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A Global Crisis Writ Large: The Effects of Being "Stateless in Thailand" on Hill-Tribe Children

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* J.D. 2008, Joy K. Park, Loyola University Chicago School of Law. This article is the product of the Spring 2008 Comparative Law Thailand seminar at Loyola University Chicago School of Law. We thank Professor Diane Geraghty, Director of the Civitas ChildLaw Center, and Dean Michael Kaufman for providing guidance and support throughout the research and writing process.
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I. INTRODUCTION

"My only crime is that I am not a citizen of any country."1

These words from one man reflect the sentiments of many of the estimated 15 million people worldwide who are stateless.2 According to the United Nations High Commission for Refugees (UNHCR), "[n]o region of the world has been left untouched by the statelessness issue."3 International law defines a stateless person as someone "who is not considered as a national by any State under the operation of its law."4 Yet across the nations, stateless persons do not desire citizenship simply for the sake of citizenship. Ultimately, citizenship, or membership in a nation, provides a link between an individual and that nation and carries with it fundamental benefits and rights.5 Correspondingly, lack of citizenship translates into a denial of benefits and rights, including basic human rights.

The global crisis of statelessness is emphasized and highlighted by the struggle for citizenship of Thailand’s hill-tribes. The hill-tribes, or “chao khao,” are minority ethnic groups that live in villages in the mountains of northern Thailand. Almost half of all hill-tribe people are stateless.6 Thailand is their true home, and for most, has been their home for

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2. U.N. HIGH COMM’R FOR REFUGEES [UNHCR], 2006 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons 14 (June 2007) [hereinafter Global Trends], available at http://www.unhcr.org/statistics/STATISTICS/4676a71d4.pdf. The exact number of stateless persons is unknown. UNHCR notes that statistics are difficult to compile because: 1) unclear citizenship or nationality is often disputed; 2) the concept of statelessness is surrounded by ambiguities; 3) there is a reluctance of governments to collect or disseminate information; 4) some people prefer to remain stateless rather than to be given a nationality not to their preference; 5) there is little information about stateless persons in detention centers; 6) UNHCR and other agencies have limited operational involvement; and 7) this issue is not yet an international priority.

Lynch, supra note 1, at 7.

3. Lynch, supra note 1, at 25.


5. Lynch, supra note 1, at 3.

6. Id. at 8.
generations. Most hill-tribe people were born in Thailand, and one or both of their parents were also born in Thailand. Thus, they are legally eligible for Thai citizenship under Thai law. In reality, however, forty to sixty percent of hill-tribe people who qualify for Thai citizenship remain without it. In point of fact, many hill-tribe people already are Thai citizens under the law: Thai laws actually provide detailed specifications regarding who is eligible for citizenship. For these people legal eligibility is not the issue. The central issue is whether, in practice, the Thai government recognizes their citizenship and provides them with corresponding documentation or proof.

There are approximately 400,000 stateless hill-tribe people in Thailand today. These hill-tribes are denied many benefits and rights on account of their legal status. For example, they are ineligible for the Thai national healthcare plan that benefits people below a certain income level because only Thai citizens are eligible for the plan. Many hill-tribe people, therefore, have either no access to healthcare, limited access through non-governmental organizations (NGOs), or access healthcare but are forced to pay an unaffordable rate. Lack of citizenship also restricts the freedom of movement of hill-tribes outside their villages and provinces. While it is already difficult for hill-tribes to obtain nonagricultural jobs, travel restrictions applicable to noncitizens further narrow their opportunities to access other employment and

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8. This article will concentrate on the subset of hill-tribes who are legally eligible for Thai citizenship under the current Thai laws. There certainly are hill-tribe people, such as those who have immigrated to Thailand recently, that fall outside this category.
10. Some suggest that statelessness and discrimination can be solved by changing international and domestic laws. See Bryant Yuan Fu Yang, Life And Death Away From The Golden Land: The Plight Of Burmese Migrant Workers In Thailand, 8 ASIAN-PAC. L. & POL'Y J. 485, 526–27 (2007); Ryszard Cholewinski, The Human and Labor Rights of Migrants: Visions of Equality, 22 GEO. IMMIGR. L. J. 177, 219 (2008); Annelies Lottmann, No Direction Home: Nationalism and Statelessness in the Baltics, 43 TEX. INT'L L.J. 503, 520–21. These articles look to international and national laws that provide for equal treatment amongst citizens and non-citizens. However, in regards to Thailand’s hill-tribe people, Thai laws already provide avenues for hill-tribe people to attain citizenship. The problem in Thailand is not the law, but what occurs in practice.
13. Id. at 12.
Lack of Thai citizenship also prevents hill-tribe people from joining labor unions, owning land, and voting in political elections. The denial of these fundamental rights places hill-tribe people at a higher risk for social and economic exploitation in the forms of sex trafficking and abusive labor. The United Nations Educational Scientific and Cultural Organization (UNESCO) reports that “[i]n Thailand . . . a lack of proof of citizenship is the single greatest risk factor for a hill[-]tribe girl or woman to be trafficked or otherwise exploited.” This increased risk of sexual exploitation translates into a greater likelihood that hill-tribe women and girls will contract HIV/AIDS.

In addition to being at greater risks for commercial exploitation, one of the greatest obstacles to social advancement facing stateless hill-tribe children is access to basic, quality education. Although Thailand’s Ministry of Education has mandated that all children have the right to twelve years of free education, the first nine being compulsory, many hill-tribe children do not benefit from this policy. Many schools are either unaware of these recent education regulations or know about the laws but choose to discriminate against hill-tribe children. As a result, some hill-tribe children struggle simply to enroll in a Thai public school. If children do succeed in enrolling in primary school, the quality of education they receive often does not match that of other schools. The quality of schools in hill-tribe villages, which are located in remote highland areas, is far inferior to Thai public schools located in and near large cities. Hill-tribe children who overcome these obstacles and graduate face further complications as many school officials stamp their

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15. Id. at 13.
21. Interview with Lahu Health Project staff, in Chiang Mai, Thail. (Mar. 5, 2008) [hereinafter Lahu Health Project Interview].
diploma with bright red letters indicating that the student is not a Thai citizen.\textsuperscript{22}

The Thai government has taken a step in the right direction by clarifying that education is for “all” and that “all” includes children who lack Thai citizenship. Furthermore, many active international organizations (IOs) and NGOs are working to assist the hill-tribes. Some of these organizations provide healthcare, some provide education, and some assist hill-tribe people with the citizenship application process.\textsuperscript{23} Yet hill-tribe people and their children continue to encounter the same problems. This Article argues that the Thai government and NGOs must attack the root of the problem: lack of citizenship. While providing hill-tribes with social services fulfills a great need, it only treats the symptoms or effects of statelessness. The solution is to recognize hill-tribe people as Thai citizens.\textsuperscript{24}

This Article clarifies the current state of Thai citizenship and education laws and sheds light upon the unjust treatment stateless hill-tribe people face in these areas. It highlights the denial of rights through the lens of education, examining the various struggles of hill-tribe children. The Article provides background information about the hill-tribes\textsuperscript{25} and outlines the current citizenship and education laws that apply to them.\textsuperscript{26} It then analyzes the implementation of Thai citizenship and education laws, discussing the main obstacles to their success.\textsuperscript{27} The Article also discusses in detail a recent 2008 UNESCO study on the magnitude and effects of statelessness on the hill-tribes.\textsuperscript{28} Finally, the Article makes practical proposals directed towards Thailand’s government and NGOs working with the hill-tribes towards the recognition of their legal and human rights.\textsuperscript{29} These proposals include educating Thai government and education officials on the statelessness problem and the

\begin{itemize}
\item \textsuperscript{22} Vital Voices, \textit{supra} note 7, at 12.
\item \textsuperscript{24} When asked what are the biggest obstacles facing hill-tribe children, the staff at Lahu Health Project stated that the number one problem is citizenship. If children have Thai citizenship, then they have the right to everything. Lahu Health Project Interview, \textit{supra} note 21.
\item \textsuperscript{25} See infra Part II (describing the history of ethnic minority groups known as “hill-tribes”).
\item \textsuperscript{26} See infra Parts III & IV (discussing the Thai laws relating to education and citizenship that apply to the hill-tribes).
\item \textsuperscript{27} See infra Part IV (analyzing the failed implementation of Thai citizenship and education laws with respect to hill-tribe children and youth).
\item \textsuperscript{28} See infra Part IV.B.2 (discussing in detail the 2008 UNESCO study findings and conclusions).
\item \textsuperscript{29} See infra Part V (proposing various potential solutions to the problems of statelessness in Thailand).
\end{itemize}
relevant laws, ensuring that all children are registered at birth, and bringing together international and local NGOs for broader collaboration.30

II. BACKGROUND: THAILAND’S HILL-TRIBES

The hill-tribes31 are Thailand’s largest minority group,32 and most live in remote villages in northern Thailand.33 The Thai government defines a hill-tribe person as “a Thai mountain [person] or any other person who resides on the high ground that the government did not previously have administration over [and] individuals who used to live on the highland and have moved to the flat plateau.”34 According to the most recent data collected by the Thai Department of Social Welfare, there were approximately 774,000 hill-tribe people living in Thailand as of 1997.35 The current estimated number of hill-tribe people ranges from 550,000 to 1.2 million.36

Currently, the Thai government recognizes nine different hill-tribes: Karen, Hmong, Mien, Akha, Lahu, Lisu, Lua, Khamu, and Malabree.37 The Karen hill-tribe is the largest, followed by the Hmong and Lahu tribes.38 While they are all categorized as “hill-tribes,” each hill-tribe

30. See infra Part V (discussing the proposals).
33. No Status, supra note 18, at vii. The hill-tribes predominantly live in one of twenty provinces located in northern Thailand: Karnchanaburi, Kumpaengpet, Chiangraii, Chiangmai, Tark, Nan, Prajoukberekun, Payao, Pisanulok, Petchburi, Petchboon, Prae, Mae Honson, Raijuri, Lec, Lumpang, Loompoon, Sukhothai, Supunburi, and Uthaithani.
34. REGULATIONS OF CENTRAL Gov., supra note 31, at 1.
37. These tribes may also be referred to as Pa-ka-kershaw, Pblong, Thong Su, or Ba-Kae (Karen); Maew (Hmong); Yao or Iew-Mien (Mien); Igor (Akha); Moo-Ser (Lahu); Lee-Saw (Lisu); La-wuar, La-Wah, Tinh, Mul, or Prat (Lua); Tong-lueng (Malabree).
38. Comm. on Human Rights, Sub-Comm. on Promotion & Prot. of Human Rights Working Group Minorities Ninth Session, Inclusion of Minorities in Public Life,
has a unique language, culture, dress, and way of life. Hill-tribes can also be found in other Southeast Asian countries, including China, Laos, Vietnam, and Burma; the term "hill-tribes," however, is most often associated with Thailand’s hill-tribes. While there are some recent arrivals, most of Thailand’s hill-tribes immigrated to Thailand approximately 100 to 150 years ago.

Hill-tribe people predominantly live in villages, although an increasing number of hill-tribes are migrating into urban areas. These villages are small communities, generally isolated from Thai society and from other villages. Agriculture is the main economic activity, while handmade goods and unskilled wage employment are secondary sources of income. The hill-tribes’ living conditions are substandard, and many, if not most, live far below the poverty line.

The term “hill-tribes” or “chao khao” did not come into existence until 1959. Before the 1950s, the Thai government largely ignored the existence of the hill-tribes and they lived in stable communities sustained primarily by subsistence farming. During the middle of the last century, however, the Thai government became concerned about a host of national issues that were, or appeared to be, intertwined with the hill-tribes. First, the hill-tribe population began increasing due to regional migration. Groups of hill-tribes fled their home countries in Asia and migrated to Thailand for different reasons. Those from China fled Mao Zedong’s troops and the increased fighting taking place in China. Political unrest and rebellious outbreaks plagued Burma, while Laos was involved in the Indochina War. Greater numbers of hill-tribes sought refuge from these local problems in Thailand than in other Asian countries. Because the hill-tribes mainly lived in remote locations near

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39. REGULATIONS OF CENTRAL GOV., supra note 31, at 34.
42. Id.
43. Id. at 52, 57.
44. Id. at 52.
45. Inclusion of Minorities, supra note 38, at 7.
46. Id. at 23.
47. Id.
48. Id.
49. Id.
50. Id.
the borders of other countries, the Thai government feared that the hill-tribes would be susceptible to the spread of communism. In the name of national security, the government created a special committee, now known as the Committee for the Solution of National Security Problems Involving Hill Tribes and the Cultivation of Narcotic Crops. The Committee is devoted to the task of dealing with this "problem."

The Thai government soon began blaming the hill-tribes for a host of national problems, including opium production and environmental issues. Before 1945, Thailand's lucrative opium trade was a source of economic benefit for Thailand's government as well as the hill-tribes. As opium's primary producers, the hill-tribes received necessary income from opium production; the government, meanwhile, profited from the opium trade as well. Pressure from the international community, however, led the Thai government to pass the Opium Act of 1958, which prohibited the production, consumption, and sale of opium. Thailand joined international efforts to replace illegal crops (including opium) with other legal cash crops. Major initiatives intended to achieve this goal became conduits for greater government control over the hill-tribes. The motivating concern underlying these programs was controlling the production of narcotics; unfortunately, the development of remote highland areas was a subsidiary concern.

In addition to viewing the hill-tribes as participants in the illegal drug trade, the Thai government and many ethnic Thais consider hill-tribes largely responsible for deforestation occurring in the highlands. Since 1941, the Thai government has used legislative means to exercise more control over land use in the northern regions. The Forest Act, the Land Code Act of 1954, and the National Reserved Forests Act transferred...
land in the highlands to the ownership of the Thai state. Such legislation gave the government control over land where many hill-tribe villages are located, as well as control over the forests and natural resources within them. Many hill-tribes currently live in forest reserves and are subject to removal at any time. The government ensures compliance with its environmental regulations by punishing those who cut down trees or damage a water source or stream. Although commercial loggers are mainly responsible for deforestation, the blame is frequently shifted to the hill-tribes.

In addition to these national issues, other aspects of the hill-tribes’ lifestyle separate them from the majority of Thais. Because the hill-tribes live in mountains and rural communities, they are isolated from the rest of the country. Many, if not most, live in substandard living conditions. Religious differences further distinguish the hill-tribes. Unlike the overwhelming majority of Thais, the majority of hill-tribe people are not Buddhist. Traditionally, the vast majority of hill-tribe people practiced animism; a significant number are now becoming Christians.

The combination of these various differences fosters ethnic discrimination that in turn motivates and fuels disparate treatment of the hill-tribes. The Eighth National Economic and Social Development Plan (1997–2001) recognizes that “hill-tribe people are referred to as a Thai culturally diverse group who are less privileged and who should be developed in order to sustain their lives with dignity and to play a greater role in national development, by providing them with equal protection and access to all basic services.” Nonetheless, hill-tribe people are continuously discriminated against because they are not “ethnically Thai.” Many ethnic Thais consider and treat hill-tribes as “second class citizens.”

