

Summary Report
AICHR-UNHCR Regional Workshop on Statelessness
and the Rights of Women and Children
Manila, Philippines
18 to 19 November 2011

1. The ASEAN Intergovernmental Human Rights Commission (AICHR) and UNHCR co-chaired the Regional Workshop on Statelessness and the Rights of Women and Children, with support from the Government of the Philippines. The event was attended by the Chair of AICHR and Representative of Indonesia to AICHR, the Representative of Myanmar to AICHR, the Representative of the Philippines to AICHR, the Designate of the Representative of Cambodia to AICHR, the Designate of the Representative of the Lao People's Democratic Republic to AICHR, the Designate of the Representative of Thailand to AICHR, the Designate of the Representative of Malaysia to AICHR, and Government officials from Viet Nam, Thailand, the Philippines, Malaysia, the Lao People's Democratic Republic, Indonesia, and Cambodia, as well as the Presidential Commission on Human Rights for the Philippines, the Working Group for an ASEAN Human Rights Mechanism, and colleagues of UNHCR from countries where it maintains a national office, as well as from UNHCR's Regional Coordinator's Office.

2. The Workshop, which was held in Manila from 18 to 19 November 2011, was convened to cover the following subjects: (a) examining the causes and consequences of statelessness; (b) identifying best practices in the ASEAN region for the identification, prevention and reduction of statelessness, while also protecting stateless people; (c) considering human rights based approaches to addressing statelessness and the national and regional levels; (d) examining issues related to the identification of stateless populations, with a focus on uncovering major issues and challenges; and (e) addressing the specific concerns of women and children in light of their heightened susceptibility to statelessness.

Proceedings

3. The Workshop was opened by the Chair of AICHR and the UNHCR Representative to the Philippines. In their remarks, they highlighted that addressing statelessness effectively requires concerted action at the regional level. This is due to the complex nature of statelessness, which involves the interaction of States' nationality laws, as well as migration between these States. Given its potential to impact core aims and purposes of ASEAN, including the promotion of economic growth, social progress, stability and the rule of law, statelessness in the region needs to be resolved.

4. The Workshop was co-chaired by the Chair of AICHR and UNHCR's Senior Regional Protection Advisor for the Asia-Pacific. They underlined that statelessness has consequences at multiple levels, with human, economic, and political costs. Statelessness impoverishes and endangers individuals and families by putting them at risk of poverty, illiteracy, exploitation, violence, and forced displacement. Stateless people are also vulnerable to engage smugglers and fall victim to traffickers. They have little choice but to resort to using dangerous smuggling measures to travel abroad, and because they are difficult to trace, they are particularly targeted by traffickers. At national and regional

levels, statelessness hampers economic development and stability. Some 12 to 15 million people are estimated to be stateless worldwide. The Workshop focused on women and children as being particularly at risk of statelessness, but it was also underscored that men and boys can also be stateless or face similar risks.

5. Participants underlined the importance of the meeting as a basis for producing substantive and actionable proposals to address statelessness, in particular by mapping nationality legislation at the country and regional levels to identify potential gaps or conflicts that can inadvertently result in statelessness, especially among migrants. Nationality laws in the region were crafted prior to appreciating the magnitude and nature of migration in the current era of globalization. ASEAN hosts some of the largest population movements in the world, with member nations serving as source, transit, and destination countries. Migration poses risks of statelessness partly due to the conflict of nationality laws between the various countries where migrants may originate, transit, or reside.

6. On the agenda item: “international legal standards”, the meeting included an overview of the international legal framework for protecting the right to a nationality and preventing and reducing statelessness. Participants emphasized that the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) are of particular importance in ASEAN, as both have been universally ratified in the region. The Workshop commended the historic accession by the Philippines to the 1954 Convention Relating to the Status of Stateless Persons, and a representative of the Philippines’ explained how the Philippines built the foundation for ratification by analyzing the compatibility of domestic law and jurisprudence with the provisions of the 1954 Convention. This instrument is especially important in facilitating the identification and protection of stateless people, as it provides the legal definition of a “stateless person” and outlines the standard of treatment to which they are entitled under international law. Participants also discussed provisions of the 1961 Convention on the Reduction of Statelessness, particularly those designed to protect the right of the child to acquire a nationality, and to prevent the loss of nationality where it would result in statelessness. Participants clarified that these instruments represent minimum standards, and States may wish to establish further protections against statelessness beyond these international instruments.

