The Need for Thailand to Accede to Conventions on Statelessness

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THE NEED FOR THAILAND TO ACCEDE TO CONVENTIONS ON STATELESSNESS

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Submitted to the faculty of Indiana University Maurer School of Law

in partial fulfillment of the requirements

for the degree

Master of Laws – Thesis

February 2020
Accepted by the faculty, Indiana University Maurer School of Law, in partial fulfillment of the requirements for the degree of Master of Laws – Thesis.

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Submission date February 24, 2020
Acknowledgement

I cannot express enough thanks to Professor Gabrielle L. Goodwin, the director of Graduate Legal Studies. I shall be forever obliged for her guidance, love, and care for me.

Further, no words of thanks can sum up the gratitude that I owe to Professor Timothy William Waters, Professor of Law and Val Nolan Faculty Fellow, and Associate Director of the Center for Constitutional Democracy, for his valuable suggestions and useful comments throughout this work.

I extend my sincere gratitude to Dean Lesley Davis and all staff members in the Graduate and International Office of Maurer School of Law. It would have been impossible to complete this thesis without their generous support.

I owe and respectfully offer my thanks to my noble parents and family for their constant moral and financial support, which helped me to achieve success in every sphere of life. I deeply appreciate their unquestionable trust that I can prudently conduct this academic research and produce my own thesis.

I sincerely acknowledge the efforts of all those who have directly or indirectly helped me in completing my thesis.
Abstract

‘Statelessness’ is a global phenomenon that refers to the lack of nationality of an individual. Although the issue of statelessness can be understood as the lack of nationality or the protections based on nationality, the solutions can be complicated because they interfere with the sovereign power of the state. Thailand is home to one of the largest stateless populations in the world. It has been working on solving the problem of statelessness with the help of international organizations, such as the United Nations and the Adventists Development and Relief Agency. However, despite the positive developments in Thailand, there are still gaps in the Nationality Act that can lead to statelessness for certain groups of people. Therefore, this thesis analyzes the problem of statelessness in Thailand and proposes that Thailand accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, as the provisions of these conventions provide beneficial guidelines on the issue of statelessness.
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Introduction

“Statelessness is a profound violation of an individual’s human rights. It would be deeply unethical to perpetuate the pain it causes when solutions are so clearly within reach.”

António Guterres, United Nations High Commissioner for Refugees

Statelessness is a massive issue. The Universal Declaration of Human Rights (UDHR), estimates that there are over 12 million stateless persons worldwide. A stateless person is a person who is not considered to be a national of any state under the operation of its law. Nationality is an essential link between an individual and the state, as it can be used by the state as a prerequisite for enforcement of other human rights protections. According to international human rights law, a stateless person has the right to protection under the law. However, in reality, stateless persons are often faced with discrimination, and their exercise of fundamental rights is limited by the state due to the stateless persons’ lack of nationality.

The beginning of this thesis starts with a simple question: How can an issue as big as statelessness be treated as if it is not an important and urgent matter? In Thailand, statelessness is usually described as an “invisible problem,” since most people take nationality for granted. However, there are at least 478,843 registered stateless persons residing in Thailand, which is one of the largest stateless populations in the world.

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5 UNHCR, supra note 2, at 66-68.
stateless population in Thailand is comprised of four main groups of people: a person who was undocumented when the population surveys were made, a person who does not possess a birth certificate, a person who falls into the gaps of the Thai Nationality Act, and an illegal worker who migrated from neighboring countries. Without nationality, a stateless person suffers from discrimination and human rights violations by the state authority or people in the community.

Statelessness is not an unsolvable problem; the solution to statelessness is simply to guarantee that every person has nationality either at birth or through naturalization. However, this is a complicated matter, as it requires the commitment and the willingness from the state to give up its sovereign power because granting nationality to a stateless person can interfere with the state’s right to determine who are and are not its nationals.  

Thailand has taken positive approaches towards the issue of statelessness. One of most outstanding steps is the change of the Nationality Act and Civil Registration Act in 2008, which allows for all children to acquire civil registration documents and apply for naturalization. Nevertheless, the problem of statelessness remains within Thai society. Many states like Thailand have put national security as a priority over human rights protection. This can be seen in the enactment of the 1972 Declaration of Revolution Party No. 337, revoking the nationality of people born from an alien parent. This decree was made due to the fear of communism in Vietnam, resulting in mass statelessness in Thailand.

The international guidelines to solve the issue of statelessness were set out in the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. These conventions require the state party to protect the rights of the stateless persons and refugees, as well as granting nationality to those people. However,

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Thailand is not a party to the conventions on statelessness, which means that Thailand does not have an obligation to comply with provisions listed in the conventions. The guidelines provided by these international conventions can be beneficial to the Thai government to solve the problem of statelessness because they provide a clear outline on what measures should be taken by the government. In addition, Thailand has made a commitment to the Global Plan to End Statelessness 2014-2024 or #IBelong campaign founded by UN agencies, states, and civil society. This campaign was launched in 2014 and consists of 10 action plans, including acceding to the UN statelessness conventions. Such a commitment implies the willingness of the Thai government to comply with the international conventions. However, challenges to the Thai government’s willingness to follow the international guidelines still remain, including issues of state sovereignty and national security. This paper will focus on the need for the government to follow the guidelines provided by international conventions to not only protect the rights of stateless people, but also naturalize stateless persons.

For the structure of this thesis, Part I provides the definition of the right to nationality and stateless persons. Part II summarizes the causes and consequences of statelessness in Thailand. After that, Part III explains what kinds of responses have been taken by the Thai government to tackle the issue of statelessness, and then this thesis proposes the possible solution to the problem in Part IV. Part V explores the arguments for Thailand to accede to statelessness conventions as a solution to statelessness. Finally, Part VI explains the challenges for the state in acceding to these conventions.
I. Definitions

1. Right to nationality and nationality

The right to nationality is one of the most important rights related to the issue of statelessness, as it can be considered a “right to have rights.” Some scholars argue that the importance of nationality to human rights protection is not as significant as it was in the past, since most of the human rights violations today are caused by national authorities’ failure to protect their citizens. However, it is undeniable that the right to nationality plays an important role on how the state treats its citizens, as well as how the rights provided by the state can be exercised. For example, the state may impose a limitation on the right to travel for non-nationals on the grounds of national security. Furthermore, the right to nationality is internationally recognized by various conventions, including the 1948 Universal Declaration of Human Rights (UDHR), the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1979 Convention on the Elimination of All Forms of Discrimination against Woman (CEDAW), and the 1989 Convention on the Rights of the Child (CRC).

Right to nationality protections in Thailand can be seen in the Constitution of Thailand (Constitution). That said, the Constitution does not use the term “right to nationality.” Nonetheless, such a right can be protected under the Constitution, which established the National Human Rights Commission with the power and duty to “suggest suitable measures or guidelines in order to prevent or redress human rights violation.”

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8 See, e.g., BLITZ and LYNCH, supra note 7, at 33; Pratch Rujivanarom, State officials behind 90% of rights violations, Nation Thailand (Dec. 11, 2018), https://www.nationthailand.com/national/30360204.
9 BLITZ and LYNCH, supra note 7, at 33.
10 CONST. of the KINGDOM of THAILAND §§ 4 ¶ 1 and 247.
11 Id. § 247(1).
Commission Act, B.E. 2560 (2017) defines “human right” as “human dignity, right, liberty and equality of people which are guaranteed or protected under the Constitution of the Kingdom of Thailand or under Thai laws or under Treaties which Thailand has obligation to comply.”

This can be interpreted to include the protection of the right to nationality, which is protected under international conventions to which Thailand is a party. Although the Nationality Act does not explicitly refer to the right to a nationality, the laws automatically grant nationality to a person born within Thai territory and a person born with a father or a mother of Thai nationality. However, there are still some restrictions on the acquisition of nationality by certain groups of people, including the stateless persons.

While the right to nationality is protected by various international conventions, including the UDHR, the decision on who should acquire a state’s nationality relies on the discretion of each state. The Permanent Court of International Justice (PCIJ), in its Advisory Opinion on the Tunis and Morocco Nationality Decrees of 1923, observed that, even though the issue of nationality falls within the domestic jurisdiction of the state, the state shall comply with the obligations under international law. This requirement for the state to comply with its

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14 See eg. UDHR art. 15; ICCPR art. 24; CEDAW art. 9; CRC art.7.
15 NATIONALITY ACT B.E. 2508 (1965) (as amended by Acts No.2 and No.3 B.E. 2535(1992), Act No.4 B.E. 2551(2008), and Act No. 5 B.E. 2555 (2012)) §7 ¶ 1 [hereinafter Nationality Act].
16 The term nationality and citizenship will be used interchangeably in this research.
international obligation is again confirmed in the Hague Convention of 1930.\textsuperscript{18} The recognition of the right to nationality became more prominent in the 20\textsuperscript{th} century when the Universal Declaration of Human Rights was created, as it was the first time that the right to nationality was declared as a human right under international law.\textsuperscript{19} Article 15 of the UDHR provides that everyone has the right to nationality and that “[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”.\textsuperscript{20} This raises the question of what nationality is under international law. As mentioned earlier, the decision on who is a national of a state has to be interpreted by the state under its domestic law. However, when a conflict about nationality arises between two countries, the need for an international interpretation of this term arises. In the Liechtenstein v. Guatemala (The Nottebohm Case), the International Court of Justice (ICJ) recognized nationality as a “legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and, sentiments, together with the existence of reciprocal rights and duties.”\textsuperscript{21} This genuine link requirement can be used for the benefit of the stateless person who has a certain connection to the country but is unable to establish a formal relationship with the state.\textsuperscript{22}

The term ‘nationality’ is commonly used in Thai laws and policies. However, the concept of nationality only arose in Thailand about 100 years ago. The concept of nationality was used to express the power of the government or the King at that time to his people. In other words,

\textsuperscript{18} Convention on Certain Questions Relating to the Conflict of Nationality Laws art. 1, April. 13, 1930, 179 no. 4137 L.N.T.S. 89.; UNHCR and IPU, supra note 17, at 9.

\textsuperscript{19} MARÍA JOSÉ RECALDE VELA, HOW FAR HAS THE PROTECTION OF THE RIGHT TO NATIONALITY UNDER INTERNATIONAL HUMAN RIGHTS LAW PROGRESSED FROM 1923 UNTIL THE PRESENT DAY?: AN ANALYSIS OF THIS PROGRESS AGAINST THE BACKDROP OF THE 5 ELEMENTS OF ARTICLE 20 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS, Tilburg Univ. 84 (2014).