59. Id.
60. Id.
63. Id. at 129.
64. In Lisa Nesser’s opinion, religion is the most important part of hill-tribe culture. Interview with Lisa Nesser, Founder of the Thai Freedom House, in Chiang Mai, Thail. (Mar. 4, 2008) [hereinafter Nesser Interview].
65. Id.
67. IJM Interview, supra note 40. “The law is not the problem; discrimination is.” Interview with Surapong Kangchantuck, Vice Chairperson, Human Rights Sub-Comm. on Ethnic Minorities, Stateless, Migrant Workers & Displaced Pers., Law Soc’y of Thail., in Bangkok, Thail. (Mar. 8, 2008) [hereinafter “Kangchantuck Interview”]. Lisa Nesser believes that the biggest obstacle for hill-tribe people is discrimination. Nesser Interview, supra note 64.
In an effort to reverse the historical trend against the hill-tribes, Thailand's Royal Family has continually advocated on their behalf. King Bhumibol Adulyadej has repeatedly emphasized his love for the hill-tribe people, and the hill-tribe people, in turn, revere the King.68 King Adulyadej insists on recognizing the hill-tribes as Thai citizens and has implemented various development projects for the benefit of the hill-tribes, principally through the Department of Agriculture and the Department of Social Welfare.69 The support of the Royal Family has helped begin to change popular sentiment toward the hill-tribes. Nonetheless, hill-tribe people and their children face significant obstacles to further development. The following sections discuss the barriers hill-tribe people face to obtaining important social benefits, the most important of these being citizenship.

III. CITIZENSHIP: LAW AND IMPLEMENTATION

This section examines the network of citizenship and education laws that affect hill-tribe children and youth. Thai citizenship laws are notoriously complicated. Thus, an understanding of the hill-tribes' uncertain legal status requires a summary of the applicable laws,70 including an explanation of the eligibility requirements for citizenship and permanent residency,71 methods of identification, and the mechanics of the citizenship application process.72 This legal framework also includes Birth Registration and various types of Civil Registration,73 as well as the naturalization process, recent legal amendments to the citizenship laws, and international covenants relevant to nationality.74

The hill-tribes' legal status impacts their access to important social benefits, particularly education. The second component of this section

68. IJM Interview, supra note 40.
69. Aguettant, supra note 41, at 52–54. The Royal Family has supported the implementation of projects such as the Mae Fa Luang Hill Area Community Learning Centre in Chiang Rai and the Somdet Ya Project in Chiang Mai. Case Study on Education Opportunities, supra note 51, at 9.
70. See infra Part III.A (discussing the three main laws relating to citizenship: the Nationality Act and its revisions, the Civil Registration Act, and the Immigration Act).
71. See infra Part III.A.1 (discussing how someone can be eligible for Thai citizenship).
72. See infra Part III.A.1.a-c (discussing Thai identity cards, citizenship application process and proving eligibility).
73. See infra Part III.A.2 (discussing birth and civil registration).
74. See infra Part III.A.3–4 (discussing naturalization, revised laws, and international covenants).
describes the current education landscape in Thailand, summarizing the development of education reform in Thailand and explaining why all children, regardless of their legal status, have a right to be educated. It discusses the legal and practical obstacles, focusing on lack of citizenship, that negatively impact hill-tribe children’s ability to receive an education.

A. Thailand’s Citizenship Laws

1. Legal Status and Eligibility

The three main Thai laws that affect citizenship rights in Thailand are the Nationality Act, the Civil Registration Act, and the Immigration Act. None of these laws specifically define the concepts of citizenship, nationality, or statelessness. In this article, the words nationality and citizenship are used interchangeably.

Until 1972, Thailand’s Nationality Act allowed a person to become a Thai citizen simply by being born in Thailand. The Vietnam War and the influx of refugees from Laos, Vietnam, and Cambodia, however, stirred racial fear among Thais and led to an amendment that changed that law. Today, Thai citizenship can be acquired by: (1) descent, (2) birth, or (3) naturalization.

75. See infra Part IV (discussing the educational landscape in Thailand and the laws applicable to hill-tribe children).
76. The Nationality Act, B.E. 2508 (1965) (Thail.), amended by the Nationality Act B.E. 2535 (No. 2), amended by the Nationality Act B.E. 2535 (No. 3) (1992) [hereinafter The Nationality Act].
77. The Civil Registration Act, B.E. 2499 (1965) (Thail.).
78. The Immigration Act, B.E. 2522 (1979) (Thail.); Interview with Ms. Bongkot NapaUmporn, Assistant to Assoc. Professor Phunthip Kanchanachitra Saisoonthorn, Thammasat Univ., School of Law, in Bangkok, Thail. (Mar. 7, 2008) [hereinafter NapaUmporn/Punthip Interview].
80. It is unclear to the authors whether there is, in fact, a legal distinction between “citizenship” and “nationality” in Thai law; it appears there is not.
81. The Nationality Act B.E. 2546 (1913); Kangchantuck Interview, supra note 67.

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The Thai government has recognized that lack of citizenship is a significant problem for hill-tribe people. In 2005, the Thai Cabinet of Ministers issued a decree that "designated the Ministry of Interior and National Security Council as the main agencies responsible for developing a strategy to deal with this problem" of citizenship status.

a. Eligibility for Thai Citizenship and Permanent Residency

A citizen is generally defined as a "member of a state" who is "entitled to the rights and privileges of" a freeperson. This article adopts the general view that the word "national" is synonymous with the word "citizen." This section will discuss eligibility for citizenship and permanent residency. Although a lesser status than citizenship, permanent residency allows a person to stay in Thailand permanently without a visa.

An important factor in determining eligibility for Thai citizenship is the status of the applicant's parents. Whether born in Thailand or not, a person is eligible for Thai citizenship if one parent is a Thai citizen. Generally speaking, if a child's parents and grandparents were born in Thailand, then the child is a Thai citizen. In addition, the children of legal alien permanent residents and non-Thai migrants are eligible for Thai citizenship. However, a person cannot obtain Thai citizenship if his or her parent was "given leniency for temporary residence in the Thai Kingdom as a special case." Additionally, anyone whose parents

83. Convention on the Rights of the Child [CRC], Written Replies by the Government of Thailand Concerning the List of Issues (CRC/C/THA/Q/2) Received by the Committee on the Rights of the Child Relating to the Consideration of the Second Periodic Report of Thailand (CRC/C/83/Add.15), ¶ 1.6, U.N. Doc. CRC/C/THA/Q/2/Add.1 (Dec. 29, 2005) [hereinafter Thailand's Written Replies to CRC].
85. Id.
87. According to Section 7(1) of the Nationality Act, a person acquires Thai nationality by birth if that person is "born of a father or a mother of Thai nationality, whether within or outside the Thai Kingdom." The Nationality Act § 7; Napanuemporn/Punthip Interview, supra note 78.
88. Feingold Interview, supra note 82.
89. IJM Interview, supra note 40.
90. Kangchantuck Interview, supra note 67.
91. The Nationality Act § 7 (1–3).
entered Thailand before October 4, 1985, is eligible for citizenship regardless of his or her parents' citizenship or legal status.\textsuperscript{92}

A person's eligibility can be determined in certain cases without reference to the status of his or her parents. For example, any person born in Thailand between April 10, 1913 and December 13, 1972, including a hill-tribe, is presumed to be a Thai citizen.\textsuperscript{93} Conversely, persons who enter Thailand illegally are ineligible for Thai citizenship.\textsuperscript{94}

Many hill-tribe people are eligible for citizenship under these laws. In addition, special legislation recognizes the precarious legal status of the hill-tribes. Regulation 2000 of the Nationality Act provides that people belonging to the Karen, Akha, Lahu, Hmong, Mien, Lisu, Lua, Kamu, and Mala Blie hill-tribes are eligible for Thai citizenship if: (1) both the applicant and his or her parents were born in Thailand and (2) the applicant or his or her parents have lived in Thailand before October 4, 1985.\textsuperscript{95} Another law provides that hill-tribe children born between December 14, 1972, and February 25, 1992, are eligible for citizenship.\textsuperscript{96} Finally, hill-tribe children whose parents are registered as "aliens" with permanent residency are eligible for Thai citizenship due to an August 28, 2001 decision by former Prime Minister Thaksin Shinawatra's government.\textsuperscript{97}

In 1990, the Thai government issued the Central Registration Order to specify further preconditions for the citizenship application of a hill-tribe person.\textsuperscript{98} Under the Central Registration Order, a hill-tribe person is eligible for Thai citizenship if he or she lives in an area under the control of a government organization, such as the Social Welfare Office, the

\textsuperscript{92} Thailand, Thailand's Supplementary Clarifications to the Human Rights Committee as part of Thailand's Presentation of its Initial Report under the International Covenant on Civil and Political Rights, ¶¶3.1, 3.3 (July 19–20, 2005), available at http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/thailand-writtenreplies.pdf [hereinafter Supplementary Clarifications to HRC]; Vital Voices, supra note 7, at 25 (citing an August 29, 2000 Thai Cabinet decision: "[a]ll children born in Thailand of hill-tribe parents who entered Thailand before 4 October 1985 will obtain Thai nationality regardless of their parents' legal status in Thailand at the time they were born . . . .").

\textsuperscript{93} REGULATIONS OF CENTRAL GOV., supra note 31, at 45. See Toyota, supra note 9, at 19 (noting that "[t]he “Ministry of Interior produced a new regulation handbook on 1 June 2000 on how to categorize and register status of ‘hill tribe’ population in 20 designated provinces.").

\textsuperscript{94} IJM Interview, supra note 40; Feingold Interview, supra note 82 (noting that persons who arrive illegally from Burma are not eligible for citizenship).

\textsuperscript{95} IJM Interview, supra note 40 (citing Regulation 2000 of the National Act).

\textsuperscript{96} Lertcharoenchok, supra note 23, at 1 (noting that on August 29, 2000, the Thai government “decided to confer Thai citizenship on hilltribe children” born during these dates).

\textsuperscript{97} Id.

\textsuperscript{98} Mika Toyota, Subjects of the Nation Without Citizenship: The Case of 'Hill Tribes' in Thailand, in MULTICULTURALISM IN ASIA 110, 120 (Will Kymlicka & Baogang He eds., 2005).
Border Police, the National Security Unit, or the Army. 99 A hill-tribe person can also attain Thai citizenship if he or she has registered with any government survey or registration project. 100

The Ministry of Interior then issued a directive on September 15, 1993, setting forth yet more specific conditions for eligibility to become a Thai national. The directive states that to become a Thai national, a hill-tribe person must either: (1) be under the supervision of a government office such as the Public Welfare Department, Border Patrol Police, Internal Security Department, or the Army; (2) have been verified and registered during the years 1969–1970; (3) have been registered on a house registration certificate 101 by the ID Project approved by the Cabinet on July 20, 1982; (4) have been registered during March–August 1985 by one of the projects approved by the Cabinet on April 24, 1984; (5) have been eligible during the years 1985–1988 for the Survey of the Hill-tribe People in Thailand, approved by the Cabinet on April 24, 1984; or (6) have been registered and issued an ID card for highlanders by the project during 1990–1991 approved on June 5, 1990. 102 Finally, on August 29, 2000, the Thai Cabinet granted Thai citizenship to the descendents of four groups of displaced persons: (1) Burmese who entered Thailand prior to March 1976; (2) Nepalese migrants; (3) Chinese migrants who migrated to Thailand after 1960; and (4) hill-tribe children born between December 14, 1972 and February 25, 1992. 103

Within this framework of eligibility for Thai citizenship, the Minister of the Interior has considerable discretion to grant or deny citizenship. Specifically, the Minister has power to "consider and give an order for each particular case granting Thai nationality to any person under [section 7] paragraph one, in conformity with the rules prescribed by the Cabinet." 104

As an alternative to full legal citizenship, some hill-tribes may be eligible for permanent or temporary residency. Although not citizens, permanent residents are legally entitled to remain in Thailand permanently without

100. Id.
103. Toyota, supra note 9, at 20.
104. The Nationality Act (No. 4), § 7.
a visa. Thailand residents, including hill-tribes, who were born outside of Thailand and entered the country before October 3, 1985, are eligible for permanent resident status. Temporary residence status applies to non-Thai persons granted the right to remain in Thailand for a certain period of time. District officials can grant temporary residency for a specific time period or can actually grant a semi-permanent residency status, which allows residency in Thailand for an indefinite period of time. Illegal immigrants, such as recent Burmese migrants, can be granted this type of semi-permanent residency. A person may also be granted temporary resident status when it cannot be ascertained how long the person has been in Thailand. Many ethnic groups living in tribal areas are thus granted temporary residency by default. A minority interpretation of the law among some scholars and academics holds that one who has permanent or temporary residency is actually a Thai citizen.

b. Citizenship Application Process and Proving Citizenship

Eligible persons must complete a citizenship application process to receive recognition and documentation of their status. According to some sources, it can take almost five years for a citizenship application to be processed in Thailand. Regulation 2000 of the Nationality Act, in theory, fast tracks the process for hill-tribes. Under this Regulation, it should take three months to process the citizenship application of a hill-tribe person; in reality, it normally takes as many as five years for approval. Local district offices in each district are responsible for accepting citizenship applications. There are three steps to the approval process.

105. Kangchantuck Interview, supra note 67.
106. IJM Interview, supra note 40 (citing the Nationality Act, Part II). Feingold Interview, supra note 82.
108. Id. at 93–94.
110. Id.
111. Id.
112. IJM Interview, supra note 40.
113. Id.
114. Id. (noting that this has led some to pose as hill-tribe people in hopes of attaining citizenship and thus complicating the citizenship process for hill-tribe people).
115. Comm. on the Rights of the Child, supra note 32, ¶ 643 (noting that the Thai Government is acting “to expedite the process of granting nationality to” hill-tribes without it).
116. Id.
The District Officer first reviews the citizenship application. Next, it is sent to the District Deputy Provincial Committee for review. Finally, the application goes to the District Sheriff for approval.

If officials at the local district office deny the application or refuse to grant citizenship for any reason, the applicant can appeal to the District Appeal Committee. The appeal must be filed within one month of the official’s decision. The Ministry of Interior has issued specific rules that govern the process of the appeal and any subsequent appeals.

To become a citizen, a hill-tribe person must be able to prove that he or she is eligible for citizenship. Citizenship eligibility can be proved in several ways, including the use of documentation. The following documents are considered proof of citizenship eligibility: documents from any government registration, including a government survey, census records and household surveys; any government issued document related to legal status, including a receipt for birth report, an affidavit of birth, a birth certificate or identity card; documents received from the Registry of Population in connection with the issuance of an ID and approved by the Ministry of Interior dated July 20, 1981; documents received from

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117. Id.
118. Id.
119. Id.
120. Supplementary Clarifications to HRC, supra note 92, ¶ 3.3.
121. Id.
122. The appeal must be written and submitted on a certain form to the “local registration officer in the sub-district where the applicant has submitted a request for nationality.” The registration officer accepts or rejects the appeal within seven days. If the appeal is accepted, within ten days the officer sends it to the District Appeal Committee (DAC) and “recommend[s] to the Chief District Officer to appoint a [DAC].” The DAC meets within fifteen days of the appointment and decides within thirty days by a 2/3 majority vote. The applicant or the Chief District Officer can appeal the DAC’s decision to the Provincial Appeal Committee (PAC). An appeal to the PAC parallels the appeals process for the DAC. If the PAC’s decision is based “on legal consideration, the decision could be appealed within 1 month with . . . a higher body . . . that is the Central Appeal Committee.” An appeal to the CAC includes a different committee composition and the process parallels that of the DAC, except that the decision of the CAC is absolutely final. Id.
123. REGULATIONS OF CENTRAL GOV., supra note 31, at 4; IJM Interview, supra note 40; NapaUmporn/Punthip Interview, supra note 78. There are also some records from when the Mae Ai province split from another province. Id.
124. Id. at 49. IJM Interview, supra note 40. Identity cards can prove where and when you were born and where your parents were born. Id. If a child lacks a birth certificate or witness, this child can submit to a DNA test for proof. Lertcharoenchok, supra note 23, at 4.
125. REGULATIONS OF CENTRAL GOV., supra note 29, at 4.
the registration for a hill-tribe I.D. in the Ministry-approved project dated
June 5, 1990 to 1991; documents from an individual’s registration
from 1999; and documents proving details that help prove nationality.

