

Master of Laws: Advanced Studies in International Children's Rights



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**The forgotten child:
The Right to Identity of stateless children in Thailand**

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A thesis submitted by: Chunya Boonyawan

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Declaration statement



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Name: Chunya Boonyawan

Student ID Number: [REDACTED]


Signature: 

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Executive summary

In Thailand, there are more than 200,000 children who are not considered to be a national of Thailand or any country in the world. Some of them do not have any identification document to confirm their legal existence before the law. Some may face difficulties accessing basic services such as health care and education during one of the most pivotal periods of human lives. Some are at risk of being trafficked, sexually exploited, or forced into hazardous labour due to their lack of legal status and protection from the states.

Hoping to eradicate childhood statelessness by 2024, the Thai Government have cooperated with various international organisation such as the United Nations High Commissioner for Refugee (UNHCR) and United Nations Children's Fund (UNICEF). More than twenty years have passed, yet Thailand remains the country with one of the highest stateless populations in the world.

To find an effective and holistic solution to the problem, it is important to fully understand the root cause, the limitation, and the surrounding context of childhood statelessness in Thailand. Hence, this thesis aims to provide an answer to the following research question:

“To what extent has Thailand ensured and protected the rights to the identity of stateless children in conformity with the UNCRC, and whether there is a potential use of the communication procedure under optional protocol 3?”

The first chapter of the thesis aims to provide the context behind this research paper, explain the research question and methodology used in this research paper, and lay down the limitation of the research. It also highlights the importance of nationality in the life of a person as well as provides an overview of the situation of stateless children in Thailand.

The second chapter outlines relevant legal frameworks at both international and regional levels. It analyses the meaning of the right to identity of the child, the state's obligation with regard to the right to identity and the prevention of statelessness in Childhood. Article 7 of UNCRC, the general principles and concluding observations are put together for the analysis.

The third chapter delves into detail about stateless children in Thailand as well as an in-depth explanation of the development of Thai birth registration and nationality law. The chapter focuses on the examination of the following three relevant legal frameworks: the Civil Registration Act, the Nationality Act and the Immigration Act. The chapter aims to highlight the existing gaps in the law and possible practical challenges.

The fourth chapter provides a thematic analysis of the Thai legal framework in comparison with UNCRC. The second part of the chapter explores the potential use of the Communication Procedure under OP3 to redress the right violation that may occur if Thailand fails to uphold its obligation under UNCRC.

The fifth chapter draws a final conclusion from previous chapters, offers an answer to the research question, provides suggestions for possible improvement of the protection of stateless children in Thailand, and ends with key takeaways.

Keywords

Stateless children – the right to an identity – birth registration – nationality – Convention on the rights of the Child.

Overview of the main findings

Nowadays, there are at least 12 million people around the world who are not considered a national of any country. Stateless people are often excluded from the state's protection system because the state does not recognise their existence. Due to their invisibilities, stateless people may face difficulties in accessing basic services such as education and health care. It is also common that stateless people would not have the resident right to reside in the country, and as a result, this increases the risk of being subjected to arrest, exploitation, poverty, and detention.

Statelessness can arise from various factors, including incongruent nationality system, discriminatory law, and administrative practice. Stateless children can inherit statelessness from their parents by birth or become stateless because of the factors mentioned above. At the International level, there has been an effort to end childhood statelessness. The matter is covered by various international legal frameworks, such as The Convention on the Reduction of Statelessness, the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the right of the Child (UNCRC).

An analysis of the UNCRC, which is the main international legal framework used in this thesis, shows that the right to identity under Article 7 consists of five separate rights, which are the right to birth registration, the right to a name, the right to acquire a nationality, and the right to know and be cared for by one's parents. The right to be immediately registered after birth plays an important role in the reduction and prevention of childhood statelessness. Although it does not ensure the acquisition of nationality, which is the solution to statelessness, a birth certificate is often required in the acquisition of nationality process. The CRC committee highlight the importance of birth registration in various document and reaffirms that the state has an obligation to ensure that birth registration is flexible, free of charge and universally accessible.

According to the UNCRC, the state does not have an obligation to grant nationality to all children born within its territory. The right to acquire a nationality is different from the right to a nationality. Nonetheless, there is a strong presumption that the state should consider granting nationality to the child if the child would otherwise be stateless and that the domestic law regarding the acquisition of nationality is non-arbitrary.

Thailand is listed among the country with the highest number of stateless people, and more than 200,000 of them are children. There are three main legal instruments that are relevant to childhood statelessness: the civil registration act, the nationality act, and the immigration act. In Thailand, all children born in the territory are entitled to birth registration. However, nationality is still a matter that is closely related to national security. Thai Nationality law is a mix between *jus soli* and *jus sanguinis*. At the moment, there is no legal framework in Thailand that is specifically dedicated to childhood statelessness, and the solution for statelessness in children varies depending on the background and the residential status of the children and their parents.

It is achieved through this research that there are gaps in Thai law on the matter of childhood statelessness and practical challenges in the implementation process that contribute to systematic discrimination and lead to children's rights violations. The thesis suggests that to holistically overcome statelessness in childhood, there are four actions to consider: law reform, awareness raising, monitoring body and allocation of budget. The thesis acknowledges the influence that the international community has on Thailand's willingness to ensure the rights under UNCRC and suggests that the communication procedure under the OP3 could be a potential tool to generate such influence.

List of abbreviations and acronyms

ASEAN – The Association of Southeast Asian Nations

CEDAW – Convention on Elimination of Discrimination Against Women
CEDAW Committee – Committee on the Convention on Elimination of Discrimination Against Women
CRC

CO – Concluding Observations

GC – General Comment

ICCPR – International Covenant on Civil and Political Rights

OP3 – Optional Protocol to The Convention on the Rights of the Child on a Communications Procedure

UDHR – Universal Declaration on Human Rights

UNCRC – United Nations Convention on the Rights of the Child

UNHCR – United Nations High Commissioner for Refugees.

UPR – Universal Periodic Review

Chapter 1: Introduction

A stateless person is a person who is not considered a national by any State under the operation of its law.¹ In the context of human rights, statelessness is a grave concern, as not having any genuine link with the state may result in not having access to other fundamental human rights. A stateless person may face challenges invoking their rights vis a vis the state, which is considered a primary duty bearer in the context of international human rights.²

According to the global report by the United Nations High Commissioner on Refugees (UNHCR), there are at least 10 million stateless people around the world and one-third of them are children.³ It means that there are more than 3 million children in the world whose legal identity is not recognised by any state. Although legal identity may not guarantee the fullest enjoyment of children's rights, its absence is a serious barrier. Without an established legal identity, stateless children may face difficulties accessing fundamental human rights services.⁴ They might also be more vulnerable to forced labour, exploitation and trafficking due to their lack of state protection.⁵

There are various reasons why millions of children are born stateless, but the two main causes are discrimination against a certain group of people and the lack of a global uniform nationality system. As the principle of non-discrimination enshrines in various international and national legal instruments, some even argue that it has crystalized and become customary international law or even *just cogen*. Thus, the debate remains on whether the state has an obligation to grant nationality to children or the state only has an obligation to ensure that the child has a right to nationality.

There are various international legal instruments that establish the right of children with regard to the acquisition of nationality and the prevention of statelessness. One of the most important legal instruments is the United Nations Convention on the Rights of the Child (UNCRC). Even with the legal instrument, the number of children born without nationality still does not decrease.

1.1 The situation of stateless children in Thailand.

Thailand is known to be one of the countries with the highest number of stateless people. According to the UNICEF report, there are approximately 539,694 stateless people in Thailand, 200,000 of whom are children.⁶ Department of Provincial Administration categorizes stateless into four main groups, which are 36,943 children of the ethnic minority groups, 82,154 children enrolled to school with unknown nationality, and 87,291 children who were recently born and registered as having nationality unknown on the birth

¹ Article 1 of the 1954 Convention relating to the status of stateless persons.

² Belton, K. (2013). Statelessness and Economic and Social Rights. In L. Minkler (Ed.), *The State of Economic and Social Human Rights: A Global Overview*, at 224

³ United Nations High Commissioners for Refugees (UNHCR), (2020), Statistical Reporting on Statelessness.

⁴ de Groot, G. R. (2014). Children, their right to nationality and child statelessness. *Nationality and statelessness under international law*, at 144.

⁵ P. Rodrigues & J. Stein, (2016), Chapter 20 The prevention of statelessness at birth: A multilevel perspective, in T. Liefwaard & J. SlothNielsen, *The United Nations Convention on the Rights of the Child*, at 392

⁶ Chiangmai University and UNICEF Thailand (2020), *Invisible Lives: 48 Years of the Situation of Stateless Children in Thailand (1972 – 2020)*, at 8. See also Information on stateless people BE. 2563 (2020) Department of Provincial Administration, Ministry of Interior, Thailand.

certificate.⁷ It is noted that there are stateless children who have not been registered anywhere and children of migrant workers who might be de facto stateless. Most stateless children in Thailand belong to ethnic groups such as Hill Tribes, the prominent indigenous group residing in Northern Thailand for generations.⁸

Although the Thai government has tried to end the situation of stateless in Thailand, it has been ineffective.⁹ According to the UNICEF report, the number of stateless people in Thailand has not significantly decreased during the past decade. There are several laws in the countries relating to civil registration and nationalities, but because the nationality law in Thailand is exclusive *jus sanguinis* which means not all children born within its jurisdiction would acquire Thai nationality (*jus soli*). Even though all children who were born in Thailand can register at birth and access primary education regardless of their nationality, the lack of nationality would impede their fullest enjoyment of other rights.¹⁰

Regarding the reduction of stateless children in Thailand, there are existing laws in the country that allow stateless children to request a nationality. However, it is noted that the criteria for stateless children to obtain Thai nationality is vague and not child friendly. According to Thai National law, the person who would like to request Thai Nationality must have proof of their ethnicity and must be residing in Thailand for at least ten years.¹¹ Such a requirement can be impossible for children of undocumented parents; the 10-year time is more than half of childhood. Without citizenship, stateless children would face difficulties accessing public facilities, which are important for the fullest enjoyment of their rights.

1.2 Research question

In light of the above, the research question is: **To what extent has Thailand ensured and protected the rights to identity of stateless children in conformity with the CRC, and is there a potential use of the communication procedure under optional protocol 3?**

This research aims to analyze the issue of stateless children in Thailand, especially on the aspect of the state obligation to reduce, prevent, and protect stateless children in its territory and whether the individual complaint mechanism under optional protocol could be a possible option for invoking the rights of stateless children vis a vis Thai government. To answer the research question, these are the supplementary research questions:

1. What is the state obligation under CRC and other relevant legal frameworks regarding the right to identity of a child?

⁷ *Ibid.*

⁸ Toyota, M. (2005) Subjects of the Nation Without Citizenship: The Case of 'Hill Tribes' in Thailand, In: Kymlicka W. & He, B.(eds), *Multiculturalism in Asia*, at 111.

⁹ *Supra* 6 at 8.

¹⁰ Kitchanapaibul S, Apidechkul T, Srichan P, Mulikaburt T, Singkhorn O, Udplong A, et al. (2022) Status of the stateless population in Thailand: How does stigma matter in their life? *PLoS ONE* 17(3): e0264959, at 6.

¹¹ Section 7 bis Thai Nationality Act 1991 and the Cabinet resolution "on addressing the legal status of students and stateless persons born in Thailand", 7 December 2016.

2. Is Thai Law about the acquisition of nationality for the child in conformity with the CRC and other international legal standards? What are the gaps existing in the national legal framework?
3. Is there a possibility to use the communication procedure under Optional Protocol 3 to redress the violation of the right to identity of stateless children in Thailand?

1.3 Methodology

This thesis research is desk-based research. The primary source of this research includes hard international law, namely UNCRC. Other relevant legal frameworks include but are not limited to the International Covenant on Civil and Political Rights (ICCPR) and the 1961 Convention on the Reduction of Statelessness.

The research will also consider jurisprudence from other regions, such as the jurisprudence from the European Court of Human Rights (ECtHR) and the African Court on Human and People's Rights (ACHR). As the issue of statelessness is multidimensional, this thesis research will take a multi-disciplinary approach by drawing not only on legal sources but also those produced by the academic field of international relations, governance, and public policy. This research acknowledges the gratitude of soft law guidance and its impact on the law and policy reform. Thus, this research will also rely on General Comments and concluding observations from the Committee on the Rights of the Child (CRC Committee), the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Commissioner on Human Rights (OHCHR), and the African Committee of Expert in the Rights and Welfare of the Child (ACERWC).

To investigate the domestic implementation of the right to identity under the UNCRC, an analysis of the Thai legal framework (Thai Constitution, Thai Civil Registration Act, Thai Nationality Act, Thai Immigration Act and other related national policies and legal frameworks enacted by virtue of the abovementioned instruments.) will be made. Academic literature, journals, reports, and news will be used to provide an analysis of how the law works in practice. Due to the hidden nature of statelessness and the lack of the state's willingness to end statelessness for all children, the information on domestic implementation and practical challenges are limited. To support the conclusion derived from the analysis, interviews with grass-rooted NGOs, the member Thai Human Rights Sub-Committee on Ethnic minorities, stateless and migrant workers (Ms. Thipvimol Sirinupong), academics, and stateless people in Thailand were remotely conducted. All interviews were conducted anonymously, unless the name is indicated, at the request and consent of the interviewees.

With regard to access to information, it is important to note that the official language in Thailand is Thai; therefore, some legislation, research, and information will not be available in English. Furthermore, there is limited access to a court judgement and government policy as Thai authorities do not publish all court judgments and certain government policies online.

Chapter 2 International and Regional Legal Framework

There are several international legal frameworks that touch upon the issue of statelessness. The most specific ones would be the 1954 UN Convention on the status of stateless persons and the 1961 Convention on the reduction of statelessness. Apart from the abovementioned two conventions that Thailand is not a state party to, there are other human rights frameworks that recognise the right to birth registration and the right to (acquire) a nationality, such as International Covenant on Civil and Political Rights (ICCPR) and UNCRC. At the regional level, Thailand is a part of ASEAN that recognise the right to birth registration in ASEAN Declarations on the Rights of the Child in the Context of Migration.

For the purpose of this thesis, the issue of protection of stateless children will not be discussed. The thesis scopes down the analysis to the state's obligation to uphold the right identity as a part of the prevention and reduction of childhood statelessness. As this research paper specifically focuses on the right to identity of stateless children, it scopes down the analysis to the right to identity under UNCRC. Other relevant legal instruments, such as ICCPR and the ASEAN declaration, are used to accomplish a holistic interpretation of the right to identity and state obligation. This chapter is divided into three main subsections: The convention on the Rights of the Child, the ASEAN Declaration on Children in the Context of Migration, and the concluding remark.

2.1 Convention on the Rights of the Child

The Convention on the Rights of the Child (hereinafter: UNCRC) is an international human rights instrument with the most ratifications from state parties.¹² The Convention touches upon the issue of childhood statelessness in Article 7 through the recognition of the right to be immediately registered after birth and the right to acquire the nationality of a child.¹³ The word statelessness is also explicitly mentioned in the second paragraph of Article 7.

However, Article 7 is not a stand-alone provision. To further elaborate, the rights under UNCRC are interdependent and interrelated; thus, there are other provisions of the UNCRC that can be used to get more detail on the implementation of the right to birth registration and the right to acquire a nationality under Article 7¹⁴ such as the right to non-discrimination¹⁵, the best interest of the child¹⁶, and a general measure of implementation.¹⁷ Moreover, due to the complementary, interpretative, and enabling relationship between Article 7 and other provisions,¹⁸ there are various rights under the UNCRC that may require birth registration under Article 7 for their fulfilment¹⁹, such as the right not to be separated from parents²⁰, the

¹² Doek, J.E. (2019), Chapter 1: The Human Rights of Children: An Introduction, in Kilkelly, U. & Liefwaard, T. (eds), *International Human Rights of Children*, at 11.

