Between Nationalities:

Legal Status of Hilltribes in Thailand

ナショナリティの狭間で -- タイの山地民の法的地位 --

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Abstract

In Northern Thailand, there appear to be the people who have been acknowledged as hill tribes by the tourism industry but not by governmental authorities. This paper aims to indicate one of the reasons for the presence of those people.

The reason underlying the confusion stems from complicated definition of the national and non-national in Thailand. This complicated definion was induced from various background factors. For example, certain economic and political reasons are served if ethnic hill tribes are only considered tourist attractions without being granted political status in the form of voting rights or the right to be employed as legal workers.

要 約

本稿の目的は、北タイ「山地民」の人々を事例に、少数民族とエスニック・ツーリズムとの関係を検討することにある。「タイ山地民」という "イメージ"は、観光資源としてグローバル規模で人々の目に曝されている。しかし一方で、おなじ「北タイ山地民」の人々が、今日でもタイ国籍を求めて抗議運動を行っている。なぜ、このようなことが起きるのかを、本稿では、「山地民」をとりまくタイ国籍法を検討することで分析した。

「山地民」をとりまくタイ国籍法を検討すると、そこには「国民」と「外国人」のあいだに位置づけられた、部分的な権利のみ保持する「居住許可者」の法的立場が複雑に入り組んでいることがわかる。「山地民」の人々のなかにも、数種類の扱いの異なる「居住許可証」を持つ人々が交じり合っており、誰が/何をもって「国民」になれるのかは明瞭には捉えられない。このような状態が生まれた背景には、ビルマからの流入者等をめぐる政治と経済の問題も見え隠

れしている。いずれにせよそうした非常に複雑な「国民」規定の結果、「山地 民」のなかには、エスニック・ツーリズムに携わることはできても、そこから 固定的な収入を得ることは難しい立場の人々が生まれているといえる。

Key words: Ethnic tourism, Ethnic minority, Hilltribes, Northern Thailand

キーワード:エスニック・ツーリズム、観光、マイノリティ、タイ

Introduction

This paper mainly aims to present one of the reasons for the presence of the large number of people constituting stateless ethnic minorities in northern Thailand, when those people have been tourist attractions for years. Every year, more than 1.6 million foreign tourists visit northern Thailand (2003)¹⁾ where the local population stands at less than 12 million (2006)²⁾ Hill tribes and their cultures have been one of the main attractions for tourists. Hilltribal dances, crafts, and even the villagers themselves have been tourist attractions in northern Thailand. However, it is not widely known that some of these tribal people who contribute to ethnic tourism suffer from the tribulations of a stateless existence.

This paper examines their situation from the standpoint of their legal status.

Theoretical perspectives

Many researches have focused on ethnic minorities and the nationality of the people belonging to minority groups. In these previous studies, the following two points have been raised: (1) rise of "borders" within national borders to distinguish between "nationals" and "non-nationals" (Fanning & Mutwarasibo 2007: 452) (2) and rise of culture-based distinctions such as cultural racism (Tzanelli 2006: 38) or cultural nationalism (Fanning & Mutwarasibo 2007: 449).

First, "the rise of internal borders" indicates that some countries that are faced with an increase in the number of migrant workers tend to differentiate within their residents. This distinction is between those who are eligible to receive "full rights" for social services and those who are not eligible to receive them in full measure, in the same time they are also expected to assimilate to the former cultures (Pajnik 2007: 857). The phrase used in this context is "distinction between nationals and non-nationals." This distinction enables the refusal of human rights in full measure to some people within the national territorial border (Fanning & Mutwarasibo 2007: 450).

Second, the rise of culture-based distinction implies that the indicators distinguishing between nationals and non-nationals tend to depend on whether or not a person is part of the dominant culture of a nation. Mutwarasibo termed this phenomenon *cultural nationalism* (Fanning & Mutwarasibo 2007: 299), while Tzamelli called it *cultural racism* (Tzanelli 2006: 38).

Although these findings are very stimulating, most of researches have been based on the situation of migrant workers in E.U. countries (Fanning & Mutwarasibo 2007: 299; Pajnik 2007: 857; Tzanelli 2006: 38). Are these research results from E.U. countries appropriate for the prevalent situation in Southeast Asia where many countries are home to migrant workers? Alternatively, should we consider another dimension for Southeast Asian countries? In this paper, I examine this point by studying the case of hill tribes in northern Thailand.

