



**VITAL VOICES**  
GLOBAL PARTNERSHIP



# **STATELESS AND VULNERABLE TO HUMAN TRAFFICKING IN THAILAND**

**Vital Voices Global Partnership**

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## ***Stateless and Vulnerable to Human Trafficking in Thailand***

*“By recognizing the task of combating trafficking, you are saying to the world that the suffering and the agony of children and women victims matters, and that there is an urgent need to rescue, assist and empower them. Their lives are as important as our own lives; they must be set free from horrific exploitation.”*

***Dr. Saisuree Chutikul***

*Former Cabinet Minister and Senator, Thailand  
Vital Voices Global Leadership Council Member  
Vital Voices 2003 Global Leadership Award Honoree*

### ***Introduction***

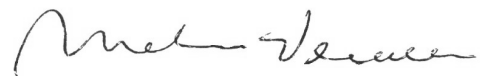
In May 2006, Vital Voices Global Partnership in collaboration with the Royal Thai Government's Ministry of Social Development and Human Security, the United Nations Office on Drugs and Crime, the United States Embassy in Thailand, and the United States Agency for International Development organized a regional conference in Bangkok, Thailand to encourage civil society and government efforts to collaborate in the prevention and elimination of human trafficking. This conference brought together representatives from government and non-governmental organizations ("NGOs") in the Greater Mekong Sub-region. The three-day conference functioned as a forum to encourage cross-sector and cross-border cooperation among government leaders and NGO representatives throughout the region. A Plan of Action was drafted to serve as a guide to enable collaborative anti-trafficking efforts.

As a follow-up to the conference, the United States Embassy Thailand's Public Affairs Department arranged for a three-day speaking tour in the northern provinces of Thailand for myself as the Co-founder and Chair of the Vital Voices Global Partnership and Wenchi Yu Perkins, Director of Human Rights program at Vital Voices. The tour included meetings with local anti-trafficking teams, local government officials, police officers, public prosecutors, NGO

representatives, lawyers, attorneys, and journalists in the provinces of Chiang Mai, Chiang Rai and Phayao.

During this tour, various village representatives articulated a concern that it was difficult for many villagers to obtain citizenship. Lack of citizenship meant lack of opportunity for education, employment and health care services reserved for citizens, thereby causing such members to be much more vulnerable to human trafficking. After learning that the lack of citizenship was linked to the problem of human trafficking, Vital Voices embarked on a study to determine why such a large percentage of the people in these northern communities in Thailand did not have citizenship identification and what obstacles blocked the path to obtaining such identification.

This report looks at the current human trafficking situation in Thailand, Thailand's commitment to anti-trafficking efforts, the relationship between the lack of citizenship and human trafficking and the challenges of obtaining proof of citizenship. Finally this report proposes recommendations to help reduce the impact of statelessness as a contributing factor to the problem of human trafficking in Thailand. We hope that this report will invite more government actions and civil society solutions to attack one of the major root causes of human trafficking, statelessness.



Melanne Verveer

Co-Founder and Chair of the Board

Vital Voices Global Partnership

## Stateless and Vulnerable to Human Trafficking in Thailand

### *Executive Summary*

Part I examines human trafficking in Thailand.<sup>1</sup> International law prohibits trafficking in persons. While the Kingdom of Thailand has committed itself to eliminating human trafficking, Thailand remains an origin, source and transit state for human trafficking.<sup>2</sup> Part II looks at one factor that has been cited as a contributing factor to human trafficking in Thailand: lack of citizenship for many residents.<sup>3</sup> While "more than half" of hill tribe villagers in Thailand have Thai citizenship, hundreds of thousands of villagers remain without nationality.<sup>4</sup> Part III examines the consequences associated with lacking citizenship, such as the inability to access state benefits like healthcare services or education or travel permits to freely travel around Thailand. Thus villagers face huge impediments in applying for jobs outside their villages.<sup>5</sup> Hill tribe villagers without access to state services become more vulnerable to exploitation, the black-market and human trafficking. If trafficked, victims without proof of citizenship receive limited protection, little assistance<sup>6</sup> and may be denied re-entry into Thailand. Part IV outlines the various obstacles to obtaining citizenship status, including a complicated legal process;<sup>7</sup> practical problems of communication, transportation and money.<sup>8</sup> New resolutions and regulations drafted by the Cabinet of Ministers, the Ministry of Interior and other departments attempt to address the

<sup>1</sup> See *infra* Part I.

<sup>2</sup> Memorandum of Understanding on Common Guidelines of Practices for Agencies Concerned with Cases where Women and Children are Victims of Human Trafficking in the Nine (9) Northern Provinces, B.E. 2546, § 1.2 (2003) [hereinafter "MOU for 9 Northern Provinces"] (on file with Vital Voices).

<sup>3</sup> See *infra* Part II. David Feingold, *Human Trafficking*, FOREIGN POLICY, Sept. / Oct. 2005, 30,-32, available at <http://www.hrusa.org/workshops/trafficking/ThinkAgain.pdf#search=%22david%20feingold%20%22greatest%20risk%20factor%22%20hill%20tribe%20population%20citizenship%22> [hereinafter "Feingold's Human Trafficking"].

<sup>4</sup> United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Second periodic report of States parties due in 1999, Thailand*, ¶ 643, CRC/C/83/Add.15, (May 31, 2005) [hereinafter "CRC 2nd Periodic Report"].

<sup>5</sup> See *infra* Part III.

<sup>6</sup> See United States Department of State, *Trafficking in Persons Report 2006*, 243, (June 2006), available at <http://www.state.gov/documents/organization/66086.pdf> [hereinafter the "2006 TIP Report"].

<sup>7</sup> See *infra* Part IV.a.

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fact that many individuals in Thailand lack citizenship, but their status remains unclear.<sup>9</sup> Finally, while the process for obtaining citizenship in Thailand remains complicated, Part V recommends adopting innovative methods to reduce the impact of statelessness, thus allowing Thailand to eliminate the link between statelessness and human trafficking.<sup>10</sup>

Improving access to citizenship would eliminate a significant factor contributing to human trafficking in Thailand. Key elements of improving access to citizenship would include the following:

- Registering the birth of all children.
- Improving the transparency of the citizenship application process.
- Training local officials and people on the elements of the law and eliminating fees associated with the application process.
- Eliminating restrictions on travel, education, health care and employment for non-citizens during the application process.

### I. Legal Framework

International law prohibits trafficking in persons. The United Nations Convention against Transnational Organized Crime ("Organized Crime Convention") criminalizes transnational crime, including trafficking.<sup>11</sup> The Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children ("Trafficking Protocol") supplements the Organized Crime Convention and specifically criminalizes trafficking in persons and

<sup>8</sup> See *infra* Part IV.b.

<sup>9</sup> See *infra* Part IV.c.

<sup>10</sup> See *infra* Part V.

<sup>11</sup> United Nations Convention Against Transnational Organized Crime, U.N. GAOR 55th Sess., Supp. No. 49, U.N. Doc. A/45/49 (2001) (entered into force Sept. 29, 2003). Thailand signed but did not ratify this convention.

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promotes the prevention of trafficking, the protection of victims and the prosecution of criminals.<sup>12</sup> The Trafficking Protocol defines trafficking as the:

recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include . . . prostitution . . . other forms of sexual exploitation, forced labour or services, slavery . . . servitude or the removal of organs.<sup>13</sup>

The Organized Crime Convention requires each State Party to codify legislation that criminalizes trafficking in persons and to take other measures that will prevent human trafficking.<sup>14</sup> Each State Party also must protect the victims of human trafficking by protecting the "privacy and identity of victims,"<sup>15</sup> by providing the victims with information regarding any type of "administrative" or "criminal proceedings"<sup>16</sup> available to them and by "consider[ing]" other assistance in housing, medical attention, education, skills training and employment.<sup>17</sup> Victims are also afforded the protection of repatriation: the State Party must, when the victim "is a national or in which the person had the right of permanent residence . . . facilitate and accept . . . the return of that person without undue or unreasonable delay."<sup>18</sup> Both the Organized Crime Convention and the Trafficking Protocol are in force.

