

## Right to Nationality for Refugee Children (temporary Displace Person) in Thailand<sup>1</sup>

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### Abstract

People with disability have experienced stigmatization, exclusion, and prejudice-especially children. They are frequently excluded from society, have historically been seen as passive beneficiaries of welfare and objects of charity. This history of charity towards children with disabilities has a detrimental impact on how they are viewed and treated. There is an urgent need for increased awareness in society about children with disabilities and their accessibility and rights needs to be prioritized. Every children, no matter where they are, has something to contribute to society. Their energy, abilities, and ideas may benefit families, communities, and the world. The extent to which children with disabilities are impoverished, feel discriminated against, and lack hope for the future demonstrates that nations are failing to achieve the most fundamental human rights of all children. Therefore, disabled children rights need to be respected in line with the best interest of the children. According to the human rights perspective on a disability, attention has shifted from a child & physical or mental limits to the societal constraints that restrict their capacity to obtain basic social services, reach their full potential, and exercise their rights. So accessibility to the Rights of Disabled Children is the key for disabled Children in Thailand and worldwide to have their basic needs and rights guaranteed and their better living conditions provided.

*Keywords:* Human Rights, Dignity, Exclusion, Equity

### Introduction

Right to nationality has become discoursed globally since the 1990s as nation states emerged and grew stronger particularly in the human rights era. Right to nationality is on the debate especially in the context of human rights but many countries have denied granting some groups of residents, mostly in Asia due to Asian values that are still based on strong practices which seem not fitting into human rights context. With more migration occurring after the cold war era, many countries formulated and reformed policies and regulations to control the flood of migrants including the growth of refugees to prevent them accessing some rights particularly right to nationality. Thailand was among countries who restricted nationality act as Thailand has been an attractive country which was a destination for many migrants and refugees.

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Thailand had a long history in permitting and providing temporary shelters for refugees from over forty countries. The flow of refugees in Thailand has taken place for more than four decades and is still ongoing in recent years. Refugees were first found entering Thailand in 1965, when a change in government form of neighboring countries such as Laos, Vietnam and Cambodia happened. The shift of political ideology in neighboring countries brought mass of refugees entering Thailand because more conflict between people and government grew. Apart from this incident, the Cambodian-Vietnamese War in 1975 was one of other factors increasing the number of refugees in Thailand (Rungwasdisab, 2022). Approximately 3 million asylum seekers were known as boat people from LCV that fled to Thailand as the damage of war. Thailand at the time started the temporary shelter project based on a temporary basis which provided shelter for 650,000 refugees. More and more refugee entering made the lead of Thailand aware of communist threat because among growing refugees were from Vietnam so that informally refugee policy in Thailand was laid out to restrict moments.

While Thailand started to find a solution to deal with refugees from entering by formulating a policy to deport back refugees from Laos, Vietnam and Cambodia, another mass group of refugees known as Burmese refugees happened to enter Thailand. The first flow of Myanmar refugees in Thailand took place in 1984 after the war between Burmese army and the Karen arm group called Korea National liberation (KNU) broke out during the revolution period (Chung-chi, 2013). This conflict forced about 10,000 civilians, especially in Karen ethnic that were in Karen State, to flee to Thailand. The situation was getting worse in 1988 when thousands of students went on an uprising and demonstrated against the coup. On 8 August 1988, the military opened fire against peaceful protesters, so thousands of activists were killed, and many fled to Thailand (Renaud, 2009). By the 1990s, with the tension of Myanmar government growth, nonstop civil war going and the fall of Manerplaw (one of the Karen areas), many people, particularly Karen, resettled to Thailand seeking a safe place and better opportunity.

Based on UNHCR recent reports in 2022, Thailand recently hosted 91,040 refugees from Myanmar which were basically found in temporary shelters or refugee camps run by the Royal Thai Government at Thai-Burma and another 5000 urban refugees and asylum-seekers from over 40 countries, mostly found in Bangkok. Camp refugees are those groups that live in refugee camps intended as a temporary accommodation for people who have been forced to flee their home because of violence and persecution. There are now nine refugee camps in Thailand which are mostly placed in remote areas along Thai-Burma border in 4 different provinces, composed of Tak, Kanchanaburi, Ratchaburi, and Mae Hong Son. Most of the population are Karen, Karenin Burmese, Mon and the rest are a mix of ethnic groups in Myanmar. On the other hand, Urban refugees are those who decided or were obliged to settle in an urban area rather than in a refugee camp in the country or territory where the person fled.