Creation of the category of hill tribes

The ethnic category of hill tribes is a reasonably new category created in the 1950s to serve political interests (Kesmanee 1994: 673-684). The dominion of Thailand was declared as a modern nation state in 1932, after the completion of

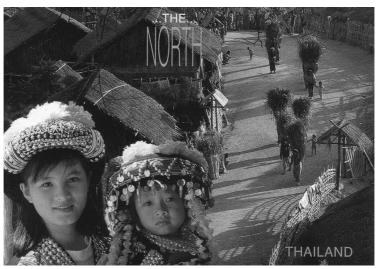
a democratic revolution (Wyatt 1984: 252–260). However, the population in the dominion was considerably diverse; therefore, the central regime has attempted to build a Thai nation (Chat Thai) (Murashima 1996). During this process, the following understanding was recognized: "The Thai nation consists of Tai ethnic groups. There are many subcategories under the Tai umbrella. The kinship among Tai people was a product not of objective linguistic or ethnolinguistic characteristics but of ethnic and national processes by creation of modern nation states (Keyes 1995: 137). This definition was useful for bracketing diverse peoples under one category—the Thai nation (Chat Thai) (Keyes 1995: 137; Wyatt 1984: 1).

There have been various local dynasties and client states of Burma in northern Thailand (Ongsakul 2005: 109–128=2001: 223–258), had a diverse population, similar to those in other parts of Thailand (Ishii & Sakurai 1998: 146). This area was merged into modern Thailand around late 19th century to early 20th centyry³⁾ (Abkorn and Wyatt 1995; Ongsakul 2005: 167–247=2001: 331–486; Wilson 1996). Subsequently, urban residents were gradually absorbed into the Thai nation; however, authorities were not as concerned with the residents in mountainous areas where small villages were scattered over a vast and inaccessible mountainous terrain during the early years of the region's incorporation into Thailand (Manndorff 1967: 527). Thus, the mountainous area was marginalized in the geography of the modern nation, resulting in this area being neglected by the central regime (Cohen 2001: 145).

After the half a century, the mountainous area acquired the status of a significant target area for the central regime of Thailand in terms of international politics (Keyes 1995: 136; Walker 1981: 13). The period from the 1950s to the 1980s witnessed mounting tension along the Laos-Thai border (Kesmanee 1994: 680). This period coincided with the Cold War era, and many major countries

Figure 1 Postcard sold in northern Thailand. In this postcard, a hilltribal village and hilltribal girls are symbol of northern Thailand.

(2006, sold in Chiang Mai)



employed villagers in neighbor countries, as guerillas and used other military powers to wage proxy battles; this is because villagers in the mountains possessed a wide network and enjoyed mobility by virtue of having shifted around mountainous regions in China, Burma, Thailand, Laos, and Vietnam (Takeuchi 1999). Since then, the central regime in Thailand started blocking the influx of "illegal migrants" with the assistance of the U.S. (Bhruksasri 1989: 5).

Under such circumstances, the Thai authorities created the category of hill tribes to acknowledge the presence of residents of mountainous areas as an ethnic minority of Thailand (Bhruksasri 1985; Kesmanee 1994: 682). Researches show that the ethnic category of hill tribes was not supposedly in opposition to the ethnic category of the Tais, before the modernization of northern Thailand (Cohen 2001: 145). In this sense, while the Tais have been included in the

mainstream population, the hill tribes are regarded as ethnic minorities in Thailand (Cohen 2001: 145). The category of hill tribes and their characteristics were created politically (Bhruksasri 1985).

The definition and distinction pertaining to the category of hill tribes have been ambiguous and arbitrary in northern Thailand from the time the category was formed; this is because the category is a need-based category that is representative of the prevailing political culture (Bhruksasri 1985; Kesmanee 1994: 682).

The population in the mountains was classified into four categories from a legal standpoint: (1) Thai nationals, (2) authorized aliens with permanent residence, (3) authorized aliens with temporary residence, (4) and undocumented residents. From the 1950s onward, villages in the mountains are said to have been slot in the bracket of Thailand. Numerous governmental and



Figure 2 Hilltribal rally demanding nationality and other rights.

