

ORIGINAL ARTICLE

# Contextualising Statelessness: Contingent Citizenship and The Politics of (non)Recognition in Thailand

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## Abstract

The legal evidentiary approach to “solving” statelessness can sometimes lead to the issue being framed in terms of certain groups of people not meeting objective citizenship criteria or lacking required legal documents. Building on critical interdisciplinary scholarship in anthropology, history and legal studies, this article demonstrates the “constructedness” of citizenship and statelessness through the lens of the politics of recognition and documentation. Using Thailand as a case study, I highlight how global economic, political and social contexts play a significant and dynamic role in delineating the legal line of membership. By tracing how Thai nationality has been instrumentalised by the state throughout the twentieth century, this article contextualises statelessness as a legal and social by-product of statemaking. As such, it challenges the framing of nationality as a non-discriminatory mode of recognition founded in legal objectivity and reiterates the *politics* of statelessness. In emphasising the fragility of citizenship when granted without genuine social, political and moral recognition, I argue that the objective of statelessness advocacy should not simply be about turning stateless persons into citizens, but rather about creating a more equitable society wherein one’s rights are upheld regardless of legal status.

**Keywords:** statelessness; citizenship; legal identity; nationality law; historical analysis; Thailand

## Introduction

Home to more than half a million registered stateless persons, Thailand has one of the world’s largest stateless populations (UNHCR 2022). Since the launch of the 10-year-campaign to end statelessness by United Nations High Commissioner for Refugees (UNHCR), Thailand has publicly pledged its commitment to collaborating with the agency to end statelessness (UNHCR n.d.a) and has mandated its governors and district officials to address legal status and nationality issues (Ministry of Interior 2016). In the effort to resolve statelessness, the language of pathology is often used in key policy documents and advocacy. For instance, statelessness is portrayed as a disease to be “diagnosed” and then “cured” through a “clinical” and objective method of legal analysis of identity documents (Janepicha 2019, 2020). A pathway to wellbeing (i.e. citizenship) could thus be achieved through legal instruments alone. This logic reflects a larger tendency to view statelessness as an indication of deviance or rupture in law and policy, and citizenship as the ideal, “healthy” condition. As Bloom and Kingston (2021: 6) argue, “this leads to a focus on ‘fixing’ or ‘solving’ statelessness, rather than addressing the context which makes statelessness so problematic to those affected”. In other words, when masked simply as an issue of documentation, statelessness is isolated as a problem affecting only a certain group of people who lack specific things (e.g. the “right” documents, parentage, birthplace, or the “right” to have rights). Meanwhile, the state-system and the unstable framework of nationality recognition that give rise to statelessness remain “undiagnosed”. This framing therefore inadvertently blames stateless persons for failing to meet the objective legal criteria of citizenship (Janepicha 2019, 2020).

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This article seeks to disrupt this framing of citizenship and statelessness by examining the intertwinement and volatility of national borders, (ethno-racial) boundaries and documentation as a technology of ethnic classification, surveillance and control. It builds on interdisciplinary scholarship that calls for the need to examine statelessness in dialogue with the politics of proof, recognition and the state system (Allerton 2017; Bhabha 2011; Bloom and Kingston 2021; Flaim 2017; Janepicha 2019; Lawrance and Stevens 2017; Staples 2012, 2017) and to investigate the interplay between the geographical territorial limits (borders) and the internal delimitations within societies (boundaries) (Fassin 2019). Instead of assuming nationality to be a non-discriminatory mode of recognition founded in legal objectivity, this scholarship reminds us of the *politics* of statelessness and of how nationality recognition is a vital aspect of state power. As Staples argues (2017: 174), “Statelessness has often been characterised as a major failing of the state system, but it is a failing that is arguably the result of that very system; in particular, of the way that recognition of individuals has come to be organised”. How one is “seen” and documented by the state apparatus is inherently political and is therefore subject to power fluctuations and contingencies at both global and local levels. I argue that historicisation and contextualisation of nationality laws, policies, the ever-evolving regime of documents, and social practices surrounding citizenship, underscore the thoroughly political nature of statelessness. Fassin (2019: 13) claims that there is an urgency to think about borders and boundaries and their complex interactions, not just as an academic exercise, but as “a way to face some of the most pressing issues of our time — issues which entail questions of life and death” for those affected. Failure to acknowledge and fully understand statelessness through these deeply political entanglements of borders and boundaries risks entrenching ethno-racial (and other forms of) differentiation and inequality.

Using Thailand as a case study to demonstrate the “constructedness” of citizenship and statelessness, this article traces the unstable politics of recognition and nonrecognition from the beginning of the twentieth century. Drawing largely on critical works by anthropologists, historians, and legal scholars, supplemented by supporting data from my fieldwork in northern and southern Thailand<sup>1</sup>, I highlight how global economic, political and social contexts play a significant role in delineating the legal line of membership during colonisation, the Cold War and the early years of mass labour migration induced by globalisation. Building on Pinkaew’s (2015) concept of “contingent citizenship”, which calls attention to expansion and contraction of the membership boundaries particularly at the margins in light of geopolitics and labour needs at different periods, I argue that statelessness must be similarly contextualised, reframed and understood as a legal by-product of state-making rather than a “disease” or legal deviance. By demonstrating the historical fragility of Thai citizenship for those at the margins, I also contend that citizenship, when granted without genuine social and political recognition, is neither a guarantee for reliable protection nor genuine inclusion. This is a reality facing *de facto* stateless persons and some groups of citizens around the world who may be legally included but are still deemed as culturally socially “Other” and thus remain outside of the boundaries of social inclusion. Therefore, the objective of advocacy work on statelessness should not simply be about issuing identity cards or turning stateless persons into citizen subjects, but rather about creating a more equitable society where one’s rights are upheld regardless of legal status.

This article is organised into four parts. The first part provides a critical discussion of the Thai state’s interpretation of the concept of statelessness. It demonstrates how social recognition is intertwined with legal recognition and cemented by the regime of documentation. The second part contextualises and historicises key Acts in Thai Nationality Law that have resulted in the complex situation of statelessness witnessed today. These contexts illustrate the political nature of recognition. The third part examines how nonrecognition is materialised by the regime of documentation that affects stateless persons. Finally, the fourth part discusses the challenges and opportunities when statelessness is engaged through the lens of recognition.