¹³ Article 7 of the UNCRC “

¹⁴ UNICEF (2013), *A passport to protection: A guide to birth registration and programming*, at 17.

¹⁵ Article 2(1) of the UNCRC.

¹⁶ Article 3 of the UNCRC

¹⁷ Article 4 and 46 of the UNCRC.

¹⁸ Tobin, J., and Soew, F. (2019). Article 7: The right to birth registration, name, nationality, to know and be cared for by parents, In: *UN convention on the rights of the child: a commentary* (First edition.), at 239.

¹⁹ Tobin, J.& Soew, F. (2019), *supra* 18 at 239.

²⁰ Article 9 of the UNCRC

right to protection from all forms of violence²¹, the right to health²², the right to education²³, and prevention of abduction²⁴.

This part of the chapter aims to analyse the right to identity under the UNCRC by first looking at Article 7 of the Convention to identify state obligations with regard to the right to identity of children and how to prevent statelessness at birth holistically. After that, the chapter will provide an analysis and the interpretation of the state obligation on the right to identity of stateless children using guidance from the four general principles²⁵, which are the right to non-discrimination, the principle of the best interest of the child, the right to life, survivor and development, and the right to be heard.

Article 7 of the United Nations Convention on the Rights of the Child states that:

“The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, as far as possible, and the right to be known and be cared for by his or her parent.

State parties shall ensure that the implementation of these rights is in accordance with their national law and their obligations under the relevant international instrument in this field, in particular where the child would otherwise be stateless.”

In light of the above provision, the right to identity under Article 7 encompasses five separate rights, which are the right to birth registration, the right to a name, the right to acquire a nationality, and the right to know and to be cared for by his or her parent.²⁶

As mentioned earlier, this research paper will mainly focus on the right to birth registration and the right to acquire a nationality, as violating these rights will increase the risk of statelessness in childhood.

2.1.1. The right to birth registration.

The first aspect of the right to identity under Article 7(1) of the CRC is the right to registration immediately after birth. This part of the Convention reaffirmed the right enshrined in Article 24 (2) of the International Covenant on Civil and Political Rights.²⁷ The right to birth registration plays a vital role in reducing statelessness in children, as it is closely linked with the recognition of the child's legal personality.²⁸ Although birth registration does not automatically lead to the acquisition of nationality that would end the issue of statelessness, it establishes a child's link to a country of their existence and the child's official

²¹ Article 19 of the UNCRC

²² Article 24 of the UNCRC

²³ Article 28 of the UNCRC

²⁴ Article 35 of the UNCRC

²⁵ CRC Committee, (2003), General Comment No.5: *General measures of implementation of the Convention on the Rights of the Child*, at 12

²⁶ Tobin, J.& Soew, F. (2019), *supra* 18 at 254

²⁷ Article 7 of the UNCRC

²⁸ Rodrigues, P. & Stein, J. (2016), *Supra* 5 at 395.

identity.²⁹ Hence, birth registration or birth certificate is required for the acquisition of nationality process in many countries.³⁰

Birth registration refers to a continuous, permanent, and universal recording within the civil registry of the occurrence and characteristics of birth.³¹ The required document, the instruction, and the measure for registration may vary in different countries as it is governed in accordance with national legal requirements. However, in general, birth registration involves three interrelated steps: the declaration of birth to the registrars, the recording of the birth, and the issuance of the birth certificate.³²

As there is no specific general comment from the CRC committee specifically dedicated to the interpretation and implementation of Article 7; therefore, this research paper aims to subtract the obligation of state parties and the interpretation of the right to birth registration from other general comments of the CRC committee, General Comment No. 17 of the Human rights council along with the *Travaux Préparatoires*.

Firstly, with regard to the word “immediately”, it is important to note that it was not mentioned in the first draft of the Convention. It was later added after several sessions in 1989. The word immediately emphasizes the urgency of the birth registration, and it has a different meaning from the commonly used phrase “reasonable time”. Although the Committee does not further elaborate on the timeframe, it did mention the immediate nature of the right to birth registration in General Comment No.7. Furthermore, the Committee had expressed its concern in the concluding observation to state parties where the children have not been named and registered until baptism³³ and recommended state parties to ensure that birth registration happens as soon as possible.³⁴

It is not enough for state parties to just provide a framework to recognize the children's rights to birth registration; the state parties also have a positive obligation to implement an effective birth registration system that is free of charge and universally accessible.³⁵ In order to achieve free and universal birth registration, states may implement measures such as a waiver of the registration fee, mobile registration unit in remote areas, or ad hoc registration services in schools for children who have not yet been registered.³⁶

²⁹ Ibid. at 397

³⁰ Office of the High Commissioner on Human Rights (OHCHR), Birth registration and the Right of everyone to recognition everywhere as a person before the law, United Nations General Assembly, 27th session, A/HR/27/22, 17 June 2014, at 24

³¹ Ibid. at 4.

³² Ibid. at 5.

³³ Tobin, J.& Soew, F. (2019), *supra* 18 at 246. See also CRC Committee, CO Grenada, CRC/C/15/Add.121, at 16.

³⁴ CRC Committee, CO, Germany CRC/C/DEU/CO/3-4, at 29. See also ACERWC GC 2 (n.13) at 79.

³⁵ Ibid. para 25

³⁶ CRC Committee& CMW committee, Joint General Comment No.4 of CMW and No.23 of CRC on state obligations regarding the human rights of children in the context of international migration in the country of origin, transit, destination and return, GC/4-CRC/GC/23, (2017) at 20 and 72.

The CRC committee highlighted the situation of children in remote areas and children of indigenous groups and encouraged state parties to take special measures to ensure that those children are duly registered.³⁷ Special measures mentioned by the Committee are not limited to legal measures but also include capacity building and awareness raising among the communities and government officials.³⁸ Although it is important to recognise that parents play an important role in the realisation of children's rights in early childhood, it does not exempt state parties from their responsibility toward the child. The parent may be the key actor who exercises the right under Article 7 for the child by registering the child after birth. The state parties should ensure that parents understand the importance of birth registration and register their children on time.³⁹ State parties are obligated to actively ensure such rights if there is neglect from the parent's side, which may include a birth registration campaign to raise parent awareness⁴⁰. Furthermore, the Committee acknowledged the practical challenges parents might face in registering the child's birth and recommended that state parties consider eliminating undue barriers.⁴¹ Such measures may include mobile registration units for children in remote areas⁴², adequate staffing to register children even during the weekend for working parents⁴³, ensuring that institutional structure at all levels is accessible in all regions⁴⁴, and allocation of human, financial, and technical resources to ensure birth registration of all children.⁴⁵

Although it is not explicitly mentioned in UNCRC that birth registration should be provided free of charge, the CRC Committee repeatedly made it clear in the concluding observation that birth registration should be free of charge.⁴⁶ Furthermore, state parties should not impose any penalty or fine on delayed birth registration⁴⁷ as it can be counter-productive and create more burden on the parents, which may lead to a lower birth registration rate.⁴⁸

2.1.2. The Right to Acquire a Nationality.

The Right to acquire a nationality is a crucial part of the full recognition of the inherent dignity and equal and inalienable rights of the child, as mentioned in the preamble of the CRC, because it creates a legal

³⁷ CRC Committee, General Comment No.11 on Indigenous children and their rights under the Convention [on the Rights of the Child] CRC/C/GC/11, (2009) at 42.

³⁸ Ibid. at 41. See also CRC Committee, GC 13 at 20 and 72. UNICEF, (2004), Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children at 9.

³⁹ I. Ziemele, Article 7 the Right to Birth Registration, Name, and Nationality and the right to Know and Be Cared for by Parents, A commentary on the United Nations Convention on the Rights of the Child, (2007), at 9. See also CRC Committee, GC 11, at 43

⁴⁰ CRC Committee, GC 11, at 43.

⁴¹ CRC Committee CO, Morocco, CRC/C/MAR/CO/3-4, at 31.

⁴² CRC committee CO Marshall Island CRC/C/15 Add 139, at 33 and CO Central African Republic CRC15 add 138, at 36, and CO Tajikistan CRC/C/15/ Add 136, at 26

⁴³ CRC Committee, CO Sao Tome and Principe, CRC/C/STP/CO/2-4, at 30(a)

⁴⁴ CRC Committee, CO Guinea-Bissau CRC/C/GNB/CO/2-4 para 33

⁴⁵ CRC Committee, CO Venezuela, CRC/C/VEN/CO/3-5/para 37(b)

⁴⁶ CRC Committee, CO Central African Republic CRC15 add 138 para 36 and CO Tajikistan CRC/C/15/ Add 136 para 26

⁴⁷ CRC Committee, Thailand, CRC/C/THA/CO/3-4/ at 44; See also CRC CO Rwanda CRC/C/RWA/

⁴⁸ OHCHR report, supra 30 at 61.

existence of a person before the law.⁴⁹ The *Travaux Préparatoires* of the CRC show that the right to nationality from birth was proposed during the initial draft of the Convention. However, objections were raised due to possible difficulties in the regulation of domestic nationality and immigration laws and the infringement of the state's sovereignty.⁵⁰ In the final draft, the wording from Article 24 ICCPR was used, and the right to nationality from birth was replaced with the right to acquire a nationality. Thus, it is crucial to distinguish between the right to nationality and the right to acquire nationality.

The right to nationality described in both the Universal Declaration on Human Rights (hereinafter: UDHR) and the UN Declaration on the Rights of the Child refers to a right of a child to be entitled from birth to a nationality.⁵¹ Hence, it implies the use of the *jus soli* principle, where the child shall be granted a nationality of the country where he or she is born unconditionally.⁵² Unlike UDHR, Article 7(1) of the UNCRC does not provide a child with a nationality but only a right to acquire one in accordance with the law.⁵³ The right to acquire a nationality under Article 7(1) lays down an obligation on state parties to ensure that the law with regard to the acquisition of nationality is non-discriminatory and fair.⁵⁴

The procedure of the acquisition of nationality is governed by domestic law, and it differs from state to state.⁵⁵ There are two rules for the acquisition of nationality: *jus soli* (by soil) and *jus sanguinis* (by blood). Article 7 of the CRC does not interfere with the principle of the acquisition of the nationality used within State Parties, nor does it entail a right of a child to a certain nationality.⁵⁶ Furthermore, there is no clear indication of which state shall be responsible for granting nationality to a child. Like the right to birth registration, the right to acquire nationality has not been made into a topic of General Comment despite its ambiguous nature. Nonetheless, the Committee had mentioned the right to nationality in other general comments as it is an enabling right to the enjoyment of other rights under the UNCRC and reaffirmed the positive obligations of state parties to ensure the effective enjoyment of the right to acquire a nationality.⁵⁷ Thus, the four general principles,⁵⁸ which will be discussed in more detail below, are used as interpretative guidance in the Convention on the interpretation of the right to acquire a nationality.

⁴⁹ Article 15 of the Universal Declaration on Human Rights.

⁵⁰ S. Detrick (ed), *The United Nations Convention on the Rights of the Child: A Guide to the Travaux Préparatoires*, (1992), at 23.

⁵¹ J.E. Doek, CRC and the right to acquire and to preserve a nationality, *refugee survey quarterly*.

⁵² Adjami, M. & Harrington, J. (2008) The Scope and Content of Article 15 of the Universal Declaration of Human Rights, *Refugee Survey Quarterly*, Volume 27, Issue 3, 2008, at 105.

⁵³ *Ibid.*

⁵⁴ CRC Committee, GC 23, at 24 See also, CRC Committee General Comment No.11, at, and Tobin, J (2019) *The UN Convention on the Rights of the Child: A Commentary*, at 256 and Doek, J.E. (2006) 'The CRC and the Right to Acquire and to Preserve a Nationality', *Refugee Survey Quarterly* 2006, Vol. 25, No. 3, at 27.

⁵⁵ Ganczer, M. (2015). The Right to Nationality as a Human Right? In: *Hungarian Yearbook of International Law and European Law*, (2015), at 15.

⁵⁶ Doek, J.E. (2006) 'The CRC and the Right to Acquire and to Preserve a Nationality', *Refugee Survey Quarterly* 2006, Vol. 25, No. 3, at 26.

⁵⁷ CRC Committee, GC 23, at 24. See also CRC Committee, GC11, at 41.

⁵⁸ Peleg, N., (2018), General Principles, in: Liefwaard, T. & Kilkelly, U. (eds), *International Human Rights of Children*, at 139

The best interest of the Child

Under Article 3(1) of the CRC, state parties are obliged to enforce each right in the CRC in conformity with the child's best interest.⁵⁹ Therefore, state parties shall consider the best interest of the child when making a decision affecting the right to acquire nationality of a child. It is important to highlight that the best interest of the child is not a triumph card; hence, the application of the best interest principle does not imply that the state must grant nationality to all children born within the territory. This thesis suggests that the principle of best interest can be applied in the aspect of nationality acquisition procedure or stateless status determination. To further elaborate, the identity verification process of the child, whether to establish that nationality or stateless status, should not be unduly prolonged or cause any damage to the child.

The principle of Non-discrimination

The other general principle that plays a crucial role in the matter of statelessness is the principle of non-discrimination under Article 2(1) of the CRC.⁶⁰ There are two aspects of the principle of non-discrimination with regard to childhood statelessness. The first aspect is that the state shall ensure that the child is not subject to any form of discrimination because they are stateless. The second aspect is the discrimination within the nationality law. This thesis only discusses the latter aspect as it falls in the scope of the prevention and reduction of childhood statelessness, while the first aspect is more related to the protection of stateless children.

Discrimination, including indirect discrimination, in the nationality law system is one of the root causes of statelessness. In several countries, especially Thailand, which will be further discussed in Chapter 3, certain groups of people are excluded from acquiring on the ground of gender, ethnicity, or place of birth. In some countries, women are not able to transfer their nationality to their children.⁶¹ In some countries, children who were born to an unmarried couple (illegitimate children) will not be able to obtain their nationality.⁶² This discrimination ground has an effect on the acquisition of the nationality of the child, which may result in the child becoming stateless.

It may be argued that nationality law is discriminatory by its nature, and it is justifiable because nationality falls under the concept of domain reserve.⁶³ However, there are some limitations to such discriminatory practice. The CRC committee, through concluding observations, has requested state parties to eliminate discriminatory provisions and practices. For example, state parties shall ensure that its national law grant women equal right with men to transfer their nationality to their children.⁶⁴ State parties also have an

⁵⁹ CRC Committee, (2013), *General Comment No. 14: The Right of the Child to Have his or her Best Interests Taken as a Primary Consideration*, at 1(a)

⁶⁰ Art. 2 of the UNCRC, See also CRC Committee, (2006) General Comment No.6 on Treatment of Unaccompanied and Separated Children outside of their country of origin, at 12 and CRC Committee, (2007), General Comment No. 9 on the Rights of children with disabilities, at para36.

⁶¹ UNHCR, UNICEF, Global Campaign for Equal Nationality Rights, and Coalition & Every Child Rights to Nationality (n.d), *Gender Discrimination and Childhood Statelessness*, at 6-7.

⁶² Rodrigues, P.& Stein, J. (2016), *Supra*. 5, at 392. See also European Network on Statelessness (ENS), *Childhood statelessness in Europe: Issues, gaps and good practice*, (2014), at 16.

⁶³ Jordan 1994 at 11.

⁶⁴ HRC GC 17 see also CRC commentary at 257.

obligation to ensure that the law does not discriminate against children with disabilities⁶⁵, children who are born out of wedlock, children from an indigenous group,⁶⁶ and children of migrant workers⁶⁷. Therefore, state parties cannot arbitrarily or unilaterally refrain from ensuring rights under the CRC for a certain group of children.

