

# Chapter 4

## Forgotten Stateless Vietnamese in Thailand



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### 4.1 Introduction

From around 1990, there have been a significant number of irregular immigrants entering Japan. The Japan's Bureau of Immigration indicated that the six countries from which 73% of these immigrants come are Thailand, Korea, China, the Philippines, Malaysia and Iran (Koshiro, 1998, pp. 155–156). Stateless Vietnamese are one of the groups from Thailand. Though born and brought up in Thailand, they have no Thai nationality as their parents were 'Indochinese refugees' escaping the first Indochina War (Komai & Azukizawa, 2009).

*Fong Laywan* was one ethnic Vietnamese from Thailand who had a tragic life, living and working illegally in Japan for 23 years. He was only able to return to Thailand at the age of 43 after he was diagnosed with metastatic lung tumors. Originally, Fong was born in Sakhon Nakhon province of Thailand in 1969. His mother was among children of the Vietnamese refugees born in Thailand while his father was born in Laos during the time his parents were fleeing the war in Viet Nam.

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According to the 1965 Nationality Act, Fong has Thai nationality by being born on the territory. Due to the fact that his mother had Thai nationality<sup>1</sup> at the time of his birth and is therefore not considered an immigrant, his Thai nationality is therefore never revoked by Revolutionary Decree No.337 (see Sect. 4.3.1). Like others in such vulnerable situations, no one in Fong's family understood this complex nationality system or was aware of amendments to the law and how they affected their lives. Fong suffered from being treated as a stateless person since he was born. As he saw no future, he decided to risk his life by going to Japan where he hoped to find higher-paying jobs to support his family in Thailand. Some illegal brokers in the community sold him passports with false Thai names. He left Thailand in 1990. In Japan, he ended up living in fear, working illegally, and getting low wages. Because of his illegal entry and unresolved statelessness status, he also had no access to welfare.

Lawyers and academia in Thailand and Japan made the case for Fong's eligibility for Thai nationality to both Thai and Japanese publics.<sup>2</sup> They argued that Fong had the right to Thai nationality since the day he was born and should not have been denied the right to return to his own country.<sup>3</sup> After considering the legal opinion and all relevant official documentation, the Thai Ministry of Interior confirmed that Fong had Thai Nationality by birth and authorised his entry to Thailand for immediate medical assistance.<sup>4</sup> Subsequently, the Royal Thai Embassy in Tokyo issued him a Certificate of Identity (C.I.)<sup>5</sup> as a travel document to return to Thailand. He finally arrived Thailand on 27 June 2012 and managed to fulfil his last wish which was to breathe his last at home. He lived with his family for a few more months and died peacefully as a Thai national.

<sup>1</sup>Fong's mother acquired Thai nationality under the *jus soli* principle in accordance with the Nationality Act B.E.2456 (1913). However, she could not pass her Thai nationality to Fong because at the time of his birth, the nationality law (Section 7(2) of the Nationality Act B.E.2508 (1965)) allowed only children born outside Thailand to acquire the nationality from the mother.

<sup>2</sup>A letter to "request protection and assistance for Mr. Fong Layway, a Thai national in Oyama, Japan, to return to Thailand in order to receive an immediate medical" was sent to the Minister of Interior on 18 June 2012 on behalf of a Thailand-Japan ad hoc advocacy group. Its attachment included an interview report, legal analysis on Thai nationality of Mr. Fong Laywan and all relevant documents e.g., his birth certificate and ID card for stateless "Vietnamese Displaced", and his mother's birth certificate and her Thai ID card.

<sup>3</sup>Article 12 of the International Covenant on Civil and Political Rights (ICCPR).

<sup>4</sup>The MOI letter No.0308.4/7680 sent to Permanent Secretary of the Ministry of Foreign Affairs on "request assistance for a Thai person living in a foreign country to return to Thailand (Fong Laywan Case), dated on 20 June 2012.

<sup>5</sup>C.I. No. A 094058 issued by Royal Thai Embassy in Tokyo, dated on 21 June 2012.

Looking back to the statelessness situation in Thailand, this country is currently hosting one of the world's largest populations of stateless people with 480,549 registered with the national civil registration system in 2020 (UNHCR, 2020b). According to the Thai National Security Council (NSC), these stateless people were registered into 18 different categories based on their country of origin and ethnicity and period of arrival.<sup>6</sup> The Vietnamese refugees fleeing the Indochina war and their descendants, like *Fong Laywan*, are one of these groups, being registered under the term 'Displaced Persons from Viet Nam'. The historical records confirmed that Thailand had accommodated several groups of Vietnamese refugees since the mid-seventeenth century. According to Sriphana (2005), those whose families have been in Thailand since before World War II, or so-called "old Vietnamese", were able to be integrated into Thai society. Whereas these Vietnamese refugees fleeing the Indochina war, who was known as "new Vietnamese" and later on registered as stateless persons, struggled for years to settle down in Thailand. The case of *Fong Laywan* exemplified an extreme scenario of the latter group of Vietnamese in Thailand who was denied Thai nationality and socio-economic rights in the past. This group was rendered stateless and a number of them decided to move onward to seek a better life in other countries.

