



Above: Rohingya displaced Muslims. Photo S. M. Hosseini/Tasnim News Agency. CC by 4.0 license on Wikimedia.

The statelessness- trafficking nexus

A case study in Thailand

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While it is difficult to estimate how many people worldwide are stateless, owing to its invisible nature, statistics from the UN Refugee Agency (UNHCR) point to around a total of 3.9 million stateless persons in 78 countries, over half of whom are believed to live in the Asia-Pacific region. The international NGO Institute on Statelessness and Inclusion (ISI), in an analysis of global statelessness statistics published in June 2020, notes that the total tally might actually be closer to 15 million stateless persons worldwide.¹ In some countries such as Thailand, the statelessness situation is particularly worrying. UNHCR's Global Trends data records 475,009 registered individuals who are stateless in Thailand as of end 2020,² a number approaching 0.7 per cent of the total population of Thailand of around 70 million, with the actual number of those stateless believed to be much higher.

Compared to other statelessness situations across the globe, there is a relative large amount of information available on statelessness in Thailand. Citizenship issues in this context are largely due to the long history of exclusion of minority groups in the country, such as the 'Hill Tribes' – many of whom have been historically excluded from Thai citizenship – and the Rohingya, who come from neighbouring Myanmar to find refuge but remain without citizenship. Stateless members of both groups are more vulnerable to exploitation and to being trafficked as well. Precisely this nexus between statelessness and trafficking in Thailand will be addressed in this article in order to examine how statelessness can be a factor of vulnerability for human trafficking. Further, it will look at what lessons can be drawn from Thailand in terms of its efforts to combat the statelessness-trafficking nexus for other countries in the region facing similar challenges.

What is statelessness?

A stateless person is, following Article 1 of the 1954 Convention Relating to the Status of Stateless Persons, "a person who is not considered as a national by any State under the operation of its law". Inherently a legal issue, the lack of citizenship has very real consequences for day-to-day life.

In the summer of 2018, media from all corners of the globe reported daily on the plight of the 'Wild Boars', a Thai youth football team that for 18 days was trapped in the *Tham Luang Nang Non* cave in Northern Thailand, two kilometres away from the Thai-Myanmar border. All the boys were saved, but two rescue divers died during and after the mission. In the aftermath, the team was invited to star in their own movie about their rescue, and the cave itself was turned into a museum and a tourist attraction. Despite the boys' widespread fame, lesser known is the fact that the teammates were not all Thai citizens. In fact, three of the players and their coach were stateless when they first entered and became trapped in the cave. Unfortunately, statelessness is a major challenge in Thailand and across the Asia-Pacific region. Statelessness, being a problem in itself, is also an issue that has broad implications for addressing trafficking in persons, as stateless persons are more vulnerable to fall into the hands of traffickers.

It is not hard to picture the last time you had to identify yourself. This might have been to board an airplane, to sign a new labour contract, open a bank account or to vote. It might even have been to sign your marriage papers or to register your child at the local city hall. Your passport or ID card is the proof that you belong to a country and its people. For many, it is the confirmation of their identity. Citizenship enables you to access healthcare, formal employment and education, and generally should include you into the legal and administrative systems of a State and its bureaucracy. Conversely, the lack of citizenship excludes you from it. While "human beings are born free and equal in dignity and rights" under the Universal Declaration on Human Rights, Article 1, the right to a nationality in practice can become the "right to have rights".

Statelessness can have many causes, including poor birth registration, migration, state succession or gender or ethnic discrimination. Particularly the last issue, discrimination, remains a key root cause of statelessness in many contexts worldwide. According to the UN Special Rapporteur on Minority Issues, over 75% of the world's stateless belong to a minority group.³ As Thailand exemplifies, however, statelessness is often caused by a mixture of multiple causes.

Nationality and statelessness in Thailand

The stateless communities in Thailand can be categorised into a few groups. They include the so-called 'Hill Tribes' living in the northern and western parts of Thailand, the 'Moken' along the Andaman coast, and the Rohingya refugees from Myanmar. Children of migrant workers, who over the last decades travelled from surrounding countries in search of better work opportunities, can also run into citizenship issues in cases where they are not properly registered and fail to gain citizenship from either Thailand or the country of their parents. Such is the case with Nopparat Kanthawong, the 25-year-old coach of the Wild Boars football team, who belongs to the Shan tribe, a community from the Shan region in Myanmar. For these groups, the main causes of their statelessness include poor civil and birth registration, gaps in the nationality framework, illiteracy, poverty and discrimination. In Thailand and the wider region, many of these causes can overlap with those of trafficking.

