

**ANALYSIS OF NATIONALITY VERIFICATION OF MIGRANT
WORKERS IN THAILAND: THE CASE OF WORKERS FROM
CAMBODIA, LAO PDR AND MYANMAR**

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**A THESIS SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENT FOR
THE DEGREE OF MASTER OF ARTS (HUMAN RIGHTS)
FACULTY OF GRADUATE STUDIES
MAHIDOL UNIVERSITY
2012**

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CAMBODIA, LAO PDR AND MYANMAR**

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was submitted to the Faculty of Graduate Studies, Mahidol University
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ACKNOWLEDGEMENTS

The success of this thesis can be attributed to the extensive support, encouragement, patience and valuable advice from my major advisor, **Dr. Sriprapha Phetcharameesree** and my co-advisor, **Dr. Seree Nonthasooth**. My deepest appreciation also goes to **Associate Professor Kritaya Archavanitkul**, who was the chair of my thesis defense committee, for her great understanding and full support in sharing and shaping ideas for this research. With their virtues, I therefore can reach the completion of this study.

To the external examiner of this thesis and my inspiration, I would like to thank **Associate Professor Phunthip K. Saisoonthorn**. For more than seven years, she has put very much effort in teaching and supporting me to become a ‘barefoot lawyer’ dedicated to protecting rights of stateless persons in Thailand, including the migrant workers who have nationality problems.

I am very grateful to **Bounmy Ladsamyxay** and **Andy Hall** who introduced me to the pragmatic approach to problems of the migrant workers in Thailand. In addition, the success of this thesis cannot be achieved without informative support from **Thawatchai Leksamrit** from the Ministry of Labour. I would like to also express my gratitude to **all migrant workers** who agreed to take part in this thesis as the case studies.

On a personal level, my heartfelt thanks go to all my beloved friends, **Pongpob Tantrakul** and **Wasurat Sumetapan**, for great moral support throughout the hard time of my study. My sincere thanks also go to my family, particularly my sister, **Tanyaporn Napaumporn** who assisted as much as she could during my thesis preparation.

Finally, I would like to dedicate a word for my **grandfather**, who always supported me and inspired me to become a better person. No matter where you are, please realize that without you, grandfather, I could not have come this far.

Bongkot Napaumporn

**ANALYSIS OF NATIONALITY VERIFICATION OF MIGRANT WORKERS IN THAILAND
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SEREE NONTHASOOT, D.Phil.****ABSTRACT**

Nationality is a legal instrument of a State for determining the rights and duties of individuals. Those who are considered nationals are entitled to protection from that State. However, people need to prove that they are entitled to the nationality of that State in order to exercise the rights of nationals. This study attempted to elucidate that nationality is recognized as an inalienable right of human beings under several international conventions. This study further aimed to analyze the nationality problems of migrant workers in Thailand from Cambodia, Lao PDR, and Myanmar, particularly on the Nationality Verification (NV) process developed under the Memorandum of Understanding (MOU) on Cooperation in the Employment of Workers between Thailand and the three neighboring countries. Furthermore, the study attempted to examine whether this verification process does in fact solve the nationality problems of the migrant workers. In doing so, the researcher analyzed case studies of workers from Cambodia, Lao PDR, and Myanmar as a basis, and reviewed relevant literature regarding the issue.

The study revealed that nationality is ‘the State's legal instrument’ in determining the rights of the person and also ‘the right’, itself, is normatively recognized under many international legal standards. The study also showed that most of these migrant workers from the three countries entered Thailand irregularly. In order to legally make use of these workers in Thailand, the Nationality Verification process was initiated and implemented in coordination with Thailand and their respective country of origin. The case studies indicated, however, that the migrant workers and members of their families have encountered difficulties during the Nationality Verification process. Without work permission, the migrant workers and their children do not have access to the Nationality Verification. As low-wage workers, the procedure of verification is too costly and also complicated. Furthermore, the workers who rely on a broker for the Nationality Verification, most of the time, are deceived by excessive charges. Moreover, the study has highlighted that there is a risk of becoming stateless or illegal after completion of Nationality Verification.

The study affirms that nationality is set forth as a fundamental right, but in order to exercise the right, the proof is key. In the migration context, particularly for the case of workers from Cambodia, Lao PDR, and Myanmar in Thailand, the process of the proof of nationality turns out to be complex and difficult. Besides, the Nationality Verification process seems not to be intended to solve the nationality problems of these migrant workers, but rather to facilitate legal employment of the workers in Thailand. To improve the situation, the study recommends that employment should not be stipulated as a condition for legalization of the migrant workers, and the capacity of overseas missions of each relevant country should be built up to conduct the proof of nationality in general. In terms of prevention for irregular entry, which could lead to nationality problems of the workers, database systems on immigration as well as on civil registration should be developed and linked both internally and between concerned countries.

**KEY WORDS: HUMAN RIGHTS / MEMORANDUM OF UNDERSTANDING /
MIGRANT WORKERS / NATIONALITY VERIFICATION**

139 pages

การวิเคราะห์การพิสูจน์สัญชาติแรงงานข้ามชาติในประเทศไทย: กรณีศึกษาแรงงานจากประเทศกัมพูชา ลาว และพม่า
ANALYSIS OF NATIONALITY VERIFICATION OF MIGRANT WORKERS IN THAILAND: THE CASE OF
WORKERS FROM CAMBODIA, LAO PDR AND MYANMAR

บงกช นภาอัมพร 5038118 HRHR/M

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บทคัดย่อ

สัญชาติเป็นเครื่องมือในการกำหนดสิทธิและหน้าที่ของบุคคล “คนชาติ” ย่อมได้รับการคุ้มครองจากรัฐเจ้าของสัญชาติอย่างใดก็ตาม เพื่อที่จะใช้สิทธิในสัญชาติบุคคลต้องได้รับการพิสูจน์ว่ามีสัญชาติของรัฐดังกล่าวจริง งานวิจัยฉบับนี้ มุ่งชี้ให้เห็นว่า สัญชาติคือสิทธิมนุษยชนที่ได้รับการรับรองโดยกติการะหว่างประเทศหลายฉบับ กับทั้งต้องการวิเคราะห์ให้เห็นปัญหาสัญชาติโดยเน้นศึกษากรณีแรงงานต่างด้าวจากประเทศกัมพูชา ลาว และพม่า ในประเทศไทย โดยเฉพาะกระบวนการพิสูจน์สัญชาติของแรงงานจากสามประเทศซึ่งถูกกำหนดขึ้นภายใต้กรอบบันทึกความเข้าใจว่าด้วยความร่วมมือด้านการจ้างแรงงาน นอกจากนี้ การศึกษานี้พยายามแสวงหาคำตอบว่าการพิสูจน์สัญชาติแรงงานเป็นกระบวนการเพื่อแก้ปัญหาสัญชาติของแรงงานหรือไม่อย่างไร? ในการศึกษา ผู้วิจัยวิเคราะห์ผ่านกรณีศึกษาของแรงงานต่างด้าวจากทั้งสามประเทศเสริมด้วยการทบทวนวรรณกรรม

จากการศึกษาพบว่า สัญชาติเป็นทั้ง“เครื่องมือของรัฐ” ในการกำหนดสิทธิของบุคคล และ “สิทธิ” ที่ถูกรับรองในกฎหมายว่าด้วยสิทธิมนุษยชนระหว่างประเทศ ในประเทศไทยปรากฏแรงงานจากประเทศกัมพูชา ลาว และพม่าจำนวนมากที่เข้าเมืองผิดกฎหมายและยังมีปัญหาในการรับรองสิทธิในสัญชาติ แต่เพื่อให้ประเทศไทยสามารถใช้งานแรงงานเหล่านี้ได้อย่างถูกกฎหมาย ประเทศไทยประสานงานกับประเทศต้นทางแรงงานเข้าสู่กระบวนการพิสูจน์สัญชาติ นอกจากนี้ การศึกษายังพบว่า ระหว่างกระบวนการพิสูจน์สัญชาติ แรงงานและครอบครัวยังประสบปัญหาหลายประการ เช่น แรงงานที่ไม่ขออนุญาตทำงานและบุตรของแรงงานถูกจำกัดสิทธิในการพิสูจน์สัญชาติ ค่าใช้จ่ายในการพิสูจน์สัญชาติที่ค่อนข้างสูงและขั้นตอนที่ยุ่งยาก และปัญหานายหน้าที่เขาเปรียบแรงงาน เป็นต้น การศึกษายังชี้ให้เห็นอีกว่า แม้แรงงานที่ผ่านการพิสูจน์สัญชาติแล้วก็อาจกลายเป็นคนเข้าเมืองผิดกฎหมายได้อีกและอาจกลายเป็นคนไร้สัญชาติได้ในท้ายที่สุด

การศึกษายืนยันข้อเท็จจริงที่ว่า แม้ว่าสัญชาติจะเป็นหนึ่งในสิทธิขั้นพื้นฐานของมนุษย์ แต่เพื่อการใช้สิทธิได้จริง การพิสูจน์เป็นกระบวนการที่สำคัญ ในสถานการณ์ของคนข้ามชาติดังเช่น กรณีของแรงงานต่างด้าวจากประเทศกัมพูชา ลาว และพม่า ในประเทศไทย การพิสูจน์สัญชาติมีความซับซ้อนมากขึ้น การศึกษายังชี้ว่า กระบวนการพิสูจน์สัญชาติแรงงานมิได้มุ่งไปสู่การแก้ไขปัญหาสัญชาติที่แท้จริง หากแต่เป็นกระบวนการเพื่ออำนวยความสะดวกในการจ้างแรงงานอย่างถูกกฎหมาย ท้ายนี้ ข้อเสนอจากงานวิจัยก็คือประเทศที่เกี่ยวข้องไม่ควรนำการจ้างงานเป็นเงื่อนไขเพื่อนำไปสู่การแก้ไขปัญหาสัญชาติของแรงงาน ควรเพิ่มศักยภาพให้แก่สถานทูตและสถานกงสุลของแต่ละประเทศในการพิสูจน์สัญชาติให้แก่แรงงานเป็นการทั่วไป และควรมีสร้างระบบเพื่อป้องกันปัญหาการเข้าเมืองผิดกฎหมาย อาทิ การพัฒนาระบบการเข้าและออกเมือง และระบบทะเบียนราษฎรเพื่อเชื่อมฐานข้อมูลของบุคคลทั้งภายในและระหว่างประเทศที่เกี่ยวข้อง

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CHAPTER I

INTRODUCTION

1.1 Rationale/Background

‘Nationality Verification (NV)’ is an initiative of the Thai Government to address legal status problems of massive numbers of irregular migrants¹ from Cambodia, Lao PDR and Myanmar in Thailand. The Nationality Verification process was developed during negotiations in the Senior Official Meetings (SOMs) and Ministerial Meetings (MMs) between the Governments of Thailand and the Governments of Cambodia, Lao PDR and Myanmar under the framework of Memorandums of Understanding (MOUs) on the Cooperation of Employment of Workers. However, the real intentions of the process in question are doubtful. It is unclear whether it aims to tackle the nationality problems of these migrant workers from the three neighboring countries or if it only devises an economic tool to control these transnational labours.

Given that nationality is the prerequisite for enjoyment of other rights as well as the basis on which a state extends protection to individuals in other states, migrant workers in Thailand who have problems obtaining nationality are vulnerable. Without recognition of the right to a nationality, migrant workers may face denial of a wide range of human rights, such as freedom of movement, formal employment, education and healthcare. Then, the Nationality Verification process as a means of proof of a nationality is expected to solve nationality problems for the workers in Thailand. It is further anticipated as an entry point for better protection of human

¹ According to Glossary on Migration in the International Migration Law published by International Organization on Migration (IOM) in 2004, ‘irregular migrant’ is a person who, owing to illegal entry or the expiry of his or her visa, lacks legal status in a transit or host country. The term applies to migrants who infringe a country’s admission rules and any other person not authorized to remain in the host country. The term “irregular” is preferable to “illegal” because the latter carries a criminal connotation and is seen as denying migrants’ humanity.

rights for the migrant workers from Cambodia, Lao PDR and Myanmar. However, this may differ in practice.

In the past, Thailand had procedures only to control what work aliens could do and there was no specific policy to tackle the problems of migrant workers in the country (Archavanitkul, 2009). However, there was a change in Thailand after the 1988 military coup and violent suppression of the pro-democracy movement in Myanmar. As a result of the uprising, no less than 100,000 people from Myanmar fled to Thailand irregularly. Almost in the same period, Thailand made remarkable progress in transforming the country from an agricultural based economy to an industrial based economy. Thailand's economy both rapidly expanded and experienced structural changes. This rapid economic growth caused labour shortages, especially for certain sectors and occupations, which were dirty, difficult and dangerous, or known as the '3D' jobs. As Thai workers have become more and more reluctant to accept the 3D jobs, which are also normally low paid work, labours from neighboring countries have become viable options for the employers and entrepreneurs. Also, the wage rates in Thailand and the rise in its economy were comparatively attractive for workers from neighboring countries. As a result of unstable circumstance as well as economic depression in the country of origin, Thailand has been facing massive inflows of migrant workers, especially from Cambodia, Lao PDR and Myanmar. Many of these workers enter Thailand irregularly to seek a better life and better job opportunities. All of these circumstances have forced Thailand to cope with this massive inbound migration.

In 1992, Thailand established its first internal procedure dealing with irregular migrants starting with workers from Myanmar who were residing and working in nine border provinces. In 1996, several Cabinet Resolutions allowed migrant workers from all three countries to work in Thailand for certain periods without mentioning any solution for their legal status problems. However, these unilateral measures seemed unsuccessful and the influx of migrant workers continued. Subsequently, Thailand started cooperation with Cambodia, Lao PDR and Myanmar, as the migrant workers' countries of origin, to holistically resolve problems.

MOUs on Cooperation in Employment of Workers were signed in 2002 for Lao and in 2003 for Cambodia and Myanmar. The Nationality Verification

process, from these MOUs, was expected to tackle legal status problems and other related rights difficulties for these workers. The process itself aims to regularize², and, as a by-product, resolve a risk of statelessness circumstances for those who entered Thailand irregularly and were undocumented or unregistered in their country of origin. However, during the process and as a consequence, the Nationality Verification process seemed not to tackle root causes of the problem, and with complex procedures it created more burdens for the workers. It also left room for illegal brokers to take advantage of vulnerable migrants.

Andy Hall³, a migration expert, has criticized the complex process regarding Nationality Verification. He said, *“The process is complicated and ambiguous. Thailand has not yet raised enough awareness about this process among the migrant workers. They have been told only that if they do not pass through this process before the deadline, they will be deported out of the country. Without transparency and enough dissemination of the correct information, so many rumors about the verification, such as, land in Myanmar of those migrants who have completed the process were seized or their family in Myanmar was exploited by the government, would keep spreading out”*. Further, the high operating cost of the Nationality Verification process is always referred to. This was illustrated by Yongyuth Chalamwong⁴, a labour expert of the Thailand Development Research Institute (TDRI). He said, *“We have to accept the fact that the operating cost for the Nationality Verification process is pretty high for migrant workers. Along the process, there are always brokers stepping in to take advantage from the employers and workers. Not only employers and migrant workers will be affected, but also Thailand will lose many thousands millions baht due to such middle persons. Therefore, Thailand has to manage this complex process”*.

² According to Glossary on Migration in the International Migration Law published by International Organization on Migration (IOM) in 2004, ‘to regularize or regularization’ is any process by which a country allows aliens in an irregular situation to obtain legal status in the country. Typical practices include the granting of an amnesty (also known as ‘legalization’) to aliens who have resided in the country in an irregular situation for a given length of time and are not otherwise found inadmissible.

³ The Nation Newspaper, 30 October 2009

⁴ Seminar on Agenda for Labour Migration Policy in Thailand, 23 February 2010

This study intends to show that nationality is recognized as a human right, but in order to exercise this right in practice, the process of proof of nationality plays a role. This study analyzes such nationality problems for migrant workers in Thailand from Cambodia, Lao PDR and Myanmar, particularly for the Nationality Verification (NV) process. Furthermore, the study attempts to examine whether this verification process does in fact solve the nationality problems for migrant workers. In doing so, the researcher has examined case studies of the workers from Cambodia, Lao PDR and Myanmar and has reviewed relevant literature regarding the issue. Lastly, in terms of providing better human rights protection for the migrant workers, several recommendations are made in the study to improve the circumstance regarding the proof of nationality.

1.2 Objectives of the research

1.2.1 To analyze the concept of nationality, which is normatively recognized as a human right, in the context of migration of workers from Cambodia, Lao PDR and Myanmar, and to examine realization of such a right through the process of proof of nationality;

1.2.2 To examine circumstances, including definition, classification, reason for migration and current numbers, of the migrant workers, particularly those from Cambodia, Lao PDR and Myanmar in Thailand, and to analyze their nationality problems and related human rights problems in Thailand;

1.2.3 To explore legal frameworks for the proof of nationality of the migrant workers in Thailand, including general measures and the special procedures, namely the Nationality Verification process, to address problems of massive numbers of the workers from Cambodia, Lao PDR and Myanmar as well as challenges and consequences of the process;

1.2.4 To examine whether this Nationality Verification process solves the nationality problems of these workers and to provide recommendations relating to the nationality problems of the migrant worker from Cambodia, Lao PDR and Myanmar in Thailand.

1.3 Research questions

First, this study aims to examine the concept of nationality as an inalienable human rights and how significant nationality is in everyday life of individuals. Without the proof of nationality, people are unable to exercise such rights. Therefore nationality problems, most of the time, are related more to the process of the proof such as criteria of the proof and how to prove it. Following are research questions for the first part of the study:

1.3.1 Why does nationality matter in individuals' lives?

1.3.2 From a human rights perspective, how does nationality play a role at both international and national levels?

1.3.3 How is the process of proof of nationality significant in terms of guarantying the human right to nationality?

Secondly, this study is narrowed down to focus on the circumstance of migrant workers in Thailand, particularly the workers from Cambodia, Lao PDR and Myanmar. This part attempts to investigate current situations of these migrant workers in Thailand, including classification, numbers as well as reason for migration. Their nationality problems and the impact on human rights are also explored practically. This portion of the study will answer the following four questions:

1.3.4 What is the current circumstance of migrant workers in Thailand?

1.3.5 Who are the so-called "migrants workers" from Cambodia, Lao PDR and Myanmar in Thailand, and how are they identified as migrant workers in Thailand?

1.3.5 What are nationality problems for the migrant workers from Cambodia, Lao PDR and Myanmar in Thailand?

1.3.6 How do the nationality problems of the migrant workers from Cambodia, Lao PDR and Myanmar in Thailand affect their other human rights in practice?

In order to understand solutions to the nationality problem of the migrant workers from Cambodia, Lao PDR and Myanmar in Thailand, existing legal frameworks are examined in the study. The frameworks cover general measures as well as special procedures. The Nationality Verification as a mean of the proof is explored in details, including process and consequences. Furthermore, the study

attempts to examine whether this Verification process does in fact solve the nationality problems of the migrant workers. From these consequences, the study ultimately brings about recommendations for better human rights protection for these workers. In this regard, the study answers these questions as follows:

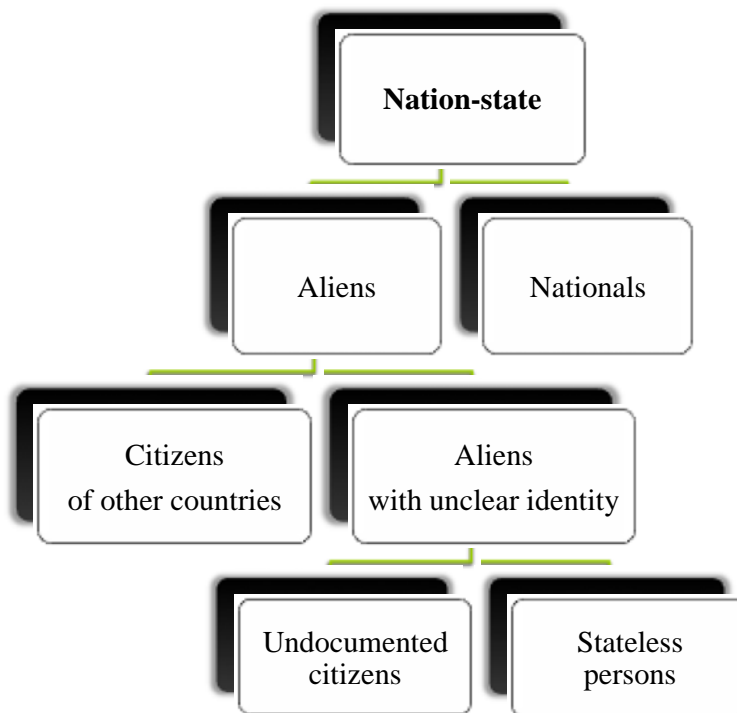
1.3.7 What are the existing frameworks regarding solution for nationality problems of the migrant workers from Cambodia, Lao PDR and Myanmar in Thailand, and how do they work to protect citizens?

1.3.8 In practice, how do migrant workers from Cambodia, Lao PDR and Myanmar in Thailand verify their nationality under the Nationality Verification process, and how does the process for each country differentiate?

1.3.9 What are significant implications of the Nationality Verification in terms of beneficiaries, procedure and consequences?

1.3.10 What are gaps and challenges towards the Nationality Verification process for the migrant workers from Cambodia, Lao PDR and Myanmar in Thailand, and how should Thailand cope with the nationality problems of the workers?

1.4 Conceptual framework



A ‘nation-state’ is a political entity, having sovereignty over its territory and populations. Within the nation-state, ‘nationality’ is one tool to exercise control over populations living in the nation-state and to select who are members of the nation-state. As a result, populations in the nation-state are divided into two groups, nationals or citizens (persons with its nationality) and aliens (persons without its nationality). Due to the *per se* exercise of the nation-state, these two groups of populations are treated differently.

Nationals or citizens are persons of nationality of the nation-state. As nationals, the nation-state, in principle, has a duty to provide them full diplomatic protection no matter where they reside. On the other hand, those who are considered aliens in the nation-state can form diverse groups. Some aliens may be recognized as nationals of other countries; this is evident by having an identity paper of citizenship from that country. Further, there are also some aliens with unclear identity. This group includes: (1) citizens of other countries who, by mistake, were not registered into civil registration as citizens of that country and (2) stateless persons who are never

considered as a national by any State under the operation of its law. In this regard, the latter group, the stateless, is more vulnerable and faces difficulties wherever they are.

In the circumstance of migrant workers from Cambodia, Lao PDR and Myanmar in Thailand, this is the case. Within its territory, Thailand is comprised of nationals and aliens, including workers from Cambodia, Lao PDR and Myanmar. According to the record of the Ministry of Labour as of December 2012, the number of people from the three countries appears to be 998,884⁵. This is the largest number of aliens in Thailand in history. Among these migrant workers, there are, as mentioned, a combination of undocumented citizens of the three countries as well as stateless persons. However, Thai authority considers the workers from Cambodia, Lao PDR and Myanmar as citizens of their respective countries even if they were not recognized as such before migrating to Thailand. The proof, which for the purpose of this study is called 'Nationality Verification', is therefore essential to screen who are citizens and who are not, and who are stateless as a consequence.

1.5 Research method

1.5.1 Documentary research

Documentary research will be the very first approach of this study in order to conceptualize the following:

- International laws and international human rights laws;
- Bilateral agreements, MOUs, and any relevant document such as meeting minutes between the Thai government and the governments of Cambodia, Lao P.D.R and Myanmar;
- National laws and policies on the issue of Cambodia, Lao PDR, Myanmar and Thailand such as nationality laws, national strategy and cabinet resolutions;
- Academic articles relating to the issue and;
- Other relevant documents

⁵ See also the detailed figure in Chapter III

This approach will be used in this research to conceptualize an overview of the circumstance of the migrant workers from Cambodia, Lao PDR and Myanmar in Thailand and to examine the existing normative frameworks for these workers, such as the MOUs and the Nationality Verification process, which are partly written in the aforementioned documents.

1.5.2 Interview method

Nationality Verification is a process which took place during negotiations between high-level authorities of Thailand and Cambodia, Lao PDR and Myanmar. As a result, some records are not accessible. Interviewing relevant government informants will fulfill gaps of documentary research relating to the background of the process as well as some relevant statistics. The key informants from the Government include people from: the National Security Council, the Ministry of Interior (through Bureau of Registration Administration) and the Ministry of Labour (through Office of Foreign Workers Administration)

This approach will be deployed to provide a comprehensive overview of the circumstances of migrant workers from Cambodia, Lao PDR and Myanmar in Thailand including the historical background and the relevant statistics. In addition, the consequences or challenges towards the Nationality Verification process will be examined during the interviews.

1.5.3 Case study method

Like in many countries, what is written in the laws or policies may not be implemented, relevant to, or effectively tackle the problems on the ground. In order to reflect the pragmatic situations of the migrant workers from Cambodia, Lao PDR and Myanmar, workers from these countries will be examined and used as case studies. The aim of this method is to study the real-life context. The information obtained from the case study method includes information about: who the migrant workers really are, how and why they migrated to Thailand, whether they are citizens of Cambodia, Lao PDR or Myanmar and what difficulties, such as human rights problems, they are facing in the respect of the Nationality Verification process. In addition, the researcher, in some cases, accompanied the migrant workers when they were

completing the Nationality Verification process. This was done to investigate the procedure and attitudes of the authorities in practice. As mentioned, this method will be used to obtain information on the real circumstance for the migrant workers in order to reflect either coherence or discordance between the National Verification process in principle and in implementation.

In this study, twelve (12) case studies were completed, including five cases of workers and children from Myanmar, four from Lao PDR, one from Cambodia, one from Viet Nam and another one from China. In the two cases from Viet Nam and China, the people were registered as workers from Cambodia and Myanmar respectively. Their cases can present an ambiguousness of the whole framework for the National Verification process for migrant workers from the three countries. They are therefore within the scope of this study.

All case study participants have given their consent for this study after the researcher provided the background and objectives of the study. However, for confidentiality, the names of the cases stated in this study are pseudonyms and personal identity papers and numbers are not specified in details.

