

NEMZETI KÖZSZOLGÁLATI EGYETEM
ÁLLAMTUDOMÁNYI ÉS NEMZETKÖZI TANULMÁNYOK KAR

ORSZÁGOS TUDOMÁNYOS DIÁKKÖRI KONFERENCIA
2025. ÉVI TAVASZI FORDULÓ

**SAFEGUARDING THE LIFE, LIBERTY, AND SECURITY
FOR STATELESS VICTIMS OF HUMAN TRAFFICKING
IN THAILAND**

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Április 4.

2024

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1 Introduction

In Thailand, there are many indigenous cultures who live isolated from the modern state's structure, particularly in border regions.¹ Furthermore, the area is also greatly affected by the South to South migration, which most regard people from Myanmar, who have been experiencing armed conflict against the central government.² Human trafficking is a crime that has been expanding internationally,³ peaking in the Asia and Pacific region, which in 2021 took up to more than a half of the global total, that is 29.6 million cases of forced labour and forced marriage.⁴ It is an accepted notion worldwide that statelessness intensifies human trafficking, putting victims at a more vulnerable position for human traffickers.⁵ Thailand is a fit case study since the government has made been many developments such as granting nationality to stateless people or introducing new ways to fight human trafficking. However, to this day, there are hundreds-thousands of people who are more vulnerable to human trafficking in the country due to their statelessness, and the cases are not declining dynamically.⁶

The international legal community has been joining forces to combat human trafficking, an example for this is the United Nations' General Assembly resolution of the United Nations Convention against Transnational Organised Crime (UNTOC) including a Protocol that aims at preventing and punishing human traffickers.⁷ Today, this is an international agreement with 192 parties to it and has served as a foundation to define human trafficking and specific strategies for the prevention of this crime. And while *Article 2b* and *Article 14* of the Protocol do mention the respect of human rights of the victims, this document is predominantly from a transnational criminal law perspective, rather than the adoption of a human rights approach. This being said,

¹ Matthew Brown, 'Addressing statelessness in Thailand' (*The Borgen Project*, 2021) <<https://borgenproject.org/statelessness-in-thailand/>> accessed 2 November 2023.

² *ibid.*

³ United Nations Human Rights, 'About trafficking in persons and human rights' (*United Nations Human Rights*, n.d.) <<https://www.ohchr.org/en/trafficking-in-persons/about-trafficking-persons-and-human-rights#:~:text=In%20fact%2C%20trafficking%20and%20associated,under%20international%20human%20rights%20law.>> accessed 2 November, 2023.

⁴ International Labour Organisation, 'Global Estimates of Modern Slavery' (*International Labour Organisation*, 2022).

⁵ Laura van Waas, Conny Rijken and Martin Gramatikov, 'Exploring the Interaction between Statelessness, Legal Empowerment and Human Trafficking' [2014] 19 TLR 303.

⁶ International Institute for Asian Studies, 'The statelessness-trafficking nexus. A case study in Thailand' (*International Institute for Asian Studies*, Autumn, 2020) <<https://www.iiias.asia/the-newsletter/article/statelessness-trafficking-nexus-case-study-thailand>> accessed 2 November 2023.

⁷ The United Nations Convention on Transnational Organised Crime and the Protocols Thereto (adopted 15 November 2000, UNGA Res 55/25).

there is no specified plan from a human rights perspective globally to combat the problem of trafficking in persons, and to include the elements that statelessness amplifies human trafficking cases. An approach as such would be crucial since both human trafficking and statelessness are indirectly protected by fundamental human rights, which enshrine the protection against slavery, sexual exploitation, forced labour, and the protection of the right to life, liberty or security.⁸

This study will assess *how the right to life, liberty and security creates the foundation for a human rights approach to fight human trafficking of stateless people in Thailand*. To answer this, we will establish the definitions of human trafficking and statelessness, and the general international law framework. Afterwards, the case of Thailand will be analysed regarding these societal challenges. Then, we will look at the Universal Declaration of Human Rights, in particular *Article 3*, which regards the right to life, liberty and security of persons and analyse Thai human rights laws. To offer a contrasting view of the human rights approach, we will also examine the transnational criminal law perspective, thus the UNTOC Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. This point of the paper will be essential to potentially shine light on the aptitude of a human rights perspective, or to offer improvements on the current approach.

1.1 Methodology

A doctrinal and traditional legal analysis of international human rights law will be utilised, to answer the research question and the sub-questions of this thesis. Within this approach, the Universal Declaration of Human Rights (UDHR) will be analysed in the scope to what extent it can establish a framework for the central issue at hand. More specifically, Article 3 of this Declaration will be looked at, which describes the right to life, liberty and security. In terms of traditional legal research, the applicability, scope and the international jurisdiction will also be involved in this research paper. Next to the UDHR, other key international law sources will be examined, as well as the Universal Periodic Review cycles in Thailand. The combination of assessing these essential legal instruments will give us an in-depth overview of human rights law both globally, and locally in Thailand. Regarding the Protocol against human trafficking, namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children as an addition to the UNTOC, another doctrinal and traditional legal analysis will be

⁸ United Nations Human Rights, 'About trafficking in persons and human rights' (*United Nations Human Rights*, n.d.) <<https://www.ohchr.org/en/trafficking-in-persons/about-trafficking-persons-and-human-rights#:~:text=In%20fact%2C%20trafficking%20and%20associated,under%20international%20human%20rights%20law.>> accessed 2 Nov 2023.

conducted. While the general focus is on the potential power of human rights regarding human trafficking of stateless people, this step is just as important as the analysis of the Declaration. It is crucial to have a contrasted approach that could reveal any downsides of the human rights approach.

With each analysis and methodology, a more general and international scope will be examined, alongside with the specific Thai case. It will be an exciting element of the paper to look at how the international agreements are actually implemented in the national jurisdiction regarding human trafficking and statelessness. In Thailand, this issue involves many areas of administration, since as currently known, the national provisions endanger local tribes and children of migrants, as well.⁹

During the preparations of the research, two interviews have been conducted with experts on statelessness and human trafficking. These interviews consisted of 7 questions that were aimed at collecting qualitative data around the topic. Mostly, the interviewees were asked about advantages and disadvantages of a human rights perspective and about the practical background of prosecution of human traffickers. At the end, the content and result of these interviews were not included in the essence of this paper, however they contributed greatly in gaining a deeper understanding of the topic at hand.¹⁰

2 Statelessness and Human Trafficking

2.1 Statelessness

Globally, there are millions of people who are considered stateless. In our modern understanding, this means that individuals are denied a nationality, which leads to their lack of ability to enrol in education, be employed at the legal labour market, have adequate health care or generally to buy a house or register their births, marriage or deaths.¹¹ Mostly, statelessness occurs in migratory situations when someone loses or is deprived of their nationality, before being able to acquire the nationality of the country of residence. Another case is when someone was born in the country where they reside in, but as a consequence of a particular implementation of national

⁹ International Institute for Asian Studies, 'The statelessness-trafficking nexus. A case study in Thailand' (*International Institute for Asian Studies*, Autumn, 2020) <<https://www.iias.asia/the-newsletter/article/statelessness-trafficking-nexus-case-study-thailand>> accessed 2 November 2023.

¹⁰ *I would like to declare my utmost gratitude to Dr. Lucy Hall, xx at the University of Amsterdam and Dr. Julia Murasziewicz, Head of Program Against Exploitation and Violence at the Trilateral Research Institute for their assistance in conducting these interviews. The written script of the interviews are available from the author for 5 years.*

¹¹ UNHCR, 'About statelessness' (UNHCR, n.d.) <<https://www.unhcr.org/ibelong/about-statelessness/>> accessed 10 November 2023.

laws, they cannot become official citizens.¹² Statelessness has grave consequences, one of the most prevalent ones is the violation of their human rights by States and national laws. Once a person loses the official security net of a legal framework, they have no one to turn to within their country of residence.

The 1948 Universal Declaration of Human Rights (UDHR) *Article 1* and *Article 2* states that human rights are universal and that all human beings are born free and equal.¹³ The emergence of the notion of statelessness in 1951, is a critique to these statements, established by Hannah Arendt, a Jewish refugee, who contemplated the consequences of losing the ‘right to have rights’. She formulated the idea that equality is not given as a result of our mere existence, but rather, it is a result of human organisation. She argued that we are not born equal, but we, as humans, become equal as members of a group as our own decisions to guarantee each other and ourselves mutually equal rights.¹⁴ In Chapter 8, *The Perplexities of the Right of Man* of her book, she established that our fundamental human rights are only upheld by the State, therefore in the case when we are citizens of a nation. Furthermore, she describes two kinds of categories: abstract human beings, and stateless people. The first regards those who seemed to exist nowhere and referred to tribes who have not reached a level of civilisation that the protection of human rights would require. The latter involved those who lost their nationality rights, thus also the legitimacy for human rights. These people not only lost their rights, but their homes and a responsible government protection.¹⁵

In 1954, as one part of the international legal framework to address statelessness, the United Nations (UN) adopted a Convention relating to the Status of Stateless Persons, which was the first internationally official document regarding the concept. The Convention was specified to statelessness, because the 1948 UDHR set out the framework for a general protection of fundamental human rights, and the 1951 Convention relating to the Status of Refugees did not cover the topic as further negotiations were required.¹⁶ In the Statelessness Convention, the international law community has agreed to define a stateless person as someone “who is not considered as a national by any State under operation of its law.”¹⁷ *Article 2* sets out the general obligations of stateless people, more particularly that they have to conform with the laws and regulations of the country they are residing in, as well as conform with the maintenance of public

¹² UNHCR, ‘Handbook on Protection of Stateless Persons’ (UNHCR, 2014).

¹³ The Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

¹⁴ Hannah Arendt, *The Origins of Totalitarianism* (first published 1951, Penguin 2017).

¹⁵ *ibid* 290.

¹⁶ The United Nations Convention Relating to the Status of Stateless Persons (adopted 28 September 1954) 360 UN Treaty Series 117.