Even though the concept of non-discrimination within Article 7 may not oblige the state to apply the principle of *jus soli* which would directly end the issue of statelessness in the country, the state's obligation to refrain from arbitrarily or unlawfully intervening with the child's right to acquire nationality would prevent number children from being stateless due to unjustifiable law.

2.2.3. *An analysis of the phrase "in accordance with their national law and their obligations under the relevant international instruments in this field".*

The second paragraph of Article 7 further elaborates that when implementing the right to birth registration and the right to acquire a nationality, other sources of law should be taken into consideration. At first glance, this phrase may seem like the CRC respects state parties' freedom to regulate their national law and their jurisdiction. However, it is important to note that the rights in the CRC are dependent and interrelated.⁶⁸ Thus, state parties still have an obligation to respect, protect, and fulfil their subsequent rights and obligation under the CRC and other legal instruments.⁶⁹ As a result, it is reasonable to argue that state parties may have an obligation to ensure that children in their jurisdiction can acquire a nationality to the furthest extent possible, as nationality is a crucial element in the realization of other fundamental rights enshrined in the CRC.

When looking at other international legal frameworks, there is still not much guidance to be found. However, as Article 7 of the CRC is derived from Article 24 of ICCPR, it is logical to consider the guidance and comment provided by the Human Rights Committee, which is the monitoring body of the ICCPR. The Human Rights Committee reaffirmed that although state parties may not be obligated to grant nationality, they are still required to adopt all appropriate measures internally and in cooperation with other states to ensure that no child is left stateless at birth.⁷⁰ To further illustrate, when a child is born outside the parents' country of origin, the question of whether the child would obtain their parents' nationality due to the *jus sanguinis* or the nationality of the country that they are born (*jus soli*) may arise. In such a situation, international cooperation among state parties to find the genuine link between the child and the country is crucial to preventing statelessness at birth. Unfortunately, the Human Rights Committee and the CRC Committee have not provided any details on what kind of measure should be taken and what is the safeguard measure for children if no state agrees to grant nationality to the child.

⁶⁵ CRC Committee Concluding Observation Yemen 2014, at 39.

⁶⁶ Syrian Arab 2003, par. 32-33. – add Thailand and general comment 11.

⁶⁷ Joint general comment 23 and CMW 4.

⁶⁸ Peleg, N., (2018), *Supra* 57, at 151.

⁶⁹ *Pacta sunt servanda* Article 26 of Vienna Convention on the Law of Treaties.

⁷⁰ HRC General Comment No. 17 at 8. See also CRC GC 23 at 24.

2.2.4. An analysis of the phrase “where the child would otherwise be stateless”.

The second paragraph of Article 7 explicitly mentions the word statelessness in UNCRC. Even though there are other rights mentioned in the first paragraph of Article 7, Article 7(2) only seems relevant to the right to birth registration and the right to acquire nationality. According to the word used in the provision, there is no clear indication of what exactly is required from state parties.⁷¹ It is obvious that the aim of the provision is to prevent statelessness in children; however, there is little to no interpretative guidance to be found in UNCRC.⁷²

Taking into account the absence of clear interpretative guidance and the ambiguity of the provision, other provisions of the CRC should be considered when reading Article 7(2).⁷³ In light of Article 2 CRC, the phrase can be interpreted as the state should consider granting the nationality born in their jurisdiction if it is established that the child could not derive a nationality from their parents. Although state parties may have the freedom to regulate their national law, the law should not be discriminatory towards certain groups of people, such as ethnic minorities, children born in wedlock, refugee children, and children of migrant workers. Considering the principle of the child's best interest, the procedure of nationality acquisition should be in an appropriate amount of time, and the requirement for the acquisition of nationality should be reasonable and child friendly.

2.2 ASEAN Declarations on the Rights of the Child in the Context of Migration

At the regional level, Thailand has been a member of the Association of Southeast Asia Nations (ASEAN) since 8 August 1967⁷⁴. Unlike other regional integration, such as the European Union, the African Union or the Inter-American, ASEAN does not have any children's rights or human rights legal instrument. However, there is a declaration on the rights of children in the context of migration where member states recognize the vulnerability of children on the move and their difficulties in enjoying children's rights outside their countries of origin.⁷⁵

ASEAN committee also issued a Regional Plan of Action on Implementing the abovementioned declaration, and this Regional Plan of Action can be used as a guide for ASEAN member states in the development of their law and policies regarding children's rights in the context of migration. Focus Area 1 (Policy to Strengthen the Protection of Children in the Context of Migration) encourages state parties to have a policy

⁷¹ J. Tobin & F. Seow, Right to birth registration, a name, nationality, and parental care, In: J. Tobin (ed) *The UN Convention on the Rights of the Child: A Commentary*, (2019) at 254.

⁷² J.E. Doek, 'The CRC and the Right to Acquire and to Preserve a Nationality', *Refugee Survey Quarterly* 2006, Vol. 25, No. 3

⁷³ Article 31(3) of the Vienna Convention on Law and Treaties (VCLT)

⁷⁴ ASEAN is a regional association promoting intergovernmental cooperation to facilitate economic, political, security and socio-cultural development.

⁷⁵ ASEAN Declaration on the Rights of Children in the Context of Migration, Operational Paragraphs 2, 3, 4, 5, 6, 8, and 9.

and procedure in place ensuring birth registration and/or issue of relevant identification irrespective of nationality, migration, and residence status of the child's parent.⁷⁶

After the issuance of the declaration, there were several meetings between the ASEAN member states and experts from UNICEF, UNHCR and IOM on the implementation of the Regional Action Plan.⁷⁷ In Thailand, capacity buildings for relevant government officials were held, and the focal point was established.⁷⁸

Although the declaration may not directly address the right to identity of stateless children, it brings up the attention of states toward children in the context of migration, whose rights are often overlooked. It highlights the importance of birth registration in the context of migration and the cooperation among states.⁷⁹ However, the issue of the acquisition of nationality is not mentioned in the ASEAN declaration.

It is important to note that the declaration is not legally binding and thus does not create any legal obligation upon the states. The implementation of the declaration is on a voluntary basis. Furthermore, the lack of a regional judicial body or independent expert group makes it difficult to utilize the declaration at the regional and national levels.⁸⁰

2.3 Concluding remarks.

Statelessness is a global phenomenon in which a person is not recognised as a national by any state under the operation of its law. It is closely intertwined with several fundamental human rights, especially the right to birth registration and the right to acquire a nationality. For the purpose of the thesis, UNCRC is used as the main international legal instrument for the analysis because it is a child-specific instrument.

Article 7 of the UNCRC is the only article that explicitly mentions statelessness. The chapter focuses on two aspects of right that relate to the identity of stateless children, which is the right to birth registration and the right to acquire a nationality. Regarding the right to birth registration, it was made clear that the state has an obligation to ensure that birth registration is free of charge and universally accessible. The UNCRC committee recommend in several concluding observation that the state should abolish the birth registration fee and establish mobile registration offices in remote areas. There is still no clear interpretation of the word immediately under Article 7(1) of the UNCRC. Taking into account the analysis above, the thesis suggests that the word immediately should be interpreted in a way that highlights the urgency of birth registration; thus, the state should ensure that birth registration happens as soon as possible.

⁷⁶ ASEAN Regional Plan of Action on Implementing ASEAN Declaration on the Rights of Children in the Context of Migration, Focus Area 2, Indicator 1.3

⁷⁷ Ministry of Social Development and Human Security, Letter to the secretariat to the Cabinet dated 25 October 2021 requesting for the approval of the Regional Action Plan of the ASEAN Declaration on the Rights of the child in the context of Migration, PM/0203/15230 (www.0203/15230)

⁷⁸ Ibid.

⁷⁹ National Human Rights Committee (NHRC), (2022), National Human Rights Committee Administrative meeting report on 8 February 2022.

⁸⁰ Htun, S.Y. (2022) the effectiveness of ASEAN Cooperation in ending regional statelessness, Marginalization and Human Rights in Southeast Asia, at 26

With regards to the right to acquire a nationality, the analysis above explained that the right to acquire a nationality is different from the right to a nationality. The right to acquire a nationality under UNCRC does not oblige the state to grant nationality to all children born within its territory. Nonetheless, the state should adopt all appropriate measures to ensure that the child has a nationality and would not become stateless. However, there is no clear interpretation of what kind of measure the state should take to prevent the child from becoming stateless.

At the regional level, ASEAN has a declaration on the Rights of the Child in the context of migration. The declaration does not directly touch upon statelessness nor has a legal binding upon ASEAN member states. Nonetheless, it highlights the importance of the rights of children on the move and encourages member states to provide better protection for migrant children.

Chapter 3 National Legal Framework

This chapter aims to take a closer look at the situation of stateless children and the relevant Thai legal framework. The chapter is divided into three main sections. The first section will delve into the root cause and characteristics of stateless children in Thailand. The second sub-section will explain the evolution of Thai law and policies on stateless children and explore three main legal frameworks related to the regulation of stateless children in Thailand: the birth registration act, nationality act, and immigration act. The third sub-section will identify legal gaps and practical challenges as well as provide a brief conclusion of the research.

3.1 The root cause and characteristic of stateless children in Thailand.

As mentioned in the first chapter, there are approximately 200,000 stateless children in Thailand. There are different reasons why they are stateless, as well as different legal frameworks in place for preventing and ending statelessness. The first group of stateless children in Thailand are children who become stateless due to administrative reasons. Children can be born to parents of Thai nationality and meet all the requirements in the nationality law but become stateless due to administrative errors or lack of required documents such as birth certificate, proof of domicile, or proof of the nationality of the parent, which will be further elaborated in Chapter 3.2.

The second groups are children of *de facto* Thai who have not been able to obtain their Thai nationality yet. In Thailand, there are many people who have been residing in Thailand for generations but have not been able to obtain Thai nationality. This group may include children of ethnic minorities and indigenous people who have been registered with the government but are still under the verification process, displaced Thai⁸¹, and descent of Thai people whose nationality was revoked due to a specific law, which will be discussed in detail below.

The third group concerns children of foreigners. As mentioned earlier in the introduction, Thai nationality law does not apply the principle of *jus soli*. Therefore, children of non-Thai people will not be able to obtain Thai nationality just because they were born in the territory. Normally, applying the principle of *jus soli* would not be a problem if the child can obtain the nationality of the non-Thai parents. However, it is impossible for certain groups of children to obtain a nationality of their country of origin due to the nationality law in the country or political reasons. Examples of this group are people forced to flee their country, such as urban

⁸¹ Section 4 of the Nationality Act states that a "Displaced Thai" refers to an ethnic Thai who has become a subject of another state because of the territorial succession of the Thai Kingdom during British Rule and does not possess and nationality of any other country, has migrated into and resides in the Kingdom of Thailand for a constructive period, observed the Thai way of life and has been surveying and registered according to the civil registration act as prescribed in the Ministerial Regulation or hold other relevant similar characteristics according to the Ministerial Regulations.

refugees⁸², Myanmar Muslims (Rohingya), illegal migrant workers, and Myanmar IDPs in temporary shelters⁸³.

The Thai government is aware of the situation and has tried to decrease the number of stateless people, especially stateless children, through various legal frameworks and policies. There has been an attempt to register stateless in the civil registration system and provide them with a 13-digit identification code⁸⁴, allowing them to access fundamental human rights services according to the statelessness solution plan.⁸⁵ In order to be registered, stateless children need to prove that they are not a national of any state, which can be a challenge because there is no established statelessness determination process in the country. Furthermore, it is important to highlight that being stateless is not the only requirement to get Thai nationality, as Thailand does not perceive granting a nationality as the legal obligation to provide international protection for stateless children. Nationality is closely related to the matter of national security. Thus, they need to meet the requirement mentioned in the law and, in some cases, specific cabinet resolutions, which will be discussed in more detail below.

3.2. Thai Law Relating to the Reduction of Statelessness in Childhood.

When considering Thai Law regarding stateless children, the author proposes that it should be divided into three interrelated aspects: The first aspect is the law regulating birth registration, as it is the first step toward recognition of children under the law. Second is the acquisition of Thai nationality, as the acquisition of nationality is the solution to end statelessness. The third aspect is immigration law, as it regulates the right to stay non-national in the country.

3.2.1 Thai Birth Registration Law.

As mentioned earlier, birth registration is the first step to ending childhood statelessness, as it recognises the legal status of children before the law. Moreover, in Thailand as well as other countries, a birth certificate is one of the required documents for the nationality acquisition process, which will be discussed further in Chapter 3.2.2. The Civil Registration Act B.E. 2534 (1991) regulates the birth registration process and issuance of birth certificates. Section 18 of the Civil Registration Act states that the child's parents or legal guardian shall report his or her birth to the Registrar for Acknowledgement at the locality house where the child is born.⁸⁶ In practice, the Civil Registration Act itself did not provide detail on whether the government

⁸² Urban refugees refer to asylum seekers who fled persecution to Thailand and have been living outside of temporary shelters along the Thai Myanmar border. There are approximately 5,000 urban refugees in Thailand from more than 40 countries of origin.

⁸³ Myanmar displaced persons or Myanmar who fled the war (ผู้หนีภัยการสู้รบ) is the word that Thai Government called Myanmar international displaced persons who have fled their country and have been residing in the nine temporary shelters along the border. There are approximately 100,000 people in this shelter and most of them are ethnic minorities who have fled the protracted civil war in 1980. The camps are regulated by the Ministry of Interior in cooperation with UNHCR and other authorized International Non-governmental organisations.

⁸⁴ Please see annex IV for more detail on the 13-digit identification code.

⁸⁵ Cabinet resolution, Strategy to Address the Problem of Legal Status and Rights of Stateless Person 2005, See also Cabinet resolution "on addressing legal status of students and stateless persons born in Thailand", 7 December 2016. (An unofficial translation of the cabinet resolution is at annex II)

⁸⁶ Section 18 of the Thai Civil Registration Act. B.E. 2534 (1991) Second Amendment B.E. 2551 (2008)

official could register the birth of illegal migrants' children or not and whether the government official should file a report on the illegal stay or not. Due to the absence of clear guidance at the local level, many migrants and stateless persons who do not have a resident permit in Thailand or any legal document from the government decide not to register the birth of their children.

Later in 2004, there was an order to prohibit local authorities from providing birth registration for children of people who illegally reside in the country; as a result, birth registration documents of such children were revoked and declared invalid, leaving thousands of children with no nationality or identity documents.⁸⁷ This incident was a big step backwards for universal birth registration and the recognition of the child's right to identity.

In 2008, following the withdrawal of reservation on Article 7 (1) of the UNCRC on the right to be immediately registered after birth⁸⁸, there was an aim to implement the Birth Registration for ALL project.⁸⁹ Hence, the government amended the Civil Registration Law and issued guidance for local authorities to provide birth registration for all children born in Thailand.

Under Thai Law, Birth registration consists of three main steps, which are the issuance of birth registration⁹⁰, the issuance of birth certificate⁹¹, and the household registration.⁹² It is important to note that all these steps are interrelated, and the failure to fulfil one step may have an impact on the next one. The birth registration process under Section is illustrated in the diagram below. It can be seen from the diagram and the law that all children who were born in Thailand are entitled to a birth certificate. However, the type of birth certificate is varied depending on their nationalities, their legal status, and the legal status of the parents. Once the process is completed, the child will be legally recognized by the Thai government regardless of their nationality, and they will have access to public welfare, such as education and health care to a certain extent. Nonetheless, it is important to highlight that the birth certificate provided under the Civil Registration Act does not guarantee the right to nationality, which is governed under the Nationality Act.

