



**Progressing the Realisation of the Human Right to Work of Karen Refugees in Camps in
Thailand: Is There a Role of Confucian Communitarianism?**

By

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Abstract

My thesis utilises insights from the Confucian communitarian tradition, which is rooted in Asian and Thai traditions, to promote and support the realisation the right to work for Karen refugees in Thai camps. There are over 80,000 indigenous Karen refugees from Myanmar resident in nine camps along the Thai-Myanmar border. They have fled to Thailand due to the long history of ethnic conflict and political persecution within Myanmar, a situation which remains ongoing. Although Thailand has a long history of hosting refugees, the country has to date refused to sign up to the 1951 Convention and its 1967 Protocol, which form the bedrock of International Refugee Law. Thailand does not have a national asylum system and regards these indigenous refugees as “illegal migrants”. Critically, these Karen refugees in Thai camps are denied the right to work, which is an inherent part of human dignity and well recognised in international law. I root my analysis in a novel legal framework which brings together three areas of law - International Refugee Law, International Human Rights Law and International Law on Indigenous Peoples. I deploy the Confucian communitarian approach to human dignity, which although different from the liberal tradition, can contribute to the advancement of universal human rights protections within Thailand. Ultimately, my research calls on Thailand to rethink its approach and uphold their obligations under this international legal framework to extend the protection of the right to work for the Karen refugees in camps. I bring forward Confucian communitarian thought in order to promote the realisation of the right to work under international law for Karen refugees in camps in Thailand, contributing an original approach.

Acronyms and Abbreviations.

ASEAN	Association of Southeast Asian Nations
CBD	Convention on Biological Diversity
CCSDPT	Coordinating Committee for Services to Displaced Persons in Thailand
CESCR	Committee on Economic, Social and Cultural Rights
CPA	Comprehensive Plan of Action
CRC	Convention on the Rights of the Child
EE	Eudemian Ethics
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families
IHRL	International Human Rights Law
ILIP	International Law on Indigenous Peoples
ILO	International Labour Organisation
IMF	International Monetary Fund
IRL	International Refugee Law
IWGIA	The International Work Group for Indigenous Affairs
KNU	Karen National Union
KRC	Karen Refugee Committee
MOI	Ministry of Interior
NE	Nicomachean Ethics
NGOs	Non-governmental organisations
NSC	National Security Council
NSM	National Screening Mechanism
OAU	Organisation of African Unity
OHCHR	Office of the United Nations High Commissioner for Human Rights
PABs	Provincial Admission Boards
TBC	The Border Consortium
TWAIL	Third World Approach to International Law
UDHR	Universal Declaration of Human Rights
UN	United Nations

UNCHR	United Nations Commission on Human Rights
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
US	United States

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Chapter 1: Introduction.

1.1. Background, Rationale and Objectives of the Research.

My thesis asks whether Confucian communitarianism can play a role in progressing the realisation of the right to work of indigenous Karen refugees in camps in Thailand. Confucian communitarianism is an ancient ethical and philosophical tradition which has had significant influence in the East and Southeast Asian regions, including in Thailand.¹ My contention is that insights from the Confucian communitarian tradition can help to progress the realisation of these Karen refugee's right to work by offering a more culturally-sensitive approach to the reading of Thailand's obligations under international law.

The right to work is widely recognised in several international legal instruments belonging to different areas of law such as International Refugees Law (IRL),² International Human Rights Law (IHRL) and International Law on Indigenous People (ILIP). The right to work “forms an inseparable and inherent part of human dignity”³ and therefore, is recognised as a basic and fundamental human right.⁴ It is important to specify here that the right to work encompasses access to work and protection of working conditions. Accordingly, the ability to access decent employment provides people with regular income in order to support themselves and their family and enjoy an adequate standard of living.⁵ Beyond economic gain, work is also important for ones' overall development and recognition within the community.⁶

Particularly for many refugees and asylum seekers, work is not simply about finance but also about a sense of independence and purpose, relating to inclusion in the wider community and belonging, social connectedness and contributing to the host society.⁷ In fact, a growing amount of research and debate

¹ Jung In Kang, *The Cultural Identity of East Asia in the Age of Globalization: West Centrism and Asian Values*, *The Korean Journal of International Studies*, 2(1), 2004, P. 123-125. Jianghua Han, *The Chinese Wuxia Culture in Thailand: Dissemination and Influence*, *Comparative Literature: East and West*, 5(1), 2021, P. 8.

² It is noted that IRL which is used throughout this thesis refers to Convention Relating to the Status of Refugees (Adopted 28 July 1951, Entered into Force 22 April 1954) 189 UNTS 137 (hereafter referred to as the 1951 Refugee Convention) and Protocol relating to the Status of Refugees (Adopted 31 January 1967, Entered into Force 4 October 1967) 606 UNTS 267 (hereafter referred to as its 1967 Protocol).

³ Committee on Economic, Social and Cultural Rights (CESCR), General Comment No 18: The Right to Work, E/C.12/GC/18, 6 February 2006, P. 2, Paragraph 1, <https://www.refworld.org/legal/general/cescr/2006/en/32433> Accessed by 10 December 2023.

⁴ Universal Declaration of Human Rights, UNGA res 217A (III) (Adopted 10 December 1948), Article 23.

⁵ CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 7 April 2016, P. 3, 5 Paragraph 9, 18, <https://www.refworld.org/legal/general/cescr/2016/en/122360> Accessed by 30 December 2022

⁶ C168 Employment Promotion and Protection against Unemployment Convention, (Adopted 21 June 1988, Entered into Force 17 October 1991), Preamble.

⁷ Helen Claire Hart, *Keeping Busy with Purpose: How Meaningful Occupation Can Shape the Experience of Forced Migration*, *Migration Studies*, 9(3), 2019, P. 1322-1323.

has shown the benefits that refugees and asylum seekers can bring to host states through work, including by filling the gaps in the national labour market, increasing tax revenue and reducing states' expenditure.⁸ In other words, the provision of refugees and asylum seekers with the right to work can, to some extent, coincide with the interests of host states. It is crucial however to stress here that the realisation of this right should not be granted merely due to the prospect of economic gains for the state (using refugees as a means to an end) but should instead originate from the human dignity-enhancing role of work.

The right to work is crucial to human dignity.⁹ Yet, for decades now, the Thai government has continuously failed to grant this fundamental right to Karen refugees in Thai camps.¹⁰ As of November 2024, there were approximately 86,539 refugees from Myanmar, most of whom indigenous Karen peoples, living in nine refugee camps located in four provinces along the Thai-Myanmar border.¹¹ Karen refugees' predicament is rooted in the long history of ethnic conflict and political persecution within Myanmar, which to this day remains embroiled in a state of civil war and ethnic strife.¹² The first Karen indigenous refugees arrived in Thai camps in 1984 and have remained in the country ever since.¹³ They constitute the longest protracted refugee situation in Southeast Asia.¹⁴ Their enduring plight thus merits particular consideration and, as my thesis demonstrates, demands new thinking.