Most hill-tribe people, however, do not have paper documentation of
their citizenship eligibility and must therefore rely on other evidence.
For example, they can bring witnesses to the District Office to testify
about when and where they were born. Local officials generally trust
eyewitness testimony because villages are small, close knit communities.

**c. Recent Legal Amendments to the Citizenship Laws**

Recent amendments to the Nationality Act and the Civil Registration
Act will affect hill-tribes’ ability to attain citizenship. In February 2008,
the Nationality Act was revised (the revised Act). The revised Act
clears up some previous legal anomalies. For example, under the
amendment, children of illegal aliens can become Thai citizens. The
revised Act authorizes the Minister of the Interior to issue regulations
governing the implementation and enforcement of the amendments.
Until such Ministerial Regulations are issued, it is not clear how the
revised Act will function.

The revised Act also makes important changes to the naturalization
process. The revised Act repeals the rule that a person naturalized as a
Thai must also apply for a certificate of naturalization. Rather, the
Act requires the competent official to immediately “issue a certificate of

126. *Id.*
127. *Id.*
128. *Id.* at 5.
129. *Id.* (listing examples of potential witnesses and stating that someone “can refer
to any material witness in order to prove his Thai Nationality . . .”); IJM Interview, *supra*
note 40; NapaUmporn/Punthip Interview, *supra* note 78.
130. NapaUmporn/Punthip Interview, *supra* note 78.
131. The Nationality Act (No. 4), B.E. 2551 (2008) (unofficial English translation
by Ms. Bongkot NapaUmporn on March 20, 2008) (on file with author). The Act was
revised on February 19, 2008. *Id.* It went into force on February 27 upon its publication
132. Feingold Interview, *supra* note 82.
134. Feingold Interview, *supra* note 82.
135. The Nationality Act (No.4), § 5; Feingold Interview, *supra* note 82;
Kangchantuck Interview, *supra* note 67 (discussing the need for “subordinate laws in the
form of rules and regulations that respond to the intentions of the laws.”). One example
of the importance of the Ministerial Regulations to the substance of the revisions is
Section 7, which provides: “The person who is born within the Thai Kingdom and has
not acquired Thai nationality under [Section 7] paragraph one shall reside in the Thai
Kingdom under conditions stated [sic] in the Ministerial Regulation . . .” The Nationality
Act (No. 4), § 7.
136. The Nationality Act (No. 4), § 10.
naturalization as a Thai as evidence” of citizenship. This amendment thus eliminates one burdensome step of the process. The revised Act also allows a “curator,” pursuant to court order, to apply for naturalization for “incompetent persons.” It also allows the appropriate person to apply for naturalization for children in foster homes and children adopted by Thais.

2. Documentation of Legal Status

a. Birth Registration

As the previous section of this article suggests, providing documentation of legal status or proving eligibility to receive such documentation can be a great challenge for hill-tribe people. Birth registration is “the official recording of a child’s birth by a government department.” In Thailand, the Ministry of the Interior’s Department of Local Administration is responsible for central registration. The Act for Registration of Inhabitants, the Civil Registration Act of 1991, and the Regulations of

137. Id.
138. Id.
140. The Nationality Act (No. 4), § 11(1) (providing that the curator must prove the person was born in Thailand. An incompetent person attempting to naturalize is exempt from two of the naturalization qualifications: having regular occupation and having knowledge of the Thai language).
141. The Nationality Act (No. 4), § 11(2)-(3). The Civil Registration Act was also revised in February 2008, so that the Nationality Act and the Civil Registration Act are more or less in harmony. Kangchantuck Interview, supra note 67. Because of the 2006 Coup Parliament was dissolved on February 26, 2006. After the Coup, the new regime created a temporary Constitution and appointed the National Legislative Assembly, in the interim before the general elections were held, to act as Parliament. Id. NLA members were appointed by leaders of the Coup. Id. They selected people from different sectors of society, so many progressive minded people were selected to the NLA. Id. Now the NLA is dissolved, and the new Parliament was elected in January 2008 with Senate elections on March 2. Id. The Immigration Act, however, may still conflict a bit with the other two Acts. Id. This article, however, does not discuss Thailand’s immigration laws.
142. Kangchantuck Interview, supra note 67; CHILDREN AS ACTIVE CITIZENS, supra note 79, at 6.
143. Comm. on the Rights of the Child, supra note 32, ¶ 197.
144. Thailand’s Written Replies to CRC, supra note 83, ¶ 1.6. Birth registration “is in accordance with the Act for Registration of Inhabitants B.E. 2534 (1991) which stipulates that it is the duty of the owner of the house
the Central Registration Office on Civil Registration 1992 regulate the birth registration process for children born in Thailand.145

Two forms of certificates are relevant to a child’s birth registration in Thailand.146 First, all children born in Thailand should be issued a delivery certificate.147 The delivery certificate essentially verifies that the child was born in Thailand. It enables the parents to list the child on a household register and to request a birth certificate.148

Hospitals are legally required to issue delivery certificates to the parents certifying a child’s birth.149 Notably, many hill-tribe children are not born in hospitals. In that circumstance, parents must report the birth to the village headman or kamnan, who is legally responsible for issuing a birth report and forwarding it to the local registrar within fifteen days.150

Distinct from a “delivery certificate,” a “birth certificate” is a document issued by the local registrar that verifies a child’s legal status in Thailand.151 Birth certificates are classified into three separate categories: (1) a birth certificate designated “Thor. Ror 1” is issued to a child with Thai nationality whose birth is reported within the first fifteen days after birth; (2) a birth certificate designated “Thor. Ror 2” is issued to a child with Thai nationality whose birth was reported after the fifteen day time period; and (3) a birth certificate designated “Thor. Ror 3” is issued to a child without Thai nationality.152

In the case of a child born in a hospital, the delivery certificate must be delivered to the local registrar’s office in order to receive a birth certificate.153 If a child is born outside of a hospital, the village headman must notify the local registrar.154 The local registration office is then required to issue the birth certificate and add the name of the child to the

(where the child is delivered), father or mother... of the child to notify the birth to the district/local registrar within fifteen days after the birth.”

Id.

146. Feingold Interview, supra note 82; Flaim & Feingold, supra note 11, at 2.
147. Feingold Interview, supra note 82; Flaim & Feingold, supra note 11, at 2.
148. Feingold Interview, supra note 82; Flaim & Feingold, supra note 11, at 2
151. Feingold Interview, supra note 82; Flaim & Feingold, supra note 11, at 2

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A hill-tribe person can use a delivery certificate to prove a child's birth place and identity when applying for official birth registration, Thai nationality, and citizenship.

b. Civil Registration

In Thailand, there are five types of civil registration. A person's civil registration status depends on their legal status. The civil registration level of Thor. Ror 14 designates permanent residents and Thai nationals. Thor. Ror 13 designates temporary residents, although Thai law does not define Thor. Ror 13 as "temporary residency" and someone could have Thor. Ror 13 but not have temporary residency. Thor. Ror 38 Kor. is a new civil registration category that has only existed since 2005 (B.E. 2548) and designates undocumented stateless people. Finally, Thor. Ror 38/1 designates registered migrant workers.

An individual's civil registration status is encoded with a barcode on their official Thai identity card (Thai ID card), which every person in Thailand is entitled to receive. The Thai ID card system identifies a person's legal status in Thailand. The ID card categorizes persons into three general groups: Thai nationals, permanent residents, and temporary residents. In the past, the ID cards were color coded to correspond with a person's civil registration status. The Thai government has recently stopped using the color coding scheme in an attempt to simplify identification. In 2005, the Thai government changed the ID cards
from a flimsy colored paper document to a waterproof card with computerized bar codes.\(^{168}\)

3. Citizenship by Naturalization

It is possible for non-Thai persons to be naturalized as Thai citizens. There are six requirements for naturalization. First, the person must reach the age of legal capacity \((sui\ juris)\) in accordance with Thai law and the law of the country in which the person is a national.\(^{169}\) The remaining five requirements are that the person must demonstrate "good behavior;" have a "regular occupation;" have lived in Thailand for at least five years before filing the application for naturalization; and know the Thai language.\(^{170}\)

In December 2007, the Deputy Prime Minister General Sonthi Boonyaratkalin announced a policy to naturalize migrant people in Thailand,\(^{171}\) such that almost "350,000 migrants will be naturalized as Thai citizens by 2009 in order to avert possible threats to national security and keep them from doing illegal businesses in this country."\(^{172}\)

4. Applicable International Law

In addition to applicable Thai law, various sources of international law respond to the statelessness problem. The Universal Declaration of Human Rights (UDHR) declares that "[e]veryone has the right to a nationality [and] [n]o one shall be arbitrarily deprived of his [or her] nationality."\(^{173}\) Similarly, the Convention on the Reduction of Statelessness

\(^{168}\) Id. (citing Regulation 2005 of the Nationality Act); NapaUmporn/Punthip Interview, \(supra\) note 78.

\(^{169}\) The Nationality Act, § 10. The phrase "\(sui\ juris\)" comes from the Latin, meaning "of one's own right." BLACK'S LAW DICTIONARY (8th ed. 2004) (defining "\(sui\ juris\)" as "of full age and capacity" or "possessing full social and civil rights"). A person has attained \(sui\ juris\) when he or she "possesses full civil rights and is not under any legal incapacity such as being bankrupt, of minor age or mental incapacity. Most adults are \(sui\ juris\)." Legal Definition of Sui Juris, DUHAIME.ORG., http://www.duhaime.org/LegalDictionary/S/Suijuris.aspx (last visited Feb. 5, 2009).

\(^{170}\) The Nationality Act, § 10. Procedurally, one seeking to be naturalized must "file an application with the competent official according to the form and in the manner prescribed" in the Ministerial Regulations." Id. § 12. If the Minister of Interior accepts the application, "he shall submit the matter to the King for Royal Sanction." Id. With Royal Sanction and an oath of loyalty to Thailand, the applicant receives citizenship. Id.

\(^{171}\) Thai News Service, Thailand: Migrants From Myanmar, Laos and Cambodia To Be Naturalized, Dec. 24, 2007 (reporting that the Deputy Prime Minister General said this).

\(^{172}\) Id.

(CRS) requires signatory States to grant nationality to someone born in its territory whom would otherwise be stateless.\textsuperscript{174} There is also a Convention
Relating to the Status of Stateless Persons (CRSSP) that grants additional
rights to stateless persons and imposes corresponding obligations on
member States.\textsuperscript{175}

As a U.N. member state, Thailand is bound by the UDHR.\textsuperscript{176} Thailand,
however, is not a signatory to the CRS or the CRSSP and therefore is not
bound by their articles.\textsuperscript{177} Thailand has, however, signed the International
Covenant on Civil and Political Rights (ICCPR) and the Convention on
the Rights of the Child (CRC), both of which are relevant to the global
problem of statelessness.

Thailand ratified the ICCPR with no reservations in 1996.\textsuperscript{178} According
to Article 24 of the ICCPR, children have the right to be registered
immediately after birth, the right to a name, and the right to acquire a
nationality.\textsuperscript{179} Thailand is bound by Article 24's legal mandate.

The CRC likewise guarantees children the right to be registered
immediately after birth, the right to a name from birth, and the right to
acquire a nationality.\textsuperscript{180} These rights are especially to be ensured when
the child would otherwise be stateless.\textsuperscript{181} Thailand is a signatory to the
CRC and ratified it in 1992.\textsuperscript{182} Notably, however, Thailand submitted a
reservation to Article 7, stating its application "shall be subject to

\textsuperscript{174} U.N. Conference on the Elimination or Reduction of Future Statelessness,

\textsuperscript{175} Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360
was adopted on September 28, 1954 by a Conference of Plenipotentiaries Convened by
Economic and Social Council Resolution 526 A(XVII) of April 26, 1954. \textit{Id.}

\textsuperscript{176} United Nations, List of Member States, http://www.un.org/members/list.shtml#t
(noting membership since December 16, 1946).

\textsuperscript{177} United Nations Treaty Collection, Convention on the Reduction of Statelessness,

\textsuperscript{178} Office of the U.N. High Comm'r for Human Rights, Status of Ratifications of
the Principal International Human Rights Treatises 10 (June 9, 2004), available at
http://www.unhchr.ch/pdf/report.pdf; International Covenant on Civil and Political
10, at 526–27.

\textsuperscript{179} ICCPR, \textit{supra} note 178, art. 24.


\textsuperscript{181} \textit{Id.}

\textsuperscript{182} Status of Ratifications of the Principal International Human Rights Treatises,
\textit{supra} note 178, at 10.
national laws, regulations, and prevailing practices in Thailand."183 This reservation, however, does not practically affect Thailand’s international obligations regarding registration and nationality because it is a signatory to the ICCPR without reservations. As stated above, Article 24 of the ICCPR gives children the right to “be registered immediately after birth and have a name” and “the right to acquire a nationality.”184

It is clear, therefore, that Thailand’s international legal obligations require it to afford all children in its territory the right to acquire Thai citizenship. Moreover, Thailand must register all children immediately after birth. At the present time, Thailand is in violation of Article 24 of the ICCPR.185

B. The Implementation of Thailand’s Citizenship Laws

Bangkok-based “Father” Joe Maier states that without identity papers or documents, it is like a child “does not exist” in the eyes of Thai society or the government.186 In Thailand, many hill-tribe children and adults live without proof of their Thai citizenship or legal status, and, in the eyes of many, these people do not exist.