⁸⁷ Ministry of Interior, Ministerial order Number MT0310.1/W8 (มท.0301.1/ว.8) 26 March 2004

⁸⁸ Paisanpanichkul D., Ngam-Urulert C., Sooktawee S., Tonboon K., (2020) Final report Ending and Protecting Child Statelessness in Thailand: Developing an Accelerated Nationality Review Model, at 15

⁸⁹ Ibid. See also Civil registration Act Third Amendment B.E. 2562 (2020) and Ministerial order number 0309.1/W8 LW (หนังสือสั่งการที่ มท.0309.1/ว.8 ลว.17) regarding birth registration for people with no Thai Nationality according to the Thai Nationality Act.

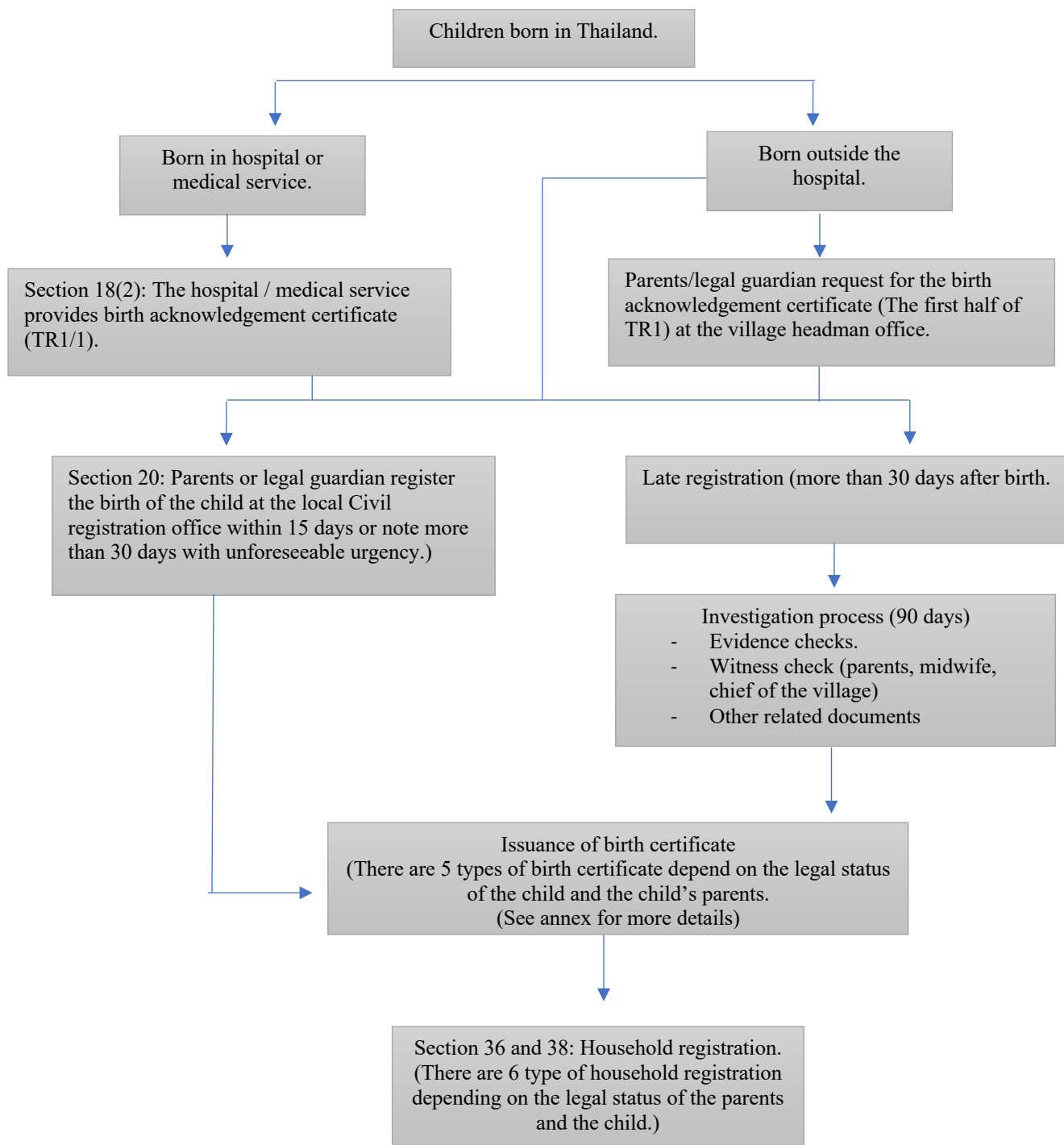
⁹⁰ Section 23 of the Civil registration Act. B.E. 2534 (1991)

⁹¹ Section 18 of the Civil Registration Act. B.E. 2534 (1991)

⁹² Please see the flow chart in Annex II

Diagram 1:

Birth registration procedure in Thailand under the Civil Registration Act B.E.2534⁹³



⁹³ The diagram was translated to English from UNICEF Thailand (2022), Manual on Birth Registration and Procedures on Facilitating the Right to a Thai Nationality, at 7.

Although Thai Law regarding birth registration may seem inclusive and beautifully written, many practical challenges impede free and universal birth registration for children, especially stateless children. The first issue is the lack of detailed guidelines or standards of practice at the local level for the authorities in the area. As there is no clear requirement on what document is required from the child's parents to establish the legal parentage between the child and the parent, the local authorities often request proof of a biological connection between the parents and the child, especially in the case where the mother is non-Thai or undocumented, and the father is the only person that holds Thai nationality or has identification document.⁹⁴ The local registrar officer may request a DNA test.⁹⁵ This creates an unnecessary financial burden and may lead to indirect discrimination toward children from poor backgrounds.

The second practical challenge that stateless children may face is the parents' fear of deportation due to their lack of legal residency in the country. This can be a vital concern in a situation where there is a well-founded fear in the parent's country of origin or the parents are unable to return to their countries. The requirement for witness checks in the case of the lack of identity proof and late registration can also lead to indirect discrimination against people who are marginalized, such as illegal migrant workers, refugees, and indigenous people. They might face difficulties getting a credible Thai person, which most of the time is the leader of the community, to provide testimony on their behalf.⁹⁶

Thirdly, the limited time frame for birth registration and the late registration fine⁹⁷ can create an unnecessary burden on the parent. Especially in remote areas where there is no available civil registration service, parents or legal guardians might not be able to make the birth registration in time due to their financial status or transportation issue.⁹⁸

3.2.2 Thai Nationality Law.

The main legal instrument regulating the acquisition of nationality in Thailand is the Nationality Act B.E. 2508 (1965). However, to fully understand the nuance of the Thai Nationality system and the situation of stateless children in Thailand, it is important to take a step back and explore the evolution of Thai Nationality Law from the beginning. The Development of Thai Nationality Law can be roughly divided into 4 phases.⁹⁹

The first period is the concept of nationality under Thai Customary law (before 1911). During this period, Thai nationality law applied the principle of *jus sanguinis*, in which children who are born to Thai parents will acquire Thai nationality. Moreover, in the case where a person was able to obtain nationality through the naturalisation process, his family member, namely his wife and children, would automatically obtain Thai nationality.¹⁰⁰

⁹⁴ Paisanpanichkul D., Ngam-Urulert C., Sooktawee S., Tonboon K., (2020), *Supra* 90, at 29

⁹⁵ *Ibid.*

⁹⁶ UNICEF and Chiang Mai University, (2020), *Supra* 6, at 29.

⁹⁷ Section 18 (2) Thai Civil registration Act B.E. 2534 (1991)

⁹⁸ Paisanpanichkul D., Ngam-Urulert C., Sooktawee S., Tonboon K., (2020), *Supra* 90, at 37

⁹⁹ Kanchanachittra Saisoonthorn P., Development of concept of Nationality and the efforts to reduce statelessness in Thailand, *Refugee Survey Quarterly*, Vol 25, Issue 3, at 42

¹⁰⁰ Article 7(1) and Article 7(2) of the Thai Naturalisation Act 1911.

The second period was from 1911 to 1951. During the second period, there was an amendment of the Nationality Act B.E. 2456 (1913) and the enforcement of the Naturalisation Act Ror Sor 130 (1911) prescribed that Thai Nationality can be obtained based on *jus sanguinis*, *jus soli*, naturalisation, and marriage. As a result of these laws, all children born in Thailand from 10 April 1913 to 12 February 1952 could obtain Thai Nationality, regardless of the status of their parents. It is reasonable to conclude that while the Nationality Act of 1913 was still in force, no child was born stateless in Thailand.

Nationality law during the third period (1952-1965) was similar to the second period, as Thai nationality could be obtained on the basis of *jus soli*. However, the idea of nationalism started to appear in this period, leading to new national legislation using a mix of *jus soli* and *jus sanguinis*. To further elaborate, the government would only grant Thai nationality to a child born in Thailand only when the mother has Thai Nationality. Moreover, people who obtained Thai nationality based on *jus soli* during the second period would lose their nationality if they accepted an alien identity card issued by the government.¹⁰¹

The fourth period is from August 1965 onwards. This is one of the most important turning points in the history of Thai Nationality law. During this period, there was an attempt from the government to solve the problem of statelessness for some groups of people, such as displaced Thais; unfortunately, many people lost their nationality because of such an attempt. The Regulation of Revolutionary Party Number 337, often called Por Wor 337, is the key legal instrument that revoked the nationality of many Thai nationals who obtained a nationality solely by the principle of *jus soli* under the previous Nationality Act.¹⁰² This regulation resulted in thousands of stateless people, and the number continues to increase as statelessness is a transgenerational issue. Although the law was enacted in 1965 and ceased its power in 1992, there are still children who were born stateless because of this law until this day.¹⁰³

The Thai government has made an effort to mitigate the impact of Por Wor 337 and to reduce the number of stateless people in the country through amendments to the Nationality Act and several cabinet resolutions targeting certain groups of people, which will be discussed below.

¹⁰¹ There is no available information on the total number of people who accepted the alien card during this period.

¹⁰² Regulation of the Revolutionary Party number 337 (*Por Wor 337*), dated 13 December 1972:

(1) revokes the Thai nationality of persons who were born in Thailand before 14 December 1972 of an alien father with non-permanent residence, or an alien mother with non-permanent residence, in circumstances where the lawful father is absent; and

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

¹⁰³ Kanchananchittra Saisoonthorn P. (2006), Development of the concept of Nationality and the efforts to reduce statelessness in Thailand, *Refugee Survey Quarterly*, Vol 25, Issue 3.

According to the Thai Nationality Act B.E. 2508 (1965)¹⁰⁴, there are six ways of getting Thai Nationality: (1) by birth¹⁰⁵, (2) by the special order of the Ministry of Interior¹⁰⁶, (3) by marriage¹⁰⁷, (4) by naturalization¹⁰⁸, (5) by recovery for Por Wor 337¹⁰⁹, and (6) by recovery for displaced Thai.¹¹⁰ This subchapter will only discuss the relevant methods for stateless children: the special order of the Ministry of Interior, naturalisation, recovery for Por Wor 337, and recovery for displaced Thai. It is important to note that each method aims to solve problems for a different group of stateless children. Some groups of stateless children are not yet covered by any of the existing legal frameworks.

The acquisition of nationality by the special order from the Ministry of the Interior under Section 7 of the Nationality Act.

Section 7 bis paragraph two¹¹¹ provides that:

“In the case where the Minister¹¹² deems appropriate, he may consider and give the order for each particular case or in general granting Thai Nationality to any person under paragraph one¹¹³, in conformity with the rule prescribed by the cabinet.”

In light of the abovementioned provision, there are several regulations enacted by the Ministry of Interior in conformity with the cabinet resolution targeting certain groups of stateless children. The cabinet resolution on 7 December B.E. 2559 (2016) is a cabinet resolution that aims to solve the issue of statelessness for children of ethnic minority groups and other children who were born in Thailand to non-Thai parents. The key criteria and required documents differ among different groups, as illustrated in the table next page.¹¹⁴

¹⁰⁴ The Nationality Act B.E. 2508 has been amended four times since it came into force: Nationality Act No.2 B.E.2535(1992) Nationality Act No.3 B.E. 2535 (1992), Nationality Act No.4 B.E.2551 (2008) and Nationality Act No.5 B.E.2555 (2012). An unofficial translation of the Act can be accessed at: <https://www.refworld.org/pdfid/506c08862.pdf>.

¹⁰⁵ Section 7 of the Nationality Act. B.E.2508

¹⁰⁶ Section 7 bis of the Nationality Act. B.E.2508

¹⁰⁷ Section 9 of the Nationality Act. B.E.2508

¹⁰⁸ Section 10, 11, 12, and 12 bis of the Nationality Act. B.E.2508

¹⁰⁹ Section 23 of Thai Nationality Act No.4 B.E.2551 (B.E.2008)

¹¹⁰ Section 5 of the Thai Nationality Act No. 5 B.E. 2555 (2012)

¹¹¹ Section 7 bis paragraph 2 as amended by the Nationality Act (No.4) B.E.2551 (2008)

¹¹² Minister of the Ministry of Interior

¹¹³ A person born within the Thai Kingdom of alien parents does not acquire Thai nationality if at the time of his birth, his lawful father or his father who did not marry his mother or his mother was: (1) the person having been given leniency for temporary residence in Kingdom as a special case; (2) the person having been permitted to stay temporarily in the Kingdom; (3) the person having entered and resided in the Thai Kingdom without permission under the law on immigration.

¹¹⁴ Please see the annex II for the full translation of the cabinet resolution.

Children of ethnic minorities/ indigenous group	Children of other non-Thai people (not the ethnic minority)
<ul style="list-style-type: none"> • The parents must be registered in the civil registration system during the ethnic minority survey conducted in 1985 – 1988 and have been residing in Thailand for at least 15 years.¹¹⁵ • Have a birth certificate. • Do not hold any other nationality. • Able to communicate in Thai, do not pose any possible threat to national security, believe in the democratic monarchy system, and have good behaviour. 	<ul style="list-style-type: none"> • Hold a bachelor's degree or equivalent from a university in Thailand. (Children who are still studying must obtain a document of necessity)¹¹⁶ • Have a birth certificate. • Do not hold any other nationality. • Able to communicate in Thai, do not pose any possible threat to national security, believe in the democratic monarchy system, and have good behaviour.

Table 1

The criteria for acquisition of nationality by birth under the Cabinet Resolution date 7 December B.E.2559 (2016)

It is noted that some of the criteria mentioned above are subjective, especially on the requirement for good behaviour where two credible witnesses are required.¹¹⁷ Without a clear and objective guideline on how to determine good behaviour, the risk to nationality or the belief in the democratic monarchy system, the authorities often rely on the testimony of the witness¹¹⁸, which could lead to an arbitrary application of the requirement. Hill tribe people in Thailand are a good example of people whom these criteria might negatively impact, as the community has always been accused of being associated with the drug dealing business.¹¹⁹ Therefore, children from this ethnic group could face unnecessary burdens and discrimination trying to find credible witnesses and evidence to prove their good behaviour.¹²⁰

For children of other groups of non-Thai people, a bachelor's degree is required. Although the state has a wide range of discretion when it comes to the matter of nationality, as explained in the previous chapter, the requirement for a bachelor's degree can lead to indirect discrimination against stateless children. In Thailand, compulsory education for all children, regardless of their legal status, is provided by the government until the ninth grade.¹²¹ Nonetheless, there are numbers of children who are not able to access education due to other practical challenges such as lack of financial means¹²², lack of required

¹¹⁵ Toyota, M. (2005), *supra* 8, at 120.

¹¹⁶ The document of necessity is issued by the Department of social development and human security to reaffirm that it is necessary for the child to have Thai nationality.

¹¹⁷ *Ibid.*

¹¹⁸ According to an interview with stateless people in Thailand and grass-root NGO, the authorities often request that the witness are credible people who hold Thai Nationality.

