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# Exploring the Interaction between Statelessness, Legal Empowerment and Human Trafficking

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## Abstract

There is a common claim and widely held perception that statelessness puts a person at greater risk of becoming a victim of human trafficking. The underlying logic is compelling: without any nationality, stateless people often face severe obstacles in access to education, employment, health care, legal remedies, freedom of movement and other basic rights - thus they are more likely to take risks in the hope of improving their lives and they are more readily exploitable. The link between statelessness and a heightened vulnerability to human trafficking has, however, never been decisively demonstrated using empirical data. In order to fill this information gap, the authors sought to develop a methodology that would enable the connection between statelessness and trafficking to be mapped. This article outlines the theory and assumptions that underlie the research methodology developed and briefly discusses how this methodology is being implemented in a concrete pilot project in Thailand.

## Keywords

statelessness – human trafficking – subjective legal empowerment – methodological approach

### 1 Introduction

It is a common claim and widely held perception that statelessness puts a person at greater risk of becoming a victim of human trafficking.<sup>1</sup> However, the causal link between statelessness and trafficking has never been decisively demonstrated using empirical data. In order to fill this information gap, the authors sought to develop and pilot a methodology that would enable the interaction between statelessness and trafficking to be mapped.<sup>2</sup> Thailand was selected as the location in which to field-test this methodology, since it has a large and long-standing statelessness problem.<sup>3</sup> Besides, it is precisely Thailand's situation that is most often cited as an example when the connection is made between statelessness and trafficking.<sup>4</sup> Nevertheless,

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- 1 United States Department of State, *Trafficking in Persons Report 2012* (2012) <<http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm>> accessed 5 October 2013; C. Foster Crawford, 'Cultural, Economic and Legal Factors Underlying Trafficking in Thailand and their Impact on Women and Girls from Burma' (2006) 12 *Cardozo Journal of Law & Gender* 821; UNIAP, *SIREN Human Trafficking Data Sheet* (2008) <[http://www.no-trafficking.org/reports\\_docs/thailand/datasheet\\_thailand\\_oct2008.pdf](http://www.no-trafficking.org/reports_docs/thailand/datasheet_thailand_oct2008.pdf)> accessed 3 November 2013; D. Brennan, *Victim-Centred Prevention Methods of Human Trafficking in the Greater Mekong Sub-Region – an Examination of Grass-roots and Governmental Efforts*, unpublished paper (2013) on file with the author.
  - 2 This project was made possible by a research grant from the United States Department of State, Bureau for Population, Migration and Refugees.
  - 3 Thailand is home to a stateless population currently estimated at just over half a million people. UNHCR, *Global Trends 2012 – Annexes. Table 7, Persons under UNHCR's statelessness mandate* (2013) <[http://www.unhcr.org/globaltrends/2012GlobalTrends\\_0913.zip](http://www.unhcr.org/globaltrends/2012GlobalTrends_0913.zip)> accessed 5 October 2013.
  - 4 This is pointed out, for instance, in L. Kingston, 'A Forgotten Human Rights Crisis: Statelessness and Issue (Non) Emergence' (2013) 14 *Human Rights Review* 73. For relevant publications on Thailand, see Vital Voices Global Partnership, 'Stateless and Vulnerable to Human Trafficking in Thailand' (2007) <[http://www.humantrafficking.org/uploads/publications/Vital\\_Voices\\_Stateless\\_and\\_Vulnerable\\_to\\_Human\\_Trafficking\\_in\\_Thailand.pdf](http://www.humantrafficking.org/uploads/publications/Vital_Voices_Stateless_and_Vulnerable_to_Human_Trafficking_in_Thailand.pdf)> accessed 3 November 2013; Y. Lertcharoenchok, 'Searching for identity' in *Step-by-Step Newsletter from the Inter-Agency Project on Trafficking in Women and Children in the Mekong Sub-Region* (2001) <[www.no-trafficking.org/content/pdf/issue5.pdf](http://www.no-trafficking.org/content/pdf/issue5.pdf)> accessed 3 November 2013.

the overall methodological framework is broader in application and can be adapted to other domestic contexts. Without attempting to comprehensively address all aspects of the project, this article discusses the main steps, considerations and decisions in the development of the research methodology and offers an insight into some of the findings from its implementation in the Thai context.