Studying about this group of Vietnamese contributes to better understanding of one of the root causes of ongoing statelessness in Thailand and the nexus between migration and statelessness. Through exploring national legal frameworks, policy measures and geopolitical complexion, the chapter identifies drivers that contribute to the policymaking on this particular population and analyses the extent to which these stateless Vietnamese had been politicised overtime. Based on real-life situations and experiences of some stateless Vietnamese, the chapter also identifies lessons learned and existing challenges.

In the next section, the chapter gives a historical landscape of migration of the Vietnamese into Thailand. The third section of the chapter discusses the politics of belonging of Vietnamese refugees fleeing the Indochina war, the focus of the Chapter, and analyses the way their matters had been politicised. It also discusses the onset of statelessness in Thailand and a shift in policy to address legal status and

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<sup>6</sup>The Thai National Security Council divided stateless persons into 18 groups including (1) Displaced Persons from Viet Nam; (2) Former Chinese Nationalist Party or Kuomintang (KMT) soldiers; (3) Thai Lue; (4) Displaced Thais from Kong Island, Cambodia; (5) Mountain persons from Laos; (6) Displaced Persons from Myanmar (arrived before 9 March 1976); (7) Displaced Thais from Myanmar (arrived before 9 March 1976); (8) Displaced Nepalese; (9) Haw or Yunnanese Chinese Displaced Persons; (10) Highlanders or hill tribes (arrived before 3 October 1985); (11) Highlanders or Persons from Highland Communities (arrived before 3 October 1985); (12) Hmong from Thamkrabok, Sara Buri Province; (13) Former Chinese Malaya Communists; (14) Highlanders or Persons from Highland Communities (arrived after 3 October 1985); (15) Illegal Migrants from Myanmar (arrived after 9 March 1976); (16) Displaced Persons from Laos; (17) Illegal Migrants from Cambodia; (18) Displaced Thais from Myanmar (arrived after 9 March 1976). Please note that these are official names (originally in Thai) according to the record in the Cabinet Resolution on National Strategy on Comprehensive Resolution for Irregular Migration, 24 April 2012.

nationality problems of these stateless Vietnamese. Finally, existing gaps and recommendations to provide redress to stateless Vietnamese in Thailand and stateless Vietnamese who moved onward to Japan are identified in the last section.

## 4.2 Vietnamese Refugees in Thailand: From Accommodation to Restrictions

Thailand has been home to different groups of ethnic Vietnamese. The majority of them fled their country due to various reasons such as religious persecution, civil war, and political violence after the country's reunification, but not all of them had to live their lives as stateless people. Since the mid-seventeenth century, there have been four waves of the migration of the Vietnamese refugees into Thailand: refugees who arrived before World War II (before 1945); refugees who fled the first Indochina War and the aftermath (1946–1954); refugees who came after the reunification of Viet Nam (1975–1995); and today's 'urban' refugees and asylum-seekers from Viet Nam. This section gives an overview of migration of Vietnamese refugees in the chronology to Thailand; however, the main focus of the chapter is on the group of Vietnamese refugees fleeing the Indochina war who was rendered stateless in Thailand.

### 4.2.1 *Vietnamese Refugees Arriving Before World War II (Before 1945)*

According to the historical records, Thailand (or Siam at that time) has welcomed many foreigners including refugees from Tonquin and Cochinchina, old terms referring to the northern and southern region of Viet Nam, since the reign of King Narai the Great (1656–1688).<sup>7</sup> Sripahana (2005) explained that these Vietnamese refugees fled anti-Christian persecutions and a civil war between the two ruling families, the Trịnh and the Nguyễn. In the Thonburi period, King Taksin the Great<sup>8</sup> (1767–1782) took in members of the ruling family of the Nguyễn who escaped from the Tây Sơn war<sup>9</sup> to take refuge in Thailand. In the Rattanakosin period, King Phutthayotfa

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<sup>7</sup>King Narai's reign was known as the most prosperous during the Ayutthaya period where he valued trade and diplomatic activities with foreign nations. See more from La Loubère (1693, pp. 10–11).

<sup>8</sup>King Taksin the Great founded Thonburi after the downfall of the Ayutthaya Kingdom. He relocated the capital from Ayutthaya to Thonburi.

<sup>9</sup>Tây Sơn war is a civil war in Viet Nam occurred during 1771–1802, followed by a series of military conflicts.