<sup>1</sup>My PhD ethnographic fieldwork was conducted intermittently between 2015 and 2018, totalling thirteen months. I examined people’s everyday experience of statelessness among ethnic Shan youth in Chiang Mai using a range of ethnographic research methods such as participant observation, focus-group interviews, semi-structured interviews and a photo-elicitation method. I also conducted interviews with several bureaucrats at both operative and management levels, as well as performed textual analysis on relevant policies and the Thai state’s official communications materials regarding statelessness. In addition to the PhD fieldwork, I also conducted research in 2018 as a consultant on statelessness among the mobile migrant population (the Moken) in southern Thailand. For more detail on the methodology of that research, see Janepicha and Sperfeldt 2023.

## Situating and Interpreting Statelessness in Thailand

On 18 February 2001, King Bhumibol gave a speech on the issue of statelessness that would later be frequently cited in various related official documents and advocacy materials:

There are groups of people who have lived in Thailand for a long time, but they are never considered real Thais. They have lived here and some of them were even born here, but they do not benefit from belonging to Thailand. They should be equally treated on the same basis. If people in Thailand are unhappy and neglected while living in the country, this will definitely affect national security. (Ministry of Interior 2016: 4)

A stateless person, as defined by the 1954 Convention relating to the Status of Stateless Persons, is someone “who is not considered as a national by any State under operation of its law” (UNHCR 2014). According to the international legal instruments, nationality is “... a linkage between the State and the individual, often on the basis of birth in the territory or descent from a national” (UNHCR 2014, 2022), or “a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments...”<sup>2</sup> (ICJ 1955, cited in Sawyer 2011: 69). However, as the existence of discriminatory nationality laws worldwide attest, nationality is not a non-discriminatory mode of recognition founded on legal objectivity, but is a political choice made by the state. The above quote of the late King Bhumibol, which was ubiquitous during my fieldwork, underscores this fundamental aspect of statelessness — to be considered “real Thai” is an issue of (social, moral and political) recognition (Allerton 2017: 251; Staples 2017).

In the Thai context, policymakers maintain that the condition of statelessness is “unique” and is comprised of two interconnected manifestations: nationalityless (ไร้สัญชาติ), and stateless (ไร้รัฐ) (Grisada 2017a). However, the way these two terms are defined by the state and legal experts is inconsistent. According to the former Permanent Secretary of the Ministry of Interior, Grisada Boonrach (2017a: 28–29; my translation and emphasis), “The term ‘stateless’ refers to a person who is **not considered a member by any state in the world**, but the term ‘nationalityless’ refers to a person who **lacks documentation to prove their nationality**.” He then claimed the two concepts are interrelated but did not elaborate how. In a similar vein, Phunthip Kanchanachittra Saisoonthorn (2006), a prominent law professor and influential expert on statelessness in Thailand, argues that the nationalityless are habitual residents in Thailand, “whose rights are protected by the Thai State but who have neither Thai nor any other nationality” (2006: 52). Phunthip argues that the stateless are not afforded protection by the state. According to UNHCR Thailand (UNHCR n.d.b), the “nationalityless” are those who have been registered and documented by the state, while “stateless” persons are those who are undocumented. Despite their technical differences, the two terms are often used in conjunction with each other. In the interviews conducted with NGO workers, many could not distinguish between them. However, one thing is clear: both categories of persons are considered “alien” (Grisada 2017a: 28).

Despite a lack of clarity, these two concepts reveal a few fundamental characteristics of how statelessness is conceptualised and (re)produced in Thailand. Here, nationality is not framed as an inherent human right but as a status made “real” by documentation. Claiming one’s human rights is dependent on being documented by the state. Most interestingly, it is possible for the state publicly to acknowledge some people’s “social facts of attachment” to the country for generations (as in the excerpt above) yet still deny them legal recognition as Thai nationals. This intersection between legal recognition and documentation reflects Sadiq’s (2017) observation that in the Global South legal institutions and forensic documentation (what he calls “jus charta” and “jus tabulae”) matter more in producing citizenship than legal principles of *jus soli* (birthright citizenship/right of soil) and *jus sanguinis* (citizenship by lineage/right of blood). The principles of granting nationality in Thailand echoes this observation, as they are not simply based on *jus sanguinis* and *jus soli*, but also on the timing of birth and documentation (particularly proof of place and date of birth). Most importantly, citizenship ultimately requires

<sup>2</sup>While this 1955 definition by the International Court of Justice (ICJ) emphasises a genuine connection, the UNHCR’s handbook on the protection of stateless persons under the 1954 Convention (2014c: 22) notes that, “There is no requirement of a ‘genuine’ or an ‘effective’ link implicit in the concept of ‘national’ in Article 1(1)”.

“conferral of belief” (Flaim 2017: 148) by the authorities in the claim and evidence presented by the “alien”. As argued by Kingston (2017), the current legalistic focus on citizenship provision tends to ignore the subtle question of statelessness as both a cause and a symptom of marginalisation. The contextualisation of legal instruments governing nationality and statelessness, such as the Thai Nationality Act, the Immigration Act and the Civil Registration Act, alongside the social and ideological construction of “Thainess” and “alien”, is therefore imperative to understanding the legal and social processes of ethnic boundaries delineation and subsequent marginalisation.

With discrimination against minorities being one of the key causes of statelessness globally (de Varennes 2019), it is not a coincidence that highlanders<sup>3</sup> in northern Thailand, such as Karen, Akha, Shan and Hmong, comprise a large population of statelessness *in situ*. Longstanding discrimination by the Thai state against these ethnic minorities and their plight of citizenship have been well-documented (see Chutima 2010; Feingold 2002; Flaim 2015, 2017; Toyota 2005). Another substantial group of stateless persons are children of labour migrants<sup>4</sup>, who struggle to be recognised as Thai despite being born and socialised in Thailand. There are also other stateless groups found in other parts of the country, including the Moken, a maritime mobile population in the Andaman Sea, whose traditions and lifestyle do not conform to the state-based and sedentary systems of belonging (Janepicha and Sperfeldt 2023, Sperfeldt 2021). While not homogeneous, these various groups share similar experiences of being subjected to the unstable politics of recognition. Often having their ties and loyalty doubted by the state due to their non-conformity to the notion of “Thainess”<sup>5</sup>, those at the margins of the state do not enjoy automatic recognition of nationality by birth. Instead, they are first classified as “aliens” before they can even prove they fulfil the criteria of the nationality law.