¹⁷ *ibid*.

order. This part demonstrates that in order to have rights and governmental protection from a State, a person, let them be either citizens or stateless, have to ‘give’ something in exchange.¹⁸ In *Article 12*, it is set out that if a stateless person has no domicile State, the laws of the country of residence shall apply to them. The Convention creates a framework to set out the legal system to govern stateless people, which is an important step to establish, as a stateless person loses the legal protection of their human rights according to Hannah Arendt.¹⁹

In the 1961 Convention on the Reduction of Statelessness, the UN aimed at complementing the 1954 Convention relating to the Status of Stateless Persons and to cooperate on the prevention of statelessness.²⁰ The central focus is to start the prevention at birth by obliging States to grant citizenships to those born on their territory, or to those who are born to their nationals abroad if the newborn would be stateless otherwise. Another aspect of the Convention is to require States to not to withdraw citizenships from nationals when it would result in statelessness.²¹ In 2010, the Office of the United Nations High Commissioner for Refugees organised an expert meeting where they further discussed the issue of statelessness globally. They clarified the definition of *de facto* statelessness, the ways to decide whether a person is stateless and how features of national law can grant a status to stateless people, among other aspects of this issue.²² This meeting allowed experts such as governments, NGOs, academia and legal professionals from different countries to further develop the definitions of statelessness and effective ways to counteract it. However, according to the paper by Mark Manly and Laura de Waas, there are still major gaps in the research around statelessness, as expressed in their work *The State of Statelessness Research*. They highlight the importance of a common research agenda to establish a comprehensive and effective response that is feasible by all stakeholders.²³

2.2 Human Trafficking

Human trafficking is one of the fastest growing transnational crimes, affecting millions of people and all countries of the world.²⁴ The United Nations defines it as “the recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception with the

¹⁸ *ibid.*

¹⁹ Hannah Arendt, *The Origins of Totalitarianism* (first published 1951, Penguin 2017).

²⁰ The United Nations Convention on the Reduction of Statelessness (adopted 30 August 1961) 989 UN Treaty Series 175.

²¹ *ibid.*

²² United Nations High Commissioner for Refugees, ‘Expert Meeting, The Concept of Stateless Persons under International Law Summary Conclusions’ (2010).

²³ Mark Manly & Laura van Waas, ‘The State of Statelessness Research: A Human Rights Imperative’ [2014] 19 TLR 3.

²⁴ Idil Atak & James C. Simeon, ‘Human Trafficking’ [2014] 12 JICJ 1019.

aim of exploiting them for profit”.²⁵ Organisations categorise human trafficking in different ways, one practice is to have distinct types of trafficking: sexual exploitation, labour exploitation, slavery and forced removal of organs.²⁶ However, the International Labour Organisation refers to it as modern slavery, which according to them, affects around 50 million people around the globe as of September 2022. In their research they also identified that mostly women are targeted and in the area of sexual exploitation, but men are also among victims, who can be of all ages and backgrounds.²⁷ In 2000, the UN General Assembly passed the resolution 55/23 which regarded United Nations Convention against Transnational Organised Crime and the Protocols Thereto, as well as adopted in 2003, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.²⁸ This was an important step to acknowledge the crime globally. Human trafficking must be distinguished from human smuggling, which is a specific aspect of illegal immigration, which entails victims being illegally transported across international borders.²⁹ The two share many similarities, however from a legislation and a law enforcement point of view it is important to differentiate them from each other. The contrast is mainly manifested in the identity of the victim: a human trafficking victim is the person who is being trafficked, while the victim in human smuggling is the one breaking the law of the country they are illegally entering.³⁰

The Protocol governing transnational crimes has been an essential framework to define the problem of human trafficking and call the attention of nations worldwide to cooperate with each other. However, there is another perspective of trafficking in persons other than the crime itself – the human rights violations of trafficked people. It is an extremely complex international crime that in many cases also involves international refugee law next to human rights law. Combining all three ways of international law has been argued to be a powerful approach to combat human

²⁵ United Nations Office on Drugs and Crimes, ‘Human trafficking’ (*United Nations Office on Drugs and Crimes*, n.d.) <<https://www.unodc.org/unodc/en/human-trafficking/human-trafficking.html>> accessed 11 November 2023.

²⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (adopted 15 November 2000), UNGA Res 55/25).

²⁷ International Labour Organisation, ‘Global Estimates of Modern Slavery’ (*International Labour Organisation*, 12 September 2022).

²⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (adopted 15 November 2000), UNGA Res 55/25).

²⁹ Tolu Ogboru & Salome Kigbu, ‘Human Trafficking and Human Smuggling: The Distinction and Legal Implications’ [2015] 6 BLR 224.

³⁰ *ibid.*

trafficking.³¹ Trafficked persons themselves are treated as illegal aliens and as criminals, which counteract the goals of any legal regulation adopted by States. In some cases, governments simply restrict the travel of women as part of the ‘prevention’ of human trafficking, but this way they merely trade one human right violation to another.³² Furthermore, the multi-billion crime industry transforms the agency of humans into being mere marketable goods.³³ They are placed in debt with all costs of transportation, accommodation and other living expenses, while being illegal residents of the country they were brought to. Trafficked persons are thus denied all legal remedies or human rights protection that legal residents are granted with.³⁴

It is also essential to mention that a lot of times trafficked persons ‘consent’ to going to another region or country to work. There are two main factors that intensify the probability of being trafficked, ‘the pull factors’ and ‘the push factors’. Pull factors include better conditions in another country, social rights, and economic opportunity, among others. Factors that push people into human trafficking are political unrest, poverty, economic downturn, or differences in cost of living, or lack of education, but also statelessness.³⁵ The theoretical background of the motivation of victims to seek potentially dangerous job opportunities is reflected in the real-life self-reports of Thai women, who have been victims of trafficking. Found as part of the research of Skrobanek et al., women from provinces like Chiang Rai were interviewed to uncover the background of their incentive to start working in the sex industry. For example, Nuj grew up in a village where sex trade was excessively blooming. She always heard stories of women working in Bangkok and earning a lot of money. When she was 15, she agreed to do the same since she felt the pressure to support her parents. However, her hopes were shattered once her virginity was sold for 20.000 baht (around 516 euros today) and never saw the money from it. She was often beaten and forced to work as a prostitute by the person she was living with.³⁶ As mentioned earlier, victims’ rights are often violated even through the measures to combat trafficking in persons. Therefore, such personal testimony is a crucial element to add, to personalise each case of human trafficking and potentially adopt a more victim-centred approach.

³¹ Idil Atak & James C. Simeon, ‘Human Trafficking’ [2014] 12 JICJ 1019.

³² Martina Vendenberg, ‘Complicity, Corruption, and Human Rights: Trafficking in Human Beings’ [2002] 34 Case W RJIL 323.

³³ Kara Patterson, ‘Sex Trafficking from Thailand to Japan: Human Beings or Illegal Goods’ [2003] 12 DJLS 175.

³⁴ *ibid.*

³⁵ Duean Wongsu, ‘TRAFCORD and Its Participation in the Promotion of Human Rights to Counter Human Trafficking in Thailand’ [2013] 31 WILJ 501.

³⁶ Siriporn Skrobanek, Nataya Boonpakdee and Chutima Jantateero, *The Traffic in Women, Human Realities of the International Sex Trade* (Zed Books Ltd 1997) 1.

Stateless people are acknowledged globally to have a greater risk of being trafficked. The reason for that is simple: the lack of nationality puts them in an exceptionally vulnerable position since they have difficulties acquiring adequate education, employment, health care or legal remedies.³⁷ They are more inclined to take risks in order to improve their life, thus can also agree to search for a better paying job abroad in order to support their families back home.³⁸ The connection between statelessness and human trafficking is clear-cut, but as presented in this chapter, the way the two are handled by the international law community is contrasting. This paper will show with a case study in Thailand, how a human rights perspective could potentially serve as an adequate measure that national authorities could easily implement. Next to many Conventions and international regulations, there is still a gap in research to pinpoint the lack of efficiency and the constant growth of human trafficking, and the status of stateless persons, which will be also addressed in the coming sections.

3 The Case of Thailand

This chapter will present the case study of Thailand and the specific history, circumstances and developments regarding statelessness and human trafficking in the country. Thailand was chosen as an example, because both statelessness and human trafficking are long-term problems in this region and the government has been making efforts to eliminate both issues nation-wide. This part of the thesis aims at unveiling the complexity of these challenges, while placing them in the Thai historical and socio-economic context.

3.1 Statelessness

In Thailand, there are two kinds of stateless people that we can identify among the 560.00 registered people as of 2021: the indigenous population of the ‘Hill Tribes’ and the refugees from Myanmar, Laos and Cambodia.³⁹ As a result of migration and the historical context, there is a significant level of cultural heterogeneity, which is intensified by the borders that are disputed. This leaves thousands of people isolated from the modern state’s bureaucracy, thus an effective administration that could ensure the protection of their fundamental human rights.⁴⁰ For example, in Thailand, stateless individuals are not entitled to possess real property, they can face detention

³⁷ Laura van Waas, Conny Rijken and Martin Gramatikov, ‘Exploring the Interaction between Statelessness, Legal Empowerment and Human Trafficking’ [2014] 19 TLR 303.

³⁸ *ibid.*

³⁹ Nationality for All, ‘Statelessness in the Asia Pacific’ (*Nationality for All*, 2023) <<https://www.nationalityforall.org/statelessness-in-the-asia-pacific/>> accessed 20 November 2023.

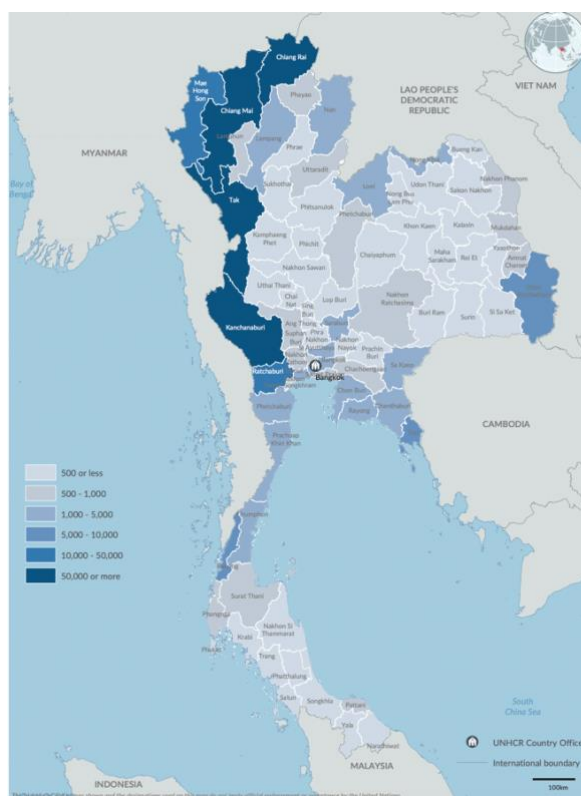
⁴⁰ Matthew Brown, ‘Addressing statelessness in Thailand’ (*The Borgen Project*, 2021) <<https://borgenproject.org/statelessness-in-thailand/>> accessed 2 November 2023.

for their status and are isolated from basic social services such as health care or education. Regarding the latter, secondary education cannot be started unless students are able to show proof of citizenship.⁴¹ The problem of statelessness is not only a question of individual safety, but regards the national security of the country.⁴²

3.1.1 *Hill Tribes*

Hill Tribes ‘*chao khao*’ are a collective name for all those groups of people in Thailand who migrated to the country hundreds of years ago from other surrounding states such as China, Myanmar, or Laos and now reside in the Northern part of Thailand. Each group has their own traditions, even their own languages; to list them: Lisu, Mien, Palaung, Karen, Hmong, Akha and Lahu, who reside mostly in Chiang Mai, Chiang Rai, Mae Hong Son, and Nan Provinces,⁴³ showed in *Figure 1*.⁴⁴ They are considered as ones of the most disadvantaged in Thailand as well as are among the most vulnerable groups in the country. They mostly engage in agricultural activities, next to also running household-based handicraft production. Generally, the current administrative problem regarding the Hill Tribes emerged in 1956, when the Thai government excluded the mentioned indigenous groups from a first national census, which led to them becoming stateless.⁴⁵ The goal of the national census was to record the Thai nationally, however due to the lack of access to the villages of the hill tribes and the prejudices towards them, they were not considered as

Figure 1. Map of Statelessness in Thailand.
(Source: UNHCR)



⁴¹ Alex Paxton, ‘Finding a Country to Call Home: A Framework for Evaluating Legislation to Reduce Statelessness in Southeast Asia’ [2012] 12 PRL PJ 623.