Chulalok Maharaj (King Rama I) accepted another highborn refugee, Nguyễn Phúc Ánh, later known as Emperor Gai Long,<sup>10</sup> who also fled the protracted Tây Sơn war. From 1820–1883, many Vietnamese Catholics fled religious oppression and strict restrictions on Catholicism to seek protection in Thailand (Flood, 1977, p. 32). Under French colonial rule over Viet Nam from 1884–1945,<sup>11</sup> there were additional groups of Vietnamese refugees fleeing through Laos and Cambodia into Thailand, including a significant number of people from Central Viet Nam who rebelled against the French authorities (Voraphas, 1966, p. 234).

Apart from Thailand and Viet Nam's troubled relations from the mid-nineteenth century, this showed that the two countries maintained a supportive relationship in the past. Thai legal frameworks during this period also reflected the openness of Thailand to foreigners including the Vietnamese irrespective of their status as refugees. Those who entered Thailand before 1927 were considered as lawful immigrants and provided with the right to stay permanently in Thailand.<sup>12</sup> Thai immigration laws until 1945 allowed undocumented persons to enter and stay in the country and granted them an identification paper at the point of entry.<sup>13</sup> In addition, discrimination against specific groups of people in the acquisition of Thai nationality did not occur during this period. Thai nationality was automatically granted to every child, including of these Vietnamese, born on the territory (*jus soli*)<sup>14</sup> and to children born to a Thai father who married a foreign or Vietnamese woman (*jus sanguinis*).<sup>15</sup> These Vietnamese who reached the age of majority and been in Thailand for at least 5 years could apply for naturalisation.<sup>16</sup> In addition, the laws provided other pathways to Thai nationality for a Vietnamese woman whose husband had obtained Thai nationality by naturalisation<sup>17</sup> and to a Vietnamese minor whose father had obtained Thai nationality by naturalisation.<sup>18</sup> Thailand managed to unite people of different ethnicities and people who came to Thailand from other countries including this group of Vietnamese through permanent settlement and

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<sup>10</sup>After defeating the Tây Sơn, Nguyễn Phúc Ánh became the first Emperor of the Nguyễn Dynasty of Vietnam (1802–1945). He is later known in Thailand as Emperor Gai Long.

<sup>11</sup>The first protectorate treaty was signed on 6 June 1884 to submit the authority of the Vietnamese monarchy to French power. After 60 years under the French rule, Viet Nam declared its independence on 2 September 1945.

<sup>12</sup>This legal standard is set in the Supreme Court Judgement No.153/2505 in 1962. The Court ruled on a case of an undocumented person of ethnic Chinese who entered Thailand in 1920 confirming that this person shall never be considered as having entered the territory in violation of the law since no immigration law was enforced during the time of his arrival.

<sup>13</sup>Section 6 paragraph two of the Immigration Act B.E.2470 (1927) and Section 13 of the Immigration Act B.E.2480 (1937).

<sup>14</sup>Section 3(3) of the Nationality Act B.E.2456 (1913).

<sup>15</sup>Section 3(1) and Section 3(2) of the Nationality Act B.E.2456 (1913).

<sup>16</sup>Section 6 of the Naturalisation Act B.E.2454 (1911).

<sup>17</sup>Section 12 of the Naturalisation Act B.E.2454 (1911).

<sup>18</sup>Section 13 of the Naturalisation Act B.E.2454 (1911).

Thai nationality. Although concrete evidence was lacking, it was presumed that around 10,000 persons of ethnic Vietnamese (with Thai nationality) had remained in Thailand since the Ayutthaya period (Chandavimol, 1998, pp. 39–43).

#### ***4.2.2 Vietnamese Refugees Fleeing the First Indochina War and Its Aftermath (1946–1954)***

The second wave of Vietnamese refugees occurred during the first Indochina War and following battles after the French reoccupied Indochina. Due to the battle of Thakhek on 21 March 1946, a large number of Vietnamese, who had been living in the Mekong River towns in Laos, crossed the Mekong to safety in Thailand. Other groups in Savannakhet and Vientiane fled after the French retook the cities on 15 March and 25 April 1946 respectively (Sriphana, 2005, pp. 24–26). Burutphat (1978) added that there was an additional migration of Vietnamese refugees to Thailand in 1953 after forces of the North Vietnamese independence coalition, Việt Minh, tried to attack the French in Laos.

The actual number of these Vietnamese was unknown. Although the Ministry of Interior tried to collect their information and statistics, the figure appeared to be unreliable due to different approaches used such as the target province for each survey. In 1956, the first survey showed that there were 46,600 Vietnamese refugees living in five northeastern and eastern provinces. In 1959, after a repatriation agreement was reached between the Thai and North Vietnamese Red Cross Societies, 70,032 Vietnamese refugees from eight northeastern, eastern, and southern provinces were registered for repatriation. After a repatriation programme to North Viet Nam came to a halt, the survey in 1965 indicated that there were 31,818 Vietnamese remained. However, this figure appeared to be lower than reality, given the fact that Vietnamese were also living in other provinces. According to Khachatphai in 1978, the number of the remaining Vietnamese including their children born in the country was more likely closer to 50,000 (Burutphat, 1978, pp. 18–21) (Table 4.1).

