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## FINDING A COUNTRY TO CALL HOME: A FRAMEWORK FOR EVALUATING LEGISLATION TO REDUCE STATELESSNESS IN SOUTHEAST ASIA

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*Abstract:* Statelessness is a problem that affects 12 million people worldwide, with severe social, economic, and political consequences. This problem is particularly acute in Southeast Asia. Over the last sixty years, Southeast Asian states have attempted to reduce existing stateless populations through nationalization. These attempts have been met with varying degrees of success. The United Nations High Commission on Refugees and other non-governmental organizations have recently started to evaluate the outcome of these legislative attempts to reduce statelessness. These *ad hoc* evaluations provide valuable lessons for those who are drafting legislation to reduce existing stateless populations as well as legal scholars evaluating their efforts. Drawing from the experience of Southeast Asian states, this comment gives specific recommendations for evaluating and informing legislation designed to reduce existing stateless populations in Southeast Asian states through nationalization. This comment suggests that legislation should relax and tailor documentation requirements for naturalization, reduce fees and administrative burdens to naturalization, reduce residency requirements, unconditionally naturalize those born in the state, and waive language and knowledge requirements. Legislation aimed at reducing statelessness should incorporate principles of nondiscrimination and safeguards against arbitrary denials of citizenship. Additionally, states should engage in awareness campaigns that target stateless persons after enacting the legislation.

### I. INTRODUCTION

The United Nations High Commissioner for Refugees (“UNHCR”) estimates that there are 12 million stateless people worldwide.<sup>1</sup> This problem is particularly acute in the Southeast Asian countries of Cambodia, Thailand, Laos, Burma, Indonesia, and Vietnam.<sup>2</sup> These stateless

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<sup>1</sup> Reliable estimates of stateless populations have only been gathered in sixty countries and have shown an estimated 6.6 million people. However, the United Nations High Commissioner for Refugees (“UNHCR”) has estimated that there are 12 million stateless people worldwide. See UNHCR, 2009 GLOBAL TRENDS: REFUGEES, ASYLUM-SEEKERS, RETURNEES, INTERNALLY DISPLACED AND STATELESS PERSONS 1 (2010), available at <http://www.unhcr.org/4c11f0be9.html>. Some estimates place this number as high as 15 million. See, e.g., *Q&A: The World's 15 Million Stateless People Need Help*, UNHCR, May 18, 2007, available at <http://www.unhcr.org/464dca3c4.html>.

<sup>2</sup> UNHCR, REGIONAL EXPERT ROUND TABLE ON GOOD PRACTICES FOR THE IDENTIFICATION, PREVENTION AND REDUCTION OF STATELESSNESS AND THE PROTECTION OF STATELESS PERSONS IN SOUTH EAST ASIA 2 (2010), available at <http://www.unhcr.org/refworld/docid/4d6e09932.html> [hereinafter REGIONAL EXPERT ROUNDTABLE]. See also KATHERINE SOUTHWICK & M. LYNCH, NATIONALITY RIGHTS FOR ALL: A PROGRESS REPORT AND GLOBAL SURVEY ON STATELESSNESS 1 (2009), available at

populations exist at the fringe of society as legal ghosts and are among the world's most vulnerable people.<sup>3</sup> Stateless people lack effective nationality,<sup>4</sup> and thus cannot avail themselves of the legal protections of any state.<sup>5</sup> Stateless populations in Southeast Asia suffer severe economic, political, and social hardships and are at a heightened risk for trafficking.<sup>6</sup> Their plight is made more precarious because, until recently, the international community knew very little about the size, location, or circumstances facing stateless persons residing in developing countries.<sup>7</sup> As a result, they have received substantially less international assistance as compared to refugees and internally displaced persons.<sup>8</sup>

While the international community overlooked stateless populations in developing countries, Southeast Asian states enacted legislation to address the complex issues presented by these populations. In 2004, the international community began to recognize the subtle but devastating consequences of protracted stateless situations.<sup>9</sup> Legal experts at leading international development organizations, in collaboration with UNHCR, have started to evaluate the effectiveness of these individual pieces of legislation and trends have begun to emerge.

This comment examines those trends and identifies factors that have proven to be important to the success of legislation designed to reduce statelessness in Southeast Asian states. It evaluates the outcomes of legislation enacted by Cambodia, Thailand, Laos, Burma, Indonesia, and Vietnam in order to craft a framework for drafting and evaluating legislation

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<http://reliefweb.int/node/300917> (discussing Thailand as a country with one of the highest stateless populations worldwide).

<sup>3</sup> Nicole Green & Todd Pierce, *Combating Statelessness: A Government Perspective*, 32 FMR 35 (2009), available at <http://www.fmreview.org/FMRpdfs/FMR32/34-35.pdf>.

<sup>4</sup> The terms "nationality" and "citizenship" will be used interchangeably in this comment to refer to formal, legal membership of a state. The author acknowledges that there are differences between these terms; however, these differences do not affect the analysis contained in this comment.

<sup>5</sup> LAURA VAN WAAS, NATIONALITY MATTERS: STATELESSNESS UNDER INTERNATIONAL LAW 12 (2008); UNHCR, HELPING THE WORLD'S STATELESS PEOPLE 2 (2011), available at <http://www.unhcr.org/refworld/docid/4e55e7dd2.html> [hereinafter HELPING THE WORLD'S STATELESS PEOPLE].

<sup>6</sup> UNHCR, GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA 3 (2010), available at <http://www.unhcr.org/refworld/docid/4d6e0a792.html> [hereinafter GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA]; SOUTHWICK & LYNCH, *supra* note 2, at 3; VITAL VOICES, STATELESS AND VULNERABLE TO HUMAN TRAFFICKING IN THAILAND 3 (2007), available at [http://www.humantrafficking.org/uploads/publications/Vital\\_Voices\\_Stateless\\_and\\_Vulnerable\\_to\\_Human\\_Trafficking\\_in\\_Thailand.pdf](http://www.humantrafficking.org/uploads/publications/Vital_Voices_Stateless_and_Vulnerable_to_Human_Trafficking_in_Thailand.pdf) (examining the situation of stateless people in Thailand).

<sup>7</sup> See, e.g., SOUTHWICK & LYNCH, *supra* note 2, at 2.

<sup>8</sup> HELPING THE WORLD'S STATELESS PEOPLE, *supra* note 5, at 2 (2011).

<sup>9</sup> See, e.g., UNHCR, CONCLUSIONS ADOPTED BY THE EXECUTIVE COMMITTEE ON THE INTERNATIONAL PROTECTION OF REFUGEES 166 para. bb (2004), available at <http://www.unhcr.org/refworld/docid/4b28bf12.html> (representing the first time the UNHCR called for protracted statelessness to be addressed specifically).

to reduce statelessness. The resulting framework functions as an evaluation tool for legal scholars as well as a set of recommendations to parliamentarians.

Part II of this comment defines statelessness and examines its causes and consequences. Part III advances the argument that existing international instruments provide insufficient guidance on reducing statelessness. Part IV argues that legislative attempts to reduce statelessness can be effective and presents a framework for evaluating and drafting national legislation designed to reduce statelessness, building upon lessons advanced by practitioners and scholars. The framework recommends the specific legislative provisions, administrative protections, and awareness-raising activities that have proven critical to the success of legislation in Southeast Asian states.

There are two important limitations of this framework. First, it pertains exclusively to legislation designed to reduce statelessness through nationalization.<sup>10</sup> It does not profess to address legislation designed to protect or prevent future cases of statelessness. Second, this framework is necessarily incomplete. Reliable data and reports on the outcomes of legislation designed to reduce statelessness are limited and evolving. This framework is only intended to summarize the lessons that can be teased from this emerging area of study. Instead of providing the final word on the subject, this comment hopes to begin the conversation and encourage additional scholarly debate on reducing existing cases of statelessness in Southeast Asia.

## II. COMPETING DEFINITIONS AND MULTIPLE CAUSES OF STATELESSNESS LEAD TO SERIOUS CONSEQUENCES FOR SOUTHEAST ASIAN COUNTRIES

Statelessness is caused by a variety of defects in national and international law. These include conflicts of law, inadequate administrative infrastructure, state succession, migration, laws that particularly affect women, and discrimination. Because legislation to reduce statelessness will need to cure these defects, this section outlines the causes of statelessness that pose major obstacles to creating successful legislation. Keep in mind that this section presents broad issues that face multiple countries in varied contexts, but as this comment later suggests, has strong implications for Southeast Asian states.

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<sup>10</sup> The terms “naturalization” and “nationalization” are used interchangeably in this comment to refer to the process by which a state recognizes an individual as a citizen of that state.

### A. *Definitions: De Jure and De Facto Statelessness*

There are two types of statelessness: *de jure* and *de facto*. Historically, states have had the absolute right to define who is a citizen of their state,<sup>11</sup> and those who fall through the cracks in this mesh of citizenship laws are labeled *de jure* stateless.<sup>12</sup> According to Article 1 of the 1954 Convention relating to the Status of Stateless Persons (“1954 Convention”), a person is *de jure* stateless if that person is “not considered as a national by any [s]tate under the operation of its law.”<sup>13</sup> In other words, a person is stateless if he or she is not recognized as a citizen of any state.

*De facto* statelessness, in contrast to *de jure* statelessness, eludes such precise definition,<sup>14</sup> and international law has not clarified the issue. The 1961 Convention on the Reduction of Statelessness (“1961 Convention”), in its final act, makes reference to “persons who are stateless *de facto*,” noting that they should be treated as stateless *de jure* to the extent possible.<sup>15</sup> However, the 1961 Convention does not define the term *de facto*. The final act of the 1954 Convention likewise alludes to individuals who do not fall within the Convention’s definition of statelessness, but are nonetheless similarly situated, making reference to a “person [who] has renounced the protection of the State of which he is a national.”<sup>16</sup> Beyond this, however, reference to *de facto* stateless persons is absent from international legal instruments.

So how do we define *de facto* statelessness? It has traditionally been couched in terms of ineffective nationality.<sup>17</sup> These individuals are citizens of a state, or possess a legally meritorious claim to citizenship, but are

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<sup>11</sup> For instance, the International Court of Justice held in the *Nottebohm Case* that “. . . it is for every sovereign [s]tate to settle by its own legislation the rules relating to the acquisition of its nationality.” *Nottebohm (Liechtenstein v. Guatemala)*, Judgment, 1955 I.C.J. 4, at 20 (Apr. 6, 1955). See also VAN WAAS, *supra* note 5, at 93; ASBJORN EIDE, *CITIZENSHIP AND THE MINORITY RIGHTS OF NONCITIZENS* 5, para. 19 (1999).