¹¹⁹ Toyota, M. (2005), *Multiculturalism in Asia*, Chapter 5: Subject of the Nation without citizenship: The case of Hill tribes in Thailand, at 120.

¹²⁰ UNICEF and Chiang Mai University, (2020), *supra* 8, at 30.

¹²¹ Section 69 of the Thailand's Constitution 2017.

¹²² Chitviriyakul, A., (2023, March 22), Dropout rate concerns UNICEF, Bangkok post, <https://www.bangkokpost.com/thailand/general/2533941/dropout-rate-concerns-unicef>

documents¹²³, discrimination issues¹²⁴, or lack of available and accessible schools in the area.¹²⁵ Stateless children who are already marginalized will again be excluded from this cabinet resolution.

There is an exception in the cabinet resolution for children who are currently studying that they may be eligible to request Thai nationality if they have a document to prove that it is necessary for them to obtain Thai nationality now.¹²⁶ At the moment, there are no clear criteria on how to define necessity, so it depends on the discretion of the government officer who assesses the request, which could lead to arbitrary decision practice.

The second cabinet resolution under this section is the cabinet resolution date 16 February 2017 regarding the acquisition of Thai Nationality by birth for children who were born in Thailand to alien parents. The main benefits of this cabinet resolution are undocumented stateless children/ stateless children who were abandoned at birth with no civil registration record of the parents. This cabinet resolution, together with Section 19/2 of the Birth Registration Act (the third amendment 2020), provides that a rootless person with no information of their birth parents in the civil registration record may acquire Thai Nationality if there is no available information indicating that the child was born to a foreign national.¹²⁷ For a child to be eligible to make a request for Nationality which the Ministry of Interior will individually approve, they will need to have a non-Thai ID card, an official document to confirm that they are a rootless person¹²⁸, a ten-year domicile in Thailand, and the other requirements are similar to the requirement for indigenous people mentioned above. There are two main concerns about this cabinet resolution. Firstly, it is very common for abandoned children not to have a birth certificate or any identity document. Secondly, this cabinet resolution can be a solution only after the child turns ten years old.

The same cabinet resolution also aims to grant nationality to non-Thai children who contribute greatly to the country. Stateless children whose background does not fit any of the above mentioned criteria may be able to get Thai Nationality if they contribute greatly to society. There is no clear definition of what great contributions to Thailand are, but there is an explanation that the child must have an acknowledgement certificate from government authorities in the following area: education or sport, art and culture, science and technology, or any deficient professional as described by the minister from the ministry of interior. The use of this section from the cabinet resolution is not very common as the threshold of great contribution to society is not clear.

However, there is one famous case in Thailand where a stateless boy was granted nationality after being a Thai representative in a paper plan competition at the nationality. It is important to highlight that it took

¹²³ UNICEF, (2019), Thailand Education Factsheet 2019: Analysis for learning and equity, at 33.

¹²⁴ CERD Committee, (2022), Concluding Observation to Thailand, at 25 (b) see also CRC committee, (2012) Concluding Observation Thailand (CRC/C/TH/CO/3-4), at 33.

¹²⁵ CRC committee, (2012) Concluding Observation Thailand (CRC/C/TH/CO/3-4) at 33.

¹²⁶ Cabinet resolution on Section 7 bis of the nationality act no.4 B.E.2551 dated 7 December 2015. (Translated from Thai to English by the author at Annexure II)

¹²⁷ Section 7 (2) of the Nationality Act No.2 B.E.2535 (1992).

¹²⁸ The Ministry of Social Development and Human Security, Ministerial Order No. 0202/9828 dated 9 August 2018.

the boy almost ten years from the day he won the competition to the day he acquired his nationality, even with such a big interest from the public and the media.¹²⁹

Naturalization

In the case where stateless children do not meet the criteria to obtain Thai Nationality by birth prescribed by the rule mentioned above, naturalization of Thai Nationality can be their alternative if they meet the requirements prescribed under Section 12 /1 of the Nationality Act.¹³⁰ Children who were abandoned at birth and did not have any proof of nationality or information about the parent would be able to acquire Thai nationality under section 12/1(2) if they were under the supervision of a Thai public foster home for more than ten years. Stateless children under the age of five can also obtain Thai nationality if they are adopted and registered as legitimate children of a Thai national. As each nationality acquisition method is separated, there is no requirement to first try the other method before going to the other one.

It is noted that the use of this provision is rare as it is difficult for a person to adopt undocumented children/ rootless children. The reason is that for an adoption to be legitimate, the intending adult needs to obtain the consent of the child's biological parent to withdraw a child's legal parentage and identification document.

The recovery of Thai Nationality to stateless children whose parent's nationality was revoked by Por Wor 337

Por Wor 337 is a legal instrument that negatively contributes to the situation of statelessness in Thailand, and the Thai government made several attempts to mitigate its impact. Section 23 of the Nationality Act No. 4 B.E. 2551 (2008) states that a person who was born in Thailand but had his or her nationality revoked or could not acquire their nationality because of Por Wor 337 shall require Thai Nationality under this act. It is noted that the person would only be eligible to acquire nationality under this section when there is evidence of civil registration proving their domicile in Thailand for a constructive period and shall have good behaviour. Stateless children who are born before the year 2008 to this group of people shall obtain Thai Nationality automatically once their parents' nationality is recovered.¹³¹ Available information indicates that after the enactment of Section 23 from 2008 to 2019, there are 52,841 people whose nationality has been recovered.¹³² Even though there is no report on how many cases are still pending, it is reasonable to conclude that the recovery for only five thousand people over the course of ten years is a long time.

***The Recovery of Thai Nationality to stateless children who are descendent of Displaced Thai*¹³³**

¹²⁹ Thai PBS World (2018), 9 years on, Mong Thongdee still hopes for Thai Citizenship, Thai PBS World, <https://www.thaipbsworld.com/9-years-on-mong-thongdee-still-hopes-for-thai-citizenship/>

¹³⁰ Section 12/1 as added by the Nationality Act B.E.2508 (1991) No. 4 B.E. 2551 (2008)

¹³¹ Section 23 of the Nationality Act B.E.2508 (1991) No. 4 B.E. 2551 (2008). See also Paisanpanichkul D., final report ending and protecting child statelessness in Thailand: Developing an accelerated nationality review model.

¹³² Civil Registration section, office of registration administration, Ministry of Interior.

¹³³ Section 4 of the Nationality Act states that a "Displaced Thai" refers to an ethnic Thai who has become a subject of another state because of the territorial succession of the Thai Kingdom during British Rule and does not possess and nationality of any other country, has migrated into and resides in the Kingdom of Thailand for a constructive period, observed the Thai way of life and has been surveying and registered according to the civil registration act as

Section 9/5 and 9/7 of the Thai Nationality Act B.E. 2508 (1911) No. 5 B.E.2555 (2012) provides that a person claiming to be a displaced Thai can apply to the local registrar office where the request will be sent to the committee of displaced Thai.¹³⁴ Once parents are recognised as displaced Thai, the child will be granted nationality accordingly. For a person to be able to file a complaint, they must provide their civil registration record, background check, and evidence to prove that they become subject to another state because of the change of territory and that they do not hold any other nationality. It is noted that once the request is filed, it will be investigated by various governmental authorities before the director general of the Department of Provincial Administration makes final approval.¹³⁵

For stateless children who were born to a displaced Thai, their possibility of recovering their Thai nationality relies heavily on their parents. From 2012 to 2020, there were approximately 9,165 displaced Thai who were granted nationality, and the most common practical issue was the request for unnecessary witnesses from the local registrar and inaccurate identity documents.¹³⁶

3.2.4 Thai Immigration Law.

Immigration Act B.E.2522 (1979) regulates the resident status of all foreigners (or aliens, which is the word used in the Immigration Act) residing in Thailand. At first glance, immigration law may seem irrelevant to the issue of stateless children in Thailand as it does not contain details about the right to birth registration or the acquisition of nationality. Nonetheless, it plays a vital role in stateless children's lives, especially those who cannot be registered into any Thai civil registration system or who do not have a permit to stay in the country. As mentioned earlier that illegal migrants and people who do not have permission to stay legally in the country, they often avoid registering for the birth of their child due to the fear of arrest and deportation, which would lead to a situation where the child is undocumented and at risk of being stateless.

Despite not being a state party to the 1951 Refugee Convention, Thailand is home to more than thousands of refugees¹³⁷ due to its geopolitics.¹³⁸ UNHCR is present in Thailand to liaison with the Thai government in providing minimum humanitarian support, but with no legal obligation to provide international protection to refugees, refugees do not have the right to stay in Thailand.¹³⁹ On the other hand, Thailand is obliged by the principle of *non-refoulement* under customary international law and the Convention Against Torture. As a result, refugees are left in legal limbo where they do not have the right to stay in the country but cannot be deported either. As a consequence, refugee children who are born in Thailand might be at risk of

prescribed in the Ministerial Regulation or hold other relevant similar characteristics according to the Ministerial Regulations.

¹³⁴ Please see the diagram in Annex III for a detailed illustration of the process.

¹³⁵ Ibid.

¹³⁶ Paisanpanichkul, D. et all, *supra* 90, at 51. An Interview with an officer from the Human Rights Sub-Committee on Ethnic minorities, Stateless, and Migrant worker also confirmed that displaced Thais face difficulties preparing document for the process.

¹³⁷ United Nations High Commissioner for Refugee (UNHCR), Thailand Factsheet, 31 December 2022.

¹³⁸ Universal Periodic Review, Country Overview: Thailand,

¹³⁹ Thanawattho, N., Rungthong, W., Arnold-Fernandez, E., (2021), Advocating Refugee Rights in non-signatory states: The role of civil society in Thailand, Forced Migration Review 67: Public Health and WASH/ Non-signatories states and international refugee regime, at 62.

statelessness if they cannot obtain the nationality of the parents due to persecution because, at the moment, there is no available Thai Law to prevent statelessness from birth for refugee children.

Even though a change in immigration law may not directly solve the problem of statelessness because it does not guarantee the acquisition of nationality, the change of immigration law to grant a temporary stay for stateless persons or waive legal punishment when they need to access civil registration for their children would eliminate undue burdens on the parent and increase the number of birth registration for children. This could be done via Section 17 of the Immigration Act, which give permission to the Minister of Interior by Cabinet approval to permit any foreigner or group of foreigners to stay in the country under certain condition.

3.3 Concluding remarks.

Statelessness, especially in childhood, is a protracted issue in Thailand, and it negatively impacts the enjoyment of the child's fundamental human rights. The Thai government has made several attempts to solve the issue by amending existing laws and enacting new laws and policies; nonetheless, the number of stateless children in Thailand remains high. The factors that impede an effective solution to end statelessness come from both the implementation level, such as the lack of resources, awareness, or political will, as well as the legislation itself.

In light of the information provided, there is an arbitrary application of the criteria in the legal framework. Many criteria mentioned in the law, such as necessity, proof of good behaviour, the risk to national security, and belief in the democratic monarchy system, can lead to arbitrary decisions as there is no available measurement to concretely determine it. Consequently, the system relies heavily on witnesses to establish that the criteria are met. As previously explained, the background of children, such as their ethnicity and their residential status, has an influence, to a certain extent, on how the witness can be produced. Instead of solving the statelessness in childhood, the legislation ends up enhancing the indirect discrimination toward these marginalized groups of children.

In conclusion, when considering Thai's obligations regarding the right to identity of the child under Article 7 of the UNCRC, there is still room for improvement, and some issues might be a good topic for strategic litigation for the individual complaint under the Optional Protocol 3 to the UNCRC which will be discussed further in the next chapter.

4. Way forward and potential use of the Communication Procedure under Optional Protocol 3 to the UNCRC

4.1 Introduction

As a state party to UNCRC, Thailand has an obligation to implement all take all appropriate measures for the implementation of the convention.¹⁴⁰ However, when looking at the analysis of the state obligation in Chapter 2 and the domestic legal framework in Chapter 3, it can be achieved that there is still a lot of work to be done. This thesis acknowledges the role of the CRC committee and the potential influence of the international community in encouraging the state party to fulfil their obligations under international law; thus, this chapter aims to answer the third supplementary research question regarding the potential use of the communication procedure under the OP3 as a tool to enhance the protection of the right to identity of stateless children in Thailand.

The Chapter is divided into three subsections. The chapter starts with an analysis of the Thai Legal and UNCRC to help identify the possible children's rights violations. The rule of procedure, the expected impact, and the potential use of the communication procedure under OP3 will be later explored, and the concluding remarks will be provided at the end of the chapter.

4.2 An Analysis of Thai Legal Framework with Regards to the Protection of the Right to Identity and the UNCRC.

The issue of childhood statelessness in Thailand is complex and multifaced. Stateless children in Thailand are deliberately categorized into various subsections by the Thai government, and there are different legal frameworks that are applicable to them. Nonetheless, it is noted that one common impediment to the fullest enjoyment of children's rights for all categories of stateless children in Thailand is systematic discrimination. To effectively prevent childhood statelessness in Thailand, there are various factors that need to be taken into consideration because a solution for one group of stateless children may have a negative impact on others. The consequence of Por Wor 337 is a good example of the abovementioned situation.

To overcome such systematic and multilayer discrimination, the goal is to establish a uniform stateless status determination and nationality acquisition process with an effective safeguarding mechanism in place. The safeguarding mechanism should take into account different limitations and vulnerabilities of stateless children. Considering the legal framework in Chapter 3, stateless children in Thailand can be divided into two main groups, as illustrated in the table on the next page.

¹⁴⁰ Article 4 of the UNCRC.

Stateless children with the existing legal framework	Stateless children without any existing legal framework
<p>Children who were born in Thailand</p> <ul style="list-style-type: none"> - Thai children who are <i>de jure</i> stateless: unregistered children of Thai parents, children of Morgan and Mani ethnicity, and children of the hill tribe's people, or displaced Thai. - Children of ethnic minorities or indigenous groups - Children of other non-Thai people that are not of indigenous groups. - Undocumented children, abandoned children, and rootless children. - Stateless children contribute greatly to Thai society. 	<ul style="list-style-type: none"> - Children of Myanmar people who fled to war in the nine temporary shelters along the Thai border. - Children of urban refugee - Children of Muslim Myanmar people, also known as Rohingya.
<p>Children who were born outside of Thailand</p> <ul style="list-style-type: none"> - Children of ethnic groups have been residing in Thailand for a long period of time. - Rootless¹⁴¹ children who migrated to Thailand. 	

Table 2:

Categories of stateless children in Thailand according to the applicable law and policy. This table is based on information provided in the UNICEF and Chiang Mai University report: Invisible Life 48 years the situation of stateless children in Thailand.

As a state party to UNCRC, Thailand has an obligation to take all appropriate legislative, administrative, and other measures¹⁴² to ensure that the rights of children of all groups are upheld in accordance with the UNCRC. Based on the information provided in Chapter 3, there are three common characteristics of the framework related to childhood statelessness in Thailand that obstruct the fullest enjoyment of the right to identity of stateless children in the country, which are gaps in the law, the arbitrary application of criteria, and indirect discrimination.

¹⁴¹ According to the Ministry of Social Development and Human Security, Ministerial Order No. 0202/9828 dated 9 August 2018, Rootless children are children whose background cannot be identified.

¹⁴² Article 5 UNCRC

Gaps in Thai Legal framework regarding the right to identity.