Although Thailand has a long history of hosting refugees, the country is not a party to the 1951 Convention Relating to the Status of Refugees (the 1951 Refugee Convention) and the 1967 Protocol relating to the Status of Refugees (its 1967 Protocol).¹⁵ Thailand has no asylum system and its policies

⁸ Ziad Ayoubi and Regina Saavedra, *Refugee Livelihoods: New Actors, New Models*, Forced Migration Review, 2018, P. 39. International Labour Organisation (ILO), *Employment and Decent work in Refugee and Other Forced Displacement Contexts Compendium of ILO's Lessons Learned, Emerging Good Practices and Policy Guidance*, 2020, P. 11, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_763174.pdf Accessed by 15 June 2023.

⁹ Hugh Collins, *Is There a Human Right to Work*, in Virginia Mantouvalou (Ed), *The Right to Work: Legal and Philosophical Perspectives*, London: Bloomsbury, 2014, P. 28.

¹⁰ CESCR, *Concluding Observations on the Combined Initial and Second Periodic Reports of Thailand*, E/C.12/THA/CO/1-2, 19 June 2015, P. 5, Paragraph 15, <https://documents.un.org/doc/undoc/gen/g15/150/41/pdf/g1515041.pdf> Accessed by 20 October 2024.

¹¹ United Nations High Commissioner for Refugees (UNHCR), *RTG/MOI-UNHCR Verified Refugee Population as of November 2024*, <https://www.unhcr.org/th/en/ekiiywkab-unhcr/unhcr-thailand#:~:text=At%20present%2C%20Thailand%20continues%20to,by%20the%20RTG%20as%20stateless> Accessed by 15 December 2024.

¹² Kirsten Mcconnachie, *Governing Refugees: Justice, Order and Legal Pluralism*, New York: Routledge, 2014, P. 33.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ For Thailand's Ratification Status to the 1951 Refugee Convention, see: https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=en Accessed by 5 December 2022.

For Thailand's Ratification Status to the 1967 Protocol Relating to the Status of Refugees, see: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&clang=en Accessed by 5 December 2022.

vis-à-vis refugees have been primarily shaped by geopolitical considerations.¹⁶ Critically, refugees in the country are categorised as “illegal migrants” under Thai law.¹⁷ It is important to note here that throughout my work the term refugee is used in a wider sense when referring to the Karen to reflect their need for international protection. When referring to individuals who have been granted refugee status within the meaning of the 1951 Refugee Convention and its 1967 Protocol, I use the term recognised refugee(s).

Due to their status as “illegal migrants”, Karen refugees in Thai camps are denied access to the fundamental right to work which is recognised under IRL, IHRL and ILIP.¹⁸ With this precarious migration status, Karen refugees are living under conditions that can only be characterised as rightlessness and face serious violations of their human dignity.¹⁹ Unable to return to Myanmar due to ongoing conflict, Karen refugees face daily life in camps without employment opportunities and are rendered dependent on international aid.²⁰ For many, this leads to a lack of hope for their future.²¹

My sympathy with these indigenous refugees, given the extreme precariousness of their situation in Thailand, was key to my undertaking of this research. Their protracted situation requires new thinking and a different approach. With this in mind, my thesis explores Confucian communitarian thought on human dignity and ground a vision of universal human rights protections in a philosophy which can speak to the culture and traditions of Thailand. Deep-seated Confucian communitarian values have long influenced Thai people and society.²² Importantly, Confucian communitarianism has relevance to the traditional indigenous beliefs and traditions of the Karen people, including Karen refugees in Thai camps.²³ The social ethics and collective culture present in Karen communities resonates strongly with Confucian communitarian thought.²⁴ The Karen adhere to a collective way of life and are organised within a clan-based kinship structure which prioritises communal harmony, respect for ancestors, and

¹⁶ Anja Jetschke, Does Forced Migration Increase Regional Human Rights Commitment? The Cases of Malaysia and Thailand in ASEAN, *Asia Pacific Business Review*, 25(5), 2019, P. 712.

¹⁷ Thai Immigration Act B.E. 2522 (Adopted and Entered into Force 30 April 1979), Section 12(1). It is noted that the term “illegal migrant” is official terminology used by the Thai government. It is not my own.

¹⁸ Human Rights Watch, *Ad Hoc and Inadequate: Thailand’s Treatment of Refugees and Asylum Seekers*, Bangkok: Human Rights Watch, 2012, P. 1, <https://www.hrw.org/sites/default/files/reports/thailand0912.pdf> Accessed by 20 August 2022.

¹⁹ Ibid.

²⁰ Gracia Fellmeth, Emma H. Plugge, Suphak Nosten, May May Oo, Mina Fazel, Prakaykaew Charunwatthana, François Nosten, Raymond Fitzpatrick and Rose McGready, *Living with Severe Perinatal Depression: A Qualitative Study of the Experiences of Labour Migrant and Refugee Women on the Thai-Myanmar Border*, *BMC Psychiatry*, 18, 2018, P. 1-2.

²¹ Ibid.

²² Jianghua Han, *The Chinese Wuxia Culture in Thailand: Dissemination and Influence*, *Comparative Literature: East and West*, 5(1), 2021, P. 8-9. Liang Chua Morita, *Religion and Family of the Chinese and Thai in Thailand and Influences*, *Studies in Language and Culture*, 28(2), 2007, P. 136.

²³ Yoko Hayami, *To Be Karen and To Be Cool: Community, Morality and Identity among Sgaw Karen in Northern Thailand*, *Cah. Sci. Hum*, 29(4), 1993, P. 748.

²⁴ Ibid.

benevolence, consistent with Confucian ideals of filial piety and ritual.²⁵ This approach, by turning to Confucian communitarianism, holds greater salience in the context of Asia and Thailand. My contention is that this approach holds potential for local acceptance from both the Thai government and wider society of progressing the realisation of the right to work for Karen refugees under IRL, IHRL and ILIP. Rooting human rights discourse and promoting the rights under this legal framework in new insights from Confucian communitarianism is critical to the originality of my work.

Central to this turn in my work is my analysis of Third World Movement debates between liberal universalist visions of human rights versus culturally relativist schools.²⁶ On the one hand are universalists who posit notions that certain rights are inherent to all and inalienable regardless of cultural or social context.²⁷ On the other hand, cultural relativists seek to situate human rights within the traditions and understandings of actually existing societies and, at their most extreme, deny the possibility of universal rights.²⁸ The Third World Approach to International Law (TWAIL), originating within the context of decolonisation, exemplifies this more sceptical tendency.

TWAIL accordingly presents international law as a tool of Western hegemony and Eurocentric ideology.²⁹ This Third World movement has swept across Asia, Africa and Latin America.³⁰ Many East and Southeast Asian countries including Thailand have called for a system of human rights that is conscious of Asian values and cultural experiences, central to which is the influence of Confucian communitarianism.³¹ They claim that the international legal framework of universal human rights is built upon a Western liberal individualistic vision of a dignified life which is not reflective of the values and traditions of many East and Southeast Asian societies.³²

My thesis moves beyond this dichotomy between universality and cultural relativism in human rights discourse and forges a middle way that takes into account cultural context and uniqueness, while at the same time promoting the universal nature of human rights. This is because legal systems and policy do not develop in a vacuum but instead are deeply rooted within the language and practices of specific

²⁵ Ibid.

