

Submission to the Human Rights Committee regarding Article 24 of the ICCPR

Selected documents on low levels of birth registration for certain groups in Thailand

This preliminary collection of documents is submitted to the Human Rights Committee in advance of its examination of Thailand's initial report, to raise the issue of the groups in Thailand whose children, in violation of Article 24 of the Covenant, tend not to be registered at birth, and are thus exposed to statelessness and many forms of difficulties and abuse.

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A. Background

Birth registration and the Hill Tribes, Burmese migrants and trafficking

1) Vulnerability of children lacking birth registration in Thailand

Vulnerability to trafficking and sexual exploitation

- Vulnerability to identity change: In keeping with article 8 of the CRC, which concerns the state's obligation to preserve a child's identity, the lack of birth registration coupled with the coordinated issuance of a birth certification increases the vulnerability of that child to illicit changes to his/her identity, such as changes of name or falsification of family ties (for example, false papers for the purposes of illegal adoption, trafficking, or to facilitate employment in sexual establishments where there is a minimum age for employment). The ability to forge such papers facilitates the buying and selling of children, as traffickers will prefer to recruit children who have not had their births registered, as they can more easily be 'hidden' and are unprotected. Similarly, if a legal minimum age is set for access to employment, the enforcement of such legislation cannot occur if effective birth registration is not in place to confirm the age of the children concerned.

Lack of protection under the court system

- Juvenile justice: The issuance of a birth certificate can protect children against prosecution as an adult and ensure that they receive any special legal protection that should be made available to juveniles. If a child's birth is not registered and he/she is held for allegedly perpetrating a crime, it becomes difficult to assess whether or not he or she will be tried as an adult or a minor. Also, such children are at risk of detention alongside adults if convicted as an adult.
- Prosecution of child sex abusers and exploiters: Adults who have abuse or exploited children whose births were not registered are difficult to convict, as the age of the child abused or exploited cannot be verified. This may lead to adults knowingly targeting children lacking registration, as well as an increased risk that such adults will not be prosecuted and will be free to abuse and exploit other children.

Vulnerability to other abuses and the violation of basic rights as an adult

- It should also be noted that Thai children who have not had their births registered and had a birth certificate issued are also vulnerable to other forms of exploitation, such as early marriage and military recruitment. They also will not be able to realize other rights as they are older – such as voting rights, and the right to stand for an elective office, and they will not be able to legally acquire a passport or even open a bank account.

Lack of access to health services

- Access to programmes and campaigns: In Thailand, a child who is not registered risks more than the inability to access the 30 Baht medical scheme - it is also difficult for such children to access other government-, IO- or NGO-run medical programmes and campaigns, such as immunization, which are cannot effectively identify and reach unregistered children if accurate statistics on their numbers and locations do not exist.

Inaccurate country data for the purposes of budgetary allocation and programme and policy planning

- Thai civil registration is one of the ways to update population census data collected, as it allows the government to measure social and demographic trends. When birth registration levels for certain groups are low, it can lead to insufficient government budgetary resources for affected populations, resulting in ill-planning for health, education services, housing, water and sanitation, and employment. Such population census data is necessary, for example, for allocating appropriate resources to those in greatest need, planning and coordinating immunization, and monitoring and addressing school drop out rates. Accurate census data also helps IOs and NGOs in their planning and implementation of programme activities – lack of statistics on beneficiaries affects programme design, budgets and planning of technical support required.

2) Birth registration of hill tribe communities in Thailand

A Contribution to the NGO Alternative Report to the Human Rights Committee

The government of Thailand has taken many initiatives to build an effective birth registration system and has stressed its commitment to ensure that the system works for everyone, including those living in remote areas.

Positive actions have included: the setting up of a Committee for National Integration and Registration System Reform (2002); the issuance of identification cards allowing Hill Tribe populations to legally register their children as a result of an Ministry of Interior regulation (2002); and the declaration of ‘The Year of Registration Service to People in the Era of Reforming Government System’ (2003).

However, in December 2004 the Thai government admitted that up to 2.5 million people are living in Thailand without citizenship. Despite being born in Thailand, these populations are unable to register births or marriages, vote, buy land, seek legal employment or travel freely. They are also denied opportunities for education, health and social services. UNESCO further identifies lack of citizenship as a major risk factor for trafficking and exploitation since the absence of a legal status limits their protection under law.

Whilst there has been a marked increase in the birth registration of Hill Tribe children aged 0-7 over the past ten years, a survey conducted in four districts of Chiangrai Province indicates that a high proportion of older children still do not have a registration card – particularly those aged 13-17 years. In addition, the Lua ethnic group is worst off in terms of civil status.

The main causes of non-registration among the Hill Tribe population are:

1. Lack of political will and national security concerns
2. Misinterpretation of legislation and inadequate implementation by officials at both national and local levels
3. Lack of awareness about the importance of birth registration and the obligation of the state to register children’s births
4. Parents’ own lack of documentation

5. Low income and inability to meet the cost of travel to registration centres, particularly for those residing in remote and distant locations

We strongly support the government's plan to set up an inter-ministerial taskforce to facilitate acquisition of Thai nationality by decentralising and speeding up the application process. This will ensure that birth certificates are systematically issued to children born on Thai soil guaranteeing them the rights to which they are entitled.

Using the Highland Master Plan as a framework, we further recommend that the Thai government set up a programme targeting the backlog of unregistered children, specifically targeting the 13-17 years old age group. An integrated assistance programme should also be promoted for the less well off ethnic groups such as the Lua people.

Finally, we recommend that the government continue to work with non-governmental organisations and other partners on raising awareness about birth registration and facilitating mobile registration initiatives.

3) Extracts on Thailand from "Lives on Hold: The Human Cost of Statelessness"

(M. Lynch, Refugees International, February 2005)

Full text at http://www.refugeesinternational.org/files/5051_file_stateless_paper.pdf

Another large group lacking effective nationality is Thailand's hill tribe people. This group includes members of Akha, Lahu, Lisu, Yao, Hmong, and Karen ethnic communities, and is estimated by the government of Thailand to be two million persons. Despite being born in Thailand, almost half of the country's hill tribe people lack Thai citizenship, and are unable to vote, buy land, seek legal employment, or travel freely. (p8)

In 2001, the Thai Cabinet granted temporary residency rights for one year to those who had previously taken part in government survey and others lacking identification. To secure citizenship they had to show that they, and at least one of their parents, had been born in Thailand. This had been difficult for those born in remote mountain areas.

The government extended the deadline to 2003. Following expiry of the most recent filing deadline, many Hill Tribe people, considered illegal migrants and/or stateless, have lived under threat of expulsion, and been denied access to many economic and social benefits. In December 2004, the Thai Government admitted that up to 2 to 2.5 million people live in Thailand without citizenship. An inter-ministerial taskforce was created to propose solutions for acquisition of Thai nationality and systematic birth registration.

In addition, families fleeing arbitrary arrest, forced labor, rape, and killing by the Burmese military arrive at the border of Thailand with hopes of leading a life free of human rights abuses, but they are prohibited from gaining refugee status due to Thailand's narrow definition of refugee. Only an estimated 150,000 refugees have been allowed to register to live in refugee

camps, leaving more than two million others to live illegally both inside, but primarily outside, the refugee camps.

There are no accurate estimates of stateless children in Thailand. Because Thai law does not recognize the children as citizens, they are subject to hazardous or exploitive labor conditions, sexual and other abuse, denial of education and healthcare, and other violations of their basic human rights. As grim as the current situation for children is, the future looks even worse.

The Thai Ministry of Education is expected to issue the Regulation on Evidence of a Child's Birth for School Admission in honor of Article 29 of the Convention of the Rights of the Child, but not all of the children receive this document. When children can attend Thai schools, they are unable to attain an official degree or certificate to pursue further education or to find a job.

(p38-9)

4) No Status: Migration, Trafficking & Exploitation of Women in Thailand: Health and HIV/AIDS Risks for Burmese and Hill Tribe Women and Girls

A Report by Physicians for Human Rights, June 2004

[Extracts on lack of birth registration and its consequences]

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Underlying Discrimination and Other Violations of Human Rights

The study findings indicate that both hill tribe and Burmese women and girls contend with denial of full legal status and gender-based discrimination, which make them vulnerable to trafficking, unsafe migration, subsequent exploitive labor, and sexual exploitation and place them at increased risk of HIV infection.

Hill Tribes: Many hill tribe women, though born in Thailand, are not Thai citizens, and their children are stateless. PHR learned that noncitizens cannot register births or marriages, are denied opportunities for education and work, cannot access public health care services through the universal health care ("30-baht") plan, and are restricted in their freedom of movement. This situation further constricts the opportunities for women in hill tribe communities, which are already limited because of traditional gender norms and the isolated, agricultural nature of life in the highland villages.

Hill tribe women and girls also come from marginalized communities. Respondents noted that hill tribes in the north of Thailand are not represented politically, suffer traditional discrimination, and are at the mercy of central government control and sometimes corrupt and/or neglectful local authorities. As a result, families are often unable to sustain a viable livelihood, and the cultural traditions of their communities are imperiled. When hill tribe women are forced to leave the villages because of circumstances such as financial hardship or loss of farmland, their lack of legal status puts them at risk of unsafe migration. Without travel documents, and

some without Thai language or literacy skills and lacking an informed network of support, women and girls (or their relatives) may pay smugglers or rely on the promises of traffickers. They are also especially vulnerable to exploitation and sexual abuse by employers, brokers, and police. The Thai administration's recent "war on drugs," targeting hill tribe communities and individuals for harassment, arrest, and even extrajudicial killing, has further stigmatized the hill tribes and greatly increased their insecurity.

Burmese Migrants

The human rights situation and worsening economic crisis in Burma are well documented. The systematic rape of women and girls, part of the military's terror campaign against minority ethnic groups, and the political and economic instability resulting from the State Peace and Development Council's militarization of Burmese society, have resulted in an exodus from that country.

There are at least one million Burmese in Thailand; some of them described to PHR their journey to Thailand over the long and porous Thai-Burma border. The vast majority are undocumented migrants and often must find the resources to pay bribes to authorities on both sides of the border to avoid detention; job brokers or other types of smugglers may facilitate this passage, and often a debt is owed. Once in Thailand and without work or residency documentation, Burmese women and girls lack the most basic rights and access to services, face acute discrimination, and are subject to the threat of deportation to Burma. The majority of stories of trafficked Burmese migrants collected in this study took place within Thailand once migrants had reached the western border town of Mae Sot.