Although refugees from Myanmar rapidly kept increasing from 1984 to recent years, Thailand never had a plan on deporting them back as a whole group apart from asking them to join a respiration program that was arranged in 2015 and found them outside of camp. Due to this, many children were born inside camp without experiencing and stepping on their motherland "Myanmar ". According to many

UNHCR data and reports, many thousand children were born in camps, but an accurate number of newborns was hard to access. Those children born inside the camp before 2007 did not receive birth certificates due to birth certificates not yet issued for newborn refugee children. Thus, those children automatically become stateless and illegal persons that they inherited from their parents.

This study attempts to conduct “Right to Nationality” for refugee children or displaced persons, guided by the research question of “will it be possible for refugee children (temporarily displaced persons) to grant Thai nationality in the future”. This research technically will indicate the possibility of entitling the right to nationality for refugee children by illustrating the various factors that could make them (the new generation of refugee children) gain Thai nationality as well as the challenge and problem of entitling. Besides, the study will mainly focus on camp refugees compared to urban refugees found in Bangkok due to the cases being totally different. The study is divided into several parts as well as case studies of both primary and secondary data that would be used in providing the level of entitling.

1.1 Research question:

- Will it be possible for refugee children (Temporary Displaced Person) to grant Thai citizenship in the future?

1.2 Objective:

- To figure the refugee status in Thailand
- To understand domestic law that intended to prevent refugee children grant Thai Nationality
- To figure out reasons behind of possibility or option of being Thai nationality

### Research problems

Historically, the Kingdom of Thailand hosted temporary shelter and accepted refugee from neighbor countries such as China, Cambodia, Vietnam, Indochina and Myanmar for over four decades, but Thailand has never used the term “Refugees” to label or grant who fled to Thailand due to persecution a refugee status especially Burmese refugees that are now in 9 temporary camps along Thai-Burma recently: instance, refugees in Thailand are called ‘displaced person fleeing fighting, people seeking asylum and refugee camp = temporary shelter due to Thailand has not yet ratified 1951 Refugee Convention and its 1987 protocol Human (rights watch, n.d). Besides, Thailand does not have a clear policy toward both urban and camp refugees but rather control mass of refugees under Immigration Act 1979, managed by the Ministry of Interior, and Nationality Act 1965. The section four under the Immigration Act 1979 stated “any person who is not of Thai Nationality under the nationality Act is alien” (National Legislative Bodies, 1979). Due to this, aliens are permitted to stay in Thailand by obtaining their valid passport or documents. Those aliens without valid passports or documents are categorized as illegal immigrants.

As refugees in Thailand controlled under those acts, camp refugees were labeled as alien as well as having an illegal status since they did not attend Thailand at the immigrant checkpoint. By holding illegal status, camp refugees were limited in the movement of moving around apart from the permitting

zone and fell into risk of deporting back once they found outside of the refugee camp. In addition, the nationality Act 1956 stated that “a person without Thai-nationality will be treated as alien although in section seven stated “Acquisition of Thai- nationality is by birth” (Napaumporn, 2021). It means newborn refugees born in the land of the Kingdom of Thailand are not Thai because the further characteristics of entitlement for nationality are listed under section 7 bis. This basically means every alien with or without a valid document to stay in Thailand could not claim Thai nationality for newborn babies unless in a special case. Since camp refugee are authorized under the Immigration Act 1979 and Nationality Act 1965, children were born in refugee camp automatically labeled as alien and illegal person as they do inherit this status from their parents and at the same time become stateless person due to right to citizenship and rights to register at birth was denied to newborn babe before 2007.