²⁶ For more context on these debates, see: Alison Dundes Renteln, *International Human Rights: Universalism Versus Relativism*, New Orleans: Quid Pro Books, 2013, P. 4.

²⁷ Ibid, P. 9.

²⁸ Ibid.

²⁹ Makau-wa Mutua and Antony Anghie, "What Is TWAIL?" *Proceedings of the Annual Meeting (American Society of International Law)*, 94, 2000, P. 31-32. Antony Anghie, *Rethinking International Law: A TWAIL Retrospective*, *European Journal of International Law*, 34(1), 2023, P. 7.

³⁰ Ibid.

³¹ Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights, A/CONF.157/ASRM/8, 2 April 1993, Paragraph 8. See also: Damien Kingsbury and Leena Avonius, *Human Rights in Asia: A Reassessment of Asian Values Debate*, New York: Palgrave Macmillan, 2008, P. 3-7.

³² Chang Yau Hoon, *Revisiting the 'Asian Values' Argument Used by Asian Political Leaders and Its Validity*, *Indonesian Quarterly*, 32(2), 2004, P. 155-156.

cultures in particular times and places.³³ The role and influence of tradition and cultures in forming conceptions of law and policy in a given society cannot be ignored. Rather, it is crucial to analyse and discover if and how non-Western cultural traditions possess their own values and thoughts which may enrich the implementation of universal human rights discourse.

I contend that although having different ways of reasoning, and different worldviews originating in different historical time periods, the Confucian communitarian tradition also believes in and promotes core values and concepts, like human dignity, which is central to the modern system of universal human rights. In particular, for Confucian communitarianism, human dignity emphasises a life of virtue and communal ties, involving care and compassion, obligations and mutual support networks intrinsic to kinship connections among humankind.³⁴ The Confucian communitarian approach to human dignity shares similarities with that articulated by Nussbaum – one of the few modern liberal thinkers who attempts to incorporate criticisms from communitarians in an effort to engage non-Western cultures and countries.³⁵ Nussbaum's centrality in modern liberalism, her engagement with communitarian thought and her turn to traditional philosophy via Aristotle³⁶ make her approach the good bridge between liberalism and Confucian communitarianism. Nussbaum's approach is therefore particularly useful for reframing Thailand's obligations towards Karen refugees. I argue that the elements of Confucian communitarianism emphasising universal love and care can provide an important grounding, similar to that played by Aristotle in Nussbaum's thought but within an Asian context,³⁷ in promoting the extension of protections of the right to work for non-nationals with precarious status like Karen refugees.

This endeavour of building bridges between Asian and Western traditions is one that has a deeper salience for me and where I come from. I was born and raised in Vietnam, where like Thailand the culture of Asian values and Confucian communitarianism prevail.³⁸ My life has been shaped by the Confucian communitarian values of filial piety, with a familial and communal focus, emphasising

³³ Stephen Zamora, *The Cultural Context of International Legal Cooperation*, *Journal of Legal Education*, 51(3), 2001, P. 462.

³⁴ Luo An' Xian, *Human Dignity in Traditional Chinese Confucianism*, in Marcus Duwell, Jens Braarvig, Roger Brownsword and Dietmar Mieth (Eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*, Cambridge: Cambridge University Press, 2015, P. 181.

³⁵ It is noted that when Nussbaum starts to raise compassion as her core idea of ethical thinking, she herself has emphasised that this notion is also central in many Asian cultures. For more information, see at: Martha C Nussbaum, *Upheavals of Thought: The Intelligence of Emotions*, Cambridge: Cambridge University Press, 2001, P. 301.

³⁶ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 156-159.

³⁷ A. T. Nuyen, *Confucianism, Globalization, and the Idea of Universalism*, *Asian Philosophy*, 13(2/3), 2003, P. 75–86.

³⁸ For more information the influence of Confucian communitarian tradition in Vietnam, see further at: Tung Hieu, *Confucian Influences on Vietnamese Culture*, *Vietnam Social Sciences*, 5(169), 2015, P. 71-82.

kinship ties and a system of virtue ethics and the obligations of care that flow from this. As a student of law in both Vietnam and in the West, I have seen this tension at play and I see it as part of my academic quest to bring my heritage, and the wider heritage of Asia, into a critical but fruitful dialogue with Western thought and values.

I acknowledge that the precarious situation of Karen refugees cannot be easily resolved and this project, by itself, may not fully ease their plight. Confucian communitarianism is not a panacea and like all other philosophies can be subject to concerns and criticisms. As Confucian communitarianism emerged over thousands of years in different societies it may be seen as outdated, with its language and terms of thought incompatible with modern day ethics.³⁹ Also, Confucian communitarianism can be and has been subject to manipulation and abuse by political and state actors. This, however, does not rob the tradition of its value or its moral power to speak across the centuries. The salience and relevance of a complex system of thought which has formed over a long historical period in a given time and place will always bring with its positives and negatives. As mentioned above, the essential and important task is to discover fresh thinking and an approach which is more sensitive to cultural context and so more able, through dialogue, to highlight points of progressing the realisation of universal human rights within the context of Thailand.

To be clear, by turning to Confucian communitarianism, my research does not aim to downplay the important contributions of liberal thought to the protection of human rights, nor to in any sense replace the international human rights framework. In a way, by retracing and rearticulating Confucian communitarian values this project seeks to complement liberal values in order reduce protection gaps for the Karen refugees under the existing international human rights system. To some extent, this new approach may more effectively encourage Thailand's acceptance and cooperation towards progressing the realisation of the right to work for the Karen refugees in camps, which is central to their human dignity and firmly articulated in provisions of IRL, IHRL and ILIP.

In order to provide an answer to the primary research question "*Can Confucian communitarianism play a role in progressing the realisation of the right to work of indigenous Karen refugees in camps in Thailand?*", my research will address the following sub-questions:

- *To what extent does IRL, IHRL and ILIP offer protections of the right to work for indigenous Karen refugees in Thai camps?*

³⁹ Gilbert Rozman, Can Confucianism Survive in an Age of Universalism and Globalisation? Pacific Affairs, 75(1), 2002, P. 1-2.

