

# Chapter 2

## Borders, Citizenship, ‘Imagined Community’ and ‘Exclusive State’ and Migration in Southeast Asia



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### 2.1 Introduction: Borders-Boundaries<sup>1</sup> Defined

“Borders define geographical boundaries of political entities or legal jurisdictions, such as governments, states or sub-national administrative divisions” (Wetherall, 2006, p. 11). A nation-state, therefore, “defines its geographical limits by territory and its demographic limits by nationality” (p.11) which is used to define who is a member and who is not. A national of a given state is considered as member of that particular political community. Those who are not nationals are ‘aliens’ or ‘foreigners’ who are, in most cases, not usually entitled to the same membership goods or the same treatment. Division between nationals and non-nationals is, often times, so clear that it creates the sense of ‘us’ and ‘them’ and perpetuates the idea of the ‘exclusive state’ through the borders of which no one can pass without control and restrictions.

For many, borders serve a purpose, despite being arbitrarily designed. Coleman and Harding state (1995, p.35) that “borders and national boundaries serve to mark out administratively convenient unit for overseeing the production and allocation of the world’s resources.” They further state that:

political borders, even if arbitrarily or conventionally set, have moral significance because they define the boundaries within which principles of distributive justice are to apply. In this view, principles of distributive justice apply to members of a political community of a certain type loosely defined by territorial borders. Those outside the borders have no claim to

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<sup>1</sup> Borders and boundaries have a slightly different meaning. Whilst borders refer to a line separating two political or geographical areas, especially countries, boundaries seem to be a bit more nuance that represent a line that marks the limits of an area or even a dividing line which does not need to be specifically national border line. In this chapter, the two terms are, sometimes, used interchangeably.

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any of the resources of the territory. The allocation of resources among members of the relevant communities will depend on whether she/he meets whatever additional qualifications the relevant principles impose (p. 35).

This concept has been contested by scholars, including John Rawls, who argue for international distributive justice. However, Coleman and Harding's arguments seem to align with the current concept and practice in Southeast Asia in the sense that justice and resources are mainly distributed among 'members' of a certain polity.

The control of territorial boundaries, "which is coeval with the sovereignty of the modern nation-state, seeks to ensure the purity of the nation *in time* through the policing of its contacts and interaction in *space*" (Benhabib, 2004, p. 38). Having advanced such a statement, Benhabib further argues that "the history of citizenship reveals that the nationalist aspirations are ideologies; they attempt to mold a complex, unruly, and unwieldy reality according to some simple governing principle of reduction, such as national membership. Every nation has its others, within and without" (p. 18). Even though, in practice, borders become more and more arbitrary from political and economic perspectives, still, the political authorities of the modern nation-state system use borders both conceptually and in practice to regulate membership in terms of national citizenship in spite of the fact that the boundaries of political community are not only no longer adequate (p. 1) but borders are also being challenged by the global economy, communication technology, and the internationalization and transnationalisation of networks, cultures, etc. Those who are not considered 'nationals' or 'migrants' do not enjoy the same rights and privileges as nationals.

However, the notion of borders can be understood beyond territorial and geographical perspectives. Borders have also been created within individual societies. Also, can borders easily be created from within oneself. This is evident in the cases of discrimination, such as that against women everywhere, against Rohingya in Myanmar, against hill-tribes and ethnic minorities in Thailand, etc., occurs only because they are considered as 'different'. We cannot understand the notion of discrimination against particular groups of people(s) without understanding the self-constructed socio-political borders that States create or psychological borders that individuals create within themselves.

This phenomenon is particularly pertinent in Southeast Asia. The region is one of the most ethnically diverse in the world. In addition to ethnic diversity across the countries of the region, nearly every single State is a "mosaic of peoples with different religions, languages and identities. In most countries, ethnic divisions are linked to socioeconomic roles, political authority and regional concentration" (Hirschman, 1984). The present-day multi-ethnic societies of Southeast Asia have been created by the expansion of the political boundaries of modern states, which in many ways, is largely the product of the colonial era. Indeed, the international borders of the region resulted from negotiations between colonial powers without the consultation of the national population. Despite their external origin, "national borders acquire highly significant meanings to nation-states, if not in direct relation to myths of national origin, then as an expression of the legitimacy and sovereignty of the State.

