

# Statelessness in Asia

## Causes, Conditions, and Challenges in Context

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### 1.1 Introduction

In June and July 2018, a daring cave rescue mission gripped the attention of the world as a junior association football team and their assistant coach were rescued from a complex cave system in Chiang Rai Province in northern Thailand, having been trapped for almost two weeks after heavy rainfall partially flooded the cave system and blocked their way out. It later transpired that the assistant coach and three of the boys were stateless. Born in tribes living in an area extending across Thailand, Myanmar, Laos, and China, the region had amorphous borders and many, including the assistant coach and the boys, did not have assigned legal status.<sup>1</sup> Following their rescue and when their stateless status was made known, Thai officials promised legal assistance to obtain Thai citizenship and in September that year, all four were granted Thai citizenship.<sup>2</sup>

Not all stateless persons in Asia and beyond are quite that fortunate. Statelessness is a global phenomenon that affects millions of people worldwide. The issue has come to the forefront of international politics

<sup>1</sup> Janepicha Cheva-Isarakul, 'Blood, Soil and Paper: Thailand's Mission to Reduce Statelessness' *The Conversation* (3 August 2018) <<https://theconversation.com/blood-soil-and-paper-thai-lands-mission-to-reduce-statelessness-100519>> accessed 6 September 2023.

<sup>2</sup> Aicha El Hammar Castano, 'Thailand grants citizenship to some of the boys and coach rescued from cave' *ABC News* (9 August 2018) <<https://abcnews.go.com/International/boys-coach-rescued-cave-granted-thai-citizenship/story?id=57109241#:~:text=CHIANG%20RAI%2C%20Thailand%20%2D%2D%20Three,ministry%20told%20ABC%20News%20Wednesday.&text=All%20four%20had%20previously%20been,became%20trapped%20in%20the%20cave.>> accessed 13 September 2023.

and media attention in recent times with the mass expulsion of stateless Rohingya from Myanmar and the risk of mass denationalization of Indian citizens in the state of Assam.<sup>3</sup> But, the phenomenon of statelessness and the predicament of the stateless go beyond these more highly publicized instances. The United Nations High Commissioner for Refugees ('UNHCR') reported in their 2022 Global Trends Forced Displacement Report ('2022 Global Trends Report') an estimate of 4.4 million stateless persons or persons with undetermined nationality worldwide.<sup>4</sup>

When statelessness first emerged as an issue of international concern, the focus was initially on Europe,<sup>5</sup> and for a long time it has been associated with the refugee or forced migration context.<sup>6</sup> The 1949 United Nations 'A Study on Statelessness' suggested that the number of stateless persons who are not refugees 'is limited'<sup>7</sup> and 'much less numerous than that of refugees who are stateless'.<sup>8</sup> The study even suggested that the position of stateless non-refugees 'is in certain respects more favourable than that of stateless refugees', as the former 'can obtain documents establishing his civil status from the authorities of the countries where these documents were originally issued, because these authorities have no reason to refuse them to him'.<sup>9</sup> More than sixty years on, the state of knowledge about the phenomenon of statelessness has changed tremendously. A 2014 UNHCR Handbook observed that '[m]ost stateless persons . . . have never crossed borders and find themselves in their "own country."<sup>10</sup> Indeed, according to the UNHCR

<sup>3</sup> Christoph Sperfeldt and Amelia Walters, 'A Crisis of Citizenship in India is Risking Mass Statelessness' *Pursuit* (5 September 2019) <<https://pursuit.unimelb.edu.au/articles/a-crisis-of-citizenship-in-india-is-risking-mass-statelessness>>; see Chapter 8 in this book, Mohsin Alam Bhat's chapter, 'Doubtful Citizens: Irregularization and Precarious Citizenship in Contemporary India'.

<sup>4</sup> United High Commissioner for Refugees (UNHCR), 'Global Trends: Forced Displacement in 2022' (Report Statistics and Demographics Section June 2023) 5 <[www.unhcr.org/sites/default/files/2023-06/global-trends-report-2022.pdf](http://www.unhcr.org/sites/default/files/2023-06/global-trends-report-2022.pdf)> accessed 12 September 2023 ('2022 Global Trends Report').

<sup>5</sup> Mira Siegelberg, *Statelessness: A Modern History* (Harvard University Press 2020), 108.

<sup>6</sup> Noting some exceptions for example, Benjamin N. Lawrence and Jacqueline Stevens (eds) *Citizenship in Question: Evidentiary Birthright and Statelessness* (Duke University Press 2017).

<sup>7</sup> United Nations, 'A Study on Statelessness' (UN Doc E/1112/E/1112/Add.1 August 1949) 3 <[www.unhcr.org/media/study-statelessness-united-nations-august-1949-lake-success-new-york](http://www.unhcr.org/media/study-statelessness-united-nations-august-1949-lake-success-new-york)> accessed 12 September 2023.

<sup>8</sup> *ibid.*

<sup>9</sup> *ibid.*

<sup>10</sup> UNHCR, 'Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons' (Handbook 30 June 2014) para 1 <[www.unhcr.org/dach/](http://www.unhcr.org/dach/)

2022 Global Trends Report, '[a]bout 1.3 million stateless people worldwide are also displaced',<sup>11</sup> meaning only about 30 per cent of the known stateless global population of 4.4 million is displaced.

The geographical scope of research and action on statelessness has also expanded significantly. While statelessness remains a global phenomenon, the data also reveals that it is a global issue with an Asian epicentre. Of the current known stateless population worldwide, the UNHCR estimates that about 56 per cent lives in the Asia-Pacific region.<sup>12</sup> In its 2022 Global Trends Report, the UNHCR notes that 'most stateless people continued to be reported in Bangladesh (952,300), Côte d'Ivoire (931,100), Myanmar (630,000) and Thailand (574,200)', notably with Côte d'Ivoire being the only country mentioned that is not located in the Asian region.<sup>13</sup>

This book is a scholarly intervention at the intersection of a growing literature on statelessness, focusing on statelessness as a phenomenon beyond forced migration and as situated within the Asian region. We conceptualize statelessness as a legal status with significant social, political, and economic impact. This highlights that being stateless is more than just a legal disability; it is a legal disability with widespread ramifications on the whole life of the stateless person. Those who are stateless, or otherwise find themselves without a recognized legal identity, not only lack political rights but face daily obstructions from lack of access to a range of social and economic resources, with significant adverse impact on their living conditions.

In addition, we examine the intersection of statelessness with systems of inequality based on ethnicity, religion, or gender. For instance, according to UNHCR estimates, more than 75 per cent of the world's known stateless persons belong to minority groups.<sup>14</sup> This overlap

[wp-content/uploads/sites/27/2017/04/CH-UNHCR\\_Handbook-on-Protection-of-Stateless-Persons.pdf](https://www.unhcr.org/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf)>.

<sup>11</sup> UNHCR, '2022 Global Trends Report' (n 4) 5.

<sup>12</sup> UNHCR, 'Asia and the Pacific Regional Trends: Forced Displacement and Statelessness' (Report, Data, Identity Management and Analysis (DIMA) Unit July 2023) 28 <[www.unhcr.org/asia/asia-pacific-regional-trends](https://www.unhcr.org/asia/asia-pacific-regional-trends)> accessed 13 September 2023 ('2022 Asia and the Pacific Regional Trends Report'). As the report acknowledges, 'the number of stateless people remains an underestimate as many countries do not report data on statelessness'.

<sup>13</sup> UNHCR, '2022 Global Trends Report' (n 4) 45.

<sup>14</sup> UNHCR "'This is our Home" Stateless Minorities and Their Search for Citizenship' (Statelessness Report 2017) 1 <[www.unhcr.org/ibelong/stateless-minorities/](https://www.unhcr.org/ibelong/stateless-minorities/)> accessed 12 September 2023.

between statelessness and minority status is sufficiently prominent that the UN Special Rapporteur on Minority Issues made statelessness a priority theme in his reporting to the 73rd session of the UN General Assembly.<sup>15</sup> Within Asia, the predicament of denationalized Bengali-speaking persons in the Indian state of Assam, Vietnamese long-term resident populations in Cambodia, former Chinese immigrants in Brunei as well as hill tribes in northern Thailand, among others, are only some examples demonstrating the multi-layered and complex interconnections that exist between minority status, social exclusion, marginalization, economic development, religion, violent conflict and access to citizenship. Contributions in this volume will further highlight how statelessness and resulting social and economic exclusion often arises from, or at least is heightened by and intricately connected with, ethnicity, religion, and/or gender.

There is a need for deeper research into the relationship between one's minority status and statelessness, particularly as an enquiry into the legitimacy or illegitimacy of the use of state power to grant and remove citizenship status. Indeed, members of disadvantaged and marginalized communities are more prone to a risk of statelessness, be it due to a lack of access to state registration systems or simply due to a higher prevalence of poverty. For many minorities, the causes of statelessness are more direct and linked to discriminatory policies and social exclusion. This means that minority populations that have often resided over many generations within the borders of a state could be regarded as foreigners or aliens who do not belong to the national polity.<sup>16</sup> The arbitrary and discriminatory use of state power in producing and sustaining statelessness needs to be fully examined and acknowledged in international policies and actions aimed at addressing and reducing statelessness.

Further, the focus on Asia also allows for greater attention to the phenomenon of *in situ* statelessness. Globally, partly due to its original focus mentioned above, studies on statelessness in recent decades have predominantly focused on the refugee or forced migration context.

<sup>15</sup> UN General Assembly 'Effective Promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Note by the Secretary-General' (20 July 2018) UN Doc A/73/205 <[www.ohchr.org/en/documents/thematic-reports/a73205-report-special-rapporteur-minority-issues-statelessness-minority](http://www.ohchr.org/en/documents/thematic-reports/a73205-report-special-rapporteur-minority-issues-statelessness-minority)> accessed 18 September 2023.

<sup>16</sup> Michelle Foster and Jade Roberts, 'Manufacturing Foreigners: The Law and Politics of Transforming Citizens into Migrants' in Catherine Dauvergne (ed), *Research Handbook on the Law and Politics of Migration* (Edward Elgar Publishing 2021) 218.

However, although statelessness may result from migration, many people on the move are already stateless before they even cross a border. The experience of the stateless resident differs from that of the stateless refugee. On the one hand, in situ stateless persons will be located within existing communities, which may allow for a degree of social and familial stability in their every day life. In contrast, stateless refugees are displaced from their homes and may experience serious threats to their physical existence and well-being. On the other hand, in situ stateless persons tend to be overlooked by the state and international organizations, and therefore may experience chronic and long-term disabilities with no prospect of improvement in their status and conditions. In contrast, stateless refugees may receive assistance from the UNHCR or other international organizations, and have some prospect, in the long run, of rectifying their stateless status with that assistance. Accordingly, there is a need to look at statelessness outside of the refugee/forced migration context as a distinct area of study.