\textsuperscript{20} UDHR art. 15.


\textsuperscript{22} UNHCR and IPU, supra note 17, at 11.
nationality was used to refer to a connection between an individual and the state. This connection can be seen in two perspectives: the legal and social contexts. In the legal context, having nationality allows a person to have rights and duties as a citizen of the state, which can be different from that of the non-nationals. In the social context, nationality can give a sense of unity to a certain group of people. On the other hand, nationality is sometimes used as a tool to discriminate against another group by denying protections based on their nationality.

2. Stateless person

According to the 1954 Convention relating to the Status of Stateless Persons (1945 Convention) article 1(1), a stateless person means “a person who is not considered as a national by any State under the operation of its law.” This definition can be problematic, as it refers to the de jure stateless person or statelessness by the operation of the law, which focuses on an individual who does not receive nationality according to national law. The interpretation of the ‘law’ under the Convention has to be done by the country of origin of the stateless person. Even though, by the provisions of the law, the person should acquire nationality, the decision of the local authority is final. Some scholars argue that the definition of a stateless person should include a de facto stateless person who has a genuine link to the state but is unable to

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23 SomChai Preechasinpakul, 100 ปี แห่งชาติไทย [100 years of Thai nationality Chapter 1], vol. 5 no. 37 Vibhasa 16, 21(2011), https://www.law.cmu.ac.th/law2011/journal/e1459405188.pdf.
24 See e.g. INDIA CONST. art. 14, art. 20, art. 21, and art. 19, § 1, cl. a. The Indian Constitution guarantees several civil rights to all ‘persons’, and certain other political rights only to ‘citizens’. The right to equality, and life and personal liberty are guaranteed to all ‘persons’, but the right to freedom of speech and expression is guaranteed only to ‘citizens’.
26 Id.
27 1954 Convention art.1(1).
29 Amal De Chickera and Laura Van Wass, Unpacking Statelessness, in UNDERSTANDING STATELESSNESS ¶6 (Tendayi Bloom, Katherine Tonkiss, Phillip Cole eds., 2018).
prove or verify their nationality.\textsuperscript{30} This group of people may include a person who has nationality but is unable to exercise the rights or freedoms as a citizen of a state.\textsuperscript{31} However, there is a question of how the distinction between \textit{de jure} and \textit{de facto} statelessness should be made.\textsuperscript{32} The difference between the two, according to Weissbrodt and Collis, is that \textit{de jure} statelessness occurs due to the gaps in the law, while \textit{de facto} statelessness is a result of state discrimination.\textsuperscript{33} That said, the \textit{de facto} statelessness is not necessarily caused by state discrimination, as it can be a result of the deprivation of effective nationality and state protection by administrative mistakes or even the lack of documentation and recognition as a citizen of the state.\textsuperscript{34} Under certain circumstances, the stateless person can also be a refugee if they fall into the definition of both stateless persons and refugees. However, this paper will only focus on persons who are either \textit{de facto} or \textit{de jure} stateless persons. It is important to note that, although the 1954 Convention relating to the Status of Stateless Persons article 1(1) is binding on state parties, the definition provided under the convention is universally recognized as a customary international law,\textsuperscript{35} meaning that all states are bound by the definition under the convention, whether they are a party to the 1954 convention or not.

The term ‘stateless’ is not recognized by any laws in Thailand. However, many scholars refer to a ‘stateless person’ as an individual who does not possess nationality of any country,

\textsuperscript{31} Id.
\textsuperscript{33} Weissbrodt and Collins, \textit{supra} note 30, 263.
\textsuperscript{34} THE EQUAL RIGHTS TRUST, UNRAVELLING ANOMALY: DETENTION, DISCRIMINATION AND THE PROTECTION NEEDS OF STATELESS PERSONS 65, 69 (2010)
but such an individual can receive protection from the state as a citizen.\textsuperscript{36} This definition provided by scholars can fit into the definition of ‘alien’ under Section 4 of the Thai Immigration Act, which describes an alien as a person who does not have Thai nationality. As a result, the protection of the right of the stateless person is made based on the same grounds of that of aliens rather than that of Thai citizens.\textsuperscript{37} Furthermore, by categorizing a stateless person as an alien, that person may be subject to deportation,\textsuperscript{38} arrest, or punishment, as they may be unable to provide any identification, which is required under Thai law for an alien to legally stay in or enter the country.\textsuperscript{39}

\textsuperscript{36} Many scholars have made distinction between stateless person and nationality-less person. However, for the purpose of this paper, only the term stateless person, meaning a person without nationality, will be used. PANTIP KANCHANACHITRA SAISOONTHORN, ANCHALEE KITTHANAPHAIBOON, ORAWAN RPDSANGWAN, SUWANEE KHEMCHAROEN, ARAYA CHINWORAKOMOL, RESEARCH REPORT ON THE STUDY OF THE IMPACT OF HUMAN RIGHTS OF STATELESS PERSONS (2002).

\textsuperscript{37} KRISDA BOONRAT, SATHÂNKÃN LÆ NÆOTHÃNGKÆKHAIPANHÃ KONRAIRAT RAISANCHÃT NAIPRATHÊTTHAI, SITUATION AND SOLUTION FOR THE ISSUE OF NATIONALITY-LESS AND STATELESSNESS IN THAILAND 2 (2017), http://www.nhrc.or.th/Human-Rights-Knowledge/Documents/Other.aspx (search in the search bar for สถานการณ์และแนวทางแก้ไขปัญหาคนไร้รัฐไร้สัญชาติในประเทศไทย).

\textsuperscript{38} IMMIGRATION ACT B.E. 2522 (1979) (as amended by Royal Decree B.E. 2561 (2018)) §54.

\textsuperscript{39} Id. §§58 and 59.
II. Overview of causes and consequences of statelessness in Thailand

The situation of statelessness in Thailand may have originated in B.E. 2411-2453 (1868-1910) when Thailand changed from a Rachathirach (ราชาธิราช) to an Absolute Monarchy. The Rachathirach in this context refers to the system in which multiple governors have absolute control over their province and are subordinate to the King. The people living in a specific area are deemed to be citizens of each governor rather than the King. On the other hand, an absolute monarchy centralized the power of the King and, instead of having a governor controlling their land, all the governing power lies in the hands of the King. During this period, the population surveys were made to determine the number of people living in the territory. However, the laws requiring Thai people to have an identification card were enacted in B.E. 2486 (1943) and B.E. 2495 (1952), when the Civil Registration Act was made to monitor birth, death, and the migration of people. The registration was completed four years after the enactment of the act (1956). This means that the movement, birth, or death of many people, who otherwise would have qualified to be Thai citizens, might not have been documented during this period.

As a result, the first of five groups of stateless people came into being. This group was comprised of individuals who were born in, and subsequently lived in, Thailand during B.E. 2452-2488 (1909-1956) before civil registration was created, but who were not documented

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42 ARCHAVANITKUL, supra note 40, at 105.
43 Id.
due to the failure of governmental officials to document people living in remote areas.\(^{44}\) This group includes the minority and ethnic people who have registered their identity with Thai government and have an alien identification card. The ancestors of these people have lived in the territory since Thailand was Siam.\(^{45}\) However, they did not acquire Thai nationality due to a lack of evidence to prove a connection or link with the state.\(^{46}\)

As of July 2018, there are over 342,167 people who have received permission to permanently stay in Thailand.\(^{47}\) These minority and ethnic groups include:

i. Vietnamese people (migrants from Laos and Vietnam) attempting to escape from suppression after Ho Chi Min declared independence from France in 1945-1946.\(^{48}\)

ii. Former soldiers of Nationalist China who participated in the civil war between Chiang Kai-shek and Mao Tse Tung who could not escape to Taiwan in time when Chiang Kai-shek lost the war. They eventually fled to Myanmar and migrated to Thailand sometime between 1950-1954.\(^{49}\)


\(^{45}\) Id., at 2.

\(^{46}\) WIWAT SUWANNASUNG, CONVENTION ON THE REDUCTION OF STATELESSNESS 1961: REDUCTION OF STATELESSNESS IN THAILAND 74 (Chulalongkorn Univ., 2009), http://cuir.car.chula.ac.th/handle/123456789/57948.


\(^{48}\) THAI NAT’L LEGIS. ASSEMBLY, supra note 44, at 47.

\(^{49}\) Id., at 46.
iii. Civilian Haw Chinese who were family members of the soldiers of Nationalist China who could not return to their county for political reasons. These people migrated to Thailand sometime between 1950-1961.\(^{50}\)

iv. Independent Hui Chinese, a Chinese group who claimed that they are related to either the former Chinese soldiers or the civilian Hui Chinese and migrated to Thailand between 1962-1978.\(^{51}\)

v. Members of the Communist Party of Malaya (CPM) from Malaysia who fled their country and surrendered to Thai authorities in 1987.\(^{52}\)

vi. Tai Leu people or descendants of Thai people who migrated from Xishuangbanna, China to Thailand over 300 years ago.\(^{53}\)

vii. Laos migrants who migrated to live in Thailand with their family due to changes in the administrative system in Laos in 1974.\(^{54}\)

viii. Nepalese people who lived in Myanmar before the Second World War when Myanmar and Nepal were British colonies. After the Japanese capture of Myanmar, some Nepalese people were forced to deliver supplies to build a railroad in Thailand, and they stayed in Thailand ever since.\(^{55}\)

ix. Displaced people from Myanmar, including Mon, Karen, Thai Yai, and Lawa, who migrated to Thailand before March 9, 1976.\(^{56}\)

\(^{50}\) Id.

\(^{51}\) Id.

\(^{52}\) Id.

\(^{53}\) The Tai Leu people are identical to Northern Thais. However, they are categorized as Tai Leu due to their origin.

\(^{54}\) THAI NAT’L LEGIS. ASSEMBLY, supra note 44, at 47.

\(^{55}\) Id., at 47.

\(^{56}\) Id., at 48.
x. Illegal immigrants from Cambodia. While the Thai government allows the displaced Thais from Koh Kong, Cambodia to migrate to Thailand before November 15, 1977, there are Cambodians who are not descendants of Thai people but migrated to Thailand with them.  