⁴² Janepicha Cheva-Isarakul, ‘Diagnosing Stateless and Everyday State Illegibility in Northern Thailand’ [2019] 1 SCR 214.

⁴³ Sarah Dean, ‘The Hill Tribes of Thailand’ (*Challenges Abroad*, n.d.) <<https://www.challengesabroad.com.au/blog/the-hill-tribes-of-thailand/>> accessed 20 November 2023.

⁴⁴ UNHCR, HQ Geneva, ‘Thailand’ Stateless population by Province’, (UNHCR, 2018). *The map depicts that the darkest blue regions, such as Chiang Rai, Chiang Mai, Tak and Kanchanaburi have 50.000 or more stateless among their population. One shade lighter regions like Mae Hong Son and Ratchaburi have between 10.000 and 50.000 stateless persons among their population. This map clearly depicts that the North-Eastern Thai provinces are the ones mostly affected.*

⁴⁵ Alex Paxton, ‘Finding a Country to Call Home: A Framework for Evaluating Legislation to Reduce Statelessness in Southeast Asia’ [2012] 12 PRL PJ 623.

nationals of the country.⁴⁶ First, they tried to repair this problem by granting them temporary residency permits and leniency. Unfortunately, this carried more disadvantages than positive developments for the minority groups, since it prevented them from being able to get naturalised in Thailand.⁴⁷ In 1959, the National Committee for Hill Tribes was founded in order to facilitate these groups to have a smoother integration into Thai society, but while also safeguarding their already existing traditions.⁴⁸ It was the region's first nation-level organisation having the responsibility to support hill tribes with developing policies regarding their social and economic development.⁴⁹ According to a research dated from 1976, it was reported that while the government has started creating some improvements regarding the socio-economic integration of this specific population, they generally lacked an organised strategy and an overall policy.⁵⁰ They also confirmed the poor social background that the Hill communities were in, that is only 54% were registered officially for the purposes of Thai identification, and only 41% had the ability to communicate in the Thai language. Furthermore, opium addiction, lack of sufficient rice, and low degree of monetization were identified.⁵¹ In 2000, a naturalisation law fortunately clarified the stance of the Hill Tribes and set out that those who could prove that their parents entered the country prior to 1985 and that they were born in Thailand could get citizenship. Furthermore, in 2016, referring to the late King Bhumibol's words regarding the different treatment and the statelessness that Hill Tribes have to experience, the Ministry of Interior addressed the issue classifying it as an extremely urgent case. The letter called all provincial governors and officials to take the next steps in helping the Northern Thai population to get citizenship. It contained a summary about the exact procedures on how to obtain the citizenship, as well as specific directions on the documentary evidence that prospective citizens have to provide to prove their legal reason for the application. It explicitly called the attention of the officials for the potential exploitation or corruption that the procedure can involve.⁵²

⁴⁶ Indigenous Law Centre, 'Shadow Report to Thailand's Initial Periodic Report to the Human Rights Committee' [2005] 9 AILR 123.

⁴⁷ Alex Paxton, 'Finding a Country to Call Home: A Framework for Evaluating Legislation to Reduce Statelessness in Southeast Asia' [2012] 12 PRL PJ 623.

⁴⁸ Food and Agriculture Organisation of the United Nations Regional Office for Asia and the Pacific Bangkok, 'Case Study on Education Opportunities for Hill Tribes in Northern Thailand' (RAP publication 2002).

⁴⁹ *ibid.*

⁵⁰ Gerald C. Hickey & Jesse Wright, *The Hill People of Northern Thailand: Social and Economic Development* (AID/ASIA-C-1310 1978).

⁵¹ *ibid.*

⁵² Janepicha Cheva-Isarakul, 'Diagnosing Stateless and Everyday State Illegibility in Northern Thailand' [2019] 1 SCR 214.

However, while the history of legislation would create a supporting legal framework to eliminate statelessness among Hill Tribes, the reality has been far different. The indigenous groups residing in Northern Thailand face grave social stigma, corruption, language barriers and face very difficult barriers in the administration sphere.⁵³ Many times, the administration procedure is very costly, and the tight deadlines are difficult to meet since this population lives in rural areas that are isolated⁵⁴. Another problem regards the birth registration of these groups. Generally, all hospitals are required to issue birth certificates in Thailand, as well as register every birth in their own database.⁵⁵ However, those who live in rural areas, are stateless and part of different ethnic groups – such as the hill tribes, being different, indigenous cultures – do not give birth at hospitals. According to the law, the parents of the child that was born outside of a hospital are obliged to inform the head of the village, who can continue the birth registration by contacting the local registrar. At this point, the local registrar would issue the birth certificate by also indicating the house number where the child resides.⁵⁶ Of course, this procedure also works differently in real life, with many elements complicating the procedure. As mentioned earlier, the Hill Tribes often face discrimination and birth registration also involves corruption, which leads to at least 40.000 unregistered births each year.⁵⁷ Unfortunately, this not only means that the pure existence of the children is excluded from the government's database, but that these children become stateless and have to suffer the circumstances of such a vulnerable position within society. Because individuals do not have documents to prove their identity and they are fully precluded or at least face drastic discrimination from the administrative system, they become especially at risk of becoming victims of human trafficking.

3.1.2 *Refugees*

The other population that is greatly affected by the condition of statelessness are refugees. There are about 100.000 refugees in Thailand, who seek shelter from the conflicts in Myanmar.⁵⁸ The first wave of refugees arrived in the 1980s and 1990s, residing in refugee camps along the Thai border. They were mostly political dissidents who were student actors in the 1988 uprising in Burma against the economic disintegration, brutal repression, and political instability.⁵⁹ The other

⁵³ Alex Paxton, 'Finding a Country to Call Home: A Framework for Evaluating Legislation to Reduce Statelessness in Southeast Asia' [2012] 12 PRL PJ 623.

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ UNHCR, 'Thailand Fact Sheet' (30 June 2023).

⁵⁹ Burma Watcher, 'Burma in 1988: There Came a Whirlwind' [1989] 29 2 AS 174.

group is ethnic minorities, who were involved in the riots and the conflict between the Myanmar government and the armed rebel groups. These refugees, not being able to return to their home and being rejected a Thai nationality, had to choose to work illegally in Thailand.⁶⁰ Statelessness with irregular migrant workers appeared more intensely when Thai hospitals started to deliver thousands of stateless children in the middle of the 1990s. The Thai Ministry of Health reported that the majority of these children had a Burmese nationality, however the legal status of these migrants was more complicated in reality. The Burmese military had multiple offensives against ethnic minorities, leaving them the only opportunity to flee the country. In the eyes of the Thai authorities, these refugees solely left their home for economic reasons, blurring the categories of irregular migrant workers, refugees, and asylum seekers. In 2001, there were around three million refugees mostly from Burma, but also from Laos and Cambodia seeking to reside in the country for various reasons.⁶¹ In 2021, a military coup took place in Myanmar, which further reinforced the instability, and human rights violations in the country.⁶² Generally, the history of migration in the country has led to cultural heterogeneity in the country, alongside disputed borders. An example for this was the case of the Temple of Preah Vihear in 1962, which was generally a complaint by Cambodia that Thailand was occupying ruins of their precious temple. While Thailand tried to argue that the map setting out the frontiers was approved by them by mistake, the Court has ruled for Cambodia, leaving the Thai armed detachment to leave the territory and restore any removed parts of the ruins.⁶³

Regarding foreign people seeking protection, we can identify two types of statelessness: *de jure* and *de facto*. The first is the traditional legal perspective when the State does not consider a person its national. *De facto* statelessness is a multi-level definition which also regards the level of protection of an individual. It refers to a person, who had to renounce their protection of a state (thus, their nationality) for valid reasons. Therefore, even though a person by law is a national of a State, they have to leave that country because the State is not able or not willing to provide protection for them.⁶⁴ The refugees in Thailand are rendered *de facto* stateless, but it is also true for foreign domestic workers temporarily. There is a lack of protection from both the host country

⁶⁰ Human Rights Watch, 'Unwanted and Unprotected: Burmese Refugees in Thailand' [1998] 10 6 HRW.

⁶¹ Tang Lay Lee. 'Gender Aspects of Statelessness and Irregular Migrant Workers from Burma in Thailand' [2003] 3 ISIL YB IHRL 22.

⁶² Lian Bawi Thang, 'Understanding the Military Coup in Myanmar, Two Years Later' (*East-West Center*, 2023) <<https://www.eastwestcenter.org/news/east-west-wire/understanding-military-coup-myanmar-two-years-later>> accessed 23 November 2023.

⁶³ *Temple of Preah Vihear Case (Cambodia v Thailand)* [1962] ICJ.

⁶⁴ Tang Lay Lee. 'Gender Aspects of Statelessness and Irregular Migrant Workers from Burma in Thailand' [2003] 3 ISIL YB IHRL 22.

and their origin country. Thus, the Burmese and other refugees all have difficulties in obtaining citizenship and related protection from authorities in Thailand.⁶⁵

3.2 Nationality in Thailand

The Nationality Act of 1965 established that Thai citizenship was based on the *jus soli* principle, which means that a citizenship is granted to those children who are born in the country. However, the legislative framework is more complicated than this.⁶⁶ An analysis of the rule shows that the *jus soli* principle does not apply in every case. For example, a non-Thai person whose parents are illegal aliens in the country within a specific time period, are eligible for applying for citizenship, given if they have sufficient documents. In addition, the legal status of a child is inherited, meaning that statelessness can potentially run for transgenerations in the family.⁶⁷ In 1983, the government created a framework that included a 13-digit personal identification number to be able to keep track of the legal status of their subject. This reveals important information regarding what relationship the person has with the state – thus, also indicates whether someone is a Thai citizen or a non-citizen. The first number shows which category a person is in: number one shows that a person is a citizen, hill tribes and other highlanders have the number six, which means that they are long-term aliens of the country. The children of those who have a number six as the first digit in their identity card have the number seven. It is possible for both of them to apply for Thai nationality through s 7 bis (2) of the Nationality Act, as long as they fulfil other requirements to prove their birthplace and residency.⁶⁸ However, applicants face a lot of struggles when trying to present documentary evidence of their genuine connection to Thailand. Many times, these documents are issued by the state itself, however their validity is questionable due to the complex bureaucratic framework in the country.⁶⁹ In 2005, an initiative of the government expanded the rights of non-citizens, allowing children from all legal status to access education. This was an important step towards creating a more equal future for stateless children.⁷⁰

⁶⁵ *ibid.*

⁶⁶ International Institute for Asian Studies, ‘The statelessness-trafficking nexus. A case study in Thailand’ (*International Institute for Asian Studies*, Autumn, 2020) < <https://www.iias.asia/the-newsletter/article/statelessness-trafficking-nexus-case-study-thailand> > accessed

⁶⁷ Janepicha Cheva-Isarakul, ‘Diagnosing Stateless and Everyday State Illegibility in Northern Thailand’ [2019] 1 SCR 214.