This book is the first to focus on statelessness *in Asia*. The various chapters employ case studies in Asia to highlight the *causes*, *conditions*, and/or *challenges* of statelessness. The causes of statelessness are varied, context-specific and interconnected. Some common causes transcend regions and can be almost seen as a universalizable phenomenon, but others are more specific due to the historical, social, and cultural contexts of the particular area. Thus, while some common causes of statelessness in Asia are not region-specific, such as inadequate legal frameworks, weaknesses in civil registration systems, lack of protections for migrants and mobile lifestyles, others like ethnic or national discrimination, gender discrimination, and colonial legacies may be more particular.<sup>17</sup>

In approaching statelessness as a multifaceted phenomenon, this book centres the person as a legal subject of statelessness as well as a social and political subject whose experiences are conditioned by their legal status. We shed light on the co-constitutive relationship between one's legal status and one's social-political conditions. For instance, one's stateless legal status could give rise to discrimination and marginalization, while at the same time, status as a member of a marginalized and discriminated group further perpetuates the resistance towards granting citizenship. More often than not there are clear links between the individual and their

<sup>17</sup> Christoph Sperfeldt, 'Legal Identity and Statelessness in Southeast Asia' (2021) 147 *Asia Pacific Issues* 1 <[www.eastwestcenter.org/publications/legal-identity-and-statelessness-in-southeast-asia](https://www.eastwestcenter.org/publications/legal-identity-and-statelessness-in-southeast-asia)> accessed 12 September 2023.

group identity, as stateless persons face discrimination not simply because of their individual legal status but also because their legal status is commonly associated with certain social prejudices connected to their group identity.

The contributions to this volume explore these important issues from a range of different disciplines and research approaches.<sup>18</sup> We align ourselves with the emergence of the study of statelessness as a multi-disciplinary field, partly in response to the realization that while statelessness is ‘fundamentally a legal concept’, a strictly legal approach to the study and analysis of statelessness is inadequate to fully understand the phenomenon and to protect stateless persons.<sup>19</sup> Multidisciplinarity brings a variety of perspectives arising from different methodologies to construct a richer and more nuanced examination of statelessness as a multifaceted *phenomenon*.<sup>20</sup> Further, by investigating the scope and nature of statelessness among affected populations in Asia, this book invites a trans-regional conversation on statelessness and aims to set a comparative research agenda to enhance the understanding and reduction of statelessness in Asia. While grounded in concrete situations of statelessness in Asia, the contributors – predominantly from the region – bring their expertise into conversation with broader themes and issues that transcend individual case studies.

## 1.2 Does a Book on Asia Make Sense?

As a preliminary matter, two questions immediately arise, namely, how do we define Asia as a region and why focus on it in particular? As to the first issue, there is of course no unassailable definition of what formally

<sup>18</sup> We acknowledge the work of other authors exploring the issue from a regional perspective, see Amal de Chickera and Laura van Waas, ‘Statelessness in Asia: An Entrenched but Solvable Problem’ in Fernand de Varennes and Christie Gardiner (eds), *Routledge Handbook of Human Rights in Asia* (Routledge 2018).

<sup>19</sup> In his symposium contribution to the first ever issue of the pathbreaking *The Statelessness & Citizenship Review*, Baluarte called for the institutionalization of a multidisciplinary approach to the study of statelessness: David Baluarte, ‘The Arrival of “Statelessness Studies”’ (2019) 1 (1) *The Statelessness & Citizenship Review* 156 <<https://statelessnessandcitizenshipreview.com/index.php/journal/article/view/69>> accessed 4 August 2023 (‘The Arrival of “Statelessness Studies”’). See also Michelle Foster and Laura van Waas ‘Editorial’ (2019) *The Statelessness & Citizenship Review* 1(1), 1 <<https://statelessnessandcitizenshipreview.com/index.php/journal/article/view/83>> accessed 4 August 2023.

<sup>20</sup> Baluarte, *ibid* 157–158.

constitutes 'Asia', whether geographically or politically. Indeed, in Vitit Muntarbhorn's important work on *Challenges of International Law in the Asia Region*, he acknowledges the definitional challenge, quoting Ruskola's provocative view that the 'short answer' to the question 'Where is Asia?', is 'not in Europe'.<sup>21</sup> Thus, on one view 'the definition of Asia is essentially negative and geographically indeterminate'.<sup>22</sup> Furthermore, we could eschew the idea of Asia as a region and examine instead subregions, such as Central Asia, East Asia, South Asia, and Southeast Asia.<sup>23</sup> Given the nascent scholarship on statelessness, in this book we have adopted an inclusive approach to the region of Asia, encompassing all of these subregions, consistent with the approach of the UNHCR – the UN agency mandated to identify, protect and reduce statelessness.<sup>24</sup>

On the second question, given its breadth we may well question whether anything is to be gained from focusing on such a large and diverse region. It is of course true that, as Muntarbhorn observes, 'the many different religions and cultures in the Asia regions... militate against a sense of unity rather than uniqueness'.<sup>25</sup> It would be impossible (and inaccurate) to generalize and seek to theorize one universal approach to statelessness in Asia, whether we consider the issue from the perspective of participation in the international legal system or from the grounded incidence of statelessness. Some countries in the region disproportionately produce statelessness. For example, 69 per cent of reported stateless people in the region are Rohingya from Myanmar<sup>26</sup> – the largest known stateless population in the world. The Rohingya also make up 99 per cent of the 1.24 million displaced stateless people in Asia.<sup>27</sup> That said, it is important not to see Asia as a 'problem' region, but also as a region that has found innovative and effective solutions to

<sup>21</sup> Vitit Muntarbhorn, *Challenges of International Law in the Asian Region: An Introduction* (Chulalongkorn University 2021) 3.

<sup>22</sup> Teema Ruskola, 'Where is Asia? When is Asia? Theorising Comparative Law and International Law' (2011) 44 *UC Davis Law Review* 882–883 quoted in Muntarbhorn (n 21) 3.

<sup>23</sup> This was the approach for example in *The Oxford Handbook of International Refugee Law* wherein the regional section has an independent chapter on each of these subregions: Cathryn Costello, Michelle Foster, and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021).

<sup>24</sup> See UNHCR, '2022 Asia and the Pacific Regional Trends Report' (n 12).

<sup>25</sup> Muntarbhorn (n 21) 3.

<sup>26</sup> UNHCR, '2022 Asia and the Pacific Regional Trends Report' (n 12) 28.

<sup>27</sup> *ibid.*

address statelessness. Indeed, some Asian states, especially from Central Asia, have been lauded as ‘eradicating statelessness’; for example, the Kyrgyz Republic was praised by UNHCR and UNICEF as ‘the first country in the world that solved the issue of statelessness’.<sup>28</sup> These effective approaches could also provide important roadmaps and guidance to other countries seeking to address statelessness.

Thus, we believe there are several compelling reasons to examine the region that is thus far the least explored in scholarship on statelessness. Anghie observes that ‘the significance of “regional international law” has increased in recent times as a result of the emergence of regional entities with carefully defined memberships, and corresponding adjudicatory systems.’<sup>29</sup> In the context of statelessness, much of the boundary-pushing normative development is emerging in regional settings with these features, such as Europe,<sup>30</sup> Africa,<sup>31</sup> and Latin America.<sup>32</sup> By comparison, this book offers an opportunity to examine what happens in a region without such robust structures and what impact a lack of regional regulatory settings has on the causes and consequences of statelessness. While previous scholarship has explored the ‘rejection’ of international refugee law in Southeast Asia<sup>33</sup> and the ‘ambivalence’ in Asia of international law and institutions,<sup>34</sup> the contributions from Uzbekistan and the Philippines in this volume offer a counterpoint to the ‘exceptionalism’ narrative. Furthermore, in terms of international law relevant to statelessness, it is worth observing that Asia, and specifically Myanmar, has been the site for testing accountability at international law

<sup>28</sup> UNICEF, ‘Kyrgyzstan to become the first stateless-free country in the world’ (Press Release, 4 July 2019) <[www.unicef.org/kyrgyzstan/press-releases/kyrgyzstan-become-first-stateless-free-country-world](http://www.unicef.org/kyrgyzstan/press-releases/kyrgyzstan-become-first-stateless-free-country-world)> accessed 12 September 2023.

<sup>29</sup> Antony Anghie ‘Identifying Regions in the History of International Law’ in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford University Press 2012) 1077.

<sup>30</sup> Katia Bianchini, *Protecting Stateless Persons: The Implementation of the Convention Relating to the Status of Stateless Persons across EU States* (Brill Nijhoff 2018).

<sup>31</sup> The Protocol to the African Convention on Human Rights and Peoples’ Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa was adopted in February 2024 during the 37th Ordinary Session of the African Union Assembly of the Heads of State and Governments.

<sup>32</sup> The statelessness determination procedures and frameworks for protection in Latin America are considered world-leading.

<sup>33</sup> Sara E. Davies, *Legitimising Rejection: International Refugee Law in Southeast Asia* (Martinus Nijhoff Publishers 2008).

<sup>34</sup> Simon Chesterman, ‘Asia’s Ambivalence about International Law and Institutions: Past, Present and Futures’ (2016) 27(4) *European Journal of International Law* 945.



for massive human rights violations, arguably precipitated by statelessness.<sup>35</sup> There is therefore value in a volume that foregrounds the Asian experience in order to create further nuances in the existing understanding of the region and of the subject matter in general.

It bears emphasizing nonetheless what this volume does not seek to do. First, we do not purport to develop or apply an all-encompassing theory to understand statelessness in the region. Rather we identify core themes that may contribute to a more nuanced and sophisticated understanding of this important topic. As such the book is exploratory in nature: we seek to open pathways for further research and provoke and inspire a research agenda to examine statelessness in Asia and beyond for future scholars. Secondly, while this book includes a variety of situations and perspectives, we do not purport to comprehensively cover the scope and phenomenon of statelessness in Asia. Authors in this volume address some major and fairly well-known issues surrounding statelessness in Asia, while also highlight emerging issues in statelessness research. Yet, it is in the nature of such regional surveys that they cannot be all-inclusive. We acknowledge the extensive work done by others on situations ranging from Bhutan,<sup>36</sup> Brunei,<sup>37</sup> Cambodia,<sup>38</sup> and Japan<sup>39</sup> to Nepal<sup>40</sup>, as well as on a range of thematic issues exploring the intersections of statelessness with migration,<sup>41</sup> health,<sup>42</sup> and more.

<sup>35</sup> See Manzoor Hasan, Syed Mansoob Murshed and Priya Pillai (eds), *The Rohingya Crisis: Humanitarian and Legal Approaches* (Routledge 2023).

<sup>36</sup> See Rana Sonia Tez Bahadur, 'Ethnic Issues of the Lhotshampas in Bhutan' (2020) 24(4) *World Affairs* 136.

<sup>37</sup> See Lidya Christin Sinaga, 'The Problem of Statelessness of the Ethnic Chinese in Brunei Darussalam' in Al Khanif and Khoo Ying Hooi (eds), *Marginalisation and Human Rights in Southeast Asia* (Routledge 2022).

<sup>38</sup> See Christoph Sperfeldt, 'Minorities and Statelessness: Social Exclusion and Citizenship in Cambodia' (2020) 27 *International Journal on Minority and Group Rights* 94.

<sup>39</sup> See Chen Tien-shi, 'Statelessness in Japan: Management and Challenges' (2012) 21(1) *Journal of Population and Social Studies* 70.

<sup>40</sup> See Subin Mulmi and Sara Shneiderman, 'Citizenship, Gender and Statelessness in Nepal: Before and after the 2015 Constitution' in Tendayi Bloom, Katherine Tonkiss and Philipp Cole (eds), *Understanding Statelessness* (Routledge 2017) 135.

