and promote their enjoyment of rights through *ad hoc* remedies based on existing domestic law (IFHR, 2008; US Comm., 2009; RI, 2009; ERT, 2010). A similar approach has also been seen in Thailand where, over the years, successive Cabinet Resolutions established a dedicated legal status for specified categories of non-nationals present in Thailand and

granted temporary permission to reside under article 17 of the Immigration Act (Lee, 2005; UNESCO, 2008; US Dept., 2008). In this way, many stateless persons in Thailand have been able to access a legal status of some kind, contributing significantly to their enjoyment of rights.<sup>17</sup>

## 6.2 Promoting access to personal documentation

The enjoyment of rights often hinges, in practice, on a person's ability to identify him or herself and show proof of legal status. A second critical element in protecting the rights of stateless persons is therefore the issuance of some form of personal documentation. Ideally, stateless persons would be issued with documents that vouch for both their identity and their status as a stateless person. In Thailand, for instance, as successive groups of non-nationals were granted a legal status under the immigration law, identity cards were also developed that verified this legal status (IRC, 2006; UNESCO, 2008; US Dept., 2008).

### Issuance of personal identity documentation in Myanmar

In 1995, the Myanmar government instituted a policy that would allow stateless residents of northern Rakhine State – principally Rohingya – to acquire personal identity documents. The authorities began to provide this population with white “Temporary Registration Certificates” (TRCs) and the issuance of these documents has been an ongoing process since. Efforts were stepped up in 2007 thanks to logistical support from UNHCR. The total number of stateless persons over age 10 who now hold TRCs is around 385,000 – an estimated 210,000 remain undocumented.

The issuance of a TRC confirms the lawful residence of the holder in northern Rakhine State. As such, the possession of a TRC may help to confirm the individual's eligibility for citizenship if the authorities change their policy on access to nationality for this population in the future. In the meantime, the certificates may help to improve the holders' legal status and stabilize their situation. The document facilitates the enjoyment of a number of rights for which proof of identity is necessary. For instance, the TRC is crucial for gaining a marriage license or travel authorisation. TRCs also formed the basis for eligibility to participate in certain political processes, including the right to vote in national elections (US Dept., 2009b and 2010a; UNHCR, 2010d).

While identity documents are key to exercising rights within a state's borders, international travel can also play a part in the enjoyment of rights – for instance, where appropriate medical care can only be found abroad. Travel documents then become a necessity. The difficulty encountered by stateless persons is that travel is generally facilitated by a passport issued by the country of nationality. Without travel documents, stateless persons may resort to the use of irregular migration channels. As such they become especially vulnerable to being trafficked. For example, a UNESCO study of trafficking patterns in Thailand showed that lack of nationality was the factor which contributed most to the risk of trafficking among members of hill tribe communities (Lertcharoenchok, 2001; Feingold, 2006). The provision of a passport or other travel document to a stateless person is therefore one of the special measures that states need to pursue in recognition of the particularities of their situation. This is not only in the interest of individuals in terms of promoting the protection of rights, it can also help to combat transnational crime. Several countries have provided for precisely this possibility. In Brunei Darussalam, stateless permanent residents are issued with a so-called “International Certificate of Identity” (ICI) which allows them to travel abroad and return to the country (US Dept., 2009a and 2010b). The Passport Act of the Philippines also provides for the issuance of a travel document, in lieu of a passport, to a stateless person who is a permanent resident (section 13). Meanwhile, according to news reports in both Malaysia and Thailand, there have been cases in which special passports have been issued in order to facilitate the travel of stateless individuals.

### **6.3 Promoting the non-discriminatory enjoyment of rights**

The protection of stateless persons can be directly improved by simply promoting non-discrimination in the enjoyment of rights. For example, if access to schooling is guaranteed for all children, regardless of nationality or status, the protection of stateless children is also assured. However, ensuring that stateless persons enjoy equal access to rights in practice may call for special measures to address any obstacles that they face due to the particularities of their situation. Only then can the protection of stateless persons be ensured and will states be able to satisfy their human rights obligations. For instance, in order to ensure that stateless persons in the Philippines are equally able to enjoy family rights, domestic rules relating to the contracting of marriage by non-citizens have been tailored to take into account their specific situation. Foreigners are generally required to submit a certificate issued by their respective diplomatic or consular office that attests to their legal capacity to contract marriage. Stateless persons, however, may submit an affidavit in lieu of this document, since there is no diplomatic or consular office necessarily obliged to issue documentation for them (article 21, Family Code of the Philippines).