The Association of Southeast Asian Nations ("ASEAN") Declaration Against Trafficking in Persons Particularly Women and Children reaffirms the Organized Crime Convention and Trafficking Protocol and declares that its member states should "undertake concerted efforts" to

<sup>12</sup> United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplement to the United Nations Convention Against Transnational Organized Crime, art. 3, U.N. GAOR 55th Sess., Supp. No. 49, U.N. Doc. A/45/49 (2000) (entered into force Dec. 25, 2003).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at art. 5.

<sup>15</sup> *Id.* at art. 6, cl. 1.

<sup>16</sup> Trafficking Protocol, *supra* note 6, at art. 6, ¶ 2(a)-(b).

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address the human trafficking problem and work toward regional solutions.<sup>19</sup> In addition to the ASEAN Declaration, Burma, Cambodia, China, Laos, Thailand and Vietnam established a first ever regional memorandum of understanding to combat trafficking: the Coordinated Mekong Ministerial Initiative Against Trafficking ("COMMIT"). COMMIT is the first "serious effort to institutionalise a multi-sectoral approach to ensure that the obligations and commitments made in the MOU and the subsequent Sub-regional Plan of Action (SPA) are translated into actions."<sup>20</sup> COMMIT has held periodic meetings and has developed a sub-regional plan of action to coordinate regional efforts between governments and between governments and NGOs to prevent and eliminate trafficking.

Thailand has committed itself to resolve its trafficking problem. In fact, Thailand signed the Organized Crime Convention on December 13, 2000,<sup>21</sup> and the Trafficking Protocol on December 21, 2003.<sup>22</sup> Although Thailand signed the convention and the protocol, it has not ratified the convention or the protocol. However, its signature demonstrates the beginning of a commitment to these treaties. As a member country of ASEAN, Thailand pledged to "make

<sup>17</sup> *Id.* at art. 6, ¶ 3(a)-(d).

<sup>18</sup> *Id.* at art. 8, ¶ 1.

<sup>19</sup> Association of Southeast Asian Nations, Declaration Against Trafficking in Persons Particularly Women and Children, preamble (Nov. 29, 2004), available at <http://www.aseansec.gov/16793.htm> [hereinafter "ASEAN Declaration"]. The declaration encourages states to work together to adopt measures to protect their passports and travel documents; to share knowledge; to train and cooperate with law enforcement; to distinguish between criminals and victims and to strengthen regional and internal cooperation between various government entities. *Id.*

<sup>20</sup> Susa Thatun, *Mekong sub-region committed to end trafficking*, FORCED MIGRATION REVIEW, at <http://www.fmreview.org/text/FMR/25/10.doc> [hereinafter "Mekong sub-region commitment"] (on file with Vital Voices).

<sup>21</sup> United Nations Office on Drugs and Crime, Convention against Transnational Organized Crime, Signatories, available at [http://www.unodc.org/unodc/crime\\_cicp\\_signatures\\_convention.html](http://www.unodc.org/unodc/crime_cicp_signatures_convention.html)

<sup>22</sup> United Nations Office on Drugs and Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Signatories, available at [http://www.unodc.org/unodc/crime\\_cicp\\_signatures\\_trafficking.html#T](http://www.unodc.org/unodc/crime_cicp_signatures_trafficking.html#T).

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concerted efforts" to reduce and eliminate trafficking.<sup>23</sup> Also, Thailand is a party to COMMIT and has committed itself to end human trafficking in the region.<sup>24</sup>

Thailand has instituted domestic measures aimed at the prevention and elimination of human trafficking.<sup>25</sup> First, Thailand criminalized trafficking and has legislation that prohibits human trafficking such as the Penal Code Amendment Act (No. 14), the Prevention and Suppression of Prostitution Act, and the Measures in Prevention and Suppression of Trafficking in Women and Children Act.<sup>26</sup> The Prevention and Suppression Act, in particular, imposes harsh penalties on "procurers, traffickers, pimps, brothel owners, customers, parents and guardians."<sup>27</sup> According to one report, the revised laws provide law enforcement with more tools to apprehend, convict and penalize violators of the law and provide for the protection and repatriation of the victims.<sup>28</sup> In order to better protect victims of human trafficking, Thailand opened "97 shelters . . . six regional shelters exclusively for foreign trafficking victims, and a central shelter outside of

<sup>23</sup> Asean Declaration, *supra* note 19.

<sup>24</sup> Vital Voices, *Mekong Governments and Partners Review Roadmap for Action Against Human Trafficking*, TRAFFICKING ALERT, INTERNATIONAL EDITION (May 2006); *see also* Mekong sub-region commitment, *supra* note 14. "The COMMIT Secretariat is located in the Bangkok-based UN Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region (UNIAP)." *Id.* (on file with Vital Voices).

<sup>25</sup> According to the U.S. Department of State, current Thai anti-trafficking legislation only applies to "trafficking resulting in sexual exploitation and fails to criminalize bonded labor or trafficking perpetuated against men." United States Department of State, *Trafficking in Persons Report 2007*, 197 (June 2007), *available at* <http://www.state.gov/documents/organization/82902.pdf> [hereinafter the "2007 TIP Report"]. The 2007 TIP Report points out, though, that Thailand has drafted legislation that criminalizes all forms of trafficking and provides protection to men, and urges Thailand to enact such legislation as soon as possible. *Id.*

<sup>26</sup> The Penal Code Amendment Act (No. 14) B.E. 2540, § 282 (1997). This draft was translated by Wanchai Roujanavong, Senior Expert State Attorney, International Affairs Department, Office of the Attorney General, and Chairperson of FACE (the Coalition to Fight Against Child Exploitation); Prevention and Suppression of Prostitution Act B.E. 2539, § 9 (1996); Measures in Prevention and Suppression of Trafficking in Women and Children Act, B.E. 2540 (1997). Draft translated by Wachai Rojuvanavong, Deputy Executive Director, International Affairs Department, Office of the Attorney General; Chairperson of FACE (the Coalition to Fight Against Child Exploitation), and Pen Suwannarat, Program Coordinator, Mekong Region Law Center (on file with Vital Voices).

<sup>27</sup> Alicia Burke and Stefania Ducci, United Nations Interregional Crime and Justice Research Institute, *Desk Review Trafficking in Minors for Commercial Sexual Exploitation, Thailand*, 9-10, *available at* [http://www.unicri.it/wwd/trafficking/minors/docs/dr\\_thailand.pdf](http://www.unicri.it/wwd/trafficking/minors/docs/dr_thailand.pdf) [hereinafter "Desk Review"].

<sup>28</sup> *Id.*

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Bangkok with capacity for over 500 foreign trafficking victims."<sup>29</sup> Thailand also drafted the Children Protection Act of 2003, an act that prohibits the trafficking and enslaving of children.<sup>30</sup> Second, Thailand drafted Memorandums of Understanding ("MOUs") with various non-governmental organizations, regions in Thailand and other governments. For example, Thailand drafted the MOU on Operations between State Agencies and Non-Governmental Organizations (NGOs) Engaged in Addressing Trafficking in Children and Women<sup>31</sup> exploring how state agencies and NGOs can work together to identify and repatriate victims.<sup>32</sup> The National Committee on Trafficking in Women and Children has coordinated the development of domestic MOUs within Thailand such as the MOU for the nine (9) Northern Provinces on Common Guidelines of Practices for Agencies in Addressing Trafficking in Children and Women, establishing practices that prevent trafficking within specific regions of the country.<sup>33</sup> Additionally, Thailand signed MOUs with neighboring countries to coordinate efforts to prevent human trafficking in the greater Mekong region. Thailand has such MOUs with Cambodia,<sup>34</sup> Laos<sup>35</sup> and Myanmar.<sup>36</sup>

<sup>29</sup> 2006 TIP Report, *supra* note 6, at 244.