The second cause of statelessness is territorial succession. The people in this group are recognized as “displaced Thai” under the Nationality Act. The displaced Thai do not possess any nationality, migrated to live in Thailand for a consecutive period, and are registered under the Civil Registration Act and other ministerial regulations. Such people include displaced Thai from Myanmar entering Thailand before and after March 9, 1976, and displaced Thais from Cambodia. The displaced Thai from Myanmar refer to people who live near the border area between Thailand and Myanmar prior to 1908. In 1908, there was a demarcation of the land between King Rama V of Thailand and the British government, which resulted in the change of borders between the two countries. Although the displaced people in Myanmar had an option to move to Thailand and acquire Thai nationality, many decided to live and work in Myanmar. These groups of people later migrated to Thailand due to the Myanmar government’s policy on minorities and the economic crisis. The displaced Thai from Cambodia refer to people who live in the Koh Kong province, which was considered to be a part of Thailand before King Rama V transferred this land to France and, subsequently,

57 Suwannasung, supra note 45, at 77-78.
58 BOONRAT, supra note 37, at 4-5.
59 Nationality Act, supra note 15, at §4.; THAI NAT’L LEGIS. ASSEMBLY, supra note 44, at 2
60 THAI NAT’L LEGIS. ASSEMBLY, supra note 44, at 2
61 Id.
62 After Military government took control over Burma in 1962 and the socialist economic system was introduced in the country, the country faced the extended deterioration and decline in economy as a result of the mismanagement of the government, decline in foreign trade and the repudiation of the current. KHIN MAUNG KYI, RONALD FINDLAY, R.M. SUNDRUM MYA MAUNG, MYO NYUNTY, ZAW OO, A VISION AND A STRATEGY: ECONOMIC DEVELOPMENT OF BURMA 10-12 (2000).
Cambodia. Once Cambodia became independent from France, the displaced Thai continued to remain in Cambodia until 1974, when there was a change in the administrative system in Cambodia.\textsuperscript{63} They are allowed to file an application with a competent official\textsuperscript{64} in order to be recognized as a displaced Thai. Once an individual has been recognized as a displaced Thai by the Committee on the Recognition of Displaced Thai, he or she is deemed to have acquired Thai nationality by birth.\textsuperscript{65}

The third cause of statelessness in Thailand arises when a child’s birth is not registered due to the failure of the administrative body to register the birth of the child who were born in remote and difficult to access area. This can happen to people who are both born in Thailand or born in a foreign country and then migrate to Thailand.\textsuperscript{66} They are considered to be undocumented persons who have permission to temporarily stay in Thailand. This group of people was not registered by the registrar office until the additional survey was made between 2005-2011 in compliance with a Cabinet Resolution dated, January 18, B.E. 2548 (2005). Currently, there are a total of 197,836 undocumented people who fall into this category.\textsuperscript{67} These undocumented people include students who are currently enrolled in school or have graduated from university but do not have civil status, rootless persons, and persons who make a positive contribution to the country.\textsuperscript{68} While it is easy to identify a student enrolled in school and a person who has contributed to the country, determining who is a rootless person can be problematic, as they could be a person who might acquire Thai nationality by birth but might also lack any identification document and,

\textsuperscript{63} Suwannasung, supra note 46, at 78.
\textsuperscript{64} “competent official” means the person appointed by the Minister for the execution of the Nationality Act. Nationality Act, supra note 15, at §4.
\textsuperscript{65} Nationality Act, supra note 15, at §§9/1, 9/5 and 9/6.
\textsuperscript{66} THAI NAT’L LEGIS. ASSEMBLY, supra note 44, at 1.
\textsuperscript{67} BOONRAT, supra note 37, at 4-5.
\textsuperscript{68} Id.
thus, would be legally considered an alien by the Thai government. According to the 2005 National Strategy on the Administration of Legal Status and the Rights of Persons, the rootless persons are persons whose origin is unknown or those who have no connection with any country. The rootless people include children who has been abandoned by their parents or whose parents are unknown and children who were born during the period when the civil registration was not effective.⁶⁹

The fourth cause of statelessness in Thailand is the change in the Thai Nationality Act.⁷⁰ Thailand had a generous *jus soli* principle in granting nationality to a person born in Thailand until 1972.⁷¹ In 1972, the government, led by Field Marshal Thanom Kittikachorn, in response to the Vietnam War and the communist influence in Asia, was concerned that a child of an alien who acquired Thai nationality on the *jus soli* ground could potentially be used as a spy by other countries, especially Vietnam. Consequently, the government issued a 1972 Revolutionary Decree No. 337 (1972 Decree),⁷² which renounced the nationality of any persons born to an alien parent who illegally entered the territory or has temporary permission to stay in Thailand. This is significant, as it not only causes a child born after the declaration to become stateless, but it also has a retroactive effect and revokes the nationality of a person who already has Thai nationality, in turn making them a stateless person.⁷³ Although, the

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⁶⁹ Suwannasung, *supra* note 46, at 79.
⁷³ THE REVOLUTIONARY DECREE No. 337 B.E. 2515 (1972) §§1 ¶ 1 and 2 [hereinafter 1972 Revolutionary Decree].

Section 1 Revoke nationality of any person born in Thailand with alien father or alien mother without legitimate father and at the time of birth, his father or other is;

1. A person who have permission to reside in Thailand as special case
2. A person who have temporally permission to stay in Thailand
3. A person who ender Thailand without permission under the Immigration Act
The current Thai Nationality Act has a provision that allows the person who cannot acquire or has lost Thai nationality due to the 1972 Decree to file for naturalization,\textsuperscript{74} this can still be problematic because the individual has to provide a civil registration document that states that he or she has had a domicile in Thailand for a consecutive period and proves his or her good behavior or benefit to Thailand.\textsuperscript{75}

The last group of stateless persons is comprised of illegal migrant workers from Myanmar, Laos, and Cambodia. This group of people entered Thailand illegally and received temporary permission to stay in the country while waiting for the deportation or a nationality determination process with another country. This group of people can become stateless if the country of origin refuses to verify them as their nationals or if the worker refuses to register with the authority because of a fear of persecution.\textsuperscript{76}

As mentioned earlier, this paper will only focus on the status of persons who fall into the category of \textit{de facto} or \textit{de jure} stateless persons. All the stateless people discussed above have one thing in common: They are living in the country. This itself does not constitute a genuine link between them and Thailand. In fact, in some circumstances, a stateless person can have a strong connection with the state but may not be able to acquire nationality. To determine whether a stateless person is \textit{de jure} or \textit{de facto} stateless, the cause of statelessness has to be taken into consideration. From the classification of stateless persons in Thailand as discussed above, most people become stateless due to the limitations under the Thai laws.\textsuperscript{77} As a result,

\begin{flushright}
Section 2 a person under section 1 who born after the enactment of this decree does not acquire Thai nationality unless the Minister of Interior deems appropriate.
\end{flushright}

\textsuperscript{74} Nationality Act, \textit{supra} note 15, at §23.
\textsuperscript{75} \textit{Id}.
\textsuperscript{76} ARCHAVANITKUL, \textit{supra} note 40, at 118.
\textsuperscript{77} See, eg. 1972 Revolutionary Decree, \textit{supra} note 73, at art. 1; Nationality Act, \textit{supra} note 15, at §7 bis.
they are considered to be a *de jure* stateless person for the purpose of this paper. However, in the case of undocumented people—including displaced Thais and people who lose their nationality as a result of the 1972 Decree — they have the right to acquire Thai nationality but cannot prove it to the state authority. Therefore, they are *de facto* stateless.

The reason it is important to distinguish between *de jure* and *de facto* stateless is because the state does not have an obligation to grant nationality to any person who has no connection to the country. Therefore, the fact that the *de facto* stateless person already has the right to acquire nationality under the law allows the government to grant nationality to them. On the other hand, the *de jure* stateless person cannot acquire nationality as a result of the Thai Nationality Act and other Thai laws. In the latter case, the state only has an obligation to protect their human rights by registering them in the civil registration system. Therefore, the solution for the latter group would be to change the domestic laws and policies.

As a member state to the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and Convention on the Rights of the Child (CRC), Thailand has an obligation to protect the civil, political, and socio-economic rights of all people within its territory. In other words, the state also has an

Section 7 bis. A person born within the Thai Kingdom of alien parents does not acquire Thai nationality if at the time of his birth, his lawful father or his father who did not marry his mother, or his mother was:

1) the person having been given leniency for temporary residence in Kingdom as a special case;

2) the person having been permitted to stay temporarily in the Kingdom;

3) the person having entered and resided in the Thai Kingdom without permission under the law on immigration.

78 Pantip Kanchanachitra Saisoonthorn, Māyākti hæng sitthinaisitthinaisanchāt mummõngëchāk thritsade hængr ŭ̄angčhing [The myth of citizenship rights: perspective from reality],4 no.1 J. of L. Naesuan Univ. 5, 8 (2011).

79 *Id.*

80 Human Rights Comm., General Comment 24 (52) : Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, at 9, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (Nov. 4,
obligation to protect the rights of stateless persons residing in the country. In addition to violating the stateless person’s right to nationality, Thailand has made it difficult or impossible for the stateless person to enjoy many fundamental rights, including the freedom of movement, right to healthcare, access to a regular job, and education, among several others.

While limitations on the freedom of movement can be made according to ICCPR Article 12, these should only be done for the protection of national security, public order, public health, or morals. Many stateless persons suffer a prolonged detention in Immigration Detention Centers, which could last for months or even years. The stateless person, under threat of criminal penalty, must seek prior permission from the Provincial Governor to travel outside the province. A stateless person without an identification document is not allowed to leave the province at all. These restrictions not only create difficulty in transportation but also place an obstacle on the stateless persons to have a regular occupation and education, which they need to satisfy the naturalization requirements. It is difficult for them to get high-wage jobs while having severe restrictions placed on their movements. Instead, they have to work in

1994); UDHR art. 2, ICCPR art. 2; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3. art.1; CRC at art. 2(1); Equal Rights Trust, Legal Protections for Rohingya in Bangladesh, Malaysia and Thailand 14 (2016).
82 KRITAYA ARCHAVANITKUL, supra note 40, at 113.
83 Id., at 113-118.
84 Institute on Statelessness and Inclusion, supra note 71, at ¶ 21.
85 Immigration Act, supra note 37, at §§37(2-4) and 76. The stateless person who does not receive a permission prior to travel shall be punished by fine not exceeding five thousand bath and a daily fine of not exceeding two hundred bath until full compliance (emphasis added).
agriculture or labor-intensive areas in which wages are low and violation of labor rights is common.\textsuperscript{88} Furthermore, because many stateless people, particularly hill tribe people, live in areas reserved for environmental purposes, they often face the risk of eviction by authorities, even though they have lived in such an area since before it was declared to be a reservation area. Although the legal eviction can be necessary to protect the public interest, the stateless person is considered to be an alien who illegally entered the country and, thus, cannot legally own land anywhere else.\textsuperscript{89} This makes them vulnerable and makes it harder to earn a living.

