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## UNDERSTANDING STATELESSNESS: ISSUES, CHALLENGES AND OPPORTUNITIES

In 2008 and 2009, there were numerous reports in the international media of Rohingya, a Muslim minority group from Myanmar, attempting to escape from Myanmar to Thailand and Malaysia, via perilous boat journeys. After being 'pushed back' by Thai authorities, there was pressure on ASEAN and the Bali Process for People Smuggling, Trafficking in Persons and Related Transnational Crime, to address the root cause of statelessness. The aim of this NTS alert is to analyse the problem of statelessness, giving an overview at both global and regional levels and tracing its causes and consequences. In addition, this alert explains the significance of statelessness under international law, highlights cases in Southeast and South Asia, and concludes by reviewing the types of solutions that have potential for being effective.

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### Introduction

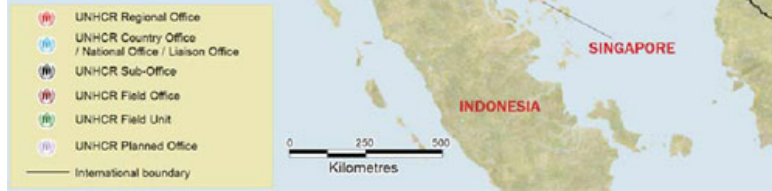
Recent events involving Rohingyas have once again brought international attention to the issue of statelessness in Southeast Asia. Between 18 and 30 December 2008, the Royal Thai Navy pushed out to sea at least 992 Rohingyas who attempted to enter Thailand after fleeing Myanmar. *TIME* reported that the first group of 412 people sailed for 12 days in a contingent of two boats. The Thai navy intercepted them and moved them to a barren isle off the Thai mainland. They were later towed back to sea in a boat, which drifted for 10 days and 10 nights. The Indian coast guard rescued 107 of them on December 27 whereas more than 300 of them were believed to have drowned. Another group of 580, arrested around December 30, was put into four boats whose engines were removed, then towed together and abandoned at sea. Of this group, one boat with 193 onboard was rescued in Indonesia's Sabang Island in Aceh on January 7, and another boat with 150 onboard was rescued in Tillanchang Island, Andaman and Nicobar of India, on January 10. Two boats with a total of 237 people are reportedly missing.

Figure 1 Map of UNHCR offices in South and Southeast Asia



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

While issues like migration, human trafficking and transnational crime have been discussed at great length by regional multilateral forums like the Association of South East Asian Nations (ASEAN), the issue of statelessness itself has not been adequately addressed and is still poorly understood in the region. According to the United Nations High Commission for Refugees (UNHCR) report



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

2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons, Southeast Asia has the world's largest stateless population. 4.3 million of the world's 6.6 million stateless population are to be found in the region with Thailand alone hosting an estimated 3 million stateless people. The Rohingyas are just one group of stateless people in the region.

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## The Problem of Statelessness

### Who are the stateless?

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

A stateless person is defined by the UNHCR as someone without nationality or citizenship. The majority of stateless persons **are not** refugees or asylum seekers, however, in some cases they can be if a state decides to recognise them as such. Often they are part of a repressed minority group within a state, for example Rohingyas in Myanmar, the Roma in Romania or the Bidun in Jordan. There are two types of stateless persons, the *de jure* and *de facto* stateless. The *de jure* stateless are not recognised as nationals under the laws of any country, whereas *de facto* stateless persons have legal nationality, but they cannot prove it either due to lack of documentation or because it is not effective (Weissbrodt and Collins, 2006). *De jure* stateless persons could be members of repressed minority groups, who may have been nationals of the country they inhabit, at one time, but had their citizenship revoked during a time of political change in that country. *De facto* stateless persons are often children who were never registered at birth. *De facto* stateless persons also have problems in proving their former nationality, for lack of proper documentation or certificates. It should be noted that there are often situations when it is difficult to distinguish between *de jure* and *de facto* statelessness. UNHCR further emphasizes:

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

### Why are they stateless?

1. **Political change and discrimination:** The persecution of ethnic nationalities in Myanmar started during the 1962 coup d'etat. It took place for two primary reasons: (1) The Myanmar military was afraid of a state break up and (2) it wanted to strengthen the socialist and economic base in Myanmar by getting rid of foreign dominance (Steinberg, 2010). One of the ethnic groups most severely affected by this policy were *Rohingyas*, who have been systematically discriminated against to this day. As a result of the harsh treatment they face, hundreds of thousands of Rohingyas have fled to Bangladesh, Thailand or Malaysia. Within Myanmar, they are restricted to the North Arakan region, and remain stateless, as the government of Myanmar refuses to issue them citizenship.
2. **Trafficking:** In 2001, the United Nations Educational, Cultural and Scientific Organization (UNESCO) in Thailand identified the lack of citizenship as the 'single greatest risk factor for highland minority girls and women in Thailand' (A Right to Belong, 2002). When a person is stateless, it is only possible to find work in the informal sector, which creates more risk, exploitation and vulnerability. In the 2009 US Department of State 'Trafficking in Persons' Report, the link between statelessness and trafficking is further elaborated upon:

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

Rohingyas are a prime example, as they have been victims of traffickers, while trying to escape repression in Myanmar.