<sup>30</sup> Child Protection Act of 2003 B.E. 2546, art. 26 (2003). English Version of the Child Protection Act of 2003 was translated by Mr. Pornchai Danvivathana, Ministry of Foreign Affairs, and edited by Ms. Ramaimas Warjorvaara, under the commission of UNICEF Office for Thailand, Bangkok, March 2004 (on file with Vital Voices).

<sup>31</sup> Memorandum of Understanding on Operations between State Agencies and Non-Governmental Organizations (NGOs) Engaged in Addressing Trafficking in Children and Women 2002 (March 24, 2003) (on file with Vital Voices).

<sup>32</sup> *Id.* at §§ 3.1- 3.3.3.

<sup>33</sup> Desk Review, *supra* note 27, at 25; *see also* National Council for Child and Youth Development (NCYD) Center for the Protection of Children's Rights (CPCR) and child and youth development NGOs and youth groups, *Thailand NGO Report on The Implementation of the Convention on the Rights of the Child 2000-2004*, 19-20 (June 2005), available at [http://www.crin.org/docs/Thailand\\_NCYDCRC\\_ngo\\_report.doc](http://www.crin.org/docs/Thailand_NCYDCRC_ngo_report.doc).

<sup>34</sup> Memorandum of Understanding between The Government of the Kingdom of Cambodia and The Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking (May 2003) (on file with Vital Voices).

<sup>35</sup> Memorandum of Understanding Between the Government of the Lao People's Democratic Republic and The Government of the Kingdom of Thailand on Cooperation to Combat Trafficking in Persons, Especially Women and Children (July 2005) (on file with Vital Voices).

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Despite the international prohibition and Thailand's legal commitment to eliminate trafficking within and across its borders, the country remains a favored source, transit and destination country.<sup>37</sup> In part, trafficking continues to thrive because its root causes have not been addressed. According to "studies by the United Nations Educational, Scientific and Cultural Organization . . . **lack of proof of citizenship is the single greatest risk factor for a hill tribe girl or woman to be trafficked or otherwise exploited.**"<sup>38</sup> The challenge of obtaining citizenship, especially for those in the northern hill tribes, directly impacts an individual's ability to access state services and opportunities. Without access to state services like education and healthcare, the stateless people become more vulnerable to trafficking, the black-market and exploitation.

### II. Hill Tribe Population in Thailand and Lack of Citizenship

Hill tribe people in Thailand comprise different "ethnic minorities" who reside in the "remote highland areas of the country."<sup>39</sup> These people represent members of many different tribes. However, the Thai government officially recognizes only nine tribes: "Karen, Mong, Yao, Muser, Lisu, Akha, Thin, Lua and Khamu."<sup>40</sup> "The largest tribal group is Karen (46.18

<sup>36</sup> Memorandum of Understanding Between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers (June 2003) (on file with Vital Voices).

<sup>37</sup> MOU for 9 Northern Provinces, *supra* note 2, at § 1.2; United Nations Office on Drugs and Crime, *Trafficking in Persons: Global Patterns*, 89 (April 2006) available at [http://www.unodc.org/pdf/traffickinginpersons\\_report\\_2006ver2.pdf](http://www.unodc.org/pdf/traffickinginpersons_report_2006ver2.pdf) (noting that Thailand ranks very high as both an origin and destination country). See United Nations Office on Drugs and Crime, *The Global Initiative to Fight Human Trafficking*, 2, available at <http://www.unodc.org/pdf/gift%20brochure.pdf> ("In many countries, international laws to stop human trafficking are still not adhered to and implementation remains inadequate. Few criminals are convicted and the majority of victims never receive help.").

<sup>38</sup> Feingold's Human Trafficking, *supra* note 3.

<sup>39</sup> United Nations Food and Agricultural Organization of the U.N. Regional Office for Asia and Pacific, *Case Study on: Education Opportunities for Hill Tribes in Northern Thailand: Implications for Sustainable Rural Development*, 1.3 (2002), available at <http://www.fao.org/DOCREP/004/AC383E/ac383e04.htm> [hereinafter "U.N. Food and Agricultural Org. Report"].

<sup>40</sup> United Nations Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Initial Report, Thailand*, ¶ 668, U.N. Doc. CCPR/C/THA/2004/1, (Aug. 2, 2004).

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percent), followed by Hmong (16.32 percent)."<sup>41</sup> "Several other minority groups in the upland areas of northern Thailand and also along the border with Burma have received no official recognition."<sup>42</sup> Some estimates suggest that "3,527 hill tribe villages in 20 provinces of Thailand, comprising 133,070 households and 751,886 persons" populate Thailand.<sup>43</sup> Other estimates suggest that 600,000 to 1 million ethnic people live in the northern and western highlands of Thailand.<sup>44</sup>

While whole generations of families have lived in the same hill tribe village and considered Thailand their country for generations, many of these families are not citizens of Thailand. No complete census data tracks the number of hill tribe residents or their citizenship status. Estimates suggest that **more than half of the hill tribe population has Thai nationality, but hundreds of thousands of villagers remain without nationality.**<sup>45</sup> Additionally, only "60.21 per cent of the total hill-tribe population" is listed for Thai nationality, meaning that sixty percent of the hill tribe population is recognized as belonging to certain groups eligible for citizenship.<sup>46</sup> The remaining forty percent will be subjected to "the regulations of the Central Registration on nationality acquisition, under the House Registration for Hill Tribe People of 1992 and its 1996 Amendment."<sup>47</sup> These additional regulations for hill tribe people are more complex and require additional time to obtain citizenship. According to

<sup>41</sup> U.N. Food and Agricultural Org. Report, *supra* note 39.

<sup>42</sup> Physicians for Human Rights, *No Status: Migration, Trafficking & Exploitation of Women in Thailand, Health and HIV/AIDS Risks for Burmese and Hill Tribe Women and Girls*, 27 (June 2004), available at <http://www.phrusa.org/campaigns/aids/pdf/nostatus.pdf> [hereinafter "Physicians for Human Rights Report"].

<sup>43</sup> "There are in total 3,527 hill tribe villagers in 20 provinces in Thailand." U.N. Food and Agricultural Org. Report, *supra* note 32.

<sup>44</sup> Physicians for Human Rights Report, *supra* note 42.

<sup>45</sup> CRC 2nd Periodic Report, *supra* note 4.

<sup>46</sup> *Id.* at ¶ 642.

<sup>47</sup> *Id.*

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some reports, "those with money can always buy nationality cards . . . [i]t is the peasants who suffer because they don't have enough money [to bribe officials]." <sup>48</sup>

### III. Problems of Lack of Citizenship, or Statelessness

Citizenship is necessary to obtain state benefits and state protections. Without citizenship, individuals residing in Thailand have limited or no access to healthcare services, education, travel, employment or political representation.

The first obstacle non-citizens face is inaccessibility to healthcare. Specifically, undocumented residents are not eligible for "universal healthcare (the 30-baht plan)" <sup>49</sup> or other "public health service[s]." <sup>50</sup> Another significant obstacle for non-citizens, specifically children, is the inability to obtain an education. The right of children to "12 years of free, compulsory education" is not universally guaranteed. <sup>51</sup> In January 2007, the Thai Legislative Assembly declared that it would grant stateless school-age children in Chiang Rai temporary identity cards that would "entitle[] [them] to education in Thailand and . . . permission to travel to study at education outlets." <sup>52</sup> This program would include 33,000 stateless students and would enable them to attend school for up to six years. Even with the regulations granting travel and education permits, "district heads still routinely refuse to issue long-term travel permits to students, saying

<sup>48</sup> Sanitsuda Ekachai, *Searching for a State*, BANGKOK POST (June 25, 2002) at Outlook, available at <http://www.karencenter.com/showstateless.php?id=164&comm=det> [hereinafter "Ekachai Searching for a State"].