1.6 Significance of the research

Firstly, this study can be one historical record of the Nationality Verification process as a special measure of Thailand to tackle the plight of irregular migrant workers from Cambodia, Lao PDR and Myanmar. As mentioned, the process itself was an initiative of Thailand to address the problem of these workers. It then would be valuable to have this information regarding Nationality Verification analyzed and presented for better understanding of the specific circumstance. Further, the establishment of the Nationality Verification process took place during negotiations between high-level authorities of Thailand and Cambodia, Lao PDR and Myanmar. Some records are not accessible or may be separate; this study therefore aims to compile and analyze these matters in the same document.

Secondly, the findings from this study will provide better understanding regarding the factual circumstances as well as the existing legal frameworks for

migrant workers from Cambodia, Lao PDR and Myanmar in Thailand. The case studies will produce written account of the pragmatic problems on the ground which has not been recorded elsewhere. In addition, to better understand the framework, the detailed process regarding Nationality Verification will be provided as a procedural knowledge compiled from the real experiences of the researcher.

Thirdly, the study will hopefully encourage the Thai authorities to review their own policy in order to improve the human rights mechanisms in managing transnational populations as well as to prevent the root causes of the problems of irregular migrants by bettering its migration control system. In addition, these finding may help Cambodia, Lao PDR and Myanmar become aware of the legal status problems of their own people.

Lastly, as the ultimate goal of the study, the findings, especially the challenges towards the Nationality Verification process, will be utilized as a mouthpiece for migrant workers who are in a vacuum of the policy and are facing the problems regarding the Nationality Verification in Thailand.

CHAPTER II

CONCEPTS OF NATIONALITY, RIGHT TO A NATIONALITY AND PROOF OF NATIONALITY

Chapter II aims to examine and utilize pragmatic situations of the migrant workers from Cambodia, Lao PDR and Myanmar in Thailand, particularly their nationality problems, to conceptualize principles of nationality and human rights. The first section regarding **nation-state and nationality** will emphasize how nationality is important in everyday life of persons, especially those workers from Cambodia, Lao PDR and Myanmar. This section will also entail how the establishment of a nation-state plays a crucial role in nationality matters. Secondly, the topic of **nationality as a human right** will be discussed. This section examines the issue regarding nationality and human rights which has become more interconnected since nationality was considered, in 1948, as one of the human rights by the United Nations. The argument that nationality is a human right will contest nationality laws of each country, particularly of Cambodia, Lao PDR and Myanmar, and determine whether the laws are consistent with international obligations on human rights. Thirdly, the **necessity of process of proof of nationality** section will examine a crucial procedural issue to access the right to a nationality in practice. In the circumstances of the migrant workers from Cambodia, Lao PDR and Myanmar in Thailand, the ‘Nationality Verification’ process is a key component. Without this process it is difficult to have their nationality determined outside the country of their origin, and these workers, as well as their children born in Thailand, could potentially become stateless as a result. Fourthly, the issue of **statelessness** will be described in connection to the previous discussions. How statelessness occurs in Thailand and how the stateless circumstance affects people’s life, including the situations of the migrant workers from these three countries, will be portrayed. Finally, the overall picture of **vulnerable groups of people who have nationality problems in Thailand** will be given along with their factual

situations. The migrant workers from Cambodia, Lao PDR and Myanmar will also be designated and focused on accordingly.

2.1 Nation-state and nationality¹

The term **'nation-state'** differs from nation and state. **'State'** is "a human community that successfully claims the monopoly of the legitimate use of physical force within a given territory" (Weber, 1968). While, the concept **'nation'** refers to "a human group conscious of forming a community, sharing a common culture, attached to a clearly demarcated territory, having a common past and a common project for the future and claiming the right to rule itself" (Guibernau, 1996). People who share certain characteristics have a common national identity. A common national identity can be expressed in terms of culture, language, religion, ways of life, common memories, shared past experiences and territory that make people feel they belong to the same community and have a certain degree of solidarity towards their fellow-nationals.

As mentioned, a nation-state is different from both a nation and a state and needs to be distinguished from the two. The nation-state is a modern political institution. The notion that there have been neatly bounded societies – "where economic, political and cultural domains or levels map neatly onto to each other" (Walby, 2003) – is inaccurate. The nation-state has exercised control of institutions and laws, the national media and the national education system. It has variously sought to nominate and promote a single official language and sometimes a single religion. It also frequently disseminates a specific version of the nation-state's history based on: remembering, ignoring or forgetting certain key events, and recovering and inventing national symbols, ceremonies, rituals, heroes, sacred places and traditions (Shotter, 1993). As defined by several academic references, the nation-state is "a form of political organization under which relatively homogenous people inhabit a sovereign

¹The term 'nationality' employed in this paper is in regard to natural persons only. The national character of business association (juristic persons), of ships, and of aircraft, does not come within the scope of this paper.

state, especially a state containing one as opposed to several **nationalities**”² or “a sovereign state of which most of the **citizens** or subjects are united also by factors which define a nation, such as language or common descent”³. In this sense, nationality is a crucial tool of the nation-state used to unite selected population under its jurisdiction.

In reality, there are various groups of people – natives, ethnic or religious minority groups, and immigrants – residing in the nation-state. By using the nationality tool, the nation-state may decide, under the nationality law, who the members of the nations are. It may decide not to recognize some people from certain groups as its members. In doing so, the state can protect the interests of the powerful, and to keep other groups in a subordinate position (Kellas, 1998). This explains the power/authority of the nation-state in a manner of nationality conferral. A principle on nationality is, however, affirmed under the Hague Convention of 1930⁴; it states that nationality law, as the selection tool of the nation-state, shall be consistent with international conventions, custom and other relevant principles relating to nationality. Although, the Hague Convention also recognized that the nation-state is allowed to determine who its own citizens are.

In this regard, the ‘nationality principle’, which was defined by the Hague Convention in 1930, shall be taken into consideration when the nation-state designs its own nationality law. According to Saisoonthorn(2008), a ‘connecting point’ or a ‘genuine link’ between an individual and a nation-state is a key element for the determination of nationality. The individual may have a link with the nation-state at birth by being born on its territory or having a parent holding nationality of the nation-state. After birth, the individual may have a link with the nation-state by assimilating into the society due to his/her long residence in the country or marriage with a citizen of the nation-state. Without these genuine links, the individual has no basis under the

² From Merriam Webster dictionary, available: <http://www.merriam-webster.com/dictionary/nation-state> [13 June 2012]

³ From Oxford dictionary, available: <http://oxforddictionaries.com/definition/english/nation%2Bstate?q=nation+state> [13 June 2012]

⁴ Taken from the 1930 Convention on Certain Questions Relating to the Conflict of Nationality Laws, the Hague, Article 1

nationality principle to acquire citizenship of the nation-state. And even though each nation-state has wide discretion to determine who is a national, without the real connection the acquired nationality may be considered ineffective as outlined in the judgment of the International Court of Justice (ICJ) on the *Nottebohm Case* (*Liechtenstein v. Guatemala*) in 1955. According to this principle and the relevant case law, the nation-state and its nationals are strongly inter-related through a legal framework referred to as 'nationality law'. This legal framework serves as the tool for population selection that is determining who is a national and who is not. However, the nationality law of each nation-state shall not be against international customary standards, and acquisition of nationality of its nationals should be explainable and based on the principle of real connection between the national and such nation-state.

Using nationality's measurement, populations in the countries are divided into two main groups: the first group is people with nationality of the nation-state, 'nationals or citizens' and the second group is people without the nationality of the nation-state, or 'aliens'. Nationality matters because it defines superior legal status of nationals compared with the so-called 'outsiders'. In addition, nationality is important not only for determining rights and duties of persons in accordance with national laws of the State, but also for indicating the relationship in regard to conflict of laws and international law (Sucharitkul, 1962). In terms of international law, nationality is a mechanism of a State to exercise its rights and to be responsible for its own people in these following aspects: diplomatic protection of nationals abroad, State responsibility for international or private claims and exercise of state sovereignty over nationals. In terms of conflict of laws, in States where a common law system is in use, nationality is not essential when it comes to a problem relating to multiple states or multiple jurisdictions, but 'domicile' is used instead. On the other hand, in States using a civil law system to deal with disputes, including Thailand, nationality is important for determining which legal systems or which jurisdictions of the court applies to a given issue. At last, in terms of rights and duties of persons, nationals (those having a nationality of the State) principally enjoy a full set of rights and social welfare provided by the State, such as free health insurance and participation in policy making. Labeling people with a nationality of the State also specifies direct duties of nationals

towards the State. Therefore, these selected people have duties to obey obligations of the State, such as military obligations or tax payment.

As mentioned, the nation-state can protect its interest by selecting certain members as nationals and excluding others. In doing so, the nation-state may face problems regarding consideration of nationality conferral upon its populations within the territory. On the other hand, the populations themselves may also confront problems such as being ‘stateless’ or ‘alien’ in the country. In this regard, nationality seems to be an instrument for creating a sense of homogeneity and ‘otherness’ with respect to groups of different nationality, which stems from the sense of nationalism.

When discussing aliens, the aliens in all countries could be broken down into two groups. First are those who have migrated from another country and have been living in a State for a specific purpose. This group of aliens may or may not be considered as a national of the home country where they are from. Those who were selected as citizens would not have a problem with their identity; they would be treated as **foreigners** in the present country. Migrant aliens who were not verified as nationals or were refused national status of their home country would be considered **stateless migrants** in the receiving country. Second is the group of aliens residing in the nation-state as their own country. In this situation, they were born in the country but are not entitled to its nationality or cannot yet prove their qualification to be nationals. These people are so-called **stateless people in an ‘in situ’ context**.

According to characteristics of states as defined under Article 1⁵ of the 1933 Convention on Rights and Duties of States (Inter-American), or so-called ‘the 1933 Montevideo Convention’, the Thai State originated around 1868-1910 in the Reign of King Rama V. During that time, the Kingdom of Siam (Thailand in the past) started to define its boundary with the neighboring countries of Cambodia, Lao PDR, Myanmar and Malaysia through the colonial empires of Great Britain and France⁶.

⁵Article 1. The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.

⁶ The Convention between the Kingdom of Siam and the Governor-General of India, defining the Boundary on the Mainland between the Kingdom of Siam and the British Province of Tenasserim in 1868 is the most important origin of defined territory according to characteristics of modern States. In

Around 1892, state administration was also reformed. Twelve Ministries were established to control affairs of the State. The twelve Ministries were supervised by the central government. This was apparently a new political order of Thailand to have centralized enforcement power of the State and to lessen the administrative authority of vassal states. Moreover, in 1909, it was the first time for the Thai State to define who the populations (real residents) in the State were. This was done by the enactment of the first civil registration law, namely Census of People in the Kingdom Act, RorSor 128 (1909). This was the first law on population management⁷ (Saisoonthorn, 2006). The notion under this law was to survey and register people who were really residing in the State, regardless of their origin, and to distinguish between those who were born and died in Thailand and those who migrated in and out of the State. Later, in 1913, the first written law on nationality was enacted and was the first concrete tool to select or deselect who were members of its country.

The same process was occurring in the neighboring countries. According to the 1933 Montevideo Convention, the modern States of Myanmar started forming following its independence in 1948, while Lao PDR and Cambodia likely started forming in 1953 when they declared independence. Laws on people management, nationality laws, of the three countries entered in force for the first time in 1948 for Myanmar, 1990 for Lao PDR and 1996 for Cambodia. This explains incompleteness of population management in Cambodia, Lao PDR and Myanmar which may lead to the situation of persons/nationals falling into legal gaps before enforcement of the law or before these countries became an independent state. These nationals may be undocumented or have their nationality undetermined in order to prove whether they reach the requirements under the law.

1881, it was the first time for Thailand to have the Thai Survey Department (presently called “Royal Thai Survey Department under Royal Thai Armed Forces Headquarters) founded in order to survey and define the boundary within Thailand’s jurisdiction.

⁷ These laws on people management are: (1) Census of People in the Kingdom Act Ror Sor 128 (1909) as a civil registration law; (2) Naturalization Act Ror Sor 130 (1911) and Nationality Act, 1913 as nationality laws; (3) Immigration Act, 1927 as immigration law; (4) Alien Registration Act, 1936 as a law for registering aliens who legally entered the country and for issuing identity document to these aliens in Thailand and; (5) Identity Card Act, 1943 as a law for issuing identity document to people with Thai nationality.

Given that the population management system in Cambodia, Lao PDR and Myanmar has just been implemented, in the *per se* circumstance, some of these people who are living in Thailand are likely to be unrecognized as a citizen from these countries in the first place. Among these migrant workers in Thailand, there are possibly groups of both undocumented citizens of the three countries as well as stateless persons. Thai authority considers the workers from Cambodia, Lao PDR and Myanmar as citizens of their respective countries, even though some of them may not be recognized as such before migrating to Thailand. The verification of nationality by using nationality law of each country as a substantive meter then bring about a need to identify whether these workers are considered as having a nationality under the operation of law.

2.2 Nationality as a human right

“Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”

Eleanor Roosevelt⁸

⁸Chair of the committee created by the United Nations Commission on Human Rights to draft the Universal Declaration of Human Rights, at the presentation of *IN YOUR HANDS: A Guide for Community Action for the Tenth Anniversary of the Universal Declaration of Human Rights*, United Nations, New York, 27 March 1958.

Human rights are universal legal guarantees protecting individuals and groups against actions and omissions of actions that interfere with fundamental freedoms, entitlements and human dignity.⁹ Human rights have been enshrined in the Universal Declaration of Human Rights (UDHR) and codified in a series of international human rights treaties ratified by States and other instruments adopted after the Second World War. There are, further, regional human rights instruments such as the European Convention on Human Rights and the ASEAN Declaration on Human Rights, and most States at the national level have adopted constitutions and other laws that formally protect basic human rights.

“Nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties.”

Defined by the International Court of Justice in the *Nottebohm Case*

The right to nationality is the prerequisite for the enjoyment of other rights, including the right to remain in his or her country, the right to re-enter from abroad, the right to vote and the right to participate fully in public affairs. Further, nationality is the basis on which a state extends protection to individuals in other states through the mechanism of consular assistance. Importantly, nationality is also the main way for individuals to invoke their universal human rights as the international human rights system is premised on state responsibility for the rights of nationals with a more limited set of rights for aliens. Without this right, individuals may face denial of subsidiary human rights such as political participation, freedom of movement, formal employment, education, and healthcare.

⁹*Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation* (United Nations publication, Sales No. E.06.XIV.10), p.1

Article 15 of Universal Declaration of Human Rights (UDHR)

- 1) Everyone has a right to a nationality.
- 2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Since the UDHR was adopted in 1948, nationality has become a right under this international human rights instrument. Nationality is no longer only a tool to protect the nation-state's interest, but it is now also a right for individuals. The right to a nationality is therefore set forth as an obligation of each State. Article 15 of the UDHR sets out that "everyone has a right to a nationality, and no one shall be arbitrarily deprived of his nationality." Later, the right to a nationality was reaffirmed by the following covenants and conventions on human rights: Article 24 (3) of the International Covenant on Civil and Political Rights (ICCPR); Article 7 (1) of the Convention on the Rights of the Child (CRC); Article 5 (d) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The UDHR was proclaimed as a "common standard of achievement for all peoples and all nations" towards which individuals and societies should "strive by progressive measures, national and international, to secure their universal and effective recognition and observance". It lists numerous rights - civil, political, economic, social and cultural - to which people everywhere are entitled. As mentioned, the UDHR gives human rights precedence over the power of the state. While states are permitted to regulate rights they are also prohibited from violating them. Moreover, Cambodia, Lao PDR as well as Thailand are parties to the following legally-binding covenants on human rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Covenants recognize and define in more detail most of the rights set out in the Universal Declaration.

Focusing on the ICCPR which Cambodia, Lao PDR and Thailand are parties, the Covenant obliges the State to respect and ensure rights of all individuals in its territory without distinction based on race, colour, sex, languages, religion, political

or other opinion, national or social origin, property, birth or other status (article 2.1). Further, if such measures are not provided already, the Covenant requires that the State shall take the necessary steps to adopt such laws (article 2.2) and the State shall ensure equal rights of men and women (article 3). Also, the ICCPR specifies that: every child without discrimination shall have a right to protection by family, society and the State (article 24.1); every child shall be registered immediately after birth (article 24.2); every child has the right to acquire nationality (article 24.3) and; all persons are equal before the law and entitled to equal protection of the law, without discrimination (article 26).

Cambodia, Lao PDR, Myanmar and Thailand are also parties to the Convention on the Rights of the Child (CRC). The CRC stipulates the right to nationality and birth registration for all children.

Besides, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) which Cambodia, Lao PDR and Thailand are State parties declares: racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin to impair the enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, cultural or any other field (article 1.1). The Convention shall not apply to distinctions, exclusions, restrictions or preferences made by the state to this convention between citizens and non-citizens (article 1.2) and nothing in this convention may be interpreted as affecting in any way the legal provisions of states concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality (article 1.3). Finally, states shall prohibit and eliminate racial discrimination in all forms to guarantee rights to everyone, notably in the political rights (to participate in elections and public affairs) and right to nationality (article 5).

At last, Cambodia, Lao PDR, Myanmar and Thailand are parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This obliges states to grant women equal rights to men to acquire, change or retain their nationality and ensure that marriage to an alien or change of nationality of the husband during marriage shall not change the wife's nationality automatically, render her stateless or force upon her the nationality of the husband (article 9.1); and

states shall grant women equal rights with respect to the nationality of their children (article 9.2).

Given human rights precedence over the power of the state, the human rights framework deals with populations within nation-states and undermines older notions of sovereignty articulated in international law. The emergence of the International Court of Justice, the European Human Rights Court, the Human Rights Committee under the International Covenant on Civil and Political Rights and the Universal Periodic Review (UPR), in itself, reflects changes that are altering the nature of nationality in a new world.

2.3 Necessity of the process of proof of Nationality

Right to a nationality, as mentioned, is included in international human rights standards. Under the principles set forth in every human rights mechanism every one shall have a right to a nationality. But in practice, it is not that easy to acquire a nationality even though a person may meet requirement under a national law. Right to a nationality is quite complex and comprised of three compositions: entitlement of the right (under law on nationality), exercise of the right by mean of the proof of nationality (under law on procedure) and recognition of the right (under law on civil registration).

Under the nationality law of any country, requirement of acquisition, loss and recovery of nationality are set as conditions whether a person is entitled to a nationality or not; however, these conditions shall comply with relevant international standards. In accordance with the view of the International Court of Justice in the case of *Nottebohm (Liechtenstein v. Guatemala)* in 1955, the Court has given a canon on nationality determination in relation with a real or genuine link between a person and a State that: *“according to the practice of States, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.”* Even though a nationality of a State can be conferred on a person by its own decision, the real connection between a person and a State of such nationality is essentially

distinguished by the state in order to have any effect in international spheres as mentioned above about the diplomatic protection. The sources of right to a nationality universally, normally, include: (1) right to a nationality under *jus sanguinis*¹⁰; (2) right to a nationality under *jus soli*¹¹; (3) right to a nationality by a virtue of marriage and; (4) right to a nationality by naturalization (loyalty).

However, in practice it is not that easy to acquire a nationality even though a person would meet requirement under a national law. The right to a nationality would be useless if there was no access to such a right. The State is rarely proactive enough to survey its people who are entitled to its nationality and register them as citizens. But, the State normally sets the rules of procedure regarding acquisition of nationality for the competent official to consider and which the people themselves are responsible for handing the application to the State authority. If this process has not occurred, right to a nationality will be only in paper.

‘Proof of nationality’ is a mean for an individual to exercise the right to nationality. It is a process to find evidence to affirm such a right. In a generic sense, the individual has to present evidence (in accordance to the relevant laws) to the competent authority of the State proving that he or she is entitled to the nationality. And if the State trusts the evidence, it will recognize the person as a citizen. Proof of nationality is, therefore, a ‘procedural’ notion emerging together with a ‘substantive’ notion of the right to a nationality. However, in normal situations, the process of proof of nationality seems not to be an issue of concern and goes unnoticed. In this situation, the process is automatically preceded at the same time when right to a nationality exists.

Again, proof of nationality is a process that happens at all times. When a person claims that they have right to a nationality, the process of proof occurs. A person might ask for proof of nationality in order to exercise the right to a nationality or additional rights attached to nationality such as the right to social welfare, the right to full political participation, or other superior rights over aliens. Furthermore, a State itself, can take an important role for proof of nationality of a national when a person is at risk of statelessness.

¹⁰‘*Jus sanguinis*’ means a rule that citizenship of a child is determined by citizenship of its parents.

¹¹‘*Jus soli*’ means a rule that citizenship of a child is determined by the place of its birth.

‘Right to proof of nationality’, itself, is not a human right set forth in the UDHR or other relevant human rights covenants or conventions, but it is important to acknowledge that right to a nationality will never be achieved without access. Proof of nationality is an access, under procedural laws, to make right to a nationality reality. Therefore, without right to proof of nationality¹², people cannot establish their right to a nationality.

Regarding irregular migrant workers from Cambodia, Lao PDR and Myanmar in Thailand, the Nationality Verification process was set out under the bilateral agreements, namely Memorandum of Understanding (MOUs) on Cooperation in the Employment of Workers, between Thailand and Cambodia, Lao PDR and Myanmar. The process is a result of negotiation between the countries of origin and the receiving country. These States agreed to lessen their jurisdiction to facilitate the verification of the migrant workers process in Thailand. In this regard, the workers from the three countries are not required to travel back to conduct the verification on their nationality. Due to their legal status problems, irregular migrant workers are vulnerable for violation or forced to be a victim of human trafficking. The process set up under the bilateral agreement does in fact solve problems for some groups of the irregular migrant workers from Cambodia, Lao PDR and Myanmar in Thailand. However, there is exclusion in terms of beneficiaries under this process. Further, the process seems to not directly tackle nationality problems, and the migrant workers and members of their families still have encountered difficulties during the Nationality Verification process.

2.4 Statelessness

The 1954 Convention relating to the Status of Stateless Persons is the only international treaty aimed specifically at regulating the standard of treatment for

¹² E.g. some group of people might be discriminately and arbitrarily excluded from the process of proof of nationality even though they themselves are eligible to a nationality under the law.

stateless persons (UNHCR, 2012), including providing definition of a ‘stateless person’. In accordance with the Article 1(1) of the 1954 Convention, stateless person means **“a person who is not considered as a national by any State under the operation of its law”**. Both State Parties to this Convention and every Nation-state shall be bound by this term as it is a part of customary international law¹³. This definition under the convention applies to neither a person whose rights and obligations are attached to the possession of the nationality of the country of their residence¹⁴, nor one who has committed a serious crime¹⁵. Weis (1979) gives a definition of a stateless person as, “a person not having a nationality under the law of any State”.

However, issues of definition/terminology regarding statelessness are complex in Thailand. The debate, relating to how to call or name the group of persons who are considered to have a lack of any nationality, has taken place for a long time. Like ‘refugee’, the Thai government never uses the term ‘stateless’ in the context of Thailand. ‘Ethnic Minority’, ‘Illegal Migrants or Irregular Migrants’, ‘Person with Legal Status Problems’, ‘People without Thai Nationality’ or ‘People without Status in Registration System’ are terms used by the government instead of ‘stateless persons’.

According to Phunthip K. Saisoonthorn, a professor on Private International Law of Thammasat University and an expert on the statelessness issue, Thailand and the countries in Southeast Asia are different and cannot compare with European countries where both law and civil registration systems to tackle statelessness have been developed for a long time and well established.

In the context of Thailand, stateless persons, as defined in Article 1(1) of the 1954 Convention, are divided into two main groups.

First is **‘unregistered stateless persons’**. This group of stateless persons is not considered as a national by any State and has not recognized/recorded his or her existence by the Thai State. These persons are facing the most vulnerable situations

¹³ This has been concluded by the International Law Commission in Articles on Diplomatic Protection with commentaries, 2006, which states that the definition in Article 1 can “no doubt be considered as having acquired a customary nature”.

¹⁴ Article 1 (2) (i) to the Convention Relating to the Status of Stateless Persons, 1954

¹⁵ Article 1 (2) (ii) and (iii) to the Convention Relating to the Status of Stateless Persons, 1954

due to not being recorded (civil registration problems), and being unable to exercise right to a nationality (nationality problems). Statelessness in this situation may occur when a person was not registered at birth or when a child was abandoned at birth with no clue to where its parentage comes from.

Second is **‘registered stateless persons’**. These stateless persons are not considered as a national by any State as well, but they are accepted and counted as a population residing in the Country. These people normally are recorded in Thailand’s civil registration database and issued an ID card with a 13-digit number for an identity document. Therefore, these registered stateless persons in Thailand are facing only nationality problem.

In the past, when unregistered stateless persons were found on Thai soil, Thailand would start tackling the problem by making records of these people into civil registration system. This occurred whether they were indigenous to Thailand or immigrants fleeing from fighting and living in Thailand for a long time; Thailand would try to make them documented first. The nationality problem would be considered after they were documented, and verification would depend on the facts surrounding each individual. Regarding this registration step, the registered stateless persons would be able to enjoy fundamental human rights although they were still without any nationality.

According to the Comprehensive Strategy to Address Problems of Irregular Migrants, which Thailand just adopted on 24 April 2012, the Thai government names every alien who irregularly entered as ‘irregular migrants’, including stateless persons (as defined in Article 1(1) of the 1954 Convention). The Strategy covers 4 target groups of irregular migrants: ethnic minorities/old comers who cannot return to their country of origin; irregular migrant workers from Cambodia, Lao PDR and Myanmar; specific populations with national security concerns and; other irregular migrants.

The first group, **‘ethnic minorities/old comers who cannot return to the country of origin’** is basically registered as stateless persons. They were issued ID cards entitled ‘Persons without Thai Nationality’, and have ID number starting with ‘6’ or ‘7’ or ‘0’ to signify that they have temporary residence in Thailand. As identified by the government, this group is without any nationality due to loss of all

connections with the country of origin and cannot return to their homeland. Therefore, based on this verification, these ethnic minorities are stateless persons (as defined in Article 1(1) of the 1954 Convention).

The second group, **‘irregular migrant workers from Cambodia, Lao PDR and Myanmar’** is not considered as stateless due to their connection with their countries of origin. The registered irregular migrant workers were also issued ID cards entitled ‘Persons without Thai Nationality’, which have ID numbers starting with ‘00’. The name of their country of origin would also be stated on the card. Thailand declares amnesty for irregular migrant workers have reported to/registered with the government and followed instructions to legally work in Thailand. One of the conditions for them to temporarily stay and work in Thailand is to regularize themselves by the Nationality Verification process. After the verification, those who are rejected under this scheme will be considered as stateless persons as defined in Article 1(1) of the 1954 Convention.