In the first years following their arrival, Thailand had showed itself to be very liberal toward these Vietnamese refugees due to the then civil government's foreign policy to support neighbouring countries, particularly Laos and Viet Nam, to regain national sovereignty and independence. Several assistance measures were undertaken such as its facilitation of the admission of these Vietnamese refugees free of charge; their exemption from the alien registration process; cabinet decisions approving provision of humanitarian assistance and a budget to loan them living expense funds and pay wages for those who involved in the highway constructions (Sriphana, 2005, pp. 75–85).

When Thailand adopted an anti-communist stance during the Cold War period these Vietnamese refugees were treated differently and faced difficulties integrating into Thai society particularly under the military regimes. These Vietnamese, although were entitled to Thai nationality, were targeted for nationality stripping.

**Table 4.1** Number of Vietnamese refugees based on the three surveys carried out by the Ministry of Interior in 1956, 1959 and 1965

Province	Surveyed in 1956	Surveyed in 1959 before repatriation	Surveyed in 1965 after repatriation
Nakhon Phanom	16,200	22,198	3763
Nong Khai	12,600	16,155	9503
Sakhon Nakhon	9300	12,533	7192
Udonthani	(no survey done)	8550	4874
Ubon Ratchathani	6500	8527	4800
Prachin Buri	2000	1583	1342
Surat Thani	(no survey done)	213	155
Phatthalung	(no survey done)	279	181
Total	46,600	70,032	31,818

Source: Burutphat (1978)

Although there were several policy changes to later remedy their situation, many remain stateless. These Vietnamese refugees were officially recorded in the Thai civil registration system as ‘Displaced Persons from Viet Nam’.

### ***4.2.3 Other Vietnamese Refugees Arriving Thailand Subsequently***

After the fall of Sài Gòn in 1975, Thailand faced another phenomenon of the mass exodus of refugees from Viet Nam who came by sea and overland. According to UNHCR (2000), the displacement caused by the conflicts in Indochina, which were exacerbated by rivalries between the United States and the Soviet Union as well as China, tested to a breaking point the capacity of states in the region to absorb the refugees. From 1975–1995, Thailand accommodated 160,239 Vietnamese refugees, but was no longer willing to allow Vietnamese to settle in the country. UNHCR, which started operating in Thailand in 1972, assisted in coordinating the extension of aid, shelter and services to these refugees and seeking durable solutions including voluntary repatriation or resettlement in third countries (Chantavanich & Rabe, 1990, p. 72). The majority of this group managed to depart to resettlement countries, with the help of international organizations and the Thai government.

UNHCR Thailand’s Fact Sheet (2021) indicated that Thailand is also a destination for a number of refugees and asylum-seekers, currently estimated at 5000 from over 40 countries, residing in Bangkok and surrounding urban areas. Based on the result of UNHCR’s assessment of the COVID-19 impact on urban refugees and asylum-seeker in 2020, it is evident that some groups from ethnic minorities from Viet Nam (e.g., Hmong, Kinh, Montagnard) were part of the population (UNHCR, 2020a). As the Thai government provides no official protection for them and

considers them “illegal” in the country, they are at risk of being detained on immigration grounds if they entered illegally or overstayed their visa. However, the Thai Cabinet approved in December 2019 the establishment of a screening mechanism to distinguish people who need international protection from economic migrants, although its implementation has been delayed. The regulation is expected to increase the protection space for these urban refugees including those from Viet Nam.

### **4.3 The Politicisation of Belonging and Stateless Vietnamese in Thailand**

The politics of belonging was defined by John Crowley as ‘the dirty work of boundary maintenance’. He further identified that the boundaries where the politics of belonging is concerned are the boundaries of the political community of belonging, the boundaries that separate the world population into ‘us’ and ‘them’. The politics of belonging encompasses contestations both in relation to the participatory dimension of citizenship as well as in relation to issues of the status and entitlements such membership entails such as the right to enter a state or any other territory of a political community, and, once inside, the right to remain there. (Yuval-Davis, 2011, pp. 26–30) This character of being full membership of the community has become the pivot of the political struggles of excluded groups, who were often marginalised, including these stateless Vietnamese in Thailand.

Besides their struggles to be part of the community, the geopolitical complexion in Southeast Asia that was influenced by the big powers during the Cold War accumulated the problems of stateless Vietnamese in Thailand. Their existence including the issues around their citizenship, legal status and entitlements had been prominently politicised and appeared on the political agenda. The politicisation of stateless Vietnamese in Thailand showed both negative and positive consequences. First, it marked the power of the Thai state against the responsibility to provide protection to these stateless Vietnamese by deploying national security to dominate the political realm. The second and positive aspect of politicising these Vietnamese was the fact that it contributed to the interstate political debates leading to a shift in policy to determine proper solutions to facilitate their permanent settlement in Thailand.