## Protecting the rights of stateless persons in Malaysia

After a visit to the country, the UN Special Rapporteur on the Right to Education reported that “one of the most serious education-related problems in Malaysia [is] the lack of access to education, at all levels, for children lacking Malaysian citizenship status, including refugee children, asylum-seekers, children of migrant workers and stateless children” (UN HRC, 2009a; CRC, 2007; RI, 2007). The Ministry of Education has since renewed its pledge to offer an education to all children, irrespective of their circumstances or status, in accordance with the Convention on the Rights of the Child. The Ministry developed strategic partnerships with a number of stakeholders, including UNICEF, the Federal Special Task Force and the armed forces, in order to implement a dedicated education policy for stateless children. Alternative education programmes have been established along the same lines as the formal system with a focus on reading, writing and arithmetic skills, as well as civic education. The Education Minister commented in national news reports that the cost of educating stateless children is minimal, while a flexible and inclusive education policy will help to generate valuable human capital for the state.

In a separate policy focusing on Malaysia’s Indian community, Prime Minister Datuk Seri Najib Razak established a Special Implementation Task Force (SITF). The Indian community in Malaysia has been identified as one of the populations at heightened risk of statelessness, although the actual incidence of statelessness within this group is not known (Koya, 206).

The SITF will monitor the participation of the Indian community in government projects and promote access to public-sector services such as poverty eradication programmes, affordable housing and education. It is designed to be a “mobile one-stop centre”, with direct involvement of different government departments such as the National Registration Department and Social Welfare Department. In its first outreach effort, the SITF registered around 500 problems, logged during a one-day session in Selangor, with an even greater turnout during the second round of outreach. Welfare cases were the most numerous complaints but this was followed by problems of access to identity documentation and birth certificates. The ongoing efforts of the SITF will therefore provide an opportunity to work on the prevention and reduction of cases of statelessness, while also ensuring that this population – including any persons who may currently be stateless – is included in social and development projects which will help to improve their enjoyment of a wide range of rights.

In some cases, direct assistance may be necessary to tackle the extreme vulnerability that can characterise stateless populations. For instance, in Myanmar, the situation of stateless residents of northern Rakhine State is such that extensive humanitarian aid programmes have been initiated to redress their plight (HRW, 2009; UN HRC, 2010). A Common Humanitarian Action Plan is now being developed to coordinate the delivery of much-needed assistance by government authorities, UN agencies and NGOs in five areas – agriculture and food security, education, health and nutrition, infrastructure and water and sanitation (UNHCR, 2009c). Such efforts have an immediate and indispensable impact on the enjoyment of rights by the persons concerned. In other cases, the protection of stateless persons may be promoted by raising awareness of existing opportunities to participate in government programmes and access public services. For example, in Thailand, a range of projects have been instituted to inform children and families affected by statelessness of their rights under Thai and international law.<sup>18</sup>

#### 6.4 Challenges in the protection of stateless persons

The protection situation of stateless populations remains a subject of concern. In the ASEAN region, as elsewhere, stateless persons continue to face significant obstacles in the practical enjoyment of their rights and can find themselves politically, socially and economically marginalised. Among the common problems experienced are restrictions on land or property ownership;<sup>19</sup> limited access to education, especially beyond primary level;<sup>20</sup> difficulties in lawfully contracting a marriage;<sup>21</sup> and obstacles to full participation in the labour market.<sup>22</sup> Stateless persons are also vulnerable to detention, which may become prolonged or indefinite (ERT, 2010b). Furthermore, stateless persons are generally excluded from political rights, making it hard for them to voice their concerns and influence policies that affect them.<sup>23</sup>

Nevertheless, the good practices highlighted above show that ASEAN states have been able to implement a number of significant measures to promote the protection of stateless persons. The challenge is to consolidate these often *ad hoc* efforts and establish a comprehensive protection regime that has been tailored to the particular needs of stateless persons. For instance, while authorities have used their discretion under the law to address the status of some stateless populations whose situation has come to their attention, this approach does not guarantee all stateless persons access to a stable legal status now and in the future. Greater effort is needed to identify stateless persons, accord them an appropriate legal status and issue them with personal documentation. The importance of these steps to ensure effective protection of the rights of stateless persons must not be underestimated. States should therefore give renewed consideration to acceding to the 1954 Convention relating to the Status of Stateless Persons which provides, among others, a legal framework for the issuance of identity and travel documents to stateless persons. Regardless of accession, states need to look at the possibility of granting “stateless person status” to individuals who have been identified as stateless, be it through the establishment of dedicated status determination procedures

or in another context. This will help to guarantee their enjoyment of fundamental rights in accordance with human rights law.