## 2 Choosing a Methodological Approach

The logic behind the claim that statelessness heightens a person's vulnerability to human trafficking is compelling and includes the following considerations.<sup>5</sup> Firstly, without any nationality, stateless people often face severe obstacles in access to education, employment, health care, legal remedies, freedom of movement and other basic rights. Armed with the sense that 'things cannot get any worse', stateless people will be more likely to take risks in the hope of improving their lives, including, for instance, enlisting the help of a broker to migrate and find a job elsewhere. Moreover, since statelessness can entail a lack of basic identity documents and restricted access to the labour market, a stateless person is more likely to feel compelled to take such risks. In effect, regular migration or employment channels are closed to him. Finally, stateless people are more readily exploitable simply because their overall vulnerability and position makes them less able or willing to make use of the various avenues through which others who find themselves in an exploitative situation can seek assistance (e.g. through labour standards complaints procedures or criminal prosecution).

A range of approaches could be conceived for the exploration of these and other potential points of interaction between statelessness and human trafficking. However, the ultimate aim of the present study was to inform the design or adaptation of anti-trafficking measures which focus on the supply end of the trafficking chain: i.e. targeting the population at risk.<sup>6</sup> The data collection was directed towards discovering if – and understanding why – a stateless person is more likely than someone who holds nationality to fall victim to exploitative practices. This is where, in addition to integrating

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5 These comments are based on some of the reasons given by key informants during interviews conducted in the initial stages of the research in Thailand (Bangkok, Chiang Mai, Pattaya 2013).

6 As opposed to, for instance, changing behaviour at the demand side of the trafficking chain or developing policy in relation to the prosecution of perpetrators of trafficking.

statelessness and trafficking expertise within a single project, a third component was introduced: Subjective Legal Empowerment theory.

The theory of Subjective Legal Empowerment (hereinafter, SLE) suggests that a person's self-belief in his or her ability to resolve a dispute or conflict is a good measure of the actual ability of that person to resolve the situation.<sup>7</sup> On the contrary, perceived lack of power is a substantial barrier to solving the existing problems. The advantage of this theory as a methodological framework is that it allows for the (relative) quantification of an individual or population's legal empowerment such that it can be compared both between groups and across different scenarios or spheres of life. In other words, while controlling against other factors such as gender or socio-economic status, it becomes possible to measure whether a stateless person is more or less empowered than a national from the same community to solve a situation that could be qualified as a (legal) dispute.<sup>8</sup> Furthermore, such comparative measurements can be taken with regard to particular legal problems that are relevant to the question of whether a person is at heightened risk of trafficking. Thus, for example, the relative SLE with regard to the ability to deal with exploitative labour conditions can be established for the stateless members of a community and their neighbours who hold nationality. This enables the testing of the overall hypothesis of this research, namely that *a stateless person is more likely to become a victim of trafficking in persons than a person with citizenship*. Exactly how this theoretical framing was translated into a concrete and workable methodology is set out next.

### 2.1 *Step One: Research Design*

While sources point to statelessness placing especially women in a situation of extreme vulnerability,<sup>9</sup> there is little data available on what and how significant the role of statelessness is in creating increased vulnerability. The current research will contribute to closing this knowledge gap by developing, implementing and documenting a research methodology

7 SLE is grounded in the psychological theory of 'self-efficacy': if you believe you can do something, you are more likely to put in the time and effort necessary and to indeed be successful. M. Gramatikov, R.B. Porter, 'Yes, I Can: Subjective Legal Empowerment' (2011) 18 *Georgetown Journal on Law & Policy* 169.

8 Note that this could refer to a wide range of situations, from domestic abuse, to violations of labour rights to dealing with debt.