Recently, the Thai state has reduced the number of stateless persons in the country as part of its public commitment to the UNHCR’s campaign to end statelessness; in fact, more citizenships have been granted more quickly than ever before. Despite this numerical success, my fieldwork conducted at the height of the campaign confirms Flaim’s argument that “protracted statelessness... persists, paradoxically, as a result of the bureaucratic practices and procedures that have been enacted to address it” (Flaim 2017: 148). By shining a light on what she calls “the fictions of the rule” (2017: 148), Flaim’s work not only unveils that statelessness is an issue of social, moral and political recognition, but also underscores the importance of historicisation and contextualisation of nationality laws, policies and social practices to understand how these “fictions” are (re)produced. While an ideal of “real Thai” seems to be commonly accepted as primordial, unchanging, and timeless, further historical examination reveals that the idea of what or who qualify as “Thai” fluctuates and is largely determined by global geopolitics, as I will demonstrate in the next section.

### Contingent Citizenship: The Geopolitics of Borders and Boundaries

Pinkaew (2015: 9) argues that Thailand has been practicing *contingent citizenship*, that is, expansion and contraction of membership boundaries, particularly for those at the margins, in light of geopolitics and labour needs at different times. In this section, this historical fluctuation of borders, boundaries and membership recognition are reviewed. Given space limitations and the law’s complexity, this article focuses on the key Acts that are most pertinent to this argument.

### The Influence of colonialism and the shifting logic of membership

Until the mid-nineteenth century, Siam<sup>6</sup> was an empire with a vast array of polities and ethnically heterogeneous populations (Streckfuss 2012: 420). Its regime of belonging was that of “flexible subjects”,

<sup>3</sup>The Thai state officially uses the term “hill tribes” (Chaokao—ชาวเขา) instead of “highlanders”, but the term has negative connotations as the translation can be a double-entendre, referring both to “peoples of the hills” and “the Other” (Pinkaew 2003: 163). The nine officially recognised “hill tribes” are: the Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin and Khamu. The Shan are classified by the Thai state as a “highland community (but not [a] hill tribe)”. I use the term highlander to refer to both categories of peoples.

<sup>4</sup>A majority of labour migrants in Thailand are from neighbouring Myanmar.

<sup>5</sup>In the next section, I will elaborate further on this notion and the process of “othering” by the Thai state against these ethnic minorities.

<sup>6</sup>Siam became a constitutional monarchy in 1932, and subsequently changed its name to Thailand in 1939.

where membership was based on self-identification, residence, labour and “voluntary submission”, ranging from tiny chiefdoms to more powerful lords in exchange for protection (Thongchai 1994).<sup>7</sup> Within this membership model, subjects were loosely ethnically differentiated but equal in status as Siamese: Thai Siamese, Lao Siamese, Malay Siamese, Khmer Siamese, Chinese Siamese etc. (Streckfuss 2012: 425). However, such membership logic underwent significant changes as the region fell under threat of colonisation. With questions of territory, race and ethnicity at the forefront of colonial thinking, King Chulalongkorn (Rama V, r 1868–1910) and his administration in Bangkok sought to retain Siam’s independence by learning to “speak” the language of the colonial powers and “see” Siam and its subjects through a differentiated and hierarchical ethnic/racial lens. Administrative concepts and tactics, such as detailed ethnic and racial classifications, cartography, militarisation, and etiquettes, were adopted as tools for governing subjects (Thongchai 1994, 2000). Siam therefore engaged in what Streckfuss (1993) calls “reverse orientalism”, or the appropriation and application of European notions of race and identity to create “Thai” as a majority racial category, which would then subsume other ethnic groups like the Lao, Cambodian and Vietnamese, and justify the right to govern them.

The newfound racial unity of being “Thai” provides a critical foundation for the logic of membership in the modern Thai state. Streckfuss (1993: 140) argues that by merging the concepts of a Thai national (*chon chaat Thai*), the Thai race (*chaat, chua chaat Thai*), and Thai citizenship (*sanchaat Thai*) under the single malleable term *chaat* (*the nation*), all people living in Thailand became Thai “citizen-subjects” and of Thai nationality. By 1902, in the treaties between Siam and France, Siamese nationality (*nationalité siamoise*) was translated as Thai nationality (*sanchaat thai* or *chaat thai*), thereby referring to any person under Siam’s legal jurisdiction (*ibid*). In other words, the ideological shift was made into an official reality through administrative practices; Thai nationals were written into being. The result was “the appearance of a Southeast Asian country in which the ‘arbitrary’ borders just happened to match precisely the geographic limits of the ‘ethnic’ group” (Streckfuss 2012: 142–143). This ideology has profound implications for statelessness in Thailand today, as those perceived to be ethnically different are also seen as incongruous with Thai nationality (see also Flaim 2017).

Understanding the administrative relationship between the centre (Bangkok) and the periphery (the provinces), as well as the ideological constructions of the latter by the former, is crucial to understanding why statelessness persists mostly in the periphery, especially in the northern highlands. While those in the Chaopraya River basin and the northeastern region had come to identify themselves as Thai as a result of both administrative “racial absorption” (as shown earlier), highlanders living in the periphery had been excluded from this homogenising project. In fact, the identities of the highland communities had long been constructed by the Bangkok elite as strange and uncivilisable due to their “race” and ways of life, thus claiming that they constituted the antithesis of civilised “Thainess” (Thongchai 2000a, 2000b).<sup>8</sup> To the elite, Thai membership — like “civilisation” — stopped at the foothills. The highland communities would be neither “seen” nor “counted” by the Thai state until much later; instead, they remained outside the ethno-racial boundaries of “Thainess”.