⁶⁸ Janepicha Cheva-Isarakul, ‘Diagnosing Stateless and Everyday State Illegibility in Northern Thailand’ [2019] 1 SCR 214.

⁶⁹ *ibid.*

⁷⁰ *ibid.*

3.3 Human trafficking

Thailand is a source, transit, and a destination for human trafficking, which includes mostly sexual and labour exploitation. According to the 2023 Global Slavery Index there were 401.000 victims in the country.⁷¹ However, as established in the previous chapter, it is extremely difficult to have a specified number of victims since the definition of human trafficking differs between organisations who create the databases. The United States Department of State reports each year a Trafficking in Persons Report for countries which are involved in this problem, categorising them and offering them recommendations on how to handle the situation.⁷² In 2014, Thailand was in Tier 3, however as of 2023, they are in Tier 2, meaning that the government does not fully comply with required minimum standards to combat human trafficking, but they are striving towards making important differences. Thus, the government of Thailand has been making significant efforts in identifying victims, prosecuting corrupt officials, and training law enforcement about the issue. However, their practices are still ineffective, there were instances where they arrested victims, did not identify victims, and deterred victims from taking part in the legal proceedings as a witness.⁷³ In order to further develop their policy, it is crucial to begin the analysis of human trafficking at its roots and examine the close connection with the vulnerability of being stateless.

The research conducted by Laura de Waas et al. established the root causes of human trafficking in the country, which were found to be very prevalent within the community of hill tribes.⁷⁴ Some root causes are poverty, lack of education, lack of employment opportunities, corruption and lack of awareness of the risks involved in migration, as quoted from the research.⁷⁵ There are also internal causes of people to seek migration, which are the desire to become independent, and the aspiration to leave poverty behind next to supporting their left-behind family. They are more inclined to take risks of moving to big cities in order to leave the rural areas.⁷⁶ Unfortunately, instead of finding the source of a ‘better life’, most women and children end up coerced into human

⁷¹ Walk Free, ‘The Global Slavery Index 2023’ (Walk Free 2023).

⁷² International Justice Mission (IJM), ‘What is the Trafficking in Persons (TIP) Report?’ (IJM, n.d.) <<https://www.ijm.org/news/what-is-the-tip-report#:~:text=At%20the%20determination%20of%20the,educational%20and%20cultural%20exchange%20programs>> accessed 23 November 2023.

⁷³ U.S. Department of State, ‘2023 Trafficking in Persons Report: Thailand’ (*Office to Monitor and Combat Trafficking in Persons*, 2023).

⁷⁴ Laura van Waas, Conny Rijken and Martin Gramatikov, ‘Exploring the Interaction between Statelessness, Legal Empowerment and Human Trafficking’ [2014] 19 TLR 303.

⁷⁵ *ibid.*

⁷⁶ *ibid.*

trafficking. They are treated as mere goods and are denied all legal protection from the state, especially if they seek job opportunities abroad. Consent also plays a role in identifying victim protection, since in many instances women agree to become sex workers, however they do not give authorisation for the lack of legal protection and human rights violations they face.⁷⁷ Human trafficking victims find themselves in very difficult situations, when they are mentally or physically not able to report the crimes committed against them due to the fear of their lives or a threat to their loved ones. This makes it more challenging for authorities to identify trafficking in persons, as well as proceed in the arrest of the traffickers.⁷⁸

There needs to be a common effort by professionals from different fields to combat this complex challenge. TRAFCORD, a non-governmental organisation highlights the victim-centred approach, where victims are persuaded to testify against the traffickers and the network surrounding the criminal business by assuring their and their families' wellbeing. This is key to prevent 're-victimisation', which is especially common within stateless individuals and those who lack protection from the government.⁷⁹

4 International Human Rights Law Perspective

As established in the previous chapters of this thesis, human trafficking is an international issue, which the stateless in Thailand are especially vulnerable to become a victim of. This part of the paper is aimed at providing an overview of the International Human Rights framework globally and in Thailand, continuing the attempt to answer the main research question: *how the right to life, liberty and security creates the foundation for a human rights approach to fight human trafficking of stateless people in Thailand*. The doctrinal analysis of the Universal Declaration of Human Rights will serve as a tool to assess what the law says and how it is relevant to the trafficking in persons. To expand the positivist research approach, examining the effect of the law will serve as an additional point of view. Furthermore, the Universal Periodic Reviews will also provide an overview of the human rights situation in Thailand from both the perspective of the country and its peers.

⁷⁷ Kara Patterson, 'Sex Trafficking from Thailand to Japan: Human Beings or Illegal Goods' [2003] 12 DJLS 175.

⁷⁸ Duean Wongsu, 'TRAFCORD and Its Participation in the Promotion of Human Rights to Counter Human Trafficking in Thailand' [2013] 31 WILJ 501.

⁷⁹ *ibid.*

4.1 International Human Rights Law

International human rights law is an essential segment of international cooperation as part of Public International Law.⁸⁰ In the 18th century's Enlightenment era, an idea emerged that human beings possess certain individual rights, which was implemented a century later in the various national constitutions, connecting rights to citizenship.⁸¹ In our modern understanding, human rights are universal, which originates from natural law theories. This interpretation was codified in 1948 by the United Nations following the atrocities of the Second World War.⁸² The Universal Declaration of Human Rights (UDHR) has been a key document to globally spread the all-embracing approach of individual rights. Naturally, there are other sources of International Human Rights Law that are worth mentioning, such as the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), which are conventions that include general rights of individuals in a broader sense.⁸³ There are other conventions relevant to this paper, which address specific issues of human rights, such as: the 1979 Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), the 1989 Convention on the Rights of the Child (CRC) and the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁸⁴

Today, specifically human trafficking is not part of the international human rights framework. However, we can find grave violations of human rights in all stages of the cycle of trafficking in persons, that is during the recruitment procedures, the holding of a person and equally after the liberation of the victims.⁸⁵ Through time, three different 'generations' of human rights emerged: civil and political rights (1), economic and social rights (2), and collective rights (3). The first-generation rights are formulated in the ICCPR, formulating the prohibition against torture, slavery, and the right to life, liberty and fair trial among others. Their nature is negative, meaning that their main objective is to protect individuals from the abuses of the state. Most of the time, the governments need to take positive action, for example by establishing independent Courts.⁸⁶

⁸⁰ Anders Henriksen, *International Law*, (OUP 3rd ed., 2021) 163.

⁸¹ *ibid.*

⁸² *ibid.*

⁸³ *ibid.*

⁸⁴ *ibid.*

⁸⁵ Laboratory to Combat Human Trafficking, 'Human Trafficking: A Human Rights Violation' (*Laboratory to Combat Human Trafficking*, 10 Dec, 2018) < <https://combathumantrafficking.org/blog/2018/12/10/human-trafficking-human-rights-violation/>> accessed 20 February 2024.

⁸⁶ Anders Henriksen, *International Law*, (OUP 3rd ed., 2021) 163.

Relating to human trafficking, the ICCPR guarantees in Article 6 the right to life, in Article 7 the right not to be tortured and in Article 10 the right not to be ill-treated.⁸⁷ The second generation of human rights are reflected in the ICESCR and regard fundamental rights like adequate working conditions including fair wages, and adequate living standard. These rights are positive since a state needs to establish the foundations for the citizens to have access to these liberties.⁸⁸ The third generation, which is the collective rights regard the right to a healthy environment. These regard groups of individuals and are found in treaties such as the 1948 Genocide Convention.⁸⁹

4.1.1 Weighing the powers and the weaknesses of human rights

A criminal justice approach is often used to tackle human trafficking as a transnational crime. However, this method focuses on the prosecuting of the traffickers and often also portrays trafficked persons as criminals rather than victims.⁹⁰ A human rights law perspective places victims as a person in front of the law, rather than witnesses of the crimes committed against them. It prioritises the rights and victims of the trafficked person, while also enabling it to include all types of human trafficking, from forced labour to sex trafficking.⁹¹ The UN Office of the High Commissioner for Human Rights also issued a commentary on recommended principles and guidelines on human rights and human trafficking. In this document, they state that human rights law has a primacy above other sources of international law due to its universal nature. They also highlight the importance of States implementing the principles of human rights and model their policies regulating trafficking in humans and the punishment of the traffickers.⁹² Furthermore, the document declared that discriminatory activities could be combated at their core, accentuating the situation of ‘non-citizens’ mentioning the issues of statelessness, too.⁹³

⁸⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200 (XXII) (UNHCR).

⁸⁸ Anders Henriksen, *International Law*, (OUP 3rd ed., 2021) 163.

⁸⁹ *ibid.*

⁹⁰ Saba Demeke, ‘A human rights-based approach for effective criminal justice response to human trafficking’ [2024] 9 *JiHA*.

⁹¹ Janina Pescinski, ‘A Human Rights Approach to Human Trafficking’ (*United Nations University*, 23 February, 2015) <<https://gcm.unu.edu/publications/articles/a-human-rights-approach-to-human-trafficking.html#:~:text=A%20human%20rights%20approach%20allows,he%20or%20she%20was%20trafficked>> accessed 22 February 2024.

⁹² United Nations Committee for Human Rights, ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’ (Commentary, United Nations Human Rights, 2010).