<sup>49</sup> Physicians for Human Rights Report, *supra* note 42.

<sup>50</sup> *Id.* at 48.

<sup>51</sup> *Id.*; see Ministry of Education, Provision of Education to the Persons Who do not Have Evidence of Civil Registration or Thai nationality (2005) (on file with Vital Voices). A child described her experience of starting school at the age of ten in a class of six and seven-year olds: she wanted to attend school when she was younger, but she was told she could not attend school because her parents "had no Thai ID cards." Supara Janchitfah, *Don't Steal Their Future: Children without documentation of their Thai nationality can look forward only to a life of exploitation and limited opportunities*, PERSPECTIVE, Oct. 23, 2005, available at <http://www.karencenter.com/showstateless.php?id=1630&comm=det> [hereinafter "Don't Steal Their Future"].

<sup>52</sup> Anchalee Kongrut Theerawat Khamthita, *Thousands of stateless children to get temporary ID cards: Will get right to study, travel*, BANGKOK POST, Jan. 14, 2007 (on file with Vital Voices).

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that they can only do so if they are instructed by the Department of Provincial Administration."<sup>53</sup> If the stateless children attend school, they receive, or at least received until recently, education certificates and transcripts "stamped with bright red letters signifying that the holder does not exist in the civil registry."<sup>54</sup> Additionally, children could not receive the appropriate certificates "necessary for higher education."<sup>55</sup> Without citizenship, hill tribe villagers and other unregistered residents have limited educational opportunities.<sup>56</sup>

Individuals without Thai national ID cards also cannot travel freely around the country because non-citizens have restricted travel passes. Indeed, "[t]he passes for hilltribe people . . . allow only short stays away from their villages."<sup>57</sup> This prevents them from being able to secure employment opportunities outside the village, where jobs, if they are available at all, are likely to exist. Few jobs exist in many villages in the Karen region because "[t]here is almost no farmland available."<sup>58</sup> Travel restrictions combined with limited job opportunities force villagers to make difficult choices. Some non-citizens choose to travel without passes and face the risk of arrest. If caught by the police and threatened with arrest, "[m]ostly, the hill people . . . choose to pay up rather than be arrested. Often they must keep mum when corrupt officials take their hard-earned money in exchange for release. For female highlanders, the . . . fear is compounded by the menace of sexual harassment."<sup>59</sup>

<sup>53</sup> Kloykamol Siribhakdi, *The Right to Learn: As the story of one girl's success shows, the odds are purposefully stacked against stateless children reaching higher education*, BANGKOK POST, March 1, 2007 at 1 (on file with Vital Voices).

<sup>54</sup> *Id.* at 2.

<sup>55</sup> Physicians for Human Rights Report, *supra* note 42, at 27.

<sup>56</sup> *Id.*

<sup>57</sup> Sanitsuda Ekachai, *Searching for a State – Fighting for a Future*; BANGKOK POST, July 9, 2002 at Outlook, available at <http://www.karencenter.com/showstateless.php?type=Searching%20for%20a%20State&comm=list> [hereinafter "Ekachai Fighting for a Future"].

<sup>58</sup> Ekachai Searching for a State, *supra* note 48.

<sup>59</sup> Ekachai Fighting for a Future, *supra* note 57.

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Moreover, if residents successfully travel outside their village, jobs may be difficult to obtain without citizenship ID cards. "[M]any employers require job applicants to produce official work permits."<sup>60</sup> Some residents sacrifice their claim to citizenship to get a job. For example, some "young Karens often register as alien workers from Burma, not knowing that by so doing they substantially weaken their right to claim Thai citizenship."<sup>61</sup> Even if they obtain a job, employers may pay them significantly less than employees with Thai citizenship.<sup>62</sup>

Lack of citizenship also removes political and other constitutional rights guaranteed by the state: "includ[ing] freedom of speech (Section 39), association (Section 45), . . . [and] freedom to form a political party (Section 47)."<sup>63</sup> Non-citizens also cannot organize into unions or enter into collective bargaining with their employers.<sup>64</sup> Without the right to form a political party, organize or vote, non-citizen residents have no representation in government to defend their rights and remain powerless against the political will of others. Finally, "[t]hose without Thai citizenship or permanent residency status are subject to the threat of arrest and deportation."<sup>65</sup> Individuals without proper identification have no legal rights to remain in their homes and face the constant threat of deportation.

Because non-citizen residents and village residents cannot access healthcare, education, employment or political representation, international organizations and NGOs in Thailand have arrived at the conclusion that statelessness makes people, such as the hill tribe people, vulnerable

<sup>60</sup> Ekachai Searching for a State, *supra* note 48.

<sup>61</sup> *Id.*

<sup>62</sup> Physicians for Human Rights Report, *supra* note 42, at 48. Some workers "receive low or no pay; are subject to employer confiscation of essential documentation; [and] are forced to labor many hours and without rest periods."  
*Id.*

<sup>63</sup> *Id.*

<sup>64</sup> United States Department of State, Country Reports on Human Rights Practices, Thailand, § 3.5 (2004), available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41661.htm> (noting that "citizen private-sector workers [have the right] to organize and bargain collectively.") *Id.* at § 6(b).

<sup>65</sup> Physicians for Human Rights Report, *supra* note 42, at 27.

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to trafficking: "The United Nations Economic and Social Council and NGOs believed that the lack of citizenship status for some hill tribe women and children was a strong risk factor for becoming victims of trafficking."<sup>66</sup> The United Nations Committee on the Rights of the Child reports "that a significant number of children residing in Thailand remain stateless . . . which renders them vulnerable to abuse, trafficking and exploitation."<sup>67</sup> Women especially are vulnerable to exploitation: "many hill girls are lured into prostitution . . . because the lack of citizenship has robbed them of education and better job opportunities."<sup>68</sup>

If non-citizen individuals are trafficked, they face more hardships than Thai citizens because fewer protections exist for trafficked victims without ID cards. According to the 2006 TIP Report, "the Thai Government continued to provide impressive protection to *select* categories of trafficking victims."<sup>69</sup> Thai overseas missions assist victims who "could prove their Thai citizenship."<sup>70</sup> However, "[e]thnic non-Thai victims trafficked from or through Thailand . . . received less Thai Government support."<sup>71</sup> In response to The Department of State's 2005 Trafficking in Persons Report, the Cabinet of Thailand authorized various policies to manage assistance to victims of trafficking found in countries outside of Thailand if the victims claimed

<sup>66</sup> United States Department of State, Country Report on Human Rights Practices 2005 – Thailand (2006), available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61628.htm> [hereinafter "State Department's Country Report"]. The U.S. Department of State echoed these problems: "Members of hill tribes without proper documentation continued to face restrictions on their movement, could not own land, and were not protected by labor laws, including minimum wage requirements. Freedom of movement was often dependent on their residency status, which was identifiable by the color of their identity cards." *Id.*

<sup>67</sup> United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Thailand*, ¶ 33, U.N. Doc. CRC/C/THA/CO/2, (March 17, 2006). The committee is "concerned that many indigenous and minority children are stateless and/or have no birth registration and are at increased risk for abuse and exploitation. It further notes that there is, at present, insufficient demographic data on the hill tribe population in Thailand." *Id.* at ¶ 78.

<sup>68</sup> Ekachai Fighting for a Future, *supra* note 50; *see also*, Anchale Phonklieng, *Hill tribe women of Thailand: Where to turn now*, COURIER, No. 173, Jan.–Feb. 1999 (on file with Vital Voices).

<sup>69</sup> 2006 TIP Report, *supra* note 6 (emphasis added).

<sup>70</sup> *Id.* at 244.