<sup>12</sup> David Weissbrodt & Clay Collins, *The Human Rights of Stateless Persons*, 28 HUM. RTS. Q. 245, 251 (2006).

<sup>13</sup> Convention relating to the Status of Stateless Persons art. 1, Sept. 28, 1954, 360 U.N.T.S. 117 (entered into force June 6, 1960) [hereinafter 1954 Convention].

<sup>14</sup> For a good discussion of the difficulties with defining *de facto* statelessness, see Allison Harvey, *Statelessness: The ‘de facto’ Statelessness Debate*, 24 J. IANL 257 (2010).

<sup>15</sup> Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175, 279, [hereinafter 1961 Convention] (with Final Act of the U.N. Conference on the Elimination or Reduction of Future Statelessness, held at Geneva from March 24 to April 18 1959, and Resolution I, II, III and IV of the Conference).

<sup>16</sup> Final Act of the United Nations Conference on the Status of Stateless Persons, July 1951, 360 U.N.T.S. 117, 122 [hereinafter Final Act of 1951 Convention].

<sup>17</sup> See, e.g., UNHCR, *THE CONCEPT OF STATELESS PERSONS UNDER INTERNATIONAL LAW* 6 (2010), available at <http://www.unhcr.org/refworld/docid/4ca1ae002.html>.

unable or, for valid reasons, unwilling to avail themselves of the protections of that state.<sup>18</sup> A *de facto* stateless person might not avail themselves of the state's protection because of ongoing civil disorder, fear of persecution, or practical considerations such as cost.<sup>19</sup> *De facto* stateless persons include those who have a nationality but do not enjoy the rights of their nationality, those who are unable to document their nationality, and those who, as a result of state succession, habitually reside in a state other than their state of citizenship.<sup>20</sup>

In short, a *de jure* stateless person lacks a legal nationality and a *de facto* stateless person lacks meaningful nationality. International instruments define *de jure* statelessness explicitly, but have not precisely defined *de facto* statelessness. In many respects, this distinction is merely academic; both groups face the same social, economic, and political consequences as a result of their statelessness.<sup>21</sup>

#### B. *Multiple Causes of Statelessness Pose Obstacles to National and Regional Legislation*

Statelessness occurs for a variety of diverse reasons, ranging from state succession to insufficient administrative infrastructure. Statelessness results from inadvertent oversight as well as deliberate state action. In order to craft a solution that corrects the devastating effects of statelessness, it is critical to understand how statelessness occurs. This section explores nine major causes of statelessness.

##### 1. *Inconsistency Between Nationality Laws Gives Rise to Statelessness*

Many individuals fall through the cracks created by a patchwork of mismatched nationality laws. A person is often rendered stateless when the national legislation of two countries differs such that the individual is left without a legal claim to citizenship in either country.<sup>22</sup> For instance, suppose a person is born in State A, which only recognizes citizenship by descent (*jus sanguinis*), but whose parents are citizens of State B, which

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<sup>18</sup> *Id.*; see also Jay Milbrandt, *Stateless*, 20 CARDOZO J. INT'L & COMP. L. 75, 82 (2011).

<sup>19</sup> Milbrandt, *supra* note 18, at 82. UNHCR also has defined a *de facto* stateless person as one who is "unable to demonstrate that he/she is *de jure* stateless, yet he/she has no effective nationality and does not enjoy national protection." See UNHCR, NATIONALITY AND STATELESSNESS: A HANDBOOK FOR PARLIAMENTARIANS 11 (2005), available at <http://www.unhcr.org/refworld/docid/436608b24.html> [hereinafter HANDBOOK FOR PARLIAMENTARIANS].

<sup>20</sup> Milbrandt, *supra* note 18, at 82.

<sup>21</sup> See *infra* Part II.C.

<sup>22</sup> HANDBOOK FOR PARLIAMENTARIANS, *supra* note 19, at 27.

only recognizes citizenship by place of birth (*jus soli*).<sup>23</sup> In this example, the child would have no claim to citizenship in State A because his or her parents are nationals of State B. The child would also not have claim to citizenship in State B because she was born in State A. The individual is rendered stateless because of the mismatched nationality laws of State A and State B. The risk that conflicting laws will result in statelessness is magnified by the fact that nationality laws are extremely complicated and they often confront equally complicated, but inconsistent, laws of a second state.<sup>24</sup>

More subtle conflicts between nationality laws also result in statelessness. For instance, statelessness may also occur when a state's nationality law requires a citizen to renounce his or her citizenship before acquiring, or being guaranteed to acquire, a second nationality.<sup>25</sup> This often occurs when nationality laws fail to take into account the potential for statelessness when a marriage dissolves while in the nationalization process. In Vietnam, for example, many women were rendered stateless after they married foreigners and were required to renounce their Vietnamese citizenship prior to obtaining citizenship in their spouse's country.<sup>26</sup> Many of these marriages dissolved before they were able to secure citizenship in their spouse's country—leaving thousands stateless.<sup>27</sup>

## 2. *Administrative Obstacles Create Barriers to Citizenship*

People may become stateless because they cannot navigate, access, or afford the burdensome administrative processes to obtaining citizenship. Excessive fees, narrow deadlines, and demanding documentation requirements create real obstacles to citizenship.<sup>28</sup>

Additionally, poorly functioning birth registration systems have left many without any evidence of their place of birth or parentage.<sup>29</sup> Many lack

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<sup>23</sup> VAN WAAS, *supra* note 5, at 50.

<sup>24</sup> See William Samore, *Statelessness as a Consequence of the Conflict of Nationality Laws*, 45 AM. J. INT'L L. 476, 477 (1951).

<sup>25</sup> HANDBOOK FOR PARLIAMENTARIANS, *supra* note 19, at 28; GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 4.

<sup>26</sup> Statelessness occurs most commonly following the dissolution of marriages between Vietnamese women and men from Taiwan, South Korea, Hong Kong, or Singapore. Kitty McKinsey, *Divorce leaves some Vietnamese women broken-hearted and stateless*, Feb. 14, 2007, UNHCR, available at <http://www.unhcr.org/45d324428.html>; see also GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 10.

<sup>27</sup> McKinsey, *supra* note 26.

<sup>28</sup> HANDBOOK FOR PARLIAMENTARIANS, *supra* note 19, at 32-33. See also *infra* Part IV.A.2.b, which discusses this problem in more depth.

<sup>29</sup> VAN WAAS, *supra* note 5, at 12.

meaningful access to birth registration systems, which make it impossible to provide the documents needed to prove citizenship.<sup>30</sup> Many children are rendered stateless even though they were born in the “right” state or to the “right” parents.<sup>31</sup> These obstacles to registration are sometimes the result of targeted attacks on specific populations, and other times result from ineffective state infrastructure.<sup>32</sup>

The interplay between birth registration systems and statelessness is hard to understate. Every year an estimated 40 million births go unregistered.<sup>33</sup> A child who is not registered lacks the “official and visible evidence of a state’s legal recognition of his or her existence as a member of society.”<sup>34</sup>

Cambodia is a prime example of how governments, in conjunction with local communities, can overcome these administrative burdens if they are committed to doing so. Before 2000, less than 5% of Cambodia’s population held birth registration certificates.<sup>35</sup> However, in 2000, Cambodia committed to resolve the situation and by 2005 it had registered 91% of the population.<sup>36</sup> Local community leaders, monks, and teachers played a vital role in building trust and explaining the importance of birth registration to stateless communities throughout Cambodia.<sup>37</sup> Nongovernmental organizations helped plan the campaign, which also contributed to its success.<sup>38</sup>

### 3. *Laws That Automatically Revoke Citizenship Cause Statelessness*

Some states revoke citizenship if an individual resides abroad for a certain period of time. The amount of time varies between states from a few months<sup>39</sup> to many years,<sup>40</sup> and revocation can affect both natural-born and

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<sup>30</sup> HANDBOOK FOR PARLIAMENTARIANS, *supra* note 19, at 31.

<sup>31</sup> VAN WAAS, *supra* note 5, at 153.

<sup>32</sup> REFUGEE STUDIES CENTRE, FORCED MIGRATION POLICY BRIEFING 3: STATELESSNESS, PROTECTION AND EQUALITY 14-15 (2009), available at <http://www.rsc.ox.ac.uk/publications/policy-briefings/RSCP3-Statelessness.pdf/view>; REGIONAL EXPERT ROUNDTABLE, *supra* note 2, at 3.

<sup>33</sup> UNICEF, *Deficient Birth Registration in Developing Countries*, 24 POPULATION & DEV. REV. 659, 662 (1998).

<sup>34</sup> NICOLA SHARP, UNIVERSAL BIRTH REGISTRATION—A UNIVERSAL RESPONSIBILITY 11 (2005), available at <http://plan-international.org/birthregistration/files/ubr-launch-report-english>.

<sup>35</sup> ASIAN DEVELOPMENT BANK, LEGAL IDENTITY FOR INCLUSIVE DEVELOPMENT 79 (2007), available at <http://www.adb.org/publications/legal-identity-inclusive-development>.

<sup>36</sup> *Id.* at 76.

<sup>37</sup> *Id.* at 56-57; GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 20.

<sup>38</sup> ASIAN DEVELOPMENT BANK, *supra* note 35, at 76.

<sup>39</sup> VAN WAAS, *supra* note 5, at 33; HANDBOOK FOR PARLIAMENTARIANS, *supra* note 19, at 33.



naturalized citizens.<sup>41</sup> Often, home countries do not notify individuals that they risk losing their citizenship when moving abroad.<sup>42</sup> In addition to laws that revoke citizenship based on time spent away from the state, citizenship can be automatically revoked when an individual behaves in a way inconsistent with their loyalty to the state, such as pledging a formal oath of allegiance to a foreign state or voluntarily serving in the armed forces of a foreign state.<sup>43</sup>

In Burma, for example, the Burmese military *junta* rendered as many as 2 million former Burmese citizens stateless after they fled Burma for Thailand.<sup>44</sup> Burma's citizenship law provides that any citizen leaving the country permanently ceases to be a citizen<sup>45</sup> and reports indicate that the Burmese government deemed individuals who left without government approval to have left the country permanently—stripping them of their citizenship.<sup>46</sup> These revocations are permanent, worsening the problem. Article 22 of Burma's Citizenship Law prevents former citizens from reapplying for citizenship.<sup>47</sup>

#### 4. *State Succession or Dissolution Causes Statelessness*

Historically, the dissolution of states and the transfer of territory from one state to another have been major causes of statelessness.<sup>48</sup> This occurs when a state dissolves, when a colony becomes independent, or when a successor state wholly or partially succeeds a predecessor state.<sup>49</sup> During the transition, individuals are sometimes overlooked or affirmatively rejected as part of the successor state, resulting in statelessness.<sup>50</sup>

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<sup>40</sup> GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 9 (2010) (referencing Indonesia).