Under international law, Thailand has a number of key obligations to ensure the right to a nationality under, among others, the International Covenant on Civil and Political Rights (Art. 18), the International Convention on the Elimination of all forms of Racial Discrimination (Art. 5(d)(iii)), the Convention

on the Elimination of all Forms of Discrimination Against Women (Art. 9), the Convention on the Rights of People with Disabilities (Art. 18) and the Convention on the Rights of the Child (Arts. 7 and 8). Moreover, the ASEAN Human Rights Declaration (Art. 18) stipulates that every person has the right to a nationality, as prescribed by law.

In domestic law, citizenship in Thailand is covered by the Nationality Act from 1972 and was primarily based on *jus soli*, the 'law of the soil'. Following this principle, the place of birth determines who is a Thai citizen. However, after successive alterations in the law, it excluded anyone whose parents were considered to be illegally residing in the country. In an effort to close the legal gap that arose, Thailand passed its 2008 amendment to the Nationality Act. This should make it possible for stateless persons to acquire Thai nationality if they can show evidence of birth and consequent domicile, and if they have shown good behaviour. While this was a positive step, there remain two issues with this solution. First, in many cases evidence is hard to acquire, as it often concerns rural communities and complicated bureaucracies. This is particularly relevant when it comes to birth registration, a lack of which leaves children vulnerable to statelessness. A second issue is the criteria of 'good behaviour', a highly discretionary term. This is problematic for ethnic minorities living in the highlands of Northern and Western Thailand, who are subject to discrimination and stigmatisation.

For the children of undocumented migrants, Thailand introduced a 'Nationality Verification Registration' in 2006 to regulate the status of migrants from the surrounding countries, allowing irregular migrants to receive identity documents. Although this benefited many persons, corruption and complicated bureaucracy make the implementation difficult in many cases.

Trafficking in Thailand

For many years, Thailand has been a source, destination and transit country of forced labour and sex trafficking. This can take the shape of working in factories, begging on the streets or being put to work in massage parlours, just to name a few. In the 2019 Trafficking in Persons Report, published yearly by the United States Department of State, Thailand remained in Tier 2 out of 3, meaning that the government of Thailand is making substantial efforts to eliminate human trafficking but does not yet meet the minimum standards. This demonstrates some improvements compared to 2015, when Thailand was placed in Tier 3. Yet, there are some serious challenges that still need to be addressed, and the Guardian reported that in 2019 Thailand was hit by a record number of human trafficking cases.⁴ For example, Thai law permits recruitment agencies to charge recruitment fees to Thais seeking overseas employment. Excessive fees make them more vulnerable to debt bondage or other exploitative conditions (see article by Wilkins in this issue). Moreover, obstacles in tackling trafficking in persons in Thailand include fear of prosecution amongst victims and survivors, but also corruption and the lack of investigation or prosecution. As is the case for statelessness, a big hurdle in fighting these injustices is bureaucracy and a complicated government civil registration system.

Relationship between statelessness and trafficking

Globally, there is a strong link between trafficking in persons and statelessness. For instance, abuses by traffickers can include the withholding of work and identity documents, which can put the person in a more dependent position and at risk of statelessness. In Thailand, this particularly applies to migrants from surrounding countries who fled conditions of poverty and/or oppression, particularly those from Myanmar, Cambodia and Laos.

Conversely, statelessness can leave a person more vulnerable to trafficking as well. In Thailand, a stateless person often faces travel restrictions domestically or may not leave his or her province without permission, has less access to formal job opportunities and cannot

own land. Stateless children are particularly vulnerable when they are not able to access education. With few prospects of a better future, stateless persons can be forced to look for better work elsewhere and – as labour migrants – can be easily deceived by brokers.

Internationally, there is an increased awareness of the statelessness-trafficking link. In 2017, the UN Committee on the Elimination of Discrimination against Women (CEDAW) recommended that Thailand address the root causes of trafficking, “including poverty, lack of economic opportunities and statelessness”.⁵ The UN Human Rights Committee (HRC-CCPR) in the same year called on Thailand to “strengthen its efforts to effectively combat trafficking in persons” and “recommended Thailand to ensure the promotion and protection of rights of stateless persons and protection against trafficking.”⁶

The ‘Hill Tribes’ and Rohingya

The biggest stateless population in Thailand belongs to the ‘Hill Tribes’, an umbrella-term used for ethnic minority groups living in the northern and western parts of the country close to the borders with Myanmar and Laos, including the Karen, Hmong, Lahu, and others. For these ethnic minority groups, statelessness is not an isolated challenge. They are often subjected to discrimination and are associated with the negative stereotypes of being involved in drugs trafficking, communism and deforestation.