<sup>71</sup> *Id.*

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Thai citizenship.<sup>72</sup> The recommended policies subject victims without identification to a "nationality verification" test.<sup>73</sup> If the victim "has a paper of domicile in the Kingdom or has an identity paper indicating his/her domicile in the Kingdom and if that paper has been issued and correctly certified by the government authority and by its holder," the Thai Embassy or Consulate-general, labour attaché office and the government security agency in the country will determine if the documentation is valid and whether "the victim should be assisted and sent to the Kingdom."<sup>74</sup>

If the victim has no ID papers, the process becomes more complicated. The Thai Embassy or Consulate-general, labour attaché office and the government security agency in the country will determine if there is probable cause to believe the victim had domicile or residence in Thailand and contact government agencies to verify the status.<sup>75</sup> If the government agencies find evidence to prove domicile, the Thai Embassy or Consulate-general, labour attaché office and the government security agency will decide whether to "concur" that "the victim should be assisted and sent to the Kingdom."<sup>76</sup> Those without evidence of domicile face hurdles to re-enter.<sup>77</sup>

According to the 2006 TIP Report, however, the "[i]mplementation of a June 2005 Thai Cabinet policy decision to protect and repatriate non-Thai citizens to Thailand, if they can prove prior residency in Thailand, has yet to be completed."<sup>78</sup> Trafficked victims without citizenship

<sup>72</sup> Cabinet Resolution on TIP: June 14, 2005, § 6 (Unofficial Translation - UNIAP Thailand) (on file at Vital Voices) [hereinafter "Cabinet Resolution on TIP"].

<sup>73</sup> *Id.* This test involves an extensive process.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at § 6, ¶ 4.

<sup>76</sup> Cabinet Resolution on TIP, *supra* note 72.

<sup>77</sup> *Id.* According to this policy, without identification, victims must wait for the results of the efforts, discretion and coordination of multiple government agencies.

<sup>78</sup> 2006 TIP Report, *supra* note 6, at 244.

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or evidence of legal domicile, therefore, face challenges to obtaining state protection and may be denied the right of re-entry.

### IV. Legal, Practical and Regulatory Obstacles to Obtaining Citizenship

There are a variety of obstacles to obtaining citizenship. First, obtaining citizenship status requires significant maneuvering around a complicated legal regime.<sup>79</sup> Second, practical problems like language and transportation often interfere with the process of citizenship.<sup>80</sup> Finally, more recent government regulations drafted to address the ongoing citizenship issues are complex, and the status of the regulations remain unclear.<sup>81</sup>

#### *(a) Legal Obstacles*

There are legal obstacles to obtaining Thai citizenship. Citizenship can be acquired (i) by birth and descent,<sup>82</sup> or (ii) by naturalization,<sup>83</sup> but there are significant impediments in each method. Furthermore, the application process for citizenship itself is difficult.<sup>84</sup>

#### *(i) Citizenship by birth or descent*

According to Section 7 of the Nationality Act, a person acquires Thai nationality by birth if that person is "born of a father or a mother of Thai nationality, whether within or outside the Thai Kingdom."<sup>85</sup> A person cannot obtain citizenship by birth in Thailand if the parent was "given leniency for temporary residence in the Thai Kingdom as a special case," the parent was "permitted to stay temporarily in the Thai Kingdom," or the parent "entered and resided in the

<sup>79</sup> See *infra* Part IV.a.

<sup>80</sup> See *infra* Part IV.b.

<sup>81</sup> See *infra* Part IV.c.

<sup>82</sup> See *infra* Part IV.a.i.

<sup>83</sup> See *infra* Part IV.a.ii.

<sup>84</sup> See *infra* Part IV.a.iii.

<sup>85</sup> Nationality Act B.E. 2508 § 7(1) (1965), as amended by Nationality Act B.E. 2535 (No. 2) and as further amended by Nationality Act B.E. 2535 (No. 3) (1992), §§ 7 and 7 *bis* [hereinafter "Nationality Act"].

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Thai Kingdom without permission under the law on immigration."<sup>86</sup> Thai citizenship can be acquired by descent if a child is born in wedlock to at least one parent who holds Thai citizenship.<sup>87</sup> Alternatively, Thai citizenship can be acquired if a child is born out of wedlock to a mother of Thai citizenship.<sup>88</sup> In other words, a child born to a Thai citizen in Thailand can become a citizen.

Eligibility for citizenship by birth does not automatically translate into proof of citizenship. Proof of citizenship must be presented to the appropriate Thai officials for verification and confirmation. People seeking citizenship by birth need to prove they were born in Thailand to Thai citizen(s). Obtaining proof of birth registration may not be a simple task.

To obtain a birth certificate or birth registration, a delivery certificate and a birth notification must be delivered to the local registrar's office. These requirements may be difficult to satisfy. First, a newborn must receive a delivery certificate. According to regulations translated by UNIAP, all children born in Thailand are entitled to a certificate of delivery.<sup>89</sup> Regulations specify that children born to aliens are permitted delivery certificates<sup>90</sup> and that children "born to persons fleeing fighting from Myanmar who have been residing in temporary shelters" are also eligible for delivery certificates.<sup>91</sup> Medical facilities should, therefore, give delivery certificates to all newborns. However, some facilities may withhold delivery certificates from children of aliens because they are uncertain of the law.

<sup>86</sup> *Id.* at § 7 *bis* (1)-(3)

<sup>87</sup> Nationality Act, *supra* note 85.

<sup>88</sup> *Id.*

<sup>89</sup> Issuance of Delivery Certificate (Tor.Ror. 1/1) to Children born to Aliens; Reference No. Mor Tor 0310.1/6984, (May 22, 2002) (Unofficial Translation - Proceeding of the Child Protection Seminar on Birth Registration Problems, 129-30, Sept. 12, 2002) [hereinafter "Regulation on Delivery Certificates"] (on file with Vital Voices).

<sup>90</sup> *Id.*

<sup>91</sup> Issuance of Delivery Certificate to Children born to persons fleeing fighting from Myanmar residing in temporary shelters, Reference No. Mor Tor 0204.2/Wor 1731 (May 26, 2003) (Unofficial Translation - Proceeding of the Child Protection Seminar on Birth Registration Problems, 137-39, Sept. 12, 2002) (on file with Vital Voices).

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Second, if a child obtains a delivery certificate, he or she still does not have all necessary documents to register the birth because a certificate of delivery does not constitute notification or registration of birth.<sup>92</sup> Registration of birth involves a more complicated process, and not all children born in Thailand are eligible for birth registration.<sup>93</sup> "In order to obtain a birth certificate, a delivery certificate (Tor. Ror. 1/1) together with a birth notification must be brought to the attention of a registrar."<sup>94</sup> The Act for Registration of Inhabitants regulates the registration of birth.<sup>95</sup> According to the Law Society of Thailand, the act states that,

it is the duty of the owner of the house (where the child is delivered), father or mother of the child born in Thailand to notify the birth to the district/local registrar (article 18). In [the] case [where] . . . the child is delivered at the hospital or medical center, the delivery certificate will be issued and given to the person who has a duty to subsequently notify the birth with the registrar (article 23). Then the district/local registrar will register the birth and issue [a] birth certificate to the notifier (article 20).<sup>96</sup>

Practical problems plague birth registration. For example, if born outside a hospital, a child may not obtain a certificate of delivery. Even if the child has a certificate of delivery, the child may not obtain birth registration because appropriate notification is not given to a government official or because the parents may not have appropriate IDs to prove their child's

<sup>92</sup> Regulation on Delivery Certificates, *supra* note 89.