3. **Laws regulating marriage:** In Vietnam, many women had to renounce their Vietnamese citizenship when marrying a foreigner, usually Taiwanese, South Korean or Chinese men. If the marriage resulted in divorce, they would find themselves stateless, as the old law did not require these women to gain another nationality before they had to renounce their Vietnamese one. However, a new law has recently been passed in Vietnam, which allows dual citizenship and does not allow a Vietnamese person to renounce their own citizenship, unless they have gained a new one (McKinsey, 2009).
4. **Failure to register children at birth:** There are an estimated one million stateless children in Thailand. Previously, Thai law did not allow migrants to register their children, if they were born in Thailand. However, in 2008 the Thai government amended this law, stating that all children born in Thailand, regardless of the parents' legal status, could be registered (Thawdar, 2009).
5. **Nationality based solely on descent:** In some countries, such as the United States, nationality at birth is based on *jus solis*. This means that if a child is born in the US, they receive American nationality, regardless of the parents' nationality. In other countries, however, nationality is based on *jus sanguine*, meaning that a child receives nationality based on descent and not on place of birth. Before the Nepal Citizenship Act was instated in 2006, Nepali nationality could only be passed on by the Nepali father. This rendered millions of children stateless. However, since 2006, nationality can be passed on through the Nepali mother as well, reducing some of the numbers of stateless persons in Nepal (International Observatory on the Stateless, 2008).

Table 1: Typologies of Statelessness

Denial and deprivation of citizenship

Withdrawal and loss of citizenship

**Methods:** The intentional and unintentional use of or interpretation of provisions in nationality laws so as to discriminate between groups; removal from census; gender-based legislation that prevents women from transmitting nationality.

**Cases:** Bangladesh, Dominican Republic, Federal Republic of Germany, Georgia, Kashmir, Kazakhstan, Kenya, Myanmar, Nepal, Russia

**Methods:** The revocation of laws; forced removals following xenophobic campaigns.

**Cases:** Bhutan, Ivory Coast, DRC, Germany (1933-45), Kuwait, Lebanon, Mauritania (pre-2007), Syria

#### State succession/state restoration

**Methods:** Ill-defined nationality laws following conflict, de-federation, secession, state succession and state restoration in multinational situations.

**Cases:** Bosnia and Herzegovina, Croatia, Estonia, Ethiopia, Eritrea, Latvia, Lithuania, Former Yugoslav Republic of Macedonia, Montenegro, Serbia, Former USSR, Yemen

#### Lack of access

**Methods:** Lack of opportunities to register births and marriages, the use of high fees for documents, requirements regarding the presence of witnesses to certify documents.

**Cases:** Croatia, Ecuador, Fiji, India, Israel, Kyrgyzstan, Former Yugoslav Republic of Macedonia, Nepal, Panama, Russia, Serbia, Slovenia, Sri Lanka

Source: 'Statelessness, Protection and Equality' by Professor Brad K. Blitz, Oxford Refugees Studies Centre, p. 16, 2009

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## Statelessness as a Problem under International Law

### Which international legal definitions and instruments are related to Statelessness?

One of the areas, rarely understood, is the standing of statelessness in the framework of international law. If the below mentioned legal instruments were more widely ratified, it would make a big difference in the status and protection of the stateless. It is important to mention that Southeast Asia has a history of rejecting international refugee law and, therefore, international law related to statelessness (Davies, 2008). Scholar Sarah Davies argues in her book 'Legitimising Rejection: International Refugee Law in Southeast Asia' that Southeast Asian nations have consistently been able to reject the use of international refugee law as:

- The Conventions are eurocentric in their content and do not take into account the Southeast Asian context of refugee and migrant flows.
- During the Indochinese refugee crisis (1975-1996), Southeast Asian states received both material assistance and resettlement offers from the international community for individuals who were only granted temporary asylum.
- Throughout the Indochinese refugee crisis, Southeast Asian states claimed that Indochinese refugees were not 'genuine' refugees, but individuals who were fleeing economic hardship, rather than widespread persecution. Till the mid-1980s the international community rejected this claim, however, in 1989, as a result of 'compassion fatigue', the US, Australia and France began to accept the term of 'illegal migrants' for the Indochinese asylum seekers. It also helped that states such as Thailand used the framework of international refugee law to explain their claims in pushing back Rohingyas.