To gain permission to remain legally in Thailand, the majority of Burmese must rely on the migrant worker registry for unskilled labor; although many are fleeing persecution, only a small percentage enjoy protected status and may legally reside in refugee camps. Having left Burma illegally, migrants in Thailand also fear punishment if they return home. PHR learned that registration is also the only means to safely and affordably access the Thai public health system through the 30-baht universal health care plan. Registration eligibility and the application process change annually, and registration has become more restrictive in the past three years; work permits have been linked to a specific place of employment, and many of the job categories dominated by migrants have not been covered by the registry.

This situation has precipitously reduced the number of workers with legal status. Moreover, even with a work permit, migrant workers are at the mercy of unscrupulous employers and are constantly harassed by law enforcement authorities. PHR noted that women and girls are particularly subject to being exploited and extorted under these circumstances, as they constitute the majority of laborers in many of these low-skilled, low-pay positions. (p 8)

Exploitation Due to Lack of Human Rights Protection and Promotion

Interviews with hill tribe and Burmese migrants made it exceptionally clear that as part and parcel of the denial of legal status and its protections, both populations routinely experience ill-treatment from employers, authorities, and members of the majority Thai community.

Women and girls are exposed to additional risks because of their gender, including sexual harassment and abuse, rape, unintended pregnancy, and unsafe abortion. Women and girls are also the majority trafficked into and sexually exploited in the sex industry. These additional risks and human rights violations are factors for HIV transmission and thus increase the likelihood that hill tribe and Burmese women and girls will become infected with HIV and, given the absence of treatment, most likely develop AIDS.

Interviews also revealed that, as undocumented migrants, many women and girls endure dangerous work conditions without safety precautions; receive low or no pay; are subject to employer confiscation of essential documentation; are forced to labor many hours and without rest periods; subsist in inadequate sanitary and living conditions; and/or are confined, physically abused, sexually abused, and sexually harassed by employers and their agents. For women and girls trafficked into these exploitative situations, the lack of enforcement of existing anti-trafficking laws and policies frequently results in further human rights violations, including repeated trafficking, exploitation by new employers, and abuse at the hands of authorities.

Women and girls trafficked into the sex industry suffer particularly harsh and endangering abuse: beatings, sexual assault, and unsafe sex practices by traffickers, commercial sex venue owners, clients, and police or immigration officials that imperil their health in many ways and increase their risk of HIV infection.

Many traffickers of women and girls are in fact police, border, and immigration officials; they and other traffickers enjoy virtual impunity in Thailand, despite a highly praised national legal framework and the prioritization of the issue by the current Thai government.

Moreover, PHR was repeatedly told that many Burmese victims of trafficking or other crimes are not identified as such by the Thai authorities, but are instead considered illegal migrants, are arrested and detained, and (if not trafficked again, extorted, or abused in some other manner) are summarily deported back to face further human rights violations in Burma. Such punishment of victims of trafficking without prosecution of traffickers or addressing the involvement of law enforcement and government officials is not only inadequate, it reinforces the pattern of exploitation of vulnerable women and girls. Even the small number of trafficked persons who are assisted by the processes set up by the Thai law enforcement and social welfare system face an uncertain fate.

The majority of these are women and girls trafficked into commercial sex venues, as law enforcement officials are reluctant, and perhaps ill-equipped, to identify as trafficked those who end up in situations of forced labor in factories, domestic service, or other sectors. The stories PHR collected reveal that stateless hill tribe women or girls are afforded long-term shelter, but denial of citizenship limits their opportunities for education, work, or independent living, and they end up in a kind of limbo in state custody. Burmese women and girls simply return, voluntarily or involuntarily, to Burma. Many trafficked persons are subjected to additional human rights violations in the process of their contact with authorities, as Thailand has not evolved and consistently implemented comprehensive policies on the identification, safe removal, witness protection, family reunification, and reintegration of trafficked persons.

The findings of the study also reveal that the general exploitation of hill tribe and Burmese women and girls is routinely aided and abetted by police harassment, which is a daily reality for all migrants. Burmese with work permits or refugee status are not exempt from the constant threat of detention, arrest, extortion, and violence.

This situation also acutely affects the NGOs that seek to improve the migrants' lives, as they are staffed with members of same communities. Thus, corruption and official government and law enforcement complicity compound the vulnerability of Burmese and hill tribe women and girls.

PHR interviews also demonstrated that women from hill tribe and Burmese communities in sex work, whether trafficked or not, are subject to extortion, sexual exploitation, and/or sexual assault by police and immigration authorities. Like undocumented persons in general, sex workers,⁷ no matter what their circumstances, are threatened with arrest and exploited by corrupt venue owners, including frequent debt-bondage.

Moreover, as with domestic service, another occupation held in the majority by female migrants, women in the sex industry are also without recourse to labor protections, for example, under the migrant registration system. Sex workers, furthermore, are socially stigmatized. (p9)

Statelessness and Citizenship

The government of Thailand should act immediately to confer full citizenship on members of hill tribes born in Thailand and take measures to ensure that they enjoy all rights of citizenship, including registry of marriages and births, school graduation certification, land rights, access to health care, and representation and participation at the village and district levels.

The government of Thailand should ensure that all children born in Thailand are registered at birth and receive a birth certificate, regardless of their nationality. The government of Thailand should ensure that no child is prevented from attending Thai schools and that all children receive a diploma upon graduation. (P11)

Denial of Citizenship

At the heart of the vulnerability of the hill tribes is their lack of full citizenship status in Thailand.

They can't help themselves, because of the government system in Thailand - the ID cards...They have no representation in the system, no place. No ID? No room for you. Traditionally, we have an identity when we are born, when we are given a name. [With regard to citizenship] we are not asking for rights, but for responsibility [of the government].

As a result of this ongoing denial, every stage of a hill tribe person's life is negatively affected; for example:

- * Undocumented parents cannot register the births of their children born in Thailand, so they have no evidence of where and to whom the children were born. This is not simply a question of oversight or neglect on the part of the government; according to UNESCO, in 2002 the Ministry of Interior directed district officials not to register these births.

- * Unregistered children cannot receive a school diploma (primary school certificate), thus prohibiting the continuation of their education and limiting job opportunities.

* Noncitizen individuals cannot obtain health care under the 30-baht plan. Given the poverty of this population, this restriction effectively deprives tribal women and girls of access to medical care, including reproductive health services.

* Individuals, though born in the country, are considered to be illegally in Thailand, are not permitted to work, and can legally be deported (and therefore held in custody indefinitely, given their technical statelessness). Those holding one or another category of limited temporary resident alien status are not much better off, as they are geographically restricted to living and working in certain areas, usually the immediate district or some portion of it. The effect is confinement to the meager opportunities for work in the locality, without special permission of the (Thai) district chief.

Given the unjust denial of the privileges and protections of full legal status, women and girls migrate to fulfill their traditional obligation to help support their families, to better their opportunities, or to escape the gender or geographic restrictions or other hardships of family, village, or tribal life. When they seek to go to urban areas, however, they are forced to risk a roster of forms of abuse and exploitation to which their gender makes them especially vulnerable.

Trafficking, Unsafe Migration, and Labor Exploitation

Among those who work with hill tribes, there is unanimous agreement that lack of citizenship is the chief factor in the particular vulnerability of hill tribe women and girls to trafficking and other forms of exploitation. As a result of the restrictions on their level of educational attainment and their confinement to the boundaries of the district, many girls (and boys) are effectively limited to hired farm labor and sex work, unless they migrate.

Members of families who have lost their land to government projects are also forced to migrate to the lowlands and find work. This is very difficult to do safely, especially for those without facilitating networks of trustworthy friends or relatives or Thai language or literacy skills; they must find their way and evade arrest by somehow obtaining, often borrowing, the means to hire smugglers and pay off police. As a result they may fall into debt and into situations of deception, coercion, and/or exploitation.

Villagers who have been to the city will tell you where you can work, and neighbors follow. Some go permanently, or they go seasonally, in the dry season or after harvest. In the past it was men in construction. Now women and children come down...because they don't have enough rice because the farms are controlled by the government...The migration stories are very diverse: some go for one or two months and go back, some move the family to the city permanently. From every village people come down, some want to make money, some want to see the city. Many have a bad experience: they are cheated from wages, arrested because of no ID card, treated differently...threatened with the police, women are raped.

Employers also take advantage of the traditional values of many hill tribe people, according to one NGO worker: "Villagers don't want to negotiate or bargain because they never claim their own rights; people want to pay respect and have relationships."

Hill tribe girls and women without full citizenship are by all accounts dependent on, and often at the mercy of, their employers. Violations of the labor and criminal laws by employers are routine, unreported, and unpunished.

For example, the need for a place to live and find meals, as well as to obtain income, leads many older teenage girls away from home to work as housemaids, where they are subject to rape and attempted rape, as one shelter worker concludes, "because they are hill tribe people, and employers think they can do whatever they want to them." These assaults go unreported because employers threaten the girls' lives or threaten to report their illegal status to the police. These human rights abuses are a direct consequence of holding only hill tribe identification of some kind, at best: "They can't legally work here, so employers threaten them with arrest." Some women and girls have found it necessary to live in a shelter in order to obtain help applying for citizenship, in the hope that this status will lead to a better paying job than those they can currently obtain, and one with humane conditions. Others seek shelter to escape physical and sexual abuse. Many end up spending several years in a kind of limbo.

There is an Akha girl here who was in school until the 9th grade, but she can't continue because she has no papers. She went to beauty school at night [while living in the shelter] and does all the girls' hair here. She wants to open her own salon, she has a lot of skills.

For young hill tribe women like this one, trapped between a lack of opportunity in their villages of origin and barriers to betterment through education or work, the future looks bleak. Given the dearth of legal, remunerative work opportunities, it is unsurprising, then, that as reported to PHR, some women who have been trafficked end up becoming traffickers themselves.

Thai Government's Failure to Address Root Causes

By all accounts, there have been some significant improvements in the situation of hill tribe girls and women in the past 10 or 15 years. Respondents particularly singled out the salutary effect of a compulsory education law mandating attendance through age 15 and government- and NGO-sponsored programs providing scholarships and other interventions to keep girls in grade school. Development has also provided some positive aspects, increasing the standards of living for many villagers. Reportedly, anti-trafficking programs supported by the Thai and US governments and other donors collaborating with NGOs have raised villagers' awareness, enabling them to identify traffickers and unscrupulous job recruiters. Many now apparently understand the need for obtaining information in advance and the potential consequences of agreeing to job brokerage and clandestine travel for themselves or their relatives in the custody of agents. Although these programs have not tracked results nor been evaluated, those who work with trafficked or at-risk women and girls have noticed a decline in those trafficked who are from the hill tribes: "We see many fewer hill tribe girls [in the shelter]...villagers have information."