Additionally, refugee children are vividly born from Burmese parents which could be considered as Burmese, but Burmese nationality could not pass to newborn babies just simply by blood. According to Myanmar law, all newborn babies need to register within a month of a birth, or a birth certificate must be issued (Consortium for street children, 2019). The birth certificate is an important factor that could allow a child to apply for nationality by a certain age as birth certificates are required to register within family registration. By not registering the newborn babies means a child is lacking a birth certificate which could be a problem in further steps of registering a child in family registration. Due to this, newborn babies in refugee camps are not officially considered a citizen of Myanmar as they either did not have birth certificates and name lists on family registration. While children in refugee camps can't obtain either status of being refugee, Thai or Burmese, refugee children immediately become stateless. Becoming stateless at birth does not only prevent children from claiming nationality but also facing many losses, especially basic rights such as rights to education (higher education), right to health care, employment, protection and security, risk of child trafficking etc.

Even though Thai domestic law plays a crucial role in not giving refugee children either legal records or granting right to citizenship, Thailand can't deny showing the obligation of enhancing the stateless issue due to the fact that they are bound by international law. Thailand is a member party of the UN and was ratified Convention on the rights of the child (CRC) on 12 February 1989 and International Covenant on Civil and Political Right (ICCPR) on 29 December 1996 (Human Rights, n.d). Based on CRC article 7, it stated that “Child shall be register immediately after birth and shall have the right from birth to a name the right to acquire a nationality and as far as possible and the right to know and be cared for by his or her parents” and in ICCPR article 24 said “Children have the right to be registered immediately after birth, the right to have a name, and the right to acquire a nationality” (Childline Thailand Foundation, 2021). Due to this, the civil registration act was revised on 15 February 2008 in order to align with international law. The section twenty in the civil registration act stated that “for the child without Thai nationality by birth with Thai law on nationality act, the registrar shall issue a birth certificate”. The process of birth registering the newborn babies inside camp was carried out in 2010 and recently

estimated 5000 newborn babies receive birth certificates in nine camps (United Nation and the rule of Law, 2015).

Receiving birth certificates seems a bridge or sign to get closer to rights to citizenship or nationality for all children in refugee camps but this does not mean children are conferred Thai nationality. The purpose of handing a newborn a birth certificate just prevents them from becoming stateless. Though birth certificates could not make much impact upon children inside camp in receiving Thai nationality, this became a legal or official record which gave a child a legal identity. This is one the major documents that will determine whether children inside camp entitled Burmese nationality or grant a Thai nationality in the future due international law play an important role in pressuring Thai government works toward both refugee and child protection. However, binding international law has no direct effect on Thailand. This basically means Thailand could be exempt when it comes to applying international law in the country. According to the Thai 2007 constitution on section 178, second phases “If a treaty requires implementation, then it must be approved by the National Assembly and must also be incorporated with the domestic legal system” (AsainLII, 2007). Therefore, granting nationality or giving a right to citizenship to refugee children is mainly dependent on domestic law.

## **Conceptual framework**

### **1.1 Politic**

Migration between countries have emerged for a long time from empower, colonies and globalization period. New arrivals in any country in the past were considered normal and legal. However, with the shift to modernization that led countries to adopt the change such as political ideology, country economic, human development as well as gaining independence from colonies, many countries turned themselves to sovereign state and formed a nation state to gain self-identity. Thus, bias and racism toward outsiders, especially migrants, emerged in order to separate “us and them”. This bias and racism toward outsiders are not only found in low level such as society but also in the highest level such as government so that it could impact law formulating and policy making in terms of governing outsiders. In the case of Thailand, refugees are never viewed as insiders or permanent residents although they have been in Thailand for more than 30 years but rather than being viewed as a burden and peace threatened. Hence, granting nationality to refugee children has never become a discourse in Thai society.

### **1.2 Not ratified 1951 refugee convention and 1967 protocol**

Thailand became a UN member party in 1946, signed the Universal Declaration of Human Rights (UDHR) in 1948 and had ratified seven core international human rights treaties including (CRC). By signing the UDHR and other seven core treaties, Thailand pelage to ensure human rights to all through showing international commitment and obligation. Moreover, based on 2017 Thai constitution which is considered as the high law in the country states “person shall enjoy rights and liberty, and also ensures that torture, brutal acts, arrest and detention, inhumane and cruel punishment are not being permitted”. This reflects that Thailand can’t deny taking responsibility and providing protection toward camp refugees

even though rights for refugees are restricted. However, because Thailand is not a member party of 1951 refugee convention and adopted the 1967 protocol which is only the legal framework that clearly states the definition of refugee and provides them with some basic rights, and protection, camp refugees in Thailand were still treated as illegal immigrants and some basic rights were ignored by law. whether illegal or legal migrants would obtain nationality by birth. Thus, right to citizenship in Thailand for refugee children is still denied.