This section discusses the major problems with the implementation of Thailand’s citizenship laws and examines the magnitude of the citizenship problem in Thailand.187 The issue lies not in Thai law but in the implementation of Thai law. The practical barriers to receiving citizenship include: inconsistent and slow implementation, general ignorance of the laws by government officials and hill-tribe people,188 ethnic discrimination by government officials, and a lack of identity documentation.189

184. ICCPR, supra note 178, art. 24.2 & 3.
185. See infra Part III.B (discussing Thailand’s failure to register all children at birth and its failure to effectively implement its citizenship laws).
187. See infra Part IV (discussing the magnitude of the problem).
188. See supra Part III.A.1 (discussing the difficulty of proving eligibility, uncooperative district officials, corruption, ethnic prejudice, and ignorance of the laws as the main causes). “[T]hose who ha[ve] authority to determine the nationality of ordinary persons lack[] knowledge of Thai nationality law.” Phunthip Kanchanachitra Saisoonthorn, Children With Problems Of Proving Rights To Thai Nationality, 1 THAIL. HUM. RTS. J. 45-52 (2003); No Status, supra note 18, at 27 (reporting “[w]idespread corruption and inefficiency”).
189. Kangchantuck Interview, supra note 67; Thailand’s Written Replies to CRC, supra note 83, at 22 (reporting that “[l]ack of knowledge and understanding among officials” is common).
I. Failed Implementation of the Law

The 1954 Convention Relating to the Status of Stateless Persons defines a “stateless person” as someone “who is not considered as a national by any State under the operation of its law.”\footnote{190} While some progress has been made in granting or recognizing the Thai nationality of some hill-tribe people, many still remain stateless.\footnote{191}

In December 2004, the Thai Government reported that between 2 and 2.5 million people live in Thailand without citizenship.\footnote{192} The Thai Ministry of Interior estimates that about half of hill-tribe people lack Thai citizenship, permanent residency, or any other sort of legal status.\footnote{193} In northern Thailand, just under half of all ethnic minority people (indigenous or hill-tribes) who are eligible for Thai citizenship do not have citizenship or even any basic legal status documentation.\footnote{194}

A significant number of children living in Thailand, almost twenty-five percent as of 2005, remain stateless and lack proof of Thai citizenship even though they are legally eligible for it.\footnote{195} A teacher who

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\footnote{190}{Convention Relating to the Status of Stateless Persons, supra note 4, art. 1.}
\footnote{191}{Comm. on the Rights of the Child, supra note 32, ¶ 639 (noting that the “process of recording Thai nationality in the house registration of the highland people” has improved and caused an increase in the granting of Thai citizenship).}
\footnote{192}{Lynch, supra note 1, at 8.}
\footnote{193}{Ethno-Linguistic, supra note 16, § 2.10. Refugees International reports that “[d]espite being born in Thailand, almost half of [Thailand’s] . . . hill tribe people lack Thai citizenship.” Lynch, supra note 1, at 8; Toyota, supra note 9, at 1 (“Currently about 40–60 percent of ‘hill-tribe’ people who have a legitimate claim to Thai citizenship remain without it.”). People from the “Karen [tribe] in Suan Phueng have been facing the problem of identity [as] [h]undreds of them have been waiting for Thai citizenship . . . .” Subhatra Bhumiprabhas, Karen Have A Historical Place In Thai Society, NATION (Thail.), Apr. 3, 2008. “A [2007] survey by UNESCO and [Thailand’s] the Bureau of Social Development . . . of 63,724 hilltribe people in 191 villages in Chiang Mai, Chiang Rai, and Mae Hong Son found that 37% still did not have Thai citizenship.” Rojana Manowalailao, A Battle For Identity, BANGKOK POST, Nov. 19, 2007.}
\footnote{194}{IJM Interview, supra note 40 (reporting that of the approximately 1 million hill-tribe people in northern Thailand, about 450,000 lack citizenship or legal status documentation); Comm. on the Rights of the Child, supra note 32, ¶ 643 (reporting that hundreds of thousands of hill-tribe villagers live without Thai nationality). Trafficking victims from Thailand that lack proof of citizenship receive less protection and assistance than victims who “could prove their Thai citizenship” and may be denied re-entry into Thailand. See U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 243–44, (2006), available at http://www.state.gov/documents/organization/66086.pdf.}
\footnote{195}{Lahu Health Project Interview, supra note 21. The Lahu Health Project has helped eighteen hill-tribe children receive Thai citizenship. Id. One hill-tribe child they helped had the words “no nationality” written on his birth certificate. Id. See also U.N. Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention. Concluding Observations: Thailand, ¶ 33, U.N.
has taught in the Terd Thai subdistrict for over twenty-one years reports that "so many of my students were born here, and their parents and grandparents have been established on Thai soil for a long time, yet they have no Thai citizenship." As of 2005, only about sixty percent of the total hill-tribe population was recognized as eligible for citizenship. The remaining forty percent may still "have the right to obtain Thai nationality" yet remain stateless. A large gap exists, however, between legal eligibility for citizenship and actual proof of or recognition of citizenship.

a. Difficulty Proving Citizenship Eligibility

A hill-tribe person legally eligible for citizenship may nevertheless have difficulty proving that he or she is eligible. Hill-tribe people often do not have the proper, or any, documentation to verify that they were born in Thailand or that their parents were born in Thailand. The list of documents that prove eligibility for Thai citizenship is not exhaustive; rather, eligibility is determined by general principles. Although government surveys or census reports can be used for this purpose, villagers often cannot read the survey cards and do not know they contain information that can help them with the citizenship process. Large-scale governmental errors in these censuses have also affected the ability of the hill-tribes to prove their citizenship eligibility. For example, the Thai government erroneously registered the same group of hill-tribe people as "having been born in Thailand" and also as "being of Burmese origin." Many hill-tribe people, therefore, are listed as both Thai and non-Thai in official government censuses.

Doc. CRC/C/THA/CO/2 (Mar. 17, 2006) (indicating that "[t]he committee is "concerned that a significant number of children residing in Thailand remain stateless . . . ."); Zixin, supra note 36, (citing a 2005 Plan survey).


198. Id.


200. IJM Interview, supra note 40. It is hard for someone to prove that his or her parents and grandparents were born in Thailand. Feingold Interview, supra note 82.

201. Kangchantuck Interview, supra note 67.

202. IJM Interview, supra note 40.

203. In 1985, the Thai government conducted a national census where "the Public Welfare Department registered many hill people as having been born in Thailand. But "subsequent censuses conducted by the Interior Ministry listed the very same individuals
Birth registration is another important tool that can prove citizenship eligibility. The World Health Organization (WHO) warns that children without birth certificates “are less likely to benefit from basic social and political rights.” Globally, somewhere between 48 and 128 million births annually go unregistered. Although it is generally recognized that “[b]irth registration is the first step in preventing statelessness,” many hill-tribe children in Thailand are not registered at birth either because they are not born in hospitals or because medical facilities illegally refuse to issue their delivery certificates. Likewise, a birth certificate can prove a child’s identity and legal status. By virtue of the fact that many hill-tribe children lack delivery certificates, however, the chance that they will receive a birth certificate is slim. A Plan International study released in 2005 showed that about twenty five percent of hill-tribe children lack birth certificates.

as being of Burmese origin.” Sanitsuda Ekachai, Searching for a State, BANGKOK POST, June 25, 2002.

204. Id.

205. IJM Interview, supra note 40.


207. Id.

208. CHILDREN AS ACTIVE CITIZENS, supra note 79, at 6; Feingold Interview, supra note 82 (indicating that “birth registration and identity are linked to the issue of citizenship.”); John B. Henriksen, Statelessness—Human Rights: A Preliminary Case On Thailand 56, June 16, 2005 (Unedited 1st Draft—Limited Circulation) (on file with the authors) (noting that “it is extremely difficult to obtain citizenship without being able to present a birth certificate.”).


210. IJM Interview, supra note 40.

211. Vital Voices, supra note 7, at 17 (suggesting that medical facilities may do this because they are uncertain of the law).

212. IJM Interview, supra note 40.

213. Zixin, supra note 36.

214. Ethno-Linguistic, supra note 16, § 2.13. (indicating that “UNESCO ‘also found that a significant number of hill tribe children . . . do not receive legal birth certificates’”); Flaim & Feingold, supra note 11, at 1 (likewise reporting that 25% of “highland minority children” lack birth certificates).
b. Uncooperative District Officials

The citizenship application process in Thailand is unnecessarily lengthy and notoriously burdensome. It often takes far longer than the prescribed period for a local district office to process citizenship applications.\footnote{Lahu Health Project Interview, supra note 21 (reporting that one girl assisted by the Lahu Health Project began the citizenship process when she was 4 years old and received citizenship when she was 16). In one particular district, 3,500 people have been waiting for over 1 year for their citizenship applications to be processed because the local government official is uncooperative. IJM Interview, supra note 40; Janchitfah, supra note 196 (reporting that "district officials are too slow in considering... [villagers'] applications for Thai nationality").} As stated above, the citizenship process for hill-tribes should take three months under Regulation 2000; however, in reality it can take up to five years.\footnote{IJM Interview, supra note 40. "Mae Fah Laung Assistant District Chief Prapan Suriwong said there are more than 40,000 people in the district who are waiting to be registered and to prove that they have been staying in Thailand long enough to qualify under the Nationality Act." Janchitfah, supra note 196. As of 2005, 19,993 applications were being processed to determine eligibility. Id.} Many hill-tribe people and those working with them report that corruption at the local level is common as someone with money or connections can often receive citizenship faster by pressuring or bribing government officials.\footnote{Lahu Health Project Interview, supra note 21. According to those who work with the hill-tribes, if someone has a relationship with the District Sheriff, they can fast track their application if they pay for it. See IJM Interview, supra note 40. "[T]hose with money can always buy nationality cards... [i]t is the peasants who suffer because they don't have enough money [to bribe officials]." Ekachai, supra note 203.}

Even when a citizenship application is approved, government officials have been known to refuse to give hill-tribe people documentation of citizenship.\footnote{IJM Interview, supra note 40. "There are about 200,000 people who have submitted evidence that they have roots in Thailand, but the local authorities have not informed them about their status,' said Surapong Kongchantuk of a human-rights panel at the Law Society of Thailand." Macan-Markar, supra note 199. Discussing hill-tribe people who applied for Thai identity cards but had not heard from the government, Chanparapha Nonttawasri, a researcher at the Hill Area Development Foundation, a Chiang Rai based non-governmental body working with the hill-tribes, said "[i]t is very trying for them, and they don't know what to do." Id.} In one village, government officials withheld citizenship documentation from 150 to 160 people.\footnote{IJM Interview, supra note 40. When IJM went to the District Office, a new District Sheriff was in charge. Sometimes, the new District Sheriff does not trust the previous one. Id.} It is not clear why, beyond ethnic prejudice and abuse of power, these officials refused to deliver the citizenship documentation.

Ignorance of the law also places hill-tribe people at a disadvantage in their dealings with local officials.\footnote{Lahu Health Project Interview, supra note 21. When IJM went to the District Office, a new District Sheriff was in charge. Sometimes, the new District Sheriff does not trust the previous one. Id.} Thai government officials may ignore hill-tribe people who do not know their rights under the citizenship laws
and are unable to enforce them.\textsuperscript{221} In short, failing to process applications, refusing to deliver citizenship documentation, or simply ignoring hill-tribe people are all examples of the reality that Thai government officials are often—in a word—uncooperative.\textsuperscript{222}

c. Flaws in the Citizenship Laws

In Vietnam, Laos, and China, ethnic minorities are citizens by birth.\textsuperscript{223} In Thailand, however, ethnic minorities must attempt to acquire citizenship through a complicated and non-transparent web of laws, paperwork, and bureaucracy.\textsuperscript{224} This is only the beginning of the flaws in Thailand’s citizenship laws.

Additionally, it is unclear whether all children born in Thailand are actually legally entitled to birth registration under Thai law, or whether non-Thai citizens are even allowed to register births.\textsuperscript{225} Notwithstanding Thailand’s obligation to register all children immediately after birth in accordance with Article 24 of the ICCPR and with the CRC, Thai law is ambiguous on this critical question. This ambiguity does not appear to be an accident or simple legislative oversight. Reliable sources report that in 2002 the Ministry of Interior ordered district officials not to register the births of undocumented parents.\textsuperscript{226} If this is true, there is

\begin{itemize}
\item \textsuperscript{221} Id.
\item \textsuperscript{222} In one particular district, 3,500 people have been waiting for over 1 year for their citizenship applications to be processed because the local government official is uncooperative. IJM Interview, supra note 39.
\item \textsuperscript{223} Feingold Interview, supra note 82.
\item \textsuperscript{224} Ethno-Linguistic, supra note 16, § 2.9.
\item \textsuperscript{226} Karn Sermchaiwong, Birth Registration of Migrant Children Born in Thailand, in Burma Peace Foundation, Submission to the Committee on the Rights of the Child regarding Articles 7 and 22 of the CRC (Mar. 16, 2005), available at http://burmalibrary.org/docs3/Submission2005.doc [hereinafter Sermchaiwong] (citing the Act for Registration of Inhabitants B.E. 2534 (1991)). Mr. Sermchaiwong identifies a March 26, 2002 letter of the Bureau of Registration Administration, Ministry of Interior and a May 22, 2002 letter by the Ministry of Interior that states all children born in Thailand are entitled to evidence of their birth in Thailand, but only children of citizens or legal immigrants may be registered in Thailand. See also No Status, supra note 18, at 29 (reporting that “[t]his
clearly a fundamental flaw in Thailand's legal treatment of ethnic minorities. Moreover, it demonstrates hypocrisy on the part of the Thai government, which extends citizenship with one hand, and with the other deprives hill-tribe children of necessary documentation to prove their eligibility.

d. Case in Point: The Mae Ai Villagers

One vivid example illustrates the problems with the implementation of Thailand's citizenship laws. In 2002, 1,243 people in the Mae Ai village of Mae Hong Son province had their citizenship unilaterally revoked.\(^2\)\(^{27}\) The affected people discovered this when they attempted to vote in an election but found their names had been removed from the list of eligible voters.\(^2\)\(^{28}\) It was later revealed that at the time these persons obtained citizenship, a small number of people had fraudulently obtained citizenship.\(^2\)\(^{29}\) By revoking their citizenship, the District Chief, in essence, decided that because he could not determine who committed the fraud, he would revoke the citizenship of all 1,243 people.\(^2\)\(^{30}\)

This group of citizens sued for the reinstatement of their citizenship status. The trial court reinstated their citizenship, a decision which the appellate court upheld.\(^2\)\(^{31}\) On further appeal, the Supreme Administration Court entered a decision registering many of the people as Thai nationals in the civil registration category of Thor. Ror 14.\(^2\)\(^{32}\) The District Chief's error in judgment and abuse of power, however, had already damaged the reputation and lives of those affected. The people suffered tremendously.\(^2\)\(^{33}\) One female teacher lost her job; a man who worked in

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\(^2\)\(^{28}\) According to one of the lawyers on the case, these people were not exclusively hill-tribe people. Kangchantuck Interview, supra note 67. But see Country Reports on Human Rights Practices, supra note 227 (stating the group was “mostly of Burmese or hill tribe origin”).

\(^2\)\(^{29}\) Feingold Interview, supra note 82.

\(^2\)\(^{30}\) Id.

\(^2\)\(^{31}\) Feingold Interview, supra note 82.