Lisu hill tribe villagers



Source: Harry Ahphu Huang, June 2009. Available at [http://www.flickr.com/photos/mayfly\\_huang/3675479713/](http://www.flickr.com/photos/mayfly_huang/3675479713/).

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

### International conventions on Statelessness

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

**1) The 1954 convention**, while not widely ratified, especially in countries where the problem of statelessness is the greatest, this convention does provide a definition of statelessness, accepted as international customary law. It also has provisions for stateless persons to be protected, like nationals in the country they inhabit, under certain categories such as 'wage earning employment', 'rationing', 'public education' and 'public relief' (Blitz, 2009).

**2) The 1961 convention** added some important provisions, including that one cannot be born stateless (though only individual countries national law can decide this), that one cannot lose one's citizenship because of state successions and that one should not become stateless due to renouncing one's citizenship, losing it or being deprived of it (Blitz, 2009). However, both the 1954 Convention and the



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

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

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

**As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.**

However, it remains a problematic definition, as the person 'not having a nationality' has to be 'outside the country of his former habitual residence'. This is why only some stateless persons are considered refugees or asylum seekers. In addition, when a person is applying for asylum status, the first step is determining and verifying nationality. In Bangladesh, for example, 28,000 (Alam, 2009) Rohingyas live in refugee camps, as they are considered to be fleeing from a well-founded fear of persecution and they are outside their habitual country, Myanmar. Stateless persons do not have a country they can be repatriated to as is the case with refugees.

#### ***Other examples of international legal instruments***

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

**1) The CRC** came into force on 2 November 1990 and has been ratified by 193 countries. All ASEAN member states are party to the CRC. It is article 7 of the CRC that is of particular importance to stateless persons, as it stipulates child registration and a right to a nationality, thus providing a child with statehood.

**2) The ICCPR** came into force on 23 March 1976, but has only been ratified by Laos and the Philippines. Cambodia, Indonesia and Thailand have all signed but not ratified. Brunei, Malaysia, Myanmar and Singapore have not signed the agreement. The ICCPR emphasises that rights should be granted to all, regardless of nationality and citizenship. It also reiterates the importance of non-discrimination and a child's right to nationality thus providing a child with statehood.

**3) The ICESR** came into force on 3 January, 1976, and has 160 state parties. Cambodia, Indonesia, the Lao People's Democratic Republic, the Philippines, Thailand and Vietnam are parties to the ICESR. This Covenant underlines the right to take part in cultural life, reflected in article 15.

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

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

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

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

#### ***Developments in national law of Asian countries***

For the purposes of length, only recent developments in Thailand and Bangladesh shall be highlighted. In both 2008 and 2009, there have been legal developments, which will help some stateless persons receive citizenship and prevent statelessness in other cases. In 2008, Thai law was amended so all children born in Thailand, regardless of their parents' nationality, can be registered at birth. Currently, Thailand is in the process of amending its Citizenship Act to provide citizenship to some stateless populations, such as populations living in southern provinces along the Thai-Burma border, including Ranong, Prachoub, Kirikham and Chumporn (Picha, 2009). This still leaves many stateless persons out of the process, as UNHCR's most current population estimate of stateless persons in Thailand is 3.5 million.

In Bangladesh, around 300,000 Urdu-speaking Biharis, who fled to Bangladesh (then 'East Pakistan') after the India-Pakistan partition in 1947, lived in 66 camps in Dhaka (Refugees International, 2006). In 1971, when Bangladesh was formed, there was resentment by Bengalis towards the Biharis, as they had supported the West Pakistan army and were from then on referred to as 'stranded Pakistanis'. In

1974, Pakistan accepted 170,000 Bihari refugees (South Asia Forum for Human Rights). However, the remaining Biharis in Bangladesh remained stateless, until recently. In 1993, an additional 300 Biharis were repatriated to Pakistan. In a landmark Bangladesh Supreme Court decision in 2003, ten Biharis were granted citizenship, on the grounds that they were either born in the camps or had been residing in Bangladesh since the time of partition (BBC News, 2003). This Supreme Court decision gave precedence for the most recent ruling in May 2008, when 150,000 Biharis were granted citizenship, on the grounds that they were either born after 1971 or were minors during Bangladesh's war of independence (BBC News, 2008).