## 7. Reflections on statelessness in Southeast Asia

Statelessness is a matter of concern to Southeast Asian states. A variety of historic, legal, political, social and economic circumstances in the region have contributed to the existence of populations who do not enjoy the legal bond of nationality with any state. This presents a serious obstacle to the exercise of fundamental rights by the individuals affected. It can also lead to significant hardship for families, interfere with the social fabric of communities and even strain inter-state relations if problems spill over from one country to the next. By contrast, addressing statelessness can help to prevent forced displacement, avert social tension and boost human capital.<sup>24</sup> With a growing interest in statelessness at the national, regional and global level, the acknowledgement that there is a need to tackle the problem must now be translated into further practical strategies and solutions. This is where good practices come in. Highlighting existing efforts for the identification, prevention and reduction of statelessness and the protection of stateless persons will help to inform future policies, by showing what can be achieved and how. The good practices discussed in this paper illustrate some of the impressive strides taken in the ASEAN region to deal with statelessness. Extracting lessons from these good practices is of value to the region as well as to the broader international community.

At the same time, this paper uncovered several areas in which there is presently a gap in stakeholders' response to statelessness and more work is needed. In the ASEAN region, the nexus between migration and statelessness presents a particular challenge – where statelessness has clearly been both a cause and a consequence of the movement of people. Migration looks set to be a significant socio-political feature in the region in years to come and, especially as the region takes further steps towards the free movement of persons within the ASEAN framework, finding ways to pre-empt problems of statelessness from arising in the migration context must be a priority.

For instance, areas in which the region's nationality laws can conflict and lead to statelessness among migrants and their families need to be further identified and addressed. Sending and receiving states will also need to invest more in promoting birth registration for children born within migrant communities. Moreover, greater effort is needed to identify statelessness among populations whose nationality status is presently unclear or disputed, such as undocumented migrants and victims of smuggling and trafficking. Having found this group to be *at risk of statelessness*, states need to put in place procedures to confirm and document nationality in order to prevent statelessness and identify stateless persons. An appropriate framework will then be needed to protect the rights of those persons who are found to be stateless – one that moves away from *ad hoc* policies towards a more encompassing approach, taking into account the particularities of statelessness and providing stability and legal certainty for individuals.

The same framework is also invaluable to guaranteeing the rights of stateless persons *outside* the migration context. In this regard, it is important to recall that many stateless persons have lived their whole lives in the country in which they were born, with no ties to any other state, and are reliant on that country for the enjoyment of rights and a resolution of their situation. States therefore need to renew efforts to identify *all* stateless persons within their territory, for instance by tailoring data collection exercises accordingly or implementing dedicated surveys. In fact, this paper has shown that strategies for the prevention and reduction of statelessness and the protection of stateless persons could all be improved by placing a greater emphasis on the comprehensive mapping of statelessness. This includes making a clear differentiation between stateless persons and persons at risk of statelessness, establishing the profile of persons affected, identifying underlying causes and protection concerns and assessing the role that different stakeholders can play in a response.

As the situation of statelessness in the region comes into clearer focus with further identification efforts in the future, good practices such as those presented in this paper will help to point the way forwards. The year 2011 marks the 50<sup>th</sup> year since the adoption of the 1961 Convention on the Reduction of Statelessness and this anniversary will be commemorated with activities across the world to raise awareness of the plight of stateless persons and to discuss ways to more effectively address the issue. This is an opportune moment for assessing progress made to date and setting out future strategies. A spotlight on good practices can help to foster a constructive debate on the issue in the ASEAN region and beyond.