The Hill Tribes have become stateless, or rather remained stateless, by a combination of issues in civil registration, discrimination and immigration regulations since Thailand first started to document its nationals in the 1950s. For many members of the Hill Tribes, the concept of citizenship was not known, in particular for those living in poor and remote areas. The lack of awareness of the importance of registration is a common problem in such areas around the world, both in Asia and beyond. Moreover, in the process of Thailand’s nation-building in the mid-twentieth century, Thai ethnicity became the centre of the national Thai identity. This excluded the Hill Tribes, who are of different ethnic groups and are often seen as foreigners. Not registered and therefore without any proof of identity, generation after generation of Hill Tribes individuals failed to gain Thai citizenship.

The consequences of being stateless and the root causes of trafficking overlap in a number of ways for the Hill Tribes communities in Northern Thailand. These include poverty, the lack of education and other rights, as found by an empirical research conducted by Tilburg University in 2014.⁷ Stateless persons face travel restrictions and have limited access to the labour market, particularly in those sectors where permits are needed. This, together

with discrimination against these ethnic minority groups and corruption among state officials, can leave members of the Hill Tribes particularly vulnerable to trafficking. The said research also noted that traumatic events, such as financial issues or the inability to receive adequate medical treatment at moments of dire need, often place an unbearable burden on a stateless person’s ability to cope with such crises. In this regard, the COVID-19 crisis and its effect on all aspects of life on a global scale is a worrying development. Situations of this kind and limited coping mechanisms of those who are already the most vulnerable in society, including stateless persons, may force individuals to take serious risks, such as migrating through a dubious middleman, rather than relying on established state structures. Without alternatives, stateless persons are more likely to become trapped in a cycle of exploitation.

The Rohingya are perhaps one of the clearest examples of how statelessness can lead to other human rights violations. It also demonstrates how a lack of citizenship can be an aggravating component of trafficking and exploitation across the region. The Rohingya is a Muslim group that lived as an integrated community in Myanmar well before the country’s independence in 1948. While there have been ethnic and religious tensions in Myanmar throughout its modern history, most Rohingya called Myanmar their home and actively took part in all parts of society, including the economy, police forces and politics. However, they were made formally stateless after the amendment of Myanmar’s Citizenship Law in 1982. Subsequently, the Rohingya lost many of their rights and have been regarded as Bengali immigrants by Myanmar’s authorities ever since. This exclusion accumulated in a ‘clearance operation’ by the Myanmar military – the *Tatmadaw* – between 25 August and 31 December 2017, using insurgent attacks on 30 police posts to legitimise what former U.N. High Commissioner for Human Rights Zeid Ra’ad al-Husseini referred to as “a textbook example of ethnic cleansing”.⁸ For these events, Myanmar is currently appearing before the International Court of Justice on account of genocide. With the exodus that followed, most Rohingya fled to Bangladesh, while others found refuge in other countries in and outside the region, including Malaysia, Pakistan, Saudi Arabia and Thailand.

It is, however, not the first time the Rohingya left Myanmar in fear of persecution. The Rohingya have spread across the Asian region and the Middle East in the last decades. In Thailand, the total number of Rohingya refugees is estimated to be comparatively low, yet it plays an important role as transit country for those who aim to reach the neighbouring Malaysia. This country currently

hosts over 100,000 Rohingya refugees and over 50,000 others, including many Christian Chin from Western Myanmar.⁹ To get there, some Rohingya refugees pay traffickers large sums of money for travel documents. In 2015, dramatic events played out on the waters of the Strait of Malacca and the Andaman Sea when thousands of Rohingyas were taken on boats to Malaysia, only to be abandoned at sea while the traffickers and smugglers escaped arrest by Thai authorities. Although Thailand cracked down on the trafficking of Rohingya refugees after this event, there are concerns that old trafficking networks are reviving. Particularly worrying are reports of Rohingya who have been unable to pay their smugglers or traffickers and are sold into forced labour.¹⁰ Furthermore, in light of the COVID-19 pandemic, boats carrying hundreds of Rohingya refugees were denied entry by both Malaysia and Thailand over fears of passengers carrying the virus.