The fundamental inequalities derived from denial of citizenship, however, have not been remedied by the Thai government. Thus, these improvements and interventions have not necessarily translated into more opportunities for teenagers and young women, as secondary and university education and other avenues to betterment and income generation remain elusive. Continued pressure on girls and women to contribute to their family's survival, and their own desires to seek a better or different way of life, mean that, despite knowing the potential risks of unsafe migration, they still remain vulnerable to a need for smugglers to leave the village, to the

enticements of traffickers offering a way to make money, to exploitation by employers, and/or to abuse by unscrupulous police and others who seek to profit from these women's lack of legal status. Circumscribed in these ways, many also may still end up for a time in sex work. Thus, hill tribe women and girls remain at risk for human rights abuses, including sexual exploitation, and for transmission of HIV/AIDS. (P35)

5) Birth registration of Burmese migrant children – extracts from a 2005 NGO document

Statelessness

Children born to Burmese migrant workers and members of Burma's ethnic minorities in Thailand are considered to be illegal immigrants, and they are denied registration of their birth by the relevant Thai authorities. The denial of birth certificates is carried out to make it difficult for Burmese children to claim Thai citizenship. This denial also has adverse consequences on the children, when they attempt to return or actually return to Burma. These children if permitted to return to Burma by the regime, will under the Burmese Citizenship Act be either denied full citizenship, or have no nationality. Being denied Thai or Burmese citizenship will make them stateless persons.

A child becomes stateless at birth, if he or she does not acquire a nationality at birth according to the law of any State. This statelessness is termed "absolute" statelessness. There are no rules of international law imposing a duty on States to confer their nationality on such children. The Thai government has now issued guidelines to hospitals, on how to deal with the birth of children of parents who have illegally entered Thailand. This has not stopped hospitals refusing to record their children's births, due to such guidelines remaining vague and without sanctions compelling its enforcement.

Children being born into statelessness in Thailand, are neither able to go back to Burma nor live in Thailand as "legal persons". Thailand is not a party to the 1950 Refugee Convention, and it is not obliged to provide protection and humanitarian assistance to a refugee child or a child seeking refugee status. Thailand maintains that refugees are "illegal persons", and refugee children born in Thailand are denied citizenship.

Under these conditions, children suffer, firstly from being uprooted from their homes and community support in Burma. Secondly in Thailand, they suffer again by being selectively denied the rights guaranteed to them under the CRC. Their future is bleak, due to such denial and insecurity as stateless or illegal aliens.

The Burmese children born in Thailand are unwanted by the Burmese authorities, and are also of little concern to the Thai authorities. They are forced to grow up in limbo without access to proper education, public healthcare and other social welfare programmes. National security are reasons given for the lack of support and the invisible existence of the children in the eyes of the Thai government.

Birth Recording

Most migrant workers are not aware of the importance of birth certificates, and mistakenly believe that it is not necessary. Some parents do not have information on where to obtain birth certificates, and some who are aware of the importance of birth certification fear to go to the Thai government's District Office, because they do not have work permits and are "illegals". The future of these children in Thailand is a cause of great concern because without a documentation of birth, it is impossible for the children to have access to education in Thailand.

The Situation on Migrant Mothers

The current situation regarding Burmese migrant workers in Maesot is that they work in jobs known as "three D jobs" – dirty, dangerous and degrading, they receive low wages, they are violently assaulted and some end up being murdered, women workers are assaulted and raped – all because of the hatred of Burmese people. The perpetrators of these heinous crimes are never brought to justice, because the victims are defenceless Burmese migrant workers who have no rights in Thailand. Working legally with work permits does not change this situation.

Burmese women migrant workers with and without work permits are no longer discriminated against at Maesot Hospital, which previously barred them from giving birth at the hospital. They are now entitled to a delivery birth certificates, but the policy with regards to issuing birth certificates to them have not changed.

The majority of expectant mothers avoid having their child delivered at the Maesot hospital due to personal security reasons, arising out of fear of arrest by the local police or other authorities. The fear of arrest extends to their husbands, and other persons who accompany them to the hospital. The other factor is the high cost of hospital care due to not being entitled to or denied access to medical services under the national 30 Baht health insurance scheme. Workers with work permits are entitled to access the scheme, but they are denied access simply due to being Burmese migrant workers.

The lack of public transportation, and the costs associated with alternative means of transportation, are some of the difficulties faced by mothers travelling from their homes to the Maesot Hospital.

Language barriers are encountered by mothers who are not long time residents of Maesot. This will discourage them from going to the Maesot hospital, because they will fear for their safety in a public place due to their inability to speak basic Thai words.

Factories employing Burmese migrant workers in Maesot, have increased by 200 in the last 5 years, with the largest factories employing around 3,000 workers. This has not reduced the number of Burmese seeking work in Maesot, and the demand for work has resulted in harsher working conditions for less pay. Factory owners collude with local police, who deport Burmese workers who seek back pay, reasonable pay or better working conditions.

Women workers who fall pregnant are not allowed to continue working, and not allow to continue to live at the employment compound. Some pregnant women are not permitted to hold work permits, and they are barred from renewing their current work permits.

The Situation of Burmese Children Born in Thailand

There are now more than 500,000 Burmese children born in Thailand. These children are deemed stateless by the Thai authorities, and are liable to be arrested on sight and deported.

Kritaya Archavanitkul from Mahidol University's Population and Social Research Institute, states that at least 2,000 Burmese children baby are born in Thai hospitals each year, and they have no proper birth certificates or identifying documents.

Burmese children born in Thailand are treated as illegal aliens. Most of them have no access to education because they are not accepted by local school, due to being denied identification records at birth by the Thai authorities. These undocumented children are also prevent them from returning home as Burmese citizens, or going to third countries or even staying in Thailand.

There is no accurate numbers or estimates of Burmese migrants children in Thailand, even though there are at least four to five children born to migrants workers each day. State hospitals record that last year it delivered some 50,000 babies born to migrant workers. Most of the babies are said to be Burmese. The apparent lack of statistics is due mainly to personal hatred against Burmese by local officials, and their desire to deny these children any opportunity to become Thai residents, even though Thai law specifically bars these children from being granted Thai citizenship. These officials work contrary to official directions to document Burmese children, or they misinterpret these directions.

The number of Burmese children born outside hospitals in Thailand are increasing each day, due to the majority of Burmese migrant workers being forced to deliver their children at home, due to their fear of deportation to Burma. These workers fear to return home due to leaving Burma illegally and they face arrest and imprisonment on their return for illegally leaving the country. The other reason is that, in Thailand even the meagre wages they earn is sufficient to support themselves and their families in Burma. Most families suffer extreme financial hardship in Burma due to rising inflation, and from being forced to contribute financially and physically to projects that only benefit the military.

In Maesot, most mothers deliver their babies at home or in rare occasions nearby to the place these mothers are living. In this regard in 2002 Mae Tao clinic recorded a total number of 2,250 women being booked in to have antenatal care at the clinic, but only a small percentage of these women proceeded with giving birth at the clinic.

There are increasing numbers of abandoned Burmese children, and Burmese street children each year in Maesot. A large number of young Burmese girls are working at Thai restaurant (which are at times a front for prostitution) as well as house maids. These

undocumented children face the risk of being deported to Burma by the authorities, where they will suffer insurmountable difficulties due to their status in the country. Neither Burma nor Thailand will protect these children's rights, even though they have taken on specific obligations to do so under the CRC.

6) Closing your eyes is not a solution

(Article from the *Bangkok Post*)

It is tempting when faced with a problem to close your eyes and pretend it does not exist, especially if the problem is complex and there is scant information, or it is wildly scattered, that could help to bring about a solution. The problem of unregistered births is such a conundrum. Officially, the Interior Ministry denies that any difficulty exists, or, at least, that is what it told a United Nations agency when it made recent inquiries. And herein may lie the answer to all those people who have read or heard about the global campaign on birth registration and wondered why there was no mention of Thailand as a problem area.

Plan, the British agency organising the campaign, fears that half a billion children worldwide could be unregistered. No records exist for 60% of babies born in South Asia. In Sub-Saharan Africa, the figure is 55%. What the report carried by the British Broadcasting Corporation did not mention is that Plan International is involved in groundwork in Khon Kaen and Chiang Rai.

The ministry's denial of the problem has sparked fierce criticism from human rights defenders. But there is a logical explanation for the official position, if fear that the Thai race could be diluted if nationality is conferred on non-Thais born in this country could be thought of as a valid enough reason.

If Thailand were to admit that some births are not registered, it would be in trouble. It is party to two conventions that call for this process: the UN Convention on the Rights of the Child and the Convention on Civil and Political Rights. With the first, Thailand may be excused up to a point because it had added a provision on the matter of nationality. But Thailand did not add a provision to the Convention on Civil and Political Rights.

Desmond Tutu, the South African archbishop and Nobel Peace laureate who helped launch the global campaign, said a birth document was "in a very real sense, a matter of life and death". Without one, children were often barred from education, health-care and citizenship, he told a press conference at the UN headquarters in New York. "The unregistered child is a nonentity," he said. "The unregistered child does not exist. How can we live with the knowledge that we could have made a difference."

In Thailand, there were stronger words. "By denying birth registration, the state is not recognising the child's existence as a human being," one non-government campaigner told the Bangkok Post. "Most animals in this country, including livestock and beasts of burden, are registered with an authority."

Due to a combination of factors _ among them complex regulations, bureaucratic red tape, fear of officialdom, policy flip-flops and a tendency to deny the existence of problems _ there is no clear overview, only pieces of the picture, backed up by estimates. According to figures used by

the Law Society of Thailand's human rights sub-committee, there are an estimated three million unregistered adults, 500,000 of whom were born in Thailand. The rest are mainly, but not exclusively, Burmese.

Longstanding regulations had provided for three types of civil registration: for those signed up on the day of their birth, for those signed up within 15 days, and for those born of foreign parents. But a 2002 interior ministry regulation introduced an important difference: Only Thais or those with permission to stay in Thailand would be listed on the civil register. Hilltribe people and ethnic Vietnamese, Lao and Burmese would be issued a card. But children born of illegal migrants would not be presented with birth documents.

Since secure people tend to be the most generous, and Thaksin Shinawatra and his Thai Rak Thai party certainly qualify as secure after their Feb 6 general election sweep, "non-persons" in this country might have room for some hope for improvement in their situation. But first the head of government or interior minister would have to recognise that a problem exists and discuss it with those who care so that the marginalised can contribute better to society, and to the economy.