In this way, national borders become a specific form, spatially bounded, of collectivity boundaries, dividing the world into 'us' and 'them'" (Yuval-Davis & Støtzer, 2002). This is the case in Southeast Asia, where both ethnic and national collectivities are constructed around the boundaries that separate the region into 'us' and 'them'. Members of the same collectivity are separate from people outside the boundary lines, despite their shared ethnicity/cultural identities. In fact, "national boundaries were never coterminous with the domains of different ethnic groups in Southeast Asia" (Jones, 2013, p. 7). During the pre-colonial and the colonial periods nation-building was not a concern and the local population was encouraged to think along ethnic/racial lines. Only after achieving political independence has national integration as a state policy been introduced (Suryadinata, 2014). One of the methods adopted to achieve a 'conventional nationhood' and 'national unity' in the process of 'nation building' is to stress citizenship building through granting of nationality.

The concepts and practice of borders serve as a point of departure for this chapter as borders define 'citizenship', make states 'exclusive' and determine the way 'membership goods' are distributed. This chapter aims to unpack concepts of citizenship, though very much contested, by focusing on a nationality — a legal status — which defines the relationships between the State and individuals. This citizenship or nationality is granted by State authorities to those who meet certain criteria, which in many cases are arbitrary. This type of citizenship is politically and socially designed to include some, while excluding others. This legal citizenship is the "formal expression of membership in a polity that has definite territorial boundaries within which citizens enjoy equal rights and exercise their political agency" (Leydet, 2017). The study of this legal concept of citizenship is conducted through the examination of laws and policies of citizenship of Malaysia, Myanmar and Thailand. These three countries have been selected due to the high number of people on the move, the high number of stateless persons, internally diverse societies, and despite historical differences, some common criteria are applied for the inclusion or exclusion of people from accessing nationality.

It is recognised that Southeast Asia has porous borders and witnesses intensification of international migration. As studied in Chap. 1 the proportion of people's movement within the region continues to rise with the UN estimating there are over ten million international migrants in the region. Forced, irregular and mixed migratory flows are all key trends in Southeast Asia. Many of the richer countries in the region (where 96% of the region's migrants are found) depend on human mobility to fill low-wage jobs and their plight has been thrust into the spotlight by the COVID-19 pandemic. The examination of the citizenship practice in the three countries reveals that not only migration creates a 'citizenship dilemma' that affects the access to 'membership goods' that members of a political community are supposed to enjoy but also in most cases, migrants are not perceived as 'citizens', therefore denied fundamental rights by the host States, including a right to a nationality.

The chapter addresses, in the introduction section, the concept of borders used in this article. The second section deals with the construction of an 'exclusive state' through 'legal' citizenship exemplified by the examination of the citizenship laws

and policies of the three countries under the study. The following section discusses further the concepts of borders, imagined communities and exclusive states in the context of migration. The fourth section discusses the making of an exclusive State, membership and membership goods. The last section attempts to conclude by discussing what's wrong with 'imagined communities' from human rights perspectives and if it is time to 're-imagine communities' in order to make states more inclusive.

## **2.2 The Construction of an 'Exclusive State' in Southeast Asia Through Legal Citizenship**

The construction of states in SEA is a rather new phenomenon. After independence and WWII, the leaders of newly established 'nation-states' tried to integrate in order to have 'national unity'. The construction of an exclusive state expressed through the lens of granting citizenship and migration policy moved from the dynamics of inter-ethnic relations before the nationality law was enacted, to the dilemmas of ethnic antagonism after citizenship became a political tool to exclude some groups of people. In the process of 'national integration' some colonial legacies were preserved and even perpetuated by the new elites (Suryadinata, 2014). Even citizenship/nationality was recognised and meant to be universal in the Universal Declaration of Human Rights, it seems that citizenship is less universal in Southeast Asia as exemplified by the cases of citizenship policies and law adopted by Malaysia, Myanmar and Thailand. The three countries are chosen due to the high number of stateless persons in the States. Citizenship in this section refers to 'legal citizenship' which will be presented in a chronological approach from pre-and colonial periods (for Malaysia and Myanmar) to post-independence and the emergence of modern nation states.