- *Can Confucian Communitarianism ground a vision of human dignity consistent with the liberal tradition?*
- *Does Confucian communitarianism see a link between human dignity and work?*
- *How can the Confucian communitarian approach to human dignity play a role in promoting the protection of the right to work under IRL, IHRL and ILIP for the Karen refugees?*

1.2. Methodology.

My project is constituted by doctrinal legal and theoretical desk-based research using both primary and secondary resources. I examine primary resources including international treaties, declarations and United Nations (UN) human rights committees' general comments regarding IRL, IHRL and ILIP in relation to the right to work. I also examine Thai national legal instruments and policies. It is important to stress here that analysis of Thai policy towards Karen refugees in camps is challenging. This is because the Thai government has not published wide ranging documents on its policy, which to a large degree remains unofficial and is reflected in long-standing state practices. What little is available is often in the Thai language and is difficult to access for me as a non-Thai speaker. In addition, although UN human rights committees are supposed to publish reports on Thailand every five years, the timeline for reporting has been inconsistent in recent times, perhaps due to the Covid-19 pandemic. Ultimately, the picture of what is happening inside these Karen camps in Thailand is piecemeal and so dependent on reports from under-resourced non-governmental actors like Human Rights Watch or other secondary sources, but they are limited in what they are able to achieve.

Moreover, I deploy a theoretical lens based on Nussbaum's conceptualisation of human dignity and the capability theory and bring this into dialogue Confucian communitarianism. Although these philosophies developed in very different circumstances, times and places, they share a similar set of ideas in how they conceptualise human dignity. I do so to craft an understanding of how liberalism and Confucian communitarianism can relate to each other in a productive dialogue concerning the basis of universal rights. Although they diverge in how they ground rights, it is important to build bridges between the two in order to inculcate the concepts of human dignity and rights that are found in international law. Ultimately, the product of this dialogue can be used to promote the realisation of the right to work, within the context of Thailand and the Karen refugees in camps.

This theoretical lens is underpinned by taking a broader socio-legal approach to the study of law, examining the interplay between legal ideas and social, political and cultural context. Socio-legal study recognises that law is a social phenomenon based on cultural foundations.⁴⁰ To privilege or exclusively

⁴⁰ Werner F Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*, 2nd Ed, Cambridge: Cambridge University Press, 2006, P. 82.

study the state and its legal texts misses much about the societal and cultural underpinnings of law.⁴¹ The study of law, from a socio-legal perspective, requires a more interdisciplinary approach studying beliefs and norms.⁴² In particular, in this thesis, I move beyond pure analysis of the specific texts in IRL, IHRL, ILIP and in Thai law and look at the ideas and practices that underpin Western and Asian law and Thai state action. I analyse cultural context and ideas – the liberalism that behind the system of modern human rights and IRL and IHRL. I examine the socio-economic and socio-political situation of the indigenous Karen refugees and of Thailand and show how Confucian communitarianism has shaped people and their culture in the country and the region. A socio-legal approach, going beyond black-letter law, enables me to build up a profound basis for turning to the values and insights of Confucian communitarianism to progress the recognition of the Karen refugees’ right to work, which is widely recognised in international law.

1.3. Originality of the Thesis.

The original contribution of my thesis consists of two core elements. Firstly, I bring together three distinct areas of international law: IRL, IHRL and ILIP and situate Karen refugees at the intersection of this legal framework. My research takes Karen refugees in Thailand as the case study of my project. There is much research on the Karen refugee situation and on the advancement of protections of these Karen as refugees. However, there is little which considers their indigeneity and addresses their specific circumstances as both refugees and indigenous people. My work addresses this gap in the literature by offering an original approach that brings ILIP into dialogue with IRL and IHRL to bolster protection for Karen refugees in Thai camps.

The second part of my thesis which has particular originality is that I deploy insights from Confucian communitarianism to promote the realisation of the right to work for Karen refugees. I posit that Confucian communitarianism contains within it a vision of human dignity which can advance the cause of universal human rights and provide new grounds for the protection of the right to work for Karen refugees under IRL, IHRL and ILIP. Bringing my legal framework grounded in the concept of human dignity into dialogue with Confucian communitarianism goes to the core of my thesis and is critical to its original contribution.

In doing so, I show that although they originate from different societies in different time periods, Confucian communitarianism holds within it values and ideas which can speak to the modern world

⁴¹ Ibid.

⁴² For an outline of how socio-legal study is interdisciplinary, drawing on sociology, legal anthropology, law, psychology, history, geography and politics, see further at: Linda Mulcahy and Rachel Cahill-O’Callaghan, Introduction: Socio-Legal Methodologies, *Journal of Law and Society*, 48(1), 2021, P. S4-5.

and liberal human rights discourse. This constitutes a novel approach which takes a balanced view and as mentioned earlier, has deep roots in my background and interests in bringing Eastern and Western thought into dialogue. This proposal, charting a course that places the ideas and traditions of different cultures at the centre of academic legal discourse, is one which I believe has transformative implications for how we engage with the implementation of human rights within Asia and/or other non-Western settings. This is important because the advancement of human rights can be enhanced and universalised, by helping societies discover how rights relate to all that they value in their traditional heritage.

1.4. Structure of the Thesis.

In the next chapter (chapter two) I set out the theoretical framework based on the concept of human dignity. In chapter three I construct my legal framework of this thesis, which brings IRL, IHRL and ILIP, into dialogue to protect Karen refugees in Thai camps. In chapter four I then turn to demonstrate the historical and geopolitical background to the development of Thai policy towards refugees. On this basis, in chapter five I go on to examine the extent to which the provisions of IRL, IHRL and ILIP protect the right to work for these indigenous refugees and the failure of the Thai government to uphold its obligations under this legal framework.

This analysis grounds the need for new thinking and a fresh approach to thinking about this precarious situation, which will be the focus of the next chapters. In chapter six I demonstrate the historical background and the influence of Confucian communitarianism in Thailand and examine its values and approach to human dignity, with reference to the advancement of universal human rights. I then in chapter seven deploy Confucian communitarianism's approach to human dignity in order to advance the realisation of the right to work for the Karen refugees in Thai camps. To conclude, in chapter eight I summarise this project's findings and its original contribution to the field of refugee studies, indigenous studies and human rights law and point forward to the possibility of future research relating to the promotion of other rights for other migrants or other indigenous groups in similar situations to the Karen.

Chapter 2: The Importance of Human Dignity in the Protection of Karen Refugees in Thai Camps.

Introduction:

As briefly mentioned in the previous chapter, Karen refugees have been living in a protracted situation in camps along the Thai-Myanmar border, facing serious violations of their human dignity. Human dignity is widely viewed as the grounding concept in the modern regime of human rights protection.⁴³ The ideal is that as “all human beings regardless of background are born free and equal in dignity”, this grants them fundamental rights.⁴⁴ This chapter shows that this concept of human dignity holds great significance for the recognition of the Karen refugees’ fundamental right to work. To be more precise, my thesis posits that Nussbaum’s approach to human dignity can speak to the traditions and culture of Thailand and, as such, can be useful in reframing Thailand’s obligations vis-à-vis Karen refugees in camps. In this chapter I seek to understand a range of approaches to human dignity and discover one that grounds a theory of rights for Karen refugees in camps.