Bangkok Post 25 February, 2005

Bangkok Post- Friday 10 January 2003

7) UN/ NGO letter on birth registration and trafficking to the Minister of Foreign Affairs

4 August 2004

H.E. Surakiart Sathirathai
Minister of Foreign Affairs
Royal Thai Government
Bangkok,
Thailand

Excellency,

The undersigned organizations present our compliments to the Ministry of Foreign Affairs and have the honor to present our views on the following issue.

ON [behalf of our organizations, recognizing the important link between birth registration and vulnerability to human trafficking, we write to respectfully encourage the Royal Thai Government to implement more effectively administrative procedures to ensure that all children in Thailand, regardless of the legal status of their parent(s), are registered at birth and provided with an official (legal) birth certificate.

As you are aware, the issue of human trafficking, especially of children, is a matter of great concern in the international community. Research and analysis

have found that while there are many factors contributing to the likelihood of becoming a victim of trafficking, lack of identity and legal status of children who are not registered at birth is a major cause of future vulnerability to trafficking. We respectfully submit that if proper birth registration is not provided, it can victimize innocent children, and deny them basic rights - such as the right to education, the right to health care, and the right of free, legal movement - which exacerbates their vulnerability to trafficking as they grow older.

We appreciate that Thailand has undertaken international obligations, through ratification of relevant treaties, to ensure registration of all births. Under article 24(2) of the UN International Covenant on Civil and Political Rights (ICCPR), we respectfully note that state parties must ensure that "Every child shall be registered immediately after birth and shall have a name". Likewise, according to article 7 of the Convention of the Rights of the Child, ratifying State Parties must provide that "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality...State Parties shall ensure implementation of these rights in accordance with their national law..."

Further, Thailand has ratified the ILO Minimum Age Convention, 1973 (No. 138), the ILO Worst Forms of Child Labour Convention, 1999 (No. 182). The ILO Minimum Age Recommendation, 1973 (No. 146), which supplements Convention No. 138, recommends in particular that "the public authorities should maintain an effective system of birth registration, which should include the issue of birth certificates;" Similarly, the ILO Worst Forms of Child Labour Recommendation, 1999 (No. 190), which supplements Convention No. 182 provides in Para. 5 (2) that: ". . . The importance of an effective system of birth registration, including the issuing of birth certificates, should be taken into account."

Unfortunately, based on the work of our organizations and our partners, we must regretfully note that this obligation appears to be neither well understood nor consistently implemented by the relevant provincial and district officials who are responsible for registering births in the national register. Specifically, it appears that there is a systematic failure in many areas to include in the civil register the children of parents who are not Thai citizens. The result is the creation of a growing group of children without legal recognition, rights or protection, whether they be sons and daughters of ethnic minority groups (such as ethnic groups in the North who have long resided in Thailand, or ethnic Vietnamese in northern Esarn), or the children of migrant workers and unregistered refugees from foreign countries. In this regard, we are pleased to share an excellent resource book on this issue, *The Problem of Birth Registration (Panha Kan Jot Tabian Kan Koet)* which is the result of an experts seminar held on 12 September 2002 by the RTG's National Youth Bureau and the Law Society of Thailand.

We welcome the Royal Thai Government's recent decision to register the births of children born to registered refugees in the camps along the Thai-Myanmar border. We would encourage the Government to extend this policy to the broader categories of children referred to above.

Excellency, we are equally pleased to note that the Royal Thai Government has made the campaign against human trafficking a top national priority. ^{DT} firing the national workshop organized by the Prime Minister's Office in Chiang Rai on May 13-14, 2004, which many international organizations attended, we were pleased to hear a strong reaffirmation of that commitment by Deputy Prime Minister Prof. Purachai Piemsombun. Another encouraging event is the follow-up national workshop on human trafficking which will take place at Government House on 6 August 2004 which will be presided over by H.E. Prime Minister Thaksin Shinawatra.

We commend the Royal Thai Government for the recent, successful registration of 1.2 million migrant workers from the neighboring countries of Cambodia, Lao PDR, and Myanmar. This registration process is a good opportunity to provide further protection to dependents of migrant workers, many of who have been born in Thailand. Efforts should be made to ensure that such children get birth certificates. While we anticipate that many children will benefit from these policies, we respectfully submit that the Royal Thai Government should strongly consider proclaiming, as part of its anti-trafficking policy, a renewed commitment to include in the civil register the births of *all children born in Thailand*, and to issue the appropriate official birth certificate that will ensure that each child starts his or her life with legal recognition necessary to claim his or her basic rights and dignity, as provided for in the Convention of the Rights of the Child.

Finally, we, the undersigned organizations, would like to take this opportunity to reaffirm our commitment to be partners with the Royal Thai Government in regard to the issue of birth registration. We respectfully request an appointment with you or your representative to meet with a delegation from our organizations to discuss these issues further, and to identify ways in which we can work together to ensure the successful achievement of these important initiatives by the Royal Thai Government. We sincerely hope that it might be possible to schedule a meeting at a mutually convenient time in the coming months.

We avail ourselves of this opportunity to renew to the Ministry of Foreign Affairs the assurance of our highest respect.

Lin Learn Lim
Acting Deputy Regional Director ILO

Inese Zalitis Representative
UNICEF Office for Thailand

Wan Hea-Lee
Acting Regional Representative for Asia & the Pacific
Office of the UN High Commissioner for Human Rights (OHCHR)

Sheldon Shaeffer Director, Bangkok Office, UNESCO

Hasim Utkan, Regional Representative, Regional Office
for Thailand, Cambodia, Laos and Vietnam
UNHCR

Carmen Madrinan
Executive Director
ECPAT International

Gothom Arya Secretary-General
Asian Forum on Human Rights and Development (Forum Asia)

Jay Jackson
Country Director
International Rescue Committee - Thailand

Mark Capaldi
Coordinator of the Regional Office
SEAPRO/Save the Children -- UK

Habte Woldemariam
Country Director
Plan Thailand

Anne Gallagher
Team Leader
Asia Regional Cooperation to
Prevent People Trafficking (ARCPPT)

cc:

Minister of Interior
Minister of Social Development and Human Security
Minister of Labor
Minister of Justice
Chair, National Human Rights Commission
President, Law Society of Thailand
Chair, National Subcommittee on Trafficking in Women and Children

Thai Government Proposals

1) Stateless People: Govt. to revamp processing of nationality applications

PREEYANAT PHANAYANGGOOR

“Bangkok Post” 4 December 2004

The government will revamp the process of giving Thai citizenship to ethnic minority groups and stateless people.

A task force will be set up to process nationality applications for up to 500,000 stateless people in the first batch.

The task force, headed by a cabinet minister, will also issue birth documents to stateless people's children who are born on Thai soil.

A government source said the proposal to overhaul the approval process would be presented to Prime Minister Thaksin Shinawatra next week.

It would suggest a review of citizenship laws to provide clearer criteria to reduce the discretionary power of state officials.

The approval process would also be decentralised to hasten it, from the interior minister to provincial and district officials.

At present only the interior minister can grant citizenship. As a result, few stateless people are given nationality as cases pile up on the waiting list.

Fewer than 10 stateless people were granted citizenship under former interior minister Purachai Piumsomnuk.

The task force would target around 200,000 students born in Thailand with stateless status and 12 groups of ethnic minorities, highlanders and immigrants who had appealed for Thai citizenship.

On Thursday, justice permanent secretary Somchai Wongsawat revealed that the Interior Ministry had been told to withdraw its appeal against a decision by the Supreme Administrative Court returning citizenship rights to 866 villagers in Chiang Mai's Mae Ai district.

On April 28 the Administrative Court told the Provincial Administration Department (PAD) to nullify its revocation order and return citizenship rights to 866 of the 1,243 villagers who filed complaints in 2002, arguing the order was illegal.

The PAD petitioned the court to overturn the April 28 ruling in a bid to salvage the legality of its directive.

The source said initially the new proposal would benefit at least 500,000 stateless people in 20 provinces who were qualified to regain or get Thai citizenship.

The government says 2-2.5 million people live in Thailand without citizenship.

The proposal would also suggest the government issue birth documents to all children of stateless people to recognise their existence in the country. The birth document would guarantee them basic rights such as education and health.

The proposal would help Thai-born people with stateless status to have their rights recognised, and create measures to prevent new cases of stateless people arising from an influx of immigrants from neighbouring countries.

2) Registering babies is just a start in life

Bangkok Post, 30 July 2004

Stateless people can look forward to some light at the end of the tunnel following Deputy Prime Minister Chaturon Chaisaeng's proposal that their children be issued with birth certificates. This step would help secure basic rights, on health and education, for hundreds of thousands of babies languishing in limbo in the border provinces because their existence has not been acknowledged by the state. It also would help Thailand fulfil its commitment as a signatory to the International Covenant on Civil and Political Rights, which calls for every child to be registered "immediately after birth".

Mr Chaturon emphasised that this was not a move towards granting Thai nationality. In fact, birth registration provides evidence against the granting of citizenship by specifying the origins of the parents.

Few stateless babies are now recorded at birth. Many mothers risk the health of themselves and their babies to give birth in secret for fear of being arrested as illegal immigrants. Also, some hospitals do not realise that they can provide services to pregnant migrants without fear of being punished for harbouring illegals. More fortunate migrant mothers who deliver at hospitals or established medical centres are issued with birth documents, but these are usually flimsy papers endorsed by midwives and they are not recorded in any information system. Moreover, the documents do not enjoy international recognition and would be useless in any later bid to repatriate the children on a voluntary basis, sources say.

Also welcome is the Education Ministry's push for access to education up to university level for stateless children. While this will require implementation and monitoring devices, the decision to continue excluding two categories _ the children of people fleeing armed conflict, and children living in holding centres _ needs review. This is a step backward. Thailand allowed the children of Cambodian refugees living in huge holding centres along the border 20 years ago to be schooled up to Pathom 6. Educating refugees and stateless people is the humanitarian duty of host countries. It also makes economic sense because the chances of educated people being accepted by third countries or of fending for themselves while still living here are much higher.

The plight of Yutthana Phamvan, the 16-year-old who won a place at Chulalongkorn University's faculty of medicine but almost lost it again because he did not have an ID card, has helped draw attention to nationality problems. Born of Vietnamese parents who were granted Thai nationality in 1999 and 2000, Mr Yutthana quickly secured his ID card after his case caught the attention of Prime Minister Thaksin Shinawatra, who made ample political capital from it.