The third group is called **‘specific population with national security concerns’**. This group includes: people ‘fleeing from fighting’ in the nine temporary shelters along border between Thailand and Myanmar, Rohingyas and North Koreans. Thailand will never consider this group as stateless persons (as defined in Article 1(1) of the 1954 Convention) but a group with specific solutions, such as resettlement or repatriation, for example. This group will not be granted Thai nationality. However, in accordance with Article 1(1) of the 1954 Convention, the groups of Rohingyas are stateless due to their explicit exclusion from 135 national ethnic groups under Myanmar’s laws. Due to current discriminatory treatment under the law and possible violence in their home country, it is problematic to send these people back to Myanmar.

Lastly, **‘other irregular migrants’** are identified as those who are excluded from the groups 1-3 mentioned above. Again, Thailand will never consider this group as stateless persons (as defined in Article 1(1) of the 1954 Convention), but irregular migrants. National policy for this group is to deport the individual back to their country of origin unless there is concrete evidence proving that they cannot return due to persecution. Overstayed aliens and smuggled persons from Africa are samples of the ‘other irregular migrants’ category. Furthermore, irregular migrant workers

from Cambodia, Lao PDR and Myanmar who are not eligible under the Nationality Verification process, such as those who do not have work permission or the children of the worker, may also be considered as part of this group. These people, then, are vulnerable to be deported according to the Comprehensive Strategy to Address Problems of Irregular Migrants which Thailand just adopted.

Besides the definition/terminology on statelessness, situations in which may cause statelessness should be explored to understand the phenomenon and to solve the problems directly at the point of origin. In the context of the South East Asia region, particularly the continental areas like Cambodia, Lao PDR, Myanmar and Thailand, statelessness circumstance may be similar. Based on case studies, the causes/situations where people could become stateless or are at risk of statelessness could be conceptualized as follows:

Firstly, people are vulnerable and at risk of statelessness if **people live in remote or hard-to-reach areas**. Ethnic minorities or hill tribes who are residing in mountainous regions face difficulties to access the governmental services such as hospitals or civil registration office. These residents then may not be aware or may not be able to register their children's birth or to conduct any process regarding civil registration. Most of the workers from Cambodia, Lao PDR and Myanmar, who are currently residing in Thailand, came from backcountry where there was no chance for economic development at the time. In this regard, these workers were unable to be documented or recorded as a national through the process of proof of nationality. Their situation has become even more complex when they crossed the border to Thailand.

A second risk of statelessness is associated with the uncertainty of the state jurisdiction over individuals in the situation. This occurs in situations where **people live in border areas**, especially the areas where the official boundary is not yet defined. Areas in question are normally claimed to belong to more than one State. Therefore, people in such areas frequently face statelessness or due to this uncertainty. Thailand shares most of its boundaries with Cambodia, Lao PDR and Myanmar and these three countries also have their borders sharing with another country. Without concrete borderline (e.g. watershed or mountain) or effective immigration systems, people who are residing in border areas between these countries may not be able to distinguish, or may not realize which country they are subjected to and they may have

more chances to cross the borders irregularly due to such ignorance. ‘*AeKaewdee*’, an Akha who were born and living in border areas between China and Myanmar, represents this difficulty (See Case study no.7 in Chapter V).

The third cause is relevant to the situation in which **people flee from persecution and cannot return to their homeland**. The primary reason for migration (see also Chapter III) for most of the migrant workers in Thailand is related to escaping from economic depression in their country of origin and seeking better life opportunity in Thailand. However, there are also workers who fled civil war or fighting in their countries because of different political doctrines, such as Military Junta, Communism, or Democracy where the elite who wished to govern the countries did so without support from third parties. The latter group may become stateless, due to these three situations: firstly, due to discriminative reasons where they cannot exercise the right to their own nationality after fleeing; secondly, nationality of these people may be revoked after their long residence abroad; and lastly, they may not have a chance to prove themselves as a national and therefore they are not documented as such. ‘*Kanchana*’ and her Karen family, for example, fled oppression against ethnic minority groups inside Myanmar to Thailand. Later, in order to earn her living in Thailand, she decided to be registered as a migrant worker from Myanmar. In the context of the Nationality Verification, Kanchana may be unable to obtain citizenship from Myanmar due to the refugee status of her family, and as a result she then becomes stateless (See Case study No.5 in Chapter V).

Fourthly, stateless problems can occur in the situation, in which **people are rootless/foundlings**. Rootless people were abandoned from their parents since early childhood. People in this situation cannot search back into their own history for parents, birthplace, or any identification papers. Due to such unclear circumstance of these foundlings, it may be difficult to affirm where these people were originally from. They may be abandoned either by a Thai parent or a migrant from another country. To give the benefit of the doubt, the country of habitual residence of these foundlings should solve legal status problems for these people.

Finally, statelessness or risk of statelessness is occasioned in the situation in which **people migrated out of the country of origin irregularly**. This is, especially the case when they left the country for a long time and they have lost

relevant links with their homeland. This reflects many of the circumstances for migrant workers in Thailand from Cambodia, Lao PDR and Myanmar who mostly entered Thailand without permission. Since the worker irregularly left their home country, some of them have never returned. Due to their irregular residence, the migrant workers cannot travel freely and are vulnerable to be exploited if they wish to do so. In this regard, a persons' irregular migration may cause revocation of their nationality under domestic law. Lao PDR, for instance, revokes nationality if a person has resided abroad for more than seven years without authorization. Re-acquisition of nationality is however possible, but in terms of the proof of nationality, it may be very complicated if these workers have already lost relevant connection with the country of origin (e.g. losing all identification document or no longer having family or relatives in their hometown).

2.5 Vulnerable groups of people in Thailand who have nationality problems

In Thailand there are many vulnerable groups of people who are encountering nationality problems: some were born and have been living in Thailand as their own country for ages while others migrated from another country. According to the Bureau of Registration Administration (BORA) database as of December 2011, registered stateless people in the country appear around 506,197 persons. This figure excludes migrant workers.

The '*in situ*'¹⁶ stateless persons may be entitled to Thai nationality but cannot yet prove their qualification as nationals. The most vulnerable stateless persons in the '*in situ*' context are the undocumented/unregistered. These people are not recorded in the civil registration system of Thailand and are also without any ID paper or 13-digit number. They are most vulnerable and at risk of rights violation due to their lack of any identification.

Other '*in situ*' stateless persons may be derived from misleading nationality criteria or nationality criteria which have changed. Under current

¹⁶'*In situ*' means in the original place.

nationality law, these people are in fact entitled to Thai nationality. However, they were previously recorded as aliens in the database. Such mistakes may take place in several circumstances such as in situations where the people themselves were not aware of the importance or existence of nationality or where the competent authority deliberately refused to determine their status.

Furthermore, the nationality law of Thailand currently limits acquisition of citizenship on the basis of the *jus soli* principle. As a consequence, people born in Thailand to aliens with temporary residence are not entitled to Thai nationality. Under a provision of the recent nationality law¹⁷, however, in the case where the Minister of Interior deems it appropriate, he may give an order granting Thai nationality to those born in Thailand of alien parents for each particular case as long as this decision is in conformity with the rules prescribed by the Cabinet. This third group of '*in situ*' stateless persons is mixed. Children of migrant workers from Cambodia, Lao PDR and Myanmar who were born in Thailand are sometimes considered as stateless persons in '*in situ*' context until they have proved that they have the nationality passed to them by their parents.

Stateless persons or people whose nationality is still not determined in the migration context are also vulnerable in Thailand. Their situation is complex due to matters of migration which most of the time is irregular. Undocumented/unregistered migrant workers are very vulnerable. These people would be considered as irregular and would not be granted hardly any entitlements from Thailand as their country of residence.

Conversely, the group of workers from Cambodia, Lao PDR and Myanmar who were registered and issued an ID card by the Thai authorities are granted temporary protection as workers in Thailand. The registered workers are permitted to stay and work in Thailand and would have a right to the proof of nationality with their country of origin, so-called the Nationality Verification process (See more details in Chapter IV). However, the migrant workers and the children who do not work or do not have a work permit would not have access to this process. Workers from other countries, such as China or Viet Nam, are not entitled to this Verification process.

¹⁷ Section 7 bis paragraph 2 under Nationality Act B.E.2508 (1965) as amended by Act B.E.2535 no.2 (1992) and Act B.E.2551 no.4 (2008)

There is no clear policy in Thailand to cope with nationality problems for migrant workers from China or Viet Nam who are facing nationality problems.

CHAPTER III

MIGRANT WORKERS FROM CAMBODIA, LAO PDR AND MYANMAR IN THAILAND

Chapter III is intended to explore an overview of the circumstance of the migrant worker populations in Thailand, including those from Cambodia, Lao PDR and Myanmar as well as their nationality problems. The existing normative frameworks for the workers from the three countries will be further examined. The first section of the Chapter will be an **overview of migrant worker populations in Thailand**. The overall picture of migrant workers in Thailand will be provided. This will include the definition, classification and statistics of all recorded migrant populations in Thailand. Following this, the matter of **migrant workers from Cambodia, Lao PDR and Myanmar in Thailand and their nationality problems** will be discussed. The scope of this study will be narrowed down to capture only workers from the three countries. People from Cambodia, Lao PDR and Myanmar are the biggest proportion of aliens in Thailand. Not all of them initially entered Thailand seeking job opportunity. However, once they engage in work they would then be considered migrant workers. Background and reasons for migration will be examined. Classification of these workers under Thailand's domestic law, as well as, specific statistics will be provided. Finally their nationality problems will be demonstrated and analyzed.

3.1 Overview of migrant worker populations in Thailand

3.1.1 Definition of migrant workers

The term 'migrant worker' is defined in core international instruments, such as the United Nations convention and the International Labour Organization

(ILO) convention, but with slightly different coverage. In accordance with Article 2 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹, the term 'migrant worker' refers to "*a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national*". The migrant workers, as defined in this Convention, include frontier workers², seasonal workers³, seafarers⁴, workers on an offshore installation⁵, itinerant workers⁶, project-tied workers⁷, specified-employment workers⁸ and self-employed worker⁹. Article 11(1) of the ILO Convention concerning

¹ This Convention was adopted by UN General Assembly resolution 45/158 of 18 December 1990.

² The term "frontier worker" refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week.

³ The term "seasonal worker" refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year.

⁴ The term "seafarer", which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national.

⁵ The term "worker on an offshore installation" refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national.

⁶ The term "itinerant worker" refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation.

⁷ The term "project-tied worker" refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer.

⁸ The term "specified-employment worker" refers to a migrant worker:

- (i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or
- (ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or
- (iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work.

⁹ The term "self-employed worker" refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.

Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No.143)¹⁰ defines migrant worker as “*a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker*”. Under paragraph two, this definition of the ILO Convention excludes: frontier workers, artistes and members of the liberal professions who have entered the country on a short-term basis, seamen, persons coming specifically for purposes of training or education and employees of organizations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments. Given the consolidated UN principles and standards¹¹ to protect human rights, the meaning and coverage of migrant worker populations in the Conventions of the United Nations High Commissioner for Human Rights are broader than what is set out in the ILO Convention.

In respect to the scope of this study Lao PDR, Myanmar and Thailand are not Party to the UN Migrant Workers Conventions while Cambodia has been a signatory to this Convention since 2004. Being a signatory means that Cambodia is interested in becoming a State Party in the future, but it does not mean that Cambodia is legally required to comply with provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Thus, none of the Countries within the scope of this study are legally obliged to follow the provisions of this Convention.

¹⁰The General Conference of the International Labour Organisation, convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixtieth Session on 4 June 1975.

¹¹ Such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

In Thailand's context, there is no definition of migrant worker specified in the national law of the country but alternative terms are instead used. In 1972 (B.E.2515)¹², Thailand started, for the first time, controlling the work of aliens who were residing in Thailand. The following enactments were the national laws which sought to control the work of aliens: the Declaration of the Revolutionary Party No.322 (known in Thailand as Por Wor 322) dated on 13 December 1972, the Working of Aliens Act of 1978 (B.E.2521) and the latest Working of Aliens Act of 2008 (B.E.2551). According to the Act of 2008 which is in force, the term 'alien' is stipulated to refer to "*a natural person who is not of Thai nationality*" while the term 'employee' is defined as "*the holder of work permit subject to Section 9, Section 11, Section 13(1) and (2), and Section 14 be granted to work as prescribed in the Ministerial Regulation issued under Section 15*". As mentioned, there is no direct term used to refer to migrant workers. This may result from consideration of the fact that aliens in Thailand are not always persons who have migrated from another country¹³.

However, in 2001 (B.E.2544), after Thailand's realization of mass irregular exodus of persons from neighboring countries due to various reasons, the Regulation of Prime Minister's Office on Administration of Irregular Migrant Workers, by a virtue of Section 11(8) of the State Administration Act, 1991, came into force to address the problem. Under this Regulation, Thailand for the first time specified a definition of 'irregular migrant workers'. Irregular migrant workers, according to the Section 5, refer to "*persons with a nationality of Cambodia, Lao PDR and Myanmar who have irregularly entered Thailand to work, excluding members of their families.*"

The above examples demonstrate how the term 'migrant worker' is defined differently in accordance with the varied circumstance and the purposes for defining it. The term in the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families covers a wider group of migrant workers in order to protect the human rights of the workers and their families who are considered as a vulnerable group outside the country of their

¹² Before 1972 (B.E.2515), aliens could apply for work in almost every sector, except in the reserved occupations for Thai nationals.

¹³ See also "3.1.2 Classification of migrant worker in Thailand"

nationality. The ILO Convention No.143 has a specific purpose and focuses on the promotion of equality of opportunity and treatment of migrant workers in term of employment. Thailand, from the different point of view, has been facing massive migration of irregular workers from Cambodia, Lao PDR and Myanmar for a long time. Terminology used by the Thai authorities is then focused on this specific group and it is used to control their work in Thailand as well as to address the situation, but distinctively it is not for the protection. Although, the migrant workers from Cambodia, Lao PDR and Myanmar are in principle protected under the Labour Protection Act of 1998 (B.E.2541), labeling these populations as ‘illegal’ has differentiated them and excluded them out of the protection framework.

3.1.2 Classification of migrant workers in Thailand

‘Migrant worker’ or ‘alien worker’ in Thailand is basically categorized as regular and irregular workers according to factual circumstance of these populations in the country. And, in the respect of the laws governing the working of aliens, the migrant workers could also be divided by type of work permission while the detailed breakdown of the migrant workers can be listed by nationality or country of origin and ethnicity in the case of irregular worker.

1) Regular migrant workers

Migrant workers who are considered legal according to Thai laws refer to aliens who may enter Thailand legally, or even irregularly, but are granted permission to work in the country. These regular migrant workers are those who are permitted to work under Section 9, Section 11, Section 12 and Section 14 of the Working of Aliens Act in 2008.

Work permission under the **Section 9**¹⁴ covers three main groups of aliens. Firstly **aliens with permanent residence who have been granted permission to**

¹⁴Section 9.

No alien shall engage in any work other than the works under section 7 and the permit shall be granted by the registrar, except for the alien who enters into the Kingdom temporarily under the law on immigration so as to engage in necessary and urgent work for a period not exceeding fifteen days and that alien may engage in that work after giving written notification to the registrar.

work before the enforcement of the Declaration of Revolutionary Party No.322 shall be allowed to work for their lifetime unless they apply to work in any new occupations. Secondly, **skilled aliens who enter into Thailand temporarily under the law on immigration to engage in necessary and urgent work or to work in general** are also allowed work permission under this Section. Lastly, given that Thailand has a bilateral agreement on employment of workers with Cambodia, Lao PDR and Myanmar, **unskilled workers from these countries** can be imported and allowed to work in Thailand for a specific period of time. In addition, workers from these three countries, who at first entered into Thailand irregularly but later were legalized through the process of Nationality Verification and are holding a temporary passport or certificate of identity issued by their country of origin, are included under this provision.

Section 11¹⁵ permits **skilled aliens who are currently residing abroad** to enter to work in Thailand. In this regard, the provision allows that the employer could apply for the permit and the pay fee on behalf of that alien. **Section 12¹⁶**, in

In the issuance of the permit, the registrar may impose any conditions to be complied with by the alien.

The permit, the application for and the issuance of the permit and the giving of notification under paragraph one shall be in accordance with the form and procedure as prescribed by the Ministerial Regulation.

The Director-General may lay down the guideline for prescribing of the conditions under paragraph two to be complied with the registrar.

¹⁵*Section 11.*

Whoever desires to engage an alien living abroad to work for his business in the Kingdom may apply for the permit and pay a fee on behalf of that alien.

The application for the permit on behalf of the alien under paragraph one shall be in accordance with the procedure as prescribed by the Ministerial Regulation.

¹⁶*Section 12.*

In granting of permission to any alien to engage in work in the Kingdom under the law on investment promotion or other laws, the authority who grants permission under such law shall without delay notify the granting of that permission in writing to the registrar together with other details as specified by the Director-General.

The registrar shall, after receiving the notification under paragraph one, issue the permit to that alien within seven days as from the date of receiving of such notification.

cooperation with other applicable laws, allows issuance of work permission to **aliens who are permitted to work under the law on investment promotion or other laws** after the authority, who grants such permission, notifies the granting to the competent official of the Ministry of Labour (MOL). And lastly work permit can be granted, under **Section 14¹⁷**, to **aliens who have residence and are nationals of the country having common boundary with Thailand** and wish to work in border provinces of Thailand.

Based on the Ministry of Labour's record (see the list of these countries in Table 1), the group of regular migrant workers, in the respect of Section 9 and Section 12, can be broken down, and arranged in ascending order, by these 40 countries of nationality: (1) Myanmar, (2) Cambodia, (3) Lao PDR, (4) Japan, (5) China, (6) England, (7) India, (8) Philippines, (9) USA, (10) Taiwan, (11) South Korea, (12) France, (13) Australia, (14) Germany, (15) Malaysia, (16) Russia, (17) Singapore, (18) Canada, (19) Italy, (20) Netherland, (21) Sweden, (22) Switzerland, (23) Indonesia, (24) Pakistan, (25) Denmark, (26) New Zealand, (27) Belgium, (28) South Africa, (29) Viet Nam, (30) Israel, (31) Bangladesh, (32) Finland, (33) Ireland, (34) Nepal, (35)

While waiting for the permit under paragraph two, that alien may engage in work without regard to section 24 until the date of receiving of the permit as notified by the registrar.

¹⁷*Section 14.*

The alien having place of residence in, and being of nationality of, the country having the common boundary with Thailand who enters into the Kingdom with travel document under the law on immigration may be permitted to engage in specific categories of works or in works with specific nature in the Kingdom temporarily through the specified period or season within the area which is adjacent to boundary or the area which is contiguous therewith.

An alien who desires to engage in the work under paragraph one shall submit the application, together with travel document, for temporary work permit to the registrar and shall pay fee in the amount as prescribed by the Ministerial Regulation.

In granting of the permit, the registrar shall specify the permitted working area or work place, working period, category or nature of work and the employer to work with in accordance with the form and procedure as prescribed by the Ministerial Regulation.

The provision of the section may come into force in any area, to the alien of any nationality, for any category or nature of work, during any period or season and with any condition upon the Notification of the Council of Ministers as prescribed in the Government Gazette.

Norway, (36) Austria, (37) Sri Lanka, (38) Iceland, (39) Hong Kong, (40) North Korea.

2) Irregular migrant workers

Irregular migrant workers mean aliens who are considered as those entering Thailand irregularly and may or may not be granted permission to work, including those who enter Thailand legally but failed to be permitted to work. Workers who do not obtain work permission are illegal in term of employment in Thailand while workers who may irregularly enter into the country but are later given amnesty to temporarily stay and work are allowed to legally work under Section 13 of the Working of Aliens Act in 2008.

According to **Section 13**, migrant workers from Cambodia, Lao PDR and Myanmar who at first entered into Thailand irregularly to work, but later were granted leniency for temporary stay, are permitted to work for a specific period of time under the condition that they have to complete the Nationality Verification process. Further, the ethnic minorities, who are considered as aliens due to lack of Thai nationality but have been residing in Thailand for a long time, shall also be eligible to work under this same provision. Under this Section, there are 27 occupations¹⁸, including semi-skilled and unskilled jobs, which the ethnic minorities are permitted to do while there are only two occupations, labour and migrant domestic workers, which are allowed for the workers from Cambodia, Lao PDR and Myanmar.

In a case of irregular migrant workers, a detailed breakdown will be recorded by country of origin for the migrant workers from Cambodia, Lao PDR and

¹⁸These 27 occupations include: (1) Fixing bicycles; (2) Fixing auto cushion (3) ;Body-work for automobile (4) ;Fixing exhaust air duct (5) ;Welders (6) ;Carpenter for furniture (7) ;Carpenter for buildings (8) ;Sawing lumbers (9) ;Bricklayers (10) ;Painting (Ex. Buildings painting) (11) ;Doors and windows fixing (12) ;Setting mosquito wire screen (13) ;Dying clothes; (14) Seamstresses (15) ;Doing laundry (16) ;Farming (17) ;Herdsman (18) ;Selling goods (medicine, chemicals, cameras and VDO cameras, guns are not included.) (19) ;Selling food or beverage (20) ;Making food or beverage (21) ; Fixing shoes; (22) Fixing clocks, watches, pens and glasses (23) ;Sharpening knives or other sharp things (24) ;Making a picture frame (25) ;Goldsmiths, silversmiths and metalworkers (26) ;Knitting and hand making textile (and; (27 Labours.

Myanmar. In the case of the aforementioned minorities, such as Lahu, Akha, Shan or Karen, a detailed breakdown will be recorded by ethnicity.

3.1.3 Statistics of migrant workers in Thailand

Figure 1 presented below is divided by type of work permit under the Working of Aliens Act of 2008. From this figure, more than half (733,603 persons or 64.04%) of 1,145,159 migrant workers in Thailand as of December 2012 were workers from Cambodia, Lao PDR and Myanmar who initially entered Thailand irregularly, but have become legalized through the Nationality Verification process and are now employed legally in Thailand. The second largest group of migrant workers in Thailand, 167,881 persons or 14.66%, shares the same origin as the first group, namely Cambodia, Lao PDR and Myanmar. This group however, is still considered irregular workers due to their incomplete Nationality Verification process. And again, the migrant workers from the three neighboring countries are in the third rank. As was agreed in the bilateral instruments between Thailand and the three countries, called ‘the Memorandum of Understanding on Employment Cooperation’, 93,265 workers or 8.15% of the total number were imported from their country of origin to work in Thailand. This was the third biggest group. Next are groups of general workers and those who applied for work under the Board of Investment (BOI) law and other similar commercial laws from 40 countries (see the list of these countries in Table 1).

Skilled workers who applied for work permit under the Section 9 were 91,206, or 7.96%, while the recorded numbers of BOI work permits (Section 12) were 32,782 or 2.86%. The last two groups of recorded migrant workers are a group of ethnic minorities who were accepted as long term residents in Thailand and residual aliens with permanent residence and who have been holding a permanent work permit since 1972. As of December 2012, only 25,439 people from the ethnic minorities group (or 2.22%) applied for a work permit. Nine hundred eighty three workers (or 0.09% of all recorded workers) with a permanent work permit left the country.

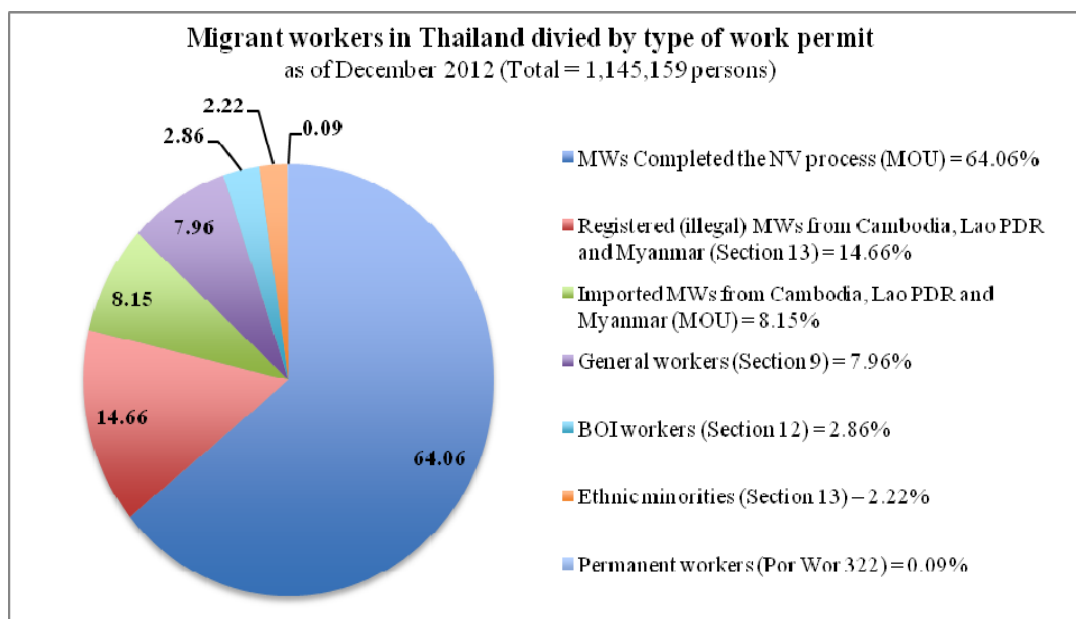


Figure 3.1: Migrant workers in Thailand divided by type of work permit
As of December 2012 (Total = 1,145,159 persons)

Source: Office of Foreign Workers Administration, Ministry of Labour

Website: <http://wp.doe.go.th/home>¹⁹

If categorized by country of nationality (see the list of these countries and figures in Table 1), the top ten largest groups of alien workers who have legally entered into Thailand are (1) Myanmar, (2) Cambodia, (3) Lao PDR, (4) Japan, (5) China, (6) England, (7) India, (8) Philippines, (9) USA and (10) Taiwan. Regular workers from Myanmar, Cambodia and Lao PDR are aggregated at around 829,000. This number excludes the 168,000 irregular workers from these countries who are on the waiting list for Nationality Verification. The others from Japan, China, England, India, Philippines, USA and Taiwan are undertaking jobs in the general sectors as skilled workers and a small number are working in the investment sector.