I develop a theoretical framework that deploys insights from Nussbaum – particularly her approach to human dignity. Nussbaum looks beyond the individualistic account of classical liberalism and provides a conceptualisation of human dignity rooted in an Aristotelian ideal of human flourishing (“*Eudaimonia*”).⁴⁵ I argue that Nussbaum’s Aristotelian conception of human dignity, that associates dignity with a virtuous and communal life, finds greater alignment with non-western traditions including Confucian communitarianism, which I focus on. My contention is that although originating from different cultures and traditions, Nussbaum’s Aristotelianism and Confucian communitarianism share fundamental core principles. An in-depth analysis of how these two traditions can be brought into dialogue will be presented in chapter 6. The application of Nussbaum’s theory in the case of the Karen refugees, alongside bringing her thought into dialogue with Confucian communitarianism, constitutes an original contribution.

In this chapter I start by demonstrating the core role of the concept of human dignity, grounding why this concept is central to my theoretical framework. I then continue by examining the traditional liberal

⁴³ John Tasioulas, *Human Dignity and The Foundations of Human Rights*, in Christopher McCrudden (Ed), *Understanding Human Dignity*, Oxford: Oxford University Press/ British Academy, 2013, P. 292.

⁴⁴ Article 1 of UDHR.

⁴⁵ Garrett Wallace Brown, *Grounding Cosmopolitanism: From Kant to the Idea of a Cosmopolitan Constitution*, Edinburgh: Edinburgh University Press, 2013, P. 169, 183.

It is important to note that *Eudaimonia* (variously translated as human flourishing, well-being, self-fulfilment, success or happiness) is, within Aristotle’s *Ethics*, seen as the end (*Telos*) of human life. Aristotle associates *Eudaimonia* with “the felicity of the Gods”. See further: in Aristotle’s *Ethical* works including two closely related collections, *Nicomachean Ethics* (*NE*) and *Eudemian Ethics* (*EE*). In terms of reference throughout my work, for example, NE 1173a29-B20 means a passage in *Nicomachean Ethics* (*NE*). Aristotle’s ideal of *Eudaimonia* also connects with his work titled *Politics* (*POL*). POL 1278a40-B5 means a passage in *Politics*.

conception of human dignity, which is widely seen as foundational for the modern system of the provisions of IRL and IHRL. Finally, I look at Nussbaum's understanding of human dignity and her Capabilities Approach in order to seek a theoretical grounding for the recognition of rights of the indigenous Karen refugees in Thai camps.

2.1. Justification for Focusing on the Concept of Human Dignity.

Human dignity is a foundational concept for the modern human rights regime from which the whole range of fundamental human rights is derived.⁴⁶ It has become a key legal notion and can be found in a wide range of legal documents belonging to different areas of international law such as IRL, IHRL or ILIP.⁴⁷ This notion is a fundamental value which is held universally and applies to all human beings, recognising their inherent worth.⁴⁸ Turning to the ideal of human dignity plays a key role in protecting Karen refugees and recognising their basic and fundamental right to work. In other words, regardless of their background, the indigenous refugees in camps should be entitled to the system of basic human rights which is crucial for expression of their human dignity.

Although concepts of human dignity appeared very early, since at least Roman times,⁴⁹ it has been regarded as a central and undisputable concept in human rights discourse since the end of the Second World War.⁵⁰ In the wake of fascism, totalitarianism and genocide in the aftermath of the Second World War, people were increasingly aware of the importance of the protection of human rights.⁵¹ The concept of human dignity was incorporated into the political discourse of the Allied powers as the ground for democracy and the protection of human rights.⁵² Accordingly, human dignity implies the inherent moral

⁴⁶ John Tasioulas, *Human Dignity and The Foundations of Human Rights*, in Christopher McCrudden (Ed), *Understanding Human Dignity*, Oxford: Oxford University Press/ British Academy, 2013, P. 292. See also: Pablo Gilabert, *Understanding Human Dignity in Human Rights*, Oxford: Oxford University Press, 2018, P. 114.

⁴⁷ Roger Brownsword, *Human Dignity from A Legal Perspective*, In Marcus Duwell, Jens Braarvid, Roger Brownsword and Dietmar Mieth (Eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*, Cambridge: Cambridge University Press, 2014, P.1-3. See also: Barbara A Misztal, *The Idea of Dignity: Its Modern Significance*, *European Journal of Social Theory*, 16(1), 2012, P. 101.

⁴⁸ Barbara A Misztal, *The Idea of Dignity: Its Modern Significance*, *European Journal of Social Theory*, 16(1), 2012, P. 101. Man Yee Karen Lee, *Universal Human Dignity: Some Reflections In the Asian Context*, *Asian Journal of Comparative Law*, 3(1), 2008, P. 1.

⁴⁹ Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, *The European Journal of International Law*, 19(4), 2008, P. 656.

⁵⁰ Hanna-Mari Kivisto, *The Concept Of "Human Dignity" in the Post-War Human Rights Debates*, *Revista De Historia De Las Ideas Politicas*, 1998, P. 99.

⁵¹ Barbara A Misztal, *The Idea of Dignity: Its Modern Significance*, *European Journal of Social Theory*, 16(1), 2012, P. 110-111. See also: Luis Roberto Barroso, *Here, There, and Everywhere: Human Dignity in Contemporary Law and in the Transitional Discourse*, *Boston College International and Comparative Law Review*, 35(2), 2012, P. 336.

⁵² *Ibid.*

It is important to note that most countries in Europe and the Americas incorporated the concept of human dignity in their constitutions. Even the three most prominent axis including Germany, Japan and Italy who were defeated in the Second World War also incorporated dignity in the constitutional documents.

worth possessed by all human beings which ought to be recognised, respected and protected by others and explains why humans possess rights.⁵³ This concept came to provide justification for a range of civil, political and socio-economic rights.⁵⁴

Human dignity has increasingly become a prominent concept in legal language and has been explicitly or implicitly recognised in various international human rights conventions or documents.⁵⁵ Much of the inspiration for the use of dignity in international conventions perhaps derives from its use in the Universal Declaration of Human Rights (UDHR).⁵⁶ The Preamble to UDHR declares that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Article 1 of UDHR affirms that “all human beings are born free and equal in dignity and rights”. Article 22 continues to state that “everyone is entitled to realisation of the economic, social and cultural rights indispensable for his dignity”. In connection with the right to work, Article 23(3) claims that “everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity”. The notion of human dignity is referred to several times in the short text of UDHR and serves as the moral and normative foundation of the list of human rights contained in UDHR.⁵⁷

Following the UDHR, two of the core international human rights conventions concluded during the 1960s – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) include dignity-based language in their Preambles as well as in the texts of several Articles.⁵⁸ Both explicitly assert that the system of human rights that they list, ranging from civil and political rights to socioeconomic rights, is rooted in the dignity of the human person.⁵⁹ In its interpretations, the Committee on Economic, Social and Cultural Rights (CESCR) also emphasises further that the concept of human dignity provides foundations of interpretation for a whole range of Covenant rights. In particular, CESCR describes the right to work as

⁵³ John Tasioulas, *Human Dignity and the Foundations of Human Rights*, in Christopher Mccrudden (Ed), *Understanding Human Dignity*, Oxford: Oxford University Press/ British Academy, 2013, P. 292.