And there is the case of Jobi, the ethnic Karen many believe was born in Thailand, which has

returned to the headlines since his acquittal in March of murder charges related to the shooting of schoolchildren in Ratchaburi in June 2002. The prosecutor's decision to appeal the verdict has touched many nerves as Jobi could be deported for illegal entry unless he can prove his country of birth. The Law Society is trying to help verify the claim, and the United Nations High Commissioner for Refugees has offered to consider giving him refugee status if authorities refuse to grant him Thai citizenship.

Such cases cannot be dealt with in a piecemeal fashion. The government must chart a course for solving the problems of the stateless, put at over two million by unofficial estimates. The registration of babies is a start that should lead to the registration of adults. Then they should be given rights to education and work so they can make a decent living, pay taxes and escape exploitation by employers.

http://www.bangkokpost.com/News/30Jul2004_news35.php

B. Analysis

Birth Registration of Migrant Children Born in Thailand

I. Information Supplementing to Thailand's initial report to the Human Rights Committee

Thai law and regulation relating to birth registration

According to the Act for Registration of Inhabitants B.E. 2534 (1991), it is the duty of the owner of the house (where the child is delivered), father or mother of the child born in Thailand to notify the birth to district/local registrar (article 18). In case that the child is delivered at the hospital or medical center, the delivery certificate will be issued and given to the person who has a duty to subsequently notify the birth with the registrar (article 23). Then the district/local registrar will register the birth and issue birth certificate to the notifier (article 20).

In 1992, the Minister of Interior issued the Ministerial Regulation (B.E. 2535) providing that an immigrant who get permission to reside temporarily in Thailand by virtue of article 17 of the Immigration Act B.E. 2522 (1979) also has the duty to, among others, notify birth to the civil registrar. Other immigrant who gets permission to stay temporarily in Thailand according to the Immigration Act has no duty to notify birth to the civil registrar. However the civil registrar will proceed with birth registration in case that there is birth notification from such immigrant.

By virtue of such law and regulation, every child born in Thailand is entitled to birth registration. However due to the official interpretation of the law and regulation, there are children born in Thailand without having right to birth registration.

Official interpretation of the Act for Registration of Inhabitants 1991 regarding birth registration of illegal migrant

The letter of 26 March 2002 issued by the Bureau of Registration Administration, Ministry of Interior regarding the Act for Registration of Inhabitants for aliens addressing to all provincial and Bangkok registrars provides that, in sum, that only a child born to immigrant who has permission to reside in Thailand according to the Immigration Act is entitled to birth registration (see Attachment 1). The subsequent letter of 10 June 2002 issued by the same Bureau echoed such interpretation. Consequently a child born to any illegal immigrant is ruled out from having right to birth registration.

Accordingly, the right of a child born in Thailand to birth registration can be divided as follows:

1. A child born in Thailand is entitled to birth registration and birth certificate if s/he falls under the following criteria:

- If either the father or mother is Thai nationality

- If the child's parent is immigrant with permanent residential status in Thailand (holding residence certificate or alien certificate)
- If the child's parent is immigrant who get permission to stay temporarily in Thailand according to the Immigration Act (i.e. having visa to enter and stay in Thailand)
- If the child's parent is immigrant who get permission to stay temporarily in Thailand by virtue of article 17 of the Immigration Act including
 - Ethnic minorities in Thailand registered by the officials with an identity card
 - Illegal migrants from Burma, Laos, and Cambodia registered by the Ministry of Interior in 2004
 - UNHCR recognized refugees from Burma (Announcement of the Ministry of Interior, dated 31 January 2005)

2. A child born in Thailand is NOT entitled to birth registration and birth certificate if s/he falls under the following criteria:

- If the child's parent is illegal migrant according to the Immigration Act, including undocumented Thai (person who claims to be entitled to Thai nationality but has not yet been officially granted Thai nationality)
- If the child's parent is illegal migrants from Burma registered by Ministry of Interior, who for humanitarian reason got permission to stay temporarily in 9 official temporary shelters along Thai-Burma border pending repatriation to Burma (or officially referred to as "persons fleeing fighting")

II. Criticism to the official interpretation of the Act for Registration of Inhabitants

Many UN agencies, NGOs and human rights advocates considered the official interpretation of the Bureau of Registration Administration, contained in its letter of 26 March 2002 mentioned above, not consistent with the right of the child to birth registration as enshrined in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child and therefore encouraged the Thai government to take necessary measure to ensure the registration of every child born in Thailand regardless the legal status of the child and his/her parents. Such official interpretation was also criticized as contradiction with the Act for Registration of Inhabitants. The Bureau of Registration Administration's letters of 26 March 2002 and of 10 June 2002 are considered a non-enforceable. The reasons given are, firstly, the Act establishes a mandatory reporting in case of birth so that the official could proceed with birth registration without giving exception for illegal migrants from such duty. Secondly, according to Article 5 of the Act, the exemption of such duty to notify birth could be granted only by the Minister of Interior through the Ministerial Regulation but there is no Ministerial Regulation granting such exemption to illegal migrants in Thailand.¹

¹ See Karn Sermchaiwong, "Birth Registration and the Issuance of Birth Certificate to Migrant Children in Thailand", **Problem of Birth Registration**, April 2004, pp. 73-88. (In Thai)

III. Special measures taken by Thai government to ensure the recognition of the child's legal personality

In response to the recommendations from various organizations and individuals, the government decided, providing that such official interpretation remains effective to guide the implementation of the civil registrar, to take important measures to ensure that a child born to illegal immigrants in Thailand receiving a document to prove his/her identity. Such measures include:

- The issuance of letter of 22 May 2002 by the Ministry of Interior addressing to the Permanent Secretary of the Ministry of Public Health to emphasize that the a birth attendant at the hospital and medical care center is able to issue a delivery certificate as prescribed by the Act for Registration of Inhabitants to a new born child, regardless of status of persons delivering birth (see Attachment 2).
- The issuance of letter of 26 May 2003 by the Ministry of Interior relating to the issuance of delivery certificate to children born to persons fleeing fighting from Myanmar residing in temporary shelters (see attachment 3).

As a result of such intervention, every child born at the hospital or medical center, including those born to illegal immigrants, is entitled to official delivery certificate. Also a child born to persons fleeing fighting from Burma residing in temporary shelters can also get official delivery certificate issued by birth attendant at medical centers operated by NGOs. (See attachment 4)

It must be noted however that the issuance of official delivery certificate is **“merely for providing the existence of birth delivery at the medical care centre. The issuance of delivery certificate shall not be interpreted as the notification or the registration of birth.”** (Cited from the letter of 22 May 2002, see attachment 2). Additionally, such measures would benefit only a child who was born at the hospital and medical care center both inside and outside temporary shelter. Information from organizations working with migrants in Thailand reveals that many children especially of illegal migrants were born outside hospital and medical center. As a result, a child cannot get a delivery certificate to prove his/her identity.

The issue of children born to illegal migrants outside hospital was brought to the attention of government officials. It was advised that the parents could ask the head of the village where the child was born to issue a letter to certify the place of birth which contains similar information to delivery certificate. This would help a child to have document to prove his/her identity.

In the recent meeting of the National Security Council chaired by the Prime Minister on 18 January 2005, the Strategy to Address the Problem of Legal Status and Right to Identity was approved. It was reported that as status determination mechanism would be established to grant legal status to various groups of immigrant in Thailand including stateless children so that proper care and protection could be provided to them. Related government agencies are working together with some academe and NGOs on the plan of implementation.

IV. Remaining concerns

It could be seen above that the Thai government has already taken some necessary measures to help a child born to illegal immigrants in Thailand to have a document to prove

his/her identify, i.e. official delivery certificate and a letter certifying the place of birth. Such measure is greatly welcome but there are remaining concerns as follows:

- The issuance of official delivery certificate by birth attendant working at hospital or medical care center is not the notification or the registration of birth. Also the delivery certificate issued by hospital or medical care center outside the temporary shelter for persons fleeing fighting is not recognized by the Bureau of Registration Administration, Minister of Interior which is the only organizations maintaining database for all inhabitants in Thailand. It is not clear whether there is a system for the Bureau to received and monitor delivery certificate that has already been issued. As such there is a concern regarding the validation of such document.
- Although parents of the child born outside hospital or medical care center can get a letter certifying the place of birth from the head of the village, there has been no official instruction for the head of the village in this regards. There is a concern whether illegal migrants is aware of this possibility and if so, whether they would be arrested by government official due to their illegal status while attempting to request for such document. One must be aware of the possibility of them having to pay money in order to get such document even though the issuance of such document is free of charge. Moreover, such exercise might lead to corruption and the issuance of false document.

Conclusion

Despite an effort from the Thai government to ensure the recognition of legal personality/identity of a child born in Thailand, it could be concluded that children born to illegal immigrants is not entitled to birth registration, according to the Bureau of Registration Administration's interpretation of the Act for Registration of Inhabitants. Although they are entitled to get delivery certificate issued by the birth attendant or a letter certifying the place of birth issued by the head of the village, there are concerns whether the child will get such document in practice and also the validation of such document due to the fact that the issuance of such documents is not the registration of birth. Providing such concerns, many children born in Thailand will have no legal identity and most likely become stateless persons.

Recommendation

The Thai government is encouraged to take further necessary measures to ensure that every child born Thailand is registered at birth without any exception, as follows:

1. Organizing public campaign, in collaboration with UN agencies, international organizations, NGOs and community organizations, to emphasize the right to birth registration and the benefit of having document to prove a child's identity, such as birth certificate.
2. Working with UN agencies, international NGOs, local NGOs, academe and community organizations and leaders to design a mechanism to gather information on children born in Thailand but have not yet received any certificate to prove his/her identity.
3. Considering revoking of the letters issued by the Bureau of Registration Administration which prevents children born to illegal immigrants from birth registration and replacing such letters with an instruction to civil registrar to register every birth in Thailand without exception.

Reference: This paper is prepared by Karn Sermchaiwong (16 March 2005) as background information for the Country Report Task Force of the Human Rights Committee in its discussion to prepare a list of issues to be sent to the Royal Thai Government in response to Thailand's Initial Report to the Human Rights Committee.