In general sectors, Japan, England, China, Philippines and USA are the top five countries of nationality for the workers working in Thailand as of December 2012. Japan, China, India, Taiwan and South Korea have sent the most investors to Thailand. These findings show ‘migrant workers’ are not only workers from

¹⁹ Statistics of migrant workers in Thailand accessed from <http://wp.doe.go.th/home> on 8 December 2012

Cambodia, Lao PDR and Myanmar, but they also include those from other countries as well.

Table 3.1: Migrant Workers in Thailand divided by type of entrance and country of nationality
As of December 2012 (Total = 1,145,159 persons)

No.	Migrant workers with legal entrance					Migrant worker with illegal entrance				
	Country of nationality	Total of regular workers	Section 9			Section 12	Country of origin / Ethnicity / Ethnic minority group as recorded by MOI	Total of irregular workers	Section 13	
			Permanent	General	NV				Import	BOI
		951,839	983	91,206	733,603	93,265	32,782	193,320	167,881	25,439
	Myanmar	649,952	-	1,409	630,185	18,241	117	65,741	63,768	1,973
	Cambodia	137,598	-	384	73,793	63,405	16	64,454	64,409	45
	Lao PDR	41,386	-	133	29,625	11,619	9	39,753	39,704	49
	Japan	29,770	-	13,032	-	-	16,738	13,350	-	13,350
	China	12,010	-	8,744	-	-	3,266	2,266	-	2,266
	England	9,815	-	8,977	-	-	838	1,370	-	1,370
	India	9,284	-	7,331	-	-	1,953	760	-	760
	Philippines	9,209	-	8,500	-	-	709	633	-	633
	USA.	8,200	-	7,335	-	-	865	502	-	502
	Taiwan	4,415	-	2,724	-	-	1,691	439	-	439
	South Korea	3,502	-	2,497	-	-	1,005	224	-	224

Table 3.1: Migrant Workers in Thailand divided by type of entrance and country of nationality (cont.)
As of December 2012 (Total = 1,145,159 persons)

No.	Migrant workers with legal entrance					Migrant worker with illegal entrance			
	Country of nationality	Total of regular workers	Section 9		Section 12	Country of origin / Ethnicity / Ethnic minority group as recorded by MOI	Total of irregular workers	Registered (irregular) MWs	Section 13 Ethnic minorities
			Permanent	General					
	France	3,466	-	2,771	-	-	182	-	182
	Australia	3,210	-	2,710	-	500	152	-	152
	Germany	2,867	-	2,240	-	627	148	-	148
	Malaysia	2,329	-	1,634	-	695	139	-	139
	Russia	1,753	-	1,716	-	37	81	-	81
	Singapore	1,719	-	1,323	-	396	10	-	10

Table 3.1: Migrant Workers in Thailand divided by type of entrance and country of nationality (cont.)
As of December 2012 (Total = 1,145,159 persons)

No.	Migrant workers with legal entrance					Migrant worker with illegal entrance					
	Country of nationality	Total of regular workers	Section 9			Section 12	Country of origin / Ethnicity / Ethnic minority group as recorded by MOI	Total of irregular workers	Section 13		
			Permanent	General	NV					Import	BOI
	Canada	1,671	-	1,503	-	-	168	Displaced from Lao PDR	9	-	9
	Italy	1,615	-	1,273	-	-	342	Nepal	5	-	5
	Netherland	1,206	-	991	-	-	215	Mien (Yao)	3	-	3
	Sweden	1,111	-	1,004	-	-	107	Displaced from Nepal	1	-	1
	Switzerland	981	-	810	-	-	171	Viet Nam	1	-	1
	Indonesia	837	-	684	-	-	153	Unidentified groups	589	-	589
	Pakistan	819	-	757	-	-	62	Others	2,508	-	2,508
	Denmark	710	-	521	-	-	189				
	New Zealand	686	-	587	-	-	99				
	Belgium	662	-	519	-	-	143				

Table 3.1: Migrant Workers in Thailand divided by type of entrance and country of nationality (cont.)
As of December 2012 (Total = 1,145,159 persons)

No.	Migrant workers with legal entrance					Migrant worker with illegal entrance				
	Country of nationality	Total of regular workers	Section 9			Section 12	Country of origin / Ethnicity / Ethnic minority group as recorded by MOI		Total of irregular workers	Section 13
			Permanent	General	NV					
	South Africa	520	-	472	-	-	-	-	48	
	Viet Nam	495	-	431	-	-	-	-	64	
	Israel	471	-	425	-	-	-	-	46	
	Bangladesh	463	-	444	-	-	-	-	19	
	Finland	453	-	388	-	-	-	-	65	
	Ireland	417	-	378	-	-	-	-	39	
	Nepal	352	-	325	-	-	-	-	27	
	Norway	307	-	256	-	-	-	-	51	
	Austria	287	-	226	-	-	-	-	61	
	Sri Lanka	234	-	179	-	-	-	-	55	
	Iceland	70	-	67	-	-	-	-	3	
	Hong Kong	64	-	58	-	-	-	-	6	

No.	Migrant workers with legal entrance						Migrant worker with illegal entrance		
	Country of nationality	Total of regular workers	Section 9			Section 12	Country of origin / Ethnicity / Ethnic minority group as recorded by MOI	Total of irregular workers	Section 13
			Permanent	General	NV				
North Korea	27	-	27	-	-	0			
Others	6,896	983	5,421	-	-	492			

Website: <http://wp.doe.go.th/home>²⁰

8 December 2012

3.2 Migrant workers from Cambodia, Lao PDR and Myanmar in Thailand and their nationality problems

3.2.1 Background and reason for migration

Thailand is the country situated in the middle of mainland Southeast Asia, sharing boundaries with four neighboring countries, Cambodia, Lao PDR, Myanmar and Malaysia. Thailand's top three longest shared borders are with Myanmar, Lao PDR and Cambodia respectively. Altogether, Thailand has 26 provinces²¹ bordering these three countries (Thailand's National Statistic Office, 2010). According to this geographical factor and the imperfect system of immigration control between the countries, people from Cambodia, Lao PDR and Myanmar are able to easily cross the shared borders with Thailand and vice versa.

As discussed earlier, some workers from Cambodia, Lao PDR and Myanmar entered into Thailand legally and applied for work permit while others, for a variety of reasons, chose to cross the border irregularly. According to Section 34 of the 1979 Immigration Act, people from Cambodia, Lao PDR and Myanmar are allowed to enter Thailand legally for specific purposes as stipulated under the provision²². In order to obtain permission under this provision, these people must have travel documents such as passport or an international identity paper to identify where their personal State is. This document is used for travelling from a country to country and can only be obtained by recognized nationals or registered aliens with residency. In this sense, workers from Cambodia, Lao PDR and Myanmar must be recognized first

²¹ Ranong, Chumporn, Prachuab Khirikhan, Phetchaburi, Ratchaburi, Kanchanaburi, Tak, Mae Hong Son, Chiang Mai, Chiang Rai, Payao, Nan, Uttaradit, Phitsanulok, Loi, Nongkhai, Nakorn Phanom, Mukdaharn, Amnat Charoen, Ubon Ratchathani, Sisaket, Surin, Buriram, Sakaeo, Chanthaburi, Trat

²² The purposes for permitted entrance under the Section 34 of the Immigration Act include: conducting diplomatic or consular missions; performing official duties; touring; sporting; doing business; investing through the Ministries and Departments of concerned; investing or conducting other activities regarding investment under law; transiting; performing as a captain or a crew of conveyance coming to a port, a station, or any areas in Thailand; education; working for mass media of communication; doing missionary work through the Ministries and Departments of concerned; conducting scientific research or teaching in a research or educational institute in Thailand; working as a skilled worker or an expert and; conducting other activities such as staying with Thai family.

as nationals, or at least as registered aliens with residence, in their country of origin to obtain such a paper. This group of people who legally enter Thailand do not encounter many problems.

On the other hand, if workers from these three countries entered into Thailand irregularly, they are at risk of criminal charges²³ and vulnerable for other various types of violations. In principle under the immigration law, aliens who are considered as those with illegal entrance include: those who were not permitted to enter into Thailand in the first place; those who were allowed to enter but over stayed their permission and those who were allowed to enter for a specific purpose but infringed on the condition²⁴.

Most of the irregular workers from Cambodia, Lao PDR and Myanmar seem not to be recognized or registered as a citizen in their country of origin. This was evident by the fact that many of these workers lack any identity paper issued by the country of origin. Due to illegal entrance, many of the people from Cambodia, Lao PDR and Myanmar are never registered with their overseas missions (e.g. embassy or consulate) to obtain diplomatic protection. As a result, they may either lose connection with their country of origin, or in the worst case they may be deprived of nationality due to long residence abroad.

Focusing on workers from Cambodia, Lao PDR and Myanmar with illegal entrance, there is a diverse mixture of people who migrated into Thailand. Some of these people migrated to Thailand a long time ago while others have recently entered the country. Reason for migration and illegal status, under relevant laws of Thailand, of these two groups are also different. According to historical and academic references on the circumstances of arrival in Thailand of workers from Cambodia, Lao PDR and

²³ Under Thailand's immigration law, if aliens have entered or left Thailand without permission from the State authorities, they will be punished by imprisonment of not exceeding 2 years and a fine not exceeding 20,000 baht (Section 62). Secondly, if aliens have stayed in Thailand without permission or with expired or revoked permission, they will also be punished by imprisonment of not exceeding 2 years and a fine not exceeding 20,000 baht (Section 81).

²⁴ For example, those who were permitted to enter as a tourist but later work in Thailand without permission.

Myanmar, the reasons for coming to the country can be broken down into four categories:

- Fleeing oppression and violence from fighting in the country of origin;
- Escaping from economic depression in the country of origin to seek a better life opportunity;
- Staying with their family; or
- Being trafficked into Thailand.

Cambodia²⁵, Lao PDR²⁶ and Myanmar²⁷ have all struggled from occupation by the foreign powers, Britain and France, which ruled the countries from around the middle of the 19th century to the middle of the 20th century. After their independence, they still faced difficulty such as civil war or fighting within the countries because of different political doctrines, Military Junta, Communism or Democracy struggles among the elite who wished to govern the countries sometimes with support from third parties²⁸. For instance, in Myanmar since the 1950s the Burmese/Myanmar army has been governing the country. This intensified after the coup of General Newin (1961). The army staged a fierce offensive against ethnic minority groups, in particular inside the Mon, Karen, Shan and Karenni states along the Thailand-Myanmar border. In Lao PDR, during the Communist uprising (Second Indo-China War), there was also violence and fighting along the border of Laos and Thailand as the Pathet Laos (Communist Laos) fought against the American-backed forces. Further, in Cambodia, in 1974, the ongoing Indo-China War between the American-backed forces and Vietnamese National Liberation Front (Viet Cong) intensified inside Cambodia as well as the encroachment of the Khmer Rouge. Therefore, fighting was one of the primary reasons why people from Cambodia, Lao PDR and Myanmar fled to Thailand until the 1990s. These people have stayed in Thailand for a long time and have never returned to their original country.

Later, in the late 1980s, the Thai economy rapidly expanded and was regarded by many countries as having remarkable economic growth and structural

²⁵ France ruled Cambodia from 1863 to 1953.

²⁶ France ruled Lao PDR from 1893 to 1953.

²⁷ Britain rule Myanmar from 1886 to 1948.

²⁸ E.g. USA, China, and Vietnam

changes. Such a situation, including rising wages in Thailand during that time, has attracted migrants from neighboring countries. Since the early 1990s, people from Cambodia, Lao PDR and Myanmar entered Thailand not to seek asylum, but to seek a better life opportunity as a result of economic depression in their own countries after the wars. Due to this changed circumstance, this group was distinguished by the Thai authorities as '*migrant workers*' rather than '*persons fleeing from fighting*' which was the term adopted in the past. Besides, some of family members or relatives of the earlier arrivals from Cambodia, Lao PDR and Myanmar may have followed their family to stay in Thailand.

Given the better job opportunities in Thailand, not only are migrants attracted to this country but also illegal brokers who smuggle these migrants into the country. This process will later lead to trafficking in person. Many women and children from Lao PDR were trafficked and forced to be sex workers in Pataya, Songkhla or Chiang Rai. Moreover, there was a case of trafficked children from Myanmar working as garland sellers at an intersection in Bangkok (Human Rights Watch, 2010).

3.2.2 Classification of migrant workers from Cambodia, Lao PDR and Myanmar in Thailand

As mentioned earlier, migrant workers from Cambodia, Lao PDR and Myanmar in Thailand can be classified by their legal status, those who irregularly entered or those who legally entered under Thai law on immigration. After narrowing all recorded migrant workers in Thailand to the group of workers from Cambodia, Lao PDR and Myanmar, they can be further divided by: type of entrance, type of work permission and occupation as follows.

1) Regular migrant workers from Cambodia, Lao PDR and Myanmar

Under the immigration law and the law on working aliens, two main groups of regular migrant workers from Cambodia, Lao PDR and Myanmar are specified. One is the group who were employed under the special exception²⁹ of the

²⁹ Under a general principle of the immigration law (Section 12(3)), an alien is prohibited to enter into Thailand to engage in work as a labour or work by exerting energy using knowledge or academic training skills or work in violation of law on working of aliens. However, the special

immigration law, which is permissible under **Section 9** of the Working of Alien Act of 2008, and the MOU on cooperation of employment. These unskilled regular migrants from Cambodia, Lao PDR and Myanmar include both imported workers from the three countries and workers who were already residing in Thailand and have completed the Nationality Verification process. There are workers from Cambodia, Lao PDR and Myanmar engaging in work in the general sectors under this provision as well. The second group refers to the workers who have residence and citizenship of Cambodia, Lao PDR or Myanmar. In this situation, if Thai employers wish to have these workers enter and work in Thailand, the employer can apply for a work permit for these migrant workers under the **Section 14** of the Working of Aliens Act. However, these workers are able to work only in border provinces of Thailand.

2) Irregular migrant workers from Cambodia, Lao PDR and Myanmar

In the case of workers with illegal entrance from Cambodia, Lao PDR and Myanmar, both those who have recently migrated to Thailand and the ethnic minority groups with a long residence in Thailand are counted. Due to labour demand in many sectors, particularly the industry and fishery, Thailand has announced amnesty programs³⁰ for irregular migrant workers who are living and working in the country. The amnesty programs allow irregular migrants to register and to later verify nationality with their country of origin. With employers, these workers are allowed to apply for work permit³¹ under the **Section 13(1)** of the Working of Aliens Act while waiting for deportation as stated literally in the provision. After completing the Nationality Verification process, legal status of these workers from Cambodia, Lao PDR and Myanmar would be improved to legal and their work permit would be issued under the Section 9 as aforementioned. According to the historical context of Thailand, there are also ethnic minorities from Cambodia, Lao PDR and Myanmar or those who had fled persecution from their own country in the past. These workers have resided in Thailand for a long time and cannot return to their country of origin.

³⁰ These migrant workers registration programs have been announced on annual basis since 2004. However, criteria for the registration vary each year.

³¹ The work permission under Section 13 is for a maximum period one year and this permit however is renewable on residence permission of each worker.

They are allowed to stay temporarily and work to earn their living under **Section 13(2)** of the Act.

As of December 2012, unskilled workers from Cambodia, Lao PDR and Myanmar under both Section 9 and Section 13(1) are mostly needed and employed in these 5 industries: (1) agriculture and livestock, (2) construction, (3) service sector, (4) food and beverage service, (5) wholesale, retail trade and street vendors. Under Section 14 of the 2008 Act, work permits for migrant workers who are eligible to apply for employment in the border areas in Thailand have not yet been implemented. Occupations engaged by ethnic minorities from Cambodia, Lao PDR and Myanmar are not broken down by nationality. Therefore, the classification by occupations or industry of workers from the ethnic minorities from Cambodia, Lao PDR and Myanmar under the Section 13(2) and Section 14 is not accessible.

3.2.3 Statistics of migrant workers from Cambodia, Lao PDR and Myanmar in Thailand

According to Figure 2, workers from Myanmar, 649,952 persons, are the largest group among the three countries as of December 2012. Due to the unstable situation in Myanmar in the past, better job opportunity in Thailand and the longest borderline shared with Thailand, workers from this country have more incentives to migrate from their own country to Thailand. However, in the case of imported workers, Cambodia migrant workers seem to be chosen from Thai employers most often. There are 63,405 imported workers from Cambodia who were requested and hired by the Thai employers while there are only 18,241 and 11,619 workers from Myanmar and Cambodia respectively. Based on information obtained from the interview with an MOL official³², the Thai employers gave a reason that Cambodian workers are normally harder working, patient and honest.

Interestingly, according to the MOL statistics, not all migrant workers from Cambodia, Lao PDR and Myanmar engage in unskilled labour sectors. There are also some skilled or semi-skilled workers from Cambodia, Lao PDR and Myanmar who applied for work permits in general sectors. From the three countries, for

³²Interviewed Chief of Section on Migrant Workers Administration (workers from Cambodia, Lao PDR and Myanmar) on 29 January 2013

example, there are investors permitted to work under the law on promotion of investment as well. Surprisingly, Myanmar is in the 15th rank (1,409 persons) of all 40 countries for the number of skilled or semi-skilled workers in general sectors in Thailand. Similarly, the numbers of investors from Myanmar who are permitted to work under the law on promotion of investment, as of December 2012, appear in the 21st rank with 117 persons.

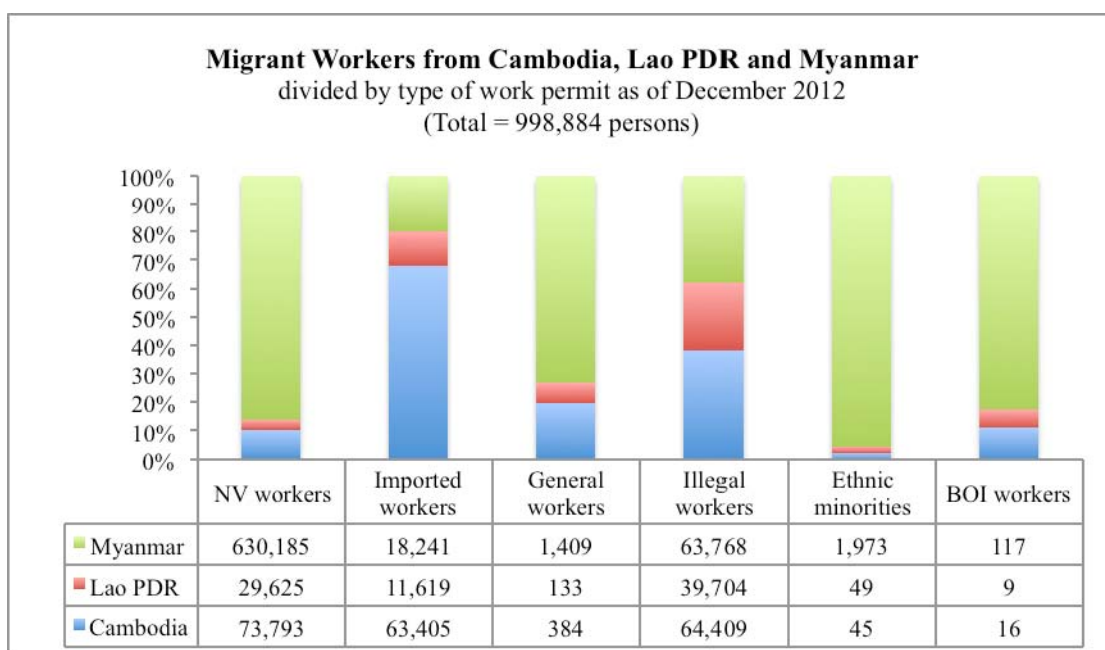


Figure 3.2: Migrant workers from Cambodia, Lao PDR and Myanmar
divided by type of work permit
December 2012 (Total =998,884 persons)

Source: Office of Foreign Workers Administration, Ministry of Labour

Website: <http://wp.doe.go.th/home>³³

3.2.4 Nationality problems of migrant workers from Cambodia, Lao PDR and Myanmar in Thailand

As discussed before, some workers from Cambodia, Lao PDR and Myanmar entered into Thailand legally and applied for work permit while others crossed the border irregularly. For those with legal entrance, they may not encounter

³³ Statistics of Migrant Workers from Cambodia, Lao PDR and Myanmar divided by type of work permit accessed from <http://wp.doe.go.th/home> on 8 December 2012

any nationality problems in their country of origin. In order to obtain permission to enter into Thailand under law on immigration, these workers must first have a travel document, such as an international ID paper issued by the authority of their personal State. This means, they must be recognized as nationals or at least as registered aliens with residence in the country to obtain such paper.

However, these migrant workers may possibly encounter deprivation of nationality due to long residence abroad. The 2004 Law on Lao Nationality³⁴, for instance, states Lao citizens could lose their nationality if they reside in other countries for more than seven years without authorization, or if their authorization to reside overseas has expired and they are not under the administration of the embassy or consulate in those countries, or they have not maintained legal connection with the country for more than ten years. In the case of Myanmar, it is as well stipulated under the Burma Citizenship Law of 1982³⁵ that any citizen³⁶, associated citizen³⁷ or naturalized citizen³⁸ who leaves Myanmar permanently, or who acquired the citizenship of another country, or who has taken out a passport or a similar certificate from another country shall lose its nationality. For Cambodia, there is no similar provision set out in the 1996 Law on Nationality³⁹. Therefore, the regular migrants from Cambodia are fortunate that they are able to maintain their legal status from their home country as a national. In the case of nationality loss, they may later ask for re-acquisition of the nationality due to this existing link and evidence.

On the other hand, the nationality problems of workers from Cambodia, Lao PDR and Myanmar who decided to enter into Thailand irregularly are diverse. These workers may or may not be considered as nationals of their country of origin. According to the interviews conducted for this research, many of the people who enter

³⁴ The Promulgation of the Law on Lao Nationality under the Decree of the President, Khantay Siphandone, enters into force on 15 June 2004.

³⁵ The Burma Citizenship Law comes into force on 15 October 1982 and this version is still being implemented.

³⁶ Article 16 of the 1982 Burma Citizenship Law

³⁷ Article 34 of the 1982 Burma Citizenship Law

³⁸ Article 57 of the 1982 Burma Citizenship Law

³⁹ The Law on Nationality of Cambodia was adopted by the National Assembly on 20 August 1996, during the Extra-Ordinary Session of its first Legislature.

Thailand irregularly do not carry any ID paper with them while crossing the border. Having no ID papers present in Thailand does not always mean that these people are stateless. However, there is the possibility that some of them might not be recognized or registered as a citizen in their country of origin. Due to illegal entrance, the migrant workers from Cambodia, Lao PDR and Myanmar are never registered with their overseas missions (e.g. embassy or consulate) and cannot obtain diplomatic protection. Besides being unable to receive rights protection when they are abroad, these workers may also lose connection with the country of origin if they do not maintain any legal bond with their home country.

Due to irregular entry to Thailand, the problems of these migrant workers from Cambodia, Lao PDR and Myanmar are much more complex. Under law on immigration of Thailand, they are firstly charged with criminal accusation. Secondly, they have no legal right to reside due to their illegal entrance. Thirdly, without any ID paper, which can specify their personal state, they face difficulty to obtain consular protection from their own country. Fourthly, in this circumstance they are vulnerable for types of abuse or violation such as human trafficking, forced labour or any other exploitation. Lastly, if they have children born in Thailand the children may not be able to register birth at their embassy or consulate due to lack of ID paper of the parents. Consequently, this could lead to statelessness of the children of these migrant workers as well.

CHAPTER IV

THE PROOF OF NATIONALITY OF MIGRANT WORKERS IN THAILAND: THE CASE OF WORKERS FROM CAMBODIA, LAO PDR AND MYANMAR UNDER THE MOUS

Most of the migrant workers from the three neighboring countries arrived into Thailand without proper document and, in many cases, engaged in some particular areas of works which might not be allowed by the Thai laws. Before dealing with the issues of nationality verification, this chapter will first examine the laws regulating the entry and employment of aliens in Thailand. In the section, **laws regulating the entry and work of migrant workers from Cambodia, Lao PDR and Myanmar in Thailand**, the legal framework for migrant workers from Cambodia, Lao PDR and Myanmar in Thailand will be explored. In particular, the immigration law and law on working of aliens will be examined. This chapter will also discuss the **diplomatic channel for the proof of nationality for migrant workers from Cambodia, Lao PDR and Myanmar in Thailand** as an alternative for solving the nationality problems of these irregular workers in Thailand. The last and major part of the chapter will be devoted to **Nationality Verification as a solution for nationality problems of migrant workers from Cambodia, Lao PDR and Myanmar under MOUs**. In this section, both the Memorandum of Understanding (MOUs) on Cooperation in the Employment of Workers between Thailand and Cambodia, Lao PDR and Myanmar and the 2004 Strategy on Management of Migrant Workers from Cambodia, Lao PDR and Myanmar under the Cabinet Resolution will be analyzed as sources of the Nationality Verification process. This analysis will be followed by an overview and discussion of the actual process to verify nationality, as well as, the practical results of the Nationality Verification process.

4.1 Laws regulating the entry and work of migrant workers from Cambodia, Lao PDR and Myanmar in Thailand

In Thailand, the immigration law is the first main legal framework to administer matters of all aliens, including migrant workers from Cambodia, Lao PDR and Myanmar. Aliens, unlike Thai nationals, are restricted in the work activities they can undertake in Thailand. In this context, the migrant workers who wish to enter Thailand are only permitted according to specific criteria under the immigration law. In doing so, they have to at first obtain a travel document, such as a passport, to identify both their personal State and their own identity. Entry permission and right to reside in Thailand of the workers from the three countries are set out in Thai immigration law. Later, if these migrant workers wish to engage in work in Thailand, they also have to ask for work permission. The application and condition for work permission is set out under the Working of Alien Act of 2008. In the respect to the right to enter into Thailand, there are both general and special procedures for aliens who wish to ask for this permission. General procedures for aliens to enter into Thailand were enforced under these five main immigration laws: Customary law¹, the Immigration Act of 1927², the Immigration Act of 1937³, the Immigration Act of 1950⁴ and the Immigration Act of 1979⁵. As described in Chapter III, most of the workers from Cambodia, Lao PDR and Myanmar migrated to Thailand in the early 1990s; they shall, therefore, fall under the **Immigration Act of 1979**⁶. These workers were then

¹ The customary law on immigration is applied for aliens entered into Thailand before 11 July 1927.