9 For instance, UN Secretary-General, *Guidance Note of the Secretary General: The United Nations and Statelessness* (2011) <<http://www.refworld.org/docid/4e11d5092.html>> accessed 20 October 2013; UN Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary General* (2011) A/HRC/19/43.

specifically dedicated to assessing the impact of statelessness on women. In adapting the SLE research framework for the assessment of the legal empowerment of stateless women, the focus will be on areas that most closely relate to these women's vulnerability to human trafficking. Thus, the quantitative and qualitative data collection will capture information regarding the ability of women (both stateless and citizen) to cope with certain key problems indicative of a heightened vulnerability to trafficking (the root causes).

By using and combining theories on SLE with knowledge on stateless hill tribe communities and human trafficking, the overall hypothesis breaks down into two underlying assumptions:

- a. Stateless people from the hill tribe communities in Thailand are more often affected by causes of trafficking than Thai citizens from the hill tribe communities
- b. Stateless people from the hill tribe communities in Thailand are less able to solve problems and (legal) disputes, compared to Thai citizens from the hill tribe communities

If both questions are answered in the affirmative the risk of becoming a victim of trafficking for stateless people is high, if one of the two is answered in the affirmative there is a heightened risk and if no affirmative answer can be given there is no heightened risk for stateless people to become victims of trafficking.

Implemented in close cooperation with local partners, a quantitative survey measured SLE of Thailand's hill tribe population across the identified problem areas for human trafficking as well as on the occurrence of these problem areas. The initial aim was to complement this with qualitative, in-depth interviews with hill tribe victims of labour and sexual exploitation to supplement and facilitate the interpretation of the survey findings in terms of understanding the link between statelessness, legal empowerment and human trafficking. As will be further outlined below, this part of the research needed amendment.

## ***2.2 Step Two: Literature Review on Situation of Stateless People in Thailand and Risk Factors for Trafficking***

As a first step, a desk review on the root causes of human trafficking in Thailand was conducted with the aim to afterwards examine whether these root causes are more prevalent in stateless hill tribe people than in citizen hill tribe people. Based on literature, the following root causes of human trafficking

seem to be most pertinent for the hill tribe communities:<sup>10</sup> poverty, lack of education, lack of employment opportunities, corruption and lack of awareness of the risks involved in migration. In addition to these external causes of trafficking some internal or subjective factors can be identified as well. Hemming and Piper state that seeking adventure, becoming independent and modern as well as enhancing life chances are among the motivations for traditional Thai women to migrate internally.<sup>11</sup> Furthermore, in relation to this observation, a growing materialism and desire to escape poverty amongst Thai people is contributing to the wish especially for young people to 'not miss the boat' and to profit to the maximum extent possible from the opportunity of increased wealth. They seek employment in bigger cities and leave rural life behind, taking the risk of unemployment, exploitative practices and living on the margins of society. Based on these findings a first survey questionnaire was designed.

In order to identify the impact of *statelessness*, independent of other factors, it was vital to be able to control for this variable. It was therefore initially explored who is stateless in Thailand and where those people could be found. Statelessness particularly affects Thailand's hill tribe communities and these were identified as the research target. The Thai government currently estimates there to be 506,197 stateless hill tribe people in the country. Although hill tribe people can be found living in towns and cities around the country, the majority are found in the Northern regions of Thailand, including the Chiang Mai and Chiang Rai provinces; these areas were thus chosen as the primary research sites.

Given the complexity of legal statuses and related documents in Thailand, and in order to get an accurate picture of the current situation of stateless people, experts of the UNHCR, the Thai government and Plan were consulted during the first stage of the field research (see below). It was learned that ID cards with the 13-digit personal identity number, issued in different colours to reflect the holder's status, are now widely used even by stateless people. This fact provided us with an objective way to make the distinction between stateless

10 UNIAP, *SIREN Human Trafficking Data Sheet* (2008) <[http://www.no-trafficking.org/reports\\_docs/thailand/datasheet\\_thailand\\_oct2008.pdf](http://www.no-trafficking.org/reports_docs/thailand/datasheet_thailand_oct2008.pdf)> accessed 3 November 2013; United States Department of State, *Trafficking in Persons Report 2013: Thailand* (2013) <<http://www.state.gov/documents/organization/210742.pdf>> accessed 20 October 2013; D. Brennan, *Victim-Centred Prevention Methods of Human Trafficking in the Greater Mekong Sub-Region – an Examination of Grass-roots and Governmental Efforts*, unpublished paper (2013) on file with the author.