<sup>41</sup> HANDBOOK FOR PARLIAMENTARIANS, *supra* note 19, at 41.

<sup>42</sup> *Id.* at 33.

<sup>43</sup> VAN WAAS, *supra* note 5, at 79.

<sup>44</sup> *Id.* at 168.

<sup>45</sup> Pyithu Hluttaw Law No. 4 of 1982 [Burma Citizenship Law] (promulgated by the Chairman of the Council of State, published Oct. 16, 1982) para. 16 (Myan.) [hereinafter Burma Citizenship Law].

<sup>46</sup> Nyo Nyo, *Burmese Children in Thailand: Legal Aspects*, 10 LEGAL ISSUES ON BURMA 51, 54 (2001).

<sup>47</sup> Burma Citizenship Law, para. 22 (Myan.).

<sup>48</sup> Weissbrodt & Collins, *supra* note 12, at 261. Much has been written on state succession as a cause of statelessness. For further discussion on this topic, see Special Rapporteur Vaclav Mikulka, *First Report on State Succession and its Impact on the Nationality of Natural and Legal Persons*, U.N. Doc. A/CN.4/467 (Apr. 17, 1995).

<sup>49</sup> HANDBOOK FOR PARLIAMENTARIANS, *supra* note 19, at 34; VAN WAAS, *supra* note 5, at 123.

<sup>50</sup> VAN WAAS, *supra* note 5, at 123.

### 5. *Arbitrary and Discriminatory Denial of Citizenship Results in Statelessness*

Statelessness often results when a state arbitrarily and discriminatorily denies or revokes an individual's citizenship. This generally occurs when citizenship is withheld or revoked based on an arbitrary consideration such as ethnicity.<sup>51</sup> While international law has substantially curtailed a state's right to deny citizenship on arbitrary grounds, states have nonetheless continued to deny citizenship arbitrarily, resulting in statelessness.<sup>52</sup> This discrimination is not limited to explicit provisions of national legislation, but also occurs at the administrative level when the required documents are inaccessible to stateless persons or when there is no meaningful avenue for appeal.<sup>53</sup>

Some national legislation explicitly forecloses the possibility of becoming a citizen if the individual belongs to a certain ethnic group.<sup>54</sup> Statelessness may also occur when facially neutral laws are applied in a discriminatory manner<sup>55</sup> or when a state unjustifiably places onerous administrative fees or obligations on some, but not all, individuals.<sup>56</sup>

### 6. *State Withdrawal of Citizenship Causes Statelessness*

Many states have withdrawn the citizenship of large groups of minorities in a single act.<sup>57</sup> This is a particularly devastating variation on the arbitrary and discriminatory revocation of citizenship<sup>58</sup> that historically occurs during times of political restructuring or periods of influential and exclusive nationalist ideologies.<sup>59</sup> It occurred after the First World War in Western Europe, Turkey, and the Soviet Union, and more recently with

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<sup>51</sup> *Id.* at 97.

<sup>52</sup> *Id.* at 36, 95; see also REGIONAL EXPERT ROUNDTABLE, *supra* note 2, at 2 (discussing post-colonial Burma, hill tribes in Thailand, ethnic Chinese in Brunei, and ethnic minorities in Cambodia).

<sup>53</sup> Gay McDougall, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development: Report of the independent expert on minority issues*, para. 27, Feb. 28, 2008, U.N. Doc. A/HRC/7/23; see also OPEN SOCIETY JUSTICE INITIATIVE, RACIAL DISCRIMINATION AND THE RIGHTS OF NON-CITIZENS 5 (2004).

<sup>54</sup> For instance, Burma's citizenship law identifies certain ethnic groups who are granted citizenship automatically, and provides the Council of State the right to "decide whether any ethnic group is a national or not." Burma Citizenship Law, para. 4 (Myan.).

<sup>55</sup> VAN WAAS, *supra* note 5, at 113.

<sup>56</sup> See, e.g., REGIONAL EXPERT ROUNDTABLE, *supra* note 2, at 2-3 (discussing post-colonial Burma, hill tribes in Thailand, ethnic Chinese in Brunei, and ethnic minorities in Cambodia).

<sup>57</sup> REFUGEE STUDIES CENTRE, *supra* note 32, at 10.

<sup>58</sup> See *supra* Part II.B.5.

<sup>59</sup> REFUGEE STUDIES CENTRE, *supra* note 32, at 10.

ethnic Nepalese communities in Bhutan and non-Arab populations in Mauritania.<sup>60</sup>

#### 7. *Laws Affecting Women Result in Statelessness*

Laws that adversely affect women are one of the leading causes of statelessness worldwide.<sup>61</sup> These laws can take a variety of forms. In some cases, a woman may lose her citizenship upon marrying a man from a foreign state and become stateless if she does not automatically become a citizen of her husband's state, or after the marriage dissolves.<sup>62</sup> The dissolution of a marriage may render either partner stateless, but historically it has disproportionately affected women.<sup>63</sup> In other cases, a woman is barred from passing her nationality onto her children.<sup>64</sup> This creates a problem when the child is born out of wedlock, the husband denies parentage, the husband has no nationality, or the husband refuses to legitimize the child.<sup>65</sup>

#### 8. *Transnational Migration Often Results in Statelessness*

Migrants comprise approximately 3% of the global population.<sup>66</sup> Individuals or entire populations are at risk of statelessness when they voluntarily migrate, are expelled from their home states, or flee one state to another. Legal, social, and linguistic barriers keep many migrants from accessing resources that are critical to preventing their children from becoming stateless, particularly when they are unable to access birth registration systems.<sup>67</sup> The children of migrants are often unable to prove parentage and place of birth, particularly in irregular migrant populations

<sup>60</sup> *Id.* at 10, 12; SOUTHWICK & LYNCH, *supra* note 2, at 2-3, 41.

<sup>61</sup> U.S. Sec'y of State Hillary Clinton, *Remarks at the United Nations High Commissioner for Refugees Ministerial on the 60th Anniversary of the Refugee Convention*, Dec. 7, 2011, U.N. Doc. PRN 2011/T57-18.

<sup>62</sup> *See supra* Part II.B.1; *see also* HANDBOOK FOR PARLIAMENTARIANS, *supra* note 19, at 33; VAN WAAS, *supra* note 5, at 64 (conflict of law), 71 (divorce).

<sup>63</sup> Lung-chu Chen, *Equal Protection of Women in Reference to Nationality and Freedom of Movement*, 69 AM. SOC'Y INT'L L. PROC. 18, 19 (1975).

<sup>64</sup> REFUGEE STUDIES CENTRE, *supra* note 32, at 14; GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 10.

<sup>65</sup> HANDBOOK FOR PARLIAMENTARIANS, *supra* note 19, at 32.

<sup>66</sup> U.N. Dep't of Econ. & Soc. Affairs Population Division, *International Migration Report 2009: A Global Assessment*, xviii, U.N. Doc. ST/ESA/SER.A/316 (Dec. 2011), available at <http://www.un.org/esa/population/publications/migration/WorldMigrationReport2009.pdf>.

<sup>67</sup> VAN WAAS, *supra* note 5, at 164.

that lack access to the formal legal mechanisms that are required to become eligible for citizenship.<sup>68</sup>

Three categories of migrants suffer statelessness more than others. First, migrants who lose their citizenship because they migrated to a new state without first attaining citizenship elsewhere are at particular risk of statelessness.<sup>69</sup> Second, children of migrants who reside in countries that link citizenship solely to parentage are at particular risk for statelessness because they do not have the requisite parentage.<sup>70</sup> Third, children of migrants in states with poorly functioning birth registration systems are at particular risk because, as discussed above, it is unlikely that their new home state will have a record of their birth and they will be unable to sufficiently document their claim to citizenship.<sup>71</sup>

#### 9. *Abandoned and Orphaned Children are Often Stateless*

Children that are abandoned for political, social, or economic reasons and orphans without documented parentage are often rendered stateless.<sup>72</sup> It is difficult to establish the identity of these children because often nothing is known about their place of birth nor about their parents' nationality.<sup>73</sup> This cause of statelessness is not insignificant; UNHCR has reported finding thousands of stateless children in orphanages.<sup>74</sup>

#### C. *The Combined Consequences of Statelessness Prevent Individuals from Exercising Their Basic Human Rights*

The consequences of statelessness are incredibly severe and they pervade every aspect of a stateless person's life. In Thailand, for instance, stateless individuals cannot own real property, they face detention for their status as stateless, and they are unable to access basic social services such as

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<sup>68</sup> *Id.* at 165.

<sup>69</sup> An individual can be rendered stateless simply by migrating to a new state if the laws of the migrant's state automatically revoke citizenship after a citizen has been absent from the country for a predetermined period of time. See *supra* Part II.B.3. This is a particularly risky situation for irregular immigrants because their presence is undocumented and they are unable to qualify as being "lawfully present" for the purposes of the naturalization laws of the state—a prerequisite for naturalizing in every state. VAN WAAS, *supra* note 5, at 168 (discussing the situation of 2 million stateless, irregular Burmese migrants residing in Thailand).

<sup>70</sup> VAN WAAS, *supra* note 5, at 168.

<sup>71</sup> *Id.* at 169 (noting that this is particularly true for irregular immigrants).

<sup>72</sup> *Id.* at 68-69.

<sup>73</sup> *Id.* at 69.

<sup>74</sup> CAROL BATCHELOR, THE INTERNATIONAL LEGAL FRAMEWORK CONCERNING STATELESSNESS AND ACCESS FOR STATELESS PERSONS 2-3 para. 4 (2002), available at <http://www.unhcr.org/refworld/docid/415c3be44.html> (E.U. Seminar on the Content and Scope of International Protection).

education and healthcare.<sup>75</sup> The severity of these consequences can be offset in states that guarantee certain rights to stateless individuals.<sup>76</sup> However, no member of the Association of Southeast Asian Nations (“ASEAN”) has procedures for designating an individual as stateless.<sup>77</sup> Instead, the protection of stateless individuals is, under the best of circumstances, dealt with on an *ad hoc*, case-by-case basis.<sup>78</sup> This approach threatens stateless individuals’ civil and political rights.