\(^2\)\(^{33}\) Feingold Interview, supra note 82.
the Thai army was fired; others had agricultural loans pulled.\textsuperscript{234} As of March 2008, the case was still ongoing, in part, because the district refused to register the children whose citizenship was reinstated by court order until the district received an order from the Department of Local Administration.\textsuperscript{235}

2. Underlying Causes of Ineffective Implementation

\hspace{1em} a. Complicated Laws

The ineffective implementation of Thailand's citizenship laws can be traced to a number of distinct underlying causes, namely: a complicated legal framework, district officials' fear of employment related punishment, ethnic discrimination and prejudice, and government corruption.\textsuperscript{236} The broader legal problem is that "Thailand's nationality laws are some of the most complicated in the world."\textsuperscript{237} The Thai citizenship process and its administration are routinely in flux.\textsuperscript{238} Dozens of laws, revised laws, decrees, and regulations govern the citizenship application process, including certain piecemeal laws specific to the hill-tribes.\textsuperscript{239} Adding to the confusion is the fact that State authorities often interpret the law narrowly and academics accept this narrow interpretation.\textsuperscript{240} Human rights activists, however, do not accept the narrow interpretations of State officials and academics.\textsuperscript{241} The complication of the citizenship laws is compounded by an increasingly complex application process,\textsuperscript{242} official corruption, and prejudice by district officials.\textsuperscript{243}

\begin{itemize}
\item \textsuperscript{234} \textit{Id.}
\item \textsuperscript{235} Saisoonthorn, \textit{supra} note 232.
\item \textsuperscript{236} See \textit{supra} Part III.B.1 (analyzing in detail the different fundamental dynamics that lead to the ineffective implementation of Thailand's citizenship laws, especially as they affect the hill-tribe people).
\item \textsuperscript{237} Feingold Interview, \textit{supra} note 82.
\item \textsuperscript{238} IJM Interview, \textit{supra} note 40.
\item \textsuperscript{239} "The actual process of registering people for citizenship or permanent residency is a lengthy and complicated procedure, as it involves a dozen pieces of legislation and revolutionary decrees." Lertcharoenchok, \textit{supra} note 23, at 4.
\item \textsuperscript{240} Kangchantuck Interview, \textit{supra} note 67.
\item \textsuperscript{241} \textit{Id.}
\item \textsuperscript{242} "The citizenship application process itself has been a barrier for the eligible hill tribe people to attain legal status." \textit{No Status}, \textit{supra} note 18, at 27.
\item \textsuperscript{243} "The process of granting citizenship has been marred by discriminatory laws and procedures, apathy and prejudices of the officials against the hill tribes, corruption, excessive powers in the hands of the District Chief . . . ." Asian Centre for Human Rights, \textit{Thailand: Not Smiling on Rights: A shadow report to the Initial Report}
The complicated nature of the laws means many hill-tribe people are ignorant of their rights. Their ignorance fosters the abuse of power by government authorities who may decide, at their discretion, who receives citizenship and who does not. The confusion about Thailand’s citizenship laws makes it easier for district officials to extract bribes from hill-tribe villagers who are ignorant of the law and unable to enforce their rights.

Ignorance of the law leads many hill-tribe people to erroneously believe that they have no right to citizenship. As a result, they fear district officers and do not understand how to navigate the citizenship application process. On a more practical level, hill-tribe people may lack contact with government officials. Villagers often live in remote mountains far removed from government services. Language barriers also exist, limiting the degree to which hill-tribe people can communicate with government officials who almost always only speak Thai.

b. District Officials Fear Employment Related Punishment

Complicating the legal implementation of Thailand’s citizenship laws is the fact that the local district officer processing citizenship applications is at the lowest level of governmental authority, and yet responsible for making major citizenship decisions. These district officers are rarely

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244. IJM Interview, supra note 40. Some hill-tribe people believe that if you live in Thailand for 10 years that you can then receive Thai citizenship. However, that is not the law. Interview with Lisu hill-tribe villagers, in Chiang Mai, Thailand (Mar. 3, 2008).
245. Don’t Steal Their Future, supra note 196, at 3. No Status, supra note 18, at 27 (reporting that “complex regulations not always fully grasped by local district officials, arbitrary decision making and abuse of the process for personal financial gain, a lack of resources and leadership, and confusion about the identification of eligible persons have contributed to the very slow pace of citizenship grants.”).
246. No Status, supra note 18, at 27.
247. NapaUmporn/Punthip Interview, supra note 78; IJM Interview, supra note 40.
248. NapaUmporn/Punthip Interview, supra note 78. Dr. Punthip accompanies hill-tribe people to their local District Office to help them complete the application process. Dr. Punthip works with hill-tribes in the Mae Ai district in Chiang Mai through the Legal Assistance Center.
250. IJM Interview, supra note 40; Lahu Health Project Interview, supra note 21.
251. IJM Interview, supra note 40; Lahu Health Project Interview, supra note 21.
252. IJM Interview, supra note 40.
253. Feingold Interview, supra note 82; IJM Interview, supra note 40 (noting that “everything is dependent upon the local sheriff”).
well-trained in the laws’ implementation and often do not even know precisely what the citizenship laws provide.\textsuperscript{254}

District officers’ confusion about the law frequently leads to the denial of citizenship applications because of the reality that a district officer may be seriously penalized for mistakenly granting citizenship to an ineligible applicant.\textsuperscript{255} The penalty for approving citizenship of a person who is not legally eligible could be dismissal.\textsuperscript{256} One advocate working with the hill-tribes characterized the Thai government as being afraid “that someone who does not deserve citizenship might get it.”\textsuperscript{257} At the same time, however, the district officer faces no punishment for inaction. If the district officer denies an applicant citizenship or simply does nothing with the application, the official does not face any sanction.\textsuperscript{258} Given the confusion and ambiguity surrounding the citizenship laws, officials often prefer to play it safe by neglecting applications or accepting orders from superiors, rather than acting in compliance with the written law.\textsuperscript{259}

c. Ethnic Discrimination Permeates Implementation

Ethnic prejudice and discrimination against the hill-tribes by Thai government officials\textsuperscript{260} and central Thais\textsuperscript{261} prevents many hill-tribe people

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\begin{itemize}
  \item \textsuperscript{254} Kangchantuck Interview, supra note 67.
  \item \textsuperscript{255} Feingold Interview, supra note 82. “Some local government officials hesitate to accept citizenship applications for fear of harsh career penalties for any mistake in approving ineligible applicants.” Vital Voices, supra note 7, at 24.
  \item \textsuperscript{256} Kangchantuck Interview, supra note 67. The influx of Burmese refugees and economic migrants into Thailand causes district officials to hesitate to grant a hill-tribe person citizenship recognition due to fear that they may actually be a Burmese migrant. IJM Interview, supra note 40. “District authorities remain unsure and bogged down in the law’s complexity and fearful, based on experience, of punishment for granting an incorrect status.” No Status, supra note 18, at 31. See also Feingold Interview, supra note 82; Chayan Vaddhanphuti, Chusak Wittayapak, Khwancheewan Buadaeng & Pinkaew Laungaramsi, State-Making, Contested Spaces and Identifications 5 (2002), http://www.yale.edu/seacm/CRNTHAlpros.pdf (arguing that “the registration for citizenship has become too complex and slow due in part to the fear that any ease of registration regulations would ‘further encourage already substantial immigration.’”).
  \item \textsuperscript{257} Feingold Interview, supra note 82.
  \item \textsuperscript{258} Id.
  \item \textsuperscript{259} NapaUmporn/Punthip Interview, supra note 78. They may also be internal ministerial letters or memorandums sent to District Officers that conflict with the law. Id.
  \item \textsuperscript{260} There is “a longstanding resistance in [Thailand’s] bureaucracy to granting human rights to ethnic minorities.” No Status, supra note 18, at 31. Kingston, supra note 249, at 8 (finding that Thailand’s government has historically considered hill-tribes “enemies of the state”).
\end{itemize} 

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from benefitting from the citizenship laws.\textsuperscript{262} As ethnic minorities, hill-tribe people are often considered not really "Thai."\textsuperscript{263} Thus, some ethnic Thais treat hill-tribe people as aliens.\textsuperscript{264} Prejudice may be one reason that some district officers reject hill-tribe citizenship applications even when they are eligible under the law.\textsuperscript{265} Unfortunately, documentation of citizenship does not always erase such discrimination. Even hill-tribe

\begin{itemize}
\item Dr. Chayan Vaddanaputti, a lecturer in political science at the University of Chiang Mai says that "[t]he demonization and criminalization of ethnic minorities, and the perpetuation of the myth that they are non-Thai, has been embedded since [the 1970's] in Thai textbooks, in Thai history and in the mainstream media." Teena Amrit Gill, \textit{Thai Hilltribes Battling Discrimination}, ASIA TIMES ONLINE, Sept. 1, 2001, http://www.atimes.com/se-asia/CI01Ae01.html. The Thai government’s recent war on drugs further stigmatized the hill-tribes because it targeted hill-tribe villages and people and officials harassed, arrested, and even killed many villagers. \textit{No Status, supra} note 18, at 2.

\item "The law is not the problem; discrimination is." Kangchantuck Interview, \textit{supra} note 67. "The biggest obstacle for hill-tribe people is discrimination. Thai people constantly discriminate against the hill-tribes and treat them as second class citizens." Nesser Interview, \textit{supra} note 64. \textit{See also Ethno-Linguistic, supra} note 16, § 2.16 (noting the need to address "complex issues of social and cultural discrimination"); Country Reports on Human Rights Practices, \textit{supra} note 227 (pointing out that “societal discrimination against hill tribes and religious and ethnic minorities” continues to be a human rights problem in Thailand).

\item Office of the Educ. Council, Ministry of Educ. Education in Thailand 2005/2006 at 38 (2006) (Thail.) [hereinafter \textit{Education in Thailand}] (on file with the authors) (implying that hill-tribe people and Thais are two separate groups by stating that “language barriers and cultural differences among hill-tribe people and Thais are obstacles to communication . . .”) (emphasis added); Feingold Interview, \textit{supra} note 82 (stating that Thailand’s monocultural identity was imported from Europe with Fascism in the 1930’s as being Thai was defined as “Central Thai”); IJM Interview, \textit{supra} note 40.

\item Feingold Interview, \textit{supra} note 82. Some Thais may also have xenophobia or a fear of foreigners. IJM Interview, \textit{supra} note 40. Activists, who met in Bangkok in August 2001 before the World Conference Against Racism, said Thailand’s treatment of ethnic minorities and hill-tribes shows how “racism, racial discrimination and intolerance continue to be practiced in various countries in Southeast Asia”. Gill, \textit{supra} note 261. David Feingold, who worked with the hill-tribes through UNESCO for over thirty years said that “[i]f you do a program for hill-tribes, . . . people say, ‘Why not do something for Thais?’” (emphasis added). \textit{No Status, supra} note 18, at 29.

\item Kangchantuck Interview, \textit{supra} note 67. Ethnic prejudice prevents hill-tribe people from the recognition of their legal rights. \textit{Id}. One District Sheriff in Mae Ai stated that processing hill-tribe citizenship applications is “not an important issue” because the hill-tribes are not Thai. \textit{Id}. Many Thais believe that the hill-tribes are responsible for the cutting of trees or deforestation even though the blame should be put on lumber companies. IJM Interview, \textit{supra} note 40; \textit{see infra} p. 9 and notes 58–63 (describing the fact that hill-tribes are often wrongfully blamed for deforestation in the northern regions). Ethno-Linguistic, \textit{supra} note 16, § 1.3 (noting that “[t]raditional farming practices have often been blamed for deforestation resulting from commercial timbering.”). Pompen Ksongkaosonkiate of the human rights NGO Forum-Asia in Bangkok says that “[a]lthough the law may not be literally discriminatory, the practice is.” Gill, \textit{supra} note 261.

\end{itemize}
villagers who receive citizenship by naturalization may be treated as "second class citizens." 266

d. Government Corruption

It is widely accepted that there is also general corruption involved in the citizenship application process within district offices. 267 District officers sometimes require applicants to produce extra documents not required by law, refuse to take applications, or seek to extract monetary bribes. 268 Bribery tends to drive the government’s inactivity or unwillingness to work with NGOs helping the hill-tribes. 269 It is often difficult for NGOs helping the hill-tribes to form relationships with the district sheriffs who are responsible for processing citizenship applications. 270

Similarly, a lack of professionalism, government corruption, and discrimination prevents many hill-tribe people from registering their children. 271 Some government officials may demand an unofficial “fee” or request additional documents that are not legally required to register a birth. 272 Corruption among government officials is, thus, one reason why many children are not registered at birth. 273 Complicating matters is the hill-tribe people’s lack of understanding of the importance of birth registration and ignorance of the process. 274 Thailand’s failure to register all children,

266. Not Smiling on Rights, supra note 243, at 38. In addition, the Nationality Act allows the Minister of the Interior to revoke the Thai nationality of a naturalized citizen if: “He commits any act prejudicial to the security or conflicting with the interests of the State, or amounting to an insult to the nation; . . . or [or] [] [h]e commits any act contrary to public order or good morals.” Nationality Act § 17. The phrases “prejudicial to the security or conflicting with the interests of the State, or amounting to an insult to the nation” and “contrary to public order or good morals” are undefined legally. Not Smiling on Rights, supra note 243, at 39. The vagueness of these terms allows district officials to arbitrarily revoke someone’s citizenship for almost any pretextual reason. Id.

267. IJM Interview, supra note 40. Sanitsuda Ekachai, Searching For A State—Stymied By Corruption, BANGKOK POST, July 9, 2002 (reporting that “absolute authority has made corruption rife at the village level”); see Country Reports on Human Rights Practices, supra note 227 (stating that “activists reported that widespread corruption and inefficiency at all levels, including among highland village headman and government officials, contribut[es] to a backlog of pending citizenship applications.”).

268. Not Smiling on Rights, supra note 243, at 49.

269. IJM Interview, supra note 40.

270. Id.


272. Id. ¶ 208.

273. Id. ¶ 197.

274. Flaim & Feingold, supra note 11, at 2–3.
especially those whose parents lack Thai citizenship, is a violation of its international obligation under Article 24 of the ICCPR.275

Clearly, the problem of statelessness and the lack of Thai citizenship for many hill-tribe people requires sustained international interest. Inability to benefit from the citizenship laws affects hill-tribes' access to a variety of social services. Arguably, one of the most important of these is basic education for children and youth. Without education, hill-tribe children have little chance of obtaining legal employment and breaking the cycle of poverty in which many of their families are trapped.

IV. EDUCATION: LIMITED ACCESS WITHOUT CITIZENSHIP

As discussed above, lack of citizenship inhibits the hill-tribes' ability to benefit from essential social services. In particular, lack of citizenship prevents hill tribe children from participating meaningfully in Thailand's efforts at education reform.276 Under the current state of the law, all children in Thailand have a right to be educated, regardless of their legal status.277 Furthermore, Thailand has formulated and implemented a number of progressive education policies.278 The implementation of these policies, however, has failed to effectively reach hill-tribe children. This section discusses various practical reasons why hill-tribe children still fail to access quality education. However, problems with education reform run deeper than these practical obstacles. Data from a forthcoming study by the United Nations Educational, Scientific and Cultural Organization (UNESCO) indicates that lack of citizenship is the most significant factor preventing hill-tribe children from participating in the Thai government's "education for all" reform.279

275. See supra notes 178–79 and accompanying text (discussing Thailand's obligations under ICCPR article 24).
276. See infra Part IV.D.1 (discussing the modern movement for education reform in Thailand).
277. See infra Part IV.D.2 (discussing the National Education Act and applicable international law providing that all children have a right to be educated).
278. See infra Part IV.D.3 (discussing the policies of the Ministry of Education as they affect hill-tribe children).
279. See infra Part IV.B.2.a (summarizing the study's data linking citizenship status and educational attainment).
Education reform has been an ostensible priority of the Thai government for over a century. In the late nineteenth century, King Chulalongkom spearheaded what could be considered Thailand’s modern educational reform movement, which focused on the creation of a national education system. In an 1871 decree, King Chulalongkorn captured his progressive view of education by stating, “Once they have acquired a literate education, goodness, beauty, and prosperity will be with them to the end of their days.” During his reign, the phrase “education for all” began to take on political salience in Thailand. The difficulty of planning and financing quality education nationwide, particularly in remote areas, was recognized as a significant challenge at this early stage of educational policy development.

It was not until the middle of the past century that Thailand’s national education system expanded to remote northern areas of Thailand. Fearing the spread of Communist and anti-colonialism movements for independence occurring in neighboring countries, the Thai military government initiated educational programs in remote border areas in the 1950s. These Border Patrol Police Schools were the first schools serving hill-tribes.