<sup>41</sup> See Marie McAuliffe, 'Protection Elsewhere, Resilience Here: Introduction to the Special Issue on Statelessness, Irregularity, and Protection in Southeast Asia' (2017) 15(3) *Journal of Immigrant & Refugee Studies* 221.

<sup>42</sup> Proloy Barua et al., 'Healthcare Policies for Stateless Populations in ASEAN Countries: A Scoping Review' (2020) 22(3) *Journal of Immigrant and Minority Health* 597.

### 1.3 Overview of This Chapter

In the remainder of this introductory chapter we review the ‘state of statelessness’ in Asia, beginning in Section 1.4 by traversing the ratification and implementation of international law including both statelessness-specific treaties and general human rights treaties pertinent to statelessness. This is followed by a brief overview of regional law, including the ASEAN Human Rights Declaration and ASEAN’s hitherto tepid response to the phenomenon of statelessness in the region. This section also includes a sweep of the range of constitutional rights to nationality across Asia and of ordinary laws on citizenship, including modes of acquisition and loss.

In Section 1.5 we provide further context to statelessness in Asia as well as map the core themes that emerge from our examination of statelessness in Asia in relation to causes. These include the wide range of ethnic, religious, cultural and linguistic diversity in the region and how these factors interrelate and contribute to statelessness; the legacies of colonialism and how they continue to reverberate across Asia in terms of concepts of nationality and citizenship, as well as ‘insiders’ versus ‘outsiders’; the impact of the achievement of independent statehood and international recognition in the second half of the twentieth century in many Asian states on the construction of citizenship and the creation of statelessness; and how contemporary politics of nation-building may be viewed as an outcome of history as well as of current contestations over identity and, many times, power and resources. We conclude Section 1.5 by drawing out intersecting vulnerabilities which include migration, gender, age/minors, racialization, and national security. Finally, in Section 1.6 we offer some preliminary thoughts on frameworks of analysis and future research agendas, including challenges and prospects for reform.

### 1.4 Statelessness: State of the Law in Asia

#### 1.4.1 *International Law*

Until recently, the protection of stateless persons had tended to be overshadowed by the international priority to protect refugees. This is notwithstanding that the protection of stateless persons and the prevention and reduction of statelessness are longstanding objectives of the international community. In the aftermath of World War II, the Secretary-General of the newly constituted United Nations established

an *Ad Hoc Committee on Statelessness and Related Problems* to ‘consider the desirability of preparing a revised and consolidated convention relating to the international status of refugees and stateless persons’ and to ‘consider means of eliminating the problem of statelessness’.<sup>43</sup> The outcome of this work was the formulation and adoption in force of three overlapping treaties: first, the 1951 Convention on the Status of Refugees (which protects stateless refugees as well as those with a nationality) (‘Refugee Convention’); secondly, the 1954 Convention on the Status of Stateless Persons (which protects *de jure* stateless persons) (‘1954 Stateless Convention’); and thirdly, the 1961 Convention on the Reduction of Statelessness (‘1961 Stateless Convention’).<sup>44</sup>

There are several reasons why commitment to the issue of statelessness and ratification of the two core statelessness treaties has been markedly inferior to refugee protection, and these include the initial (erroneous) assumption that refugees are most in need of protection, the subsequent separation of statelessness from refugee protection, and the lack of UN oversight embedded in the stateless regime (as opposed to the refugee regime). The vesting of a specific mandate in relation to statelessness in the UNHCR in the mid-1990s<sup>45</sup> and its subsequent campaign to end statelessness by 2024 have raised the profile of the phenomenon of statelessness globally, leading to increased activity and commitment to addressing it. However, state ratification of the core treaties remains low. For example, the 1954 Convention currently has ninety-eight state parties,<sup>46</sup> while the 1961 Convention has even fewer ratifications with eighty state parties.<sup>47</sup> While these ratification numbers are significantly higher due to the positive impact of the #IBelong campaign launched by

<sup>43</sup> ECOSOC, ‘Study of Statelessness: Resolution of 8 August 1949’ Res 1949/248(IX) B (8 August 1949).

<sup>44</sup> For a thorough history, see Michelle Foster and Hélène Lambert, *International Refugee Law and the Protection of Stateless Persons* (Oxford University Press 2019), ch 2.

<sup>45</sup> Matthew Seet, ‘The Origins of UNHCR’s Global Mandate on Statelessness’ (2016) 28(1) *International Journal of Refugee Law* 7, 8.

<sup>46</sup> Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117, <[https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-3&chapter=5&Temp=mtdsg2&clang=\\_en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en)> accessed 1 April 2024.

<sup>47</sup> Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175, <[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=V-4&chapter=5&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=V-4&chapter=5&clang=_en)>, accessed 1 April 2024.

the UNHCR in 2014, they nonetheless stand in stark contrast to the 147 parties to the Refugee Convention and/or its 1967 Protocol.<sup>48</sup>

Even by the standards of the low ratification numbers for the two statelessness conventions, the rate of ratification among states in Asia is even more dismal. As in the case of the Refugee Convention, neither treaty concerning statelessness enjoys much support in Asia. Indeed, even for the Refugee Convention, ratification has been low, with only eleven states in Asia having ratified. Subregionally, the accession rate for the Refugee Convention is highest among Central Asian countries, with Kazakhstan, Kyrgyzstan, Tajikistan, and Turkmenistan having acceded to the convention. Within South Asia, only Afghanistan has acceded whereas in Southeast Asia, only Cambodia, the Philippines, and Timor Leste are signatories. In East Asia, China, Japan and South Korea have ratified the Refugee Convention.

For the 1954 Stateless Convention, only a total of three Asian states have acceded to it, namely South Korea, Turkmenistan, and the Philippines. Notably, this Convention remains applicable to Hong Kong due to initial ratification by the United Kingdom which remains valid as China gave notification that the Convention will continue to apply to Hong Kong after China resumed exercising sovereignty over Hong Kong.<sup>49</sup> The accession/ratification rate for the 1961 Stateless Convention is even lower in the region, with only two states in Asia having acceded to it, namely Turkmenistan and the Philippines.

One reason commonly given for the low ratification rate for these conventions is the lack of participation among states in Asia in their conception and drafting. As has been observed in relation to the 1954 Stateless Convention, 'participation in the drafting overwhelmingly came from delegates from Western and colonial powers'.<sup>50</sup> Twenty-seven states were represented at the UN Conference of Plenipotentiaries on the

<sup>48</sup> Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, <[https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=en)> accessed 1 April 2024.

<sup>49</sup> Peter McMullin Centre on Statelessness, *Factsheet: Ratification of the Two UN Statelessness Conventions in the Asia-Pacific Region* (The University of Melbourne, December 2022) <[https://law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0011/4383668/Ratification-of-2-statelessness-conventions\\_factsheet\\_Dec\\_2022.pdf](https://law.unimelb.edu.au/__data/assets/pdf_file/0011/4383668/Ratification-of-2-statelessness-conventions_factsheet_Dec_2022.pdf)> accessed 12 September 2023.

<sup>50</sup> Betsy L. Fisher, 'The Travaux Préparatoires of the 1954 Convention Relating to the Status of Stateless Persons' (1 March 2022) xii <<https://dx.doi.org/10.2139/ssrn.4037774>> accessed 12 September 2023.

Status of Stateless Persons<sup>51</sup> which drafted the 1954 Stateless Convention, and a further five states had ‘observer’ status.<sup>52</sup> Of these, only Cambodia, Iran, and the Philippines represented Asia in the drafting committee, although Indonesia and Japan both had ‘observer’ status. Of course, not all Asian states had emerged from colonial rule as independent states at the time of the 1954 Stateless Convention’s drafting.<sup>53</sup> However, even though decolonization was well underway when the 1961 Stateless Convention was drafted, Asian states remained underrepresented in its drafting. Thirty-five states were represented at the conference in March–April 1959 and thirty states when it reconvened in August 1961,<sup>54</sup> of which nine were from Asia.<sup>55</sup>

To be clear, non-ratification of these treaties directly addressing statelessness does not mean that states in Asia (and more generally) do not have international law obligations towards stateless persons. Most states in Asia are signatories to other human rights treaties which impose obligations on states parties to prevent statelessness and protect stateless persons.<sup>56</sup> For instance, all states in Asia have ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)<sup>57</sup> and the Convention on the Rights of the Child (CRC), which are two of the most widely ratified treaties in the world. In fact,

<sup>51</sup> Australia, Belgium, Brazil, Cambodia, Colombia, Costa Rica, Denmark, Ecuador, El Salvador, France, Federal Republic of Germany, Guatemala, Honduras, Iran, Israel, Liechtenstein, Monaco, Netherlands, Norway, Philippines, Sweden, Switzerland, Turkey, United Kingdom, Vatican City, Yemen and Yugoslavia. The states are listed in ‘The Travaux Préparatoires of the 1954 Convention relating to the Status of Stateless Persons compiled and introduced by Betsy L. Fisher: *ibid* 349–351.

<sup>52</sup> Argentina, Egypt, Greece, Indonesia, Japan, as well as other organizations such as UNHCR.

<sup>53</sup> Sumedha Choudhury’s developing work on rethinking the origins of statelessness law from a decolonial perspective here will contribute much-needed insight: see Sumedha Choudhury, ‘Denationalisation and Discrimination in Postcolonial India’ (2022) 22(3) *International Journal of Discrimination and the Law* 326.

<sup>54</sup> ‘United Nations Conference on the Elimination or Reduction of Future Statelessness’ (Geneva, 24 March–18 April 1959, New York, 15–28 August 1961) <[https://legal.un.org/diplomaticconferences/1959\\_statelessness/](https://legal.un.org/diplomaticconferences/1959_statelessness/)>.

<sup>55</sup> Countries in Asia represented were China, India, Indonesia, Iraq, Israel, Japan, Pakistan, Turkey, and United Arab Republic: ‘List of Representatives, Observers and Secretaria’, United Nations Conference on the Elimination or Reduction of Future Statelessness (Geneva, 24 March–18 April 1959, New York, 15–28 August 1961) UN Doc A/CONF.9/9 <[https://legal.un.org/diplomaticconferences/1959\\_statelessness/docs/english/vol\\_1/a\\_conf9\\_9.pdf](https://legal.un.org/diplomaticconferences/1959_statelessness/docs/english/vol_1/a_conf9_9.pdf)> accessed 13 September 2023.

<sup>56</sup> However, countries may have made reservations to provisions relevant to statelessness.

<sup>57</sup> IRAW Asia Pacific, ‘State and Non-State Parties to CEDAW’ (April 2022) <<https://cedaw.iiraw-ap.org/cedaw/state-and-non-state-parties-to-cedaw/>> accessed 12 September 2023.

for the CRC, the United States is the only country that has yet to ratify.<sup>58</sup> These treaties contain important obligations pertinent to the prevention of statelessness. Article 9(1) of CEDAW obligates state parties to ‘grant women equal rights with men to acquire, change or retain their nationality’ and therefore requires them to ensure that ‘neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.’ In addition, Article 9(2) of CEDAW obligates state parties to ‘grant women equal rights with men with respect to the nationality of their children.’ For the CRC, Article 7 affirms the right of every child to acquire a nationality and requires states to implement measures to ensure that no child is left stateless.<sup>59</sup> Article 7(1) requires the child to be ‘registered immediately after birth’ and to have the right from birth to a name and to acquire a nationality. Furthermore, Article 8(1) obligates state parties to ‘undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.’