### ***2.2.1 Pre-and Colonial Periods***

Malaysia is a multi-ethnic country composed of three major ethnic groups, including the Malays, Chinese and Indians. Among the Malaysian citizens, the Malays were the predominant ethnic group in Peninsular Malaysia, making up 63.1% of the population (Department of Statistics Malaysia, 2011). In 2019, the total population of Malaysia was 32.59 million (Trading Economics, n.d.). The demographic composition in the country recorded by the WorldAtlas in 2019 includes 50.1% Malay, 22.6% Chinese, 11.8% indigenous Bumiputra groups other than the Malays, 6.7% Indian, and other groups account for 0.7%. Non-citizens account for 8.2% of Malaysia's resident population (Sawe, 2019).

There was no 'Malayan citizenship' prior to 1946 (Low, 2017b, p. 3). A unified citizenship system does not exist before independence. The state nationality and Federal citizenship were operating in tandem until 1957 when the Federation

achieved independence in August. The “citizenship history of Malaya (now Malaysia) was (and remains) controversial because of communal politics and because of the nature of Malaya as a multi-ethnic nation following the British open-door policy” (p. 7). Note that the Indian and Chinese labourers were brought in by the British to work in rubber plantations and the mining industry. By 1947, the size of the migrant population was almost equal to those of Malays and aborigines (p.5). The liberal citizenship policy based on *jus soli* introduced by the British was a serious issue as it was perceived as a threat to the traditional citizenship understanding of the Malay States. ‘Traditional citizenship’ was founded ‘on the ethno-cultural notion of Malay citizenry’ (p. 5). The policy introduced by the British attempted to “promote a broad-based citizenship which will include, without discrimination of race and creed, all who can establish a claim, by reason of birth or a suitable period of residence, to belong to the country” (p. 5). By that time, the citizenship policy was inclusive based on the principle of *jus soli* adopted in 1957.

It is not clear if, before colonisation, the concept of nationality was known in the kingdom of Burma which was ruled by ‘hero’ kings, under which control by the central State (as understood today) steadily decreased at greater distances and elevations from the centre of the Kingdom. As a result, communities of different ethnic groups enjoyed a rather high level of autonomy under the rule of a local prince (Clark et al., 2019, p.15). Following the British annexation of Burma in 1885, “different administrative systems and structures were introduced by the British. A strong centralised state was established in Ministerial Burma, where the power of local leaders was curtailed. By contrast, in the Frontier Areas local leaders and local political systems (at least as understood by the British) were left intact (p.16).” In addition, the coloniser introduced the concept of classifying people according to ethnicity. Like the case of Malaysia, the British also encouraged immigrants from India to migrate, and thousands of Indian troops were relocated to Burma. The policy of ethnic categorisation and the arrival of Indians have had profound consequences for citizenship policy after independence. It is not clear how citizenship was managed (apart from some of those who served the British and became British subjects).

Thailand was not colonised. Before the enactment of the first Nationality Act B.E.2456 (1913), the concept of citizenship/nationality did not exist in what was then Siam. “Nationality was granted regardless of whether or not the alien parents had entered the Kingdom legally or illegally or the alien parents had the right to reside in the Kingdom temporarily or permanently... Over its 39 years of operation, this law united people of different ethnicities and people who came to Thailand from other countries. Thai nationality has promoted unity among these people” (Saisoonthorn, 2006, p.43). This began to change with the replacement of the 1913 Nationality Act by the Nationality Act B.E.2495 (1952). It is clear that historically, the notion of legal citizenship was more inclusive.

Without a rigid citizenship concept based on the modern ‘nation state’ system, these countries were more inclusive than after independence and the advent of modern States in the region. Migration, both internal and across national borders, was encouraged as the power of the rulers was based on the size of the population. This, however, changed with the advent of increasing migration.