#### ***4.3.1 During the Anti-communist Era***

From the 1950s until the 1970s, Thailand came under the strong influence of the United States. Its foreign policy with regard to Indochina was based on the belief that it represented the “free world” as against the “communist world” and was



therefore largely hostile during this anti-communist era. At the domestic level, the Thai military became the most powerful group in national policy making and made use of anti-communist rhetoric to maintain a grip on the political system. This further worsened its relationship with the neighbours including Viet Nam (Maisrikrod, 1992, pp. 290–292). Policies towards these Vietnamese changed dramatically from accommodation to restriction. Due to the ideological antagonism characteristic of the Cold War, this group was pictured as “spies”, “terrorists” and dangerous “communists” by military-controlled media in Thailand especially during the second Indochina war<sup>19</sup> (Flood, 1977, p. 38).

During this period, the group of Vietnamese refugees fleeing the Indochina war was extensively politicalized and referred to in political debates. National security was deployed in public discourses to impose restrictions on and legitimize some discrimination against this group. From 1949, the Ministry of Interior has restricted the Vietnamese to reside in only designated provinces mainly in the northeast.<sup>20</sup> In 1951, there were special rules governed by the Police Department to administer the movement of these Vietnamese. Among others, one stated that “*the refugee head of family must inform the police sub-village headman every time someone from outside the province wants to contact a member of his family; the headman must verify that the visit concerns the refugee’s ‘honest living’, and if it concerns politics, the fact must be reported to Police Special Branch*” (Poole, 1967, p. 889). In the past, they would be separated from their families and sent to other provinces when they were accused of committing a crime.<sup>21</sup> After 1957, it was estimated that at least an average of 200–300 Vietnamese per year were jailed without charge or trial. In these same years, other Vietnamese in the northeast became the victims of shootings, robberies and other acts of violence, with little or no action taken against their assailants by police (Flood, 1977, p. 38). In 1970, a centre, known as the “Co-ordination Centre 114”,<sup>22</sup> was established under the Communist Suppression

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<sup>19</sup>The second Indochina War is widely known as “Viet Nam War”. However, it is called “American War” in Viet Nam. The War took place from 1954, when the US provided support to the South Viet Nam, instead of the French who was defeated in the Battle of Dien Bien Phu, until the fall of Saigon in 1975.

<sup>20</sup>Currently, these Vietnamese are restricted to reside in 14 provinces (including Nong Khai, Sakon Nakhon, Nakhon Phanom, Ubon Ratchathani, Prachin Buri, Udon Thani, Surat Thani, Phatthalung, Yasothon, Mukdahan, Nong Bua Lamphu, Amnat Charoen, Sa Kaeo and Bueng Kan). The permission to travel out of the designated provinces may be granted by the District Chief on a case-by-case basis in accordance with the Cabinet Resolution dated on 21 June 1994 and the Ministry of Interior’s Proclamation on “Designated residential provinces for Displaced Vietnamese” dated on 22 August 1994.

<sup>21</sup>Ministry of Interior Letter dated on 26 March 1953 titled “Movement of Viet Minh groups in Thailand” [in Thai].

<sup>22</sup>The operation of the Centre was terminated on 30 September 2000, and the Office of the Permanent Secretary for Interior and the Department of Provincial Administration have taken over the tasks relating to the Vietnamese after that.

Operations Command (CSOC)<sup>23</sup> to supervise the implementation of policies towards Vietnamese by relevant government agencies and to impose stricter policies and measures to control these Vietnamese refugees.

Moreover, the Cabinet adopted decisions on 18 May 1977, 3 February 1981, and 1 May 1984 to prohibit marriage between Thai men, particularly government officials, and Vietnamese women on the account of potential threat to national security (Burutphat, 1978, pp. 50–51). These resolutions were repealed in 2010, but the impact of the policies on the legal status of these couples and their children remains. Vietnamese were also prohibited from engaging in key occupations which happened to be the main areas in which these Vietnamese typically had expertise.<sup>24</sup> According to Flood (1977), their children were not allowed to continue their higher education in general public universities, except ones with open admissions, although they were allowed to study in Thai schools until high school.