In addition, the International Covenant on Civil and Political Rights (ICCPR),<sup>60</sup> another widely ratified treaty within Asia, contains two important safeguards. First Article 24 provides that, ‘Every child shall be registered immediately after birth and shall have a name’<sup>61</sup> and ‘Every child has the right to acquire a nationality’.<sup>62</sup> The Human Rights Committee has recently articulated the positive obligations imposed on states by Article 24, meaning that Article 24 and its evolving interpretation can be understood as an ‘important contribution to protection against statelessness’.<sup>63</sup> Second, Article 26 of the ICCPR guarantees

<sup>58</sup> Sarah Mehta, ‘There’s Only One Country That Hasn’t Ratified the Convention on Children’s Rights: US’ (ACLU, 20 November 2015) <[www.aclu.org/news/human-rights/theres-only-one-country-hasnt-ratified-convention-childrens](http://www.aclu.org/news/human-rights/theres-only-one-country-hasnt-ratified-convention-childrens)> accessed 12 September 2023.

<sup>59</sup> Institute on Statelessness and Inclusion (ISI), ‘Statelessness & Human Rights: The Convention on the Rights of the Child’ (Booklet, 2018) <<https://files.institutesi.org/statelessness-and-CRC.pdf>> accessed 12 September 2023.

<sup>60</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>61</sup> *ibid* Art 24(2).

<sup>62</sup> *ibid* Art 24(3).

<sup>63</sup> Human Rights Committee, *D.Z. v. Netherlands*, Views adopted by the Committee under Article 5 (4) of the Optional Protocol, concerning communication No. 2918/2016 (20 January 2021) UN Doc CCPR/C/130/D/2918/2016, in the words of the concurring opinion of member Hélène Tigroudja at 12[1]. For an analysis of this decision see

equality before the law and equal protection of the law, and explicitly prohibits discrimination ‘on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’, a protection that guarantees equal access to fundamental rights for stateless persons.<sup>64</sup>

The treaty bodies established to supervise these human rights treaties have increasingly raised statelessness issues in their periodic review of state parties’ obligations, including in Asia.<sup>65</sup> Renewed attention to statelessness as a human rights issue is also visible in the Universal Periodic Review (UPR) of Asian states’ human rights performance.<sup>66</sup>

### 1.4.2 *Regional Law*

Regional human rights treaties have proliferated in recent decades and indeed have been the source of many important developments in preventing statelessness and protecting stateless persons. In addition to generic regional human rights treaties, some nationality/statelessness specific treaties have been promulgated under the auspices of regional organizations.<sup>67</sup> Yet while such developments have occurred in Europe, Africa and the Americas, Asia lacks a binding regional human rights instrument.

A lack of binding instrument does not mean a complete absence of human rights standards in Asia. Rather, inspired by the Universal Declaration of Human Rights, the 2012 ASEAN Human Rights Declaration provides in Article 18 that ‘every person has the right to a nationality as prescribed by law’. Indeed, the ASEAN Intergovernmental

Michelle Foster, ‘D.Z. v. Netherlands, UN Doc. CCPR/C/130/D/2918/2016’ (2022) 116(4) American Journal of International 850.

<sup>64</sup> See also ICESCR and explicit general comments from UN Committee on Economic, Social and Cultural Rights, ‘General Comment No 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights)’ (2 July 2009) E/C.12/GC/20 paras 5, 26 and 30 <<https://digitallibrary.un.org/record/659980?ln=en>> accessed 18 September 2023.

<sup>65</sup> For more information about international human rights monitoring, including treaty bodies and UPR recommendations see Institute on Statelessness and Inclusion, ‘Database on Statelessness and Human Rights’ (2023) <<https://database.institutesi.org/>> accessed 20 September 2023.

<sup>66</sup> Institute on Statelessness and Inclusion, ‘Mainstreaming Statelessness and the Right to Nationality in the Universal Periodic Review: Third Cycle Evaluation and Lessons for the Future’ (17 March 2023) <[https://files.institutesi.org/Statelessness\\_in\\_the\\_UPR\\_Evaluation\\_Report.pdf](https://files.institutesi.org/Statelessness_in_the_UPR_Evaluation_Report.pdf)> accessed 20 September 2023.

<sup>67</sup> For example, the European Convention on Nationality (ETS 166) and the Protocol to the African Convention (n 31).

Commission on Human Rights (AICHR) observes that this Declaration, together with other related declarations, as well as the binding international standards described above, suggest that 'AICHR's mandate to promote and protect the human rights of all ASEAN peoples extends to addressing the causes and consequences of statelessness within this framework.'<sup>68</sup> Yet in practice national law is far more instrumental in relation to the causes and consequences of statelessness than either international or regional standards in Asia.

### 1.4.3 *National Law*

The study of nationality laws is an important aspect in much of the research on statelessness, including in Asia. Many scholars, including those in this volume, have grappled with the complex and changing laws and regulations governing nationality in individual Asian countries. Moreover, not all laws and regulations are easily accessible in many Asian countries. A comprehensive database by the Global Citizenship Observatory (GLOBALCIT) combined with analytical country reports now provides access to the nationality laws of most countries in the region.<sup>69</sup> This has greatly facilitated legal research on citizenship and statelessness in a region that lacks a common lingua franca, compared with Latin America (Spanish), the sub-Saharan Africa (English, French, Portuguese) or the MENA region (Arabic). Language issues have frequently posed barriers to cross-country comparative research on Asia, although certain subregional exceptions exist due to common colonial experiences, such as in Central Asia (Russian) and South Asia (English).

Yet, behind the veil of relatively well-developed legal frameworks is the often-different reality of implementation and practice in the region. Many countries in the region, such as Cambodia and Myanmar, find themselves at the bottom of rule of law indices.<sup>70</sup> The discrepancies

<sup>68</sup> UNHCR, 'Regional Workshop on Statelessness and the Rights of Women and Children' (Report, November 2021) <[www.refworld.org/pd/fid/50f674c42.pdf](http://www.refworld.org/pd/fid/50f674c42.pdf)> accessed 13 September 2023; see also Sriprapha Petcharamesree and Bongkot Napaumporn, 'Legal Identity of All Women and Children in ASEAN: A Regional Synthesis' (Report, ACWC and UNHCR November 2020) <<https://asean.org/book/legal-identity-of-all-women-and-children-in-asean-a-regional-synthesis/>> accessed 13 September 2023.

<sup>69</sup> Country profiles can be accessed at GLOBALCIT, 'Country Profiles' <<https://globalcit.eu/country-profiles/>>.

<sup>70</sup> See World Justice Project, 'Rule of Law Index' (2022) <<https://worldjusticeproject.org/rule-of-law-index/>> accessed 13 September 2023.



between laws and how they function in society have spurred a rich scholarship on the bureaucratic and administrative state practices that are often involved in the production of statelessness, a phenomenon also explored in the contributions to this volume.<sup>71</sup> Such socio-legal approaches, often involving ethnographic research (see Chapter 6), have expanded our understanding of the origin and consequences of statelessness in Asia.

As a start, it bears noting that many nationality laws in the region have deep roots in colonial histories. One colonial legacy is the dominance of *jus sanguinis* as the primary mode of acquisition of nationality at birth in Asia.<sup>72</sup> This contrasts with the practice in the Americas, where *jus soli* is more widely used. Even where *jus soli* was initially adopted, countries in Asia have followed a global trend in the abolition of automatic *jus soli*, often by replacing relevant provisions with more conditional forms of *jus soli*.<sup>73</sup> The chapter on India in this book, for example, examines this gradual evolution towards more restrictive modes of acquisition of nationality. Combined with the prevalent reliance on legal documentation and mounting burden of proof – frequently affecting some groups more than others – these developments have forced many populations to undergo costly, complex, and difficult administrative processes to seek to prove their citizenship, sometimes unsuccessfully. Colonial legacy may also manifest in underlying prejudices and discriminatory practices embedded in the citizenship regime. Indeed, chapters in this volume show how state practices have rendered many communities in the region stateless, often in arbitrary and discriminatory ways.

The intersection of gender and statelessness is another area studied in this book, particularly as arising from cross-border marriages. As in other regions in the world, the abolition of gender-discriminatory nationality laws, allowing women to possess their independent nationality and granting them equal rights with men in their ability to acquire, change, retain or pass on their nationality, has been a long and protracted process. Brunei, Malaysia and Nepal are among the countries in the region that still

<sup>71</sup> See also Jamie Liew, *Ghost Citizens: Decolonial Apparitions of Stateless, Foreign and Wayward Figures in Law* (Fernwood Publishing 2024) and Kamil Sadiq, *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries* (Oxford University Press, 2009).

<sup>72</sup> Olivier Vonk, 'Comparative Report: Citizenship in Asia' (Comparative Report 2017/04, GLOBALCIT December 2017).

<sup>73</sup> *ibid.*

retain some form of gender discrimination in their nationality laws, often exposing women and their children to statelessness.<sup>74</sup> The most severe form is found in Brunei, where women have no right to pass nationality to their children in any circumstances. However, even where such explicitly discriminatory provisions have been abolished, gender is still very much a factor in statelessness. Recent proposed constitutional amendments in Malaysia seek to resolve the gender-discriminatory aspect of their laws by granting overseas born children of Malaysian mothers the same right to citizenship as those born to Malaysian fathers. Initial proposals to amend the constitution to remove the entitlement of foundlings from citizenship by operation of law to citizenship by registration (and thereby subject to the discretion of the government) were removed after significant backlash from civil society.<sup>75</sup> Worryingly, this suggests that even longstanding protections against statelessness may be vulnerable to political will.

Indeed, children are another vulnerable group that may suffer disproportionately from discriminatory nationality laws. Not only are children sometimes rendered stateless by gender discriminatory rules on citizenship, they may also be rendered stateless as some Asian countries still do not grant automatic access to citizenship to foundlings, i.e., children who are found or abandoned on their territory. This exposes numerous children in the region to risks of statelessness, as highlighted in the chapter on childhood statelessness in this volume.<sup>76</sup> The injustice of such laws is evident; foundlings have no way of proving their descent but the very fact that they were found within the territory of the state should already be sufficient evidence that they were born in the country. Laws granting them citizenship automatically, rather than requiring them to seek citizenship by registration or through naturalization, thereby subjecting them to significant administrative hurdles, are necessary to prevent significant injustice.

Interestingly, cross-border migration has also contributed to statelessness. Despite significant historical and present-day cross-border migra-

<sup>74</sup> See more at Global Campaign for Equal Nationality Rights, 'Asia Pacific' <<https://equalnationalityrights.org/countries/asia-pacific>> accessed 13 September 2023.

<sup>75</sup> See Jaclyn Neo, 'Malaysia's Proposed Citizenship Amendments: Gender Equality Moving Ahead but Other Challenges Surface' (ConstitutionNet, 3 October 2023) <<https://constitutionnet.org/news/malaysias-proposed-citizenship-amendments-gender-equality-moving-ahead>> accessed 1 April 2024.