### 2.2.2 *After Independence*

There is no specific nationality/citizenship law in Malaysia. Provisions pertaining to citizenship are included in the Federal Constitution of Malaysia. After independence, “since 1957, citizenship amendments witnessed three major trends; citizenship is harder to acquire, citizenship is easier to lose, and the government’s discretion in matters of citizenship is widened” (Sheridan, 1979, p.13 as cited in Low, 2017b, p.16). *Jus soli* is no longer applied without condition and it was conditioned by elements of *jus sanguinis* (Low, 2017b). The change of citizenship policy excludes children born to persons who had no right to reside in the country and ‘who had no attachment’ from automatic acquisition of citizenship by birth.

There are essentially four different ways a person can acquire citizenship in Malaysia: by operation of law or automatically; by registration; by naturalisation; or by incorporation of territory (Liew, 2019, p.104). The provisions in the Constitution were interpreted so that every stateless person born within Malaysia is entitled to citizenship automatically. Having a parent who is a Malaysian citizen or permanent resident also entitles one to Malaysian citizenship automatically.<sup>2</sup> However, six categories<sup>3</sup> of people remain stateless persons in Malaysia (Liew, 2018, 2019). Out of these six categories, only one can be considered as foreigners or ‘illegal migrants’. However, having a genuine and effective link with the country does not entitle them to claim Malaysian citizenship. The cases of the descendants of Indian Tamils who came to Malaysia during the colonial era to work on plantations; populations in Sabah which include the Sama dilaut or Bajau Laut, the traditionally migratory people, people of Indonesian and Filipino descent who have been living in Sabah for generations are the case in point (Razali, 2017). “Contrary to popular belief, many people who are stateless in Malaysia are not foreigners, refugees or ‘illegal migrants’; many of them were actually born in the country and have been living in Malaysia most of their lives” (Nortajuddin, 2020).

Myanmar is another country with very diverse ethnicities. The country is the only one in Southeast Asia to have applied an explicitly racially-based nationality law. The 1982 Citizenship Law discriminates on the ground of race. The law establishes 135 national ethnic races which can acquire citizenship in Myanmar, which is further classified into three different categories, namely ‘full citizenship’, ‘associate citizenship’, and ‘naturalised citizenship’. The law deliberately covers ‘othering’ minorities, as the Citizenship Scrutiny Card (CSC) denotes each category whilst also denoting ‘subordinate forms of citizenship’ (Aung, 2019). The exclusion of some ethnic groups from accessing citizenship is further reinforced by religious

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<sup>2</sup>Detailed discussions on acquiring citizenship in Malaysia are found in Liew (2019).

<sup>3</sup>These six categories include: (1) persons with long-standing residence since pre-independence and their descendants; (2) people who lack documentation; (3) abandoned children or ‘foundlings’ and adopted children; (4) children of ‘mixed’ marriages or alternative families and cases where children are born out of wedlock or before a marriage was registered; (5) Indigenous persons; and (6) refugees or children of migrant workers.

affiliation. The common conflation of 'Burmese' with Bamar and Buddhist identity is one of the causes of the general exclusion of religious and ethnic minorities. "Individuals who do not fit into the rigid ethnic criteria that is prescribed by the citizenship rules also face hurdles — including people of mixed ethnic or religious parentage or those whose parents/grandparents converted to another religion" (Brinham, 2019). The denial of citizenship by Myanmar authorities to Rohingya communities is widely known, researched and publicised. They are the world's largest population of stateless peoples, making up nearly 20% of global statelessness (Committee on Foreign Affairs, European Parliament, 2017).