Another consequence of being a stateless person is the difficulty in accessing healthcare.\textsuperscript{90} Thailand has a national healthcare system called the “30-baht scheme,” which offers access to treatment at eligible hospitals and clinics at a flat rate of 30 baht ($1). However, this system is only available to people who have Thai nationality.\textsuperscript{91} Therefore, stateless persons are excluded from the benefit of this scheme. Although the Thai state, as per its law and policies, never denies access to healthcare,\textsuperscript{92} stateless persons may be required to pay for their treatment themselves in the cases in which the hospital cannot utilize the funds from other groups — for example, funds for people with low income — to cover their expenses.\textsuperscript{93} In 2010, the government announced a policy returning the right to medical treatment to people who have a status problem, thus allowing them to be eligible for free healthcare. Nevertheless, this policy does not cover stateless persons who do not fall into the Cabinet Guidelines, even if they have a civil registration document.\textsuperscript{94} This includes the Chinese migrants and other stateless groups

\textsuperscript{88} RIJKEN, WASS, GRAMATIKOV AND BRENNAN, \textit{supra} note 86, at 34; ARCHAVANITKUL, \textit{supra} note 40, at 116.
\textsuperscript{89} ARCHAVANITKUL, \textit{supra} note 40, at 113.
\textsuperscript{90} CONST. of the KINGDOM of THAILAND §47, 55.
\textsuperscript{91} RIJKEN, WASS, GRAMATIKOV AND BRENNAN, \textit{supra} note 86, at 116.
\textsuperscript{93} ARCHAVANITKUL, supra note 40, at 115.
\textsuperscript{94} \textit{Id.}
who have had a civil registration document since 1956, which also means that most of them are elderly people who are usually the ones most in need of state subsidized healthcare and medical facilities.95

While the above-mentioned rights concern the rights of adults, which can affect the livelihood of children, the right to education primarily focuses on the children. Despite the introduction of the 2005 “education for all” policy allowing all children to have free access to compulsory education regardless of their nationality, the lack of access to student loans and scholarships can be seen as an obstacle for stateless people to receive a proper education.96 Furthermore, a school may refuse to accept a stateless student, as it can be administratively and bureaucratically prohibitive for the school to receive financial support from the government.97

As demonstrated above, stateless persons are not able to enjoy similar protections on par with Thai nationals, and this severely affects their ability to live their lives with dignity and respect. This inability can be seen as a result of discrimination on the grounds of nationality by the state, something that is prohibited by all core international human rights treaties.98

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96 RIJKEN, WASS, GRAMATIKOV AND BRENNAN, supra note 86, at 34. The Thai government has a duty under the Constitution to provide a 12-year education to every person without charge. However, this only includes the tuition fee which means that students still have to pay for other expenses themselves. Constitution of Kingdom of Thailand §54 ¶ 1; WICHAN SAION, ĖKSĀNWICHĀKĀN BOTBANYAT DÂNҚĀNSUKŠĀ TÂMRATTHAMNŪN HÆNGRĀTĀNĀĈHÂKRÂTHAI B.E. 2560 [ACADEMIC FOCUS, PROVISIONS ON THE EDUCATION UNDER CONSTITUTION OF THAILAND B.E. 2560] 4 (2018) (ebook).

97 ARCHAVANITKUL, supra note 40, at 118.

98 See eg. UHDR art. 15(2); ICCPR art. 1(1); ICERD art. 5(c)(iii); CRC art. 9.
certain restrictions on the exercise of rights of stateless persons can be made under international laws, the limitation of rights has to be strictly interpreted. Nevertheless, stateless persons should receive the same protection that the Thai Constitution and laws extend to citizens, not only because stateless persons are protected under international conventions, but also because the Thai Constitution requires the state to protect “human dignity, rights, liberties and equality of the people.”

The next part of this paper will make some suggestions, relying primarily on international treaty law and customary international law, to find possible solutions for the issue of statelessness in Thailand as discussed above and to ensure that all persons can exercise all of the fundamental rights that are available to Thai citizens, especially the right to nationality.

99 See eg ICCPR art. 13 and 25; ICESCR art 2(3); ICERD art 1(2).
101 CONST. of the KINGDOM of THAILAND § 4 ¶ 1.
102 Id.
III. Measures taken by the Thai government

Thailand’s attempt to solve the issue of statelessness started in 1978 when the state granted nationality to former soldiers of Nationalist China, displaced Thais from Cambodia, Laos migrants, and displaced Thais from Myanmar and the Communist Party of Malaya. Other groups of stateless persons also have the right to file for naturalization. However, the naturalization process has to be done in compliance with the general requirements under the law. This is highly problematic, since many of them cannot satisfy the documentary requirement under the law and, thus, remain stateless.

In 2005, the Thai cabinet passed the “National Strategy on the Administration of Legal Status and the Rights of Persons” (Strategy), which provides a framework solution to the issue of the legal status of non-nationals by “[b]alancing human rights, human security, and national security.” This Strategy can be beneficial to undocumented migrant workers who are unable to verify their nationality with their country of origin, as well as to long-term resident stateless persons in Thailand. For migrant workers who cannot verify their nationality and, thus, cannot return to their country, they will be granted temporary residence in the country. However, they cannot acquire Thai nationality until they can satisfy the requirement under the law. For the long-term residence, the strategy requires the authority to issue the identifying documents and facilitate access to fundamental rights, as well as provide means for these people to have permanent residence or even nationality. To comply with this national strategy, the 2008

103 Chuti Ngamurulert and Rung Srisomwong, Legal Measures to Solve Problems of Naturalization as a Thai: The Case of Stateless Persons 8(1) MFU Connexion 345, 355(2019).
104 Id.
107 Id.
amendment to the Civil Registration Act and Nationality Act was passed, allowing the birth of every child to be registered\(^{108}\) and those who lost their nationality due to the 1972 Declaration to acquire a nationality.\(^{109}\) This is a significant step the Thai government took to solve the problem of statelessness in Thailand. Still, there is a question of whether a person can satisfy the evidentiary requirements—i.e., a birth certificate and residency documents — as the stateless person often lacks the identification documents.\(^{110}\)

In March 2016, the Royal Thai Government (RTG) announced a nationwide review to identify the number of stateless students in Thailand, as well as review their eligibility for Thai citizenship. The Ministry of Interior's Permanent Secretary, in response to the announcement by the RTG, announced that Thailand's Department of Provincial Administration (DoPA) would require all districts to comply with the RTG by identifying the legal issue of stateless students in Thailand.\(^{111}\) During this period, the RTG also expressed its commitment to and support of the UNHCR’s Campaign to End Statelessness by 2014 and has become one of the members of the Group of Friends of the Campaign. To support Thailand's efforts, the UNHCR has been working with authorities and the non-governmental agency Adventists Development and Relief Agency (ADRA) to establish Service Points\(^{112}\) in which the stateless students and their families can be registered in different schools.\(^{113}\) In the same year, the Permanent Secretary of the Ministry of Interior issued the Guiding Procedures on Determination of Nationality Law and Solutions for Resolving the Issue of Individual Legal Status. This was

\(^{108}\) CIVIL REGISTRATION ACT B.E. 2535 (1992) (as amended by Act No.2 B.E. 2551 (2008) and No. 3 B.E. 2562 (2019)) § 6 ¶ 3[hereinafter Civil Registration Act].

\(^{109}\) Nationality Act, supra note 15, at § 23.

\(^{110}\) RIJKEN, WASS, GRAMATIKOV AND BRENAN, supra note 86, at 31-32.

\(^{111}\) UNHCR, UNHCR commends steps taken to grant citizenship to stateless students in Thailand (Mar. 21, 2016), https://www.unhcr.or.th/en/news/statelessnews.

\(^{112}\) A location where stateless people can obtain nationality-related information and lodge application for birth registration, nationality and related civil stateless documents.

\(^{113}\) UNHCR, supra note 111.
made in response to King Bhumibol Adulyadej’s speech on February 18, 2001, urging the government to grant nationality to those who have lived in Thailand for a long time or were born in Thailand.\textsuperscript{114} Furthermore, the Thai Cabinet adopted the “Guidance and Measures to Address Legal Status Problems and Problems of Stateless Persons in Thailand” in December 2016, allowing children to acquire Thai nationality if they were born in Thailand to parents from ethnic minority groups and have lived in Thailand for not less than 15 years or if they were born in Thailand to other groups of aliens and have graduated from university or the equivalent.\textsuperscript{115} Although Thailand made significant progress in 2016, there were not many significant changes in 2017 or 2018. One of the most important movements during this period is the Ministerial regulation on the determination of the status and condition of residence of a person born in Thailand without Thai nationality by August 17, 2017, which allows the child to have the same residency status as the parent(s).\textsuperscript{116} In 2019, Thailand passed an amendment to the Civil Registration Act, allowing orphans, foundlings, and rootless persons to acquire Thai nationality after they satisfy the documentation and residency requirements.\textsuperscript{117} While Thai laws related to stateless persons have significantly improved, in reality, the process to acquire nationality is complicated and inaccessible by the target group, as it requires a person to have legal knowledge as well as financial capacity to seek assistance from a lawyer.\textsuperscript{118}

\textsuperscript{115} Cabinet Res., Kānkēkhaipanāh Rūāng Sanchāt Lǣ Sathānabukkhlo K’Ong Deknakrīan Naksuksā Lǣ Bukkhorraisanchā Tithikētnairāt Ānāchakratthai [The solution for the issue of nationality and status of the student and stateless person born in Thailand] (December 7, 2016).
\textsuperscript{116} Ministerial Reg., Kamn̤othānā Lǣ Ngōrankhaikān’ Ayūnairāt Ānāchakratthai Khōngphūkētnairāt Ānāchakratthai Sungmaiдаisanchātithai [the determination of the status and condition of residence of a person born in Thailand without Thai nationality], 134 Ch. 85 gor, Ratchakitchanubeska [ROYAL THAI GOV’T GAZETTE] 3 (Aug. 17, 2017).
\textsuperscript{117} Civil Registration Act, supra note 99, at § 19/2 ¶ 1.
\textsuperscript{118} Ngamurulert and Srisomwong, supra note 94, at 345, 359.
In 2018, the UNHCR reported that over 16,160 people had acquired nationality, and over 8,360 stateless people had received assistance in preparation for naturalization.\textsuperscript{119} Despite this outstanding development, Thailand has not yet succeeded in solving the issue of statelessness, as there remain over 400,000 people who need to be naturalized.\textsuperscript{120} One of the causes for the slow process in naturalization is the documentation approval, which has to be done on a case-by-case basis by governmental officials. To speed up the process of naturalization, a willingness of the government to expedite resources to handle the workload is needed.\textsuperscript{121} Furthermore, the Thai Nationality Act and Civil Registration Act still leave gaps that allow persons to become stateless. These gaps include the lack of safeguards against childhood statelessness for children born in a territory to acquire nationality without a lengthy waiting period, as well as protection against renunciation, loss, and deprivation of nationality that lead to statelessness.\textsuperscript{122}