Unofficial translation²

Mor Tor 0310.1/Wor 8

Bureau of Registration Administration
Nakhonsawan Road,
Bangkok 10300

26 March 2002

Subject: Conformity to the Act for Registration of Inhabitants for Aliens

To: All Provincial and Bangkok Registrars

Reference: Ministerial Regulation (B.E. 2535) issued in accordance with the Act for Registration of Inhabitants B.E. 2534

The Bureau of Registration Administration has received from several bureaux of registration queries about whether and how a registration of birth and death for aliens and the addition of their names into census could be furnished. Having considered, any civil registration for aliens must conform to the Ministerial Regulation (B.E. 2535) issued in accordance with the Act for Registration of Inhabitants B.E. 2534. However, to ensure that the said consideration is accurate, the Bureau of Registration Administration has consulted the legal adviser of Ministry of Interior who gave the opinion saying that all categories of aliens are subject to the provisions of Immigration Act B.E. 2522. The Ministerial Regulation (B.E. 2535), issued in accordance with the Act for Registration of Inhabitants B.E. 2534, indicates that only the aliens permitted by the Minister of Interior to reside in the Kingdom on particular grounds, and those permitted to reside temporarily in the Kingdom according to the Immigration Law, will have to conform to the Act for Registration of Inhabitants B.E. 2534.

Therefore, to ensure that the compliance with civil registration for aliens is lawful, please be informed that all district and local bureaux of registration should comply with the followings:

1. There are three categories of aliens of which birth, death, notification of move and addition of names into census could be registered:

1st category: the aliens with a residence certificate or an alien certificate.

2nd category: the aliens with the permission of the Minister of Interior approved by the Cabinet to reside in the Kingdom on particular grounds according to the Immigration Act B.E.

² Unofficial translation by UNHCR office in Thailand.

2522, Article 17. They are, for example, ethnic minorities in Thailand registered by the officials with an identity card issued as a proof. These categories of aliens are granted by the Cabinet a temporary residence in the Kingdom or a status of legal immigrant i.e. 1945-1946 Vietnamese arrivals, 1950-1954 former soldiers of the Chinese National Army arrivals, 1950-1961 Chinese arrivals who first joined the group of former soldiers of the Chinese National Army, 1962-1978 independent Chinese arrivals, pre-1987 Malaya communist from Malaysia arrivals, Thai Lue, post-1974 Laotian arrivals (non-camp population), Nepali who fled Burma along with the pre-March 1976 Burmese arrivals, pre-March 1976 Burmese arrivals, post-March 1976 Burmese arrivals, Highlanders, 1974-1977 Thai ethnic from Koh Kong province of Cambodia arrivals, post-1977 Cambodian arrivals, Tong Lueng – a primitive tribe in Northern Thailand, and illegal migrant workers from Myanmar, Laos and Cambodia already registered and granted a work permit according to the condition and duration termed by Ministry of Labour and Social Welfare.

3rd category: the aliens permitted to reside temporarily in the Kingdom according to the Immigration Law. They are, for example, foreign visitors or investors residing in the country with valid passport.

Thus, aliens to conform to the Act for Registration of Inhabitants belong to the first and the second category while those of the third are not subject to the said Law. However, should they want to, they could request the registrar to carry out the process set forth in the Act for Registration of Inhabitants.

2. Illegal immigrants, referred in any provisions of the Regulations of Bureau of Registration Administration concerning Civil Registration (B.E. 2535) and its amendments, shall mean the aliens who have been permitted to reside in the Kingdom on particular grounds according to the Immigration Act B.E. 2522.

3. Other aliens, apart from the three categories mentioned above in the 1st section such as other illegal immigrants or illegal migrant workers who are not registered and granted a work permit according to the condition and duration termed by Ministry of Labour and Social Welfare, are not subject to the Act for Registration of Inhabitants. Hence, registrar will not be able to proceed any civil registration, except for only the notification of death which requires document of the civil registration in handling with the dead body. After the notification of death, the registrar would *mutatis mutandis* issue the aliens with the document of death notification (Tor. Ror. 4) as a proof without a death certificate.

Sincerely yours,

(Mr. Prakit Kannayaban)

Deputy Director

Acting Director of Bureau of Registration Administration

Bureau of Registration Administration

Civil Registration Division

Tel/Fax 0-2281-2486

Attachment 2

Unofficial translation³

Reference No. Mor Tor 0310.1/ 6984

Ministry of Interior
Assadang Rd.,
Bangkok 10200

22 May 2002

Subject: Issuance of Delivery Certificate (Tor. Ror. 1/1) to Children born to Aliens
To: Permanent Secretary of the Ministry of Public Health
Reference: Civil Registration Act B.E. 2534

The Bureau of Registration Administration in the Department of Provincial Administration of the Ministry of Interior has received queries from the Sub-committee on Measures in Countering Stateless Children in the Committee of Women, Youth and Elderly Affairs of Senate of Thailand and officers in medical care centres as well as other registration offices. The queries are whether officers at the medical care centres are capable of issuing delivery certificates (Tor. Ror. 1/1) to illegal aliens delivering children at the medical care centres provided that the persons giving birth posse no identification document or some of them leave new borns at the medical care centres. Hence, may the Ministry of Public Health be advised of this information to cooperate in a practical manner.

The Ministry of Interior would like, in accordance with article 23 of the Act for Registration of Inhabitants B.E. 2534, to inform that when a person is born, a birth attendant has to issue a delivery certificate in conformity to a form regulated by the director of the Bureau of Registration Administration. Practically, the mentioned form is Tor. Ror. 1/1 which is annexed to the health records of mothers and children. Apart from that, medical care centres can obtain that form from district or local registration offices where the medical care centre is located. It should be further noted that the issuance of delivery certificate (Tor. Ror. 1/1) is merely for proving the existence of birth delivery at the medical care centre. The issuance of delivery certificate shall not be interpreted as the notification or the registration of birth. With respect to the law concerning civil registration, ones holding such duty of birth notification are a house host, a father or a mother. In order to obtain a birth certificate, a delivery certificate (Tor. Ror. 1/1) together with a birth notification must be brought to the attention of a registrar. The question whether the registrar will have the birth officially recorded as appeared in the delivery certificate depends on discretion of the registrar in accordance with conditions and regulations provided by the law. **Therefore, regardless of status of persons delivering birth, the birth attendant at the medical care centre is able to issue a delivery certificate as prescribed by the law.** In addition, in terms of procedure to input information in the deliver certificate (Tor. Ror. 1/1), it is vital to fill out the information accurately. If there should be any of the information unknown, be certain to put the mark of “ – “ on. As to the information pertaining the nationality of newborn children, there are two alternatives appeared on the deliver certificate (Tor. Ror. 1/1): Thai and others. In case that father and mother are illegal immigrants or aliens residing temporarily in the Kingdom such as; tourists, illegal migrant workers, be certain to put a mark on “ others” alternative.

³ Unofficial translation by UNHCR office in Thailand.

This is for your action and is considered to call on cooperation to inform all medical care centres and agencies under the Ministry of Public Health.

Sincerely yours,

(Mr. Anucha Mekkawes)
Deputy Permanent Secretary
Acting Permanent Secretary of Ministry of Interior

Department of Provincial Administration
The Bureau of Registration Administration
Civil Registration Division Tel. 0-2281-2486

Attachment 3

Unofficial translation⁴

Reference No. Mor Tor 0204.2/Wor 1731

Ministry of Interior, Bangkok

26 May 2003

Subject: Issuance of delivery certificate to children born to persons fleeing fighting from Myanmar residing in temporary shelters
Attn.: Provincial Governors of Mae Hong Son, Tak, Kanchanaburi and Ratchaburi
Reference: 1. Letter of Local Administration Department, Ref. No. Mor Tor 0310.1/Wor 1414 dated 10 June 2002
2. Letter of Central Registration Bureau, Ref. No. Mor Tor 0310.1/Wor 15 dated 10 June 2002

It was agreed at the meeting of National Security Council on 6 December 2002 that Ministry of Interior proceed with the issuance of delivery certificate for children born to persons fleeing fighting from Myanmar who have been residing in temporary shelters on the Thai-Myanmar border. This is in accordance with the Convention on the Rights of the Child which Thailand has acceded and is party, and to decrease the volume of pressure from various groups who have claimed the rights on behalf of children born to those fleeing fighting. This birth proof shall not result in any changes of legal status which the children posse. However, the issued documentation may facilitate the identification of persons in benefit of repatriation when the situation is conducive to return.

Ministry of Interior brought the issue to Central Registration Bureau, Local Administration Department for consultation who provided as follows:

1. Civil Registration Act B.E. 2534 provides that person who assists the delivery of a new born baby (or birth attendant) has to issue a delivery certificate by using the form Tor Ror 1/1 which is annexed to the regulation of Central Registration Bureau regarding the administration of civil registration B.E. 2535. Therefore, whenever a baby of persons fleeing fighting was born, the birth attendant can issue delivery certificate. Copies of such form could be obtained at district registration office or local registration bureau situated in the area where the child was born. In the case that there was no birth attendant or he or she cannot be traced, other persons concerned may make a request to chief district officer of the area where the child is currently domiciled in order to issue document certifying the place of birth.

2. Medical doctors and other health workers of non-government organisations, which have received the permission to assist in relation to medical care and facilities in temporary shelters, are able to certify, as the birth attendant in accordance with the form Tor Ror 1/1, for children of persons fleeing fighting in temporary shelters.

⁴ Unofficial translation by UNHCR office in Thailand.

By this virtue, the provinces shall take the following actions:

1. Issuing Tor Ror 1/1 to children born to persons fleeing fighting in temporary shelters who have been registered with MOI since March 1999. This could be implemented through retrieving existing registration records in the case that the birth attendant can be traced. In the case that the birth attendant can not be traced, in addition to retrieving existing registration records, it requires, prior to the submission of the request for the issuance of Tor Ror 1/1, the certification of persons concerned namely father, mother or guardian and camp committee of the temporary shelter where the child is residing. Procedure shall be in accordance with the above-referred letters. This shall commence on Tuesday 1 July 2003.

2. Notifying personnel of non-government organisations who are assisting in relation to medical care and facilities in temporary shelters in respective provinces of the above-described 1.

Ministry of Interior has already sent out a letter notifying CCSDPT.

This is for your action and is considered guideline for implementation.