Rohingya who reside in Thailand are also vulnerable to trafficking. With no or very little documentation, they risk being deported by the authorities or put in Thailand’s immigration detention camps and ‘temporary shelters’ for months on end. The COVID-19 pandemic has added a new aspect, and authorities across the region have quoted public health reasons to detain individuals. In this light, Thailand has detained 35 Rohingya children, women and men and is threatening to return them to Myanmar, in violation of the international prohibition of *refoulement* where one is returned to a country where he or she is likely to face persecution and suffer harm.¹¹ In other cases, they can fall in the arms of smugglers and be held in captivity in inhumane conditions. Already in 2014, the UNHCR reported that Rohingya “were kept for months in overcrowded camps and sometimes even cages until their families could pay for their release”.¹² Thailand has no domestic refugee law framework, and all situations of foreigners entering the country are regulated by Thailand’s Immigration Act of 1979. Thailand also has not signed or ratified the Refugee Convention nor its Protocol and refuses to recognise the Rohingya as refugees. In fact, Thai authorities have in many instances avoided mentioning the term Rohingya – speaking rather of ‘Myanmar Muslims’ – in an effort to protect their political and economic ties with neighbouring Myanmar.

Future

According to the 2019 Trafficking in Persons Report, Thailand is showing its commitment to address human trafficking, although great challenges remain. It has convicted and sentenced increasingly more traffickers based on its 2008 Anti-Trafficking Law, invested in data collection and facilitated the ability of undocumented migrant workers to register with the government. Thailand has also made an effort on the issue of statelessness amongst children born to migrant workers and people belonging to the Hill Tribes. For the three previously stateless players of the Wild Boars, they were finally granted Thai citizenship in August 2018. They will be able to enjoy all the opportunities and rights any Thai citizen enjoys, including access to education like the other boys on the football team. However, it should be noted that this was an *ad hoc* gesture, as a celebration of their successful rescue, and that Thailand remains one of the countries where both statelessness and human trafficking are particularly problematic.

At the international level, Thailand made commitments to address statelessness. At the United Nations Offices in Geneva, it is taking the lead in the Group of Friends of UNHCR’s so-called #Belong campaign to end statelessness by 2024. In October 2019, it made a series of pledges during the High-Level Segment on Statelessness with respect to enhancing the effectiveness of systems that facilitate stateless persons’ access to civil registration services and adjusting regulations for granting nationality and rights to target groups for them to access the naturalisation process equally and equitably.¹³ While government statements specifically mentioned the ‘hard-to-reach populations’, they again remained short of specifically mentioning the Rohingya. The country has a long way to go before eliminating statelessness by 2024.

While the Hill Tribes, Rohingya and other stateless groups face specific situations in Thailand, their destiny is not unique. With over 7.5 million stateless persons living in the Asia-Pacific, it is an issue that deserves more attention across the region. In the same vein, the nexus between statelessness and trafficking in persons is not unique to Thailand. With overlapping root causes, and the mutually reinforcing vulnerabilities that both stateless persons and victims of trafficking face, citizenship issues must be taken into account in the efforts to combat trafficking. COVID-19 poses an entirely new threat for those already in fear of being arrested and mistreated. We are only beginning to understand the long-lasting effects of the pandemic on those most marginalised and unable to access basic healthcare and other provisions.

As with the fight against trafficking in persons, civil society plays a central role for advocacy of the issue of statelessness. Since November 2016, the Statelessness Network Asia Pacific (SNAP) is the leading organisation in the Asia Pacific region to work with governments, with about 100 members in over 20 countries, including Thailand, to address statelessness. Organisations, such as the Hill Area Development Foundation, travel to Northern Thailand to help members in stateless communities gain citizenship by submitting the necessary documents, one village at a time. With NGOs and local activists such as these at the frontline, Thailand should ensure that it can translate political will into nationality solutions. Only then can it fully eliminate the injustice of statelessness and its associated vulnerabilities by 2024 and serve as a positive example for other countries facing the same challenge of eliminating statelessness in the region.

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Notes

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Photo of a Rohingya girl, taken in Myanmar, May 2013. UNHCR estimates that a stateless child is born somewhere in the world at least every 10 minutes. Photo reproduced under a [CC license](https://creativecommons.org/licenses/by/4.0/), courtesy of [Steve Gumaer](https://www.flickr.com/photos/stevegumaer/) on Flickr.