### **Methodology**

This study is much dependent on various previous studies of refugee policy, international law, rights and participation and engagement of the refugee community in refugee camps along Thai-Burma border. The research was conducted by using qualitative explanatory research, guided by both qualitative and quantitative approach. Qualitative methods included an opinion interview, which used unstructured questions and one by one interview through calling face to face, social media, and phone. Although the study used unstructured questions, the same question was set up for all participants which consisted of 3 opinion questions regardless of the right to nationality issue. This kind of interview allows both participants and researchers to interact freely, flexibly and also avoid problems that might occur during interviewing. Moreover, it allows participants to express their opinion openly and at the same time avoid some questions that are unanswerable during the interview. This type of study approach allows me as a researcher to collect data both based on primary and secondary as much as allowing camp refugees to engage in the research process and produce the study together. Using this approach in this study could not only explain the problems but also gain more understanding of the problems and challenges refugees face along.

This study was conducted taking up 2 months from September to November. The focus areas are basically in Kanchanaburi, Ratchaburi, Take, and Mae Hong Son where nine refugee camps are located. The study intends to include 14 participants who come from these 4 different refugee camps including Umphime camp, Karenni camp, Mae La camp, and Nu Poe camp. The focus group is on 4 refugee camps because the rest camps are hard to access in terms of contacting people. The study plans to recruit seven females and seven males among fourteen participants with a different age from children, those who are under 18, early adulthood (18 to 35), and middle adulthood (35 to 60). The participants are randomly picked based on their interest in cooperating once being picked. However, the research does conservatively limit the number participants from each camp apart gender. In simple words, the study could take up 4 participants or only one among four targeting refugee camps. The picky participant is not fully required to bring up all their personal information such as card, birth certificate, family registration but rather only when they feel conformable.

The topic itself is very interesting and at the same time not many researchers so far have not worked on the topic. However, there are many limitations especially on accessing accurate and reliable data. Many scholars publish about the status of refugees as well as discussion about Thai domestic law

and international law but right to nationality for refugee children are less in discussion topic. Besides, resources in terms of approaching people from inside refugee camp are also one of the main problems to carry out this study.

### Analysis

Based on data analysis, the possibility of accessing nationality for refugee children in future is almost non-existence. However, this does not solely mean that they might not have a chance, but they rather could obtain the right to nationality through naturalization. To further see the clear picture and process of nationalization, we first need to perceive the group of stateless people and the relationship between refugees, migrants, and ethnic groups in Thailand. There were four different groups of stateless people based on key findings of this study before the civil registration act was revised because those Thailand born children were not issued a birth certificate. The first stateless group of children is mainly found in refugee camps such as nine temporary shelters along Thai-Burma border. The second group is migrant (both document and undocumented) children that were born in Thailand. The third group is urban refugees which are mostly found in Bangkok such as Vietnamese, Cambodia ect. The last group is ethnic groups from Myanmar, China, and others that have migrated to Thailand 50 years ago mostly found in Chiang Rai, Chiang Mai, Mae Hong Son Mae Sot etc. Due to this, when it comes to statelessness and granting nationality through the naturalization process, I found many researchers use unclear words to illustrate which group of stateless are entitled to obtain nationality through the naturalization process under the nationality act. They (researcher) rather write a report titled the article “Thai government grants 2,300 stateless and displaced Thai nationalizations in 2012 to end the stateless”. Moreover, Thailand will open citizenship path the 80,000 stateless mainly focus ethnic, migrant and displace children.