\textsuperscript{119} UNHCR, reporting.unhcr.org/node/2552 (last visited Dec. 16, 2019).
\textsuperscript{120} Anchalee Kongrut, More Efforts Urged to End Statelessness, Bangkok Post (May 30, 2019), https://www.bangkokpost.com/thailand/general/1686188/more-efforts-urged-to-end-statelessness.
\textsuperscript{121} Id.
IV. Solutions to statelessness in Thailand

As mentioned earlier, many of the violations of fundamental rights were made based on the grounds of nationality. Therefore, the solution to these violations should be to ensure that no one becomes stateless in the first place. This is because, even though the international human rights conventions that Thailand is a party to require the state to protect the fundamental rights of all people under the jurisdiction of the state, there are certain rights that cannot be exercised without nationality, such as the right to vote and the right to political participation. The next issue is how the state can ensure that every person has a nationality. The 1954 Convention and 1961 Convention can be seen as an answer to this question, as they require the state party to facilitate naturalization and grant nationality to children born or found in the state’s territory. As Eva Mrekajova noted in her comparative study, “[F]acilitated naturalization could be one approach to reduce statelessness and we do think it is a good one, but it has to be considered within the context of a particular society.” The naturalization of a stateless person can be insufficient to solve the problem in a country where there is a large number of stateless persons. Mrekajova also suggests that other measures having a similar effect are needed. These include the retroactive application of standards relating to the prevention of statelessness, change in nationality law, or reversal of policy resulting in statelessness. She further proposes recommendations on the measure that should be taken by the states to solve the problem of statelessness. Although her

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124 The person who has the right to vote is a person with Thai nationality or has acquired nationality by naturalization for not less than five years. Constitution of Kingdom of Thailand § 95(1) (emphasis added).
127 Id.
128 Id.
129 Id., at 56-57.
recommendations on this issue can be beneficial for a stateless person in Thailand, these
recommendations were made based on the study of European countries—Estonia, Hungary,
and Slovakia, which are socially and economically different from Thailand. Also, the cause
of statelessness in these countries is different from that of Thailand. While there have been
various studies done with an attempt to solve the problem of statelessness, most of them
apply in a European context, which may not work the same way in the situation in Thailand
due to different causes of statelessness and varying social contexts. In Thailand, while
scholars have proposed solutions to the issue of stateless persons, they mainly focus on the
change in domestic law without adopting the international law standards.130

Nevertheless, in order to ensure that the stateless person can acquire nationality, the
current laws and policies need to be amended.131 This is because the current laws and policies
contain provisions that prohibit stateless persons who have de facto connections to the state
from acquiring nationality. This can be seen in the Thai Nationality Act, which excludes the
acquisition of nationality for a child born in Thailand if, at the time of his birth, his lawful
father, his father who did not marry his mother, or his mother was: (1) a person given
leniency for temporary residence as a special case; (2) a person permitted to temporarily stay;
or (3) a person who had entered and resided in the Kingdom without permission under the
Thai Immigration Act.132 Furthermore, the Act requires that an alien who wishes to apply for
naturalization as a Thai has to become sui juris,133 have good behavior, have a regular
occupation, have a domicile in Thailand for at least five consecutive years, and have

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130 See, eg., Ngamurulert and Srisomwong, supra note 103; BOONRAT, supra note 37.
131 Ngamurulert and Srisomwong, supra note 103, at 345, 355.
132 Nationality Act, supra note 14, at § 7bis ¶ 1.
133 A person becomes sui juris at the completion of 20 years of age. THAI CIVIL AND
COMMERCIAL CODE B.E. 2468 (1925) §19.
knowledge of the Thai language. This, together with the ministerial regulations, can be highly problematic to the acquisition of the stateless person, as it sets up conditions that a stateless person may be unable to satisfy. However, having conditions for naturalization is itself not a problem; the problem is the “unreasonable impediments” to naturalization for stateless persons created by the conditions. For instance, the “regular occupation” requirement requires a general stateless person to have Professional Certification from the Foreign Workers Administration Office or Provincial Employment Office and to earn at least 40,000 baht ($1,312.08) per month, or 20,000 baht ($656.04) for a minority stateless person. This is two times higher than the minimum wage in Thailand and does not reflect the reality that many stateless persons work in agriculture or labor-intensive areas in which wages are low.

Another example of the requirement that may raise an unreasonable impediment to naturalization of a stateless person is the requirement of civil registration documents. The current Nationality Act provides a special measure for the acquisition of nationality of

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134 Nationality Act, supra note 15, at §10.
137 Mrekajova, supra note 126, at 24.
139 Ministry of Labor, Prakātkhanakmānkākhāhāng Rūang’ Atrākhāchāhāngkhuntam Chabapthī 9 [Wage board announcement on the minimum wage No.9], 135 special part 63 Ngar, Ratkhakitchanubeska [ROYAL THAI GOV’T GAZETTE] (Jan. 19, 2018).
140 RIKKEN, WASS, GRAMATIKOV AND BRENNAN, supra note 86, at 34; KARCHAVANITKUL, supra note 40, at 116.
displaced Thais\textsuperscript{141} and stateless persons who lost their nationality as a result of the 1972 Declaration.\textsuperscript{142} For the displaced Thais to apply for Thai nationality, they have to provide a civil registration document, a relative chart with family living in Thailand, and other related evidence proving that they have no other nationality.\textsuperscript{143} A person considered to be a displaced Thai by the Committee on the recognition of Displaced Thais would then be deemed to acquire Thai nationality by birth.\textsuperscript{144} The current Act allows any persons and their children who lost their nationality due to the 1972 Declaration of Revolution Party No. 337 to obtain Thai nationality, provided that the person prove his residency in the Kingdom with civil registration documents and the good behavior or contribution to the country.\textsuperscript{145} Although this should solve the issue of statelessness in the people who lost their nationality due to the enactment of the 1972 Declaration, the civil registration document requirement and the need to apply for nationality still causes a delay in returning nationality to these groups of people.\textsuperscript{146} While the other scientific documents, such as DNA results, are accepted as evidence for naturalization,\textsuperscript{147} the cost for DNA testing could be as high as 6,500-8,500 baht ($215.23-281.46) per person,\textsuperscript{148} and only a handful of people are eligible for a free DNA

\textsuperscript{141} Nationality Act, \textit{supra} note 15, at § 4.

\textsuperscript{142} The displaced Thai as described in the Nationality Act refers to an ethnic Thai who lost Thai nationality due to the territorial succession in the past, has immigrated to Thailand for consecutive period, observed the Thai way of life and has been surveyed and registered according to the Civil Registration or hold other relevant and similar characteristics according to Ministerial Regulation. Nationality Act, \textit{supra} note 15, at § 23.

\textsuperscript{143} CHANTARAT, \textit{supra} note 138, at 81.

\textsuperscript{144} Nationality Act, \textit{supra} note 15, at § 9/6.

\textsuperscript{145} Id., § 23.

\textsuperscript{146} CHANTARAT, \textit{supra} note 138, at 138.

\textsuperscript{147} Ministerial Reg., Kamnotwithikān Læ Khāthamnīamkhamkhōphisūtkhwämpenbidā Sungmīsanchāthithaikhōngphūkōt Phūkāndaisanchāthithaidōikānkōt [procedures and fees for requests for proof of paternity of the person to obtain Thai nationality by birth], 127 Ch.66 gor, Ratchakitchanubeska [ROYAL THAI GOV’T GAZETTE] 13 (Nov. 3, 2010)

testing provided by the government.\textsuperscript{149} Thailand could potentially share the burden of proof with the stateless persons by either lowering or waiving certain requirements. However, it is important to note that even if Thailand makes another set of rules for the naturalization of stateless persons, there will always be some people who cannot satisfy even reasonable minimum requirements that bar stateless persons from acquiring nationality.

Although these changes in domestic laws and policies would provide a solution to the issue of statelessness, the guidelines under the 1954 Convention and 1961 Convention can also be beneficial, as they are specially made for the stateless person who needs special protection. Furthermore, the stateless conventions require state parties to protect the fundamental rights of stateless persons. This is significant, as the naturalization can be a lengthy process.

\textsuperscript{149} According to the letter by Bureau of Registration Administration, only a person claiming to be a Thai who has submitted a request for overdue birth notification or has requested to add a name to the House Registration (Thor.Ror.14) in accordance with the Registrar of the Office of Civil Registration Act B.E. 2535 or Hill tribes and highlanders submitting Thai nationality requests in accordance with the regulations of the Central Registration Office regarding the consideration to register a person’s status in the civil registration for Hill tribes people in 2000 or the person who submits a request to change the status in the civil registration document from non-Thai nationality to a person who acquire Thai nationality at birth according to Nationality Act are eligible for a free DNA test. The Bureau of Registration Administration (BORA), nangsūsamnakthabīanklāng dīan māk thī mōthō 0309.1/ wō 41 rūangkrhōngkāntrūatsānphanthukam phūrakākkhaipanhāthhānalaesitthik’ ongkhonthaiθītoklonthāngthabīanrāt [urgent letter No. Mortor 0309.1/ wo 41 on the genetic testing project to solve the problem of status and rights of Thais who were not registered] (Oct 29, 2015).
V. Why Thailand should accede to the Conventions on statelessness

1. The Conventions provide international standards to prevent childhood statelessness

i. *Jus soli* and *jus sanguinis* principles

The 1961 Convention requires the state to grant nationality to persons born within its territory (*jus soli*) or persons born outside of the territory (*jus sanguinis*) who would otherwise be stateless (a) at birth by the operation of law or (b) upon application in the manner prescribed by the national law, provided that such application shall not be rejected, if, at the time of their birth, their parent had the nationality of such state. The phrase “who would otherwise be stateless” is crucial, as it prevents the statelessness of children by guaranteeing their right to a nationality. The 1954 Convention defines a stateless person as a person who is not considered to be a national by any state under the operation of its laws. The laws under this Convention do not necessarily refer to the nationality law in Thailand. Instead, they refer to the nationality laws of the country of the parent(s), as well as the recognition of the competent authority, as the children may be stateless even if they met all the requirements to acquire nationality. The state cannot claim that a person is a national of another state by using its interpretation of another state's nationality law.