Sincerely yours,

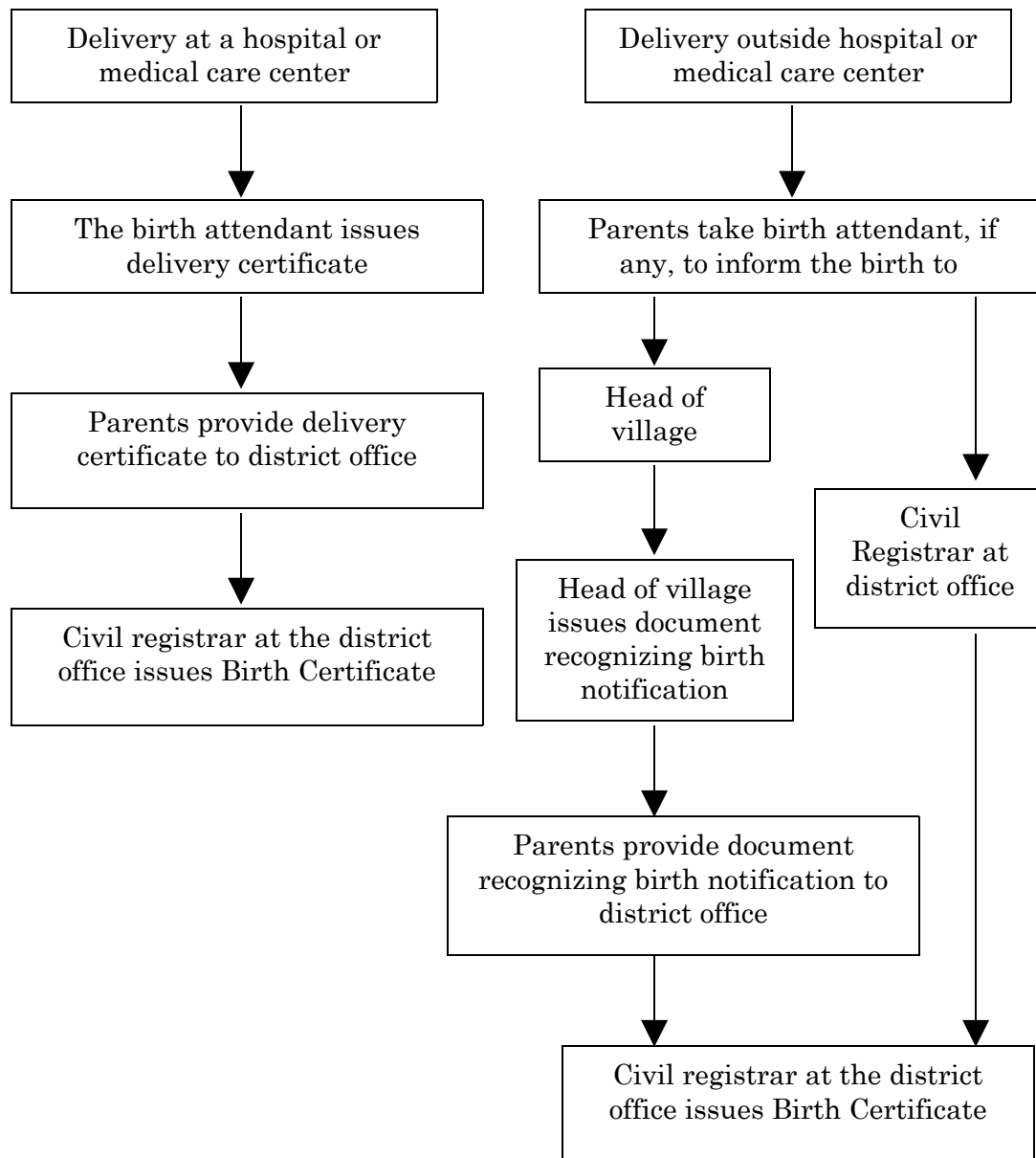
Tirawatr Kullavanijiaya
Deputy Permanent Secretary

Office of Permanent Secretary
OCDP
Tel.: 02 243 0594

Attachment 4

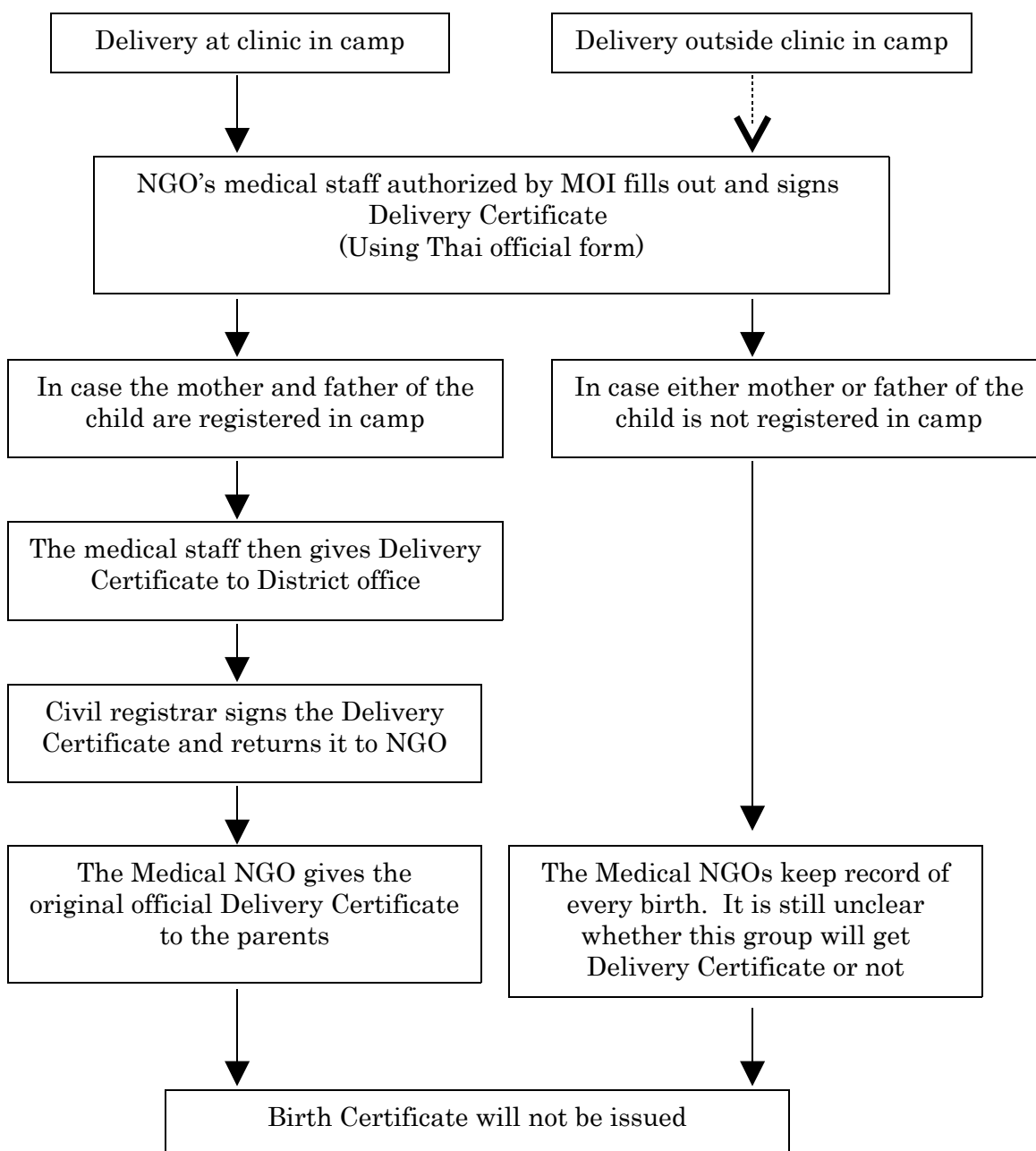
Flowchart: Birth registration of a child born in Thailand

1. Birth registration of a child whose either father or mother is Thai or migrant who has legal status in Thailand (whether having valid Visa, permanent residential status or temporary residential status by virtue of article 17 of the Immigration Act)



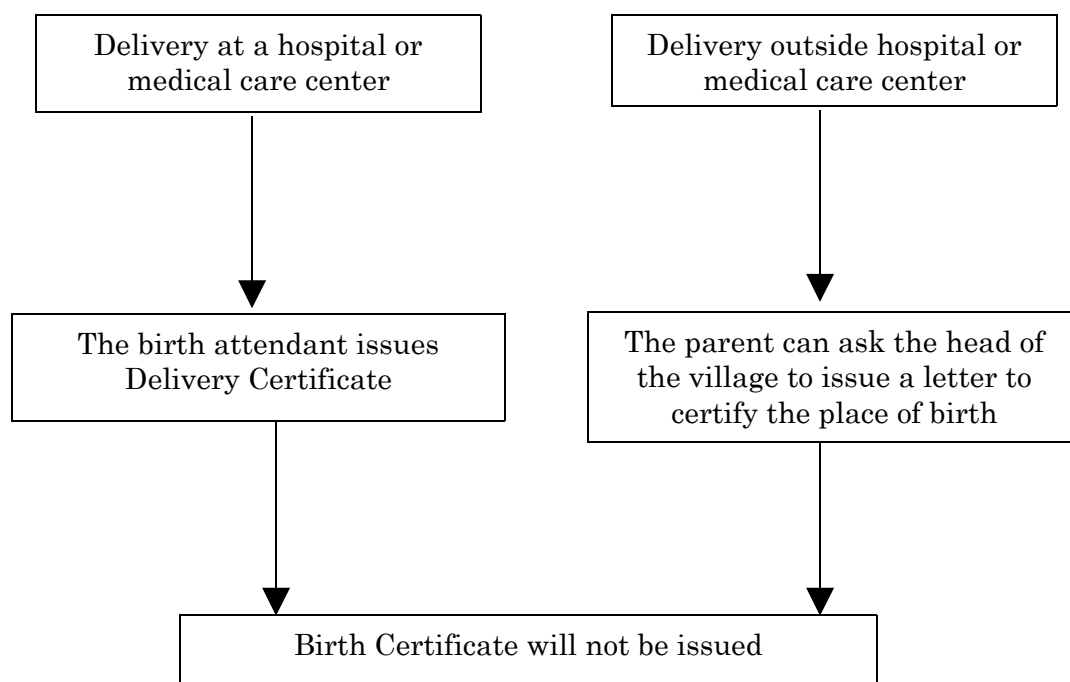
2. Birth registration of a child whose parents are illegal migrants

2.1 In case the child's parents are persons fleeing fighting residing in temporary shelter along Thai-Burma border



Note: In case the pregnant mother is referred to hospital or medical care center outside camps, the delivery certificate will be issued by birth attendant of the hospital or medical care center.

2.2 In case the child's parents are not registered in refugee camps



Note: In case the child is born outside hospital or medical center, the child will neither get delivery certificate nor birth registration.

C. Suggested language for the List of Issues

It may be helpful to deal with paras 24.2 and 24.3 separately, given that birth registration is a key act with regard to the legal identity of the person in addition to his or her nationality.