### *The birth of a Thai national*

According to Phunthip (2006: 41), statelessness did not exist in Siam prior to 1913, as the concepts of state and nationality were yet unknown to the Siamese. They were introduced during the reign of King Vajiravudh (Rama VI, r 1910–1925), who was deeply influenced by European nationalism while being educated in Britain. He initiated the project to transform Siam into a modern nation-state, striving to unify all his subjects under the mono-ethnic label “Thai”, and then recognise Thais as a separate people, both internally and externally. To promote a sense of Thai nationalism, Thai nationals were created through the 1911 Naturalisation Act (พ.ร.บ. แปลงชาติ). Vajiravudh instructed the Ministry of Foreign Affairs to oversee the naturalisation process of non-Thai persons deemed to have been, or having the potential to

<sup>7</sup>Such logic was common among pre-modern Southeast Asian empires, wherein power was organised as a mandala: centralised, radiating outward, and diffusing and declining with increasing distance (Tambiah 2013).

<sup>8</sup>See Thongchai 2000a and 2000b for more details.

be, fully assimilated into Thai society.<sup>9</sup> Children and spouses of a naturalised person were automatically naturalised; Thai nationality was granted to all family members, not only to the applicant. That the Naturalisation Act preceded the Nationality Act iterates the main concern of legally turning non-Thai subjects into Thai ones, a strategy known as ‘Thai-isation’ (*kan klai pen thai*) (Pinkaw 2014: 146). The Naturalisation Act (valid from 18 May 1911 through 12 February 1952), despite its title, is considered the first official Nationality Law in the country (Phunthip 2006).

When the 1913 Nationality Act was enacted, the term “Thai nationality” was explicitly mentioned for the first time (Phunthip 2006). With assimilation and racial/ethnic “absorption” as the objective, the 1913 Nationality Act recognised *jus soli*, regardless of the parents’ legal status.<sup>10</sup> With all persons born within the territory becoming Thai nationals, lowland peasants became “equal” citizens of the new state (Flaim 2015: 35; Phunthip 2006).<sup>11</sup> However, even though those residing in remote areas near the borders would have been qualified, in theory, to receive Thai nationality under the 1913 Act, they were neither surveyed nor counted until almost fifty years later because of their distance from Bangkok.

Notably, both the 1911 and 1913 Acts define neither citizenship nor its rights and obligations (Phunthip 2006; Pinkaw 2014: 146). Pinkaw (2014: 146) argues that this lack of elaborating on the legal bond between the state and its members meant citizenship in this early period was “a somewhat ambiguous notion of incorporation that did not yet enter the realm of administrative apparatus”.<sup>12</sup> Equally loose were the Thai state’s border regulation and civil registration, with the first Immigration Act not enacted until 1950 and civil registration and the issuance of personal identification cards not implemented nationally until 1962. As a result, Pinkaw (2014: 147) observes that “To be Thai or not to be Thai remained a political and cultural choice which could be maneuverable”. This was particularly the case among Chinese immigrants during this early stage of nationalism. Such a possibility, however, became increasingly difficult with successive nationality laws, which were progressively restrictive, and the development of a state identification card system in the mid-twentieth century.

### *The intensification of Thai nationalism and the creation of “aliens”*

The Thai nationalism project intensified during the regime of “rattaniyom” (state prescriptions) under the military dictator Pibulsongkram, whose rule (1938–1944 and 1948–1957) overlapped with the Second World War and the early years of Cold War. While nationalism under Vajiravudh aimed at turning others into Thai (through Naturalisation Act and *jus soli*), nationalism under Pibulsongkram aimed at defining Thainess through constructing boundaries on Thai identity. To further cement the “imagined community” (Anderson 1991) of Thais, Pibulsongkram also officially changed the state’s name from Siam to Thailand in 1939. Moreover, creating and promoting Thai national identity and culture became a nation-wide, long-standing project, to the extent that the Commission for National Identity was established to define Thainess (Thongchai 1994: 4). Central Thai language was also established as the official language, and the flag, national anthem, royal anthems and many other march songs were created during the Rattaniyom period to craft a unified narrative of the Thai people as a peaceful, non-aggressive and freedom-loving people who are also brave and heroic when required. Thongchai (2000a) argues that understanding of what Thainess comprised was achieved through “negative identification” to sharpen

<sup>9</sup>The criteria involved what Skinner (1957) calls ‘social intercourse’ with Thai society, either through marriage or by a proven significant contribution to the country.

<sup>10</sup>Together with the Naturalisation Act, it granted Thai nationality widely, “regardless of whether alien parents had entered the Kingdom legally or illegally, or whether the alien parents had the right to reside in the Kingdom temporarily or permanently” (Phunthip 2006: 43). Phunthip (2006) credits the “open” membership model of these early Acts to Vajiravudh’s vision to avoid the ethnic conflicts he witnessed in Europe. Streckfuss (1993, 2012) offers another explanation: ethnic homogenisation was necessary for Siam’s survival and independence from colonialism.

<sup>11</sup>While Thai nationalism and Thai nationality were imposed from above, it was not without resistance and personal agency. Phunthip’s rendering of history insinuated the smooth legal and social implementation of Thai-isation, but Saichol (2005, cited in Pinkaw 2014: 146) notes the resistance of other groups, particularly Chinese immigrants, as Chinese nationalism among overseas Chinese was heightened at the time.

<sup>12</sup>Pinkaw (2014: 146) also notes that although a naturalisation certificate was issued to naturalised nationals, its usage in everyday life was ambiguous; it was neither considered a national identity document nor a document of mobility control by the state.

the contour of Thainess, and the uncivilised highlanders represented the “Others Within” as a convenient contrast to the Thais.<sup>13</sup> Thainess, consciously constructed and imposed by the state, became a moral justification for excluding those deemed a non-Thai “Other”. As Pinkaew (2003: 161) argues, Thai nationalism has another function beyond creating a unified national identity: it produces internal threats and enemies. This “negative identification” leads to social marginalization of those who do not conform to the three core elements of Thainess, namely the Thai language, Buddhism, and loyalty to the King (Pinkaew 2014: 146). The legacy of nationalism from Pibulsongkram’s era still remains today; Thainess is largely (re)produced and enacted in daily life through these core elements.