⁹³ *ibid.*

As presented earlier, there are many international conventions regarding the protection of human rights, and these are also codified in national constitutions, including the Thai Constitution.⁹⁴ On the website of the United Nations, it is stated:

*“Human rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, colour, religion, language, or any other status.”*⁹⁵

However, the question arises whether human rights are actually inherent to us all. The human rights-based approach establishes that the fact that someone is a rights-holder, it also means they have a duty-bearer. Individuals can invoke their rights against a well-functioning state by enforcing those against the duty-bearer, who are the public authorities. Therefore, human beings as the right-holders have to have access to the authorities who are the duty-bearers.⁹⁶ But what happens when someone is stateless? – they have no access to public authorities, therefore, they have no duty-bearer. How can their rights be protected? This becomes especially challenging in the global legal framework since international law is a horizontal legal system, meaning that the parties to agreements are all equally sovereign states, who have to implement the framework of the treaties and convention to their national jurisdictions.⁹⁷ The international agreements are often vaguely formulated, which leads to contradictory implementation strategies across countries, further hindering the common and truly effective combat against human trafficking.⁹⁸

4.2 Doctrinal Analysis of The Universal Declaration of Human Rights

The UDHR was chosen as a basis of doctrinal analysis because while it is not a legally binding source of law, it has been a foundation for many legally binding instruments both internationally and regionally. Through these, legal obligations are imposed not just on states, but also on all human beings.⁹⁹ Furthermore, this document has been one of the first revolutionary instruments to introduce the concept of fundamental human rights on a global scale. In this following section, a doctrinal analysis will be conducted focusing on *Article 3* of the Declaration, specifically unfolding

⁹⁴ Constitution of the Kingdom of Thailand, BE 2560 (2017).

⁹⁵ United Nations Human Rights, ‘What are human rights?’ (*United Nations Human Rights*, n.d.) <<https://www.ohchr.org/en/what-are-human-rights>> accessed 20 February 2024.

⁹⁶ Saba Demeke, ‘A human rights-based approach for effective criminal justice response to human trafficking’ [2024] 9 JIHA.

⁹⁷ Anders Henriksen, *International Law*, (OUP 3rd ed., 2021) 11.

⁹⁸ Katerina Linos & Tom Pegram, ‘The Language of Compromise in International Agreements’ [2016] 70 *3 IO* 587.

⁹⁹ United Nations Human Rights, ‘Declaration on human rights defenders: Special Rapporteur on human rights defenders’ (*United Nations Human Rights*, n.d.) <<https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders#:~:text=The%20Declaration%20is%20not%2C%20in,on%20Civil%20and%20Political%20Rights>> accessed 22 February 2024.

what is the right to life. This right will be assessed based on to what extent it can establish a legal structure to include offences of human trafficking and the protection of the victims. Furthermore, the right's applicability, scope and general international jurisdiction will be also examined. To connect the essence of this doctrinal analysis to the core issue at hand, as earlier established, Thailand itself has to implement the individual liberties in its country. When taking a closer look at the circumstances of the stateless in Thailand, who are especially vulnerable to become victims of transnational crimes such as human trafficking; it is crucial to investigate what right they have at the core of the legal systems.

4.2.1 The right to life, liberty and security

Article 3 of the UDHR states that '*Everyone has the right to life, liberty and security of person*'.¹⁰⁰ This sentence feels self-evident – of course everyone has a right to all three of these liberties listed, however, international leaders found it necessary to codify them to protect individuals from any violation of these rights. According to McCloskey, rights are "entitlements to do, have, or enjoy, or have done, which are possessed by the possessor of the right."¹⁰¹ The *right to life* can be distinguished from the other liberties, since when someone deprives us from it, this violation has an inherent effect on, for example our right to liberty and the right to security, among others.¹⁰² On the basis of each right there is a common notion that they shall be attributed to a human being. If someone does not possess a right to life, or if this right is heavily restricted for the individual, it makes it much more challenging to exercise any other fundamental right.

4.2.1.1. The right to life

While most are aware of the existence of a right to life, it is less evident what conditions it promises to an individual or what constitutes a violation of this right. Predominantly, authors and public speakers include the discussion of this right in connection to abortion, euthanasia, or suicide, however, human trafficking and the condition of statelessness are also immensely relevant in the discussion.¹⁰³ Looking at it on a deeper level: when does a human being start to possess the right to life? Some argue that it starts with the foetus, thus an unborn child also has a right to life which God grants us. On the other hand, the history of Nazi Germany gave us examples of how certain human beings were categorised as 'subhumans', meaning that all their rights were deprived

¹⁰⁰ The Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

¹⁰¹ H, J, McCloskey, 'The Right to Life' (1975), 84 Mind 403.

¹⁰² H, J, McCloskey, 'The Right to Life' (1975), 84 Mind 403.

¹⁰³ Dieter Egert, 'Written Contribution on General Comment for the Right to Life to United Nations Committee for Human Rights: Common violations of the Right of Life' (2015).

from them.¹⁰⁴ As most laws and articles of legal documents, the right to life also has some legal limitations. In defence of any person's unlawful violence or the imposition of the death penalty can be exceptions for States to respect one's right to life.¹⁰⁵ To connect this to the current analysis, the primordial right to life of stateless human trafficking victims should be in all ways ensured. However, since stateless people can find themselves excluded from the legal system and with no one to provide a safety net for them, it is questionable whether they have their right to life protected from any violations. And while States might have exceptions to effectively protect the right to life, someone lacking citizenship should not be a reason for it.

4.2.1.2 *The right to liberty*

Liberty was defined as any everyday action which corresponds with legal principles. For example, the acts of getting up in the morning, and having breakfast are among such liberties.¹⁰⁶ This notion suggests that people shall live their lives just as they desire it to be, only within the framework of morality. Persons who are trafficked are not only victims of the crime, but are victims of the violations of the mentioned moral rules of law, which restricts them to enjoy their liberties. While victims do get up in the morning and potentially have some breakfast, they are objects of the legal wrongs which limit their freedom to enjoy their life to the fullest. They are used, exploited, and 'imprisoned' by the traffickers, which clearly constitutes a violation of their right to liberty.

4.2.1.3. *The right to security*

Thomas Hobbes argued that all men have the liberty to self-preservation in an immoral state of nature, which is manifested in the absence of a central power and a right for people to do anything and everything. However, Hobbes adds that this unlimited freedom creates a never-ending fear of people and a war of all against all. Meaning, there is a lack of security and safety, and humans are constantly seeking violence. As one of the first human nature theorists, he solves this problem by creating the idea of a sovereign that everyone obeys, who would establish peace.¹⁰⁷ There are two dimensions of security, namely individual and national security.¹⁰⁸ Applied to the trafficking of

¹⁰⁴ *ibid.*

¹⁰⁵ International Justice Resource Center, 'Right to life' (*International Justice Resource Center*, n.d.) < <https://ijrcenter.org/thematic-research-guides/right-to-life/#:~:text=Relatedly%2C%20violations%20of%20international%20humanitarian,Genocide%20Convention%20and%20Geneva%20Conventions> > accessed 20 May 2023.

¹⁰⁶ Glanville Williams, 'The Concept of Legal Liberty' (1956) 56 CLR 1129.

¹⁰⁷ Thomas Hobbes, *Leviathan* (first published 1651, Penguin 1985).

¹⁰⁸ Liora Lazarus and Benjamin J Goold, 'Security and Human Rights: Finding a Language of Resilience' (2019).

stateless people, the Thai government is failing to protect the individual safety of its citizens, while also further enabling threats to their national security. The inhumane conditions of victims of trafficking are testaments to the violation of the right to security by both traffickers and the state.

4.3 Human rights in Thailand

Today, Thailand is party to many treaties of the United Nations and ratified the agreements into its national jurisdiction. Including the International Human Right Law sources, the country ratified the ICCPR in 1966, in which *Article 6* states that ‘Every human being has the inherent right to law.’¹⁰⁹ Furthermore, it also sets out the obligation for States to protect this right in their laws, as well as highlighting that no individual shall be deprived of their life in an arbitrary way.¹¹⁰ In 2006, Thailand ratified the CRC, which is an essential legal mechanism to protect child victims of human trafficking, since it involves detailed restrictions on the sale of children, child prostitution and child pornography.¹¹¹ Another important step for the country was a year later, when the CAT was ratified. While this convention does not specifically include the right to life, it has been an essential source of human rights protection to support victims of human trafficking.¹¹²

As the Universal Declaration of Human Rights is not a legally binding document for states, the Royal Thai Government had to take positive action to implement a human rights approach into their legal framework. The National Human Rights Plan (2014-2018) set out the enactment of laws in the mentioned conventions, which government plan was created through an active participation, involving many parties and representatives in the matters. In 2014, the Royal Thai Government published a specific policy regarding human trafficking, the so-called Zero Tolerance for Human Trafficking, that was directed to establish an integrated method by involving government agencies, non-governmental organisations to join forces and come up with solutions for the root causes of the issue.¹¹³ The current national plan has a time interval between 2023 and 2027, focusing on Business and Human Rights, being the second edition by the Ministry of Justice, aimed at human

¹⁰⁹ International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200 (XXII) (UNHCR).

¹¹⁰ Ibid.

¹¹¹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted 25 May 2000 UNGA Res 54/263). (ratified in 1992 in Thailand).

¹¹² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984 UNGA Res 39/46).

¹¹³ Permanent Mission of Thailand New York, ‘Human Rights and Social Issues’ (*Permanent Mission of Thailand New York*, 2022) <<https://unmissionnewyork.thaiembassy.org/en/page/80917-human-rights?menu=5d81c6aa15e39c28900078fa>> accessed 24 May 2023.

rights violations committed by businesses.¹¹⁴ To further ensure that there is an institutional implementation of the above-mentioned provisions, the National Human Rights Commission of Thailand (NHRCT) as an independent constitutional body since 2017, makes sure that it reports facts regarding deprivations of human rights, while also suggesting progressive solutions.¹¹⁵ They have been reported as reliable and reasonable when it comes to filing violations of human rights.¹¹⁶

The UN Human Rights Council established a method of peer review, the Universal Periodic Review (UPR), which requires UN Member States to submit their own report of the human rights situation of the country every four and a half years.¹¹⁷ The reports include any actions that the government made to ameliorate their policies and further develop their efforts to improve the institution of human rights in their respective state. On top of that, Member States also receive recommendations from their peers to support each other's endeavours.¹¹⁸ This mechanism was enabled by the UN General Assembly Resolution 60/251 in 2006.

During the first cycle (2008-2011), Thailand has organised workshops to involve stakeholders in the process of the UPRs. Furthermore, already in the pre-drafting process, Thailand organised fourteen clinics including relevant government agencies to create the national report all together.¹¹⁹ They stated that the Constitution of the Kingdom of Thailand of 2007 enshrined human dignity and equality in accordance with the UDHR. Regarding human trafficking, the NHRC detailed the problem of corruption among officials and the failure to prosecute traffickers.¹²⁰ As part of the peer review, they were recommended to accede to the Palermo Protocol. Singapore specifically highlighted the importance of continuing the combat against human trafficking alongside the borders of the country. Japan suggested strengthening the law enforcement authorities' responses regarding the issue. France recommended the country to accede to the 1954 Convention on the Status of Stateless Persons.¹²¹

¹¹⁴ The Danish Institute for Human Rights, 'Thailand' (*The Danish Institute for Human Rights*, n.d.) < <https://globalnaps.org/country/thailand/> > accessed 30 May 2023.

¹¹⁵ Commissioner Prakairatana Thontiravong, 'The Role of National Human Rights Commission of Thailand in facilitating access to remedy for business-related human rights impact' (National Human Rights Commission of Thailand, n.d.).