Thailand adopted the universal principles for a person to receive nationality, which include *jus soli* (right of the soil) and *jus sanguinis* (right of blood). The *jus sanguinis* nationality in Thailand is rather straightforward. A child must have either a father or mother who has Thai nationality to acquire *jus sanguinis* nationality at birth. On the other hand, the

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151 1954 Convention, supra note 3, at art.1.
152 Chickera and Wass, supra note 29, at 60.
154 Nationality Act, supra note 15, at § 7(1).
jus soli principle is more complicated, as Thai laws take the nationality and residency status of the parent into consideration. This is demonstrated in Section 7 bis of the Nationality Act, which provides exceptions to the acquisition of jus soli nationality.

The Thai Nationality Act does not take into consideration the stateless status of an individual at the time of birth, nor does it have provisions preventing statelessness in children born with alien parents without permanent residence in Thailand. This is even though most of the stateless persons have been registered and given the identification document\textsuperscript{155} but only have temporary permission to stay in the territory. In an attempt to solve this problem and comply with the Global Action Plan 2014, the Thai Cabinet issued the resolution on the solution for nationality and status of students and stateless persons born in Thailand in 2016, allowing children born in Thailand from a stateless parent who has lived in Thailand for more than 15 years to apply for naturalization.\textsuperscript{156} This could be a good solution to this problem. However, the fact that the state requires these people to apply for naturalization can prolong the problem of childhood statelessness, as the application has to be approved individually, and Thailand does not have enough resources to effectively enforce this solution.\textsuperscript{157}

Alternatively, Thailand may adopt the guidelines under Article 1(1) of the 1961 Convention, which automatically grants nationality to a person who would otherwise be stateless at birth. However, the automatic acquisition of nationality of persons who are otherwise stateless comes with risks, such as a person with bad faith may attempt to acquire nationality this way.\textsuperscript{158} Therefore, the automatic acquisition of nationality should be subjected

\textsuperscript{155} As demonstrated in the Part III of this paper.
\textsuperscript{156} Cabinet Res., Kānkêkhaipanhā Rûng Sanchât Læ Sathânabukkhlo K’Ong Deknakrîan Naksurksâ Læ Bukkhonraisanchâ Tithikêtnairât’Anâchakrathai [The solution for the issue of nationality and status of the student and stateless person born in Thailand] (December 7, 2016).
\textsuperscript{157} Kongrut, supra note 120.
\textsuperscript{158} Suwannasung, supra note 46, at 155.
to specific conditions, such as a parent’s immigration status, duration of stay, and the civil registration requirement.\textsuperscript{159}

ii. Foundlings or rootless children\textsuperscript{160}

The 1961 Convention contains a provision requiring a state party to, in the absence of proof to the contrary, consider a foundling found in the territory to have been born within the territory of parents possessing the nationality of that state.\textsuperscript{161} This could prevent childhood statelessness in the case of a child whose parent is unknown and has no connection with another state.

Before 2019, there was no express legislation on the nationality of foundlings. While the administrative practice and civil registration allow the issuance of a certificate to foundlings, there are gaps in the acquisition that do not automatically grant nationality to foundlings.\textsuperscript{162} In 2019, the Civil Registration B.E. 2534 was amended by the Civil Registration Act No. 3 B.E. 2562 (2019), allowing foundlings to acquire Thai nationality through naturalization. Still, the newborns and children found in Thailand do not acquire Thai nationality unless the registrar can verify that the child has a parent with Thai nationality or was born in Thailand with alien parents and does not fall into the exception of the acquisition of nationality.\textsuperscript{163} The current law allows children who have identification documents to reside

\textsuperscript{159} See eg., the state may use the existing conditions under the resolution to determine whether a person can acquire nationality provided that the conditions should not unreasonably prevent a person from acquiring a nationality. Cabinet Res., Kānkēkhaipanhā Rūang Sanchāt Læ Sathānabukkhlo K’Ong Deknakrīn Naksurksā Læ Bukhonraisanchā Tithīkētnairāt Ānāchakrathai [The solution for the issue of nationality and status of the student and stateless person born in Thailand] (December 7, 2016).

\textsuperscript{160} This group of children includes homeless children, children with unknown parent or abandoned children. Civil Registration Act, supra note 108, at § 19/1.

\textsuperscript{161} 1961 Convention, supra note 150, at art. 2.

\textsuperscript{162} Civil Registration Act, supra note 108, at 19, 19/1.

\textsuperscript{163} Id., at §§ 19, 19/1-19/2 ¶ 1; Nationality Act, supra note 15, at § 7 bis; Ministerial Reg., Kotkrathōnwong
in the country for more than ten consecutive years and qualify for the naturalization under Ministerial regulation or declaration to acquire Thai nationality.\textsuperscript{164} The requirements under the current Act and ministerial regulation include the duration of residence, identification documents, and certificate issued by the departments in the Ministry of Social Development and Human Security.\textsuperscript{165}

By acceding to the stateless Conventions, Thailand would be taking take a positive approach towards granting nationality to foundlings. Instead of attempting to identify the nationality of the parents or the place the child was born, the state has to assume that such a child is born within its territory of a parent possessing the nationality of the state. This would not only prevent the statelessness of foundlings in Thailand but also protect the revocation of nationality of such persons, as the Constitution prohibits the revocation of Thai nationality acquired by birth.\textsuperscript{166}

However, the state may impose some restrictions on the acquisition of nationality of rootless children in order to prevent situations in which the parents intentionally abandons the child and then presents themselves as the child's parents once the child receives Thai nationality. The current law attempts to prevent this by giving authority to the Minister to

\textsuperscript{164} Civil Registration Act, \textit{supra} note 108, at §19/2.

\textsuperscript{165} Prakātkrathönwongmahāthiī Rūng

Kamnotlakkēnlæwīkānphisūtsathānakēntlæsanchātīk Ongdeksungthúkthōtthing Dekrerōnrū Dekthīmaiprāktabupkārīrōrbupkārīt Otthing [Ministerial Regulation establishing rules and procedures for proving the birth status and citizenship of the abandon children, homeless children or children with unknown parent], 125 Ch. 96 Ratchakitchanubeska [ROYAL THAI GOV’T GAZETTE] 10 (Aug. 12, 2008).

\textsuperscript{166} CONST. of the KINGDOM of THAILAND §39 ¶ 2.
revoke the child’s nationality if the applicant cannot satisfy the requirement or is unqualified under this Act.\textsuperscript{167} However, this revocation of nationality can still lead to statelessness when the parents are stateless or the child cannot acquire the nationality of the parent under the parent’s nationality law.\textsuperscript{168} Alternatively, Thailand may grant nationality to the foundling found in the country while under the age of five years, with the condition that the nationality of such a child can be revoked until he or she reaches a certain age, at which point the person’s nationality cannot be revoked in any circumstance.\textsuperscript{169}

2. The Conventions require the state to facilitate naturalization for stateless persons

The 1954 Convention does not give the nationality of a specific state to the stateless person.\textsuperscript{170} Instead, the convention requires the state to facilitate the acquisition of the nationality of a person as much as possible, for example, by expediting the naturalization procedure and reducing the charges and cost of the proceeding.\textsuperscript{171} However, Article 32 of the 1954 Convention does not provide a clear outline of what the state needs to do to satisfy this requirement. The UNHCR explained that ‘facilitating’ the naturalization means the state should give appropriate assistance to the person to acquire nationality, as well as the necessary information on the regulations and procedure.\textsuperscript{172} Furthermore, the state authority should adopt a legal and administrative procedure for the benefit of these people by lessening the burden of proof that they have to provide, allowing them to qualify for naturalization earlier than normal

\textsuperscript{167} Civil Registration Act, \textit{supra} note 108, at § 19/3.
\textsuperscript{168} There are at least 110,516 stateless children who cannot acquire nationality of another country if they lose Thai nationality since their parents are also stateless. Chantarat, \textit{supra} note 138, at 25.
\textsuperscript{169} \textit{See. Eg.}, FINLAND’S NATIONALITY ACT (358/2003) §12; 8 U.S.C. 1402 §301(f) (1952).
\textsuperscript{170} UNHCR, \textit{STATELESSNESS DETERMINATION PROCEDURES: IDENTIFYING AND PROTECTION STATELESS PERSONS} 9 (2014).
\textsuperscript{171} 1954 Convention, \textit{supra} note 3, at art. 32; UNHCR, \textit{supra} note 170, at 9.
aliens. Although this does not explicitly refer to stateless persons, their need for the state to simplify or waive some of the naturalization requirements is similar to that of a refugee.

The method adopted by Thailand to facilitate the naturalization of stateless persons can be divided into two parts: (1) measure for general stateless persons and (2) measure for displaced Thai and people who lost their nationality as a result of the 1972 Decree. The former group of people has to satisfy the general requirements for naturalization under the Thai Nationality Act, which includes good behavior, a regular occupation, a domicile, and knowledge of the Thai language. On the other hand, the latter group needs to prove that they are either displaced Thais or that they lost their nationality as a result of 1972 Decree and present civil registration documents to the authority in order to acquire nationality. The reason behind this could be that the former group of people never had Thai nationality, while the latter may have had nationality or at least had the right to have Thai nationality at some point. Although the amendment to the Nationality Act in 2008 should have solved the issue of statelessness in the people who lost their nationality due to the enactment of the 1972 Declaration, the civil registration document requirement and the need to apply for the nationality still cause the delay in returning nationality to these groups of people.