⁵⁴ Pablo Gilabert, *Understanding Human Dignity in Human Rights*, Oxford: Oxford University Press, 2018, P. 117.

⁵⁵ Roger Brownsword, *Human Dignity from a Legal Perspective*, in Marcus Duwell, Jens Braarvid, Roger Brownsword and Dietmar Mieth (Eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*, Cambridge: Cambridge University Press, 2014, P.1-3. Ginevra Le Moli, *The Principle of Human Dignity in International Law*, in Mads Andenas, Malgosia Fitzmaurice, Attila Tanzi, And Jan Wouters (Eds), *General Principles and the Coherence of International Law*, Boston: Brill, 2019, P. 352.

⁵⁶ Christopher Mccrudden, *Human Dignity and Judicial Interpretation of Human Rights*, *The European Journal of International Law*, 19(4), 2008, P. 667.

⁵⁷ Paolo G Carozza, *Human Dignity*, in Dinah Shelton (Ed), *The Oxford Handbook of International Human Rights Law*, Oxford: Oxford University Press, 2013, P. 347-350.

⁵⁸ *International Covenant on Civil and Political Rights* (Adopted 16 December 1966, Entered into Force 23 March 1976) 999 UNTS 171, Article 10; *International Covenant on Economic, Social and Cultural Rights* (Adopted 16 December 1966, Entered into Force 3 January 1976) 993 UNTS 3, Article 13.

⁵⁹ *Ibid.*

“an inseparable and inherent part of human dignity”.⁶⁰ The linkage between the right to work and human dignity will be analysed in more depth in chapter 5. This pattern of including references to dignity in the Preambles or Articles of major international human rights conventions has since then continued,⁶¹ such as in the Preambles to the Convention on the Rights of the Child (CRC).⁶²

Moreover, the concept of human dignity has impacted the evolution of the international refugee protection regime.⁶³ Unlike the human rights conventions mentioned above, there is no explicit mentioning of human dignity in both the 1951 Refugee Convention and its 1967 Protocol.⁶⁴ Rather, the idea of human dignity is implicitly reflected or in other words, is an underlying rationale behind the recognition of the substantial range of refugee rights as articulated in the 1951 Refugee Convention and its 1967 Protocol.⁶⁵ For example, it can be seen in the recognition of the right of recognised refugees to engage in wage-earning employment, articulated in Article 17 of the 1951 Refugee Convention. An in-depth analysis of refugee rights, in particular the right to work and of its linkage with their human dignity, will be investigated in chapter 5.

Refugees are forced to leave their homes, possess a well-founded fear of being persecuted and are unable to seek the protection of their countries, or to return.⁶⁶ They are potential victims of exploitation and extortion, and usually find themselves in a marginalised and vulnerable position and are in need of protection.⁶⁷ The centrality of human dignity requires states to consider the place of refugees within the international legal system, with a particular focus on how the plight of refugees can humanely, favourably and effectively be protected.⁶⁸ Though still shaped by states’ concerns over migration flows and immigration control, at the heart of all these provisions of the 1951 Refugee Convention and its

⁶⁰ CESCR, General Comment No 18: The Right to Work, E/C.12/GC/18, 6 February 2006, Paragraph 1, <https://www.refworld.org/legal/general/cescr/2006/en/32433> Accessed by 10 December 2023.

⁶¹ Christopher McCrudden, Human Dignity and Judicial Interpretation of Human Rights, *The European Journal of International Law*, 19(4), 2008, P. 669.

⁶² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Adopted 10 December 1984, Entered into Force 26 June 1987) 1465 UNTS 85; Convention on the Rights of the Child (Adopted 20 November 1989, Entered into force 2 September 1990) 1577 UNTS 3, Article 23, 28, 37, 39 and 40.

⁶³ Callixte Kavuro, The Value of Human Dignity in The Refugee Protection, *African Human Mobility*, 5(1), 2019, P. 1510, 1513, 1515. Christian Walter, Hospitality and Integration of Migrants and Refugees, in Andrea Gattini, Rosana Garciandia, and Philippa Webb (Eds), *Human Dignity and International Law*, Leiden: Brill, 2020, P. 182.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Article 1 of the 1951 Refugee Convention.

⁶⁷ Go Ran Collste, Human Dignity, Immigration and Refugees, in Marcus Duwell, Jens Braarvig, Roger Brownsword and Dietmar Mieth (Eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*, Cambridge: Cambridge University Press, 2014, P. 461.

⁶⁸ Conference Of Plenipotentiaries on The Status of Refugees and Stateless Persons, Final Act, 25 July 1951, UN Doc A/CONF.2/108/Rev.1. See also: Callixte Kavuro, The Value of Human Dignity in the Refugee Protection, *African Human Mobility*, 5(1), 2019, P. 1513.

1967 Protocol rests humanitarian premises⁶⁹ and aim to protect refugees from humiliation, degradation or deprivation and ensure that refugees retain feelings of self-worth and dignity.⁷⁰

Moreover, the idea of human dignity also extends to the recognition of the rights of groups and in particular, the rights of indigenous peoples.⁷¹ Human dignity is commonly understood as the dignity of every individual and provides a basis to the system of individual rights. However, there are indigenous peoples who make collective-rights claims.⁷² Indigenous groups accordingly consider themselves distinct from the other dominant groups of their societies and are determined to preserve and develop their ethnic identity in accordance with their own cultural patterns, social institutions and legal systems.⁷³ When indigenous peoples are making collective rights claims, they are not primarily interested in the human rights of the individual members of their collectivities.⁷⁴ Rather, they are interested in the recognition of their collective dignity and in other words, in the acknowledgment of the value of their collective way of life as opposed to the way of life of the dominant society.⁷⁵ This will be analysed in depth in chapter 3 when I discuss the indigeneity of the Karen.

The concept of human dignity is explicitly referred to in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).⁷⁶ Accordingly, Article 15 of UNDRIP emphasises the concept of human dignity as the basis for the recognition of the right to maintain the culture and traditions of indigenous groups. Article 43 of UNDRIP further states that the system of rights contained in the Declaration constitutes the minimum standard to ensure “the survival, dignity and well-being of indigenous peoples of the world”.

⁶⁹ The Preamble of the 1951 Refugee Convention. See also: James C Hathaway, *The Rights of Refugees Under International Law*, Cambridge: Cambridge University Press, 2005, P. 91.

⁷⁰ *Ibid.* See also: Callixte Kavuro, *The Value of Human Dignity in the Refugee Protection*, *African Human Mobility*, 5(1), 2019, P. 1510, 1515.

⁷¹ Rhoda E Howard, *Dignity, Community and Human Rights*, in Abdullahi Ahmed An-Na'im (Ed), *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, Philadelphia: University Pennsylvania Press, 1995, P. 83-84. Barbara A Misztal, *The Idea of Dignity: Its Modern Significance*, *European Journal of Social Theory*, 16(1), 2012, P. 105.