(1999, Chiang Mai, photograph by author)

nongovernmental development aids were given to the area (Chandraprasert 1997; Manndorff 1967). Villages were rapidly included in the national economy of Thailand (Jatuworaphruek 1997: 1). The Thai government displayed a tendency to bracket hill tribes as Thai nationals, and bestowed a nationality on hilltribal villagers. According to Tamada, in the period 1969-1970, 119,591 people from the mountains were awarded Thai nationality, and between 1975 to 1992, 182,065 people from the mountains were endowed Thai nationality. Between 1985 and 1988, 247,775 people were given alien cards, while almost 90,000 were endowed legal cards. In 2000, 188,931 people were awarded nationality by virtue of a revision to the regulation (Tamada 2006: 199).

Today, after 50 years of development, the international political situation has changed, and most villages in the mountains have been linked to state and urban economies as a consequence of developmental projects (Jatuworaphruek 1997: 1). Many populations in the mountains have shifted to urban areas in search of education and livelihood (Toyota 1998). Thus, after the late 1990s, people from the mountains began claiming their rights in order to acquire Thai nationality (Rungrengsaphakul 2006). In other words, developmental aid allowed many residents of the mountains to avail of national Thai education (Cohen 2001: 36). However, the scope for them in terms of occupation, social role, and social status was severely limited without Thai nationality (Tamada 2006: 206). The badge of nationality granted them the resources to reside and be accepted as legal workers in companies and institutions (Tamada 2006: 206).

Regulation on nationality in Thailand

Today, there are mainly three reasons undermining the enforcement of the regulation on nationality in Thailand: (1) continuous influx of refugees from

neighboring countries (especially Burma), (2) rural residents who are not registered, (3) and illegal migrant workers in Thailand. The nationality law stipulates certain requirements and procedures for obtaining Thai nationality. The Thai state governs its people via two channels: (1) residential registration and (2) nationality enrollment.

In the territory of Thailand, after the birth of a child, the parents are supposed to register the child as a resident of Thailand within 15 days of the birth. It is only after this is done that the child is enlisted under Thai residential registration. This registration is supposed to be done at the local (21132) office.

Later, when the child reaches the age of 15 years, he/she is supposed to enroll himself/herself as a Thai national at the local (อำเภอ) office where he/she receives a Thai nationality card (บัตรประชาชน) for identification purposes. Thus, this is the procedure that people need to follow in order to be enrolled as Thai nationals

To go through the procedures above, a person must have either (1) parents who are Thai nationals, or, a Thai national father who has legally acknowledged his fatherhood (2) or parents who hold the particular authorized alien status by virtue of which the state can allow their children to obtain Thai nationality on account of the place of birth.

People who do not satisfy the above requirements $may\ be$ granted the authorized alien status instead of Thai nationality, with either permanent or temporary domicile. The authorized alien status has been classified into 16 categories.

Table 1 Subcategories in the authorized alien status in Thailand

Annamese refugee (former
 White and Silver card)

ญวนอพยพ

2.	Former Chinese national party soldier (former White card)	(บัตรสีขาวขอบน้ำเงิน) อดีตทหารจีนคณะชาติ
3.	Refugee "Chin-ho" (former Yellow card)	จีนฮ่ออพยพ
		(บัตรสีเหลือง)
4.	Free "Chin-ho" (former White and Orange card)	จีนฮ่ออิสระ
		(บัตรสีขาวขอบส [ั] ม)
5.	Former Malay communist (former Green card)	อดีตโจรจีนคอมมิวนิสต์มลายา(บัตรสีเขียว)
6.	Thai Lue (former Orange card)	ไทยลื้อ (บัตรสีส [ั] ม)
7.	Laotian refugee (former Sky blue and Blue card)	ลาวอพยพ
	order data Brace curary	(บัตรสีฟ้าขอบน้ำเงิน)
8.	Nepalese refugee (former	เนปาลอพยพ
	Green card)	(บัตรสีเขียว)
9.	Burmese fugitive (former Pink	ผู [้] พลัดถิ่นสัญชาติพม [่] า
	card)	(บัตรสีชมพู)
10.	Burmese fugitive employed by	· · · · · · · · · · · · · · · · · · ·
	Thai employers (former Purple	ผู้หลบหนีเข้าเมืองจากพม่าอยู่กับนายจ้าง
	card)	(บัตรสีม่วง)
11.	Burmese fugitive believed to be	(TIM 101)
	of Thai origin (former Yellow	ผู้พลัดถิ่นสัญชาติพม่าเชื้อสายไทย
	and silver card)	