² The 1927 Immigration Act comes into force to control aliens who entered into Thailand from 11 July 1927 to 18 December 1937.

³ The 1937 Immigration Act comes into force to control aliens who entered into Thailand from 19 December 1937 to 24 January 1950.

⁴ The 1950 Immigration Act comes into force to control aliens who entered into Thailand from 25 January 1950 to 29 May 1979.

⁵ The 1979 Immigration Act comes into force to control aliens who entered into Thailand from 30 May 1979 until the present.

⁶ Basically, the entry permission under the Immigration Act of 1979 is governed under Section 12, Section 13, Section 15 and Section 17. However, most migrant workers in Thailand normally fall under Section 12 and Section 17. This study therefore focuses on these two provisions.

allowed to enter into Thailand under Section 12 for work in general situations or under Section 17 for special cases.

Referring to the type of work permit (as stated in Figure 2 of Chapter III) available for persons from Cambodia, Lao PDR and Myanmar, Section 12 of the 1979 Immigration Act allows: skilled workers in general sectors, imported workers under the MOUs, the workers who completed the Nationality Verification process and those who wish to work in the border provinces of Thailand, to enter into Thailand. Normally, the right to stay and period of stay will be stipulated under Section 34 and Section 35 of the law. In addition, workers from Cambodia, Lao PDR and Myanmar could also be permitted to enter into Thailand under Section 12 alongside special provisions of the Investment Promotion Act in 1977⁷ and the 1979 Act on Industrial Estate Authority of Thailand⁸.

However, the circumstance of irregular migrant workers from the three countries is different due to their illegal entrance. Most of these irregular workers (See the cases 3, 4, 5, 7 and 8 in Chapter V) did not carry travel document or even ID paper with them when crossing the border. In this matter, the immigration law would involve punishing these workers. Under the Immigration Act of 1979, Section 62 stipulates that if the workers enter Thailand without permission from the State authorities, they could be punished by imprisonment not exceeding 2 years and a fine not exceeding 20,000 baht. Further, in the respect of residence without permission or with expired or revoked permission, they could also be punished by imprisonment not exceeding 2 years and a fine not exceeding 20,000 baht under Section 81. Due to demand of unskilled labours in Thailand, their regular migrant workers from Cambodia, Lao PDR and Myanmar who are already residing in the country have been permitted to reside temporarily under Section 17 of the Immigration Act 1979 as a special case since 2004. However, they have not been granted the legal right for entrance. Due to their irregular

⁷ Under the Section 24 and Section 25, skilled workers, experts and spouses or dependents of such skilled workers and experts are allowed to enter into Thailand for the purpose of studying investment opportunities or performing any other act benefiting investment.

⁸ Under the Section 45, an industrial entrepreneur or export trader may bring skilled workers, experts and spouses or dependents of such skilled workers and experts to work for his or her industrial business in Thailand.

status, the Thai Government desires to control these workers by not giving them a right to enter. By doing so, the migrant workers from Cambodia, Lao PDR and Myanmar then cannot have freedom of movement within the country.

When it comes to the right to work for these migrant workers from Cambodia, Lao PDR and Myanmar in Thailand, Section 9, Section 12, Section 13 and Section 14 of the **Working of Aliens Act of 2008** are to be taken into consideration. As classified in the Chapter III, under Section 9⁹, Section 12¹⁰ and Section 14¹¹ are applied to regular workers from these three countries. The rights to work for migrant workers from Cambodia, Lao PDR and Myanmar who still have irregular status or who are considered ethnic minorities in Thailand are governed by the Section 13.

As discussed, due to labour shortage in Thailand, the irregular migrant workers from Cambodia, Lao PDR and Myanmar have been granted temporary residence as well as right to work. Under Section 13 of the Working of Aliens Act of 2008, these people, however, are limited to work in only two occupations: labour and domestic workers. Even though these irregular workers from Cambodia, Lao PDR and Myanmar have obtained temporary residence, they are still required to undertake the **Nationality Verification process** in order to legalize or regularize their status. According to this process, the legal status of these workers would be developed and they would also receive proper identity paper and permission to continue working in Thailand for a specific period of time. As previously stated, the complex situation of irregular workers in Thailand may lead to these people encountering nationality problems if, for example, they reside in Thailand for too long without contacting authorities of their country of origin. In the worst case, they could be deprived of their

⁹ Beneficiaries include: the migrant workers who wish to engage in necessary and urgent work or to work in general, the workers who are imported and allowed to work in Thailand for a specific period of time and those workers from these three countries, who at first entered into Thailand irregularly but were later were legalized through the process of Nationality Verification.

¹⁰ Beneficiaries are the migrant workers who are permitted to work under the law on investment promotion or other relevant laws to work in that area.

¹¹ Beneficiaries are the migrant workers from Cambodia, Lao PDR and Myanmar who have residence and are nationals of the country having common boundary with Thailand and wish to work in border provinces of Thailand.

nationality. In this matter, the Nationality Verification process is expected to tackle the nationality problems of the workers from these three countries.

In the respect to dealing with nationality problems, workers from Cambodia, Lao PDR and Myanmar could seek protection under international customary law from their oversea mission, such as an embassy or consulate. In this circumstance, the **diplomatic channel for the proof of nationality** could be used to solve nationality problems that may arise after a long stay in Thailand, for instance, and it could also provide a means to legalize the irregular migrant worker status as well. As discussed in Chapter II on the concepts of Nation-State and Nationality, a State has a direct responsibility under international customary law to provide protection to its own nationals regardless of where their residence is. Therefore, the State is obliged to provide protection for people living both inside the country and overseas. In the respect of protection for nationals abroad, these overseas missions have authorization and duty towards the nationals abroad to provide them with the same functions available inside their country of origin, such as birth registration, marriage registration, or any other services.

In the respect of the proof of nationality, it is assumed the irregular migrant workers from Cambodia, Lao PDR and Myanmar in Thailand are eligible to obtain protection through the diplomatic channel. In order to examine this assumption, research was conducted in cooperation with the Law Faculty of Thammasat University (in Bangkok), Law Faculty of Payab University and Mae Ai Legal Clinic (in Chiang Mai) and Law and Political Science Faculty of National University of Lao PDR (in Vientiane) as well as National Human Rights Commission of Thailand. This study on the diplomatic channel demonstrated that overseas missions, such as an embassy or consulate, are in the position to assist their own people. It implies from the study that the embassy of Lao PDR was a gateway for full recognition as nationals for the workers. It showed that migrant workers were however obliged to return to the country of origin to register in the civil registration system and to obtain nationality documentation after they completed the process of the proof of nationality via the embassy. Later on, with the national identification paper the migrant workers would be able to return to Thailand through the aforementioned general measure.

Case 1

Chompoo Romburi: a migrant from Lao PDR who sought protection through the diplomatic channel

Chompoo Romburi, a woman migrating from Lao PDR, was one of the test cases for developing this new process of proof of Lao nationality. Chompoo was born around 1969 in Hadxaifong District in Vientiane Province located opposite to Nong Khai Province of Thailand.

Due to family problems in the country, Chompoo left her hometown by boat via Mekong River in 1987. At first, she only wanted to find a better job opportunity in Thailand. But later, she met a Thai man and they decided to live together and they now have three children. Even though she has been living in Thailand for a long time, she still keeps in contact with her family in Lao PDR. Chompoo admitted that in the past she irregularly crossed the border back to visit her family with the children.

Under Thai law on nationality, she is eligible for requesting naturalization by virtue of marriage. However, it could take a long time for the approval by the Minister of Interior and she never applied. Under law on Lao nationality, she is clearly recognized as a Lao national as stated in the household record. Chompoo never lost her nationality even though she left Lao PDR 25 years ago. From the interview it was discovered that her parents continued to pay tax to the Government under her name so her legal relation with the country, as required under Lao constitution, still exists.

After studying all legal possibilities, the researcher and the team workers discussed her situation with the Embassy of Lao PDR in Thailand. They showed that Chompoo came from Lao country and still had its nationality. The Embassy called Chompoo for interviewing and reviewing her documents. The Embassy issued her a “laissez-passer”¹², which allowed her to travel back to Lao PDR to undertake all

¹² A laissez-passer is a travel document issued by a national government or certain international organizations. It is often used for one-way travel to the issuing country for humanitarian reasons only. Some national governments issue laissez-passers to their own nationals as emergency passports. Others issue them to people who are stateless, or who are unable to obtain a passport from their own government, or whose government is not recognized by the issuing country.

relevant civil registration process in the country. Later on, with a permanent passport from Lao PDR, Chompoo returned Thailand legally to stay with her Thai family.

This case study showed that nationality problems of the migrant workers from the three countries, in particular from Lao PDR, can in fact be solved through such diplomatic channels. Nevertheless, due to the current massive numbers of workers in Thailand, this process of the proof via the overseas missions would not serve the migrant workers promptly and effectively. These migrant workers, who migrated irregularly to Thailand, may not be aware of role and function of such diplomatic authorities or may fear contacting the authorities due to their irregular status. Further, the diplomatic channel for the proof of nationality requires the workers to return to their country of origin to undertake a civil registration procedure, such as registering in the civil record and obtaining an ID card. This could be problematic in Thailand where there is a shortage of labours. In this regard, Thailand in cooperation with Cambodia, Lao PDR and Myanmar created a special measure to address the nationality problems of these demanded workers.

4.2 Nationality Verification as a solution for nationality problems of migrant workers from Cambodia, Lao PDR and Myanmar under the MOUs.

Thai governments have conducted various resolutions since 1996 to address the large amount of migrant workers from Cambodia, Lao PDR and Myanmar working illegally in the country. These resolutions were cognizant of both the tremendous demand for labour from private and public enterprises, as well as, the problem of these people working illegally in the country. By a virtue of Section 17 of the Immigration Act, 1979, these Cabinet Resolutions offered amnesty and allowed the unlawful migrant workers from the three countries to stay temporarily to work as unskilled labours in Thailand.

The first Cabinet Resolution, promulgated in June 1996, allowed two-year temporary employment of irregular migrant workers from Cambodia, Lao PDR and

Myanmar in 43 provinces. The second Cabinet Resolution was enacted in April 1998, and extended the term of employment for one more year. The third Cabinet Resolution was concluded in August 1999. This third resolution aimed to limit the employment of irregular migrant workers from the three countries to only 37 provinces, including the border provinces and provinces where fishery industries were located. One year later, in August 2000, another Cabinet Resolution was enacted to extend the employment of the 1999 resolution. In 2001, due to the new Government, the policy to tackle the irregular migrant workers from Cambodia, Lao PDR and Myanmar was dramatically changed. The Cabinet of 2001 permitted employment of these workers in every province; in this year around 600,000 workers were registered with the MOL. There were another two Cabinet Resolutions, one in 2002 and one in 2003, to annually extend the employment of the migrant workers who were registered in 2001. However, by 2003 the residual workers who legally renewed their work permits were reduced to 50% of the number in 2001 (around 300,000 workers left in the system).

This circumstance showed that the unilateral measures seemed unsuccessful because no solution was provided to tackle root causes of the problem, and it was not only an internal problem of Thailand. Thailand therefore started seeking cooperation with the neighboring countries Cambodia, Lao PDR and Myanmar, to regularize these people (tackling the legal status issue) and later to allow legal employment in special conditions (solving the illegal employment) if they wished. As a result, Thailand signed ‘Memorandum of Understanding (MOUs) on Cooperation in the Employment of Workers’ with Lao PDR in 2002 and in 2003 with Cambodia and Myanmar. In order to effectively implement the agreements, as agreed in the bilateral papers, Thailand enacted a national policy in 2004 entitled ‘the Strategy on Management of Migrant Workers from Cambodia, Lao PDR and Myanmar’.

Memorandum of Understanding (MOUs) on Cooperation in the Employment of Workers between Thailand and Cambodia, Lao PDR and Myanmar

Due to the mass (irregular) migration of people from Cambodia, Lao PDR and Myanmar to Thailand, this circumstance has not only impacted the country of

destination like Thailand (i.e. allocation of resource in the country), but also the countries of origin (i.e. lack of labour in the countries and human trafficking). The very first concrete cooperation possibly began at the International Symposium on Migration, ‘Towards Regional Cooperation on Irregular/Undocumented Migration’, held by the Government of Thailand during 21 – 23 April 1999. In this Symposium, 19 countries¹³ in the region participated to address the question of international migration, with particular attention to regional cooperation on irregular/undocumented migration and human trafficking. Due to this Symposium, the Bangkok Declaration on Irregular Migration was declared on 23 April 1999. This was a collective regional effort to call for mutual cooperation and orderly management of migration, whether bilateral, regional or otherwise (The Bangkok Declaration, 1999). Later, the Memorandum of Understanding (MOUs) between Thailand and Cambodia, Lao PDR and Myanmar were signed based on the result of the Symposium and this Declaration.

Under these MOUs, the main discussion targets solution for negative social and economic impacts caused by existing illegal employment within the territories of the State Parties, especially in Thailand. It could be implied that the MOUs were agreed upon for the purpose of mutually beneficial cooperation between economic systems of the countries rather than other aspects which is evident by the objective and scope¹⁴ of the agreement, specified in Article 1 of the MOUs.

Article 1 of the Memorandum of Understanding (MOUs)

The Parties shall apply all necessary measures to ensure the following:

- 1) Proper procedures for employment of workers;
- 2) Effective repatriation of workers, who have completed terms and conditions of employment or are deported by relevant authorities of the other Party, before completion of terms and conditions of employment to their permanent addresses;

¹³ Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Indonesia, Japan, Republic of Korea, Lao PDR, Malaysia, Myanmar, New Zealand, Papua New Guinea, the Philippines, Singapore, Sri Lanka, Thailand, and Vietnam, as well as, the Hong Kong Special Administrative Region

¹⁴ Article 1 of the MOUs on Cooperation in Employment of Workers

3) Due protection of workers to ensure that there is no loss of the rights and protection of workers that they receive the rights they are entitled to;

4) Prevention of, and effective action against, firstly illegal border crossing, secondly trafficking of illegal workers and lastly illegal employment of workers.

This implication could be further noticed from Article 2 of the MOUs. Under Article 2 of the MOUs: the Ministry of Labour of Thailand, the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation of Cambodia, the Ministry of Labour and Social Welfare of Lao PDR and the Ministry of Labour of Myanmar are set forth as the competent authorities to undertake all measures for the purpose of the MOUs. These state agencies all engage in employment management rather than in the broader protection of overseas nationals. However, the MOUs are, more or less, a protection tool for these irregular migrant workers who were previously in a policy vacuum in Thailand.

In order to solve the problem of irregular migration, including irregular border crossing and illegal employment, legalizing the migrants from Cambodia, Lao PDR and Myanmar were also a main purpose of the agreements. Two methods for legalizing irregular migration in Thailand were devised: (1) Nationality Verification of the registered (but 'illegal') migrant workers who are already residing in Thailand to enable them to acquire travel documents issued by the country of origin, and (2) the import of legal migrant workers directly from Cambodia, Lao PDR and Myanmar.

Strategy on Management of Migrant Workers from Cambodia, Lao PDR and Myanmar under the Cabinet Resolution dated on 27 April 2004

On 2 March and later 27 April 2004, the Thai Cabinet adopted a special measure of the Ministry of Labour on the Management of Migrant Workers from Cambodia, Lao PDR and Myanmar. This policy was expected to holistically tackle the plight of irregular migrant workers from Cambodia, Lao PDR and Myanmar in Thailand alongside the MOUs. The 2004 Strategy was a compilation of these seven sub-strategies:

1) Sub-strategy on employment system for migrant workers;

- 2) Sub-strategy on employment standard for migrant workers;
- 3) Sub-strategy on prevention of irregular border crossing;
- 4) Sub-strategy on suppression and prosecution on irregular migration;
- 5) Sub-strategy on migrant workers deportation;
- 6) Sub-strategy on public information on the employment system for migrant workers and;
- 7) Sub-strategy on monitoring and evaluation

Under this Strategy, implementation was split into two phases: the first phase was ‘registration of migrant workers’ and the second phase was ‘legalization of migrant workers’. In the respect of the registration, these unlawful migrant workers would be recorded by the Ministry of Interior, into the civil registration system, and issued an ID paper called ‘Tor Ror 38/1’ in order to identify who they were. In order to obtain permission to work, the migrant workers would have to undergo the medical check-up process held by the Ministry of Public Health to verify whether they had any disease, as prescribed in a regulation on immigration. After this, these workers would be allowed and given work permit by the Ministry of Labour if a Thai employer applied for them. After conducting all these processes, they would finally have the temporary right to stay and work in Thailand for a specific period of time. As a condition for legalization, the ‘Nationality Verification’ process was invented for registered migrant workers who were already in Thailand to enable them to acquire a legalized status by means of a Temporary Passport or another relevant document (e.g. Certificate of Identity). After the verification process, the workers from Cambodia, Lao PDR and Myanmar would be considered as regular workers with legal entrance. As a result, they would have freedom of movement within Thailand and also be able to go back to their country of origin during their temporary stay in Thailand.

4.2.1 Overview of Nationality Verification under the MOUs

Based on information obtained from the MOL official¹⁵, the initiative to verify nationality of these irregular migrant workers from Cambodia, Lao PDR and Myanmar in Thailand was raised by Thailand during negotiation in the Senior Official

¹⁵Interviewed Chief of Section on Migrant Workers Administration (workers from Cambodia, Lao PDR and Myanmar) on 29 January 2013

Meetings (SOMs) and Ministerial Meetings (MMs) between the Governments. According to the MOL record on the mentioned Meetings, senior officials of Thailand met with authorities from Lao PDR six times while the designated Ministers from the two countries attended the Meetings only twice from 2003 to 2009. Regarding the cooperation with Myanmar, from 2004 to 2009, Thailand and Myanmar have taken turns holding the Senior Official Meetings, for a total of six meetings, and both designated Ministers agreed to meet once in 2008. Seven meetings for senior officials have been held between Thailand and Cambodia since 2003, and the designated Ministers have met 4 times on the MOUs issues between 2003 and 2010. As mentioned, the Nationality Verification process has been one of the crucial issues¹⁶ discussed and negotiated between the contracting Parties all these years. Regarding the issue of Nationality Verification, as stated in the meeting minutes, the contracting Parties have set out measures under negotiation even though it was not stipulated under the original MOUs.

Concerning this matter is the question of whether the new measures agreed upon in the Meetings are binding as a part of the Treaty. According to Article 13¹⁷ of the 1969 Vienna Convention, States may express their consent to be bound by an 'exchange of letters/notes'¹⁸. The basic characteristic of this procedure is that the

¹⁶ By analyzing and synthesizing all 'agreed' and 'signed' minutes of the Senior Official Meetings (SOMs) and Ministerial Meetings (MMs) between the Governments, the following main issues were discussed: (1) Nationality Verification Process; (2) Recruitment of New Workers; (3) Protection of Workers; (4) Return and Repatriation of Workers; (5) Measures against Illegal Employment and; (6) Seasonal and Daily Workers in the Border Areas

¹⁷Article 13.

The consent of States to be bound by a treaty constituted by instruments exchanged between them is expressed by that exchange when:

- (a) the instruments provide that their exchange shall have that effect; or
- (b) it is otherwise established that those States were agreed that the exchange of instruments should have that effect.

¹⁸ An "exchange of notes" is a record of a routine agreement that has many similarities with the private law contract. The agreement consists of the exchange of two documents, each of the parties being in possession of the one signed by the representative of the other. Under the usual procedure, the accepting State repeats the text of the offering State to record its assent. The signatories of the letters may be government Ministers, diplomats or departmental heads. The technique of exchange of notes is

signatures appear not on one letter or note but on two separate letters or notes. The agreement therefore lies in the exchange of both letters, or notes, with each of the parties having in their possession one letter or note signed by the representative of the other party. Moreover, it is stated in the Treaty Reference Guide of the United Nations that in a bilateral treaty, letters or notes may also be exchanged to indicate that all necessary domestic procedures have been completed. Therefore, according to the form of the document and Full Power, all these agreed and signed minutes could be claimed as an exchange of instruments constituting the MOUs.

Given that the Nationality Verification process is not explicitly identified in the MOUs, it is implied in accordance with Article 4 and Article 7 under the Chapter on ‘authority, functions and procedure to regularize the migrant workers’. Under Article 4, the Governments under the bilateral agreements have functions and authority to take all necessary measures to ensure proper procedure for employment of workers.

Article 4.

The Parties shall take all necessary measures to ensure proper procedure for employment of workers. Employment of workers requires prior permission of the authorized agencies in the respective countries. Permission may be granted upon completion of procedures required by laws and regulations in the respective countries.

The authorized agencies may revoke or nullify their permission at any time in accordance with relevant laws and regulations.

The revocation and nullification shall not affect any deed already completed prior to the revocation or nullification.

In order to seek ‘proper procedure for employment’, as stipulated in the Article 4, workers may not be, in principle, illegal or even stateless. The measure for the Nationality Verification turns out to be important for enabling these workers to acquire travel documents. In doing so, migrant workers from Cambodia, Lao PDR and Myanmar can then be employed properly as required by the Article 7. Similarly, this

frequently resorted to, either because of its speedy procedure, or, sometimes, to avoid the process of legislative approval.

condition is also set out under Section 12 of the Immigration Act of 1979 which states that aliens who lack travel documents or any other relevant document or who cannot obtain visas or other forms of entry permission shall be prohibited to enter into Thailand.

Article 7.

The authorized agencies shall coordinate with the immigration and other concerned to ensure that the applicant, who have been selected by employers and duly permitted in accordance with Article 4, have fulfilled, inter alia, the following requirements:

- 1) Visas or other forms of entry permission;
- 2) Work permits;
- 3) Health insurance or health services;
- 4) Contribution into savings fund as may be required by the authorized agencies in the respective Parties;
- 5) Taxes or others as required by the Parties;
- 6) Employment contracts of employers and workers.

More or less, the Nationality Verification process becomes as a tool for legalizing and regularizing massive numbers of irregular migrant workers from Cambodia, Lao PDR and Myanmar by cooperation with the country of their origin. The process is intended to facilitate the ability for irregular migrant workers, who may be at risk of exploitation, to verify whether they are nationals of Cambodia, Lao PDR or Myanmar. This is done by allowing them to obtain a proper ID paper without traveling back to the country of origin. Without the Nationality Verification process established under these bilateral agreements, the proof nationality could be conducted at the overseas mission of the three countries. However, the process could take a very long time and would also create a huge burden for the embassy or consulate to verify the large number of workers in specific period.

4.2.2 Practical process to verify nationality of each country

Distinctly the MOUs were established to assist in the process of legalizing

people from Cambodia, Lao PDR and Myanmar. However, not all people from Cambodia, Lao PDR and Myanmar are eligible to be covered by the MOUs. As was agreed upon in the negotiations between Thailand and the three countries in the high-level Meetings, not specified under the MOUs themselves, only workers from Cambodia, Lao PDR and Myanmar who met the following requirements could verify their nationality with their country of origin. The criteria includes: they have to be registered as migrant workers from Cambodia, Lao PDR and Myanmar, hold I.D. paper namely the Tor Ror 38/1 and their work permission has to be valid until the day of submission of the Nationality Verification application.

As part of the process of Nationality Verification, registered migrants needed to provide personal data to their country of origin for proof of their legal status and nationality. In case of Cambodia and Lao PDR, after personal data was sent to the country of origin, the competent authorities would come to Thailand to conduct interviews (as part of verification) to ensure correct information was provided by the workers. Initially, in the case of Myanmar, registered migrant workers from Myanmar had to provide, not only, personal data to their country, but also had to cross the border to conduct the processes inside the country. Only in 2012 was Thailand able to successfully negotiate with Myanmar to have the Centres for Nationality Verification set up in Thailand which would ensure more registered migrant workers from Myanmar could take part in the process, and it would also reduce travel expenditures. Finally, if the information and all relevant documents are trusted, Temporary Passports in case of Lao PDR and Myanmar, and Certificates of Identity in case of Cambodia, will be issued as well as a visa to remain in Thailand for two years¹⁹. This would also change the legal status of the worker from unlawful to lawful. On completing the Verification process, migrants are to receive certain rights, including social security, work accident compensation, the ability to obtain motorbike licences and unrestricted travel within Thailand and between Thailand and their home countries (DOE, 2009).

From analysing case studies as well as from observation of the process as it took place in Thailand, as of January 2013, the Nationality Verification process

¹⁹ The visa is extendable for two more years. After that they are required to return home for at least three years. Following the three years they then can come back to work in Thailand again via the process of import workers under the MOU.

could be parted into four phases as follows:

Nationality Verification Phase 1 (pilot period)

In this first phase, only Lao PDR and Cambodia undertook the Nationality Verification process. The pilot project for Nationality Verification for workers from Cambodia and Lao PDR spanned from the time the MOUs were signed until 2005. It was conducted in Bangkok only, and workers from other provinces had to travel to Bangkok to undergo this process. In this period, Thailand had not yet agreed with Myanmar upon the location as well as the procedure regarding the verification process.

Nationality Verification Phase 2

The second period of the Nationality Verification of each country started differently. For Cambodia and Lao PDR, Phase 2 took place from 2005 to 2012. Conversely, Myanmar started verifying the nationality for registered workers in July 2009. Therefore the Phase 2 for Myanmar lasted from 2009 to 2012.

Similar to the pilot period, Cambodia and Lao PDR sent their authorities to Thailand to facilitate the process for the workers. Designated Cambodian officials used the premise of the Department of Labour in Bangkok as a Nationality Verification center. Lao PDR had their authorities both in some larger border provinces of the North East as well as some stationed in Bangkok. In case of Myanmar, the location of the Nationality Verification center was limited to border provinces of Myanmar only.

Nationality Verification Phase 3

Phase 3 started and ended in 2012. Previously, the Thai Government intended to end the process (Nationality Verification Phase 2) by 14 June 2012; however it was not pragmatic in accordance with the circumstances of these migrant workers on the ground. As a result, Phase 3 was implemented to extend the deadline to 14 December 2012.

Cambodia and Lao PDR continued sending their authorities to station in Thailand. Myanmar, in this period, agreed to open five Nationality Verification

centers in Thailand in addition to the centers in the border provinces of Myanmar to expedite legalization of workers from Myanmar.