Under the 1982 Citizenship law of Myanmar, full citizenship is primarily based on membership of the 'national races' who are considered by the State to have settled in Myanmar prior to 1824, the date of first occupation by the British. Despite generations of residence in Myanmar, the Rohingya are not considered to be among these official indigenous races and are thus effectively excluded from full citizenship (Burmese Rohingya Organisation UK, 2014). Naturalised citizenship in Myanmar may be applied for by individuals and their children who can provide 'conclusive evidence' that they entered and resided in Myanmar prior to 4 January 1948, the date of state succession from the British. Due to a lack of documentation and the arbitrary and discriminatory implementation of the law, this effectively excludes most of the Rohingya from naturalised citizenship. This citizenship law excludes certain races and ethnic groups, most notably the Rohingya who have been made stateless in their own country. Nevertheless, it is not only the Rohingya whose citizenship is deliberately denied in Myanmar; other groups share similar experiences, especially among those with Indian origin and Muslim communities. The citizenship rules actually put different groups of peoples into the ethnic identity boxes constructed (by State) for them (Aung, 2019).

In Thailand, various ethnic minorities face the same challenges. According to UNHCR Thailand, (n.d.), at the end of June 2020, there were 479,943 people registered by the Royal Thai Government as stateless. This also includes persons of undetermined nationality. Despite its relatively open nationality law, which recognises both *jus soli* and *jus sanguinis* as principles for granting citizenship, Thailand has one of the largest stateless populations in the world (Cheva-Isarakul, 2019).

The replacement of the 1913 Nationality Act by the Nationality Act B.E.2495 (1952) brought about changes in the concept of citizenship. During this period, the new nationality legislation introduced an element of discrimination against aliens, especially Chinese people. There was a concept introduced to the legislation to limit the acquisition of Thai nationality based on '*jus soli*' (Saisoonthorn, 2006). The Thai nationality law became more rigid through the implementation of the Nationality Act B.E. 2508 (1965) as more conditions were introduced to limit access to nationality among aliens in Thailand. Legal status was taken into consideration as people from neighbouring countries were arriving in Thailand. Migration from 'poorer' countries, especially from within the region, led to a more exclusive nationality law. Only until 2008, with the amendment of the 2008 Nationality Act, is the nationality law of Thailand becoming more open and addressing statelessness, albeit at a slow pace.



There are various causes of statelessness, including discrimination based on gender, race, ethnicity or other grounds. With discrimination against minorities being one of the key causes of statelessness, as seen from the cases of Malaysia and Myanmar, it is not a coincidence that most stateless persons in Thailand are ethnic minorities, especially in the Northern and Western regions. Specifically, they are members of the nine ethnic groups officially classified as ‘hill tribes’, other highlanders not classified as ‘hill tribes’, and children of migrants, who were born in Thailand and do not have ties to their parents’ country of origin (Saisoonthorn, 2006). In Thailand, ethnic minority groups usually live on the periphery, and are linked with negative narratives of threats to national security, illicit activities such as drug trafficking and deforestation, as well as a ‘communist threat’ during some periods of modern Thai history. These derogatory stereotypes were used to both justify their exclusion from citizenship and make them objects of ‘development’ (Cadchumsang, 2011).

Large communities of persons without citizenship are found in most countries in Southeast Asia. The construction of ‘others’ and ‘otherness’ through citizenship laws and policies as demonstrated by the three cases has serious implications on a large number of people without any other legal statuses. In addition to ‘othering’ those who are considered ‘not enough like us’, migration, previously encouraged by colonial power (in the case of Malaysia and Myanmar) and the policies, introduced by the Siamese Kings, brought about changes in citizenship policy in Southeast Asia. The changing policies result in rendering millions of people stateless.

These marginalised people become victims of structures which continue to perpetuate discrimination against them. Living without citizenship leads to a wide range of human rights violations which include but not limited to problems of freedom of movement, right to work, right to education, right to accessing health services and other social securities, as well as other political rights. No citizenship also contributes to ‘illegal’ migration. Millions of them become refugees. Deprived of legal status and access to fundamental rights, many decide to migrate, and some become victims of trafficking in persons. The regular avenues of migration are only available to those with access to proper documentation. The exclusion of certain groups of the population is a real situation based, unfortunately, on an ‘imagined exclusive state’.