<sup>93</sup> Karn Sermchaiwong, The Human Rights Sub-Committee on Ethnic Minorities, Stateless Migrant Workers and Displaced Persons, Law Society of Thailand, *Birth Registration of Migrant Children Born in Thailand* 1 (March 16, 2005) (citing the Act for Registration of Inhabitants B.E. 2534 (1991)), available at [http://www.statelessperson.com/show\\_lawdet.php?id=70&comm=det](http://www.statelessperson.com/show_lawdet.php?id=70&comm=det) [hereinafter "Law Society of Thailand, Birth Registration"]. Author identifies a letter issued on March 26, 2002 by the Bureau of Registration Administration, Ministry of Interior and a letter issued on May 22, 2002 by the Ministry of Interior that stated all children born in Thailand are entitled to evidence of birth in Thailand, but only children of citizens or legal immigrants may be registered in Thailand.

<sup>94</sup> Regulation on Delivery Certificates, *supra* note 89.

<sup>95</sup> Birth registration "is in accordance with the Act for Registration of Inhabitants B.E. 2534 (1991) which stipulates that it is the duty of the owner of the house (where the child is delivered), father or mother. . . to notify the birth to the district/local registrar within fifteen days after the birth." Thailand, *Written Replies by the Government of Thailand Concerning the List of Issues (CRC/C/THA/Q/2) Received by the Comm. on the Rights of the Child Relating to the Consideration of the Second Periodic Report of Thailand (CRC/C/83/Add.15)*, ¶ 1.6, U.N. Doc. CRC/C/THA/Q/2/Add.1 (Dec. 29, 2005) [hereinafter "Thailand's Written Replies to CRC"].

<sup>96</sup> Law Society of Thailand, Birth Registration, *supra* note 93.

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status. Additional problems exist if the birth documents such as a delivery certificate or birth registration include mistakes. "When a person files a request to correct the inaccurate information, [an] . . . investigation will be conducted and there may be a charge against the person for providing falsified information."<sup>97</sup> The threat of an investigation may prevent some individuals from correcting birth certificates. Incorrect documentation will hinder future attempts to obtain citizenship.

### *(ii) Citizenship by Naturalization*

According to Section 10 of the Nationality Act, Thai citizenship can be acquired by naturalization if the person (i) "becom[es] *sui juris* in accordance with Thai law and the law under which he has nationality;" (ii) demonstrates "good behaviour;" (iii) has a "regular occupation;" (iv) has "domicile in the Thai Kingdom for a consecutive period of not less than five years till the day of filing the application for naturalization;" and (v) has "knowledge of Thai language as prescribed in the Ministerial Regulations."<sup>98</sup>

To become a naturalized citizen, an individual must "file an application with the competent official according to the form and in the manner prescribed" in the regulations.<sup>99</sup> If the Minister accepts an application, "he shall submit the matter to the King for Royal Sanction."<sup>100</sup> With Royal Sanction and an oath of loyalty to the country, the applicant will obtain citizenship.<sup>101</sup> Under the Nationality Act, only "the Minister is empowered to revoke Thai nationality."<sup>102</sup>

<sup>97</sup> Issuance of Delivery Certificate (Tor. Ror. 1/1) MorTor 0309.1/34 Feb. 13, 2004 (Unofficial Translation: A copy of letter from Chareonkrung Pracharak Hospital No. 0607/193, dated 12 January 2004) (on file with Vital Voices).

<sup>98</sup> Nationality Act, *supra* note 85, at § 10.

<sup>99</sup> *Id.* at § 12.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at §§ 18-19.

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### (iii) *The Process*

In order to apply for citizenship, individuals must present an application to their local district office.<sup>103</sup> According to certain reports, district leaders take advantage of this position of authority: "[s]uch absolute authority has made corruption rife at the village level."<sup>104</sup> In addition, the application process is slow and tedious: "villagers still find themselves waiting forever."<sup>105</sup> One Assistant District Chief reportedly said that in his district:

there are more than 40,000 people in the district who are waiting to be registered and to prove that they have been staying in Thailand long enough to qualify under the Nationality Act. He added that 13,007 locals have gotten documentation of their status since 1999 and some 19,993 applications are currently being processed to determine eligibility.<sup>106</sup>

Once the district office receives the application, the responsible officer may find it difficult to process the application. Initially, many laws, regulations and decrees govern the process. Because the process is difficult and complex, "[l]ack of knowledge and understanding among officials" is common.<sup>107</sup> Additionally, only a few officials are responsible for the citizenship applications. With few responsible officials, the quantity of applications presents a significant bureaucratic hurdle.<sup>108</sup> Also, the "[a]bsence of [a] data base of persons and linkage of data for verification purpose[s]" remains a large obstacle to identifying eligible applicants for citizenship.<sup>109</sup>

After an application is submitted and reviewed by the district official, a determination of eligibility is made. Few appellate options exist if the district official rejects the application. One

<sup>103</sup> Sanitsuda Ekachai, *Searching for a state – Stymied by corruption*; BANGKOK POST, July 9, 2002 at Outlook.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Don't Steal Their Future, *supra* note 51.

<sup>107</sup> Thailand's Written Replies to CRC, *supra* note 95.

<sup>108</sup> *Id.*

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is an appeal to the District Appeal Committee.<sup>110</sup> However, the appeal must be filed no later than one month following the official's decision.<sup>111</sup> Moreover, the appeal must be submitted in writing on a specific form to the "local registration officer in the sub-district where the applicant has submitted a request for nationality."<sup>112</sup> Rights of appeal terminate after the one month period.<sup>113</sup>

The registration officer has seven days to determine whether to accept the appeal. If the appeal is accepted, the officer transfers the appeal to the District Appeal Committee within ten days after the determination of acceptance.<sup>114</sup> Five days thereafter, the registration officer then "recommend[s] to the Chief District Officer to appoint a District Appeal Committee."<sup>115</sup> The District Appeal Committee consists of a "member who is an expert appointed by the applicant; . . . [a] member who is an expert appointed by the Chief District Officer;" and the "Assistant Chief of District [who] serves both as a member and secretary to the Committee."<sup>116</sup> The Committee determines who will be Chairperson.<sup>117</sup> The Committee must meet within fifteen days of the appointment order,<sup>118</sup> and must make a decision within thirty days. "A 2/3 majority decision of the Committee shall be considered . . . the final decision."<sup>119</sup> After reaching a decision, the Committee informs the Chief District Officer of its decision. The Chief District Officer then

<sup>109</sup> *Id.*

<sup>110</sup> Thailand, *Thailand's Supplementary Clarifications to the Human Rights Committee as part of Thailand's Presentation of its Initial Report under the International Covenant on Civil and Political Rights*, ¶ 3.3 (July 19-20, 2005), available at <http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/thailand-writtenreplies.pdf> or [http://www.omct.org/pdf/procedures/2005/84thhr\\_commission/written\\_replies/wr\\_thailand\\_07\\_05.pdf](http://www.omct.org/pdf/procedures/2005/84thhr_commission/written_replies/wr_thailand_07_05.pdf) [hereinafter "Supplementary Clarifications to HRC"].

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

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must "implement that decision within 5 days by informing the registration officer to act."<sup>120</sup>

Both the applicant and Chief of District can appeal the Committee's decision to the Provincial Appeal Committee.