12.	Highland residents (former Sky Blue card)	(บัตรเหลืองขอบน้ำเงิน) บุคคลบนพื้นที่สูง (บัตรสีฟ้า)
13.	Refugee from Kokong province believed to be of Thai origin (former Green card)	ผู้อพยพเชื้อสายไทยจากจังหวัดเกาะกง
14.	Cambodian fugitive (former White and red card)	(บัตรสีเขียว) ผู [้] หลบหนีเข้าเมืองจากกัมพูชา
15.	Pi thong luang (former Sky	(บัตรสีขาวขอบแดง) เผ [่] าตองเหลือง
16.	Blue card) Highland community (former	(บัตรสีฟ้า) ชุมชนบนพื้นที่สูง
	Green and Red card)	(บัตรสีเขียวขอบแดง)

People of Thai nationality or with authorized alien status with permanent domicile are superintended under a regulation known as "T. R. 14" (ท. ร. 14); these people possess formal Thai civil registration regardless of their status, i.e., regardless of whether they are Thai nationals or authorized aliens. Further, people with only permanent domicile are superintended under a regulation known as "T. R. 13" (ท. ร. 13); they possess an (1) alien resident's autobiography record (แบปพิมพ์ประวัติ) and (2) alien resident status.

In wards, nationals and non-nationals are not the only categories of distinction in northern Thailand. There are several categories of legal statustes *between* those of nationals and non-nationals.

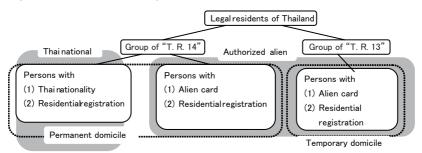


Figure 3 Classification of Legal statuses in Thailand

Hill tribes and nationality

There are four possible categories of legal status among hilltribal people. The first category comprises Thai nationals who have registered their "ethnicity" under the formal subcategories of hill tribes, such as "Hmong" or "Akha."

Second, we can find the legal category of "hill tribes" that comes under the authorized alien status. Herein, there are mainly two related categories: "highland residents" and "highland community." Members of these categories are classified as aliens who are permitted temporary domicile in Thailand. The third category consists of people who are classified as Burmese refugees by the authorities. The final category is constituted by undocumented people. These people are supposed to be newly arrived refugees from Burma.

However, in local contexts, the local deffinition of ethnic categories do not always accord with legal categories above. Here, the problem concerns many hilltribal people who have lived in Thailand's mountainous areas for sufficiently long periods of time without being granted Thai nationality or hilltribal cards; the underlying reason for such a status quo is the unavailability of documents validating their stay in Thailand. Researches have indicated that one of the main

reason for the confusion with respect to nationality or hilltribal status stems from the difficulty encountered in investigating whether or not a person is a newly arrived Burmese refugee or a member of the Thai hilltribes (Wantanee 2006).

However, is this the only reason for the confusion surrounding the awarding of nationality to people in the mountains? In the next chapter, I further analyze the causes behind the complicated situation.

Analysis

Economic background of the situation

The fundamental reasons why local authorities appear to be perplexed on the issue of undocumented residents revolve around the following: (1) economic reasons related to securement of cheap labor and (2) domestic political reasons related to electorates in particular areas.

As for economic reasons, it has already been indicated that some industries in Thailand utilize Burmese refugees as cheap labor by exploiting their ambiguous status (Kusakabe & Pearson 2007: 2). It is estimated that the number of undocumented workers stands at 920,329 (of which 568,000 are registered). Approximately 80% of them are illegal Burmese immigrants (Kusakabe & Pearson 2007: 6) working in Thailand. Ever since the arrival of Indochinese refugees in Thailand in the 1970s, the Thai government has been unable to ignore the international pressure on protecting the human rights of refugees.