Nationality Verification Phase 4 (15 December 2012 – 15 April 2013)

The 4th Phase for Nationality Verification continues from 15 December 2012 to 15 April 2013. This Phase was due to the recent 120-day extension in accordance with the latest Cabinet Resolution dated on 15 January 2013. Based on information obtained during an interview with the MOL official²⁰, this period would be open to all irregular migrant workers from Cambodia, Lao PDR and Myanmar, including unregistered workers (without Tor Ror 38/1). The only condition for Nationality Verification for this Phase is to have a Thai employer. Therefore, the employers would have to submit a letter with specified details of workers who already resided in Thailand and were working with them. And later, this information would be sent to the country of origin to conduct a pre-screening and the full verification of all of three countries would be conducted in any of the service centers in Thailand. It is important to note that at the time of this study, the process had not yet started.

4.2.3 Result of the Nationality Verification process

Table 4.1: Migrant workers from Cambodia, Lao PDR and Myanmar who completed Nationality Verification

Budget Year	Number of verified migrant workers			Total
	Cambodia	Lao PDR	Myanmar²¹	
2006 (Oct. 2005 – Sept. 2006)	37,329	43,657	0	80,986
2007 (Oct. 2006 – Sept. 2007)	8,299	12,502	0	20,801
2008 (Oct. 2007 – Sept. 2008)	5,037	167	0	5,204

²⁰Interviewed Chief of Section on Migrant Workers Administration (workers from Cambodia, Lao PDR and Myanmar) on 29 January 2013

²¹ Myanmar started verifying nationality for registered workers from Myanmar only in July 2009.

Table 4.1: Migrant workers from Cambodia, Lao PDR and Myanmar who completed Nationality Verification (cont.)

Budget Year	Number of verified migrant workers			Total
	Cambodia	Lao PDR	Myanmar ²²	
2009 (Oct. 2008 – Sept. 2009)	6,944	2,104	1,478	10,526
2010 (Oct. 2009 – Sept. 2010)	34,494	34,999 ²³	186,845	221,339
2011 (Oct. 2010 – Sept. 2011)	12,913		370,592	418,504
2012 (Oct. 2011 – Sept. 2012)	49,520	0	580,435	629,955
2013 (Oct. 2012 – 14 Dec. 2012)	37,611	0	83,508	121,119
Total	192,147	93,429	1,222,858	1,508,434

Source: Office of Foreign Workers Administration, Ministry of Labour²⁴

Based on information obtained from the Office of Foreign Workers Administration in the Ministry of Labour, since the Nationality Verification started in 2005, 1,508,434 irregular workers have completed the process so far. This includes 192,147 from Cambodia, 93,429 from Lao PDR and 1,222,858 from Myanmar (see Table 4.1 in “Migrant workers from Cambodia, Lao PDR and Myanmar who completed Nationality Verification”).

As of December 2011, 884 migrant workers were rejected under the Nationality Verification process; 880 persons were denied from Lao PDR, three were rejected from Myanmar and only one was rejected from Cambodia. However, during the re-verification in 2012, most of these rejectees were accepted as nationals of the

²² Myanmar started verifying nationality for registered workers from Myanmar only in July 2009.

²³ Nationality Verification conducted for Lao PDR during the budget year of 2010 and 2011 was continuous, starting from July 2010 to December 2010.

²⁴ Information obtained from Chief of Section on Migrant Workers Administration (workers from Cambodia, Lao PDR and Myanmar) on 29 January 2013 and covered the period from 1 October 2005 to 14 December 2012

three countries. The main reason for the previous rejection was related to insufficient personal information or details. As of December 2012, two migrant workers registered from Myanmar have been rejected under the Nationality Verification scheme. According to Ministry of Labour, one of the rejectees from Myanmar was under the age of 15 while another one was a Rohingya.

CHAPTER V

CHALLENGES AND CONSEQUENCES OF THE NATIONALITY VERIFICATION PROCESS : REFLECTION FROM CASE STUDIES

Chapter V attempts to examine whether the Nationality Verification process does in fact solve the nationality problems of the migrant workers. Eleven case studies will be used to reflect the challenges and consequences of the Nationality Verification process. Included among the case studies are five cases of workers from Myanmar, three from Lao PDR, one from Cambodia, one from Viet Nam and another one from China. The first section will discuss **structural challenges towards Nationality Verification**. This study will utilize each case study to pinpoint how the structure of the Nationality Verification process is inappropriate to cope with the nationality problems of the migrant workers, particularly from Cambodia, Lao PDR and Myanmar. Beneficiaries and requirement of work permission are in question. In the second section regarding **procedural challenges towards Nationality Verification**, problems, which obstructed the migrant workers from completing the process of verification, will be analyzed. These include shortage of competent officials, complexity of the processes and opportunity for illegal brokers and delegation of State power to private-run organizations and skepticism toward the process. Thirdly, the study will also examine **challenges towards protection of the rights of migrant workers and members of their family**. Accessibility of the Nationality Verification process of the children of the migrant worker from Cambodia, Lao PDR and Myanmar will be discussed. Further, practical circumstance regarding rights protection for these migrant workers and the family will be analyzed by looking at the case studies. Lastly, **consequences of the Nationality Verification and necessity of holistic management** will be investigated in order to think ahead in terms of the management of migrant workers in Thailand.

5.1 Structural challenges towards Nationality Verification

5.1.1 Limited coverage of the Nationality Verification

As mentioned in Chapter IV, only those who followed certain conditions can participate in the process. The conditions were: being registered as a migrant worker from Cambodia, Lao PDR and Myanmar by the Tor Ror 38/1 (issued by the Ministry of Interior until the day of the application submission) and holding an unexpired work permission issued by MOL as evidence. Subsequently, various groups of migrants from the three countries, even if they have a genuine link with their countries, are excluded from the policy of the proof of nationality. Migrant workers who do not possess a work permit cannot have access to the process. This includes those who missed out in the migrant worker registration scheme (undocumented migrant workers). Further, despite a growing presence of dependents (particularly children) of the migrant workers from Cambodia, Lao PDR and Myanmar in the country, regularization via this process was intended only for adult workers. Moreover, those who are from other countries are not eligible for this process.

As a result, the excluded groups would not gain protection from the nation-state where they came from. In the worst case scenario, these people, especially those who never possessed a nationality before, might not be protected by any other countries in the world, and end up as stateless persons.

Sormee is a showcase of a migrant worker from Myanmar who did not renew his work permission due to ignorance and uncertainty of his work as a fisherman. As a result, he lost his ability to participate in the National Verification process.

Case 2

Sormee: a citizen of Myanmar in limbo

Sormee (pseudonym) is Karen and was born around 1957 in Yangon, Myanmar. His parents were also born in Myanmar, but they have already passed away. However, he said that he still has five siblings living in Myanmar. When Sormee was in Myanmar, he worked in a restaurant in Yangon as a chef. He insisted that he and the family had no problem with his legal status or nationality in Myanmar even though

they have Karen ethnicity. They were all recognized as nationals of Myanmar, recorded in the civil registration and issued an ID card.

Around 1986, he decided to move to Thailand to seek a new job because he had to pay many levies to the junta. And at the time, he said that the economic situation in Myanmar had really declined.

Currently, he is working in a fishery in Muang District, Ranong Province. He was registered as a migrant worker from Myanmar by Tor Ror 38/1 in 2005. Due to uncertainty of his work as a fisherman and his own ignorance, he only asked for work permission from the Thai government in that year and never renewed the permission until nowadays. Moreover, he lost his Burmese ID card when he went sea fishing a long time ago.

As a matter of fact, Sormee is undoubtedly entitled to the right to nationality of Myanmar. He was recorded as a national of the country and issued the ID card. Even though he lost the document, his right to a nationality has never been taken away. Moreover, he still has siblings in Myanmar who could be witnesses that he is really Burmese.

However, as mentioned earlier, he is required to declare himself to the competent authority in Myanmar in order to verify that he is a national. As an irregular migrant, it is risky to travel or cross the border to return to his hometown. In this situation, the MOU between Thailand and Myanmar would be beneficial to assist the people to prove their nationality by such special procedure.

Unfortunately, due to lack of work permission, Sormee is excluded from the process of Nationality Verification under the MOU. Even with Burmese nationality, he still could not prove that fact through this process in order to re-issue his ID document as a national of Myanmar.

In the next case study, Nid Saengkham from Vietnam will represent migrant workers from other countries who are, in fact, not target groups for the Nationality Verification process. In order to survive in Thailand Nid agreed to be registered as a migrant worker from Cambodia. However, when it was time to undertake the Nationality Verification, she remained locked in stalemate.

Case 3**Nid Saengkham: a Vietnamese recorded as a Cambodian migrant worker**

Nid Saengkham (pseudonym) was born around 1958 in Bach Lieu City, Vietnam. Her parents were also born in Vietnam, but they both have already passed away. She said that she believed she was accepted as a Vietnamese national in Vietnam because she used to have the ID stating that she had Vietnamese nationality. However, she admitted that before leaving Vietnam, all her documents were destroyed by her ex-husband. And due to ignorance, she did not ask for re-issuance.

Due to family problems and economic reasons, around 1985, Nid gradually moved out of Vietnam to the south of Cambodia and entered Thailand through Trad Province. Around 2003, after living with a new Thai husband, she moved again to her husband's hometown in the north of Thailand. Since then, they have settled down in Mae Ai district, Chiang Mai Province.

When deciding to live in Thailand with her husband, Nid wanted to have an identification document in order to live her life more easily in Thailand. She decided to complete the migrant worker registration when the scheme became available. She explained that, at the district office, an officer asked whether she is from Cambodia, Lao PDR or Myanmar. She tried to tell the officer that she moved through Cambodia, but she is not from Cambodia. However, the officer registered her as a Cambodian.

Nid followed all regulations of the Thai government. She renewed her work permit every year. But when it came to the process of the Nationality Verification, she hesitated. She realized she would have a problem because she was not Cambodian. She was afraid of various situations which might happen such as being charged with reporting false information or being deported to Cambodia by the Thai government.

Nid's case shows that there are not only migrant workers from Cambodia, Lao P.D.R. and Myanmar, but also some from other countries such as Vietnam. Even though Nid claims that she is a national of Vietnam, she is unable to prove this due to the lack of policy option for her and the people from Vietnam in the same situation.

She is in fact not eligible for the Nationality Verification process under the MOUs and she is currently in a policy vacuum.

At last, there are also some people who missed out of the migrant worker registration scheme. As a result these individuals become undocumented migrant workers, either by intention or by ignorance. Kaew Majan is one example. She understood her situation and the solution, but she wished not to be recognized as a national from Lao PDR and hid herself as an invisible.

Case 4

Kaew Majan: an undocumented citizen from Lao PDR

Kaew Majan (pseudonym) was born around 1957 in Vientiane, Lao PDR. She said that her parents were also born in Lao PDR. And when she was in the country, she remembered that all her family members had a name in a household record as Lao nationals. However, due to her long absence from the hometown, Kaew does not know any news from her family in the country. She does not know whether her parents are still alive or not.

She recalled that in the past she and her friends crossed the border without asking permission from the authority to travel to Thailand quite often. It was quite easy at that time and she did not realize that it was illegal. When Kaew was around 19 years old (in 1976), she became accidentally pregnant with a Lao man. In the same year, due to such shame, she decided to move to Thailand and lived in Khon Kaen Province. In this Province, she fell in love with a Thai man and they decided to live together as husband and wife. Her husband accepted, Nuch, her baby as his own daughter. Two years later, Kaew and the husband had a child named Ning together. They then decided to take both children to the district and registered them as twins of the Thai father on a birth certificate. Later, they all moved from Khon Kaen to settle down in Bangkok. Later on Nuch got married to a Thai man without realization of the fact that she is not a daughter of the father and she is not Thai.

Recently, when Kaew became seriously ill, Nuch wanted to help her mother by applying for permanent residence for her. She believed that it was reasonable for her to acquire the right to permanently reside in Thailand because she

have been living in Thailand for almost 40 years, and after being a permanent resident, the mother would be covered under the health insurance scheme.

Finally, Kaew decided to tell Nuch the truth and asked her to stop doing anything related to her legal status, as it would affect Nuch's life also. Kaew chose not to register as a migrant worker from Lao PDR when the policy opened for irregular people like her. Until now, she is still undocumented and hiding in the Thai society.

Kaew's story shows another life aspect of an individual who was trying to survive in the migration context. It is not only economic difficulties that push people away from their own countries, but also social issues. Kaew would have had a choice to develop her legal status through means of the Nationality Verification process under the MOU only if she decided to register as a migrant worker from Lao PDR. She however denied the chance. Without any document, she could not utilize this process to be recognized as a national of Lao PDR.

5.1.2 Non-availability of proper types of work permission and related costs

Due to non-availability of certain types of work permission, Somsri and a number of people in similar situations could not afford the fee. Many migrant workers in Thailand hold irregular jobs and do not have a permanent employer. In this situation, the workers are required to pay for the work permission themselves. However, this fee is high and many people with irregular jobs cannot afford to pay it. As a result, these people fall into a policy vacuum and cannot access to the process of the proof of nationality. The case of Somsri will demonstrate this.

Case 5

Somsri Wilaiporn: no money, no access to normal life

Somsri Wilaiporn (pseudonym) was born on 8 April 1982 in Savannakhet Province, Lao PDR. She has parents of Lao nationality, namely Thong and Nee. In the country, Somsri has eight siblings living together in one house. As the second child she did not go to school, but had to work to help the parents afford all expenses of the house.

In 1994, Somsri decided to come to Thailand to find a better job opportunity. At first, she crossed the border from Savannakhet Province of Lao PDR

to the opposite Province in Thailand, Mukdaharn. Later, she moved to work in Rangsit Market in Pathum Thani Province. In the Market, she was illegally employed to sell fish for 8 years.

In 2002, after getting married to a man of Shan ethnicity from Myanmar called Chai Saendee (pseudonym), they agreed to live together in Chai's hometown, Mae Ai District, Chiang Mai Province. In Mae Ai, they could not find a regular job or employer. They were allowed to work in an orange farm as seasonal workers. Somsri was once registered as a migrant worker from Lao PDR in Tor Ror 38/1. She however did not apply for a work permit due to the unaffordable cost for someone with a part-time job. Moreover, she has two children to take care of. Her big son, namely Somchart Saendee (pseudonym), was born on 6 June 2002 in Thanya Buri District, Pathum Thani Province. While the little daughter called Somjai Saendee (pseudonym), was born on 14 November 2007 in Mae Ai District, Chiang Mai Province. Both are studying in local school in Mae Ai. And for this simple reason, she chose not to waste more money for work permission.

The story of Somsri is an illustration of numbers of people who are in a similar situation. Most of registered migrant workers cannot afford the fee for work permission due to their irregular work or temporary employer. These people fall into a policy vacuum and cannot access to the Nationality Verification process because there is no proper types of work permission for them to apply to as irregular workers.

5.2 Procedural challenges towards Nationality Verification

5.2.1 Shortage of official personnel facilitating the process

One problem that occurs when it comes to the Nationality Verification process is the tardiness of officials and the process. Kanda faced this problem. She was asked to pay a private organization to handle the verification instead of waiting. The official complained that there were too many migrant workers for the number of Thai officials working on the issue, and in fact they could not handle all the applications.

Case 6**Kanda: a child of refugees from Myanmar who fled to Thailand**

Kanda (pseudonym) is Karen and was born around 1984 along the border between Thailand and Myanmar. Her family, including the parents, her older brother and sister, fled oppression from Myanmar and entered Thailand at that time. Later, they were accommodated in an old Camp in Sangkhlaburi District, Kanchanaburi Province as refugees from Myanmar.

Around 1995 when Kanda was 10 years old, she left the Camp to stay with an aunt who escaped from the Camp earlier. She recalled that at the time she wanted to live a normal life, like other Thai people outside the Camp and study in Thai school. This was a turning point for her.

After Kanda left the Thai Government closed the Sangkhlaburi Camp, due to unrest along the border, and moved the refugees, including her family, to the Nupo Camp in Umphang District, Tak Province. From that time on, Kanda was separated from her family and did not meet with them again until recently. At the time, she did not know where her family was moved. In order to find her mother, she decided to leave the school and move to Muang District, Kanchanaburi Province to work and collect some money.

In town, Kanda met a Thai man. They married and moved to Bangkok around 2003. Later, she had two children (twin) with her husband. Her children have no problem with their nationality due to the Thai father. In 2004, the husband decided to take Kanda to register as a migrant worker from Myanmar in the Tor Ror 38/1. He wanted her to be recognized by the Thai State, even if her status was as a migrant worker. Also she could have health insurance when she needed to go to the hospital.

Later in 2008, Kanda heard about her family from her elder brother who was still in Thailand. She realized that the parents already resettled to a third country, USA. She has since then stayed in contact with her mother.

When it comes to the Nationality Verification as a national of Myanmar, Kanda hesitates. She does not want to go back to the country where she has never been to. She said that she wants either to stay here with her Thai family or to be with her mother in the US.

After understanding that she has to follow the procedure to be able to stay legally in Thailand, Kanda and the husband contacted the Center for Nationality Verification in Nakorn Pathom Province recently in June 2012. The official suggested that they should pay a private organization to handle the verification for Kanda. The official gave two reasons: firstly, authorities of Myanmar likely chose to verify applications sent by private agencies because it is much easier and faster, and secondly, there are too many migrant workers for the Thai official working on the issue to have the capacity to handle all of them.

5.2.2 Complexity of the processes and opportunity for illegal brokers

One criticism regarding the Nationality Verification process is its complexity. Furthermore, Thailand has not yet raised enough awareness about this process among the migrant workers. The workers therefore rely on a broker to facilitate the Nationality Verification process. Frequently, these people were charged excessive fees by brokers. Boon Singthong is a sample in this regard.

Case 7

Boon Singthong: a victim of illegal brokers

Boon Singthong (pseudonym) is a child of verified migrant workers from Myanmar. He was born on 6 March 1993 in Tachileik Province, Myanmar. His father, Srinuan, and his mother, Saengdaow, were also born in Myanmar. In 2011, his parents were verified as nationals of Myanmar through the process of Nationality Verification under the MOU.

Boon has studied in Thailand since Grade 1. In 2004, he was registered as a dependent of migrant workers from Myanmar in Tor Ror 38/1. However, when his document expired in the end of 2004, he did not renew it. Because Boon was a primary school student, at the time, his parents did not realize that Boon had to follow the policy for migrant workers also.

After finishing Grade 6, Boon was denied enrollment in high school. He then decided to work with his parents as a janitor in Samut Sakorn Wutthichai School for 3 years. Finally, he was accepted to study in the school. Right now, he is studying in Grade 10 of Samut Sakorn Wutthichai School. Boon is very good at sport, especially futsal and basketball. Often he was selected to represent the school in

various completions in the Province. Unfortunately, he could not join any due to his unclear status.

Regarding his nationality problem, Boon should have been recognized as a national of Myanmar like the parents. However, the clear procedure for the Nationality Verification process of the children of the migrant workers is not yet stipulated. Boon is still recognized as a person with undetermined nationality.

In June 2012, a broker in Samut Sakorn Province contacted Boon and his parents. The broker assured them that they could handle the verification for Boon regardless of his expired document and lack of work permission. In doing so, Boon had to pay double the fee, which was almost 10,000 baht, to the broker.

5.2.3 Delegation of State power to private-run organizations and skepticism toward the process

The case of Ae Kaewdee, a Chinese Akha, shows problems toward the process of Nationality Verification when they are completed by private-run agencies. According to Myanmar's nationality law, Chinese is not listed as one of the ethnic minorities who are entitled to citizenship in Myanmar. Therefore, it is impossible that a Chinese woman, who came from Xishuangbanna and has never seen Myanmar, would be entitled to Myanmar nationality. However, in the circumstance of Ae, she was able to obtain an inaccurate Myanmar nationality by using a private run agency.

Case 8

Ae Kaewdee: a Chinese Akha recognized as a citizen of Myanmar

Ae Kaewdee (pseudonym) is an Akha who was born around 1979 in a rural area of Xishuangbanna Prefecture, Yunnan Province of China. After her mother passed away, the father had another wife. Due to conflict with her stepmother, Ae decided to leave the village and cross the border to Mae Sai District of Chiang Rai, Thailand in 1992.

After 5 years in Chiang Rai, she heard from others that Bangkok is better and has various job opportunities for workers like her. She moved to Bangkok in 1997. Ae worked in a clothing factory around the outskirts of Bangkok. And here, she had a chance to meet a Thai man and they decided to live together.

Due to sympathy, Ae's husband once made her a fraudulent identification as a Thai. He claimed that Ae was his aunt's daughter, who had in fact passed away. Unfortunately, when Ae presented and provided testimony at the District, she was detected due to her language. They had to pay a 20,000 baht bribe to the official for not arresting them.

Later in 2004, her employer supported her to register as a migrant worker in Tor Ror 38/1, like her other employees from Myanmar. Due to carelessness, the official registered all workers, including Ae, as migrants from Myanmar. Ae did not really understand this mistake until 2009 when the employer hired a private agency to take all workers in the factory to prove their nationality in Myanmar.

When it was time to verify her nationality, Ae hesitated to cross the border to Myanmar. She was afraid she would be arrested or detained in Myanmar. However, she was successfully verified and recognized as a citizen of Myanmar. After the process, she got a Temporary Passport from Myanmar which stated that she had its nationality.

The case of Ae Kaewdee, illustrates that through private-run organizations, the competent authorities in the Nationality Verification center treat the migrant workers better. The recognized private agency takes care of the process and sometimes prepares documents for the workers. In this sense, the story of Ae would have changed if she followed the normal process of the Thai Government. However, this does not address her real nationality problem. And the concern is that after the 4 years of the work period under the MOU, she will actually be required to return to Myanmar where she does not originate.

5.3 Challenges towards protection of the rights of migrant workers and members of their family

5.3.1 Nationality Verification of the children of migrant workers

Nationality Verification for the children of verified migrant workers from the three countries is a big challenge. Under current policy, children of the migrant workers from Cambodia, Lao PDR, and Myanmar who are under 15 or who do not apply for a work permit are unable to access to the Nationality Verification process. The purpose of the Nationality Verification process is to facilitate the legal employment of the workers in Thailand. Therefore, the process is only available for actual workers. This has led to many problems such as: different legal status between migrant workers and their children, differential treatment granted to migrant workers and their children in the same family and the possibility for children to be exploited as a result of their status. In this regard, evidence such as birth certificates will play a crucial role for the proof of the child's parentage and nationality. However, such evidence has been difficult to obtain for the children of migrant workers in Thailand. This was particularly the case before the enactment of the 2008 Civil Registration Act. This Act stipulated that children born in Thailand to these workers were entitled to birth certificates.

Case 9

Somboon and Kitty: stateless siblings of verified nationals from Myanmar

Somboon and Kitty (pseudonym) are children of verified migrant workers from Myanmar. Somboon is the older brother born on 23 April 1997 in Myitkyina Province, Myanmar while Kitty, the sister, was born on 6 June 1999 in Thailand.

Somboon and his parents entered Thailand in 1999 (or when Somboon was 2 years old) while Kitty was born right after they arrived. Somboon and Kitty were never recorded in the civil registration system, or even legally visible in the view of either Thailand or Myanmar.

In 2004, their parents were registered as migrant workers from Myanmar in Tor Ror 38/1. Somboon and Kitty, as the children and dependents of the migrant workers, were not registered into the system even though there was a policy to do so.

They were left out of the registration process and remained vulnerable undocumented children living in Thailand for more than 10 years.

In 2010, their parents were verified as nationals of Myanmar and acquired Temporary Passports issued by Ministry of Home Affairs of Myanmar. Given that Somboon and Kitty were children of verified nationals of Myanmar, they were also eligible for the nationality in principle. However, they still cannot exercise the right to nationality in practice due to the lack of a recognition process for children. Therefore, Somboon and Kitty are factually stateless children as they are not recognized as nationals by any country in the world.

In 2011, Somboon and Kitty fortunately benefited from the registration scheme of the Strategy on Administration of Legal Status and Rights of Persons under the Cabinet Resolution on 18 January 2005. In this matter, they were surveyed and documented in the civil registration system of Thailand as a student with legal status problems and issued an I.D. card for non-Thais without any nationality entitled, 'Persons without Status in Registration System'. There were also given a 13-digit identification number.

Even with stateless status, both of them have a special talent. Somboon, as Field Commander, and Kitty Rimpu, as Colorguard, in the Marching Band of Suan Lumpinee School led their team to win first prize in a Thailand Contest. In 2011, their team was invited by the Thai Marching Band, as well as the Hong Kong Marching Band & Drum Corps Association to participate in the Hong Kong Marching Band Festival as representatives of Thailand.

In conclusion, these two children have contradictory legal statuses. In fact, they are children of citizens of Myanmar; however, they are recorded in the Thai civil registration system as stateless students in Thai school. Regarding the Thai policy, a clear solution has not yet come out. Somboon and Kitty, as well as the children in similar situations are in limbo. They cannot be recognized in order to exercise their right to the nationality of Myanmar. Further, they are treated as stateless students in school (e.g. as stateless students they are restricted in travel). The story of Somboon and Kitty illustrate the problems of nationality encountered by many children of migrant workers in Thailand. Their story also shows the inability of the current Nationality Verification process to deal with these children.

5.3.2 Access to fundamental rights before Nationality Verification

Everyone, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status, shall enjoy basic human rights according to the international human rights law. Moreover, as a national policy governed by international human rights laws, ‘Education for all’ has been implemented as a policy for everyone in Thailand since 2005. Even stateless persons or children of migrant workers from Cambodia, Lao PDR and Myanmar can further their study as far as they have potential. Nevertheless, in reality, the rules are not always followed. Big is a clear illustration of this.

Case 10

Big: a child of migrant workers who was excluded from ‘Education for All’ policy

Big (pseudonym) was born on 24 November 1994 in Takuapa Hospital, Takuapa District, Phang Nga Province. He is a child of Sormee (see Case 2 above), a Karen with Burmese nationality who migrated from Myanmar 27 years ago. Due to the fact that Sormee has been recognized as a national of Myanmar and issued an ID card, Big as a child should also have Burmese nationality from his father.

In this regard, Big’s absence of nationality is a procedural issue. It is related to the problems with proof of nationality for the children of migrant workers. Under both the MOUs and during the negotiations between the contracting States, it is still unclear whether the children of migrant workers in Thailand can also be proved as nationals. Even if it is agreed that the children could be proved as nationals, there is uncertainty on how the process would occur and what kind of documentation the countries of origin would accept as evidence for proof of the relationship between the children and the verified parents. Even without any proper legal status in Thailand, Big as a human being should enjoy fundamental rights as stated in the UDHR and other relevant human rights instruments.