The immigration laws were made stricter, and the nationality laws became more exclusive. This period's nationality laws introduced an idea on revocation of Thai nationality on national security grounds. The amendment in 1960 targeted Vietnamese women who married Thai men, by giving the reason that *“some countries involved female agents of their nationality in espionage and sabotage or undermining national security of foreign countries. The acts included arrangement of marriage between their female agents and nationals of the target country. Thus, it is appropriate to stipulate conditions on acquisition of Thai nationality by marriage of an alien woman. Also, the Minister of Interior shall have power to revoke her Thai nationality if the marriage is found fraudulent....”*<sup>25</sup> In addition, Thai nationality on the basis of birth on the territory could be withdrawn, on national security grounds, if either parent did not have permanent residence status.<sup>26</sup> In 1972, a Decree was issued under the then military government to retroactively revoke Thai nationality of children born in the country to parents who did not have permanent residence status as well as to deny Thai nationality of children born in the same circumstance after the Decree was in effect.<sup>27</sup> Due to fear of expansion of communism into Thailand, the Decree aimed to prevent those who came from countries under communist rule to acquire Thai nationality, targeting children born to Vietnamese. The Decree, together with the continuing restriction on *jus soli* acquisition of nationality,<sup>28</sup> adversely affected all ethnic minorities including indigenous hill tribes who are often without any documents to prove their birth and permanent

<sup>23</sup>The Communist Suppression Operations Command (CSOS) was later changed to Internal Security Operations Command (ISOC).

<sup>24</sup>The prohibited jobs were, for example, carpentry, bricklaying, dressmaking, hairdressing, gardening, driving motor vehicles, repairing vehicles and electric devices.

<sup>25</sup>Section 13 *bis* of the Nationality (Amendment) Act No.4 B.E.2503 (1960).

<sup>26</sup>Section 16 *bis* of the Nationality (Amendment) Act No.4 B.E.2503 (1960).

<sup>27</sup>Article 1 and 2 of the Revolutionary Decree No.337 B.E.2515 (1972).

<sup>28</sup>See Section 7 *bis* of the Nationality Act B.E.2508 (1965) as amended by the Act No.2 B.E.2535 (1992).

stay in the country (Saisoonthorn, 2005, pp. 48–50). Consequently, several hundred thousand people were rendered stateless as a result of the Decree (Boonrach, 2017, p. 96). Apparently, discrimination against this group of Vietnamese became an underlying cause of ongoing statelessness nationwide.

### 4.3.2 *After the Normalisation of Thai-Vietnamese Relations*

In the early 1970s, there was an immediate reversal of the stand taken by Thailand during the second Indochina war (or Viet Nam War) period, following America's pull-out from Viet Nam. Thai foreign policy was shifted from Thai-US relations being central to Thai security to one of giving more priority to Thailand's neighbours, regardless of differences in political and economic systems. However, a real turning point in policy that shaped Thai-Vietnamese relations, including solutions to stateless Vietnamese in Thailand, was the accession of Chatichai Choonhavan as prime minister (1988–1991) and his successor, Anand Panyarachun (1991–1992) (Maisrikrod, 1992, pp. 293–297). Key factors that enabled the normalisation of the two countries' relations included the Vietnamese withdrawal from Cambodia and Laos in 1989, the end of the Cold War, the dissolution of the Soviet Union, and the more cooperative role of Viet Nam in ASEAN and its political and economic reform (Sriphana, 2005, p. 109).

After Thai-Vietnamese relations was normalised, solutions to legal status and nationality problems of stateless Vietnamese became a focus of interstate political agendas again. It is noteworthy that Viet Nam takes the issues of ethnic Vietnamese residing abroad including ones in Thailand seriously. Although Viet Nam recognises a single nationality, it has directed its policies to “encourage and create favourable conditions for persons of Vietnamese origin residing abroad to maintain close relations with their families and homeland and contribute to the building of their homeland and country.”<sup>29</sup> In December 1991, Vietnamese Prime Minister Võ Văn Kiệt visited Bangkok, and in January 1992, on separate trips, Thailand's then Supreme Commander Suchinda Kraprayoon and Prime Minister Anand visited Hanoi. The issue of Vietnamese refugees who have been residing for several decades in the northeastern provinces of Thailand was discussed. Viet Nam requested Thailand to accept these Vietnamese as citizens due to their long residence in the country (Maisrikrod, 1992; Sriphana, 2005). Contrary to the political environment during the anti-communist era, the politicisation of these Vietnamese refugees during this period positively brought their problems into public attention as part of ongoing political debates. By politicising this matter, Viet Nam's diplomacy at that time influenced Thailand to readjust its policies to address legal status and nationality problems not only of stateless Vietnamese but also other groups in Thailand. This led to a shift in policy as follows:

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<sup>29</sup>This principle later reflects in article 7 of the Law on Vietnamese Nationality in 2008.