### 1. *Statelessness Undermines Individuals’ Social and Economic Rights*

The social costs of statelessness are severe. In most Southeast Asian countries, secondary education is not accessible without proof of citizenship.<sup>79</sup> Even when education is provided, the surrounding economic and social pressures prevent stateless children from attending school.<sup>80</sup> These individuals are often unable to access, or unable to afford, basic health care services.<sup>81</sup> In many states, the right to marry is linked to citizenship.<sup>82</sup>

Stateless individuals in Southeast Asia face severe economic insecurity. In many places, they are precluded from seeking traditional employment<sup>83</sup> or owning property.<sup>84</sup> When they are successful in accessing traditional employment, they often encounter “poor working conditions, including difficult, dangerous, and dirty jobs; verbal abuse; violence; racism; discriminatory attitudes; cramped living conditions; intimidating workplace

<sup>75</sup> VITAL VOICES, *supra* note 6, at 11.

<sup>76</sup> See, e.g., REFUGEE STUDIES CENTRE, *supra* note 32, at 17-18.

<sup>77</sup> REGIONAL EXPERT ROUNDTABLE, *supra* note 2, at 25 (noting that no ASEAN nations have stateless determination procedures nor do they recognize stateless persons, but only refugee status); see also *infra* Part III.A (discussing protections for stateless people embodied in the 1954 Convention). ASEAN is comprised of the following states: Brunei Darussalam, Cambodia, Indonesia, Malaysia, Burma, Philippines, Singapore, Thailand, Vietnam, and the People’s Democratic Republic of Laos. *ASEAN Member States*, ASEANWEB, available at <http://www.aseansec.org/18619.htm>.

<sup>78</sup> REGIONAL EXPERT ROUNDTABLE, *supra* note 2, at 25.

<sup>79</sup> GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 3. This, however, appears to be one problem that is being addressed. Thailand recently passed legislation to provide free secondary education. THAI MINISTRY OF EDUCATION, ASSESSMENT OF EDUCATION FOR ALL, § 2.3 (2000), available at [http://www.unesco.org/education/wef/countryreports/thailand/rapport\\_1.html](http://www.unesco.org/education/wef/countryreports/thailand/rapport_1.html). Malaysia has also recently recognized the importance of education for stateless populations residing in the country, and the modest cost of providing this education. GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 23.

<sup>80</sup> In Thailand for instance, a recent UNHCR study found stateless youth are 73% less likely to enter primary school and 98% less likely to progress to higher education. GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 7.

<sup>81</sup> REFUGEE STUDIES CENTRE, *supra* note 32, at 6.

<sup>82</sup> VAN WAAS, *supra* note 5, at 12.

<sup>83</sup> See M. LYNCH, LIVES ON HOLD: THE HUMAN COST OF STATELESSNESS I (2005), available at <http://www.refugeesinternational.org/policy/in-depth-report/lives-hold-human-cost-statelessness>; ELIZABETH FERRIS, THE POLITICS OF PROTECTION: THE LIMITS OF HUMANITARIAN ACTION 53 (2011).

<sup>84</sup> *Id.*

environments; and low salaries (which are often withheld).<sup>85</sup> Additionally, stateless individuals typically lack access to formal credit markets and are unable to open bank accounts.<sup>86</sup> The cumulative effect of these hardships produces economic insecurity and an environment ripe for exploitation. In Malaysia, for example, the inaccessibility of traditional employment forces some stateless individuals to resort to criminal activities, begging, and prostitution.<sup>87</sup>

The combined effect of these structural vulnerabilities put stateless people at particular risk for trafficking. This connection has been especially well documented in Thailand.<sup>88</sup> There, stateless ethnic minority populations lack access to formal employment opportunities outside of their villages because noncitizens have restricted travel passes that only allow for short stays away from their villages.<sup>89</sup> They also cannot own land<sup>90</sup> and do not have access to state-subsidized health care.<sup>91</sup> The movement of noncitizens is greatly restricted, which worsens their economic position, forces them to make difficult and dangerous decisions,<sup>92</sup> and prevents them from reaching out to the authorities for assistance once trafficked.<sup>93</sup>

## 2. *Statelessness Threatens Individuals' Basic Civil and Political Rights*

Stateless individuals lack a voice in a state's political dialogue, which further marginalizes their position. Without citizenship, a person cannot assert his or her basic civil and political rights.<sup>94</sup> Stateless populations cannot stand for election, nor can they vote.<sup>95</sup> In Southeast Asia, stateless individuals also face unwarranted detention and arrest by authorities because the laws there are ill-equipped to deal with the needs of stateless

<sup>85</sup> U.N. Comm'n on Hum. Rts., *Prevention of Discrimination: The Rights of Noncitizens*, para. 11, U.N. Doc. E/CN.4/Sub.2/2003/23/Add.3 (May 26, 2003) [hereinafter UNCHR] (in 2006 the UNCHR was replaced by the U.N. Human Rights Council).

<sup>86</sup> SOUTHWICK & LYNCH, *supra* note 2, at 3.

<sup>87</sup> REGIONAL EXPERT ROUNDTABLE, *supra* note 2, at 29 n.189.

<sup>88</sup> See generally David Feingold, *UNESCO Promotes Highland Citizenship and Birth Registration to Prevent Human Trafficking*, UNESCO BANGKOK NEWSLETTER ISSUE 8, Sept. 2006, at 5, available at <http://unesdoc.unesco.org/images/0015/001556/155635e.pdf>; see also VITAL VOICES, *supra* note 6.

<sup>89</sup> VITAL VOICES, *supra* note 6, at 12.

<sup>90</sup> *Thailand*, U.S. DEP'T OF STATE (Mar. 8, 2006), available at <http://www.state.gov/j/drl/rls/hrrpt/2005/61628.htm>.

<sup>91</sup> As non-citizens, stateless individual cannot benefit from the "30-baht plan" and other public health services available to Thai citizens. KAREN LEITER & CHRIS BREYER, *NO STATUS: MIGRATION, TRAFFICKING, AND EXPLOITATION OF WOMEN IN THAILAND* 2, 45, June 2004, available at <http://physiciansforhumanrights.org/library/reports/no-status-women-in-thailand-2004.html>.

<sup>92</sup> VITAL VOICES, *supra* note 6, at 12.

<sup>93</sup> *Id.* at 14.

<sup>94</sup> VAN WAAS, *supra* note 5, at 3.

<sup>95</sup> *Id.*

populations.<sup>96</sup> The increased likelihood of arrest coupled with the lack of voting rights makes it difficult for stateless populations to stage demonstrations and protests—their only remaining political rights.<sup>97</sup>

Stateless populations also remain at risk of displacement and mass expulsion.<sup>98</sup> This most often occurs when nationality has been arbitrarily stripped for a discriminatory reason, such as ethnicity.<sup>99</sup> The consequences of displacement are severe. It deprives people of the essentials of life, including food, shelter, community, education, and a resource base for self-reliance.<sup>100</sup>

### III. INTERNATIONAL AGREEMENTS PROTECT AGAINST AND PREVENT STATELESSNESS, BUT DOMESTIC LEGISLATION ALSO HAS THE POWER TO REDUCE INSTANCES OF STATELESSNESS

International law, most notably Article 15 of the Universal Declaration of Human Rights, clearly establishes an individual's "right to a nationality."<sup>101</sup> Despite recognizing this right, subsequent international agreements have aimed to protect existing stateless populations and prevent future cases of statelessness instead of working to reduce current instances of statelessness. International instruments are largely silent on the how and when to reduce existing cases of statelessness, and they provide little guidance in the subject. Despite the international community's silence, many Southeast Asian states have experimented with legislation to reduce statelessness, some with considerable success.

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<sup>96</sup> Weissbrodt & Collins, *supra* note 12, at 267-68.

<sup>97</sup> For an example of this occurring in South Asia, see Paula Banerjee, *Women, Trafficking, and Statelessness in South Asia*, 27 REFUGEE WATCH CATALOGUE 42, 42-51, June 2006, available at <http://www.mcrg.ac.in/cata.htm>.

<sup>98</sup> REGIONAL EXPERT ROUNDTABLE, *supra* note 2, at 1; REFUGEE STUDIES CENTRE, *supra* note 32, at 16.

<sup>99</sup> McDougall, *supra* note 53, para. 24.

<sup>100</sup> Francis M. Deng, *Divided Nation: The Paradox of National Protection*, 603 ANNALS AM. ACAD. POL. & SOC. SCI. 217, 218 (2006).

<sup>101</sup> Universal Declaration of Human Rights art. 15(1), Dec. 10, 1948, U.N. Doc. A/810 at 71. The right to a nationality has also been posited for particularly at-risk groups of individuals in subsequent international conventions. See, e.g., International Convention on the Elimination of Racial Discrimination art. 5, Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969, ensuring racially and ethnically neutral enjoyment of the right to a nationality); International Covenant on Civil and Political Rights art. 24, Dec. 16, 1966, 999 U.N.T.S. 171 (stating, "[e]very child has the right to a nationality"); The Convention on the Elimination of All Forms of Discrimination against Women art 9, Dec. 19, 1966, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981, requiring that women have an equal right to a nationality as men).

A. *While Calling for a Reduction in Statelessness, the 1954 and 1961 Conventions Do Not Provide Adequate Direction on Reducing Existing Cases of Statelessness*

The 1954 Convention develops protective measures to safeguard the rights of stateless persons.<sup>102</sup> The primary purpose of the 1954 Convention is to protect the rights of stateless persons residing within the territory of a state and advance the proposition that no stateless person should be treated worse than any foreigner who possesses nationality.<sup>103</sup> Chapter I defines statelessness and establishes the general obligations and principles of the Convention.<sup>104</sup> Chapters II through V define the juridical, employment, welfare, and administrative measures contracting states are obliged to take to protect stateless persons.<sup>105</sup>

The 1961 Convention provides specific guidance on preventing new cases of statelessness by enumerating safeguards that can be incorporated into national legislation.<sup>106</sup> The title of the 1961 Convention (Convention on the Reduction of Statelessness) is a bit misleading. The original title of the convention was “the Draft Convention on the Reduction of Future Statelessness”<sup>107</sup> and it was predicated on the idea that statelessness can only be avoided through international cooperation and robust national legislation that ensures no person “falls through the cracks.”<sup>108</sup>

The 1961 Convention creates four broad categories of protected stateless persons.<sup>109</sup> Articles 1 through 4 articulate protections for children born in the state. Articles 5 through 7 protect those who renounce or lose their nationality, conditioning any renunciation or withdrawal of citizenship upon acquisition of another nationality.<sup>110</sup> Articles 8 and 9 protect against arbitrary and discriminatory deprivations of nationality, ensuring due process and equal protection when conferring and withdrawing citizenship. Finally, Article 10 addresses statelessness in the context of state succession, requiring contracting states to ensure that any state transfer of territory

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<sup>102</sup> UNHCR, PROTECTING THE RIGHTS OF STATELESS PERSONS: THE 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS 4 (2010), available at <http://www.unhcr.org/4ca5941c9.html> [hereinafter PROTECTING THE RIGHTS OF STATELESS PERSONS: THE 1954 CONVENTION].