<sup>76</sup> See also Rodziana Mohamed Razali, *Safeguarding against Statelessness at Birth: International Law and Domestic Legal Frameworks of ASEAN Members* (Springer 2023).

tion, many countries in the region maintain high barriers to naturalization. This means that some migrants may remain permanent immigrants without any access to citizenship in their host country. They may even lose their citizenship in their country of origin due to their long absence, but never obtain citizenship in their new country of residence. The acquisition of nationality by historical migratory but long-term resident populations is frequently a thorny political issue in numerous countries across Asia. Japan, for instance, has one of the lowest naturalization rates among OECD countries.<sup>77</sup> In several countries in Asia, naturalization is often a cumbersome and fraught process.<sup>78</sup> Even fewer countries in the region have legal provisions that offer facilitated naturalization to stateless persons.<sup>79</sup>

### 1.5 Statelessness in Asia: Context and Causes

As discussed above, Asia is a major epicentre of the statelessness phenomenon. Of the 4.4 million stateless persons reported globally, the majority are located in the Asia-Pacific region, most notably in Bangladesh, Myanmar, and Thailand.<sup>80</sup> The scope of statelessness in the region, as well as globally, is likely far more extensive, as estimating the number of stateless persons in the region is a fraught exercise, due to the lack of reliable data and statistics. The UNHCR's annually estimated numbers of stateless populations rely mostly on government statistics, which themselves may be incomplete. Furthermore, many countries in Asia report no figures at all. The widespread lack of mechanisms to determine statelessness further contributes to a dearth of data.<sup>81</sup> Accordingly, the UNHCR figures should be taken as a conservative estimate, with the true figure likely being much higher. But what is evident from the available data is that Asia is home to the largest number

<sup>77</sup> Vonk (n 72) 17–21.

<sup>78</sup> See also Choo Chin Low, 'The Historical Development of the Nature of 'Desirability' in Naturalisation Regimes in East and Southeast Asia' (2021) 25(4) *Citizenship Studies* 491.

<sup>79</sup> Vonk (n 72) 26.

<sup>80</sup> UNHCR, '2022 Asia and the Pacific Regional Trends Report' (n 12) 6.

<sup>81</sup> The Philippines are a notable exception, as discussed in Francis Tom Temprosa's chapter, 'Persuading to Ratify: A Calculus of the Ratification of the Statelessness Convention in Asia'.

of known stateless persons in the world, with more than half of all the stateless globally living in the region.<sup>82</sup> As mentioned, the Rohingya, originally *in situ* in Myanmar and now in majority displaced across the region but mostly in Bangladesh, comprise the largest stateless population in Asia, around 1.7 million according to the UNHCR (almost one million in Bangladesh alone).<sup>83</sup> Such large-scale displacement has reshaped experiences of statelessness across the region, with new scholarship emerging from researchers in Bangladesh, India and Malaysia.

Additional large non-Rohingya stateless communities also reside in Myanmar. Other large known stateless populations can be found in Thailand (574,200), Malaysia (115,169), Uzbekistan (27,400) and Vietnam (26,800).<sup>84</sup> With the expansion of research, further incidences of statelessness have come onto the radar of international attention over the past decade. For instance, after many years of no data being reported on Cambodia, the figures now show 75,000, most of them belonging to the Vietnamese minority. Statistics on certain stateless populations remain sensitive among some governments in the region, highlighting the often-times political nature of statelessness. The following table shows the spread of statelessness across Asia based on UNHCR figures.<sup>85</sup>

Beyond numerical data, country-based mapping initiatives have made a contribution to improving our knowledge of the scope and nature of statelessness in the region. Some of these studies were produced by civil society actors, others were supported by the UNHCR in the framework of its #IBelong campaign and efforts to identify stateless populations. Employing different methodologies such mapping reports now exist,

<sup>82</sup> The number is 56 per cent according to the most recent data, UNHCR, '2022 Asia and the Pacific Regional Trends Report' (n 12) 6.

<sup>83</sup> Of which more than 72 per cent displaced across borders, the rest still in Myanmar, *ibid* 35.

<sup>84</sup> *ibid*.

<sup>85</sup> Table is reproduced from data included in Annex Table 5 'Persons under UNHCR's Statelessness Mandate' in UNHCR, '2022 Global Trends Report' (n 4) 47, cross-referenced with the list of countries included under UN Major Region Asia in the Table 23 'Country Codes, Names, UN Major Areas and UNHCR Regional Bureaux/Operations'. Countries in Asia that have provided no data on stateless persons or where UNHCR has information about stateless persons but there is no reliable data available, have not been included in this table.

Country of residence <sup>a</sup>	Population start-2022			Population end-2022		
	Total number of persons under UNCHR's statelessness mandate	Total number of stateless people including forcibly displaced Stateless persons	... of whom are UNHCR-assisted	Total number of persons under UNCHR's statelessness mandate	Total number of stateless people including forcibly displaced Stateless persons	... of whom are UNHCR-assisted
Azerbaijan	3,585	3,585	92	3,585	3,585	118
Bangladesh	- <sup>b</sup>	918,841	918,841	-	952,309	952,309
Brunei Darussalam	20,863	20,863	-	20,863	20,863	-
Cambodia	75,000	75,000	-	75,000	75,000	-
India	-	20,154	20,154	-	21,591	21,591
Indonesia	-	641	641	-	925	925
Iran (Islamic Rep. of)	-	34	34	-	34	34
Japan	522	531	-	499	508	-
Kazakhstan	7,831	7,831	607	8,569	8,569	620
Kyrgyzstan	600	600	5	203	203	5
Malaysia	9,040	112,420	103,380	9,040	115,169	106,129
Mongolia	17	17	-	17	17	-
Myanmar	449,475	600,000	177,560	473,440	630,000	236,690
Nepal	-	465	465	-	452	452
Pakistan	-	47	47	-	55	55
Papua New Guinea	-	9	9	-	-	-

(cont.)

Country of residence <sup>a</sup>	Population start-2022			Population end-2022		
	Total number of persons under UNCHR's statelessness mandate	Total number of stateless people including forcibly displaced Stateless persons	... of whom are UNHCR-assisted	Total number of persons under UNCHR's statelessness mandate	Total number of stateless people including forcibly displaced Stateless persons	... of whom are UNHCR-assisted
Philippines	255	260	248	257	267	251
Rep. of Korea	197	202	-	231	241	-
Singapore	1,109	1,109	-	1,109	1,109	-
Sri Lanka	-	35	35	-	36	36
Tajikistan	6,110	6,110		5,391	5,391	4,549
Thailand	561,329	561,527	32,303	573,898	574,219	38,270
Turkmenistan	4,280	4,280	4,280	4,527	4,527	4,527
Uzbekistan	37,993	37,993	-	27,389	27,389	-
Viet Nam	35,475	35,475	-	26,811	26,811	-

<sup>a</sup> Figures included in this table are collected from a variety of sources depending on the country of residence, including from census data, protection procedures and estimates by UNHCR. For specific information about data collection in a particular country see Table 5 'Persons under UNHCR's Statelessness Mandate' in UNHCR, '2022 Global Trends Report' (n 4) 47.

<sup>b</sup> A dash indicates that the value is zero or that data is unavailable or not reliable.

for instance, on Japan,<sup>86</sup> South Korea,<sup>87</sup> the Philippines,<sup>88</sup> Malaysia<sup>89</sup> and Iran.<sup>90</sup>

While the causes of statelessness are multifarious, the predominant factors either alone or in combination have largely been consistent over time. As early as 1949 in its 'A Study on Statelessness', the United Nations identified five causes of statelessness, namely (1) gaps in and conflicts of domestic legislation; (2) state succession or territorial resettlements; (3) mass emigration caused by changes in the political and social system of the country of origin; (4) racial, religious, or political persecution; and (5) deprivation of nationality as a penalty.<sup>91</sup> As the various chapters in this volume show, these causes are still relevant to study statelessness in Asia, but with the added overarching factor of colonialism and its lasting legacies. The following sections will elaborate upon how this volume further extends our understanding of the causes of statelessness. We will draw from the 1949 study without closely following the framework of analysis.

### 1.5.1 *Gaps, Conflicts and Discrimination in National Laws*

'Gaps' in nationality laws and 'conflict' between nationality laws causing statelessness could arise benignly, simply due to accidental oversight. Individual cases of statelessness may also result from unintended or innocuous applications of nationality laws, or gaps between nationality laws of different countries, given the fact that nationality laws differ between states. Examples in this book demonstrate this with regard to

<sup>86</sup> Ayane Odagawa et al., 'Typology of Stateless Persons in Japan: Study Group on Statelessness in Japan' (UNHCR December 2017) <[www.unhcr.org/jp/wp-content/uploads/sites/34/2018/01/TYOLOGY-OF-STATELESS-PERSONS-IN-JAPAN\\_webEnglish.pdf](http://www.unhcr.org/jp/wp-content/uploads/sites/34/2018/01/TYOLOGY-OF-STATELESS-PERSONS-IN-JAPAN_webEnglish.pdf)> accessed 13 September 2023.

<sup>87</sup> Chulhyo Kim and Seori Choi, 'Mapping Statelessness in the Republic of Korea' (UNHCR December 2021) <[www.refworld.org/docid/61dc11a34.html](http://www.refworld.org/docid/61dc11a34.html)> accessed 13 September 2023.

<sup>88</sup> Brian Barbour, 'Desk Review on Populations at Risk of Statelessness: Children of Philippine Descent in a Migratory Setting in Gulf Cooperation Council (GCC) Countries and Persons of Japanese Descent' (UNHCR Philippines April 2021) <[www.refworld.org/pdfid/6103f4174.pdf](http://www.refworld.org/pdfid/6103f4174.pdf)> accessed 13 September 2023.

<sup>89</sup> M. Bathmaloshanee et al., 'Report: Statelessness in Malaysia' (DHRR Malaysia April 2022) <[https://dhrmalaysia.org.my/wp-content/uploads/2022/04/STATELESSNESS-IN-MALAYSIA-REPORT-05042022\\_compressed.pdf](https://dhrmalaysia.org.my/wp-content/uploads/2022/04/STATELESSNESS-IN-MALAYSIA-REPORT-05042022_compressed.pdf)> accessed 13 September 2023.

<sup>90</sup> 'Statelessness in Iran' (European Network on Statelessness and Institute on Statelessness and Inclusion November 2019) <<https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Iran-final.pdf>> accessed 13 September 2023.

<sup>91</sup> United Nations (n 7) 6–7.

reforming nationality laws to account for foundlings (Razali) or improved safeguards in relation to renunciation of citizenship in cross-border marriages (Kneebone).

However, there is now appreciation of the fact that discrimination is far more likely to underpin such ‘gaps’, and indeed discrimination in the implementation of nationality laws is a major factor in the cause of large-scale statelessness globally. Such discrimination can be embedded in the way nationality laws are drafted but more often than not discrimination manifests in the unequal *application* of laws and implementation of regulations in practice. The definition of a stateless person under the 1954 Convention ostensibly accounts for this fact – by drawing attention to the ‘operation’ of nationality laws.<sup>92</sup> The contributions to our volume further highlight the multifaceted nature through which discrimination materializes in states’ administrative and bureaucratic practices.