When Big was 8 years old his father left him with a priest in a Catholic Church in Ranong so that he could study farther than in the normal educational system of Thailand. Later, Big was sent to stay in a bigger Church in Nonthaburi called Our

Lady of Mercy Church. In Nonthaburi, the Church supported him and he had no problems studying in the Educational Opportunity Expansion Schools.

However, even though the ‘Education for All’ policy is in force, Big in reality has faced educational exclusion. For example, when he decided to study in a famous public high school he was denied access. After graduating from the secondary school in 2009, Big decided to enroll in a famous school in Nonthaburi area, using his xylophone skill for its special enrollment. He was promptly denied when a teacher found that he was not Thai. The vice-principal gave the reason that because the school was the most famous one in the area he wanted to accept Thai students first. Despite his acknowledgement of the ‘Education for All’ policy issued by the Ministry of Education, he persisted that the policy could not be used with his school which was located in an urban area, and not up in the mountain. The situation of Big demonstrates that despite the ‘Education for All’ policy, in practice, many non-Thai students have unequal access to education.

5.4 Consequences of the Nationality Verification and necessity of holistic management

5.4.1 Irregular migration cycle among verified migrant workers

After the Nationality Verification process, some of verified and lawful migrant workers have a chance to become irregular again. This could occur in the circumstance where these workers fail to meet a requirement under the MOUs, such as, not returning to the country of origin after 4 years. In this regard, this study will utilize the case of Dokkaew Rachachai to highlight the fact that there is the risk of becoming stateless or irregular after completion of Nationality Verification among these workers from Cambodia, Lao PDR and Myanmar. It is concluded that a strategic plan to prevent this should be in place in the respect of migrant workers management.

Case 11

Dokkaew Rachachai: a verified migrant worker from Lao PDR in irregular migrant cycle

Dokkaew Rachachai (pseudonym) was born on 11 December 1986 in Savannakhet Province, Lao PDR. Her father, Lek, and her mother, Ked, were also born in the country and recognized as a Lao citizen in household records.

In 2004, Dokkaew irregularly migrated to Thailand without holding any ID document from the country. She crossed the Mekong River to Mukdaharn Province, like a lot of people in her village did. Later, she moved to Bangkok and has worked as a waitress in a restaurant since then.

In this restaurant, Dokkaew's employers are very supportive. They took her to register as a migrant worker from Lao PDR in Tor Ror 38/1 and renewed the work permission for her every year.

In 2007, Dokkaew followed Thailand's policy on the proof of Lao nationality under the MOU. She passed the process and was issued a Temporary Passport. According to a provision under the MOU, after the proof nationality is verified, every migrant worker has the ability to stay and work in Thailand for at most 4 years. Dokkaew's visa expired in June 2010, and in principle, she should have gone to Lao PDR, her country of origin, for 3 years. After which, she would be able to come back to work in Thailand again.

Due to having a daughter with her Thai husband in 2009, Dokkaew decided not to leave her family to return to Lao PDR once her visa expired. As a result, she broke the condition under the MOUs and she has become irregular again. Further, according to the Nationality Law of Lao PDR, Dokkaew may lose her Lao nationality if she resides in Thailand for more than seven years with authorization. This means Dokkaew would be stateless even though she had once completed the Nationality Verification process.

5.4.2 Development for better legal status of migrant workers in Thailand

Unlike Dokkaew who became irregular after the Nationality Verification process, the case of Sokleng Saete represents an optimistic aspect of this process for migrant workers. As discussed, the Nationality Verification process seems to not intentionally solve the nationality problems of migrant workers, but rather to facilitate the legal employment of the workers in Thailand. However, it could still be an

opportunity for some groups of nationals from Cambodia, Lao PDR and Myanmar to be recognized as such. The process further devises options for these workers, and at least in the case of Sokleng Saete it provided benefit.

Case 12

Sokleng Saete: a Cambodian wife and mother of the Thai family

Sokleng Saete is an ethnic Chinese born on 25 October 1950 in Phnom Penh, Cambodia. Her family was a middle class family in the country and had their own business. When she was in Cambodia, she had no problem with her legal status. She held an ID card as a Cambodian national and both Sokleng and her family were issued passports. She recalled that they travelled to Hong Kong often. Moreover, she enrolled in good high school in the town, studying both Chinese and French.

However, around 1972-1973, Sokleng and her family fled from Civil War in Phnom Penh to Thailand. Later in 1976, the Thai Government gathered all refugees from Cambodia and moved them to temporary shelter sites to wait for resettlement to a third country. Sokleng decided not to stay in the shelter with other refugees because she met a Thai man and was pregnant with his child at the time. Sokleng's mother and sisters resettled to France while she remained undocumented in Thailand for 36 years taking care of her Thai family. Sokleng, as an undocumented mother, had 3 children. Her children received a good education; her son studied abroad and the two daughters graduated from good universities in Thailand.

Sokleng realized that without any document she was at risk and could be deported from Thailand. So, in order to stay legally with her family, she decided to register herself as a migrant worker from Cambodia in Tor Ror 38/1 in 2009. Even though she did not want to go back to the country anymore, she understood that she had to be a regular alien with a nationality to live a normal life in Thailand. A Cambodian nationality was a direct answer for her.

Sokleng gathered her ID document from her family in France in order to verify that once she was recognized as a Cambodian citizen. During the proof under the MOU in 2010, she presented a Birth Certificate as evidence to the Cambodian authorities. She has passed the process and received a Certificate of Identity which stated that she is of Cambodian nationality.

With assistance from the Bangkok Legal Clinic, Sokleng realized that under the MOU, she had only 4 years in Thailand. Subsequently she tried to change her status to become a normal alien from Cambodia, not a registered migrant worker. First, she travelled back to Phnom Penh to apply for a Permanent Passport as a national. Second, she changed from Non L-A Visa to Non-Immigration Visa - O (for Thai spouse). Under her new immigration status, she has a chance to naturalize to be Thai due to her Thai spouse status.

However, she hesitates to do this. She realized that Thai nationality may not be the best answer in her current situation. With a Cambodian Passport, she could easily travel to France to visit her sister, and she may not have the same ability to do this as a Thai.

The important thing is, now, she has various options to choose from. Sokleng can make a decision which would be the better choice for her life, either having Thai nationality or Cambodian nationality. Sokleng's story reflects an aspect of how the process of Nationality Verification positively affected a migrant worker's circumstance.

As consequences of the verification process, workers who were registered by the Thai state as migrant workers¹ or who have a Thai employer are the only group of beneficiaries for the Nationality Verification process. Unregistered migrant workers, workers who are self-employed and the children of registered migrant workers are excluded from the process. Moreover, only those registered as migrant workers from Cambodia, Lao PDR and Myanmar have access to the Nationality Verification process. Workers from other countries have to disguise their own identity and sometimes they have decided to register as workers from one of the three countries (see Case 3 and Case 8 in this Chapter as actual illustrations in Thailand).

¹ A person recognized by the Thai state as a migrant worker is someone who once irregularly immigrated into Thailand, but later followed these conditions: (1) were registered into the civil registration system called Tor Ror 38/1 by Department of Provincial Administration, Ministry of Interior; (2) passed a health check-up and it was determined that he or she had no severe communicable disease by the Ministry of Public Health and; (3) asked for work permission from Department of Employment, Ministry of Labour

During verification, the migrant workers encounter: complexity in the process, the high costs of the fee and illegal brokers who are seeking to take advantage of the situation. After the process, some of the verified and lawful migrant workers may become irregular again, particularly in the circumstance where these workers break a requirement of the MOU. This would occur, for example, if the migrant worker does not return to their country of origin after 4 years.

The process of the proof of nationality is significant for individuals to exercise their rights. Nationality Verification is a special process to facilitate the proof of nationality for large numbers of workers from Cambodia, Lao PDR and Myanmar. However, the method of proof and requirement, under each domestic law, is based on facts and evidence provided by the individual seeking to verify their nationality and in many situations this information is not obtainable for the said individual.

Importantly, the Nationality Verification process was established for the purpose of facilitating the continuation of employment in Thailand for workers from Cambodia, Lao PDR and Myanmar. As a result, those who are under 15 (meaning that they are prohibited to work under the law) and those without permission to work are not eligible for the process.

Lastly, some groups of workers from these three countries are not protected and recognized as nationals such as Rohingya from Myanmar. Rohingya, like other groups of ethnic minority in Myanmar, entered Thailand to seek a better life. However, under the 1982 Citizenship Law of Myanmar, these people are not accepted as one of the 135 ethnic minorities who are entitled to citizenship. Undoubtedly, the Myanmar Government treats them as aliens no matter where they reside. In this regard, the Thai Government ought to play its role to address the nationality problems of these unaccepted workers.

CHAPTER VI

CONCLUSION AND RECOMMENDATION

Nationality as a Right and Proof of Nationality as a Means to an End

Migrant workers from Cambodia, Lao PDR and Myanmar in Thailand are mixed. According to records from the Ministry of Labour, most entered into Thailand irregularly, but there were also some who migrated regularly in the first place and worked legally in Thailand. Regular migrant workers from Cambodia, Lao PDR and Myanmar engaged in work in the general and investment sectors. In the case of workers from Cambodia, Lao PDR and Myanmar with irregular entrance, there are a mixture of those who migrated into Thailand a long time before and those who have recently entered the country. Reason of migration and legal status of these two groups are also different. Some of these people, for instance, fled oppression and violence from fighting in their country of origin, some came to seek a better job opportunity, some came along with their family and there may also have been some who were trafficked into Thailand. Irregular entry and illegal residence of migrant workers in Thailand may lead to nationality problems.

As discussed, nationality is normatively recognized as a human right. Nationality is also significant for the enjoyment of other rights, such as the right to remain in his or her country, to re-enter from abroad and the right to vote. As well, nationality is the basis on which a state extends protection to individuals in other states through the mechanism of consular assistance. However, the workers from Cambodia, Lao PDR and Myanmar who face nationality problems may be unable to exercise the right to nationality in practice if they have not yet proven they are entitled to the nationality of that State. In this regard, the process of ‘proof of nationality’ could be a solution to address this matter.

A genuine link between the person and the state is to be taken into consideration for acquisition of a nationality. The following are sources of the right to a nationality used universally: (1) right to a nationality under *jus sanguinis*; (2) right to

a nationality under *jus soli*; (3) right to a nationality by a virtue of marriage and; (4) right to a nationality by naturalization (loyalty). After recognizing such entitlement, the process of proof will follow. Proof of nationality is, therefore, a ‘procedural’ right to support the ‘substantive’ right to a nationality. In normal situations, the process of proof of nationality is not an issue and it happens at all times. In the circumstance of migrant workers from Cambodia, Lao PDR and Myanmar in Thailand, the process of the proof, namely the Nationality Verification procedure under the MOUs, is however complex. According to these agreements, the States acquiesced to lessen their jurisdiction and facilitate an easier process for verifying nationality of workers residing in Thailand. These migrant workers from the three countries do not have to travel back to their country of origin to complete the proof. The distinguished innovation under this process was to mobilize the competent authorities from the countries of origin to be stationed in Thailand instead of their respective State.

The process of proof of nationality itself is not set forth as a human right under any human rights instruments. However, the process of the proof is a means to an end in order to utilize the right to a nationality in reality. Proof of nationality provides access to the right under procedural laws. Without access to the process of the proof of nationality, the migrant workers cannot establish their right to a nationality. Furthermore, through the process of proof, the countries are able to recognize and provide better rights and protection for their own people in practice. Regardless of legal status, regular or irregular, the workers in Thailand should equally be entitled to human rights without discrimination as recognized in international standards. However, the reality may be different. In this regard, Thailand as the habitual country of these workers should undertake measures to ensure such protection is available without consideration of their current legal status as such.

The process of Nationality Verification under the MOUs on Cooperation in the Employment of Workers is a significant mechanism assisting legalization of workers from Cambodia, Lao PDR and Myanmar in a very large scale. However, this process does not benefit every migrant who has nationality problems in Thailand. These MOUs were basically agreed upon for the mutual cooperation of economic arrangement for the countries involved. It is evident that the framework for the Nationality Verification is only a ‘means’ to the proper employment of workers, which

is the ‘ultimate goal’ under the MOUs. Nationality determination to avail these workers of a full right to exercise their nationality and to reduce statelessness by the process seems to be only a ‘by-product’ of the cooperation. As a result, there are still huge numbers of irregular migrants hiding within Thailand’s territory, and the figures seem to be growing more and more. To improve the situation and to ensure realization of the right to the nationality of these migrant workers in Thailand, the proof of nationality through diplomatic channel may be one solution. According to international customary law, States, particularly Cambodia, Lao PDR and Myanmar in this context, have a direct responsibility to provide protection to their own nationals regardless of their residence, whether it is inside the country or overseas. Through overseas missions, such as an embassy or consulate in Thailand, the irregular migrant workers from these three countries are theoretically able to avail themselves of this nationality problem in the respect of the proof of nationality. However, in practice this may not be feasible for many irregular workers in Thailand.

As a consequence of the Nationality Verification process, 733,603¹ of the estimated 1.85 million registered migrant workers from Cambodia, Lao PDR and Myanmar in Thailand have completed the Nationality Verification process. 167,881² workers remain ‘registered’ but ‘illegal’ (MOL, 2012). Potential reasons that some migrant workers did not come forward to register for the verification could be due to: a lack of awareness; reluctance to approach the authorities owing to fear of detention, discrimination or deportation; fear of the consequences of the process or a lack of required documentation.

Despite some positive aspects, the process of Nationality Verification has received extensive criticism from different organizations due to the poor administration of the process and the practices that could put migrants at risk of vulnerability and corruption of the officials involved. These types of issues might further make it more difficult for people to register and go through the process. Another part of the criticism is the deteriorated situation of those migrants that did not enter the process, as it might be more difficult to come up with procedures to address those who were left out. In June 2010, the government established special centers to

¹ 630,185 from Myanmar, 73,793 from Cambodia and 29,625 from Lao PDR (MOL, 2012)

² 63,768 from Myanmar, 64,409 from Cambodia and 39,704 from Lao PDR (MOL, 2012)

suppress, arrest, and prosecute alien workers who are working illegally in Thailand. This is expected to target those migrants that did not enter the process of the Nationality Verification (IOM, 2010). It has also been reported that a new policy is in place to force legalized migrants to contribute to the cost of deporting irregular migrants by deducting their wages on a monthly basis (Bangkok Post, 2010).

Moreover, as mentioned in Chapter V, various groups of migrants from the three countries are excluded from the policy, even though they have a genuine link with their respective country. Migrant workers who did not possess work permits, for instance, could not access the process, including those who missed out of the migrant worker registration scheme (undocumented migrant workers). Further, despite a growing presence of dependents (particularly children) of migrant workers from Cambodia, Lao PDR and Myanmar in the country, regularization via this process was intended only for adult workers.

All of these situations indicate that over the past two decades, Thailand has not developed a holistically considered migration policy based on a long-term economic, social and human rights perspective. Rather, Thailand's migration policy appears to be prioritising economic development, and the need for migrant workers over human and national security and the rule of law (Hall, 2011). Cabinet resolutions, established between officials and the main agencies involved, particularly the National Security Council, have instead set a piecemeal migration policy. What emerged have been inconsistent short-term decisions made in reaction to labour shortages, employer pressure and political expediency. This approach has resulted in overall confusion and inadequate rights protection of the migrants (Chantavanich et al., 2007:16).

Besides, challenges to regularization continue to endure. They include: (a) the complex and bureaucratic nature of the Nationality Verification processes and an absence of one-stop services; (b) lack of information about what the processes entail and the rights available to the workers after becoming legal; (c) high costs both for employers and migrants from unregulated brokers which reduces the incentive to regularize; (d) lack of linkage of the Nationality Verification process under the MOUs to civil registration processes in countries of origin; and (e) lack of genuine rights protection following the process (Hall, 2011; TDRI, 2009: Chapter 5). In Phase 4 of Nationality Verification (15 December 2012 – 15 April 2013), the Thai authorities

seem to have tackled one of the challenges by the establishment of one-stop service centers for verification. However, Thailand does not seem to have any contingency plan in place for those that fail the process and whose nationality cannot be determined. This could lead to identification of cases of statelessness and a deteriorated situation for migrants that have not passed the process.

Recommendation to Address Nationality Problems of Migrant Workers from Cambodia, Lao PDR and Myanmar

As discussed and analyzed, it is explicitly evident that the framework for the Nationality Verification, as a special process, is to facilitate the proof for large numbers of workers from Cambodia, Lao PDR and Myanmar, and the ultimate goal of the process is to enable proper employment of the migrant workers who initially had an irregular status. Nationality determination, which could lead to better rights protection for these workers, seems to be only a ‘by-product’ of the process. There are currently huge numbers of irregular migrants in Thailand who are unable to verify themselves through the Nationality Verification process due to the requirements established under the MOUs. Also, there are some groups of migrant workers who were denied under this process, leaving these people in limbo.

Firstly, to solve current nationality problems of the residual migrant workers, employment should not be stipulated as a condition of legalization of the migrant workers. This study recommends that relevant States should agree upon another MOU to govern cooperation in solving nationality problems of these workers. The authorized agencies under this new agreement should be the Ministry of Interior of Cambodia and Thailand, the Ministry of Home Affairs of Myanmar, and the Ministry of Justice of Lao PDR. These are the Ministries which in fact deal with nationality issues in each respective country. In addition, by using existing overseas missions, Cambodia, Lao PDR and Myanmar should build up capacity of their authorities in conducting the process of the proof of nationality in general.

Secondly, to tackle the plight of stateless migrants who were rejected under the Nationality Verification process, Thailand, as the habitual residence of these

workers, should take a lead in improving the situation. In this regard, Thailand ought to consider recognizing these people as residents in the civil registration system and issue them an identity document. In doing so, these workers would be counted and be more able to avail themselves of fundamental rights in reality. In the same time, Thailand may consider granting stateless migrants the right to temporary residence, and later permanent residence if they stay longer and are assimilated into the Thai society. Additionally, in order to solve their nationality problem, Thailand may allow these workers to naturalize according to the existing provision under its nationality law.

Lastly, in terms of prevention for irregular entry, which could lead to nationality problems for these workers, development of a relevant system is significant. The immigration database system of Cambodia, Lao PDR, Myanmar as well as Thailand plays an important role in monitoring entry and exit of individuals. Furthermore, the civil registration system of each country should be improved to effectively provide protection to people, including nationals and aliens. In doing so, all populations will be counted and recorded. It would also be expedient for each country to make policies or allocate resources to protect people inside the countries. Finally, as this is not only a domestic matter, all these database systems should be developed and linked internally and between concerned countries as well.

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APPENDICES

APPENDIX A

SUMMARY OF PRINCIPLE OF RIGHT TO A NATIONALITY OF CAMBODIA, LAO PDR, MYANMAR AND THAILAND UNDER THEIR NATIONALITY LAW

Right to Nationality of Cambodia

Cambodia asserted independence from colonial rule in 1953 and became fully autonomous from external occupation in 1990. Cambodia's Law on Nationality, promulgated in 1996, features highly inclusive rules for the acquisition of nationality. According to **Cambodia's Nationality Act, 1996** (Kram on Nationality), an individual may obtain Cambodian (Khmer) nationality on basis of Khmer nationality at birth under the principles of *jus sanguinis* and *jus soli*, and Khmer nationality after birth by marriage and naturalization.

A person can acquire ***Khmer nationality at birth under jus sanguinis***, as stated in Article 4 (1), if he or she is a legitimate or even illegitimate child born of a mother or a father with Khmer nationality. However, he or she needs to be recognized by the parents as their child for the illegitimate case. Moreover, the State will provide Khmer nationality for a child when there is a court decision on the issue.

Therefore, conditions of entitlement of Khmer nationality at birth on basis of *jus sanguinis* are: (1) Khmer nationality of a father or a mother and (2) legal marriage registration of the parents before the birth of the child, or legitimating of the child after the birth or a court decision recognizing that the child was born from the parents with Khmer nationality.

Even though Cambodia has a principle of ***acquisition of Khmer nationality under jus soli***, it is conditional according to Article 4 (2). A person may acquire Khmer nationality on basis of *jus soli* if one of the following situations are fulfilled: (1) the person was born of foreign parents who were also born and have been living legally in Cambodia at the time of the birth of the child; (2) the person was born

in Cambodia and information about the parents cannot be traced; and (3) foundlings found in Cambodia.

In the first situation, the person who claims Khmer nationality has to prove that: (1) he or she was really born in Cambodia; (2) the father was also really born in Cambodia; (3) the father has obtained the right to reside under the relevant law; (4) the mother was born in Cambodia; and (5) the mother has also obtained the right to reside in Cambodia. In the second situation, proof of Khmer nationality requires these two matters to be proved: (1) the claimant was born in Cambodia and (2) information of the parents cannot be traced anymore. And in the last situation, it is a responsibility of the State to verify that such newborn is really a foundling whose parents are not found.

Besides the aforesaid principles, under Khmer laws, *acquisition of Khmer nationality by marriage* is widely provided for both male and female aliens who marry a person with Khmer nationality, as clarified in Article 5. The persons shall file an application together with certain evidence in order to possess qualification required under the law. They are: (1) evidence showing that the husband or the wife really has Khmer nationality; (2) certificate of marriage registration and (3) evidence proving that the couple has been living together for three years after marriage.

At last, *acquisition of Khmer nationality by naturalization* is stipulated in Article 7¹ for foreigners who desire to apply for Khmer nationality through the process of *naturalization*. The person may apply with the fulfillment of the requirements prescribed in Article 8: (1) certificate issued by Commune (Khum) or Quarter (Sangkat) of the applicants' residence which recognizes that they have good behavior; (2) certificate proving that they had never been convicted for any criminal offence; (3) document certifying that they have been residing in Cambodia continuously for seven years; (4) evidence proving that they have residence at the time of applying; (5) evidence verifying that they are able to speak Khmer, know the scripts and some Khmer history, and have been assimilated with the Cambodian society; and (6) evidence affirming that they shall not be danger nor burden to Cambodia.

¹Article 7.

Foreigners may apply for Khmer nationality/citizenship through naturalization. Naturalization is not a right of the applicant, but only a favor of the Kingdom of Cambodia. In any case, such application may also be rejected by a discretionary power.

Moreover, the statute also features protections against arbitrary deprivation of nationality. Article 3 notes that “*Khmer citizens who are living in foreign countries shall not lose their nationality automatically.*”

Despite these positive provisions of the relevant law, the reality is that it would be virtually impossible for persons from Cambodia, who have migrated to Thailand for a long time², to document that they were in possession of Khmer nationality prior to leaving Cambodia. Several factors are significant, including the length of absence from the country, the fact that they fled widespread violence associated with the Khmer Rouge, and the reality that the Khmer Rouge destroyed civil registration records.

Right to Nationality of Lao PDR

The first Law on Lao Nationality dates from 1990. It clarifies that Lao nationals include those who have acquired or possess “Lao nationality before this law is enacted” (Article 1(1)). Lao People’s Democratic Republic (Lao P.D.R.) follows only the principle of *jus sanguinis*. Original acquisition of nationality is defined in the **Law on Lao Nationality, 1990, as amended by the Law in 2004**. Foreigners may ask for nationality by marriage or may apply for naturalization under the Law in the same principle. Moreover, rootless children found in the territory will acquire Lao nationality and also adopted children of Lao citizens will obtain the nationality under the principle of family unity.

Under *jus sanguinis*, a person born of parents both bearing Lao nationality will acquire Lao nationality without taking into consideration whether they were born inside or outside the territory, as said in Article 10. Nevertheless, according to Article 11, if a person has only one of their parents (mother or father) holding Lao nationality, he or she will be considered the nationality by birth in the two situations: firstly he or she is born in the Lao PDR and secondly he or she is born outside the Lao PDR, but both parents or one of them has a permanent residence in the Lao PDR.

² The populations who were considered as old comer migrants from Cambodia are: (1) Persons with Thai ethnicity formerly living on Kong Island, Cambodia and (2) Persons entering Thailand irregularly from Cambodia (See Chapter 3). These groups of people moved to Thailand in the late 1970s to early 1980s.

In order to acquire *nationality by marriage* or *naturalization*, the same provision is provided in the Law. All of qualifications are proclaimed in Article 14³.

In accordance to Article 13, *a rootless child* whose parents' identity is unknown will gain Lao nationality if he or she is under eighteen years old. However, if there is any evidence showing that he or she is a child of alien citizens, he or she will be considered as an alien citizen from birth.

For the case of *an adopted child* of a Lao citizen, there is Article 25⁴ in the Law dealing with these people. The family unity is the issue; therefore the adopted child may obtain Lao nationality according to a mother or a father holding Lao nationality.

Article 4 of the 1990 statute also notes on oversea Lao citizens that "*Lao citizens residing overseas may maintain the Lao nationality and will receive protection and care from the Lao People's Democratic Republic.*"

³Article 14. *Conditions for the acquisition of the Lao nationality*

Individuals requesting Lao nationality must meet all the following conditions:

1. Have eighteen years of age or more when requesting the Lao nationality;
2. Respect the Lao Constitution and the other relevant laws;
3. Able to speak, read and write in Lao;
4. Possess evidence on their social and cultural integration, knowledge and respect of Lao traditions;
5. Be in good health;
6. Not under prosecution by the court to custody;
7. Rendering good service and development to the country;
8. Not be a cause of damage relating to national interest;
9. Agree to relinquish the original nationality;
10. Have permanent residence in the Lao People's Democratic Republic continuously for ten years before requesting the Lao nationality.
11. Having regular occupation.

⁴Article 25. *Nationality of adopted alien children*

Alien or apatrid children adopted by Lao citizens will be considered as Lao citizens. Alien children adopted by a married couple which one spouse is a Lao citizen and the other spouse a foreign citizen will be considered as bearing Lao nationality according to the agreement of the adoptive parents.

Movement of old comer populations from Lao PDR⁵ to Thailand involved persons fleeing war and violence associated with the communist uprising against the monarchy. In view of the nature of the population movement, and its remoteness in time (occurring some 4 decades ago), it is highly unlikely that this population would be recognized as nationals by present day Laos. There is no evidence that they would have had any records of such in Laos dating back that early.