11 J. Hemming and N. Piper, *Trafficking and Human Security in Southeast Asia: A sociological perspective*, unpublished paper (2004) <[http://www.childtrafficking.com/Docs/piper\\_01\\_human\\_asia\\_0708.pdf](http://www.childtrafficking.com/Docs/piper_01_human_asia_0708.pdf)> accessed 3 November 2013.

people (those in possession of a pink or white card), and citizens (those in possession of a blue card). All other differentiations in colours and statuses were not taken into consideration.

Although statelessness itself is often seen as an important factor for vulnerability to trafficking it must also be regarded in combination with other factors in order to understand *how* statelessness contributes to this vulnerability. For instance, where statelessness is also a burden for schooling and legal employment it feeds other factors for vulnerability. In that way stateless people are more easily affected by the root causes identified above.

In the above-discussed survey, possible problems and dispute situations were described that related to questions on how likely it would be for the respondent to solve that situation. Such questions give an impression of a person's level of SLE and by distinguishing between citizen and stateless it gives an answer to whether stateless are less able to solve problems and (legal) disputes (the second assumption of the study).

### 2.3 *Step Three: Field Research Part I: Key Informant Interviews*

One of the aims of the first stage of the field research was to test the literature findings both on statelessness and human trafficking and to collect additional and up-to-date information on the actual situation on these topics. To that end, key informant interviews were held with nearly twenty organisations and experts working either on statelessness, trafficking and/or hill tribe communities. Based on these interviews some new insights were gained, on the situation of stateless communities as well as the risk factors of trafficking in Thailand. For example, several interviewees mentioned the intrinsic element of whether a person is willing to take risks when making an effort to improve his or her situation. Some people seek adventure without paying due regard to risks that might materialize. We have labelled this factor as *disposition to risk-taking*. Another example was the role of cultural factors, especially the traditional responsibility placed, in Thailand, on the shoulders of girls and women (more than on boys and men), to take care of and financially support one's parents. This cultural - some named it religious - factor impacts negatively on women as they feel the need to earn money to take care of family members. Another interesting point raised was the use of middlemen/brokers while seeking job opportunities or possibilities to go elsewhere to improve one's life or living conditions – a factor that increases the risk to fall victim to exploitation. These and other aspects related to root causes of trafficking and the determination of stateless people were used to further develop the survey questionnaire. Generally, however, the respondents could not provide very detailed information on differences in vulnerability for trafficking practices

between stateless and citizen hill tribe people. This confirmed the need for a more detailed study.

#### 2.4 *Step Four: Field Research Part II: The Survey*

The Law Clinic of Chiang Mai University (CMU Law Clinic) was contracted for the implementation of the survey. A full-day training of interviewers was conducted; input was also sought from experts from the CMU Law Clinic and the university's anthropology department. The aim of the consultations was to further refine the method of questioning and inform the approach to the target communities (how and when to conduct the survey, language considerations, etc); the 50/50 division between citizen and stateless and the division between men and women were also discussed, including how to deal with such quotas in practice. During the training, the draft questionnaire was piloted to check translation, improve internal reliability, find out how much time people needed for the questionnaire, which questions interviewers found difficult to ask, etc. The results of the piloting were discussed with the research team and the interviewers, which led to final adaptations to the questionnaire. CMU Law Clinic commenced the survey proper a month after the training, taking about a month to reach the agreed number of respondents. The minimum sample of the survey was set at 450 persons. In the end, 490 respondents from four different villages participated.<sup>12</sup>

To avoid any conflicts or adverse impact of the research, CMU Law Clinic obtained the permission of the respective community leaders for conducting the survey. The initial randomisation strategy for identifying survey respondents proved problematic because the interviewers were confronted with an extremely high percentage of non-respondents (many people were not at home, working in the fields at day time). It was therefore decided to visit the villages during evening hours and to use a central place in the village where people gathered to participate in the survey.