### **2.3 Citizenship and ‘Imagined Exclusive States’**

In his book, ‘Imagined Communities’ Benedict Anderson states that the nation “is imagined as a community, because, regardless of the actual inequality and exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship” (Anderson, 1991, p.9; Calhoun, 2016). National identities are invented as in most cases, “the members of even the smallest nation will never know most of their fellow members, meet them, or even hear of them, yet in the minds of each lives the image of their communion” (Anderson, 1991, p. 6). From the



citizenship perspective, a community is imagined through the practice of granting nationality, which serves as another 'national boundary' between citizens and non-citizens. Anderson (1991) demonstrated, in the second edition of 'Imagined Communities', the materials underpinning imagination -culture- when he discussed census, map, and museum.

Each of these three instances, involved institutionalising a bundle of artefacts and practices that shaped how identities, solidarities, boundaries, and relationships were imagined. The lines dividing pink and grey spaces on maps reinforced the idea that the face of the earth was naturally composed of countries; the rendering of internal geographies as at least interconnected if not integral spaces gave each of those countries a solidity. (Anderson, 1991, p.12).

In the same vein "Censuses counted and categorised citizens (and sometimes denizens); they organised them into grids of occupational or religious or property-holding identities. They not only aided the administration of countries; they offered representations of the populations that facilitated imagining nations as 'organic wholes' (Anderson, 1991)".

Whilst the border is defined as a limit-line that separates legal and territorial entities into 'states', this boundary is also a mode of delineating identities. The three cases discussed in the previous section affirm "both ethnic and national collectivities are constructed around boundaries that separate the world into 'us' and 'them'. This division is further reinforced by the system of legal citizenship. As such, they are both the Andersonian 'imagined communities'" (Yuval-Davis & Støtzer, 2002, p.330). The three countries under this study may have varying ethnic and national projects which involve members of the same collectivity or people outside the national borders, but they seem to draw the citizenship boundary line in a rather similar way. The boundaries drawn through citizenship policy and law intentionally exclude some groups of peoples living within the same boundaries. However, "any construction of boundaries, of a delineated collectivity, that includes some people—concrete or not—and excludes others, involves an act of active imagination (p.331)." Such an active imagination can be easily created by physical state territorial borders that divide the people into those who belong to another nation and those who do not. As we have seen in the previous section, often the 'naturalised' borderlines do not correspond to the boundaries of ethnic and national communities who live near the borders which, in many cases, results in rendering them stateless, one of the root causes of 'forced migration'.

From the three cases discussed and an analysis of citizenship and 'imagined community', it is apparent that in the past, to a certain extent, all of the countries had accommodated a large number of individuals in their territory and made them feel that they share some things in common, building the trust and loyalty necessary for the functioning of a nation-state. By introducing the regime of citizenship, each political community tried to construct a so called 'collective identity', a robust sense of belonging and social cohesion within its borders. The sovereign, territorial state, therefore, became the necessary framework for citizenship and vice versa. Citizenship both as legal status and as activity, is thought to presuppose the existence of a territorially bounded political community, which extends over time and is

the focus of a common identity (Leydet, 2017). Although this premise is being contested because globalisation has rendered the borders so porous, a large number of states are still tied to the “formal expression of membership and the formal institutionalised political community and assume that it has both legal and moral rights to choose its members and to close or open its borders and “monopoly over territory is exercised through immigration and citizenship policies” (Benhabib, 2004, p.5).

This monopoly over territory and citizenship policy is further exercised by the distribution of ‘membership goods’. Seyla Benhabib (2004, p.1) pointed out that “political boundaries define some as members, other as aliens. Membership, in turn, is meaningful only when accompanied by rituals of entry, access, belonging, and privilege. The modern nation-state system has regulated membership in terms of one principle category: national citizenship.” She further commented that “citizenship in the modern world has meant membership in a bounded political community which was either a nation-state, a multinational state, or a commonwealth structure. The political regime of territorially bounded sovereignty...could only function by defining, circumscribing, and controlling citizenship. The citizen is the individual who has membership rights to reside within a territory, who is subject to the state’s administrative jurisdiction...” (p. 144). As previously demonstrated, this model which began in the western European countries was copied by all States in Southeast Asia, including Malaysia, Myanmar and Thailand. In this model the national citizen is considered as full political member of a particular political community. Members are eligible for ‘membership goods’.