According to the information above, it proves that if Thailand and camp refugee born children choose to stay in refugee camps without coming out, the chance of applying nationality through naturalization or accessing rights to nationality are less even when they do receive a birth certificate issued by Thai authority in the future. However, this could make them free from being stateless because they do have legal documents that could prove the name of their mother, father and place of birth but they will still inherit illegal status from their parents as nationalization act does not include or allow them to apply nationality. Furthermore, the revising of nationality act has more requirements for applicants to apply nationality through naturalization even when the act is revised by stating a person born in Thailand before 1992 is eligible to apply for it. Thus, Thai-refugee born children will have more chances to apply for naturalization only if they come out attending Thai public school. Every Thai public school will issue legal documents to alien children. The document is known as 13-digit cards which last up to 10 years with some benefit, protection and restriction. This card will allow them to travel freely in Thailand and stay legally as well as act as the main document for considering the child situation of becoming Thai. However, there are many types of 13-digit cards, so the card a child receives from Thai public schools has the most protections and benefits. While students receive education there, they will use this card as a

temporary or maybe the rest of their life in case they don't know how to apply for naturalization. To prove this, one of participants said

"I left the refugee camp when I was 14 years old to attend Thai public school in Mae Sot, but my mom and dad are still in the refugee camp, and I also still consider myself as a refugee. During my 5 years of study in Thai public school, I received a 13-digit card as a legal document. All my Burmese friends in school do have this card but we never get to keep them. The school issue for me and I paid 4000 at that time. The staff will give me cards only when I go home and have a field trip. They hand me this card when I graduate grade 10 due to the fact that I must change schools. I first got to use and keep the card with me years old. No longer after I receive this card, I try applying for a nationalization program with advice from my new school. After going to the sub district government office and waiting for 1 and 2 months, I was finally granted Thai nationality". (23 October 2022)

This case reflects that a stateless or alien person will automatically become eligible to apply for nationalization or have a more chance to access rights to nationality if they do have 13 digits card as a basic document, but the study found that cases are different in different areas. For example, in Chiang Rai, every child that has a boring proof in Thailand and does hold 13 digits will be eligible to apply for naturalization while some are banned from applying without giving any reason. The study carefully finds the root cause of banning those children from applying but accessing data is not easy. Due to this, the study can draw a conclusion based on every circumstance such as law itself, type of card, obligation of government official as well as interview. The study ultimately assumes that every refugee and Thailand born children that do hold 13 digits cards in different areas have 50% of possibility to access the rights to apply for nationality. To future provide clear picture, participant state

"I am from Karenni refugee camp which is located in Mae Hong Son and one the nine-refugee camps in Thailand. I stayed there for 5 years, and my parents finally can no longer handle the situation, so our entire family moved to Chiang Rai. After 3 years of staying in Chiang Rai, all my family members received 13-digit cards which I don't know how they did. After I graduate grade 12, I plan to attend Paya university but at that time it seems I have a document issue because our 13 digits card allows you to go only to Chiang Rai. Based on this, my high school helped me apply for naturalization and it took me 3 months. I finally received the news that I am not eligible, but they handed me a document allowing me to go outside of Chiang Rai. Since I don't know how the law works, I am not curious either why am I not eligible for applying. However, I still have a plan to apply again in the future." ( 23 October 2022)

By receiving information from primary sources by interviewing and reviewing information from many secondary sources, rights to nationality for refugee children are very complex due to many refugees and Thailand born children can consider either refugees, migrant, or ethnic groups in Thailand. Some children are born as ethnic group but end up staying in a refugee camp for several years while some are born in a refugee camp but end up staying in a remote area within ethnic village in Thailand. Even worse, some are born as migrants but spend up to six or seven years in refugee camps and finally become residents of villages where ethnic groups are belonging. Thus, cases are different and can't be used as a



whole to draw a conclusion for the right to nationality for refugee and Thailand born children that will be granted even when they have 13 digits cards. To further illustrated, the participants said

“I was born in Mae Sot, Tak, Thailand without any legal record. When I was 2 years old, I moved to Umphime refugee camp which is 3 hours’ drive from Mae Sot. I spent my time there up to 14 years and went back to Mae Sot again to pursue higher education. I received a student ID which labeled me as a migrant child or student. I spent my time in Mae Sot for 4 years with the status of being illegal, stateless, migrants’ children. I officially became Myanmar citizenship during my fifth year in Mae Sot. Before using my status as legal person I went back to my home (refugee camp) and spent my time in refugee camp again for one using my illegal status again but no longer a stateless person and migrant children. I officially first attended Thailand as a legal person with a valid document and Burmese when I attended university which was 3 and half years ago.” (23 October 2022)

Due to children could have many statuses, the study might use different cases to conclude that refugee and Thailand born children do have a chance up to 50 % for accessing right to nationality in the future but Thai will never directly grant refugee and Thailand born children a Thai nationality if they remain in refugee camp and if domestic law does not revise even when they were born with legal record and inside Thailand. Those children will still end up passing illegal status to new generation by generation.