<sup>103</sup> *Id.*

<sup>104</sup> 1954 Convention, *supra* note 13, ch. I.

<sup>105</sup> *See id.* ch. II-V.

<sup>106</sup> UNHCR, PREVENTING AND REDUCING STATELESSNESS: THE 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS 1 (2010), available at <http://www.unhcr.org/4ca5937d9.html> [hereinafter PREVENTING AND REDUCING STATELESSNESS: THE 1961 CONVENTION].

<sup>107</sup> VAN WAAS, *supra* note 5, at 42.

<sup>108</sup> PREVENTING AND REDUCING STATELESSNESS: THE 1961 CONVENTION, *supra* note 106, at 2.

<sup>109</sup> *Id.* at 4.

<sup>110</sup> *See generally* 1961 Convention, *supra* note 15.



includes provisions “designed to secure that no person shall become stateless as a result of the transfer.”<sup>111</sup>

Both conventions call for the reduction of existing cases of statelessness through nationalization, but they do so indirectly and provide very little guidance on achieving this obligation. This is, in part, due to the fact that no United Nations (“UN”) Treaty Monitoring Body monitors or provides general recommendations on either convention.<sup>112</sup> The Conventions themselves are also to blame. Article 23 of the 1954 Convention calls on contracting states to “facilitate the assimilation and naturalization of stateless persons.”<sup>113</sup> However, the extent of this obligation is ambiguously limited by the phrase “as far as is possible.”<sup>114</sup> The obligation to facilitate naturalization is further weakened by the reservations and declarations of eleven states, disclaiming any obligation under this provision or accepting it only “so far as the law allows.”<sup>115</sup>

The 1961 Convention obligates contracting states to nationalize certain discrete classes of stateless persons. Article 1 obligates contracting states to grant nationality to anyone born in its territory who would otherwise be stateless by operation of law, or upon application to the appropriate authority “in the manner prescribed by the national law,”<sup>116</sup> and subject to certain conditions.<sup>117</sup> Article 1 also requires that a stateless person whose father or mother were nationals of the state be granted nationality by “the manner prescribed by the national law.”<sup>118</sup> Finally, Article 2 calls upon states to grant nationality to foundlings.<sup>119</sup>

Despite these obligations, the 1961 Convention does not provide adequate protection and guidance to effectively reduce statelessness. First, in many Southeast Asian states ineffective birth registration systems make it

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<sup>111</sup> *Id.* art. 10(1).

<sup>112</sup> Weissbrodt & Collins, *supra* note 12, at 273.

<sup>113</sup> 1954 Convention, *supra* note 13, art. 23(1).

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

<sup>115</sup> These states include Antigua and Barbuda, Barbados, Fiji, Kiribati, Lesotho, St. Vincent and the Grenadines, Sweden, United Kingdom of Great Britain and Northern Ireland, and the People's Republic of China. The most recent list of signatories and reservations to the 1954 Convention are available on the United Nations website. *Chapter V: Refugees & Stateless Persons*, U.N. TREATY COLLECTION, available at [http://treaties.un.org/pages/ViewDetailsII.aspx?&src=UNTSOLINE&mtdsg\\_no=V-3&chapter=5&Temp=mtdsg2&lang=en](http://treaties.un.org/pages/ViewDetailsII.aspx?&src=UNTSOLINE&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&lang=en).

<sup>116</sup> The 1961 Convention, *supra* note 15, art. 1, para. 1(b).

<sup>117</sup> *Id.* States are permitted to condition nationalization on: 1) residency requirements of up to five years, 2) that the applicant applies within the fixed window, not less than one year, 3) that the person has always been stateless, and 4) that the person has not been convicted of a crime against national security or imprisoned for a term of five or more years. *Id.* art. 1, para. 2 (a-d).

<sup>118</sup> *Id.* art. 1, para. 4.

<sup>119</sup> *Id.* art. 2.

impossible to document a stateless person's place of birth or parentage.<sup>120</sup> Article 1 does not obligate states to nationalize individuals who cannot prove, in the manner prescribed by national law, that they were born in the territory of the state, or that they are children of a national, and hence within the metes and bounds of the protections of Article 1 of the 1961 Convention. By relying on the procedures prescribed by national law, the 1961 Convention leaves open the possibility that state parties may conform to the Convention, but nonetheless host a large population of stateless persons.<sup>121</sup>

Second, the 1961 Convention does not obligate contracting states to safeguard against arbitrary and discriminatory denials of citizenship, limiting its effectiveness to reduce statelessness. While Article 9 ensures that a contracting state "may not deprive any person or group of persons of their nationality on racial, ethnic, religious, or political grounds,"<sup>122</sup> the implementation of Article 1 is left to the "national law" of the state.<sup>123</sup> Nothing obligates or directs individual states to include safeguards against discriminatory laws, policies or administrative practices that result in statelessness, allowing states to continue to discriminate against minorities.<sup>124</sup>

Finally, the 1961 Convention is under-inclusive. The provisions of the 1961 Convention fail to extend protections to four groups of stateless individuals. The provisions of Article 1 necessarily exclude stateless individuals born to non-nationals who have missed the deadline for filing an application for citizenship, individuals who have been convicted of certain crimes, individuals who previously held a nationality, and individuals who have not resided in the state for the requisite period of time.<sup>125</sup> These groups of stateless individuals are significant. First, populations rendered stateless as a result of migration will not meet legal residency requirements.<sup>126</sup> Second, the economic insecurity faced by statelessness drives many to commit crimes,<sup>127</sup> which may disqualify them from relief under the 1961 Convention. Finally, many stateless persons have previously held citizenship, but were later rendered stateless.<sup>128</sup>

<sup>120</sup> See *supra* Part II.B.2.

<sup>121</sup> A recent study in Thailand, for instance, linked the lack of accessible birth registration to statelessness. NICOLA SHARP, *supra* note 34, at 25.

<sup>122</sup> The 1961 Convention, *supra* note 15, art. 9.

<sup>123</sup> See, e.g., *id.* art. 1(1).

<sup>124</sup> See *supra* Part II.B.5. For examples of legislative safeguards, see *infra* Part IV.A.1.a.

<sup>125</sup> 1961 Convention, *supra* note 15, art. 1, para. 2 (a)-(d).

<sup>126</sup> See *id.*

<sup>127</sup> See *supra* Part II.C.1; see also REGIONAL EXPERT ROUNDTABLE, *supra* note 2, at 29 n.189.

<sup>128</sup> See *supra* Part II.B.3 (discussing automatic loss of citizenship); see also *supra* Part II.B.4 (discussing loss of nationality following the dissolution of a state); Part II.B.5 (arbitrary revocation of

In sum, the 1954 and 1961 Conventions provide a framework for protecting stateless individuals and preventing future instances of statelessness, but they fall short of providing guidance on a long-term solution for the 12 million people who are currently stateless. A long-term solution for these individuals requires that the international community identify and enumerate the important legislative provisions and administrative protections that have proven indispensable in reducing existing cases of statelessness. Part IV of this comment begins to construct such a framework for Southeast Asian states.

*B. Domestic Legislation Can Successfully Reduce Instances of Statelessness*

States can address statelessness using domestic legislation in a variety of ways. Legislation can protect the rights of stateless persons,<sup>129</sup> it can authorize the return of stateless persons to their state of habitual residence,<sup>130</sup> or it can naturalize stateless populations that habitually reside in a state.<sup>131</sup> This comment is concerned with reducing statelessness through naturalization, which can be accomplished in one of three ways. Legislation can address individual cases of statelessness, it can target stateless populations in citizenship campaigns, or it can facilitate the naturalization of stateless persons.<sup>132</sup>

Individual cases of statelessness can be addressed through small changes in naturalization laws coupled with individual applications for naturalization or reinstatement of citizenship.<sup>133</sup> As discussed above,<sup>134</sup> thousands of women in Vietnam became stateless after they married foreigners and renounced their Vietnamese citizenship before they obtained citizenship in their spouse's country.<sup>135</sup> Vietnam has recently passed

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citizenship); Part II.B.6 (loss of citizenship following the dissolution of a marriage); Part II.B.7 (withdrawal of citizenship).

<sup>129</sup> GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 17.

<sup>130</sup> UNHCR, UNHCR ACTION TO ADDRESS STATELESSNESS: A STRATEGY NOTE 16, para. 59 (2010), available at <http://www.unhcr.org/4b960ae99.html> [hereinafter UNHCR ACTION TO ADDRESS STATELESSNESS].

<sup>131</sup> *Id.* para 61.

<sup>132</sup> REGIONAL EXPERT ROUNDTABLE, *supra* note 2, at 19-22.

<sup>133</sup> *Id.* at 19.

<sup>134</sup> See *supra* Part II.B.1.

<sup>135</sup> GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 10.

legislation to address these stateless persons<sup>136</sup> and they can now apply to restore their Vietnamese nationality on a case-by-case basis.<sup>137</sup>

Citizenship campaigns specifically target stateless populations.<sup>138</sup> Legislation that naturalizes large populations *en masse* is a common way for this to occur.<sup>139</sup> For example, after Indonesia gained its independence in 1945, many ethnic Chinese migrants lacked Chinese citizenship and were unable to naturalize because they did not have the ability to document their longstanding ties to Indonesia.<sup>140</sup> After petitioning for a solution, a presidential decree in 2000 collectively naturalized 110,000 stateless individuals.<sup>141</sup>

Facilitated naturalization considers individual applications for naturalization, but the procedures and requirements for naturalization are less stringent for stateless individuals.<sup>142</sup> For example, Vietnam has recently passed legislation ordering relaxed naturalization procedures and requirements for stateless individuals permanently residing in the country.<sup>143</sup> The law eliminated fees associated with the naturalization procedures and reduced the requirement for personal identification papers for these individuals.<sup>144</sup>

The problems posed by statelessness vary depending on a state's political and social climate, and legislation to reduce statelessness will need to be tailored to the particularities of a situation. Accordingly, this comment does not recommend any single solution for reducing statelessness. Rather, the following section develops a framework that helps guide and evaluate legislation designed to reduce statelessness within Southeast Asia, relying on the experiences of Cambodia, Vietnam, Thailand, Indonesia, and Burma. Because the literature on this topic is still evolving, this framework is necessarily incomplete. Instead, the following sections outline the lessons that can be drawn from the emerging body of literature in hopes of

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<sup>136</sup> Law on Vietnamese Nationality, Order No. 22 (2008), art. 23(f) [hereinafter Law on Vietnamese Nationality].

<sup>137</sup> REGIONAL EXPERT ROUNDTABLE, *supra* note 2, at 20. The Vietnamese government is developing a study of the beneficiary population and strategies for awareness raising and legal assistance.