Under Pibulsongkram, the Thai membership regime was tightened as nationalism soared. As a means for assimilating Chinese immigrants<sup>14</sup>, restrictions were placed on granting nationality based on *jus soli*. Only those with Thai mothers could claim *jus soli*, meaning children born to Thai fathers and foreign mothers were unable to obtain Thai nationality despite being born in the country. Being an alien in Thailand became increasingly difficult under Pibulsongkram’s regime due to further restrictions on employment. Between 1949 and 1952 several Acts were passed to reserve eighteen industrial and service occupations exclusively for Thai citizens. A law passed in 1956 also stated that half of the employees of any class of businesses employing 10 or more persons must be Thai. Furthermore, the 1953 Military Service Act stipulated that persons born to “an alien father” shall not be called into active service. Some of these Acts have remained active until recently and have constituted significant economic and social barriers for stateless persons in Thailand.

### *The Cold War and state violence against highland communities*

The legal and social frameworks of membership underwent a dramatic change during the Cold War. In fact, contemporary statelessness in Thailand is largely a result of membership logics in this era. During Thanom Kittikajorn’s military dictatorship “the Regulation of Revolutionary Party No. 337” (Por Wor 337; in Thai, ป.ร. ๓๓๗) was enacted on 14 December 1972. This regulation backtracked and revoked full membership that had been previously granted on *jus soli* for those “born in Thailand before 14 December 1972 of an alien father with non-permanent residence, or an alien mother with non-permanent residence, in circumstances where the lawful father is absent”. It also denied Thai nationality to “any person born during 14 December 1972–25 February 1992 of an alien father with non-permanent residence, or an alien mother with non-permanent residence, in circumstances where the lawful father is absent” (Phunthip 2006: 48). Phunthip attributes the rationale behind Por Wor 337 to the fear of communism in Southeast Asia; this regulation was designed to “prevent children of people from the communist countries gaining Thai nationality” (Phunthip 2006: 48). The borderlands, where the highland peoples reside, were the most affected because they were considered danger-zones and contested spaces for loyalty.<sup>15</sup> Highland peoples were perceived as a threat to Thai national security and linked with unlawful activities, such as providing shelter to members of the Communist Party of Thailand, growing and trafficking illicit drugs, and deforestation (Pinkaew 2003: 25). These derogatory stereotypes were used to justify both their exclusion from citizenship and their subsequent portrayal as objects of “development” (Flaim 2017: 150).<sup>16</sup>

Por Wor 337 therefore redefined the category of “alien”. Its implementation resulted in widespread statelessness in Thailand, as it turned highland communities into “aliens” despite their historic residence

<sup>13</sup>In addition to national rhetoric, this was achieved through various art forms including travel stories, plays and poems depicting “Others” within the Thai territory as “wild” and “savage” (see Thongchai 2000a).

<sup>14</sup>Between 1900 and 1947 an increase in Chinese female migrants meant a decrease in intermarriage between Chinese men and Siamese women. This policy therefore targeted this phenomenon.

<sup>15</sup>Among the state’s effort to win “loyalty” was the “Hilltribe Language Radio”, which was established in 1964 by the Internal Security Operations Command with funds from the American government to broadcast anti-communist propaganda and orchestrate the national conscience in six different hilltribe languages, including Akha, Hmong, Karen, Lahu, Lisu and Mien (or Yao) (Thaitawat and Charoenpo 1997, cited in Amporn 2012). This initial political propaganda focus later shifted to economic development as a new strategy against communism. The program has constantly been shaped, and has even reshaped itself, in relation to changing conditions in Thai society.

<sup>16</sup>The Border Patrol Police schools, for example, were created along the border to provide “education” to the highlanders in remote areas, promote national security along the borders, and bring “progress to the frontiers” (Hyun 2014).

in the area prior to Thailand becoming a modern nation-state. The Thai state also started categorising and documenting those along the border areas into groups depending on its interpretation of their migration patterns (see Pinkaew 2014, 2015). For instance, one group could be as specific as “Yunanese Chinese civilian immigrants who migrated to Chiang Mai, Chiang Rai and Maehongson between 1950–1961”. These categories and their specificity reflect the state’s attempt to regulate its borders but not necessarily the actual lived experience and personal identification of the people assigned to them.

### The Regime of Identification and its Instability

Like other modern states, Thailand seeks to “see” and “know” its population using various legibility tools in order to assert control (Scott 1998). Torpey (2000: 5) argues that identification techniques “have played a crucial role in the development of modern, territorial states resting on the distinction between citizens/nationals and aliens”. In the modern Thai context, Pinkaew (2015, 2018) introduces the notion of “proprietary citizenship” to capture how an ID card is seen as a means through which the state maintains “direct, continual, and specific contact between its ruling bureaucracy and its citizenry” (2014: 148). The ID card regime also “fix[es] identity and loyalty as subject to one nation-state,” as well as “discipline[s] stubborn and bad subjects” (Pinkaew 2014: 148).

The Thai state started issuing identity cards to citizens in what is now present-day Bangkok in 1943 with the objective of “seeing” its subjects within the capital during the Second World War. The Cold War then turned the once-forgotten periphery into a politically-charged zone of security threats, surveillance, and refuge. Between 1965 and 1985, the border zones saw an influx of refugees, displaced persons, and political asylum seekers from neighbouring countries (Pinkaew 2015: 9). Starting in 1967, Thailand commenced a complex scheme of non-Thai identification cards to register and document “Others” in the border zones as long-term “aliens”. By 2007, there were nineteen types of “alien” identification and classification (Pinkaew 2014: 151–155, 2015). The ID card scheme has therefore been established not for the universal allocation of rights, but for ethnological classification, surveillance, and differentiation (Pinkaew 2003; Toyota 2005).