⁷² Jeremy Waldron, *The Dignity of Groups*, *Acta Juridica: NYU School of Law, Public Law Research Paper No. 08-53*, 2008, P. 67-68. See also: Erika-Irene Daes and Asbjørn Eide, *Working Paper on the Relationship and Distinction between the Rights of Persons Belonging to Minorities and Those of Indigenous Peoples*, Geneva: United Nations, 2000, Paragraph 49, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/142/37/PDF/G0014237.pdf?OpenElement> Accessed by 30 December 2022.

⁷³ José R. Martínez Cobo, *Study of the Problem of Discrimination Against Indigenous Populations*, New York: United Nations, 1986, Paragraph 379, P. 29, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N87/121/00/PDF/N8712100.pdf?OpenElement> Accessed by 12 December 2022

⁷⁴ Rhoda E Howard, *Dignity, Community and Human Rights*, in Abdullahi Ahmed An-Na'im (Ed), *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, Philadelphia: University Pennsylvania Press, 1995, P. 83-84. Charles Taylor, *The Politics of Recognition*, in Amy Gutmann (Ed), *Multiculturalism: Examining the Politics of Recognition*, Princeton: Princeton University Press, 1994, P. 58, 62.

⁷⁵ *Ibid.*

⁷⁶ *Declaration on the Rights of Indigenous Peoples*, UNGA res 61/295A (Adopted 13 September 2007), Hereafter Referred to as UNDRIP.

There is no doubt that human dignity is a powerful concept which has as analysed above become embedded in the variety of international conventions and documents and provides an underlying rationale for the range of human rights. This language of human dignity is in particular important in the protection of Karen refugees in Thai camps who are among the most marginalised in Thai society and surviving under the conditions of rightlessness due to their precarious immigration status. This protracted situation of the indigenous refugees will be discussed in depth in chapters 4 and 5. Regardless of their precarious immigration status, the Karen refugees in camps are born free and equal in dignity, for which their fundamental right to work is in need of respect and recognition.

Although human dignity is a key and widely accepted concept, it is frequently criticised by many scholars as vacuous, conceptually unclear and perhaps even empty.⁷⁷ In particular, some argue that the concept of human dignity is a meaningless rhetorical device.⁷⁸ For example, Mirko Bagaric and James Allan claim that the vacuous nature of the notion of human dignity is explained by the fact that this concept has a long history in various traditions and has been interpreted in various ways by people holding different worldviews.⁷⁹ The idea of human dignity can be found in Greco-Roman Stoic traditions, in Christianity, in Confucianism, in Enlightenment thought and many other traditions.⁸⁰ As a concept which cuts across many cultures, Mirko Bagaric and James Allan argue that there is an absence of a consensus on the meaning of human dignity or where its foundations lie.⁸¹

According to Mirko Bagaric and James Allan, most people commonly read human dignity as an inherent human worth and understand that this concept is stated in many legal instruments and by a large number of legal and philosophical thinkers.⁸² On this basis, people simply assume that people have dignity and therefore have basic human rights.⁸³ The meaning of the concept of human dignity, according to Mirko Bagaric and James Allan, remains underdetermined and perhaps, empty.⁸⁴ In the same vein, Schachter claims that this notion is often left to intuitive understanding, conditioned in large measure by cultural factors.⁸⁵ Marcus Duwell also argues that given its unclear conceptualisation, the concept of human

⁷⁷ Mirko Bagaric And James Allan, *The Vacuous Concept of Human Dignity*, *Journal of Human Rights*, 5(2), 2006, P. 257-270. Marcus Duwell, Jens Braarvig, Roger Brownsword and Dietmar Mieth, *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*, Cambridge: Cambridge University Press, 2014, P. xviii.

⁷⁸ *Ibid.*

⁷⁹ Mirko Bagaric And James Allan, *The Vacuous Concept of Human Dignity*, *Journal of Human Rights*, 5(2), 2006, P. 268.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*, P. 265.

⁸² *Ibid.*, P. 268.

⁸³ *Ibid.*, P. 266.

⁸⁴ *Ibid.*

⁸⁵ Oscar Schachter, *Human Dignity as A Normative Concept*, *The American Journal of International Law*, 77(4), 1983, P. 849.

dignity can be a kind of “Trojan horse” in relation to the human rights regime.⁸⁶ Christopher McCrudden also claims that human dignity is an open and non-specific concept that is amenable to myriad interpretations.⁸⁷ He argues that the appeal of human dignity in human rights discourse camouflages significant disagreements about its nature and meaning.⁸⁸ For Christopher McCrudden therefore, the universality of the concept is only apparent, and is in fact subject to superficial consensus.⁸⁹

With the lack of conceptual clarity and the openness to multiple interpretations of the notion of human dignity, some scholars are sceptical that the concept can be used as a legal reference, and that it cannot underpin the legal and moral status of the modern human rights framework. For instance, David Feldman points out that with the indeterminacies and emptiness associated with human dignity, the assertion that human dignity can justify human rights is “superficially appealing but unconvincing”.⁹⁰ Mirko Bagaric and James Allan conclude that given the vacuous nature of the concept, human dignity should be discarded as a foundation for rights claims unless until its meaning is determined.⁹¹

Nevertheless, it is important to emphasise that other scholars do not necessarily view the lack of conceptual clarity and the vagueness of the notion of human dignity as a shortcoming. Philippe-Andre Rodriguez argues that the concept of human dignity is better understood as an essentially contested concept (similar to other concepts such as liberty and equality) as this is helpful to explain not only this political tension, but also the recent theoretical debates surrounding it.⁹² Even those more sceptical like Christopher McCrudden do not reject the idea that this notion plays an important role in the development of human rights.⁹³ Indeed, Christopher McCrudden and Philippe-Andre Rodriguez state that it may be the case that the drafters of the UDHR intentionally left the concept of human dignity vague or, at the very least, underdetermined.⁹⁴

I can see why Christopher McCrudden and Philippe-Andre Rodriguez make this statement. In fact, Jacques Maritain, one of the most influential people at the time of the drafting process of UDHR,

⁸⁶ Marcus Duwell, Human Dignity Concepts Discussions Philosophical Perspectives, in Marcus Duwell, Jens Braarvig, Roger Brownsword and Dietmar Mieth (Eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*, Cambridge: Cambridge University Press, 2014, P. 25, 29.

⁸⁷ Christopher McCrudden, Human Dignity and Judicial Interpretation of Human Rights, *The European Journal of International Law*, 19(4), 2008, P. 710

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ David Feldman, Human Dignity as A Legal Value – Part I, *Public Law*, 1999, P. 682.

⁹¹ Mirko Bagaric and James Allan, The Vacuous Concept of Dignity, *Journal of Human Rights*, 5(2), 2006, P. 269.

⁹² Philippe-Andre Rodriguez, Human Dignity as an Essential Contested Concept, *Cambridge Review of International Affairs*, 28(4), 2015, P. 752.