#### 2.5 *Step Five: Field Research Part III: In-depth Interviews with Trafficking Victims*

In order to contextualize and interpret the survey data a further objective was included in the research design - to identify and talk to victims of trafficking (qualitative data collection tools were developed in that regard). This, in the

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12 SanTiSuk village, Tambon PaTaung, Mae Jan District, Chiang Rai; TongJaSai village, Tambon Mae SaLong Nong, Mae Fha Laung District, Chiang Rai; Ban PaLaong Hua JaNu, Tambon Mon Pin, Fang District, Chiang Mai; Ban Na Lae, Tambon Mon Pin, Fang District, Chiang Mai.

end, turned out to be extremely difficult. We were not able to conduct these interviews ourselves during our field visit, mainly because of a lack of organizations that could actually help with access to the target group we were looking for. The alternative, namely that NGOs working directly with victims of trafficking from the hill tribe communities would conduct interviews on our behalf, ultimately turned out to be unsuccessful as well. One of the main reasons was that they could not find *adult* victims of trafficking who had been a victim over the last six years. This was much to our surprise, given that the desk review and key informant interviews pointed to trafficking as a major problem among hill tribe communities and the NGO we contacted was well-known for its assistance to victims of trafficking.

This fact inevitably had an impact on the rest of the project since key information to understand, contextualize and supplement the survey findings was missing. This part of the project was amended by shifting the focus away from further understanding on how statelessness impacts vulnerability of trafficking and how SLE plays a role in this tripartite interaction; instead, we focused on understanding why certain root causes of trafficking are more prevalent among stateless hill tribe people. To that end, the project team plans to conduct in-depth interviews with a small sample of respondents from the hill tribe communities, which participated in the survey (to take place in early 2014).

## 2.6 *Step Six: Analysis and Interpretation of the Survey Outcome*

Although the full analysis of the research data is not yet completed, the initial findings are already informative. So far, the survey data clearly shows that statelessness has negatively impacted hill tribe people in Thailand as compared to otherwise similarly situated members of the same community who do hold citizenship. The negative impact is felt in a number of ways, especially with regard to education, level of household income, formalisation of marriage, attitude to the use of middlemen in seeking employment outside the village, perception of labour exploitation problems and perceived exposure to labour or sexual exploitation.

Thus, when interpreted in light of the literature review and key informant interviews, the survey confirms that certain recognised 'root causes' of trafficking are aggravated by statelessness (i.e. low levels of education and income). The survey also shows that stateless people are more likely to migrate to look for work and more likely to pay a middleman in the process suggesting that they may be more likely to be exposed to potential traffickers/situations of exploitation.

At the same time, the survey data did not show any statistically significant difference between the responses from stateless hill tribe people and those

with citizenship on victimisation of crime, confidence to solve disputes or risk-taking.

These findings suggest that statelessness might not be having the effect of 'pushing' people to take risks or making them less able to solve disputes that could otherwise leave them vulnerable to exploitation. Again, interpreting this in light of the literature and key informant interviews, it would appear that certain factors that are understood to increase a person's vulnerability to trafficking are not aggravated by statelessness. The intention is to try to further clarify the picture through carefully tailored questions based on the survey data; this is going to happen via the in-depth interview process now foreseen as the final stage of the research.

### 3 Conclusion

While the research on the interaction between statelessness and human trafficking for the hill tribe people in Thailand is still on-going, the first findings from the analysis of the survey data indicate that there is some interaction between these phenomena. This needs to be further substantiated and elaborated through in-depth interviews with the population concerned before final conclusions can be drawn. Coming back to the assumptions underlying the research, it is safe to say that we have found some proof that stateless hill tribe people are more often affected by some of the root causes of trafficking than their similarly-situated community members with citizenship. So far, however, proof could not be established for the assumption that they are less likely to solve problems and thereby extract themselves from a situation that could otherwise leave them prone to exploitation. The final results including an elaborate explanation of the research, the methodology and findings will be published in 2014.