Annexes

A) Relevant Thai legislation

Thailand's Immigration Act of 2522 (1979) – apparently amended in 1980, but I could not find the later text

http://www.imm.police.go.th/nov2004/en/doc/Immigration_Act.pdf

Thailand's Nationality Act (amended 1992)

http://www.ibiblio.org/obl/docs3/THAILAND's_Nationality_Act.htm

The Constitution of the Kingdom of Thailand (1997)

http://www.kpi.ac.th/en/con_th.asp

Library of Congress page on Thailand's legislation

<http://www.loc.gov/law/guide/thailand.html>

B) Extracts from Thailand's initial report to the Human Rights Committee

The protection of rights of the child under article 24 (2)

612. The Act for Registration of Inhabitants (1991) provides that it shall be the duty of the head of the household or either one of the parents to inform the birth to the registrar of the district in which the birth has taken place, within fifteen days counting from the date of birth. In doing so, the person who helped to deliver the child or the one who gave the medical care shall also issue a certificate of birth to the person that informs the concerned district.

613. In addition, when one finds an abandoned newly born or young baby, the law requires the person to immediately bring the baby to an administrative official, police or public welfare official. After the administrative official or police has received the child, the official shall record the reception and take the child to a public welfare official. Once the child is received by the public welfare official the official shall inform the registrar who shall issue a birth certificate to the informer as evidence of birth. In doing so, the registrar shall record the information and fact as much as possible.

614. As for a birth outside the country, the Thai Consul or the official of the embassy assigned by the Minister of Foreign Affairs shall act as the registrar, and the informer shall inform the consulate or the embassy in that country. If there are no embassy or consulate present in the country, the informer may use the evidence of birth issued by the government of the country that the birth took place, translated and certified by the Ministry of Foreign Affairs, as acceptable

evidence of birth. The law further provides that the District Registrar and the Local Registrar shall have the duty to prepare the registration of birth.

615. Under the law, every child shall have the right to have a name and family name.

616. Section 1561 of the Civil and Commercial Code provides that a child has the right to use the family name of his father. And if his father is unknown, he has a right to use the family name of his mother. In case a child is born out of wedlock, the law regards that he is the legitimate child of his mother, he therefore shall have the right to use the family name of his mother.

The protection of rights of the child under article 24 (3)

617. Formerly the granting of Thai nationality is under the provision of the Nationality Act (1992). A child may acquire the Thai nationality by jus sanguine after his father or by jus soli for being born in Thailand under Section 7 of the said Act. A person who would be granted the Thai nationality would have to be:

- (1) A person born of a father of Thai nationality whether within or outside the Kingdom of Thailand;
- (2) A person born outside the Kingdom of Thailand of a mother of Thai nationality though whose lawful father is unknown or has no nationality;
- (3) A person born within the Kingdom of Thailand.

618. The announcement No. 337 of the Revolutionary Party (1972) revoked the Thai nationalities of persons born in the Kingdom of Thailand of a foreign father or of a foreign mother, whose lawful father is unknown and whose father or mother was:

- (1) Given the leniency for temporary residence in the Kingdom of Thailand as a special case;
 - (2) Permitted to stay temporary in the Kingdom of Thailand;
 - (3) Entering and residing in the Kingdom of Thailand without permission under Thai immigration law;
- unless the Minister of Interior shall see otherwise and order otherwise.

619. In 1992, a revised version of the Nationality Act gave descendants of Thai fathers or mothers the rights to acquire Thai nationality by jus sanguine whether he or she is born in or outside of the Kingdom of Thailand. The children of such a person shall acquire Thai nationality, except those persons under Paragraph 1 of Section 7 BIS, which provides that a person who was born in Thailand of foreign parents and at the time of birth, his lawful father or his father were not married to his mother, or that his mother was:

- (1) Given leniency for temporary residence in the Kingdom of Thailand;
- (2) Permitted to stay temporary in the Kingdom of Thailand;
- (3) Entered into the Kingdom of Thailand without permission under the immigration law unless the Minister (of Interior) shall grant Thai nationality on a special basis under the principles set by the Cabinet.

620. The revision of the law is useful in reducing problems of stateless children which may occur when a child is born in Thailand from foreign parents under the said Section 7 BIS and did not acquire the nationality of their parents, or that the parents are stateless.

621. Under the principles applied by the Ministry of Interior, a minority group refers to

persons who does not have Thai nationality but are temporarily residing in Thailand because of various reasons such as illegal migrations.

622. Whether a child born of this person shall acquire the Thai nationality, depends on whether the father or the mother is of Thai nationality. The child shall then acquire Thai nationality after his father or mother as mentioned above.

623. However, Thailand is trying to resolve the problem of stateless children in order to become more consistent with Article 24 of the Covenant.

C) The Committee on the Rights of the Child (CRC): its concerns about birth registration in Thailand

1) Thailand's reservation on Article 7

Although Thailand has no reservations on Article 24 of the ICCPR, it has reservations on Articles 7 and 22 of the Convention on the Rights of the Child (CRC). Article 7 deals with birth registration and provides that:

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

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Thailand's reservations on Articles 7 and 22 of the CRC are:

"The application of articles 7, 22 of the Convention on the Rights of the Child shall be subject to the national laws, regulations and prevailing practices in Thailand." at

<http://www.ohchr.org/english/countries/ratification/11.htm#reservations>

2) The CRC on the reservation

In the Concluding observations of the Committee on the Rights of the Child: Thailand. 26/10/98. of 26 October 1998, the Committee refers to Article 7:

D. Subjects of concern and Committee recommendations

8. While noting with appreciation that the State party has withdrawn its reservation with respect to article 29 of the Convention, the Committee is concerned at the remaining reservations (to arts. 7 and 22), made by the State party upon ratification of the Convention. In this regard, the

Committee notes that the State party has recently (1997) ratified without reservation the International Covenant on Civil and Political Rights, and wishes to draw attention in particular to the provisions of articles 2 and 24 of the Covenant. In the light of the Vienna Declaration and Programme of Action of 1993 and the recent ratification of the International Covenant on Civil and Political Rights, the Committee encourages the State party to consider the possibility of reviewing its reservations with a view to withdrawing them.

20. The Committee notes that the State party has enacted legislation to guarantee registration at birth (the Registration of Inhabitants Act), but is concerned that many children are still not registered, particularly those living in nomadic and hill tribe communities. In the light of article 7 of the Convention, the Committee recommends that the State party increase its efforts to raise awareness among government officers, community leaders and parents to ensure that all children are registered at birth. The Committee also encourages the State party to adopt measures to regularize the situation of hill tribe children and provide them with documentation to guarantee their rights and facilitate their access to basic health, education and other services.
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.97.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.97.En?OpenDocument)

3) Discussion on the reservation in Thailand's 2nd report to the CRC

The Committee on the Rights of the Child will examine Thailand's 2nd report in January 2006. The issue of birth registration is dealt with in the report -- see the tabular analysis of Thailand's reservation on Article 7 of the Convention, (page 17) and the subsequent discussion under General Measures of Implementation from page 25:

1. General Measures of Implementation

General Situation

This section attempts to respond to the general guidelines, particularly paragraphs 11-23, regarding the format and contents of periodical reports submitted by the State parties under the Convention on the Rights of the Child (CRC), based on the general guidelines of the CRC.

The Royal Thai Government has organized a number of meetings and seminars to review Thailand's position regarding the reservations to article 7 and article 22 of the CRC. The meetings held at both national and international levels, with wide participation from GOs, NGOs, the media and children, provided forums for discussion and exchange of views on the issue. There were divided opinions, both for and against the withdrawal of the reservations at those meetings.

However, at the Consultative Meeting with related agencies on 11 June 1999, there was general agreement that Thailand should seriously take action towards the removal of the reservation to article 7 (Right to Nationality), based on the following principles:

- 1. Accept that the genuine objective of article 7 of the CRC aims at encouraging State parties to take appropriate action to ensure that all children who live in their territories are given the right to their respective nationalities, and that none are left stateless.*
- 2. Agree to review the withdrawal of the reservation to article 7 by implementing the following :*

2.1 Examine proper procedures and approach to recommend the withdrawal of the reservation.

2.2 Consult with related agencies for common understanding in implementing the necessary set of actions leading to every child being granted a nationality according to their mother or father.

2.3 Thoroughly work out practical operational guidelines to ensure smooth and effective delivery of aimed results after Thailand's removal of the reservation.

2.4 Hold another consultative meeting among related agencies to assess achievement and review problems and obstacles encountered in the course of fulfilling the duty-bound obligations after Thailand withdraws the reservation.

As with Thailand's stand on the reservation to article 22, the general recommendation is that Thailand should withdraw the reservation. Such recommendation was drawn from the National Conference on "Facing the New Millennium: Child Rights and Displaced Persons Situation in Thailand" held on 11-12 October 1999, attended by related government agencies and non-governmental organisations both local and international. The reason given for Thailand's withdrawal is that although the country has made the reservation, it has acted to render humanitarian assistance to children who fled from fighting and conflicts, and other displaced children. A further recommendation from the conference is that Thailand should look for solutions to the problem of displaced persons by forging closer collaboration with other countries to achieve a mechanism at the international level, since the problem involves other countries in the different stages of solution, e.g. repatriation, provision of assistance and resettlement in third countries.

In addition, Thailand organized a regional conference on the same topic on 26-28 January 2000, participated by representatives from the governmental and non-governmental sectors, as well as youth participants from 14 countries in Asia and the Pacific. The conference made the following observations: 1. The issue of displaced children is a global problem that deserves greater attention and cooperation among nations to seriously find more effective measures to tackle the problem. 2. Displaced children should not be considered as criminals or offenders, but as victims instead. 3. There should be public awareness and participation of all parts of the society to help and protect these children victims. State should set up extensive service units to provide assistance to these children. 4. Preventive measures should be implemented. States should support and promote human rights, child rights, democracy, peace, sustainable development and environment protection.

Problems 1. The reason why Thailand still maintains its reservations to the CRC is cited as mainly the political unrest in its neighboring countries, which has pushed periodical flows of displaced persons into Thai territory, as well a large influx of foreign labourers and illegal immigrants into Thailand. Thailand has by far taken the responsibility of looking after the welfare of these people on humanitarian ground, despite the strain on its budget in the midst of a long economic slump after the crisis. 1. At the consultative meetings among related agencies to look at pros and cons of withdrawing Thailand's reservations to the CRC, there were arguments against the withdrawal. Yet the effort to work towards the withdrawal is still pursued.

Solutions 1. Cooperation should be sought from international organizations in terms of budget and various forms of assistance to help materialise the withdrawal of the reservations. 2. There

should be further consultative meetings among related agencies to study plausible procedures and approaches, which are favorable to the withdrawal of the reservations. A working group may be specially set up to review the reservations in detail.

[extracted from the report, at <http://www.ibiblio.org/obl/docs/Thailand2nd.pdf>]