Despite abundant legal frameworks and policies relating to the reduction of statelessness in Thailand, there several aspects and groups of children are absent. The first thing that is missing from the Thai legal framework is a clear and uniform stateless status determination procedure. Statelessness status determination is one of the key elements toward the reduction of statelessness because for the state to effectively solve statelessness in childhood, stateless children must be identified.¹⁴³ As mentioned in Chapter 2, Thailand is not a state party to the 1961 Convention on the reduction of stateless, and there has never been an attempt to establish the stateless status determination process in Thailand. Without a stateless status determination, stateless children in Thailand may face difficulties proving their status and getting protection.¹⁴⁴

The Cabinet Resolution¹⁴⁵ mentioned in Chapter 3 explicitly requires that the person/children requesting Thai Nationality shall prove that they do not hold the nationality of other states. However, because there is no clear guideline on what kind of evidence is needed, the competent officer often requests more evidence than necessary, or in some cases, even request for evidence is difficult to obtain in practice.¹⁴⁶ For instance, the officer may ask for a document from the other country to confirm that the person does not hold their nationality. Such instances can be problematic if the person is not a nationality of that state or the authorities of that state are unwilling to cooperate. When there is no evidence available, the officer, in some instances, may request testimony from witnesses, and that may lead to arbitrary application of criteria and indirect discrimination¹⁴⁷.

The second obvious gap in the Thai legal framework is that it does not cover all groups of stateless children residing in Thailand.¹⁴⁸ Thai law and policy on the reduction of statelessness in childhood are complex and targeted specifically. Thus, only children from the group that is covered in the national strategy¹⁴⁹ can access the solution to statelessness. It is acknowledged that Thailand does not have an obligation to grant Thai Nationality to all children born in its territory, and the state is entitled to wide discretion on the matter of nationality. Nonetheless, it is important for Thailand to ensure that all stateless children have equal access to stateless determination and nationality acquisition processes that are non-arbitrary, which will be discussed in detail below.

¹⁴³ Gyulai, G. (2014). The determination of statelessness and the establishment of a statelessness-specific protection regime. In A. Edwards & L. Van Waas (Eds.), *Nationality and Statelessness under International Law*, at 127.

¹⁴⁴ *ibid*

¹⁴⁵ Cabinet resolution date 7 December 2016 regarding the individual acquisition of nationality for children born to non-Thai parent.

¹⁴⁶ Information from an interview with officer from the Human Rights Sub-committee on Ethnic minorities, Stateless, and Migrant workers. See also. Paisanpanichkul, D. et al (2020), *supra* 90, at 51

¹⁴⁷ *Ibid*. Anonymous interview with stateless person in Bangkok Thailand.

¹⁴⁸ Table 2 Category of stateless children in Thailand according to applicable law and policy.

¹⁴⁹ Thai National Security Council, (2005), 2005 National Strategy on Administration of Legal Status and Rights of Persons

The arbitrary application of criteria.

It acknowledged that the right to acquire a nationality Article 7 of the UNCRC does not compel the state to grant nationality to all children born within its jurisdiction¹⁵⁰, the provision does lay down an obligation on state parties to ensure that the law on the acquisition of nationality is non-discriminatory and fair.¹⁵¹ When considering nationality in Thailand, many provisions contribute to the arbitrary application of criteria. Criteria such as having good behaviour¹⁵² or not posing a risk to national security are heavily relied witnesses and the discretion of the decision maker, which can be subjective and unstable. Available information indicates that the burden of proof and evidence required by the government official regarding the request for nationality are different in each municipal office and committee, depending on their discretion and the political momentum of the country at the moment.¹⁵³

To ensure that decisions regarding the acquisition of the nationality of a child are made fairly and non-arbitrary, it is recommended that the Thai government refrain from increasing burden proof to the extent that it undermines the effectiveness of safeguards for stateless children.¹⁵⁴ A clear guideline and measurement on the case assessment could be provided to the decision maker at all levels to ensure the integrity of the process throughout the country. Due to the characteristic of statelessness, it is understood that there could be difficulties in getting official documents or evidence. In such a situation, the thesis suggests that discretion could be used but only to the extent that is beneficial to the applicant and that the domestic legal framework should guarantee that the best interest of the child is a primary consideration.

Indirect discrimination.

From the analysis in Chapter 3, the Thai Legal framework regarding the right to identity of a child is achieved that the framework constitutes indirect discrimination against certain groups of stateless children. The arbitrary application of the criteria explained above and the law and policy that do not reflect the reality of stateless children, indirect discrimination is an inevitable issue impeding the effective prevention and reduction of childhood statelessness in Thailand. For example, the requirement of a bachelor's degree in cabinet resolution¹⁵⁵ in itself does not amount to discrimination under Article 2 UNCRC; however, when considering the reality of stateless children in Thailand, many of them are not able to pursue higher education. In the case of Rohingya children, the chance of them getting into university is low because they face multiple challenges in getting accepted into school.

Although it is ensured in the Thai Constitution that all children in Thailand are entitled to basic primary education, the schools still have discretion on the enrollment criteria, and an identity document is a commonly required document.¹⁵⁶ Even if they are accepted into school, it is also very likely that their

¹⁵⁰ Tobin, J.& Seow, F. (2019), supra 18 at 254.

¹⁵¹ Ibid. at 274.

¹⁵² Cabinet resolution date 7 December.

¹⁵³ Interview from grass-root NGO.

¹⁵⁴ Gyulai, G. (2014), Supra 156, at 137.

¹⁵⁵ Cabinet resolution date 7 December B.E.2559 accommodating Ministry of Interior regulation regarding the order to grant nationality to people who were born in Thailand to non-Thai parents and the acquisition of nationality on an individual and exceptional basis.

¹⁵⁶ The Equal Rights Trust and Institute of Human and Peace Studies Mahidol University, Human Rights of Stateless Rohingya in Thailand (2012) at 13.

education will be inconsistent as they are highly dependent on the assistance of the NGO in the area.¹⁵⁷ Therefore, it is extremely challenging for them to pass university admission in comparison with other children from more privileged backgrounds. Ethnic minority children also face the same issue as they are usually unable to attend university due to the lack of financial means, the lack of residential status, and the unavailability of accessible education services in their area.¹⁵⁸ Hence, the education requirement causes indirect discrimination based on ethnicity.

The second issue is that the criteria for the acquisition of nationality applicable to stateless children heavily rely on the civil registration or residency status of the child's parents.¹⁵⁹ As mentioned in Chapter 1, statelessness is a transgenerational issue, and stateless children often inherit statelessness from their parents. Therefore, having criteria that heavily rely on the status of the parents would perpetuate the cycle of statelessness instead of breaking it, which is the objective of the law.¹⁶⁰ Furthermore, the criteria that rely heavily on the status of the parents also lead to a violation of Article 2(2), which protects children from discrimination based on the status of the parents. To overcome the issue of indirect discrimination, it is suggested that the criteria for the acquisition of nationality under both Sections 7 bis and 23 of the Nationality Act be amended in a way that is more flexible, reflects the reality of stateless children in the country and relies less on the status of the parents.¹⁶¹

The analysis from this subsection shows that despite significant progress in the legal framework that has been made, the government has not yet been able to uphold its obligation under the UNCRC effectively.¹⁶² There are several factors contributing to the ineffective reduction and prevention of childhood statelessness in Thailand: lack of public awareness, ill-perception of stateless children as illegal migrants or threats to national security, and lack of political will or inadequate resources. Thus, it is important to shed light on the difficulties that stateless children in Thailand have been facing and firmly remind the government of its obligation toward stateless children as a UNCRC state party.¹⁶³ One way to emphasize the obligation of the state and achieve effective remedies for stateless children in Thailand is through litigation at the international level, as it will create pressure from the international community upon the Thai government.

In other countries, there have been attempts to bring a strategic litigation case relating to the right to identity of stateless children to international and regional judicial/quasi-judicial before. For example, there was a decision from the Human Rights Committee in 2016 regarding the violation of the right to acquire a nationality of a child under Article 24(3) of ICCPR by the Netherlands.¹⁶⁴ At the regional level, there was a case brought to the African Committee of Experts on the Rights of the Child (ACERWC) concerning the

¹⁵⁷ Ibid.

¹⁵⁸ Committee on the Elimination of Racial Discrimination, (2022), Concluding Observation to the combined fourth to eighth periodic of Thailand, CERD/C/THA/CO/4-8, at 10.

¹⁵⁹ Cabinet resolution ANNEX III and Section 23 of the Nationality Act.

¹⁶⁰ Preamble of the cabinet resolution.

¹⁶¹ CRC Committee, GC23, at para 25. See also Tobin, J.& Seow, F. (2019) *supra* – at 257.

¹⁶² Nations Thailand, (2021, April 16), Need to accelerate the end of statelessness in Thailand, says the study, Nation Thailand, <https://www.nationthailand.com/in-focus/30404738>

¹⁶³ CRC Committee, (2012), CO Thailand 3-4, at 41-42. See also UN Human Rights Council, (2022), Report of the Working Group on the Universal Periodic Review: Thailand, A/HRC/49/17

¹⁶⁴ Denny Zhao V. The Netherland, UN Human Rights Committee 26 November 2016.

discrimination against the children of Nubian ethnicity by Kenya, which led to childhood statelessness.¹⁶⁵ Consequently, the decision from the committee led to an awareness-raising campaign and the start of law reform in Kenya.¹⁶⁶

Unlike other regions, such as European or African, no regional judicial or quasi-judicial body exists in the Southeast Asia region to decide or give an opinion when the Thai Government fails to comply with their obligation under international law. Fortunately, Thailand ratified Optional Protocol 3 of the UNCRC, which allow children to submit complaints to the CRC committee through the communication procedure.¹⁶⁷ This procedure opens the door for stateless children and people who are working on this matter to redress the violation of rights under CRC through individual petitions, Inter-state communication and inquiry procedure for grave or systematic violations. An overview and rule of procedure for the Communication procedure under OP3 will be explored in the next subsection.

4.3. Communication Procedure under OP3.

The Communication Procedure is a mechanism established under optional protocol 3 of the UNCRC that allows the CRC to receive a complaint from children or groups of children or their representatives and inter-state inquiries regarding the violation of the rights under the CRC and the other two Optional Protocols: The First Optional Protocol on the sale of children, child prostitution and child pornography and the Second optional protocol on the Involvement of Children In Armed Conflict.¹⁶⁸

It is important to note that the CRC committee have a quasi-judicial role which means that they will not have the power to make a binding decision like domestic court or other international courts such as the European and Inter-American Human rights courts.¹⁶⁹ Nonetheless, the impact of the jurisprudence developed by the committee should not be underestimated. The decision from the committee would provide an interpretation of the rights to identity under Article 7 of the CRC and clarify the state obligations on the matter, which could lead to actual legal or policy changes at the domestic level. As mentioned earlier that the first step toward the solution of childhood statelessness in Thailand is to make the issue visible to both the government and the public; the decision from an international body will give civil society a useful to advocate for better protection for stateless children at the national level.¹⁷⁰

¹⁶⁵ *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative (on behalf of Children of Nubian Descent in Kenya) v. the Government of Kenya*, Decision No 002/Com/002/2009, African Committee of Experts on the Rights and Welfare of the Child (ACERWC), 22 March 2011,

¹⁶⁶ Songa, A. (2021). Addressing statelessness in Kenya through a confluence of litigation, transitional justice, and community activism: reflecting on the cases of the Nubian, Makonde and Shona communities. *African Human Rights Yearbook*, 5, at 261 (253-276.) See also. Bingham, M. (2017, May 15) Kenya's Nubian Minority pushes forward for equal treatment, Open Justice Initiative. <https://www.justiceinitiative.org/voices/kenyas-nubian-minority-road-citizenship-remains-difficult>

¹⁶⁷ Article 1 OP3

¹⁶⁸ Article 5 OP3.

The Optional Protocol on the involvement of children in armed conflicted.

¹⁶⁹ Langford, M.& Clark, S. (2019) *The New Kid on the Block: A complaints procedure for the Conventions on the Rights of the Child*, NJHR 28: 3-4 , at 390.

¹⁷⁰ CRIN (2009), Meeting of the UN working group for the Communication Procedure, 2009, available at http://www.crin.org/docs/OP_CRC_WG_Meeting_Dec2009.pdf

4.3.1 Rule of Procedure

For the complaint to be admissible, there are several rule procedures that need to be fulfilled. The rule of procedure is thoroughly prescribed in Article 1(3), Article 5, and Article 7 of the OP3. This subsection will mainly focus on the rule of procedure that are substantively crucial when considering the possible use of the communication procedure, which are the exhaustion of local remedies¹⁷¹ and the identification of the victim.¹⁷²

The victim must be clearly identified.

It is important to note that to file a complaint to the CRC committee, the victim and the rights that have been violated need to be clearly identified. Thus, it is not sufficient to only provide an overview of what is wrong with the national legal system.¹⁷³ The analysis in Chapter 4.2. shows that the way legal frameworks and policies regarding statelessness in Thailand are designed may contribute to the violation of children's rights during the implementation. Together with the category of stateless children in Thailand illustrated in Table 2, the thesis suggests that a child from the Rohingya Community might have the potential to bring an individual complaint to the committee. Rohingya children are considered one of the most marginalized groups of stateless children in Thailand, as they are excluded from almost every legal framework with regard to the reduction of statelessness.¹⁷⁴ Rohingya children are considered irregular migrants despite being born in the country.¹⁷⁵

Parents of children from the Rohingya community often face difficulty registering the birth of their children at the local registrar because of their residential status stigma attached to their ethnicity.¹⁷⁶ The issue can get more complicated when parents cannot register their children within the timeline prescribed in the law because they will need to go through the investigation in order to get authorization for the birth certificate and pay the fee. This creates unnecessary burdens for the parents and may amount to a violation of the right to be immediately registered after birth.¹⁷⁷ Regarding the right to be immediately registered after birth¹⁷⁸, it is noted that the issue lies within the legislation itself and the implementation of the law. The requirement for parents to register their child within 15 days after birth at first glance may seem to be in conformity with the term immediately under Article 7 of the CRC. However, the analysis in Chapter 2 clearly showed that the word immediately should interpret in a way that highlights the urgency of birth registration, not to impose the deadline.¹⁷⁹ Therefore, it is reasonable to conclude that the domestic practice, namely the deadline for birth registration, the late registration fee, and the late registration investigation violates safeguards of the right under Article 7 UNCRC.

¹⁷¹ Article 7(5) OP3

¹⁷² Article 5 OP3.

¹⁷³ Ibid

¹⁷⁴ Equal Rights Trust, (2016). *Confined Spaces: Legal Protections for Rohingya in Bangladesh, Malaysia and Thailand*, at 183.

¹⁷⁵ Secretariate of the House of representative Thailand, *Rohingya Humanitarian Crisis: an unsolvable puzzle?*, (2019) at 13, available at https://www.parliament.go.th/ewtadmin/ewt/parliament_parcy/ewt_dl_link.php?nid=46612, accessed on 15 June 2023.

¹⁷⁶ Equal Rights Trust, *Equal Only in Name: The Human Rights of Stateless Rohingya in Thailand*, 2014 at 40.

¹⁷⁷ Article 7 UNCRC.

¹⁷⁸ Article 7 (1) UNCRC

¹⁷⁹ Tobin, J.& Seow, F. (2019), *supra*18, at 247.

Exhaustion of local remedies.

This admissibility criterion is a common requirement for other human rights systems at the United Nations and other regional levels. The rationale behind this is based on the principle of sovereignty of the state, the consensual nature of international law and the subsidiary nature of international protection.¹⁸⁰ Thus, the state should be able to address the alleged violation first; this is to avoid contradicting decisions from the domestic and international levels.¹⁸¹ However, it is important to note that there is an exception for the exhaustion of domestic remedies, as only available, effective, and sufficient remedies are needed to be exhausted. Furthermore, an unduly prolonged domestic remedy should not be considered an available, effective or sufficient remedy.¹⁸²

Taking to account the situation of stateless children, the Thai Legal framework, and the criteria above, stateless children from the Rohingya community might meet the exhaustion of local remedies criterion for the following two reasons. Firstly, there is no existing legal framework to solve their childhood statelessness or establish their legal status in the country.¹⁸³ To further elaborate, Rohingya children were not mentioned in any of the cabinet resolutions regarding the acquisition of Thai nationality despite the high number of Rohingya people residing in Thailand.¹⁸⁴ It is shown in Chapter 3 that Thai law regarding the acquisition of nationality deliberately categorizes people into different groups; thus, different rules apply to different ethnic minorities.¹⁸⁵ They have been excluded from the national survey of the status of a person in the past.¹⁸⁶ Stateless children from Rohingya not only fall in between the legal gaps but are also considered irregular migrants instead of stateless children.