7. The Workshop took note of invaluable presentations from experts in the region, including those by representatives from Viet Nam’s Ministry of Foreign Affairs, Cambodia’s Ministry of Interior, Thailand’s Ministry of Social Development and Human Security, the Department of Justice of the Philippines, and Indonesia’s Ministry of Justice and Human Rights. These presenters shared information on the good practices that have emerged in relation to preventing and reducing statelessness—such as strategies to establish the universal registration of all children at birth; legal reforms to protect the rights of women and children to acquire and retain a nationality; legal reforms to prevent the loss of nationality due to residence abroad; and leading initiatives to prevent and reduce statelessness in the context of labor migration, people smuggling, and human trafficking.

8. On the agenda item: “risks and special needs of women and children”, participants

noted that conflicts of nationality law between various States are a major cause of statelessness, particularly for women who move to a new country in connection with marrying a foreign national. A major problem is the legal requirement found in some States that foreigners must renounce their current nationality prior to applying for citizenship in the new State. This has led to statelessness in cases where women forfeited their original nationality as required, but had not been approved for naturalization in the new State of residence, generally because the marriage to the foreign husband had dissolved. The meeting revealed that States in ASEAN are undertaking groundbreaking measures to solve this problem. Vietnamese nationality is not forfeited until the other State confirms in writing that the naturalization application will be approved. In some jurisdictions, foreign wives in the jurisdiction where the husband resides are allowed to apply for naturalization by marriage independently, and without having to rely on the sponsorship of the husband. In some jurisdictions, the naturalization process has been shortened to avoid foreign women being placed in legal limbo. Similarly, the Republic of Korea has removed the requirement that foreign wives of their nationals must surrender their current nationality prior to applying for naturalized Korean citizenship. Viet Nam has established 18 marriage assistance centers to educate women in transnational marriages about the laws and customs of their foreign husbands' countries to help prevent statelessness. It was noted that these measures serve as good practices that could be replicated in the region.

9. On the area of preventing statelessness among children, the Workshop underlined the importance of registering all children at birth. Birth registration furnishes proof of the two conditions needed to qualify for nationality in all countries of the world—namely, the child's place of birth, and the identity of its parents. Without evidence of these facts, children can become stateless as they have no proof of their links to the country of nationality. Birth registration is a fundamental human right, and international law requires that all children must be registered at birth, without any distinction as to whether they are nationals of the State or the status of their parents. Birth registration is vital to the social protection of children, because it gives them a legal identity and increases their access to critical services such as health care and education. Birth registration proves that a child is under the age of majority, and is therefore entitled to the special protections reserved for children under international law. Children without birth registration face not only risks of statelessness, but also human trafficking, exploitative labor, military conscription, and sexual exploitation.

10. The Workshop recognized leading initiatives in the region to establish universal birth registration. Cambodia established a universal birth registration policy in 2000 and has since used mobile registration teams to reach rural and isolated areas, raising the registration rate from 5 percent to 90 percent from 2004 to 2005. Cambodia's Ministry of Foreign Affairs noted that universal birth registration not only enhances the protection of individuals and communities, it is of vital importance to the State because it provides reliable information about the size and nature of its population.

11. On the area of the social protection of children, participants noted that primary education is a human right to which all children are entitled, irrespective of their nationality, immigration status, or possible statelessness. States in ASEAN have adopted flexible practices to allow children to enroll in primary school even if they do not have

identity documentation, and several States allow non-nationals to receive primary education in the public system. The Designate of the Representative of Thailand to AICHR noted Thailand's adoption of a universal education policy in 2005. This policy allows all children in the country, irrespective of status or access to documentation, to enroll in public education free of charge for 15 years. Coupled with Thailand's establishment of universal birth registration, its education policy has greatly increased the protection of children.

12. On agenda item: "mixed migration and its link to statelessness", participants noted the multiple ways that population movements can create risks of statelessness. Some States terminate nationality on the basis of extended residence abroad, while others limit the ability of their nationals to pass citizenship to children born outside the country, or stipulate that citizenship cannot be passed on indefinitely to successive generations of children born outside the territory of the State. The expert from Indonesia outlined reforms that prevent statelessness among Indonesians who migrate and live abroad. Previously, the law stipulated that Indonesians who reside abroad for five years or more without registering with the Indonesian Government would lose their nationality on this basis. Indonesia has closed this gap in coverage by clarifying that citizenship will not be revoked on this basis if it would result in statelessness. Indonesia has also instituted policies to facilitate the restoration of nationality to former citizens who became stateless under the previous policy. Indonesia adopts a flexible policy regarding dual citizenship for children, by permitting children to retain two nationalities until they reach the age of majority, 18 years of age. This ensures that children of mixed marriages who qualify for the nationality of both parents can defer the choice of nationality until they reach the age of adulthood. This also prevents the problem of statelessness among children that can arise when the parents do not agree about which nationality a child should have.