Simultaneously, Thailand has been eager to build regional economic zones in collaboration with neighboring countries (Kusakabe & Pearson 2007). It has formulated and ratified several agreements in order to promote transnational economic collaboration in the area, such as GMS-EC (Greater Mekong Subregion

Economic Cooperation, 1992), ECR (Economic Cooperation Rectangle, 1993), and BIMST-EC (Bangladesh, India, Myanmar, Sri Lanka, Thailand Economic Cooperation, 1997), which has been renamed as the Bay of Bengal Initiative for Multi-sectoral Technical and Economic Cooperation (Kusakabe & Pearson 2007, Tsuneishi 2005). Given this situation, the income gap between Thailand and neighboring countries has induced the influx of illegal foreign workers into Thailand (Kusakabe & Pearson 2007: 5). Therefore, a situation wherein cheap laborers constitute the workforces of small enterprises is inevitable.

In northern Thailand, undocumented people, inluding some hilltribal people, serve as cheap and disposable labor, which is an important factor for some industries. Similar to the practice prevalent in other border provinces, the tourism, textiles, and other industries in northern Thailand utilize cheap migrant labor. In a potential situation wherein hilltribes could serve as tourist attractions, they are instead employed as cheap labor by virtue of not being legally recognized as hill tribes of Thailand.

Political background of the situation

Domestic political reasons revolve around the fact that the population of the hilltribal people is a rather small percentage of the total population of Thailand. According to an enumeration by the local authorities, the number of hilltribal people in northern Thailand stands at 1,203,149, whereas the total Thai population is 64,865,523 (2004). Thus, the hilltribal population comprises a mere 1.8% of the national population. However, the residential registrations of almost all hilltribal residents have been made in northern Thailand. The population of northern Thailand stands at 1,658,298 (2006), with the hilltribal population constituting an approximate 10% of it. According to some statistics, more than 10% of the area consists of hilltribal people. If every hilltribal resident

is awarded Thai nationality, the hilltribal group will emerge as a major vote bank in the area. This translates into a situation where, provided many hilltribal residents are awarded Thai nationality and thereby granted suffrage, the political interests of hilltribal people would hold considerable influence in the concerned electorates. Further, it is already indicated that the negative effects of racial threat on the votes for liberal legislation should be given more importance than the positive effects of the increase in the ethnic minority vote (Jacobs & Tope 2007: 1485).

Conclusion

There appear to be a large number of people (originally) residing in mountainous areas who have been acknowledged as hill tribes by the tourism industry but not by governmental authorities. In Thailand, the main distinction pertains not only to the categories of nationals and non-nationals. The distinctions related to legal status are considerably more complex.

The reason underlying the complexity surrounding the grant of nationality is often noted that it stems from the difficulty in distinguishing between Burmese refugees and hill tribes of Thailand. This difficulty is supposed to be of substantial proportions given the various background factors. For example, certain economic and political reasons are served if ethnic hill tribes are only considered tourist attractions without being granted political status in the form of voting rights or the right to be employed as legal workers.

Considering only northern Thailand, to solve the problem of stateless people, we need to analyze the situation surrounding the problem from a national or even a global standpoint.

Acknowledgements

This research was completed on account of a grant-in-aid for Scientific Research (A) of Japanese Society for the Promotion of Science (project number: 18251005; April 2006 to March 2009; principal Investigator: Nobukiyo Eguchi; and research title: "Comparative Study on the Self-reliance of Socially Disadvantaged People and the Globalization of Tourism.") This study was also supported by the Institute of Humanities, Human and Social Sciences in Ritsumeikan University.

I would like to express my gratitude toward Dr. Phunthip Saisoonthorn, Ms. Rungrat and Ms. Ratanamanee of Thammasart University, Dr. Wantanee Rungrang of Phayap University, and Dr. David A. Feingold, and Ms. Chotika Khruemanee from UNESCO, Bangkok, for their kind advice, providing infomations and useful suggestions. However, all resopnsibility for contents of this article belongs to the author.

Notes

- 2) National Statistical Office (of Thailand), http://service.nso.go.th/nso/data/ data05/eco01-12/01.html より
- 3) The local landlord, i.e., the king of Lanna, ratified two "Chiang Mai Treaties" in 1874 and 1883. The first treaty allowed the Bangkok dynasty to intervene in economic affairs, while the second treaty enabled it to intervene in domestic affairs (Wilson 1996:76).

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