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Thailand's role in updating ASEAN immigration policy

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ABSTRACT

This research examined how the Association of Southeast Asian Nations (ASEAN) can improve upon the common economic community through the revision of policies related to labor and migration. The literature review suggested that economic prosperity and growth are significantly related to national openness to naturalization and foreign investment. Citizenship laws from all 10 ASEAN states and several other nations were analyzed alongside economic indicators. Within ASEAN, Thailand is considered central to widespread immigration law changes due to its leadership role in the region. Human rights aspects of citizenship and migration were assessed and potential solutions posed for the high incidence of statelessness in Myanmar and Thailand. In order to support consistent, long-term economic growth and protection of human rights, the research recommends various statutory revisions and the implementation of an executive strategic plan to protect alien laborers. For the purposes of developing globally-competitive economies in ASEAN, the research supports expansive access to citizenship by descent, birth-right, and by naturalization, with full recognition of multiple citizenship.

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Introduction

The Association of Southeast Asian Nations (ASEAN) launched its ASEAN Economic Community (AEC) at the end of 2015 (ASEAN Secretariat, 2016). Leaders hope the AEC will “transform ASEAN into a region with free movement of goods, services, investment, skilled labor, and freer flow of capital” (ASEAN Secretariat, 2008). Despite popular comparisons to the European Union, the AEC is not intended to introduce any of a single currency, central banking, or a regional governing body similar to the European Commission into the Southeast Asian region (Trairatvorakul, 2011). Lack of such supranational governing bodies has attracted suspicion that AEC will not have a great effect, but proponents consider it a “game changer” (Lim, 2014).

Visa exemptions for intra-ASEAN travel help streamline the process for short-term passage between member States (ASEAN Framework Agreement on Visa Exemption, 2006), although the effects are mainly limited to the tourism sector. Eight ASEAN Mutual Recognition Arrangements (MRAs) have been drafted to promote freer movement of select qualified professionals, namely engineers, nurses, accountants, architects, surveyors, medical practitioners, dentists, and tourism personnel (Leungbootnak & Deewong, 2012). While a freer flow of highly skilled labor should be an AEC goal as it creates significant economic benefits, most intra-ASEAN migration is among low-skilled groups, from the poorer six nations to the wealthiest four—Singapore, Brunei, Malaysia, and Thailand. Martin and Abella (2013) propose those lower-skilled migrant laborers need to be the subject of international partnerships and protection.

Economic and social diversity in combination with rampant poverty and high agriculture sector involvement

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within ASEAN necessitate the broader inclusion of peoples in the language and spirit of AEC agreements in order to protect migrant workers against exploitation and to ensure the AEC benefits reach beyond the highest echelons of societies. Thailand's role as an ASEAN founder, its geographical location within the deeply impoverished Greater Mekong Subregion (GMS) and its common heritage with people from neighboring least developed countries—Laos, Cambodia, and Myanmar—give it a natural advantage in spurring action designed to help target ethnic and socio-economic demographic segments in the AEC. However, before Thailand can take on such a leadership role in ASEAN, it needs to update its own immigration laws and system.

This article examines how ASEAN members can improve the AEC, and how Thailand can claim a leadership role, by amending laws relating to migration. International law, custom, and practice are reviewed and analyzed to gain a clear picture of how domestic policy can be shaped in a manner consistent with global ideals. Statutes, data, and research from the OECD and other competitive nations are compared and contrasted with those in ASEAN in search of best practices models. Issues relating to economic growth, human rights, and reciprocity bolster recommendations and suggestions intended to improve transparency, efficiency, and the rule of law within the Kingdom of Thailand and the AEC as a whole.

The research supports proposals that Thailand should adopt liberal immigration policies with unambiguous language: (1) recognizing both *jus soli* and *jus sanguinis* rights to nationality; (2) committed to expansive naturalization of foreign nationals; (3) fully recognizing dual citizenship; (4) removing governmental power to revoke citizenship; and (5) establishing that Thai nationality may be relinquished only on a voluntary basis and only in cases where subjects hold multiple citizenships. Labor laws should be revised to support broad employment-based immigration. The government should also implement an executive strategy for the protection of alien laborers, in order to ensure the protection of human rights. The research suggests that upon successfully promulgating new laws or seriously amending old laws, Thailand's new approach should then be taken into consideration by other ASEAN member States, which should follow in attempts to create greater social, economic and cultural stability.