One case in point that perfectly captures both the unstable recognition of membership and the failed regime of documentation in the borderland is that of Mon, a woman born in 1941 in Mae Ai District, Chiang Mai. Phunthip (2006: 44–45) recounts that Mon’s parents were born before 1913 and therefore qualified to be Thai under customary law, but they were neither surveyed nor granted Thai citizenship until 1956. However, Mon was not home on the fateful day when the survey took place and was therefore omitted from the registration. As a result, when her parents became Thai, Mon became stateless. Then, when another survey was administered in 1979, she was misclassified as a “displaced person with a Burmese nationality” by a Thai official due to the policy at the time, which stipulated that “persons fleeing from the fighting in Myanmar who arrived in Thailand before 19 March 1976” be surveyed and registered. The authority did not believe that Mon was her parents’ daughter and thus refused to grant her Thai nationality. Despite her right to Thai nationality, Mon became classified as an alien who had entered Thailand illegally but was nonetheless permitted by the Royal Thai Government to reside in Thailand temporarily. That initial act of having missed the survey became a life-long burden on Mon to prove that she was a legal Thai citizen. Even after she finally obtained Thai nationality in 1999, she became stateless again in 2002; Mon and 1242 other persons in the Mae Ai district were removed from the civil registry of Thai nationals without the opportunity to defend themselves. The district officer who led this mass revocation of nationality claimed to have followed the order of the Department of Public Administration (DOPA) after the district’s alleged corruption involving granting citizenship to aliens.<sup>17</sup>

Far from being an anomaly, Mon’s life story is a common fate among highlanders, as well as the Shan youths who participated in my research decades later. Additionally, Flaim’s work (2015, 2017) reveals that there are stark discrepancies between a person’s actual identity and the official record, as well as highlights the frustrations of both the officials who conducted the survey in difficult terrains and the villagers who were surveyed. Language barriers, power imbalances and mistrust still feature in interactions between

<sup>17</sup>Mon finally was given back her Thai nationality following DNA testing and active lobbying by academics (for more details on this case and others in Mae Ai, see Phunthip 2006 44–45 and Pinkaew 2014: 143–144).



Thai officials and those deemed as the “Other Within” (Thongchai 2000a), as I have demonstrated elsewhere (Janepicha 2019). Among my participants, there are personal stories of how an unfortunate event of missing a state survey has led to a lifetime of searching for ways to be “seen” by the state. Aum, a Shan teenager, was one of those children omitted from the government database because she was absent on the day that registration was conducted at her school. Although she could complete her primary education, Aum has faced many difficulties in accessing secondary education due to her lack of legal identity. Eventually, she opted to pay under the table to be registered as living in another district, despite having never set foot there. The ID card she received categorised her as a new migrant, reducing her chances of attaining Thai citizenship but giving her proof of being “seen” for educational purposes. The desperation to be “seen” and recorded is very real because it is seen as providing greater rights and protection. As another participant remarked, “When I saw the news that the animal protection laws would be passed, I couldn’t help but think of [the stateless person] situation. Even dogs will now be issued legal IDs and have their rights protected. What about us?” Another interviewee reported having secured three birth certificates for his daughter who was born in Chiang Mai, one from a district in Thailand and two from different towns in the Shan state in Myanmar. He said this was for “security reasons” to ensure that his daughter would definitely be registered. Nonetheless, he was still unsure whether any of these certificates would lead to full social and legal inclusion for his daughter.

### *The implication of ID Cards for stateless persons today*

Over the years, the Thai state’s legibility practices have become tighter, as well as more integrated and sophisticated. Since 1988, Thailand has employed a 13-digit-personal identification number to document subjects in its territory. Each digit contains specific information about a person, including the province in which they were registered, which, to an extent, reveals the individual’s relationship to the state (BORA n.d.). In principle, the same personal identification number appears across all official documents, suggesting a coherent system that tracks and traces a person across various documentary records. Database connectivity, moreover, makes the state appear omnipresent, “knowing” and “seeing” all its populations. In practice, however, the regime of ID cards is far from stable and truly representative of a person’s identity. As demonstrated earlier, this instability is pronounced in the border areas where population registration has historically been erratic and the issuance and revocation of cards have become common practices (Pinkaw 2014: 144).

Today a non-Thai identification card also serves as a personal identification and an internal “pass”. Previously, its holder could not travel beyond the district in which they were registered. A legal change in 2016 slightly expanded the scope of travel to the provincial level without the person needing to ask for official permission. To go beyond the provincial border, however, one must still obtain a permission letter from a local district office, which could take days, and more documents to prove the need for traveling. Restricting internal mobility is one of the most severe violation of rights experienced by stateless persons in Thailand. Beyond physical mobility, the non-Thai identification card also demarcates scopes of social mobility and a pathway towards citizenship.<sup>18</sup> Although, over the years, the Thai state has issued various Cabinet Resolutions to allow “aliens” with long-term residency to apply for citizenship, this “permission” has occurred at different points in time, and only for specific groups of “aliens” (see Pinkaw 2015). It has also been subject to one’s date and proof of birth.

The blue “highlander card” (บัตรประจำตัวบุคคลบนพื้นที่สูง), issued between 1990 and 1991, illustrates the complexities of a regime of timing and proof. For instance, a 5 June 1999 Cabinet Resolution states that highlanders who entered the country before 3 October 1985 are eligible for citizenship. Their children, born between 14 December 1972 and 25 February 1985, also qualify for Thai citizenship (Pinkaw 2015: 17). However, as universal birth registration was not enacted until 2008, generations of stateless persons were excluded from the most important “evidence” of their existence — a birth certificate — as well as other documentation required for a citizenship application, such as a house registration. This means many

<sup>18</sup>Stateless highlanders and other persons without legal status are physically confined to the province within which they are registered. Until 2016, they were only allowed by law to have 27 occupations. See <https://www.unhcr.org/ibelong/invisible-thailand>. See also Grisada (2017b).

stateless persons who may be legally entitled to Thai citizenship cannot prove their belonging through documentation (see Flaim 2015, 2017). Lacking proof results in being classified as an “alien” who immigrated into the country, as presumption of alienage — a person unable to prove that they were born in the country is presumed to be an alien — prevails in the Thai legal system.