<sup>138</sup> *Id.*

<sup>139</sup> It can also occur by decree or administrative order. *Id.*

<sup>140</sup> *Id.* at 21.

<sup>141</sup> *Id.* at 20.

<sup>142</sup> *Id.* at 21-22.

<sup>143</sup> Law on Vietnamese Nationality, art. 8. *See also* Government Decree No. 78 (2009) (Viet.) [hereinafter Government Decree No. 78] (describing and guiding the Law on Vietnamese Nationality art. 8(1) and clarifying that "permanently residing" means "stably residing in the Vietnamese territory since July 1, 1989").

<sup>144</sup> Government Decree No. 78 (Viet.).

encouraging additional study and debate over the essential elements of legislation designed to reduce statelessness through nationalization.

IV. THERE IS SUFFICIENT RESEARCH TO BEGIN DEVELOPING A FRAMEWORK FOR EVALUATING LEGISLATION TO REDUCE EXISTING CASES OF STATELESSNESS IN SOUTHEAST ASIA

International law has developed frameworks to protect existing stateless populations and prevent new cases of statelessness, but there is no framework to reduce statelessness.<sup>145</sup> A successful framework will focus on specific provisions in national legislation. Similar to the 1961 Convention, it will make recommendations for provisions in national legislation and measure legislation against these recommendations. There have been relatively few attempts to construct such a framework based on the experiences of individual states and international experts.<sup>146</sup>

This framework is drawn from the experiences of Cambodia, Vietnam, Thailand, Indonesia, and Burma, as well as from the broad recommendations of international organizations. It will make recommendations against which national legislation designed to reduce statelessness in Southeast Asia can be measured. The purpose of the framework is to provide recommendations to parliamentarians, and to provide an analytic tool for legal scholars evaluating this type of legislation.

A. *All Legislation to Reduce Statelessness Should Include Three Important Provisions, and Legislation to Facilitate the Naturalization of Stateless Should Include Five Additional Provisions*

Nations can reduce stateless populations through naturalization by individual application, citizenship campaigns, or facilitated naturalization.<sup>147</sup> Regardless of the path chosen, the experiences of international organizations and individual states have identified three provisions in national legislation that bear heavily on the success of these pieces of legislation. The following

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<sup>145</sup> See *supra* Part III. The 1961 Convention is the yardstick for measuring national legislation designed to prevent future cases of statelessness, while the 1954 Convention enumerates important protection measures needed to assure stateless persons basic human rights.

<sup>146</sup> For something close to a framework, see UNHCR, STATELESSNESS: AN ANALYTIC FRAMEWORK FOR PREVENTION, REDUCTION AND PROTECTION (2008), available at <http://www.unhcr.org/49a271752.html> [hereinafter STATELESSNESS: AN ANALYTIC FRAMEWORK]. However, the framework is simply a series of questions. *Id.* at 15-17. See also HANDBOOK FOR PARLIAMENTARIANS, *supra* note 19. Unlike the UNHCR framework, which does not note the source of these suggestions, the latter framework seeks to take an empirical approach.

<sup>147</sup> See *supra* Part III.D.

sections explore these provisions, paying particular attention to the experiences of Thailand, Burma, Indonesia, Vietnam, and Cambodia.

1. *Three Important Recommendations Are Applicable to all Legislation Designed to Reduce Statelessness*

Three factors have proven important to the success or failure of all types of legislation designed to reduce statelessness. One of these factors is intrinsic to the legislation, while the other two highlight the importance of outside activities that states engage in before, during, and after the legislation is passed.

a. *Legislation should Safeguard Against Arbitrary Denial of Citizenship by Including Principles of Nondiscrimination, Ensuring the Right to Appeal, and Removing Reference to Ethnicity from Nationalization Laws*

While the apparent causes of statelessness are technical and legal, discrimination on racial, ethnic, religious, linguistic, and other grounds often plays a substantial role in causing statelessness.<sup>148</sup> Reducing statelessness requires undoing the subtle force of discrimination. A recent report by UNHCR reported on a thematic investigation into the effects of discrimination on the acquisition of nationality and concluded that nationalization laws and practices systematically deny nationality to minorities that are disfavored by a state.<sup>149</sup>

The situation of ethnic Rohingya in Burma demonstrates the way in which discrimination can stand in the way of efforts to reduce statelessness. The Rohingya are a Muslim ethnic group descended from the northern Arakan region of Burma,<sup>150</sup> and they are forbidden from marrying or traveling without permission.<sup>151</sup> They are also often singled out by police for beatings and forced to perform labor.<sup>152</sup>

The Rohingya do not qualify for citizenship under Burma's 1982 Citizenship Law.<sup>153</sup> This law provides the Council of State with the authority to determine whether the Rohingya are among the ethnic groups

<sup>148</sup> UNHCR ACTION TO ADDRESS STATELESSNESS, *supra* note 130, at 25.

<sup>149</sup> McDougall, *supra* note 53, at 15, paras. 44-45.

<sup>150</sup> *Burma [Myanmar]: Information on Rohingya Refugees*, UNHCR REF WORLD (1999), <http://www.unhcr.org/refworld/country,,USCIS,,MMR,,3ae6a6a41c,0.html> (last visited May 1, 2012).

<sup>151</sup> Mike Thompson, *Burma's Forgotten Rohingya*, BBC NEWS (Mar. 11, 2006).

<sup>152</sup> *Id.*

<sup>153</sup> Nurul Islam, *Rohingyas Should Not Be Treated in Hostile Way*, WEEKLY BLITZ (Mar. 3, 2010), <http://www.weeklyblitz.net/576/rohingyas-should-not-be-treated-in-hostile-way> (last visited May 1, 2012); *see also* Burma Citizenship Law, ch. 1, arts. 3, 4.

that may be granted nationality.<sup>154</sup> This decision is made in conjunction with the Central Body, which has sweeping powers to determine citizenship policy.<sup>155</sup> The Council of State has not designated the Rohingya as citizens under the law,<sup>156</sup> and consequently hundreds of thousands of Rohingya remain stateless.<sup>157</sup>

This framework proposes three legislative safeguards that ensure nondiscrimination and equal protection of stateless people when applying for nationalization. First, legislation should ensure the right to appeal before an independent tribunal. The right to effective appeal is a necessary component of legislation to safeguard against discrimination.<sup>158</sup> Second, legislation should enshrine principles of equal protection and nondiscrimination within the body of the act to protect against discrimination by providing a guiding principle for those enacting the legislation.<sup>159</sup> Finally, legislation should remove references to ethnicity from the state's nationality laws.

An example from Indonesia illustrates the importance of this final safeguard. Prior to 2000, at least 209,000 ethnic Chinese were stateless.<sup>160</sup> In 2006, Indonesia passed legislation abolishing the distinction between indigenous and non-indigenous groups in their nationalization law.<sup>161</sup> Abolishing this distinction allowed over 3,000 stateless ethnic Chinese who were previously ineligible for citizenship to nationalize.<sup>162</sup>

*b. The State Should Engage in Awareness Campaigns that Target Stateless Persons*

In order for legislation to be successful, stateless populations must be aware of the new legislation and understand the importance of obtaining citizenship. Targeted awareness campaigns that aim to educate at-risk

<sup>154</sup> Burma Citizenship Law, ch. 1, art. 3.

<sup>155</sup> Islam, *supra* note 153; *see also* Burma Citizenship Law, ch. 1, arts. 2(i), 35.

<sup>156</sup> Islam, *supra* note 153.

<sup>157</sup> Palash R. Ghosh, *Burma: The Tragedy of the Rohingya People*, INT'L BUS. TIMES (Jan. 6, 2012), <http://www.ibtimes.com/articles/277760/20120106/burma-myanmar-rohingya-refugees-bangladesh-thailand-malaysia.htm> (last visited May 1, 2012).

<sup>158</sup> MAGDALENA SEPULVEDA ET AL., UNIVERSAL AND REGIONAL HUMAN RIGHTS PROTECTION: CASES AND COMMENTARIES 560 (2004), *available at* <http://www.hrc.ucepeace.org/files/universal%20and%20regional%20human%20rights%20protection.pdf>.

<sup>159</sup> These principles should prohibit both direct and indirect discrimination. *See, e.g., id.* at 130-45 (discussing the importance that these provisions played in protecting against discrimination in two cases from the European Court of Human Rights and the Inter-American Court).

<sup>160</sup> SOUTHWICK & LYNCH, *supra* note 2, at 37. This is the number of officially registered stateless ethnic Chinese; the total number is unknown. *Id.*

<sup>161</sup> Citizenship Law of the Republic of Indonesia, Law No. 12 (2006) [hereinafter *Citizenship Law of Indonesia*]; GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 18.

<sup>162</sup> GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 18.

populations about the importance of obtaining a nationality have proven to help guarantee the success of legislative reform.<sup>163</sup> These campaigns remain important because stateless people often do not initially understand the importance of obtaining citizenship.<sup>164</sup>

UNHCR's experience in Southeast Asia suggests that know-your-rights campaigns encourage participation when stateless populations are otherwise reluctant to take part in the citizenship process.<sup>165</sup> Television and radio broadcasts, informational posters, and leaflets have all proven to be effective means by which to raise awareness.<sup>166</sup> These measures are particularly effective when the government leverages partnerships with community leaders and civil service organizations to spread the word and encourage participation.<sup>167</sup> As demonstrated in Cambodia, engaging local community leaders, religious leaders, and teachers can play a vital role in building trust and developing an understanding of programs in stateless communities.<sup>168</sup> The campaign in Cambodia was incredibly successful, registering over 90% of the country's population, or 12.78 million people, between 2002 and 2008.<sup>169</sup>

*c. Legislators and Stakeholders Should Be Made Aware of the Situation Facing Stateless Persons before Drafting Legislation*

UNHCR, through the experiences in its field offices, has found that awareness-raising and sensitivity sessions with legislators and other stakeholders help prepare these individuals to appropriately and adequately address the causes and consequences of statelessness.<sup>170</sup> Trainings help legislators understand and appreciate the causes of statelessness, recognize the vulnerable situation in which these individuals find themselves, and appreciate the costs that statelessness imposes on society as a whole.<sup>171</sup>

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<sup>163</sup> *Id.* at 20.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 21.

<sup>166</sup> REGIONAL EXPERT ROUNDTABLE, *supra* note 2, at 16-20 (discussing successful approaches taken in Cambodia and the Philippines).

<sup>167</sup> GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 20, 27; REGIONAL EXPERT ROUNDTABLE, *supra* note 2, at 15.

<sup>168</sup> *See supra* Part II.B.2.