#### **4.3.2.1 Facilitation of Local Settlement Through Permanent Residence**

In 1984, the first cabinet decision was issued to allow for the Minister of Interior to set out conditions and requirements for permanent residence status of stateless Vietnamese who were deemed as having “good moral character”. The implementation of this policy was not successful because the application process was lengthy and strict. As a result, only 96 Vietnamese were granted permanent residence status. In 1992, the National Security Policy on Displaced Vietnamese (1992–1994) was approved. This introduced a comprehensive policy framework to facilitate permanent settlement of stateless Vietnamese in Thailand based on the fact that they had been in the countries for generations and could no longer return home. The policy detailed required actions to address legal status and rights of Vietnamese including the revision of relevant policies, measures and rules to expedite nationality application process for Vietnamese children born in Thailand and grant permanent residence status to their parents. Accordingly, another cabinet decision was passed in 1997 to revise eligibility criteria and rules for granting permanent residence status to the first generation of the Vietnamese refugees who fled during 1945–1946. Recently, the Cabinet approved on 26 January 2021 a new set of criteria on determination of legal status and rights of people who had migrated to and stayed in Thailand for a long period of time, and repealed previous decisions on facilitated permanent residence of stateless populations including these Vietnamese. This recent policy enhances access of Vietnamese to a wider set of entitlements associated with their legal immigration status and permanent residence which will further facilitate improved access to nationality, and highlights human security as a new security paradigm.

#### **4.3.2.2 Remedy for the Deprivation of Thai Nationality**

These Vietnamese refugees were rendered stateless by the 1972 Decree that revoked and denied their Thai nationality. It was impossible for them to (re)acquire Thai nationality unless there was a special measure to help facilitate the application process and remedy their situation. In 1990, the Cabinet passed a resolution to grant Thai nationality to second and third generation Vietnamese. Later in 1992, Decree No.337 was repealed by the Nationality (Amendment) Act No.2 B.E.2535 and the National Security Policy on Displaced Vietnamese (1992–1994) was adopted to cope with legal status problems of the Vietnamese. In 2008, the Thai Government passed an important amendment to the nationality law aiming to completely address the loss or denial of Thai nationality under Decree No.337. The amended provision allowed those who were born in Thailand and affected by the Decree to acquire Thai nationality by registration at the district office where they reside. To be eligible, the applicant has to: (1) provide evidence through civil registration of being born in Thailand and having been domiciled in Thailand for a consecutive period established at the discretion of the civil registration authorities; and (2) demonstrate good

behaviour or acts done to the benefit of the country. Due to this provision, a great number of the Vietnamese whose nationality was revoked or denied got back their Thai nationality.<sup>30</sup>

## 4.4 Conclusions: Redress for the Stateless Vietnamese

### 4.4.1 For Remaining Stateless Vietnamese in Thailand

As of December 2020, the Ministry of Interior indicated that there were only 470 stateless Vietnamese (registered as ‘Displaced Persons from Viet Nam’) left in the civil registration record. However, this may not represent the real situation of remaining stateless Vietnamese because this number includes only the first generation who fled to Thailand and their children who were born before 1989.<sup>31</sup> The figure excludes the remaining children who were born in Thailand after 1989 and the Vietnamese who have already been granted permanent residency status but are still stateless.<sup>32</sup>

To better understand the impact of the previous discriminatory practices on the remaining stateless Vietnamese in Thailand, two brief case studies of Vietnamese in Thailand are examined as follows:

According to Saisoonthorn (2005), Ms. Suda is among ethnic Vietnamese in Thailand who was affected by Decree No.337. She was born in Sakhon Nakhon province in 1949 to the Vietnamese refugees who fled the war during 1945–1946. According to the Nationality Act B.E.2456 (1913) that was in force at the time of her birth, she acquired Thai nationality under the *jus soli* principle regardless of her parents’ legal status. Later in 1972, her Thai nationality was revoked by the Decree, and she became stateless at 23 years old. Only when she was 43, Suda was eligible to apply to restore her Thai nationality based on the Cabinet Resolution on 17 March 1992. Worse than that, the process took her seven years to finally obtain Thai nationality.

(continued)

<sup>30</sup> Section 23 of the Nationality (Amendment) Act No.4 B.E.2551 (2008).

<sup>31</sup> In 1989, the Department of Provincial Administration started providing a household registration for temporary residents (Thor Ror 13) to these registered Vietnamese. The Vietnamese children born before this date including their parents were categorized as a group numbered 6 while those born after being granted the household registration were assigned as a group numbered 7 in the civil registration system.

<sup>32</sup> This is because the number of all children born in Thailand to stateless parents and people having permanent residency status, including these Vietnamese, are combined. From the civil registration system, it is difficult to sort out who among them are ethnic Vietnamese.