Recent scholarship has also emphasized the pivotal role of racial discrimination as both a cause and consequence of statelessness. Foster and Baker note the many cases where nationality laws have a racially or ethnically discriminatory basis.<sup>93</sup> As they observe, racialized citizenship often intersects with gender or religious discrimination, and can manifest both directly and indirectly.<sup>94</sup> Similarly, in Asia, significant grounds of discrimination relate to gender and race, but also religion. The fact that so many states retain explicit gender-discriminatory nationality laws – including Brunei, Malaysia and Nepal in the region – means that much attention has been (understandably) focused on instances of direct discrimination.

Furthermore, gender discrimination in nationality laws may manifest differently across jurisdictions and populations, as is highlighted in Kneebone’s chapter in this volume on marriage migration to East Asia. This nuanced and original contribution reveals how ‘laws and policies on nationality, in both Korea and Taiwan, both include and exclude the

<sup>92</sup> UNHCR, ‘Guidelines on Statelessness No 1: The Definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons’ (20 February 2012) UN Doc HCR/GS/12/01 <[www.refworld.org/pdfid/4f4371b82.pdf](http://www.refworld.org/pdfid/4f4371b82.pdf).> accessed 13 September 2023.

<sup>93</sup> Michelle Foster and Timnah Rachel Baker, ‘Racial Discrimination in Nationality Laws: A Doctrinal Blind Spot of International Law?’ (2021) 11(1) *Columbia Journal of Race and Law* 83, 94–97.

<sup>94</sup> At 92–93; see also David Scott FitzGerald, ‘The History of Racialized Citizenship’ in Ayelet Shachar, Rainer Bauböck, Irene Bloemraad and Maarten Vink (eds) in *The Oxford Handbook of Citizenship* (Oxford University Press 2017) 129, 130.



marriage migrant on the basis of gender, nationality, race, class, culture and ethnicity'. She thereby exposes the causes of statelessness in this context by uncovering the complex interplay between interconnected factors, further contributing to emerging scholarship on intersectional discrimination as a cause of statelessness.<sup>95</sup>

Similarly, in Chapter 3, Razali shows the intergenerational effects of gender-discriminatory nationality laws and how they affect children. The chapter sheds light on the 'impact of the production and perpetuation of childhood statelessness in Southeast Asia' by examining 'the production and inheritance of statelessness at birth through habitually overlapping variants of discrimination, including explicit discrimination through the substance and implementation of a country's laws and policies, indirect discrimination via arbitrary or slippery official practices which form part of a state's administrative design and indirect discrimination through judicial interpretation'.<sup>96</sup>

At times, discrimination may be less blatantly manifested. Discriminatory practices could be obscured by ostensibly neutral laws and procedures; Jain identifies three supposedly neutral criteria commonly used to deny citizenship to persons and groups from certain backgrounds, rendering them stateless, that is, time, territory, and administrative burdens.<sup>97</sup> Time involves the use of cut-off eligibility periods, unreasonable application deadlines, and expanding durational residency requirements.<sup>98</sup> Territory or space involves the delineation of territorial borders to include/exclude certain groups.<sup>99</sup> The combination of time and spatial requirements may further create statelessness within borders, such as requiring persons to prove that they were within a particular space during a particular time in order to be eligible for citizenship. Administrative burdens employ formal documentary requirements, archival conditions, or limited application periods to deny citizenship.<sup>100</sup>

<sup>95</sup> Deirdre Brennan, Nina Murray and Allison J. Petrozziello, 'Asking the "Other Questions": Applying Intersectionality to Understand Statelessness in Europe' in Tendayi Bloom and Lindsey N. Kingston (eds), *Statelessness, Governance, and the Problem of Citizenship* (Manchester University Press 2021).

<sup>96</sup> Chapter Three, 63–93.

<sup>97</sup> Neha Jain, 'Manufacturing Statelessness' (2022) 116(2) *The American Journal of International Law* 237, 238.

<sup>98</sup> *ibid* 250–260.

<sup>99</sup> *ibid* 261.

<sup>100</sup> *ibid* 268–269.

Chapters in this book document these explicit and implicit forms of discrimination, and demonstrate how they may manifest in conjunction with one another. The multitude and complexity of such practices, such as in relation to legal documentation, identification, application processes, litigation and more, is a constant theme across the case studies, often made visible by in-depth examination of administrative documents or fieldwork. One prominent example in the region is India's 'correction' of its National Register of Citizens ('NRC') that has put at risk the citizenship of 1.9 million individuals living in the state of Assam.<sup>101</sup> The publication of the NRC in August 2019, together with the process established whereby individuals left off the list can 'appeal' to the Foreigners Tribunals, could be seen as encapsulating all three ostensibly neutral criteria described by Jain.

In Chapter 4, Ismatov reveals that notwithstanding 'inclusive and gender-neutral laws', statelessness in Central Asia has 'primarily affected married women and children'.<sup>102</sup> Further, Bhat's groundbreaking chapter, Chapter 8, adds yet another dimension to Jain's conceptualization of insidious nationality practices in revealing how the Indian state 'has weakened citizenship of its nationals in profound ways without formally revoking citizenship status'. He argues that the Indian state has 'irregularized citizenship of a large population through insidious legal processes. Precarious citizens facing irregularization may not formally lose their nationality, but they lose fundamental social and political goods because of their irregular, indeterminate status. Most of all, they lose any semblance of stability and security of citizenship status, which in turn severely harms their well-being'. As he observes, '[w]hile the Indian government and courts have sought to justify irregularization in the language of the rule of law, racialization and exceptionalism have permitted them to not apply ordinary legal standards to these citizenship policies. Irregularization – as opposed to formal revocation of citizenship – allows the Indian state to politically instrumentalize citizenship policies at the cost of citizenship security, without facing the obvious domestic and international repercussions that denationalization often invites'.<sup>103</sup> Precarity is systematized as a tool of state oppression.

<sup>101</sup> See Chapter 8 in this book, Mohsin Alam Bhat's chapter, 'Doubtful Citizens: Irregularization and Precarious Citizenship in Contemporary India'.

<sup>102</sup> Aziz Ismatov, 'Hidden Statelessness Dimensions of State Succession in Central Asia: Transit to a Solution for Stateless Trans-Border Wives and Children', Chapter 4.

<sup>103</sup> Bhat in this volume.

### 1.5.2 Colonial Legacies

One distinctive factor for statelessness in Asia is the legacy of colonialism; most states in Asia today were colonized by European powers to varying degrees, with Thailand (Kingdom of Siam), Japan, and to some extent Iran being the main exceptions. Within the field of statelessness studies, scholars are beginning to explore the connections between colonialism and statelessness,<sup>104</sup> calling for ‘the value of decoloniality as a tool to understand and critically analyse statelessness’.<sup>105</sup> Several chapters in this book contribute important analysis to this ongoing work. These chapters highlight the long-lasting legacies of colonial rule on statelessness in at least three ways, namely the adoption of the nation-state model, the failure to fully integrate populations which arrived through mass colonial-era migration, as well as policies and practices tied to the logic of colonial racial classification that regulate populations and belonging.

First, many protracted situations of statelessness in the region have deep roots in the ways through which countries in the region adopted the nation-state model during and after colonialization. Western-derived concepts of race/ethnicity, nationhood and citizenship were imposed on Asian countries during the twentieth century.<sup>106</sup> Decolonization and statehood perpetuated sometimes arbitrary borders drawn by colonial powers, which encompassed rich ethnic, linguistic and cultural diversity but also divided traditional communities across newly rigidified state borders. For example, Ismatov in Chapter 4 observes that in 1924, the Soviet policymakers undertook a ‘massive and clumsy border delimitation process and created five *stans* in order to consolidate power and promote socialism’. These borders were approximate: ‘people were mixed, and the boundaries between them porous’.<sup>107</sup>

<sup>104</sup> Choudhury, (n 53).

<sup>105</sup> Malak Benslama-Dabdoub, ‘Decolonising Statelessness: Unpacking Colonial Legacies and Deconstructing Forms of Epistemic Violence’ (*Critical Statelessness Studies*, January 2021) <<https://law.unimelb.edu.au/centres/statelessness/resources/critical-statelessness-studies-blog/decolonising-statelessness-unpacking-colonial-legacies-and-deconstructing-forms-of-epistemic-violence>> accessed 13 September 2023.

<sup>106</sup> See Leo Suryadinata, *The Making of Southeast Asian Nations: State, Ethnicity, Indigenism and Citizenship* (World Scientific 2014); and Arif Dirlik, ‘Colonialism, Revolution, Development: A Historical Perspective on Citizenship in Political Struggles in Eastern Asia’ (2010) 39(2) *Development and Society* 187.

<sup>107</sup> Citing Vanessa Ruget, ‘Citizenship in Central Asia’ in Engin F. Isin and Peter Nyers (eds), *Routledge Handbook of Global Citizenship Studies* (Routledge 2014) 336.

Many countries in the region received their first nationality law while still under colonial rule.<sup>108</sup> After gaining independence, Asian states had to undergo a dynamic process of (re)formulating these citizenship regimes, which was sometimes influenced by inter-communal hostility and prejudices that had taken root during colonial rule.<sup>109</sup> The new circumstance of statehood, which also often gave political power to majority communities, provided the conditions for social and political exclusion to take on the form of 'statelessness'. Formal proof of belonging to a state became imperative in many new Asian nations, leaving those who failed to secure such formalities at risk of non-recognition. For instance, when Singapore became independent in 1965, a group of persons who had been born in pre-independence Singapore became stateless as they had no documents to prove their place of birth, despite having lived nowhere else but within the modern borders of Singapore.<sup>110</sup> Rectification of their status requires access to legal mechanisms. Such frictions between identity, belonging, and nationality in post-colonial Asia, and the sometimes paucity of legal solutions, are discussed in the chapters throughout this book. The issue of borders and mobilities in general, as part of but also beyond colonial legacies will be discussed further in the next sub-section.

Second, many colonial projects in Asia involved migration across the empire, with lasting effects on historic migrant populations and permanently changing demographics. For instance, the British Empire facilitated migration between India, Sri Lanka, Myanmar, Malaysia and other states in the region to fill labour needs on plantations, in mines, for construction, and in administration, while the French enabled Vietnamese migration across their Indochinese territories of Cambodia and Laos. Labour migrants also came from China, mainly into Southeast Asia, where they joined long-established flourishing Chinese merchant and minority

<sup>108</sup> See for instance Christopher Goscha, *Going Indochinese: Contesting Concepts of Space and Place in French Indochina* (NIAS Press 2012); and Kalyani Ramnath, 'Histories of Indian Citizenship in the Age of Decolonisation' (2021) 45(1) *Itinerario* 152. See also Tendayi Bloom, 'Citizenship and Colonialism' (2018) 67 *Soundings* 114.

<sup>109</sup> Michelle Ann Miller (ed), *Ethnic and Racial Minorities in Asia: Inclusion or Exclusion?* (Routledge 2013).