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## Overview of Global and Regional Trends

### Global estimates of statelessness

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

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

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

Table 2: Number of countries reporting statistics on stateless persons

Year	Number of countries reporting statistics on stateless persons	Total numbers of stateless persons
2004	30	1.5 million
2005	48	2.4 million
2006	49	5.8 million
2007	54	3 million
2008	58	6.6 million

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

However, despite the expansion in coverage and knowledge of stateless persons, the number of States party to the 1954 Convention relating to the Status of Stateless Persons (the 1954 Convention) and the 1961 Convention on the Reduction of Statelessness (the 1961 Convention), two key instruments for the protection of stateless people and the prevention and reduction of statelessness remained limited. In some cases, questions relating to nationality were viewed as sensitive and falling solely within the realm of national sovereignty, despite the legitimate interest of the international community in this issue.

### Regional estimates of statelessness

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

As the table below indicates, in Southeast Asia, there are no reliable figures for Brunei, Cambodia, Indonesia and Philippines although significant stateless populations exist in these countries. However, with the expansion in coverage and knowledge of stateless persons increases this gap was expected to narrow in the future.

Table 3: Stateless population in Southeast Asia

Country of residence	Description/origin	Population end-2008	Of who: UNHCR assisted**
Brunei Darussalam	Stateless	*	—
Cambodia	Stateless	*	—
Indonesia	Stateless	*	—

Malaysia	Stateless	40,001	–
Myanmar	Stateless	723,571	200,000
Philippines	Stateless	*	–
Thailand	Stateless	3,500,000	–
Vietnam	Former Cambodian refugees	7,200	–
<b>Southeast Asia Total</b>		<b>4,270,772</b>	<b>200,000</b>
<b>Global Total</b>		<b>6,572,167</b>	<b>225,488</b>

Source: *2008 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*, 16 June 2009, United Nations High Commission for Refugees (UNHCR).

\*Significant stateless populations but no reliable figures existed.

\*\*the majority of stateless people are still beyond the reach of UNHCR.

### Regional cases

Rohingyas in Myanmar and the hill tribes in Thailand shall be highlighted in this section, as the Rohingyas are among the most vulnerable and the hill tribes of Thailand form the largest population of stateless persons worldwide, estimated at 3.5 million according to the latest UNHCR statistics. The stateless hill tribes themselves are estimated at 400,000 (Keenapan, 2009).

#### 1) Rohingyas in Burma

It is estimated that around 725,000 Rohingyas live in the North Arakan region, along the Myanmar Bangladesh border. They are related to the Chittagonian Bangladeshis, but were conquered by the Burmese in the early 19th century. Of South Asian descent and practicing Sunni Islam, Rohingyas have increasingly been discriminated against since Myanmar's independence in 1948. After military rule commenced in Myanmar in 1962, numerous policies against residents of Indian and Chinese descent were instituted, causing a mass exodus, including of Rohingyas. Hundreds of thousands of Rohingyas fled to neighbouring Bangladesh in 1978 and were stripped of their Burmese citizenship under the 1982 Burmese Citizenship Act. While 28,000 Rohingyas have been accepted as refugees in Bangladesh and live in UNHCR supported camps in the Cox Bazaar district, it is estimated that 200,000 Rohingyas, who do not have refugee status and remain stateless, live in surrounding areas (Lewa, 2009). Rohingyas who still live in the North Arakan region suffer under the repressive policies of the Myanmar state. Sean Garcia and Camilla Olson of *Refugees International* write:

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

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

Malaysia, which is not a signatory to the 1951 Convention Relating to the Status of Refugees or the 1954 Convention Relating to the Status of Statelessness, often targets Rohingyas for deportation under the auspice of being 'illegal migrants'. Approximately 13,000 Rohingyas are registered in Malaysia, but only 400 have access to primary education opportunities (Human Rights Watch, 2009).

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

#### 2) Hill tribes in Thailand

The hill tribes in Thailand are made up of many different ethnic minorities, originating from Myanmar, China, Laos and Tibet. The following nine groups are recognised by the Thai government: Karen, Mong, Yao, Lisu, Akha, Thin, Lua and Khamu (FAO, 2002). The most populous of these groups are the Karen, who fled political change and persecution in Myanmar, and the Hmong, who fled the Indo-China conflict in the 1970s. Even though hill tribes, including the nine groups mentioned above, have resided in Thailand for multiple generations, a little more than half of them have Thai nationality, while the rest remain stateless (Physicians for Human Rights, 2004). It is a complicated and time-consuming procedure for hill tribe people to obtain citizenship in Thailand, as they have to follow the Central Registration on nationality acquisition regulations, based on the 1996 House Registration for Hill Tribe People (Vital Voices, 2007). As mentioned in the international law section, the proposed amendment of the Thai Citizenship Act, under the current interim government, may change some of this.