In the case of Mr. Yutthana Phamvan, a third-generation Vietnamese refugee, his nationality problem was resolved 19 years after he was born although he should have been granted nationality at birth. Yutthana was born in Udon Thani province in 1985. His mother and father were also born in Thailand in 1949 and 1950 respectively, themselves the children of Vietnamese refugees. According to the Nationality Act B.E.2508 (1965), Yutthana has Thai nationality by birth and should not have been affected by Decree No.337 because his parents are not immigrants. Despite this, from 1985–2004, he was treated as a stateless person and missed many opportunities. Yutthana only realised his stateless status (and subsequently fought for his nationality) when he was awarded a place at Chulalongkorn University’s faculty of medicine but was denied entry due to the claim that he did not have Thai nationality.<sup>33</sup>

Regardless of the positive developments in Thai laws and policies regarding this issue, there are still problems related to bottlenecks in the application process. Like other stateless groups, Vietnamese encounter lengthy and complicated processes in this area. According to a report by Chiang Mai University and UNICEF Thailand in 2021, the processing time for applications for naturalisation or applying for Thai nationality by marriage can be over 730 days. For stateless people who are over 18, the nationality process involves even more steps (e.g., checking criminal record including drug offences and assessing whether they present a threat to national security). The Thai government should expedite resources to increase processing times as well as simplifying the process. Breaking the cycle of statelessness requires an adequate safeguard in the law to grant Thai nationality to children born stateless in the country.<sup>34</sup> Without this safeguard, stateless parents will continue to pass down statelessness to their children. Due to the delay in eradicating statelessness in Thailand, this status, like a heritage, goes on from one generation to the next.

#### ***4.4.2 For Stateless Vietnamese Who Were Forced to Flee Thailand***

Apart from *Fong Laywan*, there are still a number of stateless Vietnamese from Thailand who have been living in limbo in Japan. Most of them were once registered as stateless persons in Thailand holding the ID card for ‘Displaced Persons

<sup>33</sup> Saisoonthorn, Phunthip K., Letter to Director General of Department of Provincial Administration on “Legal Opinion on Thai Nationality of Yutthana Phamvan”, Thammasat University, 14 May 2004.

<sup>34</sup> Although Section 7 *bis* paragraph two allows children born to stateless parents to apply for Thai nationality, it is still challenging since the application process is lengthy and complicated, and the approval depends very much on the discretion of the Minister of Interior.

from Viet Nam'. Some were born in Thailand and are eligible to acquire Thai nationality in accordance with the nationality law that was amended after they left the country. There are also a few cases of persons who have Thai nationality by birth, but were mistakenly registered as stateless.<sup>35</sup> Their tragedy was a consequence of years of terrorizing and degrading treatment and violation of their rights including deprivation of their nationality. In Japan, their lives were worsened due to their illegal entry and unresolved statelessness status. Many were arrested and detained by the Japanese Immigration Bureau in preparation for deportation. However, it was always in vain as they had no state which would accept them back. Many have wasted months or years in detention before there was any possibility of them being temporarily released (Komai & Azukizawa, 2009; Odagawa et al., 2017).

To seek proper solutions to recover their loss, a study of their situations and profiles will first enable classification of their legal status and provision of legal assistance. According to Thai nationality law, those who have Thai nationality by birth can easily be assisted because the process is automatic and not dependent on official discretion. Those Vietnamese who were remedied only after the nationality law was amended in 2008 are in need of an amnesty in order to allow them to return since their granted stay permits in Thailand were terminated on the day they left Thailand illegally.<sup>36</sup> In addition, facilitated nationality procedures should be introduced such as exempting them from fulfilling a requirement for a consecutive period of domicile in Thailand,<sup>37</sup> or providing optional channels to verify their nationality at Thai embassies or consulates in Japan.

In short, lessons learned in the case of these forgotten stateless Vietnamese are twofold. Firstly, it showed that migration, especially forced migration, affects regional and international relations. Internal violence, oppression and violation of human rights force people to leave their home country. Although some may flee to countries outside of the immediate region of the crisis, the majority often migrate to neighbouring countries or within the region. The way in which the Vietnamese refugees fleeing the Indochina war were treated and, consequently, how their issues were brought up as part of regional political debates well exemplified the impacts. Secondly, the situation of stateless Vietnamese from Thailand in Japan demonstrated the nexus between migration and statelessness. The protracted situations of statelessness among these Vietnamese in Thailand drove them to irregularly migrate further to seek a better life in other countries. Due to their illegal entry and links to more than one country on the basis of birth (Thailand), descent (Viet Nam), and habitual residence (Japan), finding solutions to legal status and nationality problems of these stateless Vietnamese becomes more challenging. Meanwhile, this can be an opportunity for Thailand to dialogue and collaborate with the concerned countries, Viet Nam and Japan in this case, to rethink the lessons learned on the issues of

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<sup>35</sup> Information was obtained in 2014 from a group of the stateless Vietnamese from Thailand in Kanagawa, Japan.

<sup>36</sup> Please see Section 39 of the Immigration Act B.E.2522 (1979).

<sup>37</sup> Please see Section 23 paragraph one of the Nationality (Amendment) Act No.4 B.E.2551 (2008).



migration and statelessness. Reviewing and learning from past experiences can contribute to guiding the search for protection and solutions for stateless migrants from Thailand or even Thai migrants who are at risk of statelessness abroad to build their secure identity and lives in the long run.

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