281. Fry, supra note 280, at 6.
282. Id. at 5.
283. Id. at 6.
284. Id. at 7. Another stage of Thailand’s education reform movement took place in the 1970s and 1980s which, among other measures, emphasized addressing issues of inequity and inequality in the Thai education system and criticized the handling of rural primary education. Id. at 12-13. The Ministry of Education was subsequently given responsibility for rural primary education. Id.
286. Id.; see supra notes 51-52 and accompanying text (describing the creation of the Border Patrol Police).
The Thai government's policy toward educating the hill-tribe population has evolved over the past several decades. In the 1950s, it was defined by concerns about assimilating them for national security reasons; focus then shifted to curtailing opium production and agricultural enhancement; in the late 1990s, the theme "education for all" was promoted following the 1997 Constitution; today, government policy includes the preservation of highland culture as a goal.

Education reform in Thailand picked up speed in the wake of the Asian economic crisis. Thailand has joined other countries in an effort to revamp its educational system in order to stay economically competitive. A lingering question is whether hill-tribes will be able to take advantage of the positive aspects of this reform.

2. Education Law and Policy Today: Right to Education Under the Law

While the government's educational policies regarding the hill-tribes have become increasingly progressive, hill-tribe children will see little tangible benefit from them if they are not actually attending school. This section examines the recently established right of all children to go to school regardless of their citizenship status and discusses the structure of the education system designed to educate them.

The 1997 Constitution mandated education reform by providing at least twelve years of free, quality basic education and decentralizing the educational administrative structure. The National Education Act of

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288. See supra notes 51-52 and accompanying text (describing the circumstances surrounding the creation of the Border Patrol Police).
289. See supra notes 53-63 and accompanying text (discussing the history of the Thai government's attitude towards the hill-tribes).
290. Flaim & Feingold, supra note 11, at 4. See No Status, supra note 18, at 27; supra note 65 and accompanying text.
291. Fry, supra note 280, at 17.
293. KINGDOM OF THAIL. CONST. § 43 (1997).

A person shall enjoy an equal right to receive the fundamental education for the duration of not less than twelve years which shall be provided by the State thoroughly, up to the quality, and without charge.

In providing education by the State, regard shall be had to participation of local government organizations and the private sector or as provided by law.

Id.

The State shall decentralize powers to localities for the purpose of independence and self-determination of local affairs, develop local economics, public utilities and facilities systems and information infrastructure in the locality thoroughly and equally throughout the country as well as develop into a large-sized local government organization a province ready for such purpose, having regard to the will of the people in that province.
1999 (National Education Act) codifies this requirement, providing a right to free education for twelve years for all children. The National Education Act further mandates nine years of compulsory education. In 2002, twelve years of free basic education was first made available to Thai students in accordance with this mandate.

The 1997 Constitution, however, did not unambiguously grant persons without legal status the right to attend Thai public school. The Constitution states that “a person” enjoys an equal right to basic education, but makes no statement to the effect that stateless children are “persons.” The National Education Act apparently resolves this ambiguity by providing that “all individuals” throughout the nation of Thailand have an equal right and opportunity to receive free basic education for twelve years. However, this “education for all” policy was not consistently interpreted to extend to hill-tribe children after the National Education Act’s enactment. Stateless hill-tribe children continued to face barriers to entering primary school, including discriminatory treatment and outright denial of admission.

In 2005, the Ministry of Education took an important step toward correcting this situation by issuing a directive guaranteeing free and

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Id. at § 78; National Education Act B.E. 2542, § 9(2) (1999) (Thail.), available at http://www.moe.go.th/English/edu-act.htm (stating that “[d]ecentralization of authority to education service areas, educational institutions, and local administrative organizations” is an organizational principle); Fry, supra note 280, at 17–18 (stating that “[b]oth educational reform and decentralization were mandated by the new [1997] constitution”).

294. National Education Act § 10. “In the provision of education, all individuals shall have equal rights and opportunities to receive basic education provided by the State for the duration of at least 12 years. Such education, provided on a nationwide basis, shall be of quality and free of charge.” Id.

295. Id. § 17. “Compulsory education shall be for nine years, requiring children aged seven to enroll in basic education institutions until the age of 16 with the exception of those who have already completed grade 9.” Id. Fry, supra note 280, at 25.


297. KINGDOM OF THAIL. CONST. § 43.

298. National Education Act § 10. “In the provision of education, all individuals shall have equal rights and opportunities to receive basic education provided by the State for the duration of at least 12 years. Such education, provided on a nationwide basis, shall be of quality and free of charge.” Id. The National Education Act further provides that persons with disabilities will receive special education free of charge at birth or after being diagnosed. Id.

299. Flaim & Feingold, supra note 11, at 4.

300. See No Status, supra note 18, at 2, 14, 28–29.
compulsory primary education to all children regardless of legal status.\textsuperscript{301} Under this clarification of the law, there is no longer any legal ambiguity about the right of stateless hill-tribe children to enroll in public school. All children in Thailand have the right to receive basic education, regardless of citizenship status.

Outside this body of Thai law, international agreements to which Thailand is a signatory also establish that all children, including those without legal status, have a right to attend Thai public schools. The International Covenant on Economic, Social, and Cultural Rights protects the right of every person, regardless of citizenship, to access education.\textsuperscript{302} Similarly, the Convention on the Rights of the Child recognizes the right of all children to education.\textsuperscript{303}

In light of the clear statements in Thai education law as well as international agreements to which Thailand is a signatory, all children throughout Thailand have a right to receive free basic education for at least twelve years.

3. Administration of Education in Thailand

As the previous sections described, the Thai government has taken important legal steps to reform the treatment of stateless children in the education system.\textsuperscript{304} Broad education reform in Thailand is still underway, with a focus on: curriculum development and research, teaching reform, decentralization of authority, effective budget allocation, and improving overall school quality, particularly in remote areas.\textsuperscript{305} The stated goals and policies of the Thai government and the Ministry of Education in particular demonstrate a commitment to improving education under the theme "education for all."\textsuperscript{306}

Although the law may be clear in the abstract, the type of education that hill-tribe children actually receive depends upon the Ministry of Education’s implementation of that law. This implementation can best be understood by first considering the educational landscape that the Ministry of Education envisions.\textsuperscript{307} An examination of the National

\textsuperscript{301} Flaim & Feingold, supra note 11, at 4.
\textsuperscript{303} Convention on the Rights of the Child, supra note 180, art. 28.
\textsuperscript{304} See Fry, supra note 280 (discussing the history of educational reform in Thailand).
\textsuperscript{305} See Education in Thailand, supra note 263, at 4.
\textsuperscript{306} See supra Part IV.A.2 (describing the laws that guarantee all children a right to an education).
\textsuperscript{307} See infra Part IV.A.3 (describing the administrative structure of the Ministry of Education).
Education Act as well as the Ministry of Education's internal structure and plan for implementing educational reform shed light on how these policies do or should affect the hill-tribes.  

The National Education Act recognizes three categories of education: formal, nonformal, and informal education. "Formal" education, divided into basic and higher education, refers to education that is provided by institutions that requires completing specific, uniform curricula and evaluates students on the basis of objective, standard criteria. In contrast, "nonformal" education refers to flexible programs that attempt to address the needs of individual learners rather than rely on specified curricula and evaluation criteria. The Department of Nonformal Education oversees some nonformal education programs attempting to respond to the needs of hill-tribe children. Finally, "informal" education is available to the general public through different media and public and private sources of knowledge. Examples of informal education include public libraries, educational radio and television programs, and village reading centers. While all forms of education should be available to hill-tribe children, the focus of this article is on their access to basic, formal education.

Thailand's Ministry of Education is responsible for overseeing all levels and types of education provided by the Thai state. Within the Ministry, five main bodies manage educational administration, including

308. See supra Part IV.A.2 (discussing the ways hill-tribe children should benefit from these policies).
310. Id. § 15(1). "Formal education shall specify the aims, methods, curricula, duration, assessment, and evaluation conditional to its completion." Id.
311. Id. § 15(2). "Non-formal education shall have flexibility in determining the aims, modalities, management procedures, duration, assessment, and evaluation conditional to its completion. The contents and curricula for non-formal education shall be appropriate, respond to the requirements, and meet the needs of individual groups of learners."
312. See Case Study on Education Opportunities, supra note 51. This report summarizes the educational programs of the Department of Nonformal Education (DNFE) directed at the hill-tribes. For example, the DNFE established "community learning centres" in the 1990s in some areas to promote literacy among hill-tribes. Id. at 8–10. Some centers were established through the "Hill Area Education Project." Id. at 9. The Department of Agricultural Extension and the Department of Public Welfare also coordinate various support programs in hill-tribe communities. Id. at 10–15.
313. National Education Act § 15(3). "Informal education shall enable learners to learn by themselves according to their interests, potentialities, readiness and opportunities available from individuals, society, environment, media, or other sources of knowledge." Id.
314. EDUCATION IN THAILAND, supra note 263, at 4.
the Office of the Basic Education Commission (OBEC), which is responsible for providing basic formal education.315 “Basic education” comprises the twelve years of education before the college and university level.316 It covers six years of primary school, three years of lower secondary school, and three years of upper secondary school.317 The nine years of primary and lower secondary school are considered compulsory.318

4. Hill-Tribe Children in the Thai Education System

Hill-tribe children constitute about five percent of the eight million students in the Thai public school system.319 The policies of the Ministry of Education and OBEC stated above apply equally to hill-tribe children as to other children in the public school system.320 Although there are no distinct educational policies regarding hill-tribe children, there are some special programs available for children who are “socially and/or culturally disadvantaged.”321 Most children considered “disadvantaged” study in regular Thai public schools; however, two special programs exist that support their education: the “Border Patrol Police Schools” and the “Welfare Schools.”322


317. EDUCATION IN THAILAND, supra note 263, at 29.

318. Id.


320. Id. In Part IV.B, this Article will examine whether and how hill-tribe children actually benefit from those policies. See infra Part IV.B (analyzing the failed implementation of the citizenship and education laws).

321. EDUCATION IN THAILAND, supra note 263, at 37 (stating that several agencies provide education for disadvantaged children, including the Ministry of Education, the Border Patrol Police Bureau, the Department of Social Development and Public Welfare, and certain non-governmental organizations); Basic Educ. Comm. Interview, supra note 319. Ms. Subannapong and Mr. Kaewchamnam stressed that all schools receive the same equipment; in fact, they stated that hill-tribe schools sometimes even receive better equipment because they are considered “disadvantaged.” Id.

322. EDUCATION IN THAILAND, supra note 263, at 38–39.
According to materials published by OBEC, the Border Patrol Police Bureau has undertaken some development projects, such as rural medical aid stations and schools in remote areas.\footnote{Id. at 38. The main responsibility of the Border Patrol Police Bureau is to maintain border security in the northern provinces. Id.} Between 1956 and 2005, 713 such schools were established under the patronage of the Royal Family.\footnote{Id.} Not all of these schools have permanent structures; those that do have school buildings, a sufficient number of students, and stable "quality of life of people in the surrounding area" are transferred to the supervision of the Ministry of Education.\footnote{Id.}

The OBEC also supervises "Welfare Schools," which provide education, food, clothing, school supplies, accommodations, and sometimes special vocation training.\footnote{Id.} OBEC reports that in 2004, there were 5,449 "minority children" studying at the Welfare Schools, most of whom were boarders.\footnote{Id. at 39.} However, the report concedes that "[i]t is difficult to present the actual number of disadvantaged children having access to basic education because of the different terms used to define the groups."\footnote{Id.} Disadvantaged students attending both regular schools and Welfare Schools are divided into ten sub groups.\footnote{Id.} "Hill-tribe" or "highlander" children are not specifically categorized; therefore, it is difficult to draw any conclusions about the number of hill-tribe children attending Border Patrol Police Schools or Welfare Schools.

As the OBEC materials acknowledge, most "disadvantaged students," which presumably includes some hill-tribe children, are attending regular Thai public schools. Thus, they are theoretically taught the same formal education curriculum, regardless of location.\footnote{Id. at 39-40. The ten sub-categories of disadvantaged children studying in both regular and Welfare Schools are (1) "Children forced to enter the labour market," (2) "Child sex workers," (3) "Abandoned Children and Orphans," (4) "Children in Observation and Protection Centres," (5) "Street Children," (6) "Children affected by HIV/AIDS," (7) "Children of Minorities,"(8) "Physically Abused Children," (9) "Impoverished Children," and (10) "Children affected by narcotic drugs." Id.} Teachers at village schools in the highland areas do have discretion to incorporate "local wisdom" (such as weaving or farming) into the curriculum.\footnote{Basic Educ. Comm. Interview, supra note 319.} Despite the ability
to teach some local curriculum, they do not teach local languages at Thai schools.\textsuperscript{322}

The location of schools administered by OBEC is based on the division of the country into 175 educational services areas for the purpose of decentralizing educational administration.\textsuperscript{333} There is supposed to be a school no more than five kilometers from every village.\textsuperscript{334} Under this system, there are about three villages for every school service area.\textsuperscript{335} Many hill-tribe children, however, must walk to school from their villages because there is no school bus service or public transportation.\textsuperscript{336} According to officials at the Policy and Planning Bureau of OBEC, there is some assistance available for children who live too far from school to commute daily.\textsuperscript{337} The officials stated that 20,000 children are currently boarding at Thai public schools under a government program that provides 2,600 baht, or approximately $82.00, for room and board.\textsuperscript{338}

\textbf{B. Implementation of the Education Laws}

In 1986, the Thai-Norwegian Church Aid and Payap University conducted focus interviews among the hill-tribe population and ranked the urgent problems facing the hill-tribe community.\textsuperscript{339} Regarding the availability and quality of education, the hill-tribes identified the following problems as most pressing: illiteracy, irregular teaching by village teachers, lack of funds for school fees, and prohibitive distances to nearby schools.\textsuperscript{340} As the following section will demonstrate, these problems regarding quality and access to education have changed very little in the last two decades.

\begin{itemize}
\item \textsuperscript{322} \textit{Id.}
\item \textsuperscript{333} Basic Educ. Comm. Interview, \textit{supra} note 319; \textit{Education in Thailand}, \textit{supra} note 263, at 7. Each service area is responsible for between 300,000 and 500,000 students. \textit{Id.} An evaluation of the educational service areas by the Ministry of Education in 2005-2006 found that "81 of the 175 educational service areas are able to provide satisfactory services, 64 are nearly ready to provide services, 24 still require assistance, and 2 need further improvement." \textit{Id.} Some sources also state that there are 185 educational service areas.
\item \textsuperscript{334} Basic Educ. Comm. Interview, \textit{supra} note 319.
\item \textsuperscript{335} \textit{Id.}
\item \textsuperscript{336} \textit{Id.}
\item \textsuperscript{337} \textit{Id.}
\item \textsuperscript{338} \textit{Id.} See \textit{Education in Thailand}, \textit{supra} note 263, at 39 (stating that 92\% of students at Welfare Schools are boarders).
\item \textsuperscript{339} Flaim & Feingold, \textit{supra} note 9, at 5, citing Robert, L., R. Batzinger, and R. Renard, \textit{Census of Problems of Highlanders in Thai-Norwegian Church AID Highland Development Project Areas: An Analysis with Suggested Priorities in Development} (Chiang Mai: Payap Research Center 1986).
\item \textsuperscript{340} \textit{Id.}
\end{itemize}
The Thai government’s education reform efforts demonstrate the government’s commitment to the concept of “education for all.”\textsuperscript{341} Educational reform in Thailand, however, has thus far largely failed to eliminate the obstacles to education that face many hill-tribe children and youth.\textsuperscript{342} In 2005, the Asian Centre for Human Rights reported that only approximately fifty-one percent of hill-tribe children were enrolled in primary school, compared to the national average of eighty-seven percent.\textsuperscript{343} There are a number of practical causes of low hill-tribe enrollment in school.\textsuperscript{344} However, this article concludes that lack of citizenship is the most significant barrier to the successful implementation of Thailand’s education laws for school age hill-tribe children and youth.