Secondly, even if they manage to bring the case to the court, it is important to note that the court process can be unduly prolonged. As shown in Chapter 3 and Annexure I, the process for the acquisition of Thai nationality can last very long, even for people who fall under the 2005 national strategy.¹⁸⁷ In 2014, there was a strategic litigation case brought to the court requesting a household registration for ethnic minorities group in Chiang Mai.¹⁸⁸ Although the court only took one year to order a positive decision allowing the applicant to add the name to the household registration, they still need to gather other required documents

¹⁸⁰ Fokala, E., & Chenwi, L. (2014). Statelessness and Rights: Protecting the Rights of Nubian Children in Kenya through the African Children's Committee, *African Journal of Legal Studies*, 6(2-3), at 363

¹⁸¹ J. Doek, Communications with the Committee on the Rights of the Child under the Optional Protocol to the CRC in communications Procedure and admissibility, Report on decisions of the Committee in Admissibility: Summary and Comment

See also the Nubian case at 26.

¹⁸² The African Committee of Expert on the Rights and Welfare of the Child (ACERWC), Institute for Human Right and Development, in Africa and the Open Society Justice Initiative (on behalf of the Nubian Descent in Kenya) against the government of Kenya, at 32.

¹⁸³ See Table 2 the category of stateless children in Thailand.

¹⁸⁴ See also Equal Rights Trust, (2016). *Supra* 187 at 183

¹⁸⁵ Cabinet resolution date 7 December 2016. Annexure II.

¹⁸⁶ Equal Rights Trust, (2016). *Supra* 187 at 170.

¹⁸⁷ Interview with officer from National Human Rights Sub-Committee on Ethnic minorities, stateless, and Migrant workers. See also Thai PBS, (2018, July 27). “ปู่คออี้” แห่งป่าแก่งกระจาน ได้สัญชาติไทยในวัย 107 ปี (Koyi from Kangkrajarn province get Thai Nationality at the age of 107 years old.), Thai PBS, <https://www.thaipbs.or.th/news/content/273639>

¹⁸⁸ Princess Maha Chakri Sirindhorn Anthropology Centre. (2014), Special report: Chiang-Dao the mountain village and the story of the villager (รายงานพิเศษ: เชียงดาว เมืองในหุบเขา กับเรื่องเล่าคดีของชาวบ้าน), https://www.sac.or.th/databases/ethnicredb/news_detail.php?id=1672

before undergoing a nationality acquisition process under Section 23 of the Nationality Act. The whole process can take up to ten years before a person gets a Thai nationality.¹⁸⁹ It is worth highlighting that Rohingya are not recognised as an ethnic minority group in Thailand but rather as illegal migrants.¹⁹⁰ Thus, they will not have the same legal standing before the Thai authorities as the recognised ethnic minority group, and the process may take even longer.

4.4 Concluding remarks.

In spite of all laws and policies enacted in the attempt of the government to end statelessness in Childhood in Thailand by 2024, statelessness is still easily inherited and difficult to overcome. An abstract analysis of the Thai legal framework in this chapter identifies three main issues with Thai law, which are gaps in the law, arbitrary application of criteria, and indirect discrimination. It is suggested that a communication procedure under OP3 could be used to overcome the issues and redress the violation of the right to identity of stateless children in Thailand.

¹⁸⁹ Thai PBS, (2018, July 27), *supra* 200. The officer from the National Human Rights Sub-Committee on Ethnic minorities, stateless, and Migrant workers also confirmed during the interview that the nationality acquisition process can take a long time.

¹⁹⁰ Equal Rights Trust, (2016). *Supra* 187 at 170.

Chapter 5: Conclusion and Recommendations

5.1 Conclusion

'The forgotten child' is the word chosen to describe stateless children in Thailand, which perfectly reflects the invisible status of stateless children in the eyes of the Thai government and Thai society. It can be seen throughout the thesis that the element of children's rights is often overlooked in Thai law regarding statelessness. At the same time, Thai law relating to the provision and protection of children's rights often undermines the existence of stateless children.

In Thailand, it is easy to inherit statelessness but challenging to overcome. Even with various legal frameworks and efforts from the government to reduce and prevent childhood statelessness, the number of stateless children remains high. To break to cycle of childhood statelessness in Thailand, the following research question was addressed in this research:

To what extent has Thailand ensured and protected the rights to the identity of stateless children in conformity with the CRC, and is there a potential use of the communication procedure under optional protocol 3?

In the second chapter, an analysis of state obligation regarding the right to identity of the child under UNCRC is provided. Article 7 UNCRC is the main article that lays down the state obligation relevant to the right to identity of the child. There are two main aspects of the right to identity that are closely intertwined with childhood statelessness: the right to birth registration and the right to acquire nationality. Through an analysis of various concluding observations together with relevant General Comments, such as general comments no.11 and 23¹⁹¹, it can be achieved that the state has an obligation to provide for birth registration that is flexible, free of charge, and universally accessible¹⁹².

On the matter of the right to acquire a nationality, the analysis in Chapter 2 deliberately makes a distinction between the right to acquire a nationality and the right to a nationality. It is noted that although the sovereignty of the state about the regulation of nationality is recognised under international law¹⁹³, the state still has an obligation to ensure that the law on the acquisition of nationality is just and non-arbitrary. Article 7(2) UNCRC aims at preventing stateless. However, it does not lay down a clear obligation upon the state to grant a nationality to a stateless child but instead redirects the state to the obligation under another international legal instrument. Hence, it reflects the sensitivity and ambiguity which may lead to the reluctance of the state to reduce childhood statelessness.

Chapter 3 focuses on the situation of stateless children in Thailand, the national legal framework and practical challenges. Children in Thailand become stateless for several reasons, including the lack of birth registration or other proof of nationality, the application of the exclusive jus sanguinis principle in nationality law, the law to revoke nationality, discrimination, or even by administrative error. There are three main

¹⁹¹ CRC Committee General Comment 11 at 41 and General Comment 13 at 20 and 72.

¹⁹² CRC Committee CO Marshall Island CRC/C/15 Add 139, at 33, CO Central African Republic CRC15 add 138, at 36., and CO Tajikistan CRC/C/15/ Add 136, at 26.

¹⁹³ Lichtenstein v. Guatemala (Nottebohm) at 20.

domestic legal frameworks in Thailand that are relevant to the reduction of childhood statelessness which are the Civil Registration Act B.E.2534 (1991), the Nationality Act B.E.2508 (1965), and the Immigration Act. B.E2522 (1979). Because the matter of nationality is closely related to national security in the perception of Thai authorities, the perspective of children's rights is absent. This perception reflects in both the regulation and the implementation and application of the law at the local level. To further elaborate, children from certain ethnic groups, such as Hill tribes, Karen, Rohingya or other urban refugees, are often left out in the legislation or systematically blocked out at the implementation level.

Chapter 4 provides a thematic analysis of the Thai legal framework vis-à-vis the UNCRC and the potential use of the Communication procedure under OP3. There are three main issues with regard to the Thai national legal framework and policy on the reduction of childhood statelessness which are gaps in the law, arbitrary application of criteria and indirect discrimination. As Thailand is a state party to OP3, children can bring a case to the CRC committee as another way to remind the government of its obligation under the CRC. The thematic analysis in support of the information from local NGOs and stateless children in Thailand establishes that there is a violation of children's rights, namely articles 2, 3, and 7 UNCRC. Taking into consideration the human rights atmosphere and the implementation of previous judgement on the acquisition of nationality under Sections 7 bis and 23 of the Nationality Act 1991, the requirement for exhaustion of local remedies is likely to be fulfilled. The case of Rohingya children who are not included in any domestic framework can be a good first case to bring to the attention of the committee via the communication procedure. The CRC committee not only reaffirmed the principle of non-discrimination in several General Comments, especially General Comment No.11 on children from indigenous groups¹⁹⁴, but they also highlighted the issue of discrimination towards children of ethnic minorities in the Concluding Observation to Thailand.¹⁹⁵

5.2 Recommendations

The Thai government announced that they would join the #IBelong campaign by UNHCR in 2011 and aimed to achieve the goal of zero statelessness by 2024. More than ten years have passed, and the number of stateless children in Thailand still remains high. It is obvious that the goal to end childhood statelessness by 2024 is no longer practically possible. Nonetheless, the government must not abandon their effort; indeed, it should step up its action to end childhood statelessness in Thailand as soon as possible. This thesis provided the reflection of the government's effort through the past decades and will now also offer four thematic recommendations that could advance the reduction of childhood statelessness in Thailand and effectively protect their rights to identity under UNCRC:

Legal standards and regulations

Law and regulation are the heart of the enjoyment of the right to identity under Article 7 UNCRC because the right to identity is the right to be equally recognised before the law. It is the power of the law that establishes the legal status of the child. For better recognition of children's identity, the thesis; thus, suggests that Thailand review the following legal frameworks regarding stateless children: Civil Registration Act B.E.2534 (1991), the Nationality Act B.E.2508 (1965), and the Immigration Act. B.E2522 (1979).

¹⁹⁴ CRC Committee, GC 11 at para. 24 and 42.

¹⁹⁵ CRC Committee, CO Thailand at para. 33, 41 and 43.

For the Civil Registration Act, it is suggested that the late birth registration fee is revoked and that the deadline for birth registration is amended. It is recommended that the word “immediately” in Article 7 UNCRC should be interpreted in a way that reflects the urgency and the importance of birth registration rather than creating unnecessary burdens. Hence, the authority shall not refuse to issue birth certificates in the case where the child's parents cannot register the birth of the child within the deadline.

With regard to the Nationality Act, it is recommended that the government review the Nationality Act and consider a whole legal framework reform. The issue with Thai nationality law, as stated earlier, is that the law is too complex and redundant. Hence, it is recommended that the government consider replacing all cabinet resolutions, ministerial regulations, and other fragmented laws with one clear, concise, and inclusive procedure for stateless children.

It is suggested that the Thai government consider amending the following law: Section 19/2 and Section 23 of the Nationality Act as well as the criteria in the Cabinet Resolution enacted under the power of Section 7 Bis of the Nationality Act, in a way that is less dependent on the testimony of witnesses. The requirements that cannot be objectively measured, such as necessity, good behaviour, or belief in the constitutional monarchy system, should be reconsidered. This would resolve the issue of indirect discrimination, abuse of power, and corruption by government officials.

To accelerate the nationality acquisition process for stateless children, it is suggested that the government consider amending the criteria on the minimum period of domicile, language proficiency and education level. It is also suggested that a clear and uniform statelessness status determination process is established to ensure that stateless children in Thailand are promptly identified and provided with protection as enshrined in the law.

A monitoring body for the implementation

The government should establish a transparent and effective mechanism to monitor the birth registration and nationality acquisition request process to ensure that the request is processed fairly within an appropriate amount of time. When implementing the monitoring mechanism, the government should ensure that it is accessible and available in all areas. Taking into account the practical limitation of stateless children in Thailand, such as physical remoteness, financial situation, and language burden, the government may consider cooperating with National Human Institute or grass-rooted NGOs to enhance the effectiveness of the process.

Capacity building and a clear guideline for competent authorities

To ensure a smooth translation of the law to practice, it is important that all government officials at all levels who involve in the birth registration and acquisition of nationality process have an awareness of the international children's rights framework. A better understanding of a children's rights concept is crucial to strike a balance between national security and the right of the child. It would reduce administrative error, abuse of power, and indirect discrimination, which are keys burden to the fullest enjoyment of the right to identity in Thailand.

An adequate allocation of resources

When providing service to ensure the right of the child, the government should ensure the service is accessible, available, and acceptable. The government should consider the physical remoteness and other practical challenges, such as the lack of financial means and the language barrier of stateless children, when deciding on the allocation of budget and any policy for them. The government may consider establishing a remote birth registration unit in remote areas¹⁹⁶ and using language spoken by ethnic minorities in the birth registration form or during the birth registration process.

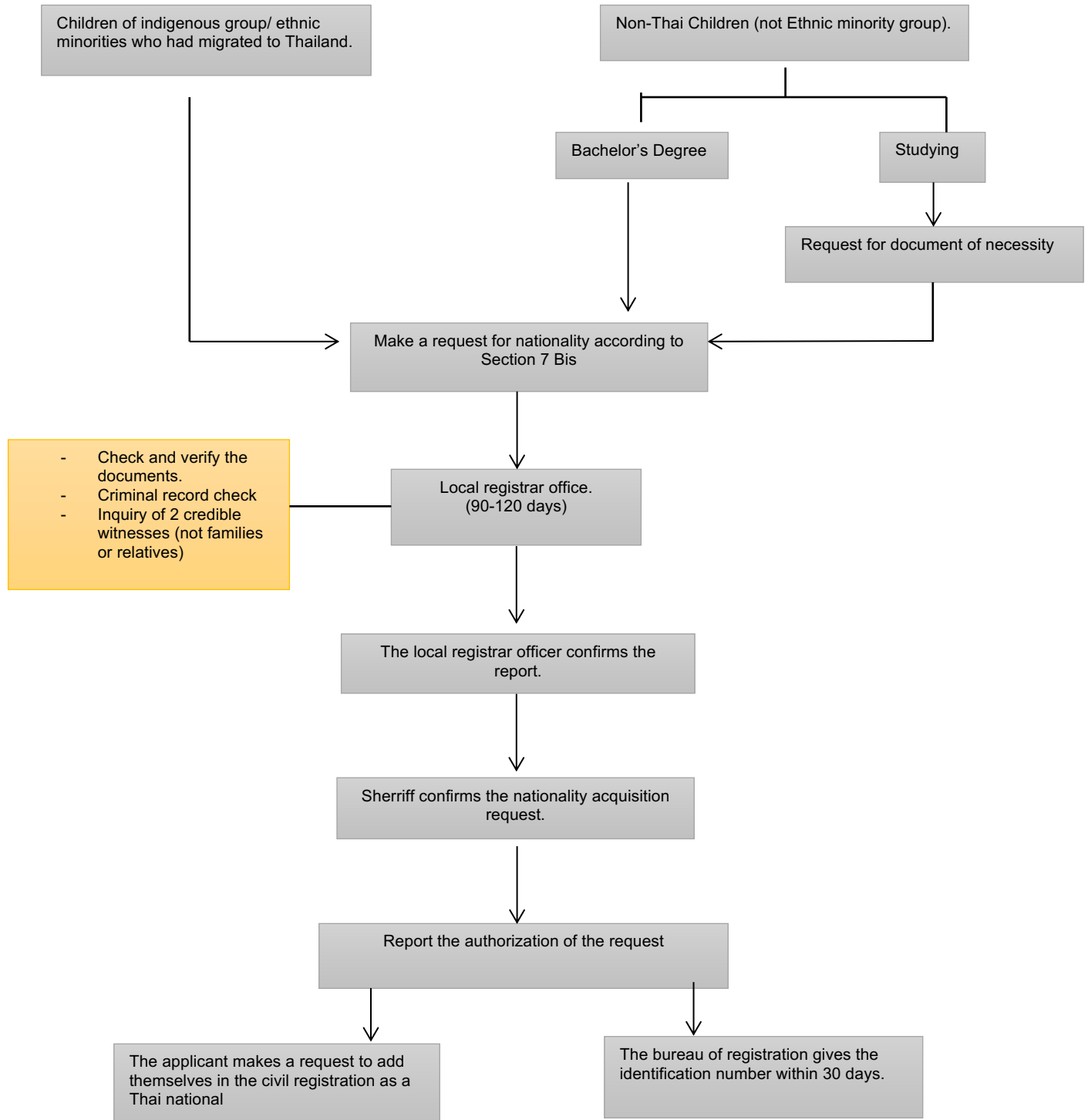
5.3 Key takeaway

Childhood statelessness is an issue that has been swept under the rug by the Thai Government and Thai society for decades. This thesis hopes to bring attention to the situation of stateless children in Thailand and reaffirm their equal and inherent rights as enshrined in the UNCRC. For Thailand to effectively eradicate childhood statelessness, legal reform and effective legal safeguard is required. Furthermore, the Thai government should ensure that the principle of non-discrimination is upheld throughout the implementation process to avoid discriminatory design and indirect discrimination, which have been a major hindrance to the abolition of statelessness in Thailand.