Another example of how the specific “window” of claiming nationality based on *jus soli* can lead to unfortunate outcomes for those born outside the stipulated timeframe is Family A. In this case, the parents and the eldest child were eventually granted Thai citizenship because they could prove they were born in Thailand before 26 February 1992, the cut-off date for *jus soli* principle (Venus 2011). The youngest daughter, however, does not meet citizenship criteria simply because she was born after the cut-off date; she thus remains a stateless person in a family of Thai citizens (despite possessing the exact same “ties” to the country as her sister in terms of birth, language, experience, etc). The question of timing in the nationality law and immigration law is further complicated by the complex regime of documentation. For example, while the official status of children born in Thailand after 26 February 1992 to “alien” parents is “illegal alien,” their legal sub-classification is not homogeneous. The type of documentation held by the parents at the time of their child’s birth determines how the child is classified by the state, which in turn influences his or her eventual pathway to citizenship. Those whose parents held resident permits can be added to a house registration — a key document for claiming citizenship — and are issued a different type of birth certificate from their counterparts, whose parents were “illegal” or categorised as “undocumented”.

Given this hierarchy within the regime of identity cards, ID cards are therefore not only a state instrument of control but also constitute “survival resources to be assessed, classified, and circulated according to a hierarchy of values...” (Pinkaw 2015: 29). This then leads to resorting to various strategies to upgrade one’s status, such as selling the ID cards of deceased highlanders to new immigrants and adding the latter’s names to highlanders’ households to get a highlander card (Pinkaw 2018). The ID cards’ varying “conversion power” into Thai citizenship mediates the experience of statelessness in Thailand and turns statelessness into a hierarchy of hope rather than into a homogenous category of lacking legal status. Recognising the hierarchy of statelessness is crucial to understanding the nuances of the lived experience of stateless persons.

### *Labour migration registration and blurred categories*

Mass labour migration from the neighbouring countries into Thailand during its economic boom during 1980s-1990s further complicates the country’s statelessness situation and its regimes of identification. As a largely migrant-export country until the 1980s, Thailand initially struggled to regularise the mass influx of labour migrants from the Greater Mekong Sub-region (GMS) — namely Myanmar, Laos and Cambodia — starting in the early 1990s. Supang *et al.* (2007) observe that there was no legal framework at the time to regulate low-skilled labour migrants. As a result, Thailand’s early policies have been described as “series of practical responses to unfolding events and changes in labor needs” (Revenge *et al.* 2006: 10). Although Thailand started registering unskilled migrant workers for the first time in 1992, the practice was not widespread; rather, most migrants remained undocumented (Supang *et al.* 2007: 11). Between 2000 and 2005, policies alternated between arresting and granting amnesty, causing fear, insecurity and confusion among labour migrants. Such an unpredictable approach has become yet another reality that labour migrants and their children have gotten used to.

In 2004, the Thai state began implementing the Nationality Verification System to regularise migrants coming from the GMS. This process “creates a transnational bureaucracy, linking the Myanmar and Thai states with the goal of regulating the long running, largely uncontrolled migration of Myanmar workers to Thailand” (Gruß 2017: 1). Under this scheme, a temporary passport (known as an “MOU” passport) is issued for migrants to allow them free movement between Thailand and their country of origin. In conjunction with the passport, a work permit is issued with specific details on the type of work allowed and uses the address of employer. Gruß argues that not only has the process been designed to extract money from the migrants — who are required continuously to apply and reapply for registration and then to extend their registration — but it has also resulted in the permanent temporariness of their legal status.

Migrant children, however, were not considered by policymakers during the early years of labour migration management. Many were not documented at all until 2005. Between 2005 and 2009, the

Thai state implemented the “Strategy on Managing People with Personal Legal Status Problems and Rights” (ยุทธศาสตร์ การ จัดการ ปัญหา สถานะ และ สิทธิ บุคคล) by conducting countrywide surveys and issuing a “person-without-legal-status” identification card (บุคคลไม่มีสถานะทางทะเบียน), also known as a “Number Zero Card”, a “0 89” card (as its middle digits are 89) or a 10-year card because it permits the holder to reside temporarily in Thailand. This “Number Zero Card” is a common among undocumented migrants and their children who were surveyed by the Thai state during this period.

Although this survey was conducted in schools, there were students who missed out on this and whose life chances have therefore been damaged as a result. Similar to the story of Mon, mentioned earlier, some who were excluded from the initial survey were then later issued another type of card — one that is worse than the “0 89” in terms of rights and pathways to citizenship. In fact, a number of my participants hold identity documents that reflect neither their true circumstance nor the correct legal status they should have had. Worse, some end up getting temporary migrant worker cards through an illegal broker. These cards have the information of a fake employer and a fake job but has real and serious limitations in terms of rights, entitlements and prospects for attaining citizenship. Having now been legally classified as a temporary labour migrant worker, these youths can no longer hope to qualify for Thai citizenship, despite having been born there or having spent almost all their life in the country. Despite this well-known problem regarding the discrepancies between one’s real-life story and the legal documentation one ends up acquiring, as mentioned earlier, the approach to addressing statelessness in Thailand is still based on documentary “diagnosis”. Identity and identification are conflated as one “truth”.

### Challenges and Opportunities

Since 2005, the rights of non-citizen children have been progressively recognised and expanded. Regardless of their legal status, all children in Thailand now have the right to education and birth registration. Non-citizen children who possess a state-issued identity card can also access basic healthcare. The Cabinet resolution passed on 7 December 2016 also states that stateless children and youth born to migrants and displaced persons may be considered for Thai citizenship under the following conditions: that they (1) possess proof of being born in Thailand; (2) do not possess any other citizenship; (3) have proficiency in Thai (reading and writing); (4) demonstrate loyalty to the monarch; (5) have a record of good conduct; and (6) can prove educational achievement like holding a Bachelor’s degree (Asia Pacific Migration Network 2017). However, given the inconsistency within the documentation regime and various obstacles in attaining tertiary education, unfortunately, the prospect of citizenship remains a distant possibility for many. As I have argued elsewhere (Janepicha 2019: 225), being Thai under *jus soli* is therefore not simply a matter of birthright but instead involves a constant process of proving and becoming.<sup>19</sup> The criteria also reflect how education is perceived as key to integration and producing “self-reliant Thai citizen[s]”.<sup>20</sup> Explicit in expanding membership boundaries is that each citizenship case rests on the judgement and consideration of the involved officials every step of the way. In other words, the recognition of one’s legal rights and status is still subjected to “conferral of belief” by the agents of the state.