## 2.4 Borders, Exclusive State, Membership and Membership Goods

Eligibility for membership of a given political community, as discussed, varied from one country to another. However, there seems to be a “growing convergence among states regarding policies of acquisition of citizenship. Such policies are usually classified in two broad categories: *jus soli*, which confers citizenship based on birth on state territory; and *jus sanguinis*, which confers citizenship based on descents...” (Aleinikoff & Klusmeyer, 2002, p.2). All three States applying *jus sanguinis* are faced with several generations of foreign nationals who have migrated into and reside within their borders. Malaysia and Thailand have adopted policies that grant citizenship to children born to certain classes of immigrants, whilst Myanmar restricted citizenship rules to limit birthright citizenship to children born to settled immigrants. However, millions of individuals are barred from becoming a member of these political communities. Not only can they not enjoy the privileges of citizenship, they could also not access membership goods.

Jules L. Coleman and Sarah K. Harding (1995) have identified different forms of ‘membership goods’. Goods include employment, access to emergency services and socio-economic resources, political participation, the right to permanent residence, immunity from expulsion, and the most difficult good to obtain, citizenship.

It does not mean, in any case, that other goods, such as political participation, socio-economic resources and services, and employment, are easy to obtain. Access to the said membership goods, which are basic rights, depends very much on the laws and policies of a particular country, as well as the political will and the level of openness and democracy. In most, if not all cases, “different bundles of goods are provided differently to individuals depending on their different status” (Coleman & Harding, 1995). This ‘arbitrary concept of membership goods’ seems to be the general practice in Southeast Asian countries.

Membership goods, in states in Southeast Asia, tend to be limited to citizens only. Non-citizens, migrants and refugees do not only receive the benefit of membership goods, but they are also vulnerable to human rights abuses. These marginalised people become victims of structures which continue to perpetuate discrimination against them. Living without citizenship leads to a wide range of human rights violations, which includes, but is not limited to, problems of freedom of movement, right to work, right to education, right to access health services and other social securities, as well as other political rights. These issues are discussed in Chap. 7 prepared by Sharuna Vergis entitled ‘Citizenship and legal status in health-care: Access of non-citizens in the ASEAN: A comparative case study of Thailand and Malaysia’ and by Amparita S. Sta. Maria examines, in Chap. 8 ‘Labour Migration and Exclusive State amidst the Global Pandemic of COVID-19’.

The examination of laws and policies in Malaysia, Myanmar and Thailand, which revealed that millions of people are legally inexistent within the Thai, Myanmar and Malaysian borders, presents some anomalies in membership policies and access to membership goods. It is, in fact, indicative of unfair and unjust societies in which lines between territoriality, sovereignty, and citizenship are totally disconnected to human beings and moral responsibilities of a State. For over a million people born and residing in those states not having documents which show proper legal status is, to borrow the expression used by Seyla Benhabib (2004), ‘a form of civil death’ which will be discussed in Chap. 3. They are sentenced to civil death only because of chance, not choice; this has placed them within political borders that deny their rights as human being to belong to a community. Finally, political boundaries become so problematic even for those who could have become members.

If political borders render human beings legally invisible and deprive them of necessary membership goods, in these societies, we also witness another kind of constructed border which is hard to understand let alone to accept. Discrimination against women to confer nationality to their child, as seen in the case of Malaysia, is an evident case of ‘constructed borders’ within oneself. In the case of the Rohingya, socio-racial discrimination has been institutionalised.

Imagine a group of people who are regularly subject to arbitrary differentiation from the rest, obliged to suffer the worst of working conditions, verbal abuse, sexual molestation, who are excluded from all forms of social benefits and social distribution for the simple reason of being born within a particular group and with no particular distinction from the rest of the population...Victims of discrimination based on descent are single out, not because of the difference in physical appearance or race, but rather by their membership in an endogamous group that has been isolated socially and occupationally from other groups in the societies (Yutzis, 2004, p. 10–11).