<sup>110</sup> See 'Head P – Ministry of Home Affairs', Singapore Parliamentary Reports (12 March 2004). See also Xue Jianyue, '90% of stateless applicants obtained S'pore citizenship between 2003 and 2012' (*Today Online* 14 August 2013) <[www.todayonline.com/singapore/90-stateless-applicants-obtained-spore-citizenship-between-2003-and-2012](http://www.todayonline.com/singapore/90-stateless-applicants-obtained-spore-citizenship-between-2003-and-2012)> accessed 13 September 2023.

communities.<sup>111</sup> Not only did the colonial governments not have any interest in integrating these migrant communities into their new societies, division among the different communities in fact made colonial rule easier. These divisions continued post-independence such that some communities continue to be perceived as ‘immigrants’ in the new states – often across multiple generations. Many of the descendants of these historical migrants have struggled to access nationality in the countries they now consider their home.<sup>112</sup>

In Chapter 2, Ramnath explores the long-lasting legacies of colonial-era migration with the example of historical Indian Tamil migrants in Sri Lanka. Her detailed and insightful exploration of legal history illustrates ‘how colonial-era migrants were stranded within new nation-state borders during decolonization, a process during which former imperial citizens were manufactured into non-national “foreigners”’.<sup>113</sup> Of course, as she acknowledges, the ‘manufacture’ of putative citizens into foreigners continues today.<sup>114</sup> Indeed, in Chapter 12, De Chickera and Mohammed further show how intergenerational statelessness and social exclusion of the Hill Country Tamil communities in Sri Lanka is deeply entrenched, resulting in marginalization and socio-economic disadvantages that are not easily fixed solely by the conferral of nationality. Similarly, in Chapter 4, Ismatov recounts how the breakup of the Soviet Union transformed many previous internal migrants, including those from mass historical population movements into Central Asia during the Stalin era and beyond, into international migrants with contested nationality claims.<sup>115</sup>

Finally, many of the independent states of Asia adapted colonial-era classifications of populations and administrative processes for the purposes of their own emergent citizenship regimes. The impact of these practices was particularly felt in how the post-colonial states managed the

<sup>111</sup> Leo Suryadinata (ed) *Ethnic Relations and Nation-Building: The Case of the Ethnic Chinese* (ISEAS Publications 2004).

<sup>112</sup> See Jamie Liew, ‘Homegrown Statelessness in Malaysia and the Promise of the Principle of Genuine and Effective Links’ (2019) 1(1) *Statelessness & Citizenship Review* 95; and Nyi Nyi Kyaw, ‘Adulteration of Pure Native Blood by Aliens? Mixed Race Kapyia in Colonial and Post-Colonial Myanmar’ (2019) 25(3) *Social Identities* 345.

<sup>113</sup> Ramnath in Chapter 2.

<sup>114</sup> Ramnath cites Foster and Roberts, ‘Manufacturing Foreigners: The Law and Politics of Transforming Citizens into Migrants’ in Catherine Dauvergne (ed), *Research Handbook on the Law and Politics of Migration* (Edward Elgar 2021) 217.

<sup>115</sup> W. Rogers Brubaker, ‘Citizenship Struggles in Soviet Successor States’ (1992) 26(2) *International Migration Review* 269.

relations between majority and minority populations; between racial/ethnic groups, as well as between those considered nationals and those who were considered immigrants. In Chapter 8, Bhat demonstrates these dynamics with the example of the 1946 Foreigners Act in India and how it is applied to persons with contested citizenships claims.

### 1.5.3 *Borders and Mobilities*

As mentioned, the creation of borders and associated border regimes during and after the colonial period is a major cause of statelessness in the region. While many state borders were arbitrarily drawn by colonial powers when dividing up their 'possessions' in Asia, new state borders continued to emerge even after the end of colonial rule – in South Asia, after the partition of India and Pakistan and the independence of Bangladesh; in Central Asia following the dissolution of the Soviet Union; and more recently, Timorese independence in 2002. In Chapter 4, Ismatov reveals that statelessness in Central Asia has involved 'largely hidden and complex elements of state succession'.<sup>116</sup>

New borders frequently cut across territories that were historically, culturally, economically, and politically connected, often dividing communities and producing new 'immigrant' communities. In Chapter 8, Bhat alludes to the challenges the violent formation of state borders in South Asia generated for who is perceived to be a citizen and who is not. At the same time, territorial boundaries can be more fluid and indeterminate than they often seem. Persons born in many border areas of Asia may find it much harder to prove their citizenship, more so if their traditional communities span across borders and their belonging to any one state is contested. Border areas of Thailand (the site of Cheva-Isarakul's research in Chapter 6) and Malaysia (especially Sabah, see also Mohammed Razali's work in Chapter 3) are just some examples of many in Asia.<sup>117</sup>

New borders combined with evolving regimes of border control have also had an impact on the regulation of cross-border mobility with

<sup>116</sup> Aziz Ismatov, 'Hidden Statelessness Dimensions of State Succession in Central Asia: Transit to a Solution for Stateless Trans-Border Wives and Children', Chapter 4.

<sup>117</sup> See more generally Sriprapha Petcharamesree, 'Borders, Citizenship, 'Imagined Community' and 'Exclusive State' and Migration in Southeast Asia' in Sriprapha Petcharamesree, and Mark P Capaldi (eds), *Migration in Southeast Asia* (Springer 2022), 23.

relevance to the production and experience of statelessness. This has affected both historical and more contemporary forms of mobility. An example of the former is the scattered communities of maritime mobile populations or 'sea nomads' in the region, including the Moken of the Andaman Sea of Myanmar and Thailand, and the Bajau Laut of the Sulu Sea. State-based nationality laws and registration systems grounded in a system of fixed territorial links struggle to capture the particularities of such populations, who have lived mobile lifestyles for centuries.<sup>118</sup> In Chapter 9, Acciaioli, Brunt and Clifton explore some of these issues in the case of trans-border Bajau Laut (or Sama Dilaut) communities of eastern Sabah, located at the interface of east Malaysia and the Philippines and Indonesia.

More contemporary forms of cross-border mobility also intersect with statelessness in the region, including labour migration. Irregular migration forms a significant part of this mobility, including human trafficking, both affecting stateless persons and leading to new risks of statelessness.<sup>119</sup> In Chapter 7, Kneebone explores the rising phenomenon of marriage migration, especially from Southeast Asia to East Asia, and how its gendered dimension generates risks of statelessness.<sup>120</sup>

Finally, violent conflict and mass atrocities have generated multiple displacements and forced migration movements across Asia, both historically and in contemporary times. Guo therefore explores the intersection between violent conflict and statelessness in Chapter 5 with the example of stateless ex-Kuomintang soldiers and their descendants in Thailand, noting that conflict and atrocities may lead to statelessness, but equally statelessness may result in conflict and serious human rights violations. These dynamics are also made visible by Kyaw in Chapter 11 on the Rohingya and the ongoing contestations over their citizenship status in Myanmar after the 2021 military coup. Kyaw highlights how politicization of citizenship (and its denial) could be weaponized by political factions for violence and power, and how embedded

<sup>118</sup> Janepicha Cheva-Isarakul, and Christoph Sperfeldt, 'Citizenship and Statelessness among Mobile Maritime Populations: The Case of the Moken in Thailand' (2023) 27 (4) *Citizenship Studies* 530.

<sup>119</sup> Conny Rijken et al., *The Nexus between Statelessness and Human Trafficking in Thailand* (Wolf Legal Publishers 2015).

<sup>120</sup> See also Susan Kneebone, Brandais York and Sayomi Ariyawansa, 'Degrees of Statelessness: Children of Returned Marriage Migrants in Can Tho, Vietnam' (2019) 1 (1) *Statelessness & Citizenship Review* 169.

prejudices could create blind spots for governments that seek more democratic and progressive causes.

#### 1.5.4 *Intersectionality and Vulnerabilities*

Contributions to this volume attest to the fact that statelessness can rarely be reduced to a single cause, nor are its manifestations and consequences one-dimensional. Rather what the authors reveal throughout this book is that causes of statelessness frequently intersect, often affecting already marginalized populations across various social, economic, cultural and political planes. Cheva-Isarakul's insightful ethnographic account in Chapter 6 of Shan youth experiences in northern Thailand demonstrates how factors such as age, ethnicity and migration affect how statelessness is locally reproduced and experienced. Her research demonstrates how these stateless children, who previously may have been 'relatively oblivious of their status', face a particular set of stresses and vulnerabilities as they transition to adolescence and adulthood. By capturing the process of how these youths 'learn to be stateless', the author illuminates the emotional and practical burden of statelessness and how affected individuals exercise their agency and resources to manoeuvre their existence as stateless persons.

The relevance of migration, particularly in the context of the creation of borders, as a cause of statelessness was explained above. Yet forced migration across the region, such as in the context of the Rohingya crisis, constitutes an ongoing intersecting vulnerability in this context. The lack of frameworks and governance in relation to refugee protection across the region<sup>121</sup> leaves stateless refugees particularly vulnerable to a serious deprivation of rights and exploitation. Razali's chapter reveals the heightened vulnerability of stateless refugee Rohingya children residing predominantly in Bangladesh and Malaysia.

While it is well understood that statelessness can lead to a range of legal, social and economic disabilities and exclusions, in Chapter 9, Brunt, Acciaioli and Clifton offer an original and insightful analysis of the impact of intersecting vulnerabilities in the form of cultural appropriation and exploitation. In their exploration of the seafaring indigenous Bajau Laut community of Sabah, Malaysia, they observe that lack of legal status concomitantly brings about a lack of political and economic status

<sup>121</sup> See relevant subregional chapters in Cathryn Costello, Michelle Foster, and Jane McAdam (n 23).



as the state is able to control and manipulate the representation of their cultural heritage in order to benefit the state. They observe that ‘the increasing commodification of what is presented as heritage [means that] even stateless people may be appropriated as representatives of a heritage that is intended not only to create a national narrative, but also to attract the touristic gaze and the revenue it generates’. This results in both the loss of cultural autonomy and the perpetuation of their disadvantaged status in society.

## 1.6 Challenges and Prospects for Reform

Notwithstanding the multifaceted and complex causes of statelessness and its protracted and intergenerational nature in many countries in Asia, some progress has been made in reducing statelessness and protecting stateless people across this diverse region. As mentioned above, gender-discriminatory provisions in nationality laws have been removed from many states in the region. The UNHCR notes that much of this reform is relatively recent, citing Sri Lanka (2003), Indonesia (2006), and Bangladesh (2009), amongst its examples of reform.<sup>122</sup> The UNHCR’s #iBelong campaign to end statelessness by 2024 has supported and highlighted measures on various levels (legislative, administrative, practical) across the region.<sup>123</sup> At the ‘High-Level Segment’ to commemorate the half-way point of the campaign in 2019, seven states in Central Asia and the Asia Pacific made pledges to implement initiatives to address statelessness.<sup>124</sup> Yet, as many of the chapters in this volume reveal, there are both ongoing and emerging challenges to addressing statelessness, as well as reasons for optimism as to prospects for reform.

<sup>122</sup> UNHCR, ‘Background Note on Gender Equality, Nationality Laws and Statelessness 2022’ (4 March 2022) <[www.refworld.org/docid/6221ec1a4.html](http://www.refworld.org/docid/6221ec1a4.html)> accessed 31 August 2023.

<sup>123</sup> The UNHCR publishes several campaign updates a year to promote achievements and provide information about the implementation of the Global Action Plan, alongside the issuing of Good Practice Papers on each action item, UNHCR, ‘Publications’ (*iBelong* 2023) <[www.unhcr.org/ibelong/publications/](http://www.unhcr.org/ibelong/publications/)> accessed 18 September 2023. See also a recent update on the #iBelong campaign from UNHCR EXCOM, ‘Statelessness (Including an Update on the #iBelong Campaign)’ (24 May 2023) UN Doc EC/74/SC/CRP.12 <[www.unhcr.org/sites/default/files/2023-05/CRP-12-Statelessness-87-SC-English.pdf](http://www.unhcr.org/sites/default/files/2023-05/CRP-12-Statelessness-87-SC-English.pdf)> accessed 18 September 2023.