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## ENDNOTES

- <sup>1</sup> Note that literature dealing with statelessness discusses two separate terms: *de jure* and *de facto* statelessness. The former describes a person who meets the international legal definition of a stateless person. The latter refers to persons whose situation is in some way comparable to that of the *de jure* stateless, for instance because they are unable to establish their nationality. This is an area of ongoing debate. UNHCR is seeking to clarify the use of terminology through the issuance of guidance on the interpretation of the legal definition of a stateless person. The first paper produced to this end is UNHCR, UNHCR and *de facto* statelessness, Legal and Protection Policy Research Series, April 2010.
- <sup>2</sup> During the colonial period, migration was often actively promoted by colonial powers – for instance of Vietnamese to Cambodia under French rule. Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples – Cambodia: Vietnamese*, 2008. Periods of post-colonial unrest in some ASEAN countries encouraged large-scale displacement within the region. In addition, according to the Working Group for an ASEAN Human Rights Mechanism, today there are more than 13 million migrant workers from ASEAN countries working abroad – of whom, around 5 million can be found in other ASEAN states. ASEAN Secretariat, *ASEAN Seeks to Protect and Promote Migrant Workers Rights*, 21 July 2010.
- <sup>3</sup> The non-discriminatory enjoyment of rights means that non-nationals may only be subject to different treatment from nationals if this is reasonable and objective, pursues a legitimate aim and is proportionate to that aim. Where the question involves stateless persons, account should also be taken of the particular predicament and vulnerability of the stateless who do not hold any nationality. See, for instance, Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligations Imposed on States Parties to the Covenant, 26 May 2004; and Committee on the Elimination of Racial Discrimination, General Recommendation 30: Discrimination against non-citizens, 1 October 2004.
- <sup>4</sup> Two ASEAN countries, Brunei Darussalam and Malaysia, currently maintain a reservation to article 9 (2) of CEDAW regarding the equality of women with men with respect to the nationality of their children. Singapore and Thailand both also initially adopted reservations to article 9 (2) of CEDAW, but have since withdrawn these following amendments to their nationality laws. Malaysia has also made a reservation to article 7 of the Convention on the Rights of the Child.
- <sup>5</sup> For instance, a safeguard to ensure that foundlings acquire a nationality can now be found in the nationality legislation of more than half of ASEAN countries. Those are: Cambodia, Indonesia, Lao PDR, Malaysia, Singapore and Vietnam.
- <sup>6</sup> Another provision in the Declaration that could be invoked to prevent statelessness and protect stateless persons is the obligation of sending states to ensure the protection of migrant workers when abroad as well as repatriation and reintegration to the countries of origin. Article 13 (Obligations of Sending States) of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, 2007. Consider also the obligation of receiving states to facilitate the exercise of consular functions of a migrant worker's state of origin when he or she has been detained for any reason. This may help

- to prevent statelessness by leading to the verification or documentation of nationality. Article 10 (Obligations of Receiving States).
- <sup>7</sup> States participating in the Bali Process have acknowledged the connection between tackling statelessness and combating human smuggling and trafficking. This is evidenced, for instance, by efforts to discuss concerns surrounding the situation of the Rohingya on the sidelines of a meeting of the Bali Process in 2009. E. Schwartz, Assistant Secretary, US Bureau of Population, Refugees and Migration, Protecting stateless persons: the Role of the US Government, statements made at a conference on statelessness, Washington DC, 30 October 2009; ‘Bali Process’ may address Rohingya crisis, Inter Press Service [International News Agency], 28 February 2009; Bali process failed to solve Rohingya boatpeople issue: AI, Mizzima News [India], 17 April 2009; Bali process inadequate to help Rohingya: NGOs, Jakarta Globe [Indonesia], 29 May 2009.
  - <sup>8</sup> One example of a regional study is the compilation and analysis of nationality law in Africa completed by the Open Society Initiative in 2009. See B. Manby, *Citizenship Law in Africa. A comparative study*, Open Society Initiative, 2009. A global questionnaire on statelessness conducted by UNHCR in 2004 similarly helped to trace trends in nationality policy and areas of concern. It also looked at state policy for the protection of stateless persons. Indonesia, Malaysia and Philippines were the only countries from the ASEAN region to submit information in response to this questionnaire. See UNHCR, *Final report concerning the questionnaire on statelessness pursuant to the Agenda for Protection*, March 2004. See also research conducted by the Hungarian Helsinki Committee on the protection regime for stateless persons in Central Europe, G. Gyulai, *Forgotten without reason. Protection of non-refugee stateless persons in Central Europe*, Hungarian Helsinki Committee, 2007.
  - <sup>9</sup> This is explicitly provided for in the 1930 Hague Convention on Certain Questions Relating to Conflict of Nationality Laws, the 1961 Convention on the Reduction of Statelessness, the European Convention on Nationality and the Covenant on the Rights of the Child in Islam. It is also strongly evidenced in state practice. See, for instance, UNHCR, *Final report concerning the questionnaire on statelessness pursuant to the Agenda for Protection*, March 2004.
  - <sup>10</sup> One exception is Malaysia where women cannot transmit their nationality to their children if they are born outside state territory. Section 1 (b), (c) and (d), Part II of the Second Schedule of the Federal Constitution of Malaysia, 1957, as amended. In addition, there is some conflicting information with regard to the nationality law of Brunei Darussalam. Some sources cite the adoption of an amendment in 2002 which allows women to pass nationality to their children on the same terms as men. See Freedom House, *Freedom in the World – Brunei* (2006), 19 December 2005; US Department of State, *2007 Report on International Religious Freedom – Brunei*, 14 September 2007. However, this revised version of the law was not available to the author and other sources continue to express concern as to the gender inequality in the nationality law. See Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council Resolution 5/1 – Brunei Darussalam*, A/HRC/WG.6/6/BRN/2, 7 August 2009.