The socially (self) constructed borders which result in discrimination against some groups of people within the same society are expanded to different areas including discrimination based on gender and race. While ethnic minorities are clearly discriminated against in Malaysia, Myanmar and Thailand, the migrants in these countries do not escape the same fate.

## **2.5 Conclusions: Universal Human Rights and ‘Re-imagined Community’**

The three countries studied in this chapter have in common their nationalist conception of citizenship (Hampton, 1996). Not only is there race or genetic-based exclusion from membership and membership goods, but according to Hampton, “there are value-based exclusions. There is an assumption that the values constituting a polity are fixed. But this assumption is unfounded. Values always change resulting from the generational changes. Children may have different values different from their parents” (p. 72). The predetermined Malay(ness), Barma, or Thainess exclude so many people considered ‘different’. In fact, the value-based exclusion serves to hide a race-based as well as gender-based exclusion which many countries do not admit. This exclusion is, in many ways, a by-product of a much deeper form of injustice and inequality within our society and in the region. Hampton further stressed that “if a country continues to deny rights to membership goods to a non-national who has been living a long and productive life within its borders on an equal basis with other nationals, it already allows a system of different classes of people in that society” (p. 72). It is equally serious that even among the same nationals, citizens are treated differently. This politics of differences creates resentment and dissension which may lead to possible conflicts which would be damaging to all groups in the society. The politics of differences already leads to ‘forced’ migration such as in the case of the Rohingya.

Citizenship is a frontier of sorts, defining political membership in a nation-state. The question of citizenship is ‘one of the thorniest issues’ that prevents social and political integration of so many people. The empirical approach examined how the State determined who could be a full member of their political community and why a separate ‘class’ of citizenship was relevant in the mind of authorities remains irrelevant from a human rights perspective. Being barred from membership and membership goods within one’s ‘borders’ because of legal status and the kind of ‘beings’ we are is absolutely unacceptable. The existing regimes of citizenship which produce social differentiation not only reinforce an ‘imagined exclusive state’ which leads to discrimination and human rights violations but also ends up exacerbating migration, forced migration and trafficking in particular.

Legal citizenship (or nationality), according to international human rights treaties, is now expanded from being a State right, to being also an individual right. They provide a detailed account of how the advent of international human rights has

slowly but consistently intruded into State discretion such that we can now see that, in many instances, both a denial to grant nationality and a withdrawal of nationality violate norms of international law. Although the International Covenant on Economic, Social and Cultural Rights (ICESCR) allows developing countries to determine to what extent they would guarantee the economic rights recognised by the Covenant to non-nationals, the provision clearly notes that States can do so with due regard to human rights and the national economy. Most, if not all, receiving countries in Southeast Asia are relying on 'migrants', they are sufficiently economically advantageous that resources can be justly distributed in order to make the community more caring and inclusive as envisioned by ASEAN. Unfortunately, the ASEAN Human Rights Declaration is not conducive to fulfilling such a vision as article 18, although recognising the right to nationality, makes it subject to national legislation.<sup>4</sup> Given that international human rights laws, including refugee law, extend the 'right to have rights' to those living in the same borders, an 'exclusive' community demands a re-imagination.

The debate here is not about calling for opening the borders or contesting the right of States to decide who and how non-citizens can enter its territory, but about how and if 'universal human rights' can be extended to non-members of a 'political community'. As Bosniak (2006) rightly put it, "to resident aliens who live within a specific community of citizens, the border is not something they have left behind, it effectively follows them inside the state, denying them many of the rights enjoyed by full citizens or making their enjoyment less secure." Through a human rights framework which recognises 'social, political and economic agency' of 'migrants' they should enjoy 'membership goods' that they contribute to. This type of citizenship requires a re-imagination of both internal and international distributive justice to create a more inclusive state.

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<sup>4</sup>Article 18 of ASEAN Human Rights Declaration: "Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality" (ASEAN, 2013).

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