\textit{1. Gaps Between Policy and Practice: Practical Barriers to Education}

Although the Thai Constitution and the National Education Act expanded free education to the upper secondary levels, and although the Ministry of Education has clearly stated that “all” children have a legal right to receive education in Thai schools, hill-tribe children remain educationally disadvantaged.\textsuperscript{345} There are various practical, as opposed to legal, obstacles to hill-tribes’ access to education.

\textit{a. Ineffective Communication of the Ministry of Education’s Policies}

The Ministry of Education’s efforts to reform its policies toward stateless children are not always effectively communicated to government officials who work with those children. The Ministry of Education oversees the administrative structure of the Thai education system; the Ministry is further divided into five main agencies, one of which is the

\textsuperscript{341} See No Status, supra note 18, at 30 (stating that there have been “some significant improvements” in the situation of hill-tribe women and girls, in part because of the effect of compulsory education).

\textsuperscript{342} Id. (noting that the improvements have not translated into more opportunities for young women, because secondary and university education remain difficult to obtain and that).

\textsuperscript{343} Not Smiling on Rights, supra note 243, at 13.

\textsuperscript{344} See infra Part IV.B.1 (discussing the practical, as opposed to legal, obstacles to education).

\textsuperscript{345} See infra Part IV.B.1 (discussing how hill-tribe children are educationally disadvantaged, despite the law).
Office of the Basic Education Commission. The OBEC’s activities are administered by thirteen bureaus, including the Bureau of Policy and Planning (BPP), which is responsible for creating educational policies and allocating the budget for educational institutions. The BPP communicates education policies to Thai public school teachers through the Educational Service Area Offices (ESAO). According to officials at the BPP, the directors of each ESAO meet every two months to discuss education policy. Every three months, the Chiefs of the Planning Section of every ESAO meet for the same purpose. The Chief of the Planning Section at each ESAO is responsible for communicating the Ministry’s policies to school principals in his or her area.

This communication structure reflects the Ministry of Education’s commitment to the goal of decentralization. However, the Ministry’s regulations regarding the treatment of children without citizenship may not be reliably communicated through this chain. Although the Ministry’s regulations provide that Thai educational institutions must provide equal education opportunities to children without citizenship, the Ministry has conceded that many officials “may not understand this regulation clearly.” Lack of knowledge of Thailand’s education laws causes confusion among school officials and leads to ineffective implementation of the law. This ignorance and confusion, in turn, helps create a situation where many hill-tribe people do not realize that they and their children have a right to education.

b. School Enrollment

Despite the clarity of the education laws in this area, in many circumstances hill-tribe children without citizenship are denied enrollment in Thai public schools. If admitted, they may not be issued a diploma.

346. EDUCATION IN THAILAND, supra note 263, at 5-6; see supra Part IV.A.3 (describing the administrative structure of the Ministry of Education).
348. Id.
349. Id.
350. Id.
351. Id.
353. See infra Part IV.B.1.b (citing research finding that hill-tribe children are still rejected from schools despite the law).
354. See, e.g., Interview with Lisu hill-tribe villagers, in Chiang Mai, Thail. (Mar. 3, 2008). Some of the villagers believe that a child must have Thai citizenship to attend Thai public school in Chiang Mai city. See, e.g., Cholchaya Suwanpanmani, One Big Happy Family, BANGKOK POST, Nov. 28, 2006 (incorrectly stating, “Without a Thai national identity card, Angkana [an Akha refugee from Burma] isn’t entitled to receive the free compulsory education in Thailand . . . .”).
certifying their completion of the appropriate levels of education. Many NGOs working with the hill-tribes state that school officials continue to deny hill-tribe children admission to school despite the new law and the Ministry of Education directive.\textsuperscript{355}

Hill-tribe children who are able to attend school face further difficulties when it is time to matriculate. They may be denied a school certificate, although a law requiring schools to issue certificates or diplomas to children without citizenship is improving this problem.\textsuperscript{356} At every level of education, however, school officials can and do stamp certificates with a mark designating that the student does not have Thai citizenship.\textsuperscript{357} There is, unfortunately, no law prohibiting this practice.\textsuperscript{358} Such a mark on a school certificate limits the ability of hill-tribe students to continue to higher education or find lawful employment.

c. Cost and Distance to School

Education-related expenses and long distances to school are significant obstacles to educational attainment.\textsuperscript{359} Although compulsory basic education is free, the cost of lunch, uniforms, fees, and supplies can pose an insurmountable obstacle to education for many hill-tribe children.\textsuperscript{360}  

\textsuperscript{355} Not Smiling on Rights, supra note 243, at 50 (stating that despite the Ministry regulation clarifying that all children can go to school, some official still refuse to admit students or to give them necessary scholarships or food subsidies); IJM Interview, supra note 40; Nesser Interview, supra note 64 (stating that schools avoid enrolling hill-tribe children by claiming they have met a "quota" of hill-tribe children, or by stating that they are not familiar with the education laws that require all children to attend school); NapaUmporn/Punthip Interview, supra note 78 (stating that some village schools do not know about the laws or claim not to).

\textsuperscript{356} IJM Interview, supra note 40.

\textsuperscript{357} Id. The IJM staff stated that in the past, there was no law requiring schools to give diplomas to children without legal status; thus, teachers often refused to give children without Thai citizenship academic diplomas. Id. However, it may be becoming easier for hill-tribe children to receive academic diplomas in light of a recent clarification of the law. Id. The staff at one NGO stated they had heard of schools writing "not a citizen" or marking diplomas with a red stamp denoting that a student is not a Thai citizen. Lahu Health Project Interview, supra note 21.

\textsuperscript{358} IJM Interview, supra note 40.

\textsuperscript{359} Flaim & Feingold, supra note 11, at 4; IJM Interview, supra note 40. Aphae stated that educational expenses, as well as the fact that hill-tribe children are not eligible to receive government scholarships, are a barrier to education for many hill-tribe children. Id.

\textsuperscript{360} Interview with Lisu hill-tribe villagers, supra note 354. The villagers stated that the financial costs associated with education are a barrier to sending their children to school. Id. They listed school books, uniforms, lunches, and boarding as some of the costs. Id.; see IJM Interview, supra note 40 (describing some of the costs associated
There is some government funding available for children who cannot afford to pay school related fees, but it is debatable whether hill-tribe children routinely receive funding under these programs. Distance to school is also a barrier to matriculating to higher levels of education. Most villages have only primary schools, so hill-tribe students must travel significant distances to attend secondary school or college. Without documentation of legal status, students must apply to district immigration offices for permission to travel outside their district. Such travel restrictions, therefore, impede hill-tribe families' ability to enroll their children in secondary education.

d. Quality of Schooling

The quality of schooling in remote, rural areas of northern Thailand is a highly significant impediment to the educational attainment of hill-tribe children. Thai public schools in city centers are generally superior to village schools because they have more teachers and more equipment. Staff at numerous NGOs in Thailand stated that village schools deteriorate in more remote areas, where schools are more heavily populated with hill-tribe children. Some heard reports of, or personally witnessed, teachers in remote areas working only two or three days a week. The

with basic education and why they pose an obstacle to some hill-tribe children); Not Smiling on Rights, supra note 243, at 50 (discussing the fact that the unavailability of necessary food subsidies and scholarships to hill-tribe children severely limits their access to education).

361. According to OBEC, both merit-based and need-based government educational scholarships exist and all children are eligible to receive funding for school, regardless of citizenship. Basic Educ. Comm. Interview, supra note 319. OBEC stated that even children from Burma, who may be in the country illegally, are eligible. Id. For purposes of these scholarships, “poor” children are those that come from families earning less than 50,000 baht per year. Id.

362. See Not Smiling on Rights, supra note 243, at 50 (stating that school officials often refuse to give hill-tribe children necessary food subsidies and scholarships).

363. IJM Interview, supra note 40. There are also many primary school age children who have difficulty traveling to school. Interview with Lisu hill-tribe villagers, supra note 354. In one Lisu village, the villagers stated that it is often difficult to transport children to school. Id. A local friend of the villagers, a teacher from the nearby Lisu Bible Institute, transports the children in his pickup truck. Id. However, the villagers do not know how the children will travel to school when the teacher returns to the United States in April. Id.

364. IJM Interview, supra note 40; Lahu Health Project Interview, supra note 21 (stating that travel restrictions affect access to education).

365. Lahu Health Project Interview, supra note 21.

366. IJM Interview, supra note 40; Lahu Health Project Interview, supra note 21; Nesser Interview, supra note 64.

367. Lahu Health Project Interview, supra note 21; IJM Interview, supra note 40 (stating that there is a need for committed teachers and that some teachers in northern Thailand start classes late or end early); Nesser Interview, supra note 64. Ms. Nesser stated that she personally witnessed the failure of teachers at remote schools to fulfill
staff at one NGO speculated that even if the hill-tribe children from these villages could afford to go to school in the city, they probably would not be able to pass the exams required because of the low quality education they have received. Because of the cost and difficulty of traveling between districts, hill-tribe parents cannot easily surmount this problem by sending their children to higher quality city schools.

3.6. Language

The fact that all education in Thai public schools takes place in the Thai language handicaps hill-tribe children in those schools. The Asian Centre for Human Rights argues that Thai language education is a major obstacle to education and vocational training of hill-tribes. The staffs at other NGOs agree that although many hill-tribe children speak Thai, their language skills are not often advanced to the level necessary to enter school.

Furthermore, the hill-tribes legitimately fear that their local language and culture are in jeopardy due to Thai language-only instruction. Although hill-tribe parents recognize their children need to learn Thai to find employment and participate in Thai society, they fear that Thai language education will hasten the demise of highly valued tribal language and culture.

2. Citizenship: The Sine Qua Non of Reform

Without discounting the important effects of the foregoing factors on access to education, the most significant obstacle to education for most hill-tribe children is lack of Thai citizenship. Addressing the needs of hill-tribe children with respect to cost, distance, and quality of schooling

their assignments; instead, they would fill in attendance sheets without having actually been to the school. Id.

368. Lahu Health Project Interview, supra note 21.
369. IJM Interview, supra note 40.
370. Not Smiling on Rights, supra note 243, at 18 (noting that language barriers are also a serious obstacle to obtaining citizenship). The Report also notes that the failure to teach indigenous children in their own languages is a violation of Article 27 of the International Covenant on Civil and Political Rights. Id. at 50.
371. IJM Interview, supra note 40; Nesser Interview, supra note 64.
372. Lahu Health Project Interview, supra note 21 (stating that hill-tribe parents worry that their children will lose their hill-tribe culture if they go to Thai public schools in the city).
373. IJM Interview, supra note 40.
is necessary, but not sufficient, to effect real education reform. Rather, the documented link between legal status and educational attainment demonstrates that lack of citizenship is the most significant barrier to education for hill-tribe children.

a. UNESCO Research Confirms Educational Disadvantage

A forthcoming study by the United Nations Educational, Scientific and Cultural Organization (2008 UNESCO Study) indicates that despite the Thai government’s commitment to “education for all,” hill-tribe children are still not accessing education at the same rate as ethnically Thai children who have Thai citizenship.\(^\text{374}\) Using data from the UNESCO Highland People’s Survey of 2006, which focused on issues of birth registration, citizenship, and access to social services in northern Thailand, the 2008 UNESCO Study analyzed the impact of legal status on educational attainment.\(^\text{375}\)

The 2008 UNESCO Study compares the educational attainment of persons with one of the following statuses of legal registration: (1) official Thai citizenship, (2) official birth registration, (3) a delivery certificate, and (4) no legal status.\(^\text{376}\) The Study compares the impact of legal status on the degree of educational attainment among the following four categories of persons: (1) Thai citizens, (2) alien permanent residents, (3) alien nonpermanent residents, and (4) persons with no legal status.\(^\text{377}\) The Study concludes that lack of citizenship and lack of birth registration have a significant negative impact on the likelihood that hill-tribe children will progress through school.\(^\text{378}\)

The Study reveals that Thai citizens are significantly more likely to begin basic primary school education than non-Thai citizens living in Thailand. In comparison to Thai citizens, those with no legal status and alien non-residents are seventy percent less likely to enter basic primary education.\(^\text{379}\) Similarly, alien permanent residents are fifty percent less likely than Thai citizens to enter primary school.\(^\text{380}\)

\[^{374}\] Flaim & Feingold, supra note 11, at 11–12.

\[^{375}\] Flaim & Feingold, supra note 11, at 7. The UNESCO Highland Peoples’ Survey from 2006 was implemented in Mae Hong Son, Chiang Mai and Chiang Rai provinces by local offices of the Thai Ministry of Social Welfare and Development. The survey covered 192 international border villages, except those in restricted military zones. Id.

\[^{376}\] Id. at 2.

\[^{377}\] Id. at 9–10.

\[^{378}\] Id. at 11.

\[^{379}\] Id. at 9.

\[^{380}\] Id.
The advantage of Thai citizenship is still apparent as children progress through school, in that the attrition rate of children who are not Thai citizens is much higher. Compared to Thai citizens, the Study found that noncitizens with a minimum of lower primary schooling are disadvantaged in matriculating to upper primary school.\textsuperscript{381} Alien nonpermanent residents are thirty-three percent less likely to progress to upper primary school, and both alien nonresidents and those with no legal status are about fifty-six percent less likely than Thai citizens to progress to upper primary school.\textsuperscript{382}

The Study results indicate that these disadvantages remain relevant as children matriculate to lower and upper secondary school.\textsuperscript{383} Those with no legal status are forty percent less likely to matriculate at the lower secondary level, given attendance at upper primary school.\textsuperscript{384} Moreover, individuals of both alien statuses are twenty-five percent less likely to matriculate to lower secondary school.\textsuperscript{385} Matriculation to upper primary school is similar—those with no status are thirty percent less likely to progress to upper secondary, whereas alien permanent residents and alien nonpermanent residents are over fifty percent less likely.\textsuperscript{386}

The foregoing results analyze the rate of educational attainment of Thai citizens versus persons with alien resident or no legal status whatsoever. The Study also examines the impact of birth registration status on educational attainment.\textsuperscript{387} It compares data regarding three categories of persons: (1) those with a delivery certificate, (2) those with no birth registration at all, and (3) those with an official Thai birth certificate.\textsuperscript{388} This portion of the analysis reveals a “complicated relationship” between

\textsuperscript{381} Id.
\textsuperscript{382} Id.
\textsuperscript{383} Id.
\textsuperscript{384} Id.
\textsuperscript{385} Id.
\textsuperscript{386} Id. at 9–10. The authors noted that: The lack of significant differences in the likelihood of matriculation from upper secondary school to higher education between Thai citizens and those with no status and those with alien permanent residency likely reflects the fact that the highland population that has attained upper secondary schooling despite these significant barriers is highly selected. If this population were compared to urban populations in Chiang Mai city, for example, data would likely reveal that all non-citizens are highly disadvantaged in matriculating to higher education relative to Thai citizens.
\textsuperscript{387} Id. at 10.
\textsuperscript{388} Id. at 10.