- <sup>11</sup> See, for instance, Chapter IV of the 1997 European Convention on Nationality which is dedicated to “procedures relating to nationality” and provides for processing within a reasonable time, motivation of decisions in writing, reasonableness of fees and an opportunity for administrative or judicial review. The International Law Commission’s Draft Articles on Nationality of Natural Persons in relation to the Succession of States and the Council of Europe Convention on the avoidance of statelessness in relation to State Succession also detail a number of procedural guarantees.
- <sup>12</sup> Note that this is only the case for applicants who are also “of Lao race”. Thus, the regular qualifying period of residence is 10 years; for persons of Lao race, this is reduced to 5 years; and if the applicant, in addition to being of Lao race, holds no other nationality, then the residence period is reduced again to 3 years. See articles 14 and 14 of the Law on Lao Nationality, No. 06/90/PSA, 1990, as amended. Note that rendering access to facilitated naturalisation for stateless persons dependent on being of a particular race may raise questions with regard to the international principle of non-discrimination. Persons belonging to minorities such as other indigenous groups, as well as ethnic Vietnamese and Chinese minorities, will be excluded from the important benefits of this provision.
- <sup>13</sup> Brunei Darussalam granted permanent residence status to just under 50,000 persons between 1958 and 2009. Of this number, almost half were categorised as “stateless”. With around 30,000 persons granted nationality over the same period, it can safely be assumed that a substantial number of these were previously stateless. Parents blamed for ‘stateless’ children, *The Brunei Times* [Brunei Darussalam], 23 March 2010. See also US Department of State, US Department of State Country Report on Human Rights Practices 2005 – Brunei, 8 March 2006; US Department of State, US Department of State Country Report on Human Rights Practices 2006 – Brunei, 6 March 2007; 240 to receive Brunei citizenship, *Borneo Bulletin* [Brunei Darussalam], 17 December 2008; 208 Receive citizenship at ceremony, *Borneo Bulletin* [Brunei Darussalam], 7 June 2009. There are also reports that Brunei Darussalam amended its law to allow stateless persons over the age of 50 to satisfy the language requirement for naturalisation through an oral, rather than written, test. US Department of State, US Department of State Country Report on Human Rights Practices 2003 – Brunei, 25 February 2004; US Department of State, US Department of State Country Report on Human Rights Practices 2006 – Brunei, 6 March 2007; M. Lynch; K. Southwick, *Nationality rights for all: A progress report and global survey on statelessness*, Refugees International, 2009. Note that other sources reported a tightening of access to naturalisation. See *Minority Rights Group International, World Directory of Minorities and Indigenous Persons – Brunei Darussalam: Chinese*, 2008; 283 granted Brunei citizenship, *The Brunei Times* [Brunei Darussalam], 25 April 2010; As before, note that this revised version of the law was not available to the researcher so the content of this reform could not be confirmed.
- <sup>14</sup> “The Contracting States shall as far as possible facilitate the assimilation and naturalisation of stateless persons. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the changes and costs of such proceedings”. Article 32 of the 1954 Convention relating to the Status of Stateless Persons. The European Convention on Nationality also provides guidance on facilitated naturalisation for stateless