Even though the recent amendments to the laws allow many stateless persons to acquire Thai nationality, it is difficult for stateless persons to have access to the naturalization procedure due to the complexity of the laws and the requirements that indirectly exclude certain groups of people from applying. Certainly, the conditions for naturalization can protect the interests and security of the state to a certain extent by allowing the state to determine who

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173 UNHCR, supra note 172, at 3; Mrekajova, supra note 126, at 19.
174 Mrekajova, supra note 126, at 19-21.
175 Nationality Act, supra note 1, at §10.
176 Nationality Act, supra note 15, at §§ 4 and 23; Chantarat, supra note 138, at 81.
177 Id., at 138.
178 Ngamurulert and Srisomwong, supra note 103, at 360.
should be its citizen without spending human and financial resources examining all aliens. However, the same requirements should not apply to the stateless person who has no connection with another state, as they may not be able to acquire the required documents. Further, the process of acquiring these documents can be difficult or time intensive. It is also possible that some documents may never have been issued and, therefore, may not exist.\footnote{Mrekajova, supra note 126, at 42.}

3. The Conventions could help prevent the loss and deprivation of nationality

While granting nationality can be one of the most important solutions to the issue of statelessness, ensuring that a person does not lose their nationality without a lawful action is also crucial in preventing further cases of statelessness. The deprivation of nationality on the grounds of discrimination is a violation of human rights. Therefore, statelessness resulting from discrimination cannot be used as a reason for excluding these people from benefiting from other rights.\footnote{Human Rights Council Res. 26/14, U.N. Doc. A/HRC/RES/26/14, 2-3 (July 11, 2014); Human Rights Council Res. 32/5, U.N. Doc. A/HRC/RES/32/5, 2 (July 15, 2016).}

While the revocation of the nationality of a person acquired by birth is prohibited under Thai constitution,\footnote{CONST. of the KINGDOM of THAILAND § 39.} the arbitrary deprivation of the nationality acquired through naturalization is allowed under Thai Nationality Act in certain circumstances such as when a person commits a serious crime against the country or when a nationality had been obtained through fraud.\footnote{Nationality Act, supra note 15, at §§17, 19 ¶ 1.} The 1961 Convention generally prohibits the deprivation of nationality that would render a person stateless. There are some exceptions concerning the national security and acquisition of nationality through fraud. The nationality of a person born with alien parents in Thailand can be very sensitive. Such person's nationality can be revoked if he resides in a country in which his parent has or used to have nationality for more than five years, if he makes use of another
nationality, or if he commits any act that is conflicting with the national interest or public orders.\textsuperscript{183} Similarly, the nationality of the child born to an alien parent who has acquired nationality according to the Minister's discretion as a special case can be revoked for the purpose of security and interests of the state.\textsuperscript{184} Although the Thai Nationality Act and Civil Registration Act can grant nationality to the children of aliens who fall into an exception as a special case, their nationality does not have a similar effect to that of children born to Thai parent(s) or with an alien parent who has permanent residence in Thailand. This is reflected in the language of the Nationality Act, which uses the term \textit{renunciation} for Thai nationals and \textit{revocation} for the children of aliens.\textsuperscript{185} Further, the Constitution only prohibits the revocation of the nationality of a person who acquires nationality at birth.\textsuperscript{186} Thus, the nationality of a person born in Thailand with alien parents can be problematic, since many of the children who receive Thai nationality as a result of ministerial regulations or cabinet resolutions can be deprived of nationality, leading to statelessness. This is because those children may not have been connected with another country, or their parent may be a stateless person.

In the cases in which an individual acquires nationality through naturalization, nationality can be revoked if it is proved that (1) naturalization was effected by concealment of facts or false statements; (2) a person still makes use of another nationality; (3) a person committed any act prejudicial to the security or conflict with interest of the state; (4) a person committed any act contrary to the public order or good morals; (5) the person resided abroad without having a domicile in Thailand for more than five years; or (6) the person retains nationality of a country at war with Thailand.\textsuperscript{187} Noticeably, many of the provisions concerning

\textsuperscript{183} Nationality Act, \textit{supra} note 15, at§17
\textsuperscript{184} Id., §18
\textsuperscript{185} Id., §§14 and 17.
\textsuperscript{186} CONS. of the KINGDOM of THAILAND B.E. 2560(2017) §39 ¶ 2.
\textsuperscript{187} Nationality Act, \textit{supra} note 15, at §19 ¶ 1.
Deprivation of nationality under the Thai Nationality Act are similar to the exceptions under Article 8 of the 1961 Convention. For example, Article 8(2) of the Convention provides that the state may deprive nationality of its nationals if such person falls to acquire nationality either upon residence or registration with appropriate authority within one year after reaching 20 years of age.\(^{188}\) Alternatively, a competent authority may deprive the nationality of an individual if his nationality has been obtained by misrepresentation or fraud.\(^{189}\) This provision only applies to an individual who acquires nationality through the application.\(^{190}\) The ‘misrepresentation’ in this context refers to dishonest misrepresentation rather than if a person is unaware that the information provided as a material for naturalization is not true.\(^{191}\) Furthermore, there must be causality between fraud or misrepresentation and the granting of nationality.\(^{192}\) The convention also allows the state to retain the grounds for deprivation of nationality other than that specified in the convention, even though such deprivation may lead to statelessness.\(^{193}\)

Nevertheless, one of the biggest differences between these two contexts is the effect of deprivation of nationality on the children or spouse. The Thai Nationality Act extends the effect of revocation of nationality to the spouse and the child if he is still a minor,\(^{194}\) which results in those individuals losing nationality and possibly become stateless. On the other hand, the 1961 Convention provides that the deprivation of an individual should not affect the children or

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188 1961 Convention, supra note 150, at art. 8(3) and art. 7(4), (5).
190 UNHCR, Expert meeting: interpreting the 1961 Statelessness Convention and avoiding Statelessness resulting from loss and deprivation of nationality (2014) ¶ 56.
191 Id., at ¶ 56-59.
192 Id., at ¶ 58-59.
193 1961 Convention, supra note 150, at art. 8(3); Luca Büken and René de Groot, supra note 189, at 38, 41.
194 Nationality Act, supra note 15, at §19 ¶ 2.
spouse if such action would lead to statelessness.\textsuperscript{195} The latter measure should be adopted into the Thai Nationality Act, as so to prevent the further case of statelessness.

According to the Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions") in 2013, the exception to the right for the state to deprive nationality of a person has to be interpreted narrowly and must be proportionate to the impact on an individual.\textsuperscript{196} In the cases in which the deprivation is permissible, the act of deprivation should be delayed until such a person acquires another nationality or permanent residence status in another state.\textsuperscript{197}

Many scholars agree that the state should have the right to deprive the nationality of a person on certain grounds such as fraud or national security.\textsuperscript{198} However, the deprivation of nationality should be done in proportion to the interest of the state and the impact on the right of an individual.\textsuperscript{199} The arbitrary deprivation of nationality acquired at birth should be prohibited unless such a person has committed a serious crime against the country. In other words, the deprivation of nationality based on the legal status of the parent at birth should be abolished. Regarding the revocation of nationality acquired through naturalization, particularly in the case of misrepresentation or fraud, the limitation, in terms of duration between the commission of an act and its discovery by the authority and between the discovery and the issuance of the deprivation decision,\textsuperscript{200} should be included in the Thai Nationality Act. This is

\textsuperscript{195} 1961 Convention, \textit{supra} note 150, at art. 6.
\textsuperscript{196} UNHCR, \textit{supra} note 153, at 53-54.
\textsuperscript{197} \textit{Id}. at 22-23.
\textsuperscript{200} UNHCR, \textit{supra} note 196, at 21.
because such a person may have already integrated into the society, and the revocation of nationality could have a great and irreversible impact on the person’s life.

Thai laws do not prohibit a person whose nationality has been revoked to reapply for nationality based on the link to his family. However, allowing a person whose nationality has been revoked for national security purposes to apply for naturalization would be contradictory to the national interests of the state. Thus, such persons should not be allowed to acquire Thai nationality. According to the guidelines by the Ministry of Interior, one of the qualifications for a person who wishes to apply for naturalization is good behavior, which means that an individual must have no criminal record related to politics, drugs, or national security.201 In other words, if a person commits a crime serious enough for his nationality to be revoked, he is not qualified to apply for naturalization. However, he should be able to stay in Thailand in the interest of his children if he cannot acquire nationality in another state. This is why the human rights protections of stateless persons is important, as there will always be some people who fall through the gaps of the laws or commit unforgivable crimes towards the country of their residence.

4. Accession to the conventions would affirm Thailand’s commitment to protect human rights

Other than the benefits of the conventions listed above, acceding to the statelessness Convention would reinforce the commitment of Thailand to the protection of human rights,202 because the conventions require the state to protect the right of the stateless person while


waiting for naturalization. This is important, as Thailand has the capacity to grant nationality to only a limited number of people each year. The 1954 Convention contains provisions related to identity and travel documents, non-expulsion, naturalization, and other fundamental rights. Articles 27 and 28 require the state to issue identity and travel documents to an individual recognized as stateless. These provisions are important because without these documents, a stateless person may not be eligible to receive any protection from the state. These documents also help to facilitate a stateless person who may wish to travel abroad for study, employment, health, or immigration. However, the validity of the travel documents in the non-contracting state can be a problem, since only 94 countries have ratified the Convention. In addition, the article on non-expulsion on the grounds of national security or public order is important for stateless persons who may have no place to return and can be subject to human trafficking. However, the convention balances the importance of national security and that of human rights protection by allowing expulsion with due process of law. In addition, the Final Act recognizes the general principle of the non-refoulement in the cases in which a person may be subject to persecution. Once the stateless person has the right to temporarily or permanently reside in the state's territory without the fear of deportation, the issue of naturalization becomes the priority for them.

203 Despite the attempt of the government to solve the problem in recent years, the number of stateless persons in Thailand decreased by 2% in 2018 as only 16,160 persons acquire nationality in that year compared to the 478,843 stateless persons in Thailand. UNHCR, supra note 119.
204 1954 Convention, supra note 3, art. 27, 28.
207 Id.
The 1954 Convention also protects the right to property (Articles 13 and 14), right to association (Article 15), access to courts (Article 16), employment (Articles 17 and 18), housing (Article 21), education (Article 22), administrative assistance (Article 25), and freedom of movement (Article 26). Although the convention requires the contracting states to protect the rights of stateless persons as favorably as possible — or provide the same treatment to the nationals or aliens\textsuperscript{208} — the actual standard of treatment is made according to the aliens generally in the same circumstances and based on the non-discrimination clause for a stateless person in comparison to non-nationals.\textsuperscript{209} The 1954 Convention adopted the similar protection to the exercise of rights with the 1951 Refugee Convention, which means that the exercise of any rights by the stateless person under this convention is offered depending on the level of attachment to the state.\textsuperscript{210} Even though the convention requires the member state to improve the rights of the stateless person to reside within its territory, this cannot be seen as a substitution for the need to acquire nationality, nor alter the fact that these people are stateless.\textsuperscript{211}

5. The conventions serve as a base for human rights organizations and the court.

Acceding to the statelessness conventions can legitimize the claims of non-profit organizations against the government.\textsuperscript{212} Furthermore, the accession to the conventions strengthens the grounds for the human rights claimants, either stateless persons themselves or their representative.\textsuperscript{213} This can help speed up the process of acquiring nationality in the cases in which the authority refuses to accept the application or the consideration of whether a person