¹¹⁶ Don F. Selby, *Human Rights in Thailand* (University of Pennsylvania Press 2018).

¹¹⁷ United Nations Human Rights Council, 'Universal Periodic Review' (*United Nations Human Rights Council*, n.d.) <<https://www.ohchr.org/en/hr-bodies/upr/upr-home>> accessed 20 February 2024.

¹¹⁸ *ibid.*

¹¹⁹ UNGA 'National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Thailand' HRC WG UPR A/HRC/WG.6/12/THA/1 (19 July 2011).

¹²⁰ *ibid.*

¹²¹ UNGA 'Report of the Working Group on the Universal Periodic Review: Thailand' HRC A/HRC/19/8 (8 December 2011).

The second cycle (2012-2016) served comparative developments regarding the first cycle of URP. During this period the country experiences a coup d'état, which led to many extrajudicial killings within the realms of the government's counterinsurgency campaigns. Thus, many stakeholders noted severe concerns of human rights protection in the country.¹²² In their national report, Thailand announced the drafting of a new Constitution and the development of a new National Human Rights Plan. It was also stated that on 3 April 2015, the Criminal Court of Thailand set up a new division which specifically handles cases of human trafficking. In theory, this allows judges who are experts of the topic to access the cases. Furthermore, the Human Trafficking Case Procedure Act enables victims of human trafficking to request compensation for the damages they have incurred.¹²³ Despite these improvements, many stakeholders still highlighted the poor measures to create an efficient fight against human trafficking and the situation of the stateless hill tribe people.¹²⁴ As part of the peer review, Montenegro indicated their concern regarding the sexual exploitation of individuals and forced labour. Argentina recommended the continued efforts especially when it comes to the implementation of support programmes for victims of trafficking.¹²⁵

The third cycle (2017-2022) had challenging times in store for the Thai government. Apart from grave health-related issues, the COVID-19 pandemic has also affected the human rights framework. This report focused mostly on the sustainable development of the State involving both private and public sectors.¹²⁶ In 2018, the Anti-Trafficking in Persons Act B.E. 2562 was adopted, where there are clear definitions about important concepts of human trafficking, such as 'exploitation for profit' or 'forced labour or services'. The public prosecutor ordered 1,056 cases of human trafficking to be prosecuted between 2017 and April 2020.¹²⁷ There was a prominent development regarding statelessness: in 2020, 480,549 persons were registered with 13-digit identification numbers in the civil administration system and given citizenship to around 290,000

¹²² UNGA 'Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Thailand' HRC WG UPR A/HRC/WG.6/25/THA/3 (23 February 2016).

¹²³ UNGA 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Thailand' HRC WG UPR A/HRC/WG.6/25/THA/1 (12 February 2016).

¹²⁴ UNGA 'Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Thailand' HRC WG UPR A/HRC/WG.6/25/THA/3 (23 February 2016).

¹²⁵ UNGA 'Report of the Working Group on the Universal Periodic Review: Thailand' HRC A/HRC/33/16 (15 July 2016).

¹²⁶ UNGA 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Thailand' HRC WG UPR A/HRC/WG.6/39/THA/1 (17 August 2021).

¹²⁷ *ibid.*

stateless persons.¹²⁸ However, Amnesty International still highlighted how the ratification of international treaties are still inefficient. Furthermore, the Helena Kennedy Centre for International Justice noted that girls who are from tribal groups, ethnic minorities and who are stateless or refugees have the highest probability of becoming victims of trafficking.¹²⁹ When it came to recommendations from the other countries, many, including Croatia and the Philippines, highlighted that Thailand shall continue the efforts to fight against human trafficking, specifically focusing on high-risk groups and a victim-centred approach.¹³⁰

5 Exploring the Transnational Criminal Law Perspective

‘Trafficking in persons’ was first defined on an international level as part of the Palermo Agreement in 2000, as a transnational crime.¹³¹ The State Parties have been implementing the measures highlighted in the Protocol for more than twenty years, with lesser and greater achievements. This chapter will first introduce what transnational criminal law is, since it is important to understand the nature of this legal system to analyse the anti-trafficking efforts and their real effects. Then, the most important document in this discussion will be examined, next to also providing an insight into the Thai national jurisdiction regarding criminal justice and the current practices to combat human trafficking. The discussion of the findings will follow, where the criminal perspective will be compared to the human rights approach in reflection of the Thai stateless’ circumstances. This part will serve as an essential element of the paper since it may include potential recommendations and points of improvement of the current Thai anti-trafficking practices.

5.1 Transnational Criminal Law

Transnational crimes are distinct criminal offences since they have a multinational character which leads to very unique ways of understanding the causes of these crimes to prevent them, as well as different strategies of the perpetrators’ prosecutions.¹³² The legal system of transnational criminal law as a subdivision of international criminal law, is a horizontal obligation of the international community to cooperate and criminalise certain crimes, but also consists of a vertical

¹²⁸ *ibid.*

¹²⁹ UNGA ‘Summary of Stakeholders’ submissions on Thailand: Report of the Office of the United Nations High Commissioner for Human Rights’ HRC WG UPR A/HRC/WG.6/39/THA/3 (13 August 2021).

¹³⁰ UNGA ‘Report of the Working Group on the Universal Periodic Review: Thailand’ HRC A/HRC/49/17 (21 December 2021).

¹³¹ United Nations Special Treaty Event ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime’ (April 2009).

¹³² Jay S. Albanese, *Transnational Crime* (de Sitter Publications, 2008).

application of the criminal law rules and regulations in the national legal systems.¹³³ An important international convention has been the United Nations Convention against Transnational Organised Crime (UNTOC), which was part of the Palermo Agreement in 2000. According to *Article 3(2)* of the UNTOC, a crime is transnational if and when it is committed in more than one State (a), it is committed in one State but a substantial part of its preparation, planning, direction, or control takes place in another State (b), it is committed in one State, but involves an organised criminal group that engages in criminal activities in more than one State (c), or it is committed in one State, but has substantial effects in another State.¹³⁴ Many have criticised transnational crimes as being over-exclusive, since it is a rather broad category of crimes, including organised, white collar, but also political crimes.¹³⁵

The opinions on how to establish the legal framework to combat transnational crimes are relatively controversial, thus attracting many scholars to discuss their views. For example, Sornarajah claimed that transnational crime is a by-product of globalisation, since the integration of the world's markets can be compared with how transnational crimes affect the whole globe.¹³⁶ They also underlined the importance of national criminal law systems translating the international rules as a distinct body of transnational crimes. According to Sornarajah, this can only be done in a way that a State contributes to the global, united efforts with other States and not solely with the motivation to protect their own State's morality or safety.¹³⁷ This standpoint was not supported by Parrish, who claims that the response to transnational crimes should be multilateral and collaborative, rather than leaving all the obligations to the States to adopt extraterritorial rules in their domestic legal system.¹³⁸ They argue further that national laws having an extraterritorial effect can be quite problematic, shifting the emphasis to the perpetrators, rather than adopting a victim-centred approach.¹³⁹

5.1.1 Palermo Agreement

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Organised Crime Convention (the Trafficking in Persons Protocol),

¹³³ Neil Boister, *Transnational Criminal Law* (Oxford University Press, 2018) 17.

¹³⁴ The United Nations Convention on Transnational Organised Crime and the Protocols Thereto (adopted 15 November 2000, UNGA Res 55/25).

¹³⁵ Neil Boister, *Transnational Criminal Law* (Oxford University Press, 2018) 3.

¹³⁶ M. Sornarajah, 'Transnational Crimes: The Third Limb of the Criminal Law' [2004] SJLS 390.

¹³⁷ *ibid.*

¹³⁸ Austen L. Parrish, 'Domestic Responses to Transnational Crime: The Limits of National Law' [2012] 23 CLF 275.

¹³⁹ *ibid.*

was created to recognise the vital elements of trafficking in persons and to establish a global, shared understanding of this crime. The agreement was concluded in Palermo in 2000 and entered into force three years later. There are three basic components of trafficking in persons based on this document, namely: the act, the means, and the purpose of traffickers.¹⁴⁰ The act regards the question of what is done to the victims and includes the recruiting, transporting, transferring, or harbouring a person. The means of trafficking is the way it is done, including the use of force or threat of it, coercion or abduction, fraud, or deception, next to abusing power to take advantage of the more vulnerable. The reason behind these actions is the purpose, that is, the exploitation of individuals, which can be sexual exploitation, forced labour or services, slavery or the removal of organs.¹⁴¹ Human trafficking can be identified when one the ‘acts’ and at least one of the ‘means’ is met with the ‘purpose’.¹⁴²

One of the goals of the Palermo Agreement was to focus on the protection of the victims. Article 3b, establishes this victim-centred approach by stating that the consent of the victim is irrelevant if any of the ‘means’ has been set forth by the perpetrators.¹⁴³ This is further intensified by *Article* 6, which instructs State Parties to protect the privacy and identity of the victims, alongside the implementation of different recovery strategies, including physical, psychological and social conditions of the victims.¹⁴⁴ These concerns for example appropriate housing, counselling in a language that the victim understands, but also medical support or employment and educational training.¹⁴⁵ Another goal of the Protocol is to prevent trafficking in persons by also establishing efficient cooperation between State Parties. Measures regarding prevention are enshrined in *Article* 9, which also include the protection of victims from re-victimisation.¹⁴⁶ As human trafficking is a transnational crime, law enforcements and other authorities of State Parties shall also cooperate by sharing information especially when it comes to border controls. It is crucial to identify whether

¹⁴⁰ UNODC, ‘E4J University Module Series: Organised Crime, Module 3: Organised Crime Markets’ (April 2018).

¹⁴¹ UNODC, ‘E4J University Module Series: Organised Crime, Module 3: Organised Crime Markets’ (April 2018).

¹⁴² *ibid.*

¹⁴³ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (adopted 15 November 2000), UNGA Res 55/25).