Right to Nationality of Myanmar

According to Burma Citizenship Laws, the principle of *jus sanguinis* is the only way for a person to originally acquire Burmese nationality. The people falling under this category are called ‘citizen’⁶, while another who applies for nationality through the *nationalization* process is an ‘associate citizen’⁷ or ‘naturalized citizen’⁸. These definitions were obtained from the First Secretary (Consular) at the Embassy of the Union of Myanmar in Ottawa (4 Dec. 1991).

Under *jus sanguinis*, according to Article 7 of **Burma Citizenship Law, 1982**, a person can obtain nationality whether they are born inside or outside the State to parents: one of whom is a citizen and the other who is an associate citizen or a naturalized citizen, or both of whom are naturalized citizens. Conclusively, the person cannot acquire Burmese nationality by birth if one of the parents is a foreigner.

Acquisition of nationality by *naturalization* can occur from three different situations. Firstly, persons living in Myanmar at the time of independence but may have held Indian or British citizenship can apply to be an ‘associate citizen’ under **the**

⁵ Migration of the people from Lao PDR started well before 1960s due to porous border and cultural/ethnic ties between Thailand and Laos.

⁶ Citizen, as stated in the Burma Citizenship Laws, is a true Burmese whose ancestors were residing in what is now Myanmar in 1823, one year after it became a British colony as part of British India.

⁷ Associate citizens are those who are eligible to apply to become citizens under the 1948 Citizenship Law. These persons were living in Myanmar at the time of independence but may have held Indian or British citizenship.

⁸ Naturalized citizens are persons and their descendants who have been living in Myanmar since 4 January 1948. For example, a person may have wished to retain his status as a British subject in 1948. His grandchild may, however, wish to be a citizen of Myanmar. In that case, the grandchild would be a naturalized citizen.

Union Citizenship Act, 1948, as mentioned in Article 23⁹. Secondly those who have been living in Myanmar since 4 January 1948 may ask for ‘naturalized citizen’ status, according to Article 42 of **the Burma Citizenship Law, 1982**. Finally, as stated in Article 43 of the same Law, a person who is born in or has immigrated into Burma after October 15th, 1982 of parents, one of whom is citizen, associate citizen or naturalized citizen and the other is a foreigner. For the third situation, only people with the qualifications mentioned in Article 44¹⁰ can go through the naturalization process.

A man or woman foreigner married to a citizen or to an associate citizen or to naturalized citizen may apply for naturalized citizenship, according to Article 45¹¹.

Myanmar law allows for the revocation of nationality on the basis of departure and residence outside the country. Article 16 of the Burma Citizenship Law (1982) provides that “[a] citizen who leaves the State permanently...or who takes out a passport or a similar certificate of another country ceases to be a citizen.” The statute does not define what time period suffices as grounds for determining that an

⁹Article 23.

Applicants for citizenship under the Union Citizenship Act, 1948, conforming to the stipulations and qualifications may be determined as associate citizens by the Central Body.

¹⁰Article 44.

An applicant for naturalized citizenship shall have the following qualifications:

- (a) be a person who conforms to the provisions of section 42 or section 43;
- (b) have completed the age of eighteen years;
- (c) be able to speak well one of the national languages;
- (d) be of good character;
- (e) be of sound mind.

¹¹Article 45.

A person married to a citizen or to an associate citizen or to a naturalized citizen, who is holding a Foreigner's Registration Certificate anterior to the date this Law comes into force shall have the following qualifications to apply for naturalized citizenship:

- (a) have completed the age of eighteen years;
- (b) be of good character;
- (c) be of sound mind;
- (d) be the only husband or wife;
- (e) have resided continuously in the State for at least three years is the lawful wife or husband.

individual has left the State “permanently”, and therefore appears open to arbitrary application.

While the 1982 Citizenship Law was passed after the old comer populations¹² (as mentioned in Chapter 3) departed from Myanmar, there is no explicit protection from retroactive application. Article 23 of the 1974 Constitution of Burma does prohibit retroactive application of law, but only for penal statutes.

Right to Nationality of Thailand

As a matter of fact, people from Cambodia, Lao PDR and Myanmar could be entitled to Thai nationality if they have a genuine link with the Thai state. Conditions of entitlement to the right to Thai nationality are stipulated in the nationality laws of Thailand¹³. Entitlement of right to Thai nationality can be granted by: (1) acquisition of Thai nationality at birth and (2) acquisition of Thai nationality after birth.

Right to Thai nationality at birth under nationality laws is based on both *jus sanguinis* and *jus soli* principles.

The jus sanguinis principle mainly governs the acquisition of Thai nationality at birth. However, there are differences in details between the *jus sanguinis* derived from the father and from the mother in each period of the development of law on nationality of Thailand.

There were only two conditions required for claimants to obtain Thai nationality at birth on the *jus sanguinis* principle from the father in almost every period of the development of law on nationality of Thailand. These conditions were: (1) Thai nationality of the father at the birth of the child and (2) legitimation of the

¹² The populations who were considered as old comer migrants from Myanmar are: (1) Persons with Thai ethnicity who were formerly living in Myanmar; (2) Displaced Persons from Myanmar and (3) Persons entering Thailand irregularly from Myanmar (See Chapter 3). These three groups of people have moved to Thailand since late 1970s.

¹³ The concept of Thai nationality under law on nationality of Thailand can be distinguished into four periods since the beginning of the historical period of legal history: (1) during the enforcement of Thai customary law; (2) during the enforcement of the Nationality Act B.E.2456 (1913); (3) during the enforcement of the Nationality Act B.E.2495 (1952) and; (4) during the enforcement of the Nationality Act B.E.2508 (1965).

father at the birth of the child¹⁴. The relevant provision of the nationality act was revised in 2008. Currently, the claimants will acquire Thai nationality from the father if they can prove that at their birth: (1) their father has Thai nationality and (2) their father is a biological father¹⁵.

In every period of the development of law on nationality of Thailand, persons will obtain Thai nationality at birth on *jus sanguinis* principle from the mother if they can prove that they meet these two conditions: (1) Thai nationality of the mother at the birth of the child and (2) real biological relationship between the mother and the child. However, in 1965 the acquisition of Thai nationality from the mother was limited only for a child who was born outside Thailand to an illegitimate father of foreign nationality. Later in 1992, law on nationality was revised so that the acquisition of Thai nationality is equally derived from the mother and from the father.

The jus soli principle has a subordinate status under law on nationality. In the period of Customary Law, right to Thai nationality at birth on the *jus soli* principle had not emerged yet. But when *the Nationality Act B.E.2456 (1913)* was in force, such a right to Thai nationality became unconditional. During 1913 to 1952, every person born on Thai soil would obtain Thai nationality at birth automatically. However, later when *the Nationality Act B.E.2495¹⁶ (1952)* and *the Nationality Act B.E.2508¹⁷ (1965)* came into force, right to Thai nationality at birth on the *jus soli* principle had been

¹⁴ The father has to legally register marriage under Thai law before the child was born or the father has to legally recognize the child after birth, the father therefore will be qualified as a legitimate father of the child.

¹⁵ Procedure of proof of biological father is stipulated in the Ministerial Regulation under the Nationality Act B.E.2508 (1965) as amended by the Act No.4 B.E.2551 (2008)

¹⁶ Limitations were in some provision, for example, stating that Thai nationality at birth on the *jus soli* principle would be conferred upon persons who have a Thai mother only or that person with Thai nationality on the *jus soli* principle would lose their Thai nationality immediately after receiving an identification paper for aliens. However, these two provisions were repealed finally.

¹⁷ The provision under the Act stipulated that only those who were born in Thailand while a parent already had permanent residence in Thailand shall acquire Thai nationality by birth automatically. However, others who were born in Thailand of a parent (1) who has been given leniency to stay in Thailand as a special case or (2) who has a temporary residence or (3) who has entered illegally into Thailand do not acquire Thai nationality on the *jus soli* principle. Only in the case where the Minister of interior deems it appropriate may Thai nationality be granted in the application of each case.

limited to conditional. Therefore, in the period of unconditional right to Thai nationality at birth on the *jus soli* principle, persons would meet condition of entitlement of such right to Thai nationality if they could prove that they were really born on the Thai soil.

Since 1952 the conditions to reach qualification of entitlement of right to Thai nationality have increased. They include: proving that their father or mother were given leniency for temporary residence as a special case, or were permitted to stay temporarily in Thailand or entered and resided in Thailand illegally. Moreover, the persons wishing to obtain Thai nationality by *jus soli* have to file an application to the Minister of Interior for their discretion.

The right to Thai nationality after birth under law of Thai nationality is not acquired automatically. It will be granted by filing an application to the Minister of interior for discretion. The applicants have to prove that they meet every condition required under each provision which are: they have lived in Thailand for a long time and they have been assimilated into the society, or they have rendered great contribution to Thailand or they have a Thai husband. The acquisition of Thai nationality after birth is based on these two means: naturalization and marriage.

The acquisition of Thai nationality by naturalization emerged during the period of enforcement of Thai customary law. The provisions were not regulated clearly in the beginning of the period because Thai nationality at that time was granted by royal decree¹⁸. However, in 1911 King Rama VI enacted the *Naturalization Act Ror Sor 130 (1911)*. The written regulations for naturalization were stipulated for the first time in this Act. And the concept relating to naturalization has been set forth in laws on nationality since then.

Required conditions for naturalization under the present law on nationality are: (1) proof that applicants are legally adult and have been assimilated into the Thai society¹⁹ or have been rendered great contribution to Thailand²⁰ or have been rendered

¹⁸ A sample of aliens who naturalized according to royal decree is “Constantine Falcon”. Constantine is a Greek who came into Thailand in the Reign of King Narai of Ayutthaya. By the King, he was granted Thai nationality by naturalization as well as provided Thai nobility as “Chaophraya Wichayen”.

¹⁹ Section 10 of the Nationality Act B.E.2508

great contribution to Thailand and are children, wives or husbands of a Thai national by naturalization²¹ or have been rendered great contribution to Thailand and are children, wives or husbands of a Thai national by recovery²² or have been rendered great contribution to Thailand and used to have Thai nationality²³ or have been rendered great contribution to Thailand and are a husband of a Thai national²⁴ or are incompetent persons under supervision of a Thai national²⁵ or are *minor* aliens under

²⁰ For *sui juris* (legally adult) who have rendered great contribution to Thailand, two following conditions of entitlement of the right to Thai nationality by naturalization under Section 11 (1) of the Nationality Act B.E.2508 are exempted: (1) having a domicile in the Thai Kingdom for a consecutive period of not less than five years and (2) having knowledge of Thai language.

²¹ For aliens who have rendered great contribution to Thailand and are children, wives or husbands of a person with Thai nationality by naturalization, two following conditions of entitlement of the right to Thai nationality by naturalization under Section 11 (2) of the Nationality Act B.E.2508 as amended by the Act No.4 B.E.2551 (2008) are required: (1) having a domicile in the Thai Kingdom for a consecutive period of not less than five years and (2) having knowledge of Thai language.

²² For aliens who have rendered great contribution to Thailand and are children, wives or husbands of a person with Thai nationality by recovery, two following conditions of entitlement of the right to Thai nationality by naturalization under Section 11 (2) of the Nationality Act B.E.2508 as amended by the Act No.4 B.E.2551 (2008) are exempted: (1) having a domicile in the Thai Kingdom for a consecutive period of not less than five years and (2) having knowledge of Thai language.

²³ For aliens who have rendered great contribution to Thailand and used to have Thai nationality, two following conditions of entitlement of the right to Thai nationality by naturalization under Section 11 (3) of the Nationality Act B.E.2508 as amended by the Act No.4 B.E.2551 (2008) are exempted: (1) having a domicile in the Thai Kingdom for a consecutive period of not less than five years and (2) having knowledge of Thai language.

²⁴ For aliens who have rendered great contribution to Thailand and are a husband of a person with Thai nationality, two following conditions of entitlement of the right to Thai nationality by naturalization under Section 11 (4) of the Nationality Act B.E.2508 as amended by the Act No.4 B.E.2551 (2008) are exempted: (1) having a domicile in the Thai Kingdom for a consecutive period of not less than five years and (2) having knowledge of Thai language.

²⁵ For incompetent persons under supervision of a person with Thai nationality, two following conditions of entitlement of the right to Thai nationality by naturalization under Section 12/1 (1) of the Nationality Act B.E.2508 as amended by the Act No.4 B.E.2551 (2008) are exempted: (1) having regular occupation and (2) having knowledge of Thai language.

supervision of public foster home²⁶ or are *minor* aliens who are adopted children of a Thai national²⁷; (2) proof that applicants have good behavior; (3) proof that applicants have regular occupation; (4) proof that applicants having a domicile in the Thai Kingdom for a consecutive period of not less than five years; and (5) proof that applicants have knowledge of Thai language as prescribed in the Regulations.

Rules of acquisition of Thai nationality by virtue of marriage have appeared in the Thai society since B.E.2454 (1911) when the Naturalization Act Ror Sor 130 was enforced. It is remarkable that under this Act there was a provision stipulating “the right to Thai nationality of an alien wife of naturalized Thai husband” which was automatically granted²⁸. The real intention of the provision was to maintain “family unification” in the Thai society at the time. However, right to Thai nationality of the alien wife of the Thai husband has changed to be conditional since the first written Nationality Act until the present²⁹. In conclusion, if the alien wife desires to apply for Thai nationality by marriage, she has to prove that she can possess these following qualifications under the current law on nationality³⁰: (1) Thai nationality of the husband and (2) being legal wife (conducting marriage registration) of the Thai husband while filing the application.

²⁶ For *minor* aliens under supervision of public foster home, two following conditions of entitlement of the right to Thai nationality by naturalization under Section 12/1 (2) of the Nationality Act B.E.2508 as amended by the Act No.4 B.E.2551 (2008) are exempted: (1) becoming *sui juris* in accordance with Thai law and the law under which he has nationality and (2) having regular occupation.

²⁷ For minor aliens who were adopted by a Thai national, two following conditions of entitlement of the right to Thai nationality by naturalization under Section 12/1 (3) of the Nationality Act B.E.2508 as amended by the Act No.4 B.E.2551 (2008) are exempted: (1) becoming *sui juris* in accordance with Thai law and the law under which he has nationality and (2) having regular occupation.

²⁸ Section 12 of the Naturalization Act Ror Sor 130 (1911)

²⁹ Section 3 (4) of the Nationality Act B.E.2456 and Section 8 of the Nationality Act B.E.2495 and Section 9 of the Nationality Act B.E.2508

³⁰ Section 9 of the Nationality Act B.E.2508 (1965)

APPENDIX B

PROCESS OF NATIONALITY VERIFICATION OF CAMBODIA UNDER THE MOU

Detailed process	Responsible organs	Required document	Place of operation	Fee
Before the Process of Proof of Nationality				
Collect a filled application form for requesting the NV and send to Provincial Employment Offices or Bangkok Employment Office Area 1 – 10	Employers	Application form for requesting the NV (for Cambodians)	Provincial Employment Offices or Bangkok Employment Office Area 1 – 10	-
Inform employers and migrant workers to go for the nationality verification process	Provincial Employment Offices or Bangkok Employment Office Area 1 – 10	-	-	-

Detailed process	Responsible organs	Required document	Place of operation	Fee
During the Process of Proof of Nationality				
Verify nationality and receive Temporary Passport	Employers and migrant workers	Copy of work permit or I.D. paper (so-called Tor Ror 38/1) Work quota in the present year Two 4x6 cm. photos	Cambodian Nationality Verification Center in Office of Foreign Workers Administration, Department of Employment, Ministry of Labour,	1,500 Thb
After the Process of Proof of Nationality				
Submit a request for Visa Non L-A	Migrant workers	Request form for Visa Non L-A Temporary passport Arrival and departure Form (T.M.6) Work quota in the present year	Cambodian Nationality Verification Center in Office of Foreign Workers Administration, Department of	500 Thb

Detailed process	Responsible organs	Required document	Place of operation	Fee
		Copy of work permit or I.D. paper (so-called Tor Ror 38/1) One 4x6 cm. photos	Employment, Ministry of Labour	
Write and submit a report on statistics of verified Cambodian migrant workers to the Province where the migrant workers have domicile and Office of Foreign Workers Administration	Cambodian Nationality Verification Center in Office of Foreign Workers Administration, Department of Employment, Ministry of Labour	Report on statistics of verified Cambodian migrant workers	Cambodian Nationality Verification Center in Office of Foreign Workers Administration, Department of Employment, Ministry of Labour	-
Conduct a medical check-up	Migrant workers	Temporary passport	Hospitals assigned by Ministry of Public Health in the Province the migrant workers have	Medical check-up fee: 600 Thb Fee for health insurance: 1,300 Thb

Detailed process	Responsible organs	Required document	Place of operation	Fee
Request for work permit (within 7 days after receiving the medical certificate)	Employers and migrant workers	Temporary passport and its copy medical certificate Work quota in the present year Map of work location Two 4x6 cm. photos Copy of work permit or I.D. paper (so-called Tor Ror 38/1)	domicile Provincial Employment Offices or Bangkok Employment Office Area 1 – 10 or Cambodian Nationality Verification Center in Bangkok	Total 1,900 Thb Fee for requesting work permit: 100 Thb Work permit fee: 1,800 Thb/year Total 1,900 Thb

APPENDIX C

PROCESS OF NATIONALITY VERIFICATION OF LAO PDR UNDER THE MOU

Detailed process	Responsible organs	Required document	Place of operation	Fee
Before the Process of Proof of Nationality				
Collect a filled application form for requesting the NV and send to Provincial Employment Offices or Bangkok Employment Office Area 1 – 10	Employers	Application form for requesting the NV (for Laotians)	Provincial Employment Offices or Bangkok Employment Office Area 1 – 10	-
Inform employers and migrant workers to go for the nationality verification process	Provincial Employment Offices or Bangkok Employment Office Area 1 – 10	-	-	-

Detailed process	Responsible organs	Required document	Place of operation	Fee
During the Process of Proof of Nationality				
Verify nationality and receive Temporary Passport	Employers and migrant workers	<p>Application form for requesting the NV (for Laotians)</p> <p>Copy of work permit or I.D. paper (so-called Tor Ror 38/1)</p> <p>Work quota in the present year</p> <p>Three 4x6 cm. photos</p>	Lao Nationality Verification Center in Bangkok or Provincial Employment Offices set as the NV Centers	1,500 Thb
After the Process of Proof of Nationality				
Submit a request for Visa Non L-A	Migrant workers	<p>Request form for Visa Non L-A</p> <p>Temporary passport</p> <p>Arrival and departure Form (T.M.6)</p> <p>Work quota in the</p>	Lao Nationality Verification Center in Bangkok or Provincial Employment Offices set as the NV Centers	500 Thb

Detailed process	Responsible organs	Required document	Place of operation	Fee
		present year Copy of work permit or I.D. paper (so-called Tor Ror 38/1) One 4x6 cm. photos		
Write and submit a report on statistics of verified Laotian migrant workers to the Province where the migrant workers have domicile and Office of Foreign Workers Administration	Lao Nationality Verification Center in Bangkok or Provincial Employment Offices set as the NV Centers	Report on statistics of verified Lao migrant workers	Lao Nationality Verification Center in Bangkok or Provincial Employment Offices set as the NV Centers	-
Conduct a medical check-up	Migrant workers	Temporary passport	Hospitals assigned by Ministry of Public Health in the Province the migrant workers have domicile	Medical check-up fee: 600 Thb Fee for health insurance: 1,300 Thb Total 1,900 Thb

Detailed process	Responsible organs	Required document	Place of operation	Fee
Request for work permit (within 7 days after receiving the medical certificate)	Employers and migrant workers	Temporary passport and its copy medical certificate Work quota in the present year Map of work location Two 4x6 cm. photos Copy of work permit or I.D. paper (so-called Tor Ror 38/1)	Provincial Employment Offices or Bangkok Employment Office Area 1 – 10 or Lao Nationality Verification Center in Bangkok	Fee for requesting work permit: 100 Thb Work permit fee: 1,800 Thb/year Total 1,900 Thb

APPENDIX D

PROCESS OF NATIONALITY VERIFICATION OF MYANMAR UNDER THE MOU

Detailed process	Responsible organs	Required document	Place of operation	Fee
Before the Process of Proof of Nationality				
Collect a filled application form for requesting the NV and send to Provincial Employment Offices or Bangkok Employment Office Area 1 – 10	Employer	Application form for requesting the NV (for Myanmar)	Provincial Employment Offices or Bangkok Employment Office Area 1 – 10	-
Send the application forms to Office of Foreign Workers Administration	Provincial Employment Offices or Bangkok Employment Office Area 1 – 10	Application form for requesting the NV (for Myanmar)	-	-
Send the application forms to Myanmar Embassy in Thailand to	Office of Foreign Workers	Application form for requesting the NV (for	-	-

Detailed process	Responsible organs	Required document	Place of operation	Fee
check all data and documents of migrant workers	Administration	Myanmars)		
Conduct pre-screening by checking submitted documents of migrant workers and inform list of migrant workers who are preliminarily approved to the NV process to Office of Foreign Workers Administration	Myanmar Embassy in Thailand	List of migrant workers who are preliminarily approved to the NV process	-	-
Request MOI for issuing travel permission of the migrants in the list	Office of Foreign Workers Administration	List of migrant workers who are preliminarily approved to the NV process	-	-
Issue travel permission for the migrants in the list and send the letter of permission to Office of Foreign Workers Administration	Ministry of Interior	Letter of travel permission from MOI	-	-
Inform Provincial Employment Offices or Bangkok Employment	Office of Foreign Workers	-	-	-

Detailed process	Responsible organs	Required document	Place of operation	Fee
Office Area 1 – 10 about appointment date, time and location for the NV process	Administration			
Inform list of migrant workers who are preliminarily approved to the NV process and permitted to travel out of the restrict areas to Immigration Bureau	Office of Foreign Workers Administration	List of migrant workers who are preliminarily approved to the NV process	-	-
Inform Coordination Center for Myanmar Nationality Verification (in Chiang Rai or Tak or Ranong) about list of migrant workers and the appointment date and time	Office of Foreign Workers Administration	List of migrant workers who are preliminarily approved to the NV process	-	-
Inform employers and migrant workers to receive the documents in order to verify nationality on the appointment date, time and location	Provincial Employment Offices or Bangkok Employment Office Area 1 – 10	Letter of permission for nationality verification Copy of letter of travel permission from	-	-

Detailed process	Responsible organs	Required document	Place of operation	Fee
		MOI		
During the Process of Proof of Nationality				
Receive the documents in order to verify nationality	Employers and migrant workers	Letter of permission for nationality verification Copy of letter of travel permission from MOI	Provincial Employment Offices or Bangkok Employment Office Area 1 – 10	-
Present at the Center in order to cross the border to verify nationality	Employers and migrant workers	Letter of permission for nationality verification Copy of letter of travel permission from MOI Copy of work permit or I.D. paper (so-called Tor Ror 38/1)	Coordination Center for Myanmar Nationality Verification (in Chiang Rai or Tak or Ranong)	-
Check required documents of	Coordination Center	Letter of permission	Coordination Center	-

Detailed process	Responsible organs	Required document	Place of operation	Fee
migrant workers listed in accordance with Office of Foreign Workers Administration	for Myanmar Nationality Verification (in Chiang Rai or Tak or Ranong)	for nationality verification Copy of letter of travel permission from MOI Copy of work permit or I.D. paper (so-called Tor Ror 38/1)	for Myanmar Nationality Verification (in Chiang Rai or Tak or Ranong)	
Make a list of migrant workers who are crossing the border to verify nationality and inform the Immigration Checkpoint	Coordination Center for Myanmar Nationality Verification (in Chiang Rai or Tak or Ranong)	List of migrant workers who are crossing the border to verify nationality on daily basis	Coordination Center for Myanmar Nationality Verification (in Chiang Rai or Tak or Ranong)	-
Cross the border to Myanmar to verify nationality and receive Temporary Passport	Migrant workers	Letter of permission for nationality verification Application form for	Myanmar Nationality Verification Center (in Tachilek or	Fee for a Border Pass from Thailand: 30 Thb Fee for visa on

Detailed process	Responsible organs	Required document	Place of operation	Fee
		data collection (in Myanmar) Application form for nationality verification (in Myanmar) Certificate of Myanmar nationality recognition Request form for Myanmar I.D. card Three 4x6 cm. photos	Myawaddy or Victoria Point (Thong Island), Myanmar	arrival in Myanmar: 30 Thb Fee for possessing documents related to nationality verification in Myanmar: about 100 Thb. Total 460 Thb
After the Process of Proof of Nationality				
Submit a request for Visa Non L-A	Migrant workers	Request form for Visa Non L-A Temporary passport Arrival and departure Form (T.M.6) Work quota in the	Immigration Checkpoint in Mae Sai, Chiang Rai or Mae Sot, Tak or Ranong	500 Thb

Detailed process	Responsible organs	Required document	Place of operation	Fee
		present year Copy of work permit or I.D. paper (so-called Tor Ror 38/1) Three 4x6 cm. photos		
Report on arrival to Thailand	Migrant workers	Letter of permission for nationality verification Temporary passport with the visa stamp Letter of permission for traveling back to the province where the migrant workers have domicile	Coordination Center for Myanmar Nationality Verification (in Chiang Rai or Tak or Ranong)	-
Write and submit a report on statistics of verified Myanmar migrant workers to the Province where	Coordination Center for Myanmar Nationality	Report on statistics of verified Myanmar migrant workers	Coordination Center for Myanmar Nationality	-

Detailed process	Responsible organs	Required document	Place of operation	Fee
the migrant workers have domicile and Office of Foreign Workers Administration	Verification (in Chiang Rai or Tak or Ranong)		Verification (in Chiang Rai or Tak or Ranong)	
Conduct a medical check-up	Migrant workers	Temporary passport	Hospitals assigned by Ministry of Public Health in the Province the migrant workers have domicile	Medical check-up fee: 600 Thb Fee for health insurance: 1,300 Thb Total 1,900 Thb
Request for work permit (within 7 days after receiving the medical certificate)	Employers and migrant workers	Temporary passport and its copy medical certificate Work quota in the present year Map of work location Two 4x6 cm. photos Copy of work permit or I.D. paper (so-called	Provincial Employment Offices or Bangkok Employment Office Area 1 – 10	Fee for requesting work permit: 100 Thb Work permit fee: 1,800 Thb/year Total 1,900 Thb

Detailed process	Responsible organs	Required document	Place of operation	Fee
		Tor Ror 38/1)		

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