\textsuperscript{545}
birth registration and access to education for hill-tribes.\textsuperscript{389} Surprisingly, it finds that those with a delivery certificate are \textit{more} likely to enter lower primary school and progress to upper primary school than those with official birth registration.\textsuperscript{390} However, the converse is true at the secondary level of education.\textsuperscript{391} Children with a delivery certificate who accessed upper primary education are thirty percent \textit{less} likely to matriculate to upper secondary school than children with official birth registration.\textsuperscript{392} Thus, although a delivery certificate appears to confer some educational advantage at the early stage of primary education, this advantage does not last through the secondary education level. The Study concludes that because children with a delivery certificate are likely officially registered but do not have Thai citizenship, official birth registration is important at early stages of education but is not sufficient to ensure equal access at higher levels of education.\textsuperscript{393}

Data regarding children with no birth registration whatsoever also reveals complicated results. The Study finds that children with no birth registration are sixty percent less likely to even enter lower primary school than those with official birth registration.\textsuperscript{394} Thus, few children with no birth registration will enter school at all. However, among those children who do enter lower primary school, children with no status are sixty percent \textit{more} likely to enter upper primary school than those with birth registration.\textsuperscript{395} Based on this data, the Study hypothesizes that after children without birth registration overcome the obstacles to accessing lower primary school, the issue of birth registration is no longer significant, possibly because lower and upper primary school is often taught in the same building.\textsuperscript{396}

Likewise, the Study finds that children with no birth registration are twenty percent less likely to enter lower secondary school compared to those with official Thai birth registration, which indicates that birth registration is an important issue for hill-tribe people at higher levels of schooling.\textsuperscript{397}

The 2008 UNESCO Study concludes that persons with no legal status face highly significant obstacles to accessing education, even controlling for the location of schools in villages.\textsuperscript{398} Furthermore, alien permanent

\textsuperscript{389} Id.
\textsuperscript{390} Id.
\textsuperscript{391} Id.
\textsuperscript{392} Id.
\textsuperscript{393} Id.
\textsuperscript{394} Id.
\textsuperscript{395} Id. at 11.
\textsuperscript{396} Id.
\textsuperscript{397} Id.
\textsuperscript{398} Id.
or nonpermanent resident status is insufficient to guarantee equitable access to schooling compared to Thai citizens.\textsuperscript{399} While a delivery certificate appears to protect children’s ability to access basic primary education, it is not sufficient to protect their ability to matriculate to secondary school.\textsuperscript{400} Meanwhile, children with no official birth registration status face obstacles at all levels of lower education.\textsuperscript{401}

\textit{b. Field Research Confirms Educational Disadvantage}

The field research completed for this article supports the conclusions of the 2008 UNESCO Study. Scholars, NGO staff, and the hill-tribe people themselves recognize that lack of citizenship presents a virtually insurmountable obstacle to accessing social services, including education.

For example, one NGO working in Chiang Mai, Thailand, reported that primary or lower secondary education is the highest level of education that the hill-tribe children they work with typically attain.\textsuperscript{402} The staff also stated that although most of the children they work with are attending school, only last year a school refused to accept non-Thai citizen children.\textsuperscript{403} In their opinion, hill-tribe children with Thai citizenship have a better chance of receiving advanced degrees.\textsuperscript{404} Even with a college education, however, hill-tribe people without citizenship will face discrimination and difficulty finding employment because it is illegal to employ persons without citizenship.\textsuperscript{405} According to the staff at this NGO, the two main reasons non-citizen children do not go to college are lack of money and lack of citizenship.\textsuperscript{406}

The staff at International Justice Mission (IJM) focus on assisting hill-tribe people in attaining citizenship. IJM’s staff state that lack of citizenship prevents hill-tribe children from accessing equal education and receiving academic credentials.\textsuperscript{407} Although hill-tribe children can legally attend Thai schools, they reported that schools may turn away children who do not have Thai citizenship, possibly because they still do

\begin{itemize}
\item 399. \textit{Id.}
\item 400. \textit{Id.}
\item 401. \textit{Id.}
\item 402. Lahu Health Project Interview, \textit{supra} note 21.
\item 403. \textit{Id.} (stating that in 2007, one school rejected non-Thai citizen hill-tribe children, accepting them only if there was room after admitting Thai citizens).
\item 404. \textit{Id.}
\item 405. \textit{Id.}
\item 406. \textit{Id.}
\item 407. IJM Interview, \textit{supra} note 40.
\end{itemize}
not know the law, although efforts to educate schools and teachers are improving.\textsuperscript{408}

Likewise, the founder of the Thai Freedom House in Chiang Mai, Thailand stated that hill-tribe children and refugees are routinely denied enrollment for many different reasons.\textsuperscript{409} For example, schools may state that hill-tribe children are registered in a certain village and must attend school in that village; refuse admission to children with no house registration; claim to have met their “quota” of hill-tribe students; or claim ignorance of the education laws requiring all children to go to school.\textsuperscript{410}

There are many factors inhibiting equal access to education for hill-tribe children. However, academics, researchers, those who work with the hill-tribes, and hill-tribe people themselves consistently agree that the most significant factor affecting the ability of hill-tribe children to access education is lack of citizenship.\textsuperscript{411}

V. PROPOSAL

"Stateless individuals are some of the world’s most vulnerable people. They are also some of the least known."\textsuperscript{412}

The hill-tribes, especially children, need Thai citizenship.\textsuperscript{413} Hill-tribe statelessness is a problem that can be solved.\textsuperscript{414} The global community, however, must collaborate and implement practical solutions to this global problem.\textsuperscript{415} There are several practical steps the Thai government, IOs, and NGOs working in Thailand can take to improve the citizenship process for the hill-tribes. Succeeding in this task would help guarantee that hill-tribe children obtain the education to which they are entitled under the law.

\textsuperscript{408} Id; NapaUmporn/Punthip Interview, supra note 78 (stating that some village schools still do not know the law or at least claim not to).
\textsuperscript{409} Nesser Interview, supra note 64.
\textsuperscript{410} Id.
\textsuperscript{411} IM Interview, supra note 40; Lahu Health Project Interview, supra note 21; NapaUmporn/Punthip Interview, supra note 78.
\textsuperscript{412} Lynch, supra note 1, at 25.
\textsuperscript{413} Lahu Health Project Interview, supra note 21; Former Miss Thailand, Areeya Chumsai, emphasized that “[w]e need to spread the message that [hill-tribes] are not second class citizens and should have the basic human rights of all Thais.” Plan Thailand, Hilltribe Musicians Rock the stage in the North of Thailand, http://www.plan-international.org/wherewework/asia/thailand/rockthestage/.
\textsuperscript{414} Lynch, supra note 1, at 25.
\textsuperscript{415} Id.
A. For the Thai Government

The Thai government should take an active part in solving the problem of statelessness in order to ensure long term solutions.\textsuperscript{416} While Thai law already provides detailed steps to citizenship, the Thai government should now turn to the practical aspects of ensuring maximum compliance and implementation in practice. An important step in this direction would be the implementation of a birth registration program that ensures that all children are issued official birth certificates soon after birth. Furthermore, lawmakers, government officials at all levels, and the public must be educated about their right to apply for citizenship. Thai laws relating to citizenship are fluid and are difficult to navigate; therefore, the onus is on the Thai government to educate the Thai people, as well as the hill-tribes, about the laws that affect them.\textsuperscript{417} More importantly, the Thai government must inform and train its own employees to understand and consistently implement the law. One very important element of this task is holding district officers reasonably accountable for conscious neglect or failure to apply the law to the hill-tribes.

\textsuperscript{416} Id.
1. Register All Children Immediately After Birth

Every year, at least forty-eight million children worldwide are not registered at birth. Fifty percent of these children are born in Asia. Birth certificates are not simply pieces of paper; rather, they provide important information and formal proof that a child exists. The Thai government should register all children as soon as possible after birth. Thailand should make civil birth registration easy "in terms of physical access, language and professional attitudes of registration officials." The 2006 Universal Birth Registration Conference identified areas where Thailand should take action in this regard. Thailand's delegates agreed that they should: (1) implement training for local registration officials and schools; (2) target vulnerable groups, such as the hill-tribe population; (3) ensure that all school children receive legal status; (4) build a network of international NGOs, local NGOs and IOs; and (5) review the present Thai laws and policies concerning birth registration and the implementation of those laws.

Birth registration is particularly important for the hill-tribes. As a group already excluded and marginalized, "the lack of a birth certificate puts them at even greater risk of discrimination, violence, abuse and exploitation." United Nations Children's Fund's (UNICEF) Deputy Executive Director, Rima Salah, states: "Our objective is clear—free birth registration and a free birth certificate for every child in every country." Thailand can and should take steps in accordance with this objective.

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418. Article 7 of the Convention on the Rights of the Child recognizes the importance of birth registration:
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.

Convention on the Rights of the Child, supra note 180, art. 7. However, Thailand has filed a reservation to this Article. See Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child, supra note 183, at 18.

420. Id.
421. Id. at 5.
422. Children as Active Citizens, supra note 79, at 7.
423. Record, Recognise, Respect, supra note 419, at 21.
424. Id. at 8.
425. Id.
426. Id.
2. Train and Hold District Officials Accountable

As this article has demonstrated, "Thailand's citizenship laws are some of the most complicated in the world." Even government officials, whose task it is to enforce the law, find the citizenship laws difficult to navigate. To avoid tackling this confusing area, many district officials neglect applications, sometimes for many years, from persons whose right to citizenship seems uncertain. The Thai government must take an active role in correcting this problem by providing detailed guidelines regarding the implementation of its citizenship laws. District officials need to be trained to understand and apply the citizenship laws. UNESCO recently recognized this need and conducted several workshops explaining the Thai citizenship laws; some district officials were in attendance.

Second, the Thai government should create a disciplinary system that forces local district officers to do their jobs. Inaction by district officials should be a punishable infraction. At the same time, punishment for erroneous decisions must be reasonable and not overly harsh. Local district officers are some of the lowest ranking officials in Thai government, yet they are integral to the citizenship application process. Mistakenly granting citizenship to an applicant who is not eligible could cost an officer his or her job. The severity of response to mistakes creates an incentive for district officials to refrain from taking any action at all. If there are repercussions for waiting months or years before taking action or simply rejecting an application, officials cannot refuse to take action for fear of granting citizenship to an undeserving person. District officials must face accountability for both action and inaction, but the disciplinary response must be measured and appropriate.

The mechanism of appealing decisions made by lower ranking officers should also be improved. There is currently a system of filing complaints

427. Feingold Interview, supra note 82.
428. Id. The Army supports citizenship for the hill-tribes. The National Security Council approved training for District Officers and even participated in the trainings. Some people in the Thai government are committed to helping the hill-tribes receive Thai citizenship, while others are not. NapaUmporn/Punthip Interview, supra note 78. Furthermore, the Sub-Committee on Ethnic Minorities, Stateless, Migrant Workers and Displaced Persons is trying to campaign to disseminate information about the citizenship laws. Kangchantuck Interview, supra note 67.
429. Feingold Interview, supra note 82.
430. Id.
431. Id.
432. Id.
against inactive officials. While complaints can also be made to the Administrative Court, superior officials almost always protect the district officials. In the Mae Ai case referenced in Part IV, a low ranking junior official revoked the citizenship of many hill-tribe villagers. With the assistance of NGOs, the villagers appealed their case. The case required them to fight the whole "Thai bureaucracy," which protected its personnel and shifted blame to the villagers. While the villagers were finally acknowledged as Thai citizens, the case demonstrates the government’s commitment to the status quo, which makes appealing unjust citizenship decisions costly and burdensome.

B. For International Organizations and Non-Governmental Organizations

1. Awareness of the Source of the Problem

There are a host of NGOs who conduct work within Thailand, many of whom work specifically with the hill-tribes. However, only a few NGOs work to assist the hill-tribes in attaining Thai citizenship. Due to the current state of Thai citizenship laws and the lengthy citizenship process, many other NGOs provide valuable social services to the hill-tribes rather than tackle the citizenship problem. Some are providing healthcare and others are providing hill-tribe children with education. These services fulfill a great need. However, NGOs must realize that the source of these needs is lack of citizenship. Citizenship would enable hill-tribe children to access national healthcare, to travel beyond their villages and provinces, and to access public education and education scholarships.

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433. Kangchantuck Interview, supra note 67.
434. Id.
435. Id.
436. Id.
437. Id.
438. Lahu Health Project Interview, supra note 21.
439. Nesser Interview, supra note 64; Interview with John Padorr, Advisor, Mercy Centre, Human Development Foundation, March 7, 2008, Bangkok, Thailand.
440. IJM Interview, supra note 40. There are many NGOs that are not effectively helping the hill-tribe villagers. Id. Ms. Bongkot draws a distinction between those NGOs that are working with the law versus those who are just trying to help hill-tribe people out of sympathy and are addressing symptoms but not causes. NapaUmporn/Punthip Interview, supra note 78.
2. Collaboration

Navigating the Thai bureaucracy to obtain citizenship is a difficult task. Thus, NGOs working together have greater odds of affecting change than a single organization working alone. One example of successful collaboration is the Statelessness Working Group. It is comprised of UNESCO, UNICEF, UNHCR, Lawyers Law Society, Thommasat Law University, the NGO Knowing Children, and the Thai Human Rights Commission. However, many other NGOs are not involved with this consortium. UNESCO also hosts seminars and meetings on the citizenship problem in Thailand, to which various organizations are invited. However, many NGOs have declined to participate in these seminars in the past. As a result, they missed an opportunity to learn about the existence and work of other organizations, many of whom are working to correct the same problems. Thailand is home to numerous NGOs serving the hill-tribes, many of whom do not even know that the others exist.

Collaboration amongst IOs and NGOs is necessary to provide widespread solutions for the hill-tribes. NGOs interested in improving the hill-tribes situation should partner with each other and share information, contacts, and best practices. As discussed during the Fourth Universal Birth Registration Conference, Thailand should build a network of international organizations and NGOs on not only the issue of birth registration but also the issue of statelessness.

VI. CONCLUSION

"Education for all." This statement is full of hope, dreams, and excitement. Hill-tribe children in particular stand to gain immeasurably through successful implementation of this policy. However, the practical results of the dream of education for all are minimal for hill-tribe children. Without Thai citizenship, they continue to face difficulty enrolling in school and accessing quality educational services. The underlying

441. Feingold Interview, supra note 82.
442. Id.
443. During the course of all of our interviews, we asked NGOs whether they had heard about the work of other NGOs whom we had previously interviewed. More times than not, NGOs and IOs had never heard of many of the other organizations who are working to help the hill-tribes. Feingold Interview, supra note 82; Lahu Health Project Interview, supra note 21; IJM Interview, supra note 40.
444. Record, Recognise, Respect, supra note 419, at 21.
root of this problem is lack of citizenship. Thus, the Thai government, IOs, and NGOs must first recognize that providing social services, while important, treats the symptoms of the chronic disease of statelessness. The hill-tribes are not asking the government to make exceptions to the law. Many hill-tribes satisfy the requirements for citizenship. Rather, it is time for the Thai government to recognize the hill-tribes’ status as Thai citizens—in both law and practice.