persons, declaring that “favourable conditions” should be put in place which may include “a reduction of the length of required residence, less stringent language requirements, an easier procedure and lower procedural fees”. See Council of Europe, European Convention on Nationality: Explanatory Report, Strasbourg, 1997. Note that UNHCR’s Executive Committee has encouraged states which have not yet acceded to the 1954 Convention relating to the Status of Stateless persons “to consider, as appropriate, facilitating the naturalization of habitually and lawfully residing stateless persons in accordance with national legislation”. UNHCR Executive Committee, Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons, No. 106, 6 October 2006.

- <sup>15</sup> It is important to note that the authorities of any relevant countries should only be approached in the context of stateless person status determination “once it is certain that the person is not entitled to asylum since an exchange with the country in question could put the person at risk”. UNHCR, UNHCR Action to Address Statelessness – A strategy note, March 2010.
- <sup>16</sup> In Spain, for example, a dedicated procedure was established by Royal Decree 865/2001 of 20 July approving the Regulation for the Recognition of the Status of Stateless Persons. Applicants may approach police stations or the Office for Asylum and Refugees (part of the Ministry of Interior). The office will conduct an investigation to determine if the person is stateless in accordance with various rules of evidence and procedure. Several other states have also taken steps to identify a competent decision-maker and outline procedures for stateless person status determination – including France, Italy, Hungary and Mexico. C. Batchelor, *The 1954 Convention relating to the Status of Stateless Persons: Implementation within European Union Member States and Recommendations for Harmonisation*, UNHCR, October 2003; G. Gyulai, *Forgotten without reason. Protection of non-refugee stateless persons in Central Europe*, Hungarian Helsinki Committee, 2007; UNHCR and IPU, *Nationality and Statelessness: A Handbook for Parliamentarians*, 2008; UNHCR, *UNHCR progress report on statelessness 2009*, EC/60/SC/CRP.10, 29 May 2009; G. Gyulai, “Remember the forgotten, protect the unprotected” in *Forced Migration Review*, Issue 32, 2009. It is of interest to note that the experience of such countries shows that providing for a dedicated determination procedure and status of “stateless person” under the law has not created a significant pull factor for migration. Over the period from 2001 to 2006, Spain saw an average of less than 70 applications per year for stateless person status and recognised only 23 applicants as stateless over this entire period. G. Gyulai, *Forgotten without reason. Protection of non-refugee stateless persons in Central Europe*, Hungarian Helsinki Committee, 2007
- <sup>17</sup> In addition, it has opened avenues for the prevention of statelessness among children of persons who hold one of these dedicated statuses and will facilitate the reduction of statelessness as Thailand develops new policies in this area. This shows how efforts to protect stateless persons can complement and reinforce the prevention and reduction of statelessness. Punthip Kanchanachittra Saisoonthorn, “Development of concepts of nationality and the efforts to reduce statelessness in Thailand” in *Refuge Survey Quarterly*, Vol. 25, Issue 3, 2006; L. van Waas, *Is permanent illegality inevitable? The challenge to*

ensuring birth registration and the right to a nationality for the children of irregular migrants – Thailand and the Dominican Republic, Plan International, 2006; UNESCO, Citizenship Manual – Capacity building on birth registration and citizenship in Thailand, 2008.