An appeal to the Provincial Appeal Committee largely parallels the appeals process for the District Appeal Committee.<sup>121</sup> The decision of this Committee is final. "However, if [the decision is] based on legal consideration, the decision could be appealed within 1 month [to] . . . a higher body. . . the Central Appeal Committee."<sup>122</sup>

An appeal to the Central Appeal Committee includes a different committee composition, but the process largely parallels the process for the appeal to the District Appeal Committee.<sup>123</sup> The decision of this committee is absolutely final with no right of appeal.<sup>124</sup>

The appeals process is fraught with obstacles. Lack of knowledge of the right to appeal, the manner in which to appeal and the one month statute of limitations present significant if not insurmountable obstacles. In addition, government discretion and the amount of money and time required to undertake an appeal may also present obstacles to appeal.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* The appeal must be drafted in writing and submitted to the original local sub-district within one month. The Provincial Appeal Committee is comprised of the following members: the Deputy Governor as chairperson, "two academics who are experts in specific fields[,] . . . [the] Chief of Administration Branch as member and secretary . . . [and the] Deputy Chief of Administration Branch as member and Assistant Secretary." *Id.* After receiving a timely and written appeal, the registration officer must submit the appeal within five days. The secretary of the committee must then call a meeting within fifteen days of receiving the appeal.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* The appeal must be submitted within one month to the original local subdistrict. Within five days of receiving that appeal, the registration officer must submit the appeal. The Central Appeal Committee is "appointed by the Director of the Central Registration Bureau." *Id.* The committee would consist of the "Deputy Director of the Central Registration Bureau as Chairman of the Committee[,] . . . [the] Assistant Director of the Central Registration Bureau as member[,] . . . three academics who are experts in specific fields as members[,] . . . [the] Chief of the Registration of Minority Groups as member[,] . . . [and] Chief of the Minority Groups' Legal Affairs and Regulations Branch as member and secretary." *Id.* The secretary is required to call a meeting within fifteen days after an appeal is received from the registration officer.

<sup>124</sup> *Id.*

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### *(b) Practical Obstacles*

In addition to legal obstacles, there are also practical obstacles to obtaining citizenship, which include lack of census data, lack of communication and translation and government abuse. Census data collection has been contradictory, incomplete and inconsistent. According to Physicians for Human Rights, before the 1950s, hill tribe villages "were for the most part ignored by the Thai government and were not included in the first national census in 1956."<sup>125</sup> In 1985, the Thai government conducted a new national census. During this census, "the Public Welfare Department registered many hill people as having been born in Thailand."<sup>126</sup> However, "subsequent censuses conducted by the Interior Ministry listed the very same individuals as being of Burmese origin."<sup>127</sup> Consequently, individuals may be listed in the 1985 census as Thai, but a later census may report the same individual as non-Thai:

Take Loryub Mayeu, a 38-year-old Akha man . . . The 1985 survey noted down his place of birth as Thailand. The 1991 survey said he was born in Burma. The matter is further complicated by the fact that the spelling of his name in the first survey is not the same as in the second because officials transliterated his name into Thai differently. Now Loryub is stuck with illegal-immigrant status.<sup>128</sup>

According to one reporter, "regulations on nationality stipulate that the authorities must use documents which favour claims by applicants seeking citizenship,"<sup>129</sup> thereby guaranteeing that those listed as Thai in earlier censuses would be able to use the earlier census data as evidence of registration. However, according to this same reporter, "officials very often refuse" to recognize the earlier census.<sup>130</sup> Thus, practical problems to obtaining proof of citizenship or

<sup>125</sup> Physicians for Human Rights Report, *supra* note 42, at 27.

<sup>126</sup> Ekachai Searching for a State, *supra* note 48.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

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residency includes incomplete, inconsistent and contradictory census data and inconsistent decisions by officials regarding status and identification of individuals.

Other obstacles result from translation issues, lack of information, lack of communication and risk-adverse local officials. At times the Ministry of Interior and other government officials have tried to issue identity cards to villagers. However, because some villagers do not speak Thai and because state officials are not required to communicate with villagers in a language other than Thai, information is sometimes not clearly delivered or collected. Some villagers reportedly complained that the "officials never informed them about their rights, and that it was only later that they found out about the Nationality Act B.E. 2508."<sup>131</sup> Some villagers also reportedly complained that they were confused when they accepted incorrect identification cards. As a result, "[s]ome hold the blue card, which identifies them as people who live in the highlands. Some hold the pink card, which has been issued since 1979 and identifies the holder as a Burmese displaced person. Some hold both cards."<sup>132</sup> Confusion abounds, in part, because seventeen ID cards exist, each signifying different rights to work, travel, education and healthcare. Some local government officials hesitate to accept citizenship applications for fear of harsh career penalties for any mistake in approving ineligible applicants.

Additional obstacles result from alleged corruption. According to one reporter, "many villagers claim that some officials demanded thousands of baht from them for a Thai ID card and threatened them with deportation."<sup>133</sup> Another abuse of power occurred in 2002 when, according to certain reports, a District Chief removed the citizenship status of 1,243 villagers after

<sup>131</sup> Supara Janchitfah, *A Long Struggle – Mae Ai villagers*, PERSPECTIVE, Sept. 18, 2005, available at <http://www.karencenter.com/showstateless.php?id=1562&comm=det> [hereinafter "A Long Struggle"].

<sup>132</sup> Don't Steal Their Future, *supra* note 51.

<sup>133</sup> A Long Struggle, *supra* note 131.

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receiving "two complaints about graft and corruption in issuing Thai ID cards."<sup>134</sup> A court determined that the District Chief's order was unlawful.<sup>135</sup> In response to the decision, the new District Chief in the village reportedly informed the villagers that "[t]he court only states that the February order was unlawful, but it does not tell you if you are Thai or not."<sup>136</sup> As a result, although the order was unlawful, the villagers must still prove their citizenship.<sup>137</sup>

### *(c) Regulatory Obstacles*

In addition to the Nationality Act and the Act for Registration of Inhabitants, the Cabinet, the Ministry of Interior and its agencies have issued multiple regulations and decrees clarifying or amending citizenship regulations. For example, in 2000, the Cabinet determined that anyone whose parents entered Thailand before October 4, 1985, would be eligible for citizenship regardless of their parents' legal status.<sup>138</sup> Those whose parents entered after 1985 would need to prove citizenship if born in Thailand with the Ministry of Interior:

All Children born in Thailand of hill tribe parents who entered Thailand before 4 October 1985 will obtain Thai nationality regardless of their parents' legal status in Thailand at the time they were born. . . . 'those who entered Thailand before 4 October 1985 (60,000) were provided by Cabinet resolution of 2000 with a legal migrant status for the first generation, upon approval of the Minister of Interior. Their children who were born in Thailand are entitled to Thai nationality, upon approval of the Minister of Interior.'<sup>139</sup>

In 2005, the Cabinet of Ministers issued a decree regarding the issue of citizenship and "designated the Ministry of Interior and the National Security Council as the main agencies

<sup>134</sup> *Id.*; see also United States Department of State, Country Reports on Human Rights Practices, Thailand (March 31, 2003), available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18265.htm>.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> The case was not reviewed. The above references to the case were from a reporter's article.

<sup>138</sup> Supplementary Clarifications to HRC, *supra* note 110, at ¶ 3.1.

<sup>139</sup> *Id.*

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responsible for developing a strategy to deal with this problem" of citizenship status.<sup>140</sup> By its resolution, the Cabinet requested the Ministry of Interior and the National Security Council to take the following measures:

1. Survey and preparation of civil registration documents;
2. Revision of criteria/conditions and lessening procedures by establishing an ad hoc committee;
3. Formation of a framework for determining the status of persons;
4. Following an approach which favors giving some sort of status first and then revoking it later if deemed inappropriate;
5. Decentralization of authorization;
6. Participation of academic sector and non-governmental organizations in the decision-making process.<sup>141</sup>

Unfortunately, the status of the above-referenced regulations, the accountability of the ministry or other departments, the resolution of these decrees with earlier decrees and the funding of these programs are unclear.

### V. Recommendations.

The process of obtaining citizenship in Thailand is complicated and the government has done little to clarify it. First, the process to prove birth without birth certificates and the process to correct mistakes in birth forms are unclear and hinder the application process. Second, the restriction of state services like education, healthcare and employment to citizens makes non-citizens more vulnerable to exploitative labor. Third, the complexity of the application process and legal hurdles prevent the successful registration of citizens.

In order to improve the number of births registered, the UN Committee on the Rights of the Child recommends that the Thai Government create mobile registration units, conduct a public awareness campaign, educate midwives on the registration process and communicate with

<sup>140</sup>Thailand's Written Replies to CRC, *supra* note 95, at ¶ 1.6.