13. The meeting also considered the linkages between people smuggling and human trafficking with statelessness. Human trafficking can lead to statelessness in cases where the victims of trafficking have had their identity documents confiscated by the trafficker and remain outside their home countries for extended periods in situations of bondage and vulnerability. This can make it extremely difficult for them to prove their links to their home countries, and if they have children born in the country to which they are trafficked, it is also unlikely that the child will be registered—thereby also placing the child at risk of statelessness. An expert from Thailand's Ministry of Social Development and Human Security outlined Thailand's strategy for preventing and responding to human trafficking. This includes efforts to identify and rescue victims of trafficking in Thailand, and ensure they are referred to shelters to receive needed services. Thailand's ministerial regulations allow for the temporary stay in Thailand of trafficking victims to ensure that services and protection can be provided. Thailand has established bilateral arrangements with neighboring countries to facilitate repatriation and reintegration, including a Memorandum of Understanding with the Union of Myanmar and close cooperation with the Lao People's Democratic Republic. Participants noted that addressing human trafficking effectively requires a coordinated approach among States in the region, as well as coordination with States outside the region to which persons may be trafficked. AICHR could promote international cooperation by developing a coordinated approach in the ASEAN region.

Recommendations

14. With respect to the agenda item: “identifying recommendations for further actions to address statelessness in the ASEAN region”, the participants agreed that the following recommendations be considered:

Study on Nationality Laws to Identify Possible Gaps and Conflicts

15. Recognizing that gaps or conflicts between the nationality laws of various States is a major cause of statelessness, participants recommend that a study be undertaken to analyze gaps that may exist in each State’s nationality laws and how they may conflict at the regional level. This would permit the identification of technical reforms that would be needed to prevent and reduce statelessness. Participants took note that such a study is especially relevant in consideration of the size of population movements within ASEAN, and the reality that the lives and families of migrants often span multiple countries.

Identification of stateless persons

16. Noting that obtaining reliable data about the size and location of stateless people or populations at risk of statelessness is a critical first step to addressing the issue, participants recommended that AICHR explore ways to collaborate with ASEAN Member States and international organizations to share information on the identification of stateless populations, as well as their size and location. Moreover, States are encouraged to strengthen measures to collect data on stateless persons. Participants noted the usefulness of research efforts to map stateless populations and to develop demographic profiles that offer information about their composition and the assistance they may require.

Universal birth registration and access to education

17. Participants agreed that ensuring the registration of all children at birth is one of the most important measures to protect the right of the child to a nationality and noted universal accession to the Convention of the Rights of the Child in the region. Moreover, several States in ASEAN have adopted innovative and effective practices in this regard, including the use of mobile registration teams, the direct linking of civil registries to hospitals, and the enlistment of local police and village leaders in registering births. Participants recommended that AICHR, through its mandate in promoting implementation of international instruments ratified by ASEAN Member States, encourage that concrete provisions be adopted in national laws throughout ASEAN to provide universal birth registration. Also, participants recommended that AICHR encourage the adoption of good practices that were highlighted during the discussions, as well as to identify other effective approaches. Participants noted the importance of the reality that universal birth registration needs to be progressively realized, subject to the availability of resources.

Facilitated restoration of nationality to former citizens

18. Participants noted that the situation of having lost one’s nationality, becoming stateless as a consequence, and seeking to reacquire that nationality is a phenomenon in

this region. Participants therefore recommended the consideration of flexible and expedited procedures for reacquiring nationality for former nationals who are stateless.

Collective engagement on resolving statelessness

19. Participants noted that statelessness is a multinational problem. It arises due to factors involving multiple States, such as the migration of persons between those States and the interaction of their laws. Participants recognized that this issue requires cooperation among States, especially given that more freedom of movement could be possible between ASEAN countries in 2015 or after. Participants noted several mechanisms for enhancing cooperation, including the implementation of declarations on related human rights issues, such as the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, the ASEAN Declaration on the Elimination of Violence Against Women in the ASEAN Region, and the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children. Participants also noted the vital role ASEAN can play. This includes the adoption of a Declaration on Human Rights that incorporates a reference to addressing statelessness and particularly that nationality not be revoked or lost if it would result in statelessness. In addition, participants recommended that AICHR encourage cooperation and consolidation among relevant ASEAN sectoral bodies and its relevant programs

20. Participants highlighted that the recommendations for consideration would require the support and cooperation of international organizations such as UNHCR.

Acknowledgment

21. The Co-Chairs and participants expressed their appreciation to the Government of Philippines for its generosity and hospitality in hosting the Workshop, and recognized the very good cooperation between AICHR and UNHCR.

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