- <sup>18</sup> These initiatives include a human rights caravan project by the National Human Rights Commission; various initiatives by the Payap University Faculty of Law, including UNICEF-supported “Stateless Classrooms”; and ongoing work by Stateless Watch for Research and Development Institute of Thailand. See Abhisit urges rights awareness, Bangkok Post [Thailand], 17 March 2009; The Stateless Classroom, Bangkok Post [Thailand], 23 June 2009.
- <sup>19</sup> Non-nationals often face restrictions in the enjoyment of certain property rights. See, for instance, US Department of State, 2009 Country Reports on Human Rights Practices – Vietnam, 11 March 2010; Minority Rights Group International, World Directory of Minorities and Indigenous Peoples – Brunei Darussalam: Chinese, 2008; US Department of State, 2009 Country Reports on Human Rights Practices – Brunei Darussalam, 11 March 2010; US Department of State, 2009 Country Reports on Human Rights Practices – Cambodia, 11 March 2010; Committee on the Elimination of Racial Discrimination, Reports submitted by state parties: Cambodia, CERD/C/KHM/8-13, 15 June 2009; UN Human Rights Council, National report submitted in accordance with Paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 – Cambodia, A/HRC/WG.6/6/KHM/1, 16 September 2009; US Department of State, 2009 Country Reports on Human Rights Practices – Malaysia, 11 March 2010.
- <sup>20</sup> For instance, in Brunei Darussalam, while primary education is free for citizens and permanent residents, reports indicate that secondary education fees of B\$140 (approx. 100 USD) per month are required for non-citizens and university fees for non-citizens are B\$2800-3500 (approx. 2000-2500 USD). US Department of State, 2008 Country Reports on Human Rights Practices – Brunei Darussalam, 25 February 2009; US Department of State, 2009 Country Reports on Human Rights Practices – Brunei Darussalam, 11 March 2010.
- <sup>21</sup> In Indonesia, for example, stateless persons commonly feel that they must employ the services of a middleman to sort out the necessary marriage paperwork but brokerage fees can be prohibitively high which may deter people from getting married at all. See Tales of stateless, foreigner status Jakartan Chinese, The Jakarta Post, 12 February 2010. In Myanmar, stateless residents of Northern Rakhine State require official permission to marry – a procedure that can be costly and take up to several years to complete. US Department of State, 2009 Country Reports on Human Rights Practices – Burma, 11 March 2010. Note, however, that the Myanmar Supreme Court has now overturned two convictions for illegal marriage, illustrating the role of the judiciary in safeguarding the rights of stateless persons. UN Human Rights Council, Progress report of the Special Rapporteur on the situation of human rights in Myanmar, A/HRC/13/48, 10 March 2010.

- <sup>22</sup> In Lao PDR, membership of trade unions is restricted to those who hold Lao nationality. International Trade Union Confederation, 2008 Annual Survey of violations of trade union rights – Laos, 20 November 2008. In Malaysia, lack of access to the regular employment market has reportedly forced some stateless persons to resort to 3D jobs (dirty, dangerous and difficult), to begging or to criminal activities and prostitution. L. Koya, “Statelessness in Malaysia” in S. Nagarajan (ed.) *SUHAKAM after 5 years: State of human rights in Malaysia*, 2006; US Department of State, 2009 Country Reports on Human Rights Practices – Malaysia, 11 March 2010.
- <sup>23</sup> Under international human rights law, political participation is an area in which rights may legitimately be reserved for citizens of the state. See, for instance, article 25 of the International Covenant on Civil and Political Rights. An interesting exception can be found in Myanmar where, despite not being recognised as nationals, Rohingya could vote in the 1990 elections and the 2008 constitutional referendum. They will also be eligible to vote in the 2010 elections. In practice, a Temporary Registration Certificate may be required to cast their ballot, illustrating again the fundamental link between access to personal documentation and the enjoyment of rights by stateless persons. Note that the right to stand for election remains reserved to citizens both of whose parents were citizens. Amnesty International, *Myanmar: travesties of justice—Continued misuse of the legal system*, 12 December 2005; US Department of State, 2008 Country Reports on Human Rights Practices—Burma, 25 February 2009; UNHCR, *UNHCR Global Report 2008 – Myanmar*, June 2009; International Crisis Group, *The Myanmar elections, Asia Briefing No. 105*, 27 May 2010; UNHCR, *UNHCR Global Report 2009 – Myanmar*, 1 June 2010.
- <sup>23</sup> In Vietnam, for instance, economic development and human capital considerations were taken into account as the country moved towards a policy of accepting dual nationality. Vietnam to allow dual nationality, AFP [International News Agency], 14 November 2008. Recall also that in Malaysia, promoting access to education for stateless children was seen as a low-cost policy that could have a significant impact in terms of generating human capital for the state. Ensuring education for all, *New Straits Times [Malaysia]*, 20 July 2010; Government to ensure stateless children get education: DPM, *Bernama [Malaysia]*, 20 July 2010; Muhyiddin: Kids without papers will get access to education, *The Star Online [Malaysia]*, 21 July 2010.

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