¹⁴⁴ *ibid.*

¹⁴⁵ *ibid.*

¹⁴⁶ *ibid.*

travel documents belong to the person wishing to cross a border or could be potential perpetrators or victims of trafficking.¹⁴⁷

While the Palermo Protocol 2000 has been an important step to unite State Parties and raise awareness of the challenges of human trafficking, it is argued that this agreement has not been effective enough to reduce the magnitude of trafficking in persons in a significant manner.¹⁴⁸ Seideman claimed that the broad wordings of the Palermo Protocol and the inability to enforce the UN's legislation, next to having irregularities with State's self-reports, have made the agreement ineffective when it comes to reducing sex trafficking.¹⁴⁹ They claim that the broad descriptions lead to States having their own interpretations for crucial definitions. Furthermore, while the Protocol regards the victim's consent irrelevant, many countries do not reflect this in their own national jurisdictions – leading to many cases when the traffickers cannot be convicted due to the 'consent' of the victims to e.g. working in a brothel in a foreign country under highly repressive circumstances.¹⁵⁰ Gallo & Thinyane also argued that the majority of the anti-trafficking measures of the Protocol had failed after 20 years in operation. The long-term positive impact plans to reduce the amount of trafficking cases has fallen short. They claim that a criminal justice approach does not consider the root causes of the problem and can only reach a marginal effect.¹⁵¹

5.2 Thai Criminal Legal Framework

In 1932, Thailand adopted its first Constitution as part of a military regime. In the 1990s, the country converted into a democracy by also adopting its democratic Constitution in 1997.¹⁵² Since then, there have been many military-backed governments, like the most recent change to the Constitution in 2017. Currently, there are many debates about the rigidity of the junta-backed¹⁵³ basic laws, while many demand a new democratic constitution to restore the balance of the Thai

¹⁴⁷ *ibid.*

¹⁴⁸ Christina A. Seideman, 'The Palermo Protocol: Why It Has Been Ineffective in Reducing Human Sex Trafficking' [2015] 9 GT.

¹⁴⁹ Christina A. Seideman, 'The Palermo Protocol: Why It Has Been Ineffective in Reducing Human Sex Trafficking' [2015] 9 GT.

¹⁵⁰ *ibid.*

¹⁵¹ Michael Gallo & Hannah Thinyane, 'The Palermo Protocol Turns 20: Failures of the Past and Shifting Paradigms for the Future' (*UNU Macau*, 20 November 2020) <<https://unu.edu/macau/news/palermo-protocol-turns-20-failures-past-and-shifting-paradigms-future>> accessed 25 February 2024.

¹⁵² Ridwanul Hoque, 'Determinants of Anti-Trafficking Efforts, Case Study: Thailand' (*British Institute of International and Comparative Law* 2022).

¹⁵³ military-backed.

society.¹⁵⁴ This constant struggle of political instability in the country¹⁵⁵ naturally makes it more challenging to effectively produce and implement laws that can contribute to the combat of trafficking in persons. Despite the volatile atmosphere, it was found that as a response to the international pressure, the current political will of the Thai government has been steered towards the improvement of the trafficking in persons situation in the country.¹⁵⁶ The Trafficking in Persons (TIP) Reports by the United States seem to be one of the most substantial influences to motivate the anti-trafficking efforts in the country. If a country reaches a Tier 3, the U.S. president can determine whether to restrict that State from funding exchange programs, and to limit the country's access to funds and loans.¹⁵⁷

In the realm of criminal law, the first relevant legislation to human trafficking was adopted in 1988 and in 1997, which were replaced in 2008, with the Anti-Trafficking in Persons Act.¹⁵⁸ This document generally criminalises the act of trafficking in human beings. In 2013, Thailand ratified the UNTOC, thus making an important step towards implementing the international guidelines into their national legal system. In the same year the Anti-Transnational Organised Crime Act was also adopted, as a complementary to the Anti-Trafficking in Persons Act of 2008. Apart from these, Thailand has various other laws that govern the combat the human trafficking of the stateless, such as the Penal Code of 1956, Nationality Act 1981, the Prevention and Suppression of Prostitution Act 1996, the Child Protection Act 2003, the Witness Protection Act 2003, the Anti-Transnational Organised Crime of 2013, and the Modern Slavery Act 2015.

While many stakeholders collaborate with the government in translating these anti-trafficking measures, police forces are the most responsible to investigate offences of human trafficking.¹⁵⁹ The US 2022 TIP revealed that the Thai government has significantly more authority, than NGOs

¹⁵⁴ Ponson Liengboonlerthchai, 'Do you hear the people sing?: Thais demand a democratic constitution to replace the junta' (*Constitutionnet* 29 June 2021) <<https://constitutionnet.org/news/do-you-hear-people-sing-thais-demand-democratic-constitution-replace-junta>> accessed 25 February 2024.

¹⁵⁵ Joshua Kurlantzick, 'Thailand's Turbulence: Implications for the Region and the World' (*Council on Foreign Relations* 31 August 2023) <<https://www.cfr.org/in-brief/thailands-turbulence-implications-region-and-world>> accessed 25 February 2024.

¹⁵⁶ Ridwanul Hoque, 'Determinants of Anti-Trafficking Efforts, Case Study: Thailand' (*British Institute of International and Comparative Law* 2022).

¹⁵⁷ International Justice Mission (IJM), 'What is the Trafficking in Persons (TIP) Report?' (*IJM*, n.d.) <<https://www.ijm.org/news/what-is-the-tip-report#:~:text=At%20the%20determination%20of%20the,educational%20and%20cultural%20exchange%20programs>> accessed 23 November 2023.

¹⁵⁸ Ridwanul Hoque, 'Determinants of Anti-Trafficking Efforts, Case Study: Thailand' (*British Institute of International and Comparative Law* 2022).

¹⁵⁹ *ibid.*

or other organisations specialised in human rights.¹⁶⁰ This is an important element since the rate of corruption within public authorities is relatively high in Thailand. It is manifested in their domination due to power imbalances between social groups, but also public officials' interference in the protection of victims.¹⁶¹ The Thai government also publishes annual progress reports to demonstrate its efforts in the anti-trafficking. In early 2023, the government adopted their whole-of-society approach, next to implementing zero tolerance towards traffickers. Furthermore, the National Referral Mechanism was also expanded nation-wide, which adopts a victim-centred, trauma-informed approach to human trafficking. In 2023, the NRM identified 765 potential victims out of which 252 were actual victims, who were accepted to shelters.¹⁶²

6 Conclusion

6.1 Discussion of findings

Today, human trafficking is mostly dealt with from a transnational criminal law point of view, despite the disadvantages this approach carries for the victims. It has been proven that a human rights-based perspective would be a better way for the victims' rights to be prioritised. However, this approach also has some downfalls, the human rights legal system has to be implemented on a national level, which then often excludes the stateless. Members of the hill tribe and the refugees residing in Thailand are considered in this category. It appears that they are considered less in the eyes of the Thai administration, leaving them at a higher risk to become victims of human trafficking. After analysing the specific international law framework and the local Thai system, it seems as none of the approaches are fit to combat the problem of human trafficking of the stateless. The findings suggest that the combination of the different approaches would be the most suitable to fight this complex issue. Meaning that the criminal justice measures should reflect the importance of the rights of the victims, next to focusing on the prosecution of the perpetrators. And vice versa, the human rights approach should also consider its flaws, for example by highlighting the significance of governments and local authorities incorporating stateless people in their system. This combination of methods can be done both nationally and internationally.

Another possibility to include human trafficking in the human rights system would be for example adopting a right to effective remedies for stateless victims of human trafficking in the

¹⁶⁰ Kimberly Wild Thongsonti, 'What economic, sociocultural, and political challenges does Thailand face when implementing legislation on human trafficking for sexual exploitation?' [2023].

¹⁶¹ *ibid.*

¹⁶² Royal Thai Government, 'Royal Thai Government's Progress Report on Anti-Human Trafficking Efforts' (1 January - 31 December 2023) <<https://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2024/02/2023-Country-Report-FINAL-as-of-25-Jan2-2.pdf>> accessed 25 February 2024.

form of a non-binding declaration by the United Nations, which can further contribute to the policy-making on a national level. This would contribute to the international pressure of States to develop their laws effectively, while also declaring the importance of the issue of the stateless people's vulnerability on a global level.

6.2 Conclusion

This thesis sought to answer the question how the right to life creates the foundation for a human rights approach to fight human trafficking of stateless people in Thailand. The first chapter introduced the topic through defining statelessness and trafficking of persons in a general sense. The 1954 Convention relating to the Status of Stateless Persons enshrined that a stateless person is not considered as a national by any State under its law. It was also established that the problem of statelessness is a global challenge, affecting millions of people. The state of being stateless also places the individual in a vulnerable position and at a higher risk of becoming a victim of human trafficking. Trafficking in persons is a rapidly growing transnational crime; in 2021, there were 50 million victims across the globe of this multifaceted crime, which also involves grave violations of human rights. The second chapter presented the specific case of Thailand and the country's historic socioeconomic context, next to also demonstrating the efforts of the government to combat the issue of trafficking of stateless people. Two kinds of stateless people can be identified in Thailand: the indigenous people of the Hill Tribes and refugees from the surrounding states. People who fall under the category of stateless do not have legal documents to prove their identity, therefore are precluded from the Thai administrative system. In 2023, there were around 400,000 victims of human trafficking in the country, which data is also connected to the stateless since the most prevalent causes of becoming victims are poverty, lack of education and lack of employment opportunities. While the government has been making efforts to better the situation, these have not been sufficiently effective. TRAFCORD, a local non-governmental organisation, calls for a victim-centred approach to prevent and protect victims. The third chapter aimed at establishing the human rights framework and analysing Article 3, more specifically the right to life of the UDHR. It found that the right to life, as the most fundamental human right of individuals, has the potential to provide the base for stateless victims of human trafficking when adopting a human rights-based approach. Furthermore, the chapter also offered an overview of Thailand's human rights situation through the presentation of their Universal Periodic Reviews. According to these, the country has been making improvements, however the government still needs to adopt crucial measures to enhance the protection of human rights nation-wide. The last chapter served as a counter-example for the human rights-based approach by introducing the current technique to deal with human

trafficking, transnational criminal law, and by revealing the advantages and disadvantages of the criminal justice approach.

To conclude my thesis, the right to life, liberty, and security creates a foundation for stateless by being ones of the most fundamental rights one can have and by enabling the inherent right to be considered under not only international law, but in the national legal systems as a human being whose rights are protected by the State and from the abuses of it. It is crucial to do so, to enable the stateless to a) become less vulnerable to human trafficking and b) to access better remedies to support them in their recovery after being trafficked.

7 References

7.1 Primary Sources

Constitution of the Kingdom of Thailand, BE 2560 (2017).

International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200 (XXII) (UNHCR).

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (adopted 15 November 2000), UNGA Res 55/25).

Temple of Preah Vihear Case (Cambodia v Thailand) [1962] ICJ.

The United Nations Convention on Transnational Organised Crime and the Protocols Thereto (adopted 15 November 2000, UNGA Res 55/25).

The Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

The United Nations Convention Relating to the Status of Stateless Persons (adopted 28 September 1954) 360 UN Treaty Series 117.

The United Nations Convention on the Reduction of Statelessness (adopted 30 August 1961) 989 UN Treaty Series 175.

The Rome Statute of the International Court (adopted 17 July 1998) A/CONF.183/9.

7.2 Secondary Sources

7.2.1 Reports

Food and Agriculture Organisation of the United Nations Regional Office for Asia and the Pacific Bangkok, ‘Case Study on Education Opportunities for Hill Tribes in Northern Thailand’ (RAP publication 2002).

International Labour Organisation, ‘Global Estimates of Modern Slavery’ (*International Labour Organisation* 2022).