### **In conclusion**

This paper or study is started out with the assumption by using probability approaches to figure out the possibility that Thailand will grant nationality to refugees, and Thailand born children by reviewing the domestic law and international law and other factors. This study has been supported by many secondary data and at the same time from interviewing as primary data. Getting primary sources from talking to some refugees that have experienced receiving different status as well as those who remain in the refugee camp for over 30 years is one scenario that could provide another perspective in this study.

I am convinced that by choosing this topic to cover, I will at least understand the situation of children end up being refugee, stateless, Myanmar citizen but not Thai nationality, gain insightful information and make the new generation aware of the law and policy that Thailand has used to control mass refugees. Firstly, the study on the right to nationality for refugee children in the future would not only allow us understanding of the reason behind that granting Thai nationality is impossible or possible but also make us have more information to empower refugee both children and parents in camp to claim their rights. Secondly, information itself in the topic requires us or the new generation to know and study law and policy carefully, otherwise the right to nationality will be denied to all refugees. Finally, international law is also another main actor or tool that will help right activist to advocate for refugee and Thailand born children.

In addition, the study does touch upon the different path to receive Thai nationality by looking at the naturalization process. For example, the refugee resident talked about how they officially become Thai citizens and how they go through the process. Therefore, reviewing many factors that impact of right to citizenship such as from Thai law, international law (various convention), status of a person and 13 digits card, the study will conclude by stating, granting nationality depend on case and applying but Thai will not grant land born children a Thai nationality so it will take up sometime that refugee and Thailand born children will enjoy these rights in the future.

## **Recommendation**

### **1.1 Revised naturalization law in Nationality Act**

Refugees in Thailand are controlled under the domestic law compared to refugees in Europe or America so there is no easy way to change or receive their official refugee status rather than become an illegal person at birth. Receiving illegal status by inheriting from their parents is a kind of curial thing refugee children in Thailand have ever faced. Inheriting illegal status from their parents is not only preventing children from receiving basic rights but also impacts on their development and growth. Those children must spend their whole life stuck to society's stigma which labels them "Aline, Stateless, and Illegal". Thailand should be aware of this issue and accept that Thailand is a hometown to thousands of refugees born children. To this child, Thailand is either their mother homeland and the place that they spend their whole of their life and some even end their life there. Due to this, deporting them back or keep pushing them to be illegal within the land of the Kingdom of Thailand can ruin a child's future.

The findings of this study show that granting Thai nationality to refugees is a major concern because there is not only law itself that prevents refugees from being entitled for Thai citizenship, but it concerns national security and at that same public acceptance. Due to this, granting Thai nationality to mass refugees by land born will be very problematic. At this point, revising the nationalization law under the Nationality Act should be considered. The law itself is clear that discriminate against and excludes the camp refugee born children to participate.

### **1.2 legal Framework or Policy**

Thailand is not a new country that has been dealing and accepting refugees. They have experience permitting refugees to stay here for over four decades which none of the refugees has ever expected that they will be in land of the kingdom of Thailand for over four decades with the illegal status. Thus, a legal framework and policy toward camp refugees or Burmese refugees should be drawn or formulated in order to fully carry out protection. Without legal context, 90,934 thousand people depend on the internal aid due to restriction moment, income, access alternative education. Moreover, the cycle of being an illegal person will keep passing on to new generations without having any chance to apply nationality.

### 1.3 Obligation

Thailand is performing a good job in showing international commitment and obligation of implementing international law compared to other ASEAN member countries but if the 2017 constitution, which is considered as high law in Thailand, prevents them from fully engaging in implementing international law, Thailand can make excuses at any time. They could use the domestic legal system to make exemption and prevent either NGO, CBO, CSO and other sectors from intervention. Due to this, showing more obligation to align with international law is needed.

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