<sup>169</sup> *Cambodia: Impact of the Universal Birth Registration Campaign*, PLAN INTERNATIONAL [hereinafter PLAN INTERNATIONAL], available at <http://plan-international.org/birthregistration/resources/country-case-studies/cambodia>.

<sup>170</sup> UNHCR ACTION TO ADDRESS STATELESSNESS, *supra* note 130, at 17-18, paras. 65-66.

<sup>171</sup> UNHCR field offices have found that introducing legislators to the relevant international standards and information on statelessness helps to mobilize them. *Id.*



2. *Legislation to Facilitate the Naturalization of Stateless Persons Should Contain Five Important Provisions*

According to field officers at the UNHCR, small-scale nationalization programs offer the best opportunities for facilitating a reduction in statelessness.<sup>172</sup> Although the 1961 Convention prescribes some of the provisions outlined below,<sup>173</sup> this framework bases its recommendations on the experiences of individual states and experts who work to craft and evaluate legislation designed to reduce statelessness.

a. *Legislation Should Relax and Tailor Documentation Requirements for Stateless Persons When Applying for Naturalization*

Most stateless individuals will have difficulty proving their birthplace, the amount of time they have been residing in a host state, and other common documentation requirements found in national laws.<sup>174</sup> As a result of being stateless, they lack access to the formal administrative structures that create the paper trail necessary to document such requirements.<sup>175</sup> Without reducing and tailoring documentation requirements for stateless individuals, facilitated nationalization legislation will be significantly less effective because stateless individuals, by virtue of being stateless, simply do not have access to the requisite documents.

Thailand's multiple attempts to facilitate the naturalization of stateless ethnic minorities living in the north illustrate the importance of tailoring documentation requirements. The problem began in 1956 when a large number of Hmong, Akha, Karen, Lahu, Lisu, and Mien ethnic minorities living in the mountainous regions of northern Thailand were excluded from the first national census—rendering them stateless.<sup>176</sup> The Royal Thai Government first attempted to address this problem by issuing temporary residency permits and granting leniency to various ethnic minority populations.<sup>177</sup> However, this leniency proved to be a double-edged sword.

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<sup>172</sup> *Id.* at 13 para. 45.

<sup>173</sup> *See, e.g.*, 1961 Convention, *supra* note 15, art. 4 (calling for reduced residency requirements for stateless persons habitually residing in a state where they were not born); *see also* 1954 Convention, *supra* note 13, art. 4.

<sup>174</sup> *See supra* Part II.B.2; *see also* Milbrandt, *supra* note 18, at 92.

<sup>175</sup> *See supra* Part II.B.2; *see also* Milbrandt, *supra* note 18, at 99.

<sup>176</sup> Yindee Lertcharoenchok, *Searching for Identity*, STEP BY STEP (UN Inter-Agency Project Newsletter, Issue 5, Bangkok, Thai.), 2001, at 1, 4, *available at* <http://www.no-trafficking.org/content/pdf/issue5.pdf>.

<sup>177</sup> UNESCO, CITIZENSHIP MANUAL: CAPACITY BUILDING ON BIRTH REGISTRATION AND CITIZENSHIP IN THAILAND 48 (2008), *available at* <http://unesdoc.unesco.org/images/0016/001621/162153e.pdf> [hereinafter UNESCO CITIZENSHIP MANUAL].

Prior to a clarification to the nationalization law in 2000, it prevented individuals who were given leniency by the Thai government, as well as those given temporary residency permits and irregular immigrants, from naturalizing.<sup>178</sup>

This law was clarified in 2000, permitting stateless children born to ethnic minorities to nationalize if they are able to demonstrate that their parents entered Thailand prior to October 4, 1985 and that they were born in Thailand.<sup>179</sup> However, stateless ethnic minorities in this region encounter social stigma, corruption, language barriers, and difficult administrative hurdles that prevent them from registering the birth of their children and documenting the date they entered Thailand.<sup>180</sup> These stringent documentation requirements ignore the fact that children born to parents who entered prior to this date cannot meet this high evidentiary burden because they lack the needed documents.<sup>181</sup> As a result, hundreds of thousands of villagers were without a nationality.<sup>182</sup> Perhaps recognizing this deficiency, the Thai Government enacted legislation in 2008 to grant nationality to all children born in Thailand.<sup>183</sup>

*b. Legislation Should Reduce the Fees Associated with Nationalization and Relax Administrative Deadlines*

Two large hurdles to attaining citizenship are the costs associated with the application process and the tight administrative deadlines that pervade most national legislation.<sup>184</sup> Stateless individuals living in remote areas will find it difficult to make use of facilitated naturalization legislation unless legislators relax deadlines associated with the naturalization process. This is because normal nationalization procedures require individuals to apply at government offices situated in urban centers, which require stateless persons

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<sup>178</sup> Nationalization Act, No. 4 (2008), § 7 paras. 1-3 (Thai.) [hereinafter Thailand Nationalization Act] (as clarified by Regulation 2000 of the Nationality Act (Aug. 29, 2000)). For a discussion of the 2000 clarification, see THAILAND'S SUPPLEMENTARY CLARIFICATIONS TO THE HUMAN RIGHTS COMMITTEE 19-20, § 3.1 (July 19-20, 2005), available at [http://www.omct.org/files/2005/07/2982/wr\\_thailand\\_07\\_05.pdf](http://www.omct.org/files/2005/07/2982/wr_thailand_07_05.pdf) (as part of Thailand's presentation of its initial report under the International Covenant on Civil and Political Rights) [hereinafter THAILAND'S SUPPLEMENTARY CLARIFICATIONS].

<sup>179</sup> Thailand Nationalization Act, § 7 para 1(2), § 7(bis) (as clarified by Regulation 2000 of the Nationality Act (Aug. 29, 2000)).

<sup>180</sup> VITAL VOICES, *supra* note 6, at 16-26. See also LEITER & BREYER, *supra* note 91, at 2.

<sup>181</sup> See VITAL VOICES, *supra* note 6, at 17-21 (discussing the difficulties in obtaining a birth registration document and the hurdles presented by the absence of a database that is capable of confirming eligibility for citizenship).

<sup>182</sup> *Id.* at 10.

<sup>183</sup> GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 12.

<sup>184</sup> HANDBOOK FOR PARLIAMENTARIANS, *supra* note 19, at 32.

living in remote areas to travel long distances.<sup>185</sup> The process may require several trips or expensive overnight stays, which create serious impediments to naturalizing. Likewise, unreasonable fees associated with nationalization applications pose an obstacle to reducing statelessness because stateless populations often live in situations of economic insecurity that prevent them from paying for services not vital to their survival.<sup>186</sup>

Reduced fees and relaxed administrative deadlines should also extend to the procedures necessary to obtain documentation needed to naturalize. The same obstacles outlined above stand in the way of obtaining birth registration and related documents,<sup>187</sup> and amending these procedural hurdles will enhance a program's accessibility for stateless persons living in remote areas. Awareness campaigns that emphasize the importance of obtaining citizenship can also play an important role in reducing the challenges posed by remote stateless populations by encouraging stateless populations to take advantage of relaxed administrative fees and deadlines.<sup>188</sup>

Cambodia's massive birth registration campaign demonstrates the consequences of overlooking these two obstacles. Despite targeting stateless populations<sup>189</sup> and registering 87% of the country's population,<sup>190</sup> the registration campaign did not relax the administrative deadlines and fees associated with the registration process. The long trips to the registration office and fees prevented many stateless people living in remote areas from registering.<sup>191</sup> This demonstrates that even well-planned and generally successful programs that target stateless populations can fail to reach the most vulnerable stateless populations if the registration fees and deadlines are not carefully considered during the planning stages.

*c. Legislation Should Reduce Residency Requirements*

In many cases, effective legislation to reduce statelessness requires reducing existing residency requirements.<sup>192</sup> This is particularly true when

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<sup>185</sup> SOUTHWICK & LYNCH, *supra* note 2, at 37 (discussing this problem in Cambodia); *see also* REFUGEE STUDIES CENTRE, *supra* note 32, at 14-15 (discussing this problem in Nepal).

<sup>186</sup> As previously discussed, stateless individuals face severe economic insecurity, making fees a particularly difficult obstacle to overcome. *See supra* Part II.C.

<sup>187</sup> McDougall, *supra* note 53, at 9 para. 27.

<sup>188</sup> *See infra* Part IV.B.

<sup>189</sup> PLAN INTERNATIONAL, *supra* note 169.

<sup>190</sup> *Id.*

<sup>191</sup> SOUTHWICK & LYNCH, *supra* note 2, at 37 (discussing Cambodia).

<sup>192</sup> *See, e.g.*, U.N. Secretary-General, GUIDANCE NOTE OF THE SECRETARY GENERAL: THE UNITED NATIONS AND STATELESSNESS 11 (June 2011), available at <http://www.unhcr.org/refworld/docid/4e11d509>

stateless populations fail to meet statutory requirements for residency because they have recently migrated to the state and do not meet the statutory requirements.<sup>193</sup> Effective legislation will consider the possibility that existing residency requirements, in addition to documentation requirements, are hurdles to effectively reducing statelessness.<sup>194</sup> Carefully designed documentation requirements are important to effective legislation,<sup>195</sup> but even well-crafted documentation requirements can fail to reduce statelessness if the targeted stateless populations have not resided in the state for the requisite period of time.

Laos is the only country that has a long-standing reduced residency requirement for stateless individuals in Southeast Asia.<sup>196</sup> A stateless person of Lao race must reside within the state for three years and meet other statutory requirements before qualifying for citizenship.<sup>197</sup> This is compared with five years for a person of Lao race who has citizenship elsewhere,<sup>198</sup> and ten years for those not of Lao race.<sup>199</sup> This law has flaws, but it also exemplifies the type of legislation that can help reduce statelessness in the region.

*d. Legislation Should Naturalize Stateless Persons Born in the State*

In some cases, a country will refuse to grant citizenship to a person even though they were born in the state.<sup>200</sup> Legislation that confers citizenship to individuals who were born in the state can bypass the difficulties inherent in meeting and documenting residency requirements by simply eliminating this burdensome documentation requirement. This includes, for instance, ethnic Cambodians who were born in Vietnam and whose births were documented, but who nonetheless have not received Vietnamese citizenship.<sup>201</sup>

However, this recommendation is itself not a panacea for reducing statelessness. Often documenting one's place of birth can prove to be an

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2.html (recommending the reduction of residency requirements when using legislative measure to reduce statelessness).

<sup>193</sup> VAN WAAS, *supra* note 5, at 369 (making the same point about residency requirements for recent migrants in the context of the European Convention on Nationality).

<sup>194</sup> UNHCR ACTION TO ADDRESS STATELESSNESS, *supra* note 130, at 13 para. 43.