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district officials.<sup>142</sup> Cambodia provides an example of how one country used some of these techniques to increase birth registration. Many citizens in Cambodia did not have birth certificates, and thus, like Thailand, children could not access their right to education and healthcare.<sup>143</sup> In order to resolve the issue of statelessness and register millions of birth certificates for eligible children, Plan International worked with the Cambodian Ministry of Interior, the Asian Development Bank and UN Volunteers to review the applications and issue birth certificates for 11.5 million Cambodians from 2004 to 2006.<sup>144</sup> In order to undertake this campaign, "13,000 registration officials received training and technical support. . . Thousands of registration books were printed and a national information campaign was undertaken to inform people about the ongoing registration activities."<sup>145</sup> Now 89% of Cambodians have made an effort to obtain birth certificates. Below are specific recommendations to increase birth registration:

### **To the Thai government:**

- Respect the obligation under Article 24 of the International Covenant on Civil and Political Rights, thereby guaranteeing all children the right to birth registration at birth.
- Train hospital and local administrative officials regarding the birth registration process.
- Provide mobile birth registration units to register births in rural areas.

### **To NGOs**

- Lobby government officials to grant citizenship for babies born in Thailand.
- Organize and offer resources to assist in massive registration of babies in Thailand.

<sup>141</sup> *Id.*

<sup>142</sup> United Nations Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the convention, Concluding Observations: Thailand*, ¶ 32(a)-(d), U.N. Doc. CRC/C/THA/CO/2, (Jan. 27, 2006). The Committee on the Rights of the Child noted that Thailand was working on a Draft Birth Registration of Children Born in Thailand Act and a Draft Nationality of Children Born in Thailand Act.

<sup>143</sup> Plan Cambodia, *Cambodians turn out in their millions to get birth certificates*, Oct. 18, 2006, at <http://www.plan-international.org/wherewework/asia/Cambodia/cambodiaubr/ubrmillions/>.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

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### To the International Community

- Encourage universal birth registration for all births in Thailand.
- Provide the resources, as in Cambodia, to assist in the massive review and registration of birth certificate applications.

In order to reduce the impact of statelessness on non-citizens, opening up access to education and healthcare services to children and permitting some forms of legitimate labor to those awaiting proof of citizenship would eliminate the link between statelessness and human trafficking. In Brunei, many ethnic Chinese do not have the right to citizenship. As in Thailand, without access to citizenship these stateless people in Brunei do not have access to subsidized healthcare services and other government-provided services. While the stateless individuals suffer from some of the same problems faced in Thailand, Brunei offers free education to "stateless persons and permanent residents."<sup>146</sup> By providing education, Brunei relieves one of the problems for its stateless people that make them vulnerable to exploitation. Although Thailand has promised education to children in certain regions of Thailand, some children still do not have access to education. Below are specific recommendations to reduce the impact of statelessness on the residents of Thailand:

### To the Thai Government

- Codify the Draft Rules of the Ministry of Education Governing Evidence of Date of Birth in Admitting Schoolchildren and Students to Attend Class in the Place of Study<sup>147</sup> to enable all children, regardless of citizenship status, to attend school. Educate teachers on the right of all children to attend school.
- Eliminate requirement of proof of citizenship to travel around the country and issue country-wide travel permits to children attending school.
- Permit those without proof of Thai citizenship to apply for special work permits that do not require them to provide proof of citizenship or to claim an alien status. Incorporate the rights granted under any and all Thai labor laws into these work permits.

<sup>146</sup> Refugees International, *Lives on Hold: Asia: The Human Cost of Statelessness, Global Review of Statelessness*, 32, Feb. 14, 2005, available at <http://www.refugeesinternational.org/content/publication/detail/5051/>.

<sup>147</sup> Ministry of Education, *Provision of Education to the Persons Who do not Have Evidence of Civil Registration or Thai nationality* (2005) (on file with Vital Voices).

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- Ratify the draft memo produced by the Cabinet of Minister in 2005 regarding the process of repatriating victims of trafficking who do not have proper proof of Thai citizenship.<sup>148</sup>

### To NGOs

- Lobby government officials to reduce the number of IDs in Thailand, and lobby government officials to improve the rights afforded under each ID.
- Support and supplement services that help residents become more employable.
- Conduct periodic assessments of the access to residents of Thailand to education, travel permits, healthcare facilities and legitimate forms of employment.

### To the International Community

- Encourage the replacement of multiple ID cards for a simpler citizenship identification card system.
- Encourage universal education of children.
- Monitor access to legitimate forms of employment and transportation.

In order to improve access to citizenship, thereby eliminating a significant factor that leads to trafficking in Thailand, the citizenship application process needs to be simpler and more transparent. Below are specific recommendations that would simplify and clarify the application process to reduce the impact of statelessness on trafficking:

### To the Thai Government

- Ratify the United Nations Convention Against Transnational Crime and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.
- Adopt the United Nations High Commissioner for Human Rights Principles and Guidelines on Human Rights and Trafficking<sup>149</sup> which recommends that "States and intergovernmental organizations ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination."<sup>150</sup>
- Implement training programs for NGOs and state agencies to train them on the process of applying for citizenship in order to empower them to assist applicants. Train them on eligibility criteria and the application process.
- Provide citizenship application forms translated into the languages spoken in Thai villages.

<sup>148</sup> United Nations Commissioner for Human Rights, Principles and Guidelines on Human Rights and Trafficking, Recommended Principles on Human Rights and Trafficking, guideline 2, ¶ 6, U.N. Doc. E/2002/68/Add.1 (2002). "Ensuring that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody." *Id.*

<sup>149</sup> *Id.* at ¶ 5.

<sup>150</sup> *Id.*

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- Establish local permanent appeals committees to reduce the cost and need to create new appeals committees per appeal.
- Create a trained oversight committee that randomly reviews local government officials decisions on citizenship applications to ensure that local officials are both consistently and correctly applying the laws.

### **To NGOs**

- Lobby government officials for a more simplified and transparent citizenship application process.
- Instruct local leaders on the citizenship application process.
- Assist stateless people prepare documents for birth registration and citizenship.
- Coordinate with local government officials to engage in capacity building and education regarding the citizenship application process. Develop joint training programs regarding the citizenship application process with government officials targeted at non-citizen individuals.

### **To the International Community**

- Provide funding to the government and NGOs to support training of local government officials regarding the process of registration.
- Provide funding to the government and NGOs to support public awareness campaigns focused on training communities on the application process.
- Provide funding to the government and NGOs to support the citizenship registration process.
- Conduct periodic assessments of the performance of the Thai government in extending citizenship to ethnic hill-tribe people and addressing vulnerability of these groups to human trafficking.
- Publish reports on the status and progress of the Thai government in dealing with the citizenship status of those who have a right to citizenship.

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### **VII. Organizations Involved in Citizenship and Birth Registration Issues in Thailand**

United Nations Educational, Scientific and Cultural Organization  
<http://www.unescobkk.org>

United Nations Children's Fund  
<http://www.unicef.org/infobycountry/Thailand.html>

United Nations High Commissioner for Refugees  
<http://www.ohchr.org/english/countries/th/index.htm>

United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-Region  
(Cambodia, China, Lao PDR, Myanmar, Thailand, Vietnam)  
<http://www.un.or.th/TraffickingProject/TraffickIntro.html>

Plan-International  
<http://www.plan-international.org/wherewework/asia/thailand/>

International Justice Mission  
<http://www.ijm.org>

World Vision  
[http://www.worldvision.org/about\\_us.nsf/child/addresses](http://www.worldvision.org/about_us.nsf/child/addresses)

Asia Regional Trafficking in Persons (ARTIP) Project  
<http://www.artipproject.org>

The Mirror Art Group  
<http://www.mirrorartgroup.org/web/index.html>

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