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\textsuperscript{208} See, eg., 1954 Convention, supra note 3, art.13, 21.  \\
\textsuperscript{209} Laura Van Wass, The UN Statelessness Conventions, in NATIONALITY AND STATELESSNESS UNDER INTERNATIONAL LAW 64, 73-74 (Alice Edwards and Laura Van Wass ed., 2014).  \\
\textsuperscript{210} Id.  \\
\textsuperscript{211} UNHCR, supra note 206, at 10  \\
\textsuperscript{212} Cassel, supra note 202, at 127.  \\
\textsuperscript{213} Id., at 128.
\end{flushright}
is eligible for naturalization takes longer than the law provided. Also, the conventions can serve as the reference for the court. For example, in the Ruling of the Constitutional court No. 4/2556, the court referred to Article 14(3) of ICCPR when interpreting whether the provision allowing for the testimony of the plaintiff’s witness to be done in a foreign country, according to the Mutual Assistance in Criminal Matters Act B.E. 2535(1992), is constitutional. The court concluded that the testimony in a foreign country is a violation of the Constitution and Article 14(3) of the ICCPR. It is important to note that, although the previous decision of the court has a significant impact on the interpretation of the lower court, the lower court is not bound to follow such a decision.\textsuperscript{214} However, the Ruling of the Constitutional Court is final and binding on the National Assembly, the Council of Ministers, Courts, independent organizations, and State agencies.\textsuperscript{215}

\textsuperscript{214} WASU SIRIMAHAPHRUEK, BINDING EFFECT OF PREVIOUS JUDGMENT IN HIGH COURT: A STUDY ON THE DOCTRINE OF PRECEDENT IN THE DIKA Assumption Univ. 2 (2012)
\textsuperscript{215} CONST. of the KINGDOM of THAILAND B.E. 2560 (2017) § 211 ¶ 4.
VI. Challenges for the state in acceding to the conventions on statelessness

1. The dualist approach towards application of international law

As demonstrated above, the conventions on statelessness provide significant guidelines in the acquisition of nationality, as well as the prevention of future statelessness. However, Thailand has not acceded\(^\text{216}\) to the statelessness conventions despite the nation state’s commitment to the Global Action Plan to End Statelessness in 2024, which includes actions encouraging the state to accede to the 1954 Convention and the 1961 Convention.\(^\text{217}\) As a result, Thailand does not have a legal obligation to comply with the provisions under the statelessness conventions. Therefore, Thailand should accede to the statelessness conventions despite the fact that the conventions would not have an immediate effect on the domestic laws. Thailand adopted a dualist approach in the application of international law, which means that the treaties or conventions concluded by the King with approval from the National Legislative Assembly would not have any legal status in the Thai legal system until legislative action has been made.\(^\text{218}\) This reflects the separation of power by prohibiting the executive branch from creating new laws or amending existing laws by simply concluding the treaty.\(^\text{219}\) Nevertheless,

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\(^{216}\) The 1954 Convention Relating to the Stateless Persons and the 1961 Convention on the Reduction of Statelessness closed for signature on December 31, 1955, and May 31, 1962, respectively. Therefore, Thailand which did not sign the conventions during such a period can only accede to the Convention. 1954 Convention, \textit{supra} note 3, at art 35(1), (3); 1961 Convention, \textit{supra} note 141, at art. 16(1), (4).

\(^{217}\) UNHCR, \textit{supra} note 1, at Action 9: accede to the UN Statelessness Conventions.

\(^{218}\) According to the section 178 of the 2017 Constitution, there are five categories of international agreements that requires approval from the National Legislative Assembly: (1) a treaty which provides for a change in the Thai territories; (2) a treaty which provides for a change in the Thai external territories that Thailand has sovereign right or jurisdiction over under any treaty or international law; (3) a treaty which requires the enactment of an Act for its implementation; (4) a treaty which has wide-scale effects on the economic or social security of the country; and (5) a treaty which results in a significant obligation being placed on the trade, investment or budget of the country. CONST. of the KINGDOM of THAILAND §§156(14), 178; CHUMPICHA VIVITASEVI, THE INTERPRETATIVE INFLUENCE OF INTERNATIONAL HUMAN RIGHTS NORMS ON JUDICIAL REASONING IN THAILAND: LESSONS FROM THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA 79 (Durham University, 2012) http://etheses.dur.ac.uk/5938/.

\(^{219}\) VIVITASEVI, \textit{supra} note 218, at 77-78.
the importance of the statelessness conventions has been recognized by the ad hoc committee. The committee made an observation on the draft of the amendment in Section 19/2 concerning the nationality of the registered abandoned children, orphans, and rootless persons and concluded that said persons should acquire *jus sanguinis* nationality according to international law, which indicates that, when children are abandoned, it is the duty of the state to grant these children nationality.²²⁰ Although the committee did not mention the name of the international law in its observation, the 1961 Convention is the only convention that contains a provision concerning the rights of foundlings.²²¹

2. Contradiction between rights to nationality and state sovereignty

Although, as discussed in Part II, the power of the state in regulating matters of nationality can be limited by international obligation,²²² the final decision on whether a person can acquire nationality, or what condition an individual needs to satisfy to acquire nationality, of such a state remains within the sovereignty of the state.²²³ The accession to the stateless conventions, which require a state to grant nationality to stateless persons, interferes with the sovereign power of the state to determine who is its citizen. This may discourage a state from acceding to the stateless conventions, as a state is often reluctant to give up its absolute power over domestic matters.²²⁴ However, the importance of the human rights protections can outweigh

the importance of the sovereign power of the state in specific circumstances. An example of this is when the sovereign power of the state is used to exclude the protection of human rights from specific groups of people, leaving them vulnerable, as they are considered to be a threat to national interest. 225 This can be seen in the 1972 Decree, which excludes aliens from acquiring nationality and revokes their nationality for national security purposes. The enactment of this decree would be a clear violation of the right to nationality, as well as the 1961 Convention, as it creates mass denationalizations. The 1961 Convention, in order to lessen the conflict between the right to nationality and the sovereignty of states, allows states to make reservations on certain articles and provides exceptions to the deprivation of nationality that result in statelessness. 226

225 Hayden, supra note 223, at 251-252.
226 1961 Convention, supra note 150, at art. 8, 11, 14, 15, 17.
Conclusion

The issue of statelessness in Thailand is neither a new nor small issue. In fact, Thailand has one of the largest populations of stateless persons in the world. While Thailand has made significant progress in solving the problem of statelessness by amending the Nationality Act and Civil Registration Act in 2008, the problem still remains. Stateless persons suffer many consequences due to the lack of nationality, such as the limitation of freedom of movement and access to public healthcare. Children in particular have been *de facto* excluded from access to upper, secondary, or tertiary education, as access to scholarships has been restricted to nationals. Although Thailand has an obligation to protect the rights of stateless persons residing in the country, many policies have been made requiring a person to have Thai nationality in order to enjoy protections provided by the government. While there are different causes of statelessness in Thailand, the solution to statelessness, especially *in situ* statelessness, is to ensure that stateless persons acquire nationality and do not lose their nationality without justification. Nationality in this context does not necessarily mean Thai nationality. The Thai government may use a nationality determination process with illegal workers who come from neighboring countries to help them gain nationality in another state, if possible. Again, it is important to note that this thesis is not intended to give Thai nationality to every person who enters and stays in Thailand.

Thailand has not acceded to either the 1954 Convention or the 1961 Convention, which means that Thailand has no obligation to comply with the conventions. Therefore, this thesis proposes that Thailand accede to the conventions on statelessness, as it could be beneficial to solve the problem of statelessness in Thailand. As the UNHCR noted, despite positive changes towards the statelessness issue, the Nationality Act does not contain safeguards to ensure that children born in the territory and who would otherwise be stateless can acquire nationality.
without a lengthy waiting period.\footnote{UNHCR, \textit{supra} note 122, at 9.} The additional safeguards concerning the nationality of children would be in accordance with article 1 and 2 of the 1961 Convention and Thailand’s obligation under Article 7 of the CRC.

Furthermore, Thai laws do not contain safeguards against loss and deprivation of nationality that could lead to statelessness. In fact, the Thai Nationality Act allows the effect of deprivation of nationality to be extended to children and the spouse. Although the deprivation of nationality under Article 8 of the 1961 Convention is not strictly prohibitive, and the state can reserve the right to revoke nationality in matters concerning national interest, Article 6 of the Convention provides that the deprivation of an individual should not affect the children or spouse if such action would lead to statelessness. By acceding to the Conventions, Thailand would adopt a provision limiting the effect of deprivation to an individual, as well as a policy concerning the (re)acquisition of nationality in cases in which a person’s nationality has been revoked due to national security reasons.

The naturalization of existing stateless persons can be seen as the most challenging mission for the government because governments are often reluctant to grant nationality to a person who does not have or cannot prove a clear connection to the state. Although it is reasonable for the state to set up conditions for the acquisition of nationality, the criteria for naturalization can create unreasonable impediments for naturalization, such as the financial requirement stating that a person must earn certain wages. Such a requirement does not reflect the situation of the statelessness in the country, as the majority of stateless persons work in labor-intensive and low wage jobs. In order to solve or at least reduce the number of stateless persons in the country, Thailand needs to find a way to further ‘facilitate naturalization’ of the stateless persons, which can be done by either waiving or lowering the requirements for naturalization. However, it is
important to note that there are certain limitations on how far a state is willing to lower their requirements, as it must balance national interest with the rights of people whom it does not recognize as its citizen. This means that there could be some people who cannot satisfy the requirement under the laws and policies. Therefore, it is crucial for the state to provide protections to the stateless persons residing in the country, despite the fact that they may never acquire nationality. Although the laws do not explicitly prohibit stateless persons from accessing many of the fundamental rights and instead treat them as aliens, the situation of stateless persons is not comparable to aliens who may seek protection from their home countries.

Since Thailand has adopted a dualist approach towards the application of international law, the accession of the conventions would not have a direct impact on domestic law until legislative actions have been made and the provisions under the conventions have been adopted into domestic laws. However, this does not mean that Thailand would be precluded from complying with the obligations under the conventions. Furthermore, Thailand has made a voluntary commitment to the Global Action Plan to End Statelessness, which contains similar standards to the conventions. The accession to the conventions would strengthen Thailand’s commitment to this universal plan. In addition, the conventions can be used by the stateless persons, non-profit organizations, or even the courts in order to protect the rights of stateless persons against government action.
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