Notably, legal norms and recognition can take time to transform into moral recognition and translate into social recognition and practices. Therefore, it is common for stateless persons to still have their rights denied by those who have power over their daily transactions such as state officials, employers, school administrators, and teachers. For example, many children were denied their right to birth registration and school admission even after the 2005 Education for All Cabinet Resolution and the Civil Registration Act B.E 2551 (2008) came into effect (Venus 2011). Key culprits of these gaps in rights claiming are not only deeply-rooted fear, prejudice and negative stereotypes against the ‘Others Within’ held by Thai officials and administrators, but also a lack of understanding and confidence in interpreting and implementing the law (Venus 2011: 31; fieldnotes). While conducting my fieldworks, I met several teachers and frontline bureaucrats who confessed their ignorance regarding the situation of the people with whom they were dealing and the nature of the ID documents themselves. As one teacher at a school with

<sup>19</sup>For some of my participants who have finally received Thai citizenship, this process of “proving and becoming” persists even after citizenship is conferred. This is an area for future research.

<sup>20</sup>Mukdawan (2009) examines in depth how national integration policies based on citizenship and education both incorporate and marginalise highlanders.

predominantly Shan students recounted her experience, “Before I didn’t even know the difference between Shan (ไทใหญ่) and Burmese (พม่า)... Learning about these [ID] documents can give you a headache”. A district official responsible for documenting a Moken community in southern Thailand admitted that she commenced her job without receiving any training. She further noted: “I knew nothing. I did not even know what a Moken was. They all looked the same to me” (Janepicha and Sperfeldt 2023: 12). Unfamiliarity leads to a misrecognition of the rights of others: when it comes to the ‘unknown’ it can feel safer to default to exclusion rather than inclusion. Conversely, with time and practice come familiarity and the normalisation of social inclusion, though some prejudices may run deep.

In Thailand, the role of academia and Non-Governmental Organisations (CSOs) as intermediary agents has been indispensable in raising awareness on the issue of statelessness and building the capacity of state officials and stateless persons. In some cases, such as with the Moken, Non-Governmental Organisations (NGOs) act as cultural translators and logistical facilitators for local authorities by providing legal training and arranging visits to communities for district officials whose budgets were insufficient to do so independently (Janepicha and Sperfeldt 2023: 13–14). Several models of legal aid have also been set up by academics and CSOs, especially in the north where the majority of stateless people reside.<sup>21</sup> Some focus on capacity building for stateless communities at a local level by educating and empowering stateless persons to learn not only about their rights and the laws, but also how to interact and communicate effectively with officials in order to claim one’s rights. Some are established as “legal clinics” to provide legal counselling on nationality-related questions and legal aid relating to acquisition of nationality, including by naturalisation. However, with the tendency of statelessness being framed in terms of certain groups of people not meeting objective citizenship criteria or lacking required legal documents, there is a delicate balance for those providing legal aid to achieve empowerment without reinforcing such framing that puts the blame on stateless persons.

Another area of challenge and possibility is the fact that the limited rights currently extended to stateless children cease to be guaranteed upon entering adulthood. My participants, who were mostly born between 1997 and 2007, belong to the generation that is granted the right to education. The partial social and legal incorporation means that most of the Shan participants grew up, in their own words, “normal” (โตมาแบบปกติ). Usually, it is not until they reach their teenage years (from around thirteen years old upwards) that they become aware of their “abnormal” legal condition (สถานะไม่ปกติ) and the barriers imposed on their social and physical mobility. Gonzales (2011) argues that although illegality has little direct impact on most aspects of childhood, it becomes “a defining feature of late adolescence and adulthood” as it prevents these youths from following normative pathways to adulthood (605), leading to what he calls “development limbo”. Stateless youths, who previously may have been relatively oblivious of their status, therefore face a particular set of stressors and vulnerabilities as they transition into adolescence and adulthood. It is the adults who have authority over their life — be it their teachers, parents, district officials or any other state officials — that play a key role in either hindering or helping stateless children make sense of, and recalibrate to, their newfound awareness (Janepicha forthcoming). This understanding provides important insights into possible spaces for effective intervention by CSOs and adult citizens. Consequently, the objective of statelessness advocacy should not simply be about issuing identity cards or turning stateless persons into citizens, but should rather be about creating a more equitable society wherein one’s rights are upheld regardless of legal status.

## Conclusion

In this article, through taking up Thailand as a case study, I have demonstrated that statelessness is a condition deeply entangled with the politics of recognition, proof and membership. Nationality is not a non-discriminatory mode of recognition founded in legal objectivity but is a mode of recognition that is sharply interwoven with global politics. Understanding statelessness through the evolution of borders and boundaries, their intertwinement and their ever shifting nature, has several critical implications. Firstly, it complicates the framing of statelessness as an individual legal status issue that can be “diagnosed” and resolved by standardised evidentiary procedures and documentation. Instead, it emphasises the need to acknowledge the process of statemaking in the (re)production of statelessness. Secondly, by tracing the dynamic logic of Thai membership and the Thai state’s legibility practices during colonisation,

<sup>21</sup>Phunthip Kanchanachittra Saisoonthorn, a law professor at Thammasat University, pioneered the concept of a legal clinic for statelessness in Thailand and set up “Thammasat University’s Bangkok Legal Clinic” in 2005.

the Cold War and labour migration, this article demonstrates that the Thai regime of membership, like elsewhere, is inherently politically flexible and time-sensitive (i.e. shifting with changing political and economic needs). It also emphasises that those at the margins of borders and boundaries are particularly subjected to this contingent citizenship regime, which oscillates between inclusion and exclusion. Finally, contextualising statelessness in this way would mean that it is no longer simply an issue of certain groups of people not meeting “objective” citizenship criteria or lacking belonging, but instead is a matter of political, social and moral recognition that warrants collective responsibility. Ensuring inclusion and protection for those at the margins requires not only legal recognition under the current frameworks, but also expanding political, moral and social recognition to all.

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