Source: Ruben Flamanque/Austcare/August 2008.

## Conclusion

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

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

While the 'stateless', 'refugees' and 'illegal migrants' have needs and issues that are specific to only them, they also have many cross-sectional similarities with each other, which are not analysed enough. The cross-sectional similarities between the above mentioned categories and the policy relevance of the many faces of statelessness in Southeast Asia will be analysed in an upcoming Alert.

Table 4: Organisations working on preventing and reducing statelessness

Type and Name of Organisation	What issues they work on connected to statelessness
<b>International Organisations</b>	
UNHCR	<p>Since 1974, UNHCR has been the lead agency working with and providing assistance and protection for the stateless. A 2006 document by the UNHCR Executive Committee (now comprising 76 states) titled 'Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons', gave UNHCR new ground to expand its work on statelessness, including a focus on:</p> <ul style="list-style-type: none"> <li>• Research and statistics related to statelessness, development of a systematic method for information gathering</li> <li>• Working more closely and in partnership with other UN agencies such as the United Nations Fund for Children – UNICEF (for birth registration) and the United Nations Population Fund – UNFPA (for population data)</li> <li>• Advocating strongly with countries who have still not ratified the 1954 and 1961 Conventions</li> </ul>
United Nations Secretariat	UN Special Rapporteur on Non-Citizens, Human Security Commission, Office of the High Commissioner for Human Rights (OHCHR)
UNICEF	Specialises in facilitating birth registrations, in conjunction with PLAN international
UNFPA	Specialises in collecting population data, gives technical assistance on how to e.g. include stateless persons in census data
UNESCO	Focuses on the link between statelessness and trafficking in Southeast Asia, with an emphasis on Thailand
United Nations Development Program (UNDP)	Runs an 'equal access to justice' programme worldwide, which has helped in some stateless persons attaining legal status
Asian Development Bank (ADB)	Conducted a study on the impact of birth registration campaigns in Asia.
<b>International NGOs and Think Tanks</b>	
Refugees International	Refugees International advocates lifesaving assistance and protection for displaced people, and promotes solutions to displacement crises, which includes a programme on statelessness. It recently published the Global Survey on Statelessness in March 2009.
Open Society Institute (OSI)	The OSI seeks to shape public policies that assure greater fairness in political, legal, and economic systems and safeguard fundamental rights. It has a program on statelessness, but currently focuses more on statelessness in African countries.
The Equal Rights Trust	The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and to promote equality as a fundamental human right and a basic principle of social justice. Within this mission, it addresses the issue of statelessness.
The International Observatory on Statelessness (IOS)	Created by Oxford Brookes University and the Oxford Refugees Studies Centre, the IOS focuses on collating national data on patterns, types and conditions of statelessness and promotes research on patterns and causes of statelessness by gathering data on a range of issues.
Plan International	A children's organisation aiming to alleviate poverty, Plan International

Human Rights Watch	worked on a large birth registration campaign with UNICEF in 2006.
Amnesty International	Has written several reports on stateless persons, the most recent is 'Perilous Plight: Burma's Rohingya take to the Seas'.
	Has also written numerous reports and raised the issue of statelessness, most recently concerning statelessness in Latvia.
<b>National Organisations in the Southeast Asia region</b>	
The Arakan Project	Based in Bangkok, the Arakan Project focuses on raising awareness and advocacy for Rohingyas.
The Legal Assistance Center	Focuses on education for stateless children in the Mae Ai town of Thailand.

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#### About the Centre:

The Centre for NTS Studies was inaugurated by the Association of Southeast Asian Nations (ASEAN) Secretary-General Dr Surin Pitsuwan in May 2008. The Centre maintains research in the fields of Climate Change, Energy Security, Health Security, as well as Internal and Cross Border Conflict. It produces policy-relevant analyses aimed at furthering awareness and building capacity to address NTS issues and challenges in the Asia Pacific region and beyond. The Centre also provides a platform for scholars and policymakers within and outside Asia to discuss and analyse NTS issues in the region.

In 2009, the Centre was chosen by the MacArthur Foundation as a lead institution for the MacArthur Asia Security Initiative, to develop policy research capacity and recommend policies on the critical security challenges facing the Asia-Pacific.

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