<sup>195</sup> *See supra* Part IV.2.A.

<sup>196</sup> REGIONAL EXPERT ROUNDTABLE, *supra* note 2, at 22; *see* Law on Lao Nationality, No. 5 (2004) art. 15 (Laos) [hereinafter Law on Lao on Nationality].

<sup>197</sup> Law on Lao Nationality, art. 15.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* art. 14(10).

<sup>200</sup> *See supra* Part II.B.1 (for a discussion of statelessness caused by *jus sanguinis* citizenship laws).

<sup>201</sup> *See supra* Part IV.A.2.

equally insurmountable obstacle because birth registry systems are so poorly designed and burdensome that many births go unregistered.<sup>202</sup> Without birth certificates, stateless individuals are not able to take advantage of legislation that grants citizenship based on a person's place of birth.<sup>203</sup>

Thailand provides a telling example of how onerous birth registration systems can result in a low birth registrations rates and statelessness. In Thailand, hospitals are legally required to issue birth certificates.<sup>204</sup> However, many stateless ethnic minorities living in northern Thailand do not give birth at hospitals.<sup>205</sup> If a child is not born in a hospital, the law requires that the parents report the birth to the head of the village, who then must issue a birth report and forward it to the local registrar within fifteen days.<sup>206</sup> The local registrar is then required to issue a birth certificate and add the name of the child to the house register.<sup>207</sup> Numerous factors complicate this process, including rampant discrimination and prejudice against ethnic minorities, corruption, and fear of imprisonment on the part of the stateless individuals.<sup>208</sup> As a result, 40,000 births are unregistered every year in Thailand<sup>209</sup> and these children are rendered stateless.<sup>210</sup>

*e. Legislation Should Waive Language and Knowledge Requirements*

Language fluency requirements are another obstacle to acquiring citizenship. Learning a new language is simply infeasible for many stateless individuals who, by virtue of being stateless, lack access to public education, or live in remote areas.<sup>211</sup> In Vietnam, for instance, approximately 2,300 stateless ethnic Cambodian who have resided there since the 1970s were

<sup>202</sup> See *supra* Part II.B.2' see also UNHCR ACTION TO ADDRESS STATELESSNESS, *supra* note 130, at 11 para. 33.

<sup>203</sup> For instance, in Thailand, a child must prove that he or she was born in Thailand to take advantage of a 2000 clarification to the nationalization law that allows otherwise ineligible children to naturalize, assuming that their mother or father entered Thailand prior to October 4, 1985. See THAILAND'S SUPPLEMENTARY CLARIFICATIONS, *supra* note 178.

<sup>204</sup> Letter from Anucha Mekkawes, Permanent Secretary of Ministry of Interior of Thailand (May 22, 2002), available at [http://www.lac-irc thailand.org/document\\_sources/law/56/Letter%206984%20%2022May02.pdf](http://www.lac-irc thailand.org/document_sources/law/56/Letter%206984%20%2022May02.pdf).

<sup>205</sup> Joy K. Park et al., *A Global Crisis Writ Large: The Effect of Being "Stateless in Thailand" on Hill-Tribe Children*, 10 SAN DIEGO INT'L L.J. 495, 513 (2009).

<sup>206</sup> UNESCO CITIZENSHIP MANUAL, *supra* note 177, at 12. Note that the process requires substantial documentation of the parents' legal status in Thailand, which is likely a separate impediment to birth registration by stateless parents.

<sup>207</sup> *Id.*

<sup>208</sup> Joy K. Park et al., *supra* note 205, at 525.

<sup>209</sup> Nattha Keenapan, *Ensuring the 'First Right' Online*, BANGKOK POST, Oct. 11, 2010, available at [http://www.unicef.org/thailand/reallives\\_14441.html](http://www.unicef.org/thailand/reallives_14441.html).

<sup>210</sup> VITAL VOICES, *supra* note 6, at 17.

<sup>211</sup> See, e.g., *supra* Part II.C.1.

prevented from acquiring Vietnamese nationality, in part because the law required that they obtain a language proficiency certificate.<sup>212</sup> This changed in 2008 when legislation removed, *inter alia*, language requirements for naturalization, resulting in a reduction in the stateless population.<sup>213</sup>

*B. Statelessness Determination Procedures Are Important for Legislation to Reduce Statelessness and There Is Agreement Among Academics and Practitioners on the Content of These Procedures*

Statelessness determination procedures are the processes by which an individual is classified as stateless, and they are important whenever legislation provides specific accommodations for stateless persons. An individual will need to first prove that he or she is stateless before benefitting from this legislation.<sup>214</sup> The form and substance of these procedures are incredibly important because stateless individuals will often have to prove that they are, indeed, stateless before benefitting from legislation to reduce statelessness.

A number of components—both procedural and substantive—define the parameters of these determining procedures. The international community has discussed these components at length<sup>215</sup> and there is a growing consensus that adequate statelessness determination procedures will vary depending on the circumstances.<sup>216</sup> This discussion is particularly lively because the 1954 Convention requires that an individual first be designated as stateless before they are protected under the Convention.<sup>217</sup> While admitting that the procedures and substance of stateless determination procedures vary with the circumstances, international actors have identified important components of statelessness determination procedures common to all successful schemes.<sup>218</sup>

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<sup>212</sup> GOOD PRACTICES: ADDRESSING STATELESSNESS IN SOUTHEAST ASIA, *supra* note 6, at 19.

<sup>213</sup> *Id.*

<sup>214</sup> Not all legislation designed to reduce statelessness will not first require adjudging an individual's status as stateless. When there is a large population of stateless with historic ties to the country, it is often better to design legislation to target all members of that group instead. See STATELESSNESS: AN ANALYTIC FRAMEWORK, *supra* note 146, at 20. For example, legislation may target "all ethnic minorities who do not possess Thai nationality" or "persons whom have renounced their citizenship upon marrying a foreigner."  
*Id.*

<sup>215</sup> See, e.g., UNHCR, STATELESS DETERMINATION PROCEDURES AND THE STATUS OF STATELESS PERSONS (2010), available at <http://www.unhcr.org/refworld/docid/4d9022762.html> [hereinafter UNHCR STATELESS DETERMINATION PROCEDURES].

<sup>216</sup> For instance, the determination procedures for stateless populations that are largely migrants will vary from those who consider themselves *in situ*, or "in their own" country. *Id.* at 2.

<sup>217</sup> *Id.* at 1.

<sup>218</sup> *Id.* at 2.

Wide agreement among academics on the substance and form of these procedures makes it unnecessary to address each recommendation in depth here. Instead, common components of these schemes are reproduced below for reference. The purpose is to summarize the key ingredients involved in designing effective statelessness determination procedures and help readers identify when additional research may be warranted.

The following aspects of statelessness determination procedures have been identified as particularly important to their success:

- 1) There is a formal procedure for determining statelessness status.<sup>219</sup>
- 2) The determination is made by a central authority with the relevant knowledge and expertise to assess applications.<sup>220</sup>
- 3) There are procedural safeguards that ensure a meaningful opportunity for review and appeal from decisions.<sup>221</sup>
- 4) During the review process applicants are given a temporary stay of deportation.<sup>222</sup>
- 5) Determinations are conducted on a case-by-case basis.<sup>223</sup>
- 6) Safeguards are established to ensure that the determination is fair, in keeping with international standards.<sup>224</sup>
- 7) Applicants are provided with access to legal advice and qualified interpreters.<sup>225</sup>
- 8) Written reasons for decisions are provided to applicants upon the completion of the determination.<sup>226</sup>
- 9) In situations where refugee and stateless populations overlap, applicants are advised of their refugee rights.<sup>227</sup>

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<sup>219</sup> *Id.*

<sup>220</sup> *Id.* at 3; PROTECTING THE RIGHTS OF STATELESS PERSONS: THE 1954 CONVENTION, *supra* note 102, at 20; HANDBOOK FOR PARLIAMENTARIANS, *supra* note 19, at 20.

<sup>221</sup> PROTECTING THE RIGHTS OF STATELESS PERSONS: THE 1954 CONVENTION, *supra* note 102, at 6; UNCHR STATELESS DETERMINATION PROCEDURES, *supra* note 215, at 4.

<sup>222</sup> UNHCR STATELESS DETERMINATION PROCEDURES, *supra* note 215, at 4.

<sup>223</sup> *Id.* at 3. However, membership in a particularly at-risk group may be considered *prima facie* evidence of statelessness. *Id.*

<sup>224</sup> PROTECTING THE RIGHTS OF STATELESS PERSONS: THE 1954 CONVENTION, *supra* note 102, at 6; UNHCR STATELESS DETERMINATION PROCEDURES, *supra* note 215, at 6.

<sup>225</sup> HANDBOOK FOR PARLIAMENTARIANS, *supra* note 19, at 21; UNHCR STATELESS DETERMINATION PROCEDURES, *supra* note 215, at 4.

<sup>226</sup> HANDBOOK FOR PARLIAMENTARIANS, *supra* note 19, at 21, 33.

<sup>227</sup> UNHCR STATELESS DETERMINATION PROCEDURES, *supra* note 215, at 4.

10) Any administrative fees should be reasonable and not act as a deterrent to stateless persons seeking protection.<sup>228</sup>

11) Both the applicant and the government share the burden of proving that the applicant is not considered a national by any state under the operation of law.<sup>229</sup> After the applicant has demonstrated, based on all reasonably available evidence, that he or she is evidentially not a citizen of any state, the burden of proof shifts to the government to prove that the applicant has a nationality.<sup>230</sup>

The standards above form a yardstick with which to measure the statelessness determination procedures of a state. Any legislation that accommodates or otherwise singles out stateless individuals should incorporate many, if not all, of these components when creating procedures for determining whether than individual is stateless. Together, these components form a robust canon of procedural due process rights.

## V. CONCLUSION

Stateless individuals continue to face severe economic, social, and political consequences because of their status. This is particularly the case in Southeast Asia. The causes of statelessness are diverse, and each presents particular problems that lend themselves to particular legislative solutions.

International law encourages states to pursue solutions to the problem of statelessness from various angles. It pushes states to prevent future cases of statelessness and to protect existing stateless populations. The 1954 Convention creates a framework for protecting stateless populations in their country of habitual residence. The 1961 Convention establishes a similar framework for legislation designed to preventing new cases of statelessness.

However, international law has yet to provide a framework that provides durable solutions for the 12 million individuals who are currently stateless. This comment has begun to construct that framework, focusing on the lessons learned in Southeast Asian states. Its goal was to begin forming a framework that is useful to legal scholars evaluating legislation in Southeast Asia and instructive to legislators crafting legislation to reduce existing cases of statelessness in the region.

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<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*



