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 United Nations High Commissioner for Refugees (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 475,099 registered individuals who are stateless in Thailand as of end 2020, 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 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.2 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 working 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)(ii)), the Convention on the Elimination of All Forms of Discrimination Against Women (Art. 9), the Convention on the Rights of Persons 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, and passed its 2008 amendment to the Nationality Act. This should make it possible for stateless persons, for example those of Rohingya origin, to show evidence of birth and consequent domicile, and if they have shown good behaviour in the past, there remain two issues with this solution. First, in many cases evidence is hard to acquire, for example for the children of undocumented migrants. Secondly, a source, destination and transit country for forced labour and sex trafficking. This can take the shape of working in factories, beggars on the streets, or 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 “minimal efforts to eliminate human trafficking but does not yet meet the minimum standards”. This demonstrates some positive developments compared to 2015, when Thailand was placed in Tier 3. Yet, there are some serious challenges that still need to be addressed. For example, Thai authorities reported that in 2019 Thailand was hit by a record number of human trafficking cases.3 For example, law permits recruitment agents to charge recruitment fees to Thais seeking overseas employment. Excessive fees may force them to take on other precarious or less 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 injurious issues is a complicated bureaucracy.

Relationship between statelessness and trafficking

Generally, there is a strong link between trafficking in persons and statelessness. For instance, former trafficking victims are more likely to undergo 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 find 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 exploited by traffickers.

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.” The UN Human Rights Committee (HRC-COR9) in the same year called on Thailand to “strengthen its efforts to effectively combat trafficking in persons” and “encourage Thailand to ensure the promotion and protection of rights of stateless persons and protection against trafficking.”

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, Monk, Lahu, and others. For these ethnic minority groups, statelessness is not an isolated challenge. These groups are often seen as foreigners. Not registered by the authorities, 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 2012. 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, makes these persons particularly vulnerable to trafficking. The said research also noted that traumatic events, such as being sold by a trafficker or having to undergo inadequate medical treatment at moments of dire need, often place an unbearable burden on a stateless person in a crisis. Cycles of abuse 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 for a long time, most Rohingya called Myanmar their home and actively took part in all parts of society, including politics. However, they were formally stateless after the amendment of Myanmar’s Citizenship Law in 1982. The_bottom_reasons for this are complex, but it is significant that the Rohingya lost many of their rights and have been regarded as Bengali immigrants by the authorities throughout Myanmar. This exclusion accumulated in a ‘clearance operation’ by the Myanmar military – the Tatmadaw – between 25 August and 31 December 2017, using insurmountable attacks on Rohingya communities that led to the displacement of an estimated 360,000 persons. Women, children and men is being threatened to return them to Myanmar, in violation of the international humanitarian law. So far, no one is returned to a country where he or she is likely to face persecution and suffer harm.”

In the same year, the UNHCR reported that “Rohingya “were finally given the chance to move out of overcrowded camps and sometimes even cages until their families could pay for their freedom,” in 2015, Thailand introduced a so-called domestic refugee law, and all situations of foreigners entering the country are regulated by Thailand’s Immigration Act. Thailand and also has not signed or ratified the Refugee Convention or its Protocol. In 2019, the International Court of Justice on account of the ‘hard-to-reach populations’, they again lead to other human rights violations. It also provides the legal basis for the treatment of the Rohingya as refugees. In fact, Thai authorities have in many instances evaded the terming the Rohingyas as 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 countering trafficking. It has made some great challenges remain. It has convicted and sentenc...