<sup>124</sup> These are Indonesia, Philippines, Thailand in the Asia-Pacific and Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan in Central Asia, UNHCR, ‘High-Level Segment on Statelessness: Results and Highlights’ (May 2020) 19 <[www.unhcr.org/ibelong/high-level-segment-on-statelessness-results-and-highlights/](http://www.unhcr.org/ibelong/high-level-segment-on-statelessness-results-and-highlights/)> accessed 13 September 2023.

### 1.6.1 *Ongoing and Emerging Challenges*

National security has emerged as a major source of denationalization across several countries. To date, however, scholarship and advocacy have largely centred on Europe, North America, and Australia. In Chapter 10, Seet reveals that the Asian region has not been immune to this issue. His important contribution studies the *de facto* denationalization of hundreds of Indonesian citizens who were subject to exclusion orders and prevented from returning from Syria. As Seet notes, denationalization is not new. What is new is its deployment as a counter-terrorism measure; stripping alleged terrorists of their citizenship facilitates their deportation to their other state of nationality and legally grounds the state's refusal to re-admit alleged 'foreign terrorist fighters' who had left the jurisdiction to join armed causes abroad. Seet's study of Indonesia shows that while counter-terrorism citizenship-stripping measures exercised by Western liberal democracies may have a racially discriminatory bent, the practice of a Muslim-majority state in Asia refusing to repatriate Muslim individuals provides a fresh lens through which to consider the prospect of *de facto* denationalization as a tool for national security. Indeed, while citizenship had largely been regarded as encompassing the right to enter one's country of citizenship, such exclusion orders demonstrate the ever-omnipotent power of the state to exclude even their citizens on the grounds of public interest and national security. In another form, while only on a temporary basis, the exclusion of nationals from entering their countries of citizenship during the Covid-19 pandemic is another demonstration of this persistent sovereign power of the state to control their borders and to denude the quality of citizenship, rendering some temporarily but effectively stateless.<sup>125</sup>

### 1.6.2 *Approaches to Addressing and Resolving Statelessness across the Region*

Many contributions in this volume ask critical questions about how the problem of statelessness in Asia – or perhaps more appropriately, the

<sup>125</sup> On the temporary exclusion of citizens during the Covid-19 pandemic see Olivera Simic, 'Australia, Covid-19, and the India Travel Ban' (2021) 9(2) *Griffith Journal of Law & Human Dignity* 35. For information about the impact of Covid-19 on stateless persons see also Institute on Statelessness and Inclusion, 'Statelessness in a Global Pandemic' (Impact Report, 2020) <[https://files.institutesi.org/Covid19\\_Stateless\\_Impact\\_Report.pdf](https://files.institutesi.org/Covid19_Stateless_Impact_Report.pdf)> accessed 18 September 2023.

problem of citizenship<sup>126</sup> – should be approached and addressed.<sup>127</sup> A traditional emphasis in the field of statelessness has been on law reform, including by bringing national laws into closer alignment with international frameworks and standards.<sup>128</sup> In a regional context, where only a few states have ratified the statelessness conventions, the Philippines is often hailed as an example to challenge ‘Asian exceptionalism’. Drawing on first-hand observations, Temprosa, in Chapter 13, chronicles and analyses the Philippines’ ratification process, exploring how states can be persuaded to ratify these international treaties. He reveals that ‘states ratify human rights treaties on rationalist and non-rationalist (but not necessarily irrational)’ grounds. While drawing some cautionary lessons, Temprosa argues that ‘other Asian states could learn from the challenges that the Philippines had faced or is currently facing in the signature, ratification, and implementation of the Statelessness Convention, or at least, in putting up a regime of laws that protect stateless persons’.

Yet, a study of statelessness in Asia clearly shows the limitations of approaches solely focused on law reforms. If we recognize that the phenomenon of statelessness in Asia is one of law *and* practice, intersectional in nature and frequently marked by discriminatory practices, we quickly realize that attempts to address statelessness require much broader, deeper, and context-specific strategies than are currently envisaged at international levels. Responses need to consider the root causes of social exclusion and statelessness and tackle the politics behind these processes. This will not only involve careful engagement with Asian states’ concerns with respect to the inclusion of particular groups, but also listening to the voices of stateless people themselves.

In Chapter 11, Kyaw deeply engages with the politics of Rohingya’s exclusion from citizenship in Myanmar, showing how fundamental changes in the political landscape – such as the 2021 coup – can both complicate attempts at resolution but also open up new opportunities.

<sup>126</sup> Tendayi Bloom and Lindsey N. Kingston (eds), *Statelessness, Governance, and the Problem of Citizenship* (Manchester University Press 2021).

<sup>127</sup> See also Nick Oakeshott, ‘Solutions to Statelessness in Southeast Asia’, in Laura van Waas and Melanie Khanna (eds), *Solving Statelessness* (Wolf Legal Publishers 2016); and UNHCR, Good Practices: Addressing Statelessness in South East Asia (Report of the Regional Expert Roundtable 2010).

<sup>128</sup> Alex Paxton, ‘Finding A Country to Call Home: A Framework for Evaluating Legislation to Reduce Statelessness in Southeast Asia’ (2012) 21(3) *Pacific Rim Law & Policy Journal* 623.

Kyaw shows that ‘the fate of Rohingyas is deeply implicated in the vagaries of the political trajectory of Myanmar’ and, as such, identifies a positive ‘Rohingya moment’ that has emerged just ‘at a time when Myanmar again finds itself in an unprecedented political, social and humanitarian crisis after the coup’.

De Chickera and Mohammed, in Chapter 12, engage critically with two dominant frameworks frequently mobilized in policies and programmes addressing statelessness, namely the human rights and development frameworks. These are most prominently articulated in international human rights law and the Sustainable Development Goals (SDGs), specifically SDG 16.9 which aims to provide ‘legal identity for all’ by 2030. While alignment between both frameworks is necessary to address statelessness, the authors emphasize that, ‘approaches must be underpinned by a deeper commitment to pursuing equality and combating discrimination in their many forms – legal, political and societal’.

De Chickera and Mohammed explore their argument through the case study of the Hill Country Tamils in Sri Lanka. While often considered a case where statelessness is now ‘resolved’, the authors show that the Hill Country Tamils are still among the ‘furthest behind’ and continue to experience severe discrimination. The authors conclude that ‘the lived reality of this community demonstrates the limits of treating formalized citizenship as the primary means to resolve the consequences of multi-generational statelessness’, without addressing the structural discrimination frequently underlying statelessness. These observations resonate with other cases of ‘resolved’ statelessness in the region, such as the Bihari in Bangladesh.<sup>129</sup>

Weak identification and civil registration systems, including birth registration, are another factor contributing to statelessness.<sup>130</sup> Shortcomings in or exclusion from civil registration expose children to risks of statelessness as many contributions in this volume attest. Such problems particularly affect minorities and remote communities, as well as migrant or refugee populations, highlighting once more the intersectional nature of statelessness. Recognizing the importance of civil registration, states in the region proclaimed, in 2014, the Asia-Pacific Civil Registration and Vital Statistics (CRVS) Decade with the goal of improving civil registration systems by

<sup>129</sup> Khalid Hussain, ‘The End of Bihari Statelessness’ (2009) 32 *Forced Migration Review* 30.

<sup>130</sup> See Carla Abouzahr et al., ‘Towards a Research Agenda for Civil Registration and Vital Statistics in the Asia-Pacific Region’ (2014) 29(1) *Asia-Pacific Population Journal* 99.

2024, including achieving universal birth registration.<sup>131</sup> These and other initiatives have reinvigorated CRVS efforts in Asia.

Moreover, and following a global trend, many states in the region are making use of the spread of new technologies to implement digital identification management systems, often in combination with biometric identifiers. Yet, coverage and eligibility for inclusion in such systems varies across the region.<sup>132</sup> There is potential for these new identification systems to assist with expanding the reach of government services and making them more inclusive. However, there are also risks, especially when new digital identification systems do not consider stateless populations in their design and are then coupled with rules that make proof of legal identity mandatory for accessing rights and services. In contexts where there are discriminatory laws or practices, such an approach may risk intensifying exclusion from basic rights and protections for certain populations, posing new challenges for the struggle against statelessness. This more complex perspective highlights another area in which future research is needed.<sup>133</sup>

It is increasingly recognized that the perspectives of stateless people ‘must play a central role in advocacy and research related to statelessness’.<sup>134</sup> The continuing dominance of simplistic and singular stereotypes and images of stateless persons as ‘invisible’, ‘ghost-like’ and powerless fails to account for their agency in navigating the barriers that non-citizenship present, to value or appreciate their advocacy and its costs,<sup>135</sup> or to provide the evidence base needed to develop nuanced and targeted responses to statelessness. In this regard, Cheva-Isarakul’s chapter (Chapter 6) offers a crucial intervention in challenging the ‘dominant and static framing of stateless children by examining the dynamic process through which Shan youth participants in northern Thailand engage

<sup>131</sup> See ‘Civil Registration and Vital Statistics in Asia and the Pacific’ (*Get in the Picture*) <<https://getinthepicture.org/crvs-decade>> accessed 3 August 2020.

<sup>132</sup> Asian Development Bank, *Identity for Development in Asia and the Pacific* (2016) <[www.adb.org/sites/default/files/publication/211556/identity-development-asia-pacific.pdf](http://www.adb.org/sites/default/files/publication/211556/identity-development-asia-pacific.pdf)> accessed 13 September 2023.

<sup>133</sup> See Sperfeldt (n 15) 5–6.

<sup>134</sup> Lindsey Kingston and Ekaterina E, ‘Responding to Netflix’s Stateless Series: Misrecognition and Missed Opportunities’ (2023) 5(1) *Statelessness & Citizenship Review* 4.

<sup>135</sup> Deirdre Brennan, ‘Caring about Statelessness: Unpacking the “End Statelessness” Campaigns through a Feminist Ethics of Care’ (*Critical Statelessness Studies*, May 2021) <<https://law.unimelb.edu.au/centres/statelessness/resources/critical-statelessness-studies-blog/caring-about-statelessness-unpacking-the-end-statelessness-campaigns-through-a-feminist-ethics-of-care>> accessed 13 September 2023.

in making sense of their legal predicament and navigating its limitations during their adolescence'. As she observes, a stateless child's experience 'is often reduced to a singular representation of complete deprivation without heeding the diverse historical, social and political causes of their statelessness, the varying access to rights in the place they consider home or their personal circumstances, such as the life pressures that change according to their age and life stage. Stateless children are rarely perceived and portrayed as active agents in constructing and determining their own social lives. Instead, they are transmuted into ahistorical, acontextual and generalized subjects with an ostensibly universal experience of total abjection'. This important work not only sheds light on a particular population in Thailand but exemplifies a path for future research that can offer such nuanced and crucial insight.

As a whole, more on-the-ground research and interdisciplinary collaborations would be necessary to formulate effective contextualized solutions for the eventual elimination of statelessness in Asia and beyond. This volume aims to be one such contribution in that direction.