Literature Review

International legal instruments and customs have long recognized clear and equal rights to nationality among peoples. Equality among peoples and states is a fundamental tenet of human rights law, which arose out of custom through the [Universal Declaration of Human Rights \(1948\)](#), of Human Rights. The concept has been written into treaties at numerous points since the advancement of international law became a viable option through the United Nations. Human rights and basic freedoms are granted equally to all people under agreements such as the [Convention relating to the Status of Stateless Persons \(1954\)](#), the [Convention on the Reduction of Statelessness \(1961\)](#), the [Convention on the Elimination of All Forms of](#)

[Racial Discrimination \(1963\)](#), the [International Covenant on Civil and Political Rights \(1966\)](#), the [International Covenant on Economic, Social and Cultural Rights \(1966\)](#), and the [Convention on the Elimination of All Forms of Discrimination against Women \(1979\)](#). Bilateral and multilateral treaties such as the 2012 ASEAN Human Rights Declaration strengthen the basic principles.

However, the voluntary nature of international law leaves room for States to overlook some people. For example, all ASEAN members have ratified the [1989 Convention on the Rights of the Child \(CRC\)](#), which provides children rights to be registered at birth, thereby reducing the likelihood of statelessness, yet recent UNICEF statistics have shown about 45 percent of births in Indonesia, 35 percent in Myanmar, and 28 percent in Laos go unregistered ([UNHCR, 2010](#)). A study of only 65,000 hill tribe persons in Thailand found 25,000 participants were stateless or at risk of being stateless ([UNHCR, 2010](#)).

The most egregious abuses of basic human rights to citizenship within ASEAN are presently found in Myanmar. An estimated 1.2 million stateless people in Myanmar were expected by the end of 2015 ([UNHCR, 2014c](#)). The [1982 Myanmar Citizenship Act](#) granted discretionary power over whether or not certain minority ethnicities would be recognized as citizens. Among those not recognized were 800,000 Rohingya Muslims from the Rakhine territory, bordering Bangladesh. Rohingya people experienced various human rights abuses, prompting the [United Nations to pass Resolution 67/233 \(2012\)](#) calling on Myanmar to protect the rights of Rohingya people and to allow them equal access to citizenship. Myanmar rejected the resolution ([Ferrie, 2013](#)) and *ipso facto* rejected its commitments under the [2012 ASEAN Human Rights Declaration](#), showing the ineffectual side of international law.

The problem of statelessness in ASEAN is mostly localized to Myanmar and Thailand, which together contain more than 1.3 million stateless people, or more than 10 percent of the world's total of stateless persons ([UNHCR, 2014a,c, 2017](#)). Add to this more than 406,000 refugees in and nearly 800,000 refugees from ASEAN member States ([UNHCR, 2014b](#)) and we find reason to make serious policy changes. The Philippines is the lone ASEAN member State to have ratified or signed the 1954 Convention on Stateless Persons while no ASEAN State signed or ratified the 1961 Convention on the Reduction of Statelessness. Those treaties are a good start. If Thailand, Malaysia, Brunei, Vietnam, and Singapore also ratified the [2000 Protocol against Smuggling of Migrants](#), ASEAN as a whole could stand more united against practices which threaten rights to citizenship. A competitive AEC requires people with passports, or at least identification, and thus citizenship. Statelessness is an economic death sentence in a world on the move.

"In 2013, 232 million people, or 3.2 percent of the world's population, were international migrants, compared with 175 million in 2000 and 154 million in 1990" (UN, 2013). Half of all international migrants in the same year lived in 10 countries: the USA, Russia, Germany, Saudi Arabia, the UAE, the UK France, Canada, Australia, and Spain. Singapore is a rarity in the Eastern world as

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