¹⁹⁶ CRC Committee, GC11, at 42.

Annexure I

The process of nationality acquisition under Section 7 bis Nationality Act Fourth amendment B.E. 2551 Group 1 Children of the Indigenous group who have integrated into Thai Society.¹⁹⁷



¹⁹⁷ The diagram is translated from a Thai Diagram provided in the Chiang Mai University and UNICEF, 2020, Final report: Ending and Protecting Child statelessness in Thailand: Developing an accelerated Nationality review model.

Annexure II

Unofficial translation Cabinet Resolution (7 December 2016)

Announcement of the Ministry of Interior

Regarding an order to allow people who were born in the Kingdom and not receiving Thai nationality whose father and mother are aliens to obtain Thai nationality in general and the granting of Thai nationality in a particular case
(7 December 2016)¹⁹⁸

On December 7, 2016, the Cabinet approved the criteria for Thai nationality to solve the issue of stateless children and stateless persons born in the Kingdom as proposed by the Ministry of Interior. Children who were born to minorities or ethnic groups. Children and persons studying in educational institutions or completing education born in the Kingdom whose parents are aliens other than Minorities or ethnic groups according to the Ministry of Interior's history registration or do not appear to have parents or have been abandoned by parents since childhood and meet the qualification may obtain Thai Nationality.

By virtue of Section 7 bis paragraph two of the Nationality Act B.E. 2508 as amended by the Nationality Act (No. 4) B.E.2551, the criteria for identifying the status of target groups according to the strategy for managing status and rights problems of individuals and the Cabinet resolution (7 December 2016) on the determination of criteria for obtaining Thai nationality for foreigners born in Thailand in order to resolve the nationality and personal status problems of students and stateless persons, the Minister of Interior issued the announcement as follows:

Section 1 This announcement shall cancel

1. Announcement of the Ministry of Interior regarding the acquisition of the nationality of a person without Thai nationality born in the Kingdom of Thailand to an alien father and mother to obtain Thai nationality in general and the granting of Thai nationality on an individual basis, dated 26 September 2012.
2. Announcement of the Ministry of Interior regarding the acquisition of the nationality of a person without Thai nationality born in the Kingdom of Thailand to an alien father and mother to obtain Thai nationality in general and the granting of Thai nationality on an individual basis (No. 2) dated 11 June 2015

Section 2 To grant nationality on an individual basis to children of those who had immigrated into the Kingdom and had been residing for a long-time, including minority groups and ethnic groups that the cabinet had previously approved their status to live in the kingdom (Vietnamese immigrants. Former Chinese National Guard Chinese Ho, civilian immigrants, Chinese Ho free, Thai Lue, immigrants of Thai descent from Koh Kong Province. Cambodia Burmese displaced people of Thai descent, IDPs of Burmese nationality, Nepalese immigrants, hill tribes, highlanders or highland communities, Laotian mountaineers, Hmong Tham Muek, and immigrants from Burma, former Malayan communist Chinese bandits, Cambodian

¹⁹⁸ Please note that it is unofficial translation. Translated from Thai to English by the authors. In case of any contradiction, the Thai text shall prevail.

immigrants and, Morganites) and people who immigrated to the Kingdom and have been living for a long time have been surveyed and registered according to the Strategic Management of Status and Rights of Persons according to the Cabinet Resolution on the 18th. January 2005.

The abovementioned group of people may obtain Thai Nationality under the following conditions:

1. The father or mother who immigrated into the Kingdom and resided for a long time under paragraph one; must be or used to be registered in the civil registration document, have a 13-digit identification number according to the law on civil registration, and must enter the Kingdom for a period of not less than fifteen years up to the date the child submits the request for Thai nationality.
2. The person must have evidence to prove that they were born in the Kingdom (birth certificate, birth registration, birth certificate (Tor Ror. 20/1) or certificate of the place of birth.), and the child must be registered in the household registration according to the law on civil registration.
3. There is no evidence of having and using another nationality.
4. The person can speak and understand Thai, except for children under seven years old.
5. The person has the belief in the constitutional monarchy system.
6. The person must have good behaviour and show no potential risk to national security. In case a person was convicted of a criminal offence, the person must have been released for not less than five years up to the date of submission of the application for Thai nationality unless it is a penalty for negligence or misdemeanour.

Section 3 Children who are studying in Thai institutions or finished their education and were born to non-Thai parents that do not belong to the ethnic minorities or indigenous group mentioned in Clause 2; children who do not have any record of the parents or orphanage may have Thai nationality under the following condition.

1. The person must have evidence to prove that they were born in the Kingdom (birth certificate, birth registration, birth certificate (Tor Ror. 20/1) or certificate of the place of birth.), and the child must be registered in the household registration according to the law on civil registration.
2. There is no evidence of having and using another nationality.
3. The person can speak and understand Thai, except for children under seven years old.
4. The person has the belief in the constitutional monarchy system.
5. The person must have good behaviour and show no potential risk to national security. In case a person was convicted of a criminal offence, the person must have been released for not less than five years up to the date of submission of the application for Thai nationality unless it is a penalty for negligence or misdemeanour.
6. The person must hold a bachelor's degree from authorized institutions in Thailand. Bachelor's degree from abroad is only acceptable when the person receives a government scholarship to study in such an institution.
7. Children who are still studying in an educational institution but meet all the criteria (1-5), if necessary, may request Thai Nationality upon the authorization of the minister of interior.
8. Abandoned children who meet the criteria (1-5) and do not meet the education requirement must have the official document confirming their rootless status from the government official under the Ministry of social development and human security and must have at least ten years of domicile in Thailand up to the date they submit the request.

Section 4 Those who were born in the Kingdom and did not acquire Thai nationality that has visibly and greatly to the country may acquire Thai nationality on an individual basis under the following conditions:

1. The person must have evidence to prove that they were born in the Kingdom (birth certificate, birth registration, birth certificate (Tor Ror. 20/1) or certificate of the place of birth.)
2. The person must have a continuous domicile in the Kingdom and is registered in the household registration in accordance with the Civil Registration Law.
3. There is no evidence of having and using another nationality.
4. The person can speak and understand Thai, except for children under seven years old.
5. The person has the belief in the constitutional monarchy system.
6. The person must have good behaviour and show no potential risk to national security. In case a person was convicted of a criminal offence, the person must have been released for not less than five years up to the date of submission of the application for Thai nationality unless it is a penalty for negligence or misdemeanour.
7. The person must be in honest occupation; and
8. The person must make contributions to the country with his/her work or knowledge and expertise that is evident and continue contributing to the development of the country with a certificate of merit or contribution in various fields from government agencies or government agencies at the department level or the equivalent of the relevant department as follows:
 - a. Education or sports
 - b. Arts and Culture
 - c. Science and technology; or
 - d. A shortage field of profession or other fields as the Minister of Interior deems appropriate.

Section 5 The person who will consider the application and the qualification criteria as laid down in Clauses 2 and 3 is the person who holds the following positions:

1. For the applicant whose domicile is in Bangkok, the Director-General of the Department of Provincial Administration shall consider the qualifications and make the order for the Thai nationality list. If the applicant is under eighteen years old on the date of the application submission, The director of the Office of Registration Administration, Department of Provincial Administration shall consider the qualifications.
2. For the applicant whose domicile, according to the civil registration, is in a province other than Bangkok, the provincial governor shall consider the qualifications and make an order to list Thai nationality. If the applicant is under eighteen years old on the date of the application submission, the District Chief shall consider the qualifications.

In the case where the applicant had already met all the qualifications before or on the date of this announcement, that person shall acquire Thai nationality from the date this announcement is effective. The applicant who meets the qualification after the date of this announcement shall acquire Thai Nationality on the date that the abovementioned person makes the decision on their application and order the nationality in the Civil registration.

Section 6: Criteria and procedures for obtaining Thai nationality, examination of the applicant's qualifications and forms used for compliance with this announcement shall be as prescribed by the Director-General of the Department of Provincial Administration. In this regard, the time period for each step must

be clearly specified. Moreover, applicants under the age of eighteen shall be exempt from criminal records and risk to the national security check.

Section 7: Any person who has acquired Thai nationality by this announcement and it later appeared that the acquisition of Thai nationality was not in accordance with the characteristics or conditions under this announcement, or such person commits any act that may affect the security or is contrary to the interests of the State or insult the nation or perform any act contrary to public order or good morals The competent official under the law on nationality, who knows the cause of such circumstance, shall report to the Director-General of the Department of Provincial Administration in order to revoke that person's Thai nationality according to the law.

Section 8 All ongoing applications for Thai nationality that had been submitted before this announcement and the Sub-committee on Consideration for Granting Thai Nationality to Minorities or the Sub-committee on pre-screening the request for granting Thai nationality and granting alien status to legal immigration to ethnic minorities at the provincial level according to Article 5/1 of the Notification of the Ministry of Interior on ordering persons without Thai nationality born in the Kingdom of Thailand The father and mother are foreigners to obtain Thai nationality in general 2555 (2012) as amended by the Notification of the Ministry of Interior regarding the ordering for persons without Thai nationality born in the Kingdom of Thailand to alien parents to obtain Thai nationality in general and the granting of Thai nationality in an individual case (No. 2) dated 11 June 2015 shall be continued until the decision is complete in accordance with the relevant announcement.

The application for Thai nationality that has been submitted before this announcement and the Sub-Committee under the first paragraph has not been considered or has been advised to revise shall proceed as specified in this announcement.

Section 9 The Permanent Secretary of the Ministry of Interior shall act in accordance with this announcement. It shall also have the power to diagnose problems and resolve obstacles in compliance with this announcement.

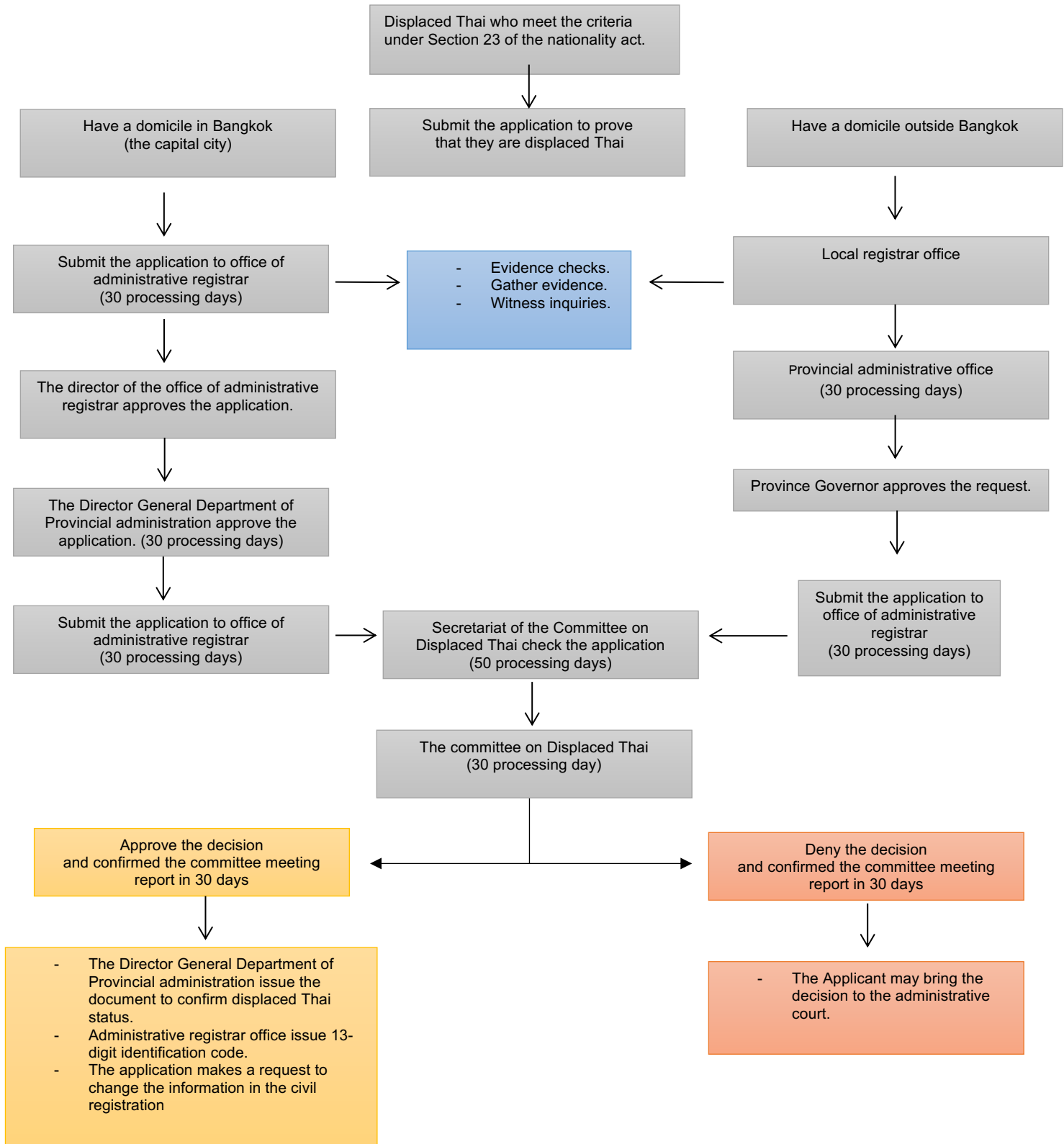
Announced on February 16, 2017

General Anupong Paochinda

Minister of the Interior

Annexure III

The recovery of Thai nationality process for displaced Thai under Nationality Act B.E.2508 (No 5 B.E. 2555)



Annexure IV

Thai 13-digit identification number

<u>Digit</u>	<u>Meaning</u>				
<u>1</u>	This identifies the type of individual plus when/how the ID card was issued, as detailed below.				
	0 Not used for Thai nationals but occasionally on other cards	1 Thai Nationals. Born after 1st Jan 1984 Birth notified within 15 days	2 Thai Nationals. Born after 1st Jan 1984 Birth notified late	3 Thai Nationals. Born & registered before 1st Jan 1984	4 Thai Nationals. Born before 1st Jan 1984 Registered late.
	5 Thai Nationals. Missed census or special cases	6 Foreign Nationals living temporarily, or illegal migrants	7 Children of #6 who were born in Thailand.	8 Foreign Nationals living permanently or Thai nationals by naturalisation.	
<u>2-3</u>	The Province where the holder first registered for their ID card				
<u>4-5</u>	The District where the holder first registered for their ID card				
<u>6-12</u>	For Thai nationals, this will be their birth certificate number, which consists of a book number and sheet number for the specific district. Foreigners/migrants will receive a sequential number per district.				
<u>13</u>	A checksum calculated from digits 1-12				

Bibliography

International Legal Instrument

Convention on the Rights of the Child, 1989

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