Ridwanul Hoque, ‘Determinants of Anti-Trafficking Efforts, Case Study: Thailand’ (*British Institute of International and Comparative Law* 2022).

Royal Thai Government, ‘Royal Thai Government’s Progress Report on Anti-Human Trafficking Efforts’ (1 January - 31 December 2023) <<https://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2024/02/2023-Country-Report-FINAL-as-of-25-Jan2-2.pdf>> accessed 25 February 2024.

UNHCR, ‘Handbook on Protection of Stateless Persons’ (UNHCR, 2014).

United Nations Committee for Human Rights, ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’ (Commentary, United Nations Human Rights, 2010).

UNGA ‘National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Thailand’ HRC WG UPR A/HRC/WG.6/12/THA/1 (19 July 2011).

UNGA ‘Report of the Working Group on the Universal Periodic Review: Thailand’ HRC A/HRC/19/8 (8 December 2011).

UNGA ‘Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Thailand’ HRC WG UPR A/HRC/WG.6/25/THA/3 (23 February 2016).

UNGA ‘National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Thailand’ HRC WG UPR A/HRC/WG.6/25/THA/1 (12 February 2016).

UNGA ‘Report of the Working Group on the Universal Periodic Review: Thailand’ HRC A/HRC/33/16 (15 July 2016).

UNGA ‘National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Thailand’ HRC WG UPR A/HRC/WG.6/39/THA/1 (17 August 2021).

UNGA ‘Summary of Stakeholders’ submissions on Thailand: Report of the Office of the United Nations High Commissioner for Human Rights’ HRC WG UPR A/HRC/WG.6/39/THA/3 (13 August 2021).

UNGA ‘Report of the Working Group on the Universal Periodic Review: Thailand’ HRC

A/HRC/49/17 (21 December 2021).

U.S. Department of State, '2023 Trafficking in Persons Report: Thailand' (*Office to Monitor and Combat Trafficking in Persons* 2023).

Walk Free, 'The Global Slavery Index 2023' (*Walk Free* 2023).

7.2.2 Academic background

Alex Paxton, 'Finding a Country to Call Home: A Framework for Evaluating Legislation to Reduce Statelessness in Southeast Asia' [2012] 12 PRL PJ 623.

Anders Henriksen, *International Law*, (OUP 3rd ed., 2021) 163.

Austen L. Parrish, 'Domestic Responses to Transnational Crime: The Limits of National Law' [2012] 23 CLF 275.

Burma Watcher, 'Burma in 1988: There Came a Whirlwind' [1989] 29 2 AS 174.

Christina A. Seideman, 'The Palermo Protocol: Why It Has Been Ineffective in Reducing Human Sex Trafficking' [2015] 9 GT.

Duean Wongsu, 'TRAFCORD and Its Participation in the Promotion of Human Rights to Counter Human Trafficking in Thailand' [2013] 31 WILJ 501.

Gerald C. Hickey & Jesse Wright, *The Hill People of Northern Thailand: Social and Economic Development* (AID/ASIA-C-1310 1978).

Glanville Williams, 'The Concept of Legal Liberty' (1956) 56 CLR 1129.

H. J. McCloskey, 'The Right to Life' (1975), 84 Mind 403.

Hannah Arendt, *The Origins of Totalitarianism* (first published 1951, Penguin 2017).

Human Rights Watch, 'Unwanted and Unprotected: Burmese Refugees in Thailand' [1998] 10 6 HRW.

Idil Atak & James C. Simeon, 'Human Trafficking' [2014] 12 JICJ 1019.

Indigenous Law Centre, 'Shadow Report to Thailand's Initial Periodic Report to the Human Rights Committee' [2005] 9 AILR 123.

Jay S. Albanese, *Transnational Crime* (de Sitter Publications, 2008).

- Janepicha Cheva-Isarakul, 'Diagnosing Stateless and Everyday State Illegibility in Northern Thailand' [2019] 1 SCR 214.
- Kara Patterson, 'Sex Trafficking from Thailand to Japan: Human Beings or Illegal Goods' [2003] 12 DJLS 175.
- Katerina Linos & Tom Pegram, 'The Language of Compromise in International Agreements' [2016] 70 3 IO 587.
- Kimberly Wild Thongsonti, 'What economic, sociocultural, and political challenges does Thailand face when implementing legislation on human trafficking for sexual exploitation?' [2023].
- Laura van Waas, Conny Rijken and Martin Gramatikov, 'Exploring the Interaction between Statelessness, Legal Empowerment and Human Trafficking' [2014] 19 TLR 303.
- Liora Lazarus and Benjamin J Goold, 'Security and Human Rights: Finding a Language of Resilience' (2019).
- Mark Manly & Laura van Waas, 'The State of Statelessness Research: A Human Rights Imperative' [2014] 19 TLR 3.
- M. Sornarajah, 'Transnational Crimes: The Third Limb of the Criminal Law' [2004] SJLS 390.
- Neil Boister, *Transnational Criminal Law* (Oxford University Press, 2018) 3.
- Saba Demeke, 'A human rights-based approach for effective criminal justice response to human trafficking' [2024] 9 JIHA.
- Siriporn Skrobanek, Nataya Boonpakdee and Chutima Jantateero, *The Traffic in Women, Human Realities of the International Sex Trade* (Zed Books Ltd 1997) 1.
- Tang Lay Lee. 'Gender Aspects of Statelessness and Irregular Migrant Workers from Burma in Thailand' [2003] 3 ISIL YB IHRL 22.
- Thomas Hobbes, *Leviathan* (first published 1651, Penguin 1985).
- Tolu Ogboru & Salome Kigbu, 'Human Trafficking and Human Smuggling: The Distinction

and Legal Implications’ [2015] 6 BLR 224.

7.2.3 Websites

International Institute for Asian Studies, ‘The statelessness-trafficking nexus. A case study in Thailand’ (*International Institute for Asian Studies*, Autumn, 2020) <
<https://www.iias.asia/the-newsletter/article/statelessness-trafficking-nexus-case-study-thailand>> accessed 2 November 2023.

International Justice Mission (IJM), ‘What is the Trafficking in Persons (TIP) Report?’ (*IJM*, n.d.) <
<https://www.ijm.org/news/what-is-the-tip-report#:~:text=At%20the%20determination%20of%20the,educational%20and%20cultural%20exchange%20programs>> accessed 23 November 2023.

Janina Pescinski, ‘A Human Rights Approach to Human Trafficking’ (*United Nations University*, 23 February, 2015) <
<https://gcm.unu.edu/publications/articles/a-human-rights-approach-to-human-trafficking.html#:~:text=A%20human%20rights%20approach%20allows,he%20or%20she%20was%20trafficked>> accessed 22 February 2024.

Joshua Kurlantzick, ‘Thailand’s Turbulence: Implications for the Region and the World’ (*Council on Foreign Relations* 31 August 2023) <
<https://www.cfr.org/in-brief/thailands-turbulence-implications-region-and-world>> accessed 25 February 2024.

Laboratory to Combat Human Trafficking, ‘Human Trafficking: A Human Rights Violation’ (*Laboratory to Combat Human Trafficking*, 10 Dec, 2018) <
<https://combathumantrafficking.org/blog/2018/12/10/human-trafficking-human-rights-violation/>> accessed 20 February 2024.

Lian Bawi Thang, ‘Understanding the Military Coup in Myanmar, Two Years Later’ (*East-West Center*, 2023) <
<https://www.eastwestcenter.org/news/east-west-wire/understanding-military-coup-myanmar-two-years-later>> accessed 23 November 2023.

Matthew Brown, ‘Addressing statelessness in Thailand’ (*The Borgen Project*, 2021) <
<https://borgenproject.org/statelessness-in-thailand/>> accessed 2 November 2023.

Michael Gallo & Hannah Thinyane, ‘The Palermo Protocol Turns 20: Failures of the Past and

Shifting Paradigms for the Future’ (UNU Macau, 20 November 2020) <<https://unu.edu/macau/news/palermo-protocol-turns-20-failures-past-and-shifting-paradigms-future>> accessed 25 February 2024.

Nationality for All, ‘Statelessness in the Asia Pacific’ (*Nationality for All*, 2023) <<https://www.nationalityforall.org/statelessness-in-the-asia-pacific/>> accessed 20 November 2023.

Ponson Liengboonlerthchai, ‘Do you hear the people sing?: Thais demand a democratic constitution to replace the junta’ (*Constitutionnet* 29 June 2021) <<https://constitutionnet.org/news/do-you-hear-people-sing-thais-demand-democratic-constitution-replace-junta>> accessed 25 February 2024.

Sarah Dean, ‘The Hill Tribes of Thailand’ (*Challenges Abroad*, n.d.) <<https://www.challengesabroad.com.au/blog/the-hill-tribes-of-thailand/>> accessed 20 November 2023.

United Nations Human Rights, ‘About trafficking in persons and human rights’ (*United Nations Human Rights*, n.d.) <<https://www.ohchr.org/en/trafficking-in-persons/about-trafficking-persons-and-human-rights#:~:text=In%20fact%2C%20trafficking%20and%20associated,under%20international%20human%20rights%20law.>> accessed 2 November 2023.

United Nations Human Rights, ‘What are human rights?’ (*United Nations Human Rights*, n.d.) <<https://www.ohchr.org/en/what-are-human-rights>> accessed 20 February 2024.

United Nations Human Rights, ‘Declaration on human rights defenders: Special Rapporteur on human rights defenders’ (*United Nations Human Rights*, n.d.) <<https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders#:~:text=The%20Declaration%20is%20not%2C%20in,on%20Civil%20and%20Political%20Rights>> accessed 22 February 2024.

United Nations Human Rights Council, ‘Universal Periodic Review’ (*United Nations Human Rights Council*, n.d.) <<https://www.ohchr.org/en/hr-bodies/upr/upr-home>> accessed 20 February 2024.

United Nations Office on Drugs and Crimes, 'Human trafficking' (*United Nations Office on Drugs and Crimes*, n.d.) < <https://www.unodc.org/unodc/en/human-trafficking/human-trafficking.html> > accessed 11 November 2023.

UNHCR, 'About statelessness' (*UNHCR*, n.d.)
<<https://www.unhcr.org/ibelong/about-statelessness/>> accessed 10 November 2023.

7.2.4 *Other sources*

Dieter Egert, 'Written Contribution on General Comment for the Right to Life to United Nations Committee for Human Rights: Common violations of the Right of Life' (2015).

Martina Vendenberg, 'Complicity, Corruption, and Human Rights: Trafficking in Human Beings' [2002] 34 Case W RJIL 323.

United Nations High Commissioner for Refugees, 'Expert Meeting, The Concept of Stateless Persons under International Law Summary Conclusions' (2010).

UNHCR, 'Thailand Fact Sheet' (30 June 2023).

United Nations Special Treaty Event 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime' (April 2009).

UNODC, 'E4J University Module Series: Organised Crime, Module 3: Organised Crime Markets' (April 2018).