⁹³ Christopher McCrudden, Human Dignity and Judicial Interpretation of Human Rights, *The European Journal of International Law*, 19(4), 2008, P. 710.

⁹⁴ *Ibid.*, P. 655. Philippe-Andre Rodriguez, Human Dignity as an Essential Contested Concept, *Cambridge Review of International Affairs*, 28(4), 2015, P. 752.

explains that it is necessary to recognise and respect the irreducible diversities of cultures, traditions and religions with different views of humanity.⁹⁵ He admits that the meaning of human dignity could be explained in many different ways.⁹⁶ However, for Jacques Maritain, although there is the lack of a consensus on what human dignity means, he believes that peoples from different backgrounds and cultures all would agree that human dignity has a certain value and can serve as the foundation of the list of universal human rights.⁹⁷

When I deploy the idea of human dignity as part of my theoretical framework, I understand that there are concerns around its conceptual clarity. However, I posit that although the concept of human dignity is an indeterminate and contested concept, this does diminish its value. Given the wealth of references to human dignity in different legal instruments as a foundation of human rights, it is difficult to deny that human dignity is a key value which remains useful for protecting the human rights of Karen refugees in Thai camps. Instead of rejecting, it is important to engage with a range of approaches to human dignity that have been described. In doing this, we can seek an understanding of human dignity that can speak to the context of Thailand and promote the recognition of the right to work of Karen refugees in camps.

I will now turn and start analyse the traditional liberal approach to human dignity that has shaped the system of rights under IRL and IHRL. I will also continue to unpack the communitarian critiques of the liberal individualistic concept of human dignity.

2.2. The Traditional Liberal Approach to Human Dignity and Its Communitarian Critics.

2.2.1. The Liberal Concept of Human Dignity Underpinning IRL and IHRL.

In my view investigating the liberal approach to human dignity is important as it grounds an understanding of the philosophy that stands behind the existing international legal framework. With this knowledge in mind, I can then examine the contributions that Confucian communitarianism can make, opening up the possibility for fresh thinking and a new approach towards the situation of the Karen refugees. The ultimate aim is to progress the recognition of their fundamental right to work. Immanuel Kant, one of the most influential philosophers of the Enlightenment, provides the most famous and influential secular characterisation of human dignity.⁹⁸ Some authors regard him as “the father of the

⁹⁵ Jacques Maritain, *Man and The State*, Chicago: University of Chicago Press, 1951, P. 111. See also: Paul Valadier, Jacques Maritain’s Personalist Concept of Human Dignity, in Marcus Duwell, Jens Braarvig, Roger Brownsword and Dietmar Mieth (Eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*, Cambridge: Cambridge University Press, 2014, P. 264-265.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ Jeremy Rabkin, What We Can Learn about Human Dignity from International Law, *Harvard Journal of Law and Public Policy*, 27(1), 2003, P. 147. See also: Luis Roberto Barroso, *Here, There, and Everywhere: Human*

modern conception of human dignity”.⁹⁹ Kant’s understanding of human dignity has become the core ideal of modern humanism and political liberalism, and is central to Western philosophy, underpinning the provisions of IRL and IHRL.¹⁰⁰

In particular, Kant states that all persons, regardless of rank or social class, have an equal intrinsic worth or dignity.¹⁰¹ Kant defines human dignity as an innate worth or status that we did not earn and cannot forfeit.¹⁰² He emphasises that the dignity of human beings is of “an unconditional and incomparable worth” that “admits of no equivalent”.¹⁰³ Kant goes on to require respect for this worth by emphasising that we all should “treat humanity, whether in their own person or in the person of any other, always at the same time as an end in itself, never merely as a means”.¹⁰⁴

Kant famously claimed that the principle of treating humanity as an end is the supreme principle of morality (known as the *Categorical Imperative*).¹⁰⁵ This Kantian approach to human dignity has had a profound influence on that of other liberals. John Rawls, who led the rebirth of liberal political theory, later took great inspiration from Kant.¹⁰⁶ Rawls states that “each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override”.¹⁰⁷ He emphasises that each person with this inviolable worth should be respected as an equal and an end in themselves.¹⁰⁸

Dignity in Contemporary Law and in the Transitional Discourse, Boston College International and Comparative Law Review, 35(2), 2012, P. 358.

⁹⁹ Giovanni Boggetti, The Concept of Human Dignity in European and US Constitutionalism, in Georg Nolte (Ed), European and US Constitutionalism, Strasbourg: Council of Europe, 2005, P. 75, 79. Christopher McCrudden, Human Dignity and Judicial Interpretation of Human Rights, The European Journal of International Law, 19(4), 2008, P. 659.

¹⁰⁰ Callixte Kavuro, The Value of Human Dignity in the Refugee Protection, African Human Mobility, 5(1), 2019, P. 1512. Josef Koudelka, The Refugee Regime and Its Weaknesses: Prospects for Human Rights and Kant’s Ethic, Human Rights Affairs, 26, 2016, P. 363.

¹⁰¹ Immanuel Kant, Groundwork for The Metaphysics of Morals, in Thomas. E. Hill and Arnulf Zweig (Edited and Translated), Oxford Philosophical Texts, Oxford: Oxford University Press, 2003, P. 214-215. Thomas E Hill, IR, Kantian Perspectives on The Rational Basis of Human Dignity, in Marcus Düwell, Jens Braarvig, Roger Brownsword and Dietmar Mieth (Eds), The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives, Cambridge: Cambridge University Press, 2015, P. 215.

¹⁰² Ibid.

¹⁰³ Immanuel Kant, Groundwork for The Metaphysics of Morals, in Thomas. E. Hill and Arnulf Zweig (Edited and Translated), Oxford Philosophical Texts, Oxford: Oxford University Press, 2003, P. 214-215. Immanuel Kant, Groundwork for The Metaphysics of Morals, 1785, 4: 434-463, in Mary J. Gregor (Edited and Translated), Practical Philosophy, Cambridge: Cambridge University Press, 1996.

¹⁰⁴ Immanuel Kant, The Metaphysics of Morals, 1797, 6: 462, in Mary J. Gregor (Edited and Translated), Practical Philosophy, Cambridge: Cambridge University Press, 1996. Immanuel Kant, Groundwork for The Metaphysics of Morals, 1785, 4: 429, in Mary J. Gregor (Edited and Translated), Practical Philosophy, Cambridge: Cambridge University Press, 1996.

¹⁰⁵ Immanuel Kant, Groundwork for The Metaphysics of Morals, 1785, 4: 414-429, in Mary J. Gregor (Edited and Translated), Practical Philosophy, Cambridge: Cambridge University Press, 1996.

¹⁰⁶ John Rawls, A Theory of Justice: Revised Edition, Oxford: Oxford University Press, 1999, P. 11.

¹⁰⁷ Ibid, P. 3.

¹⁰⁸ Ibid, P. 11-12.

According to Rawls, people should not be sacrificed or serve as part of a plan to achieve other's ends without their consent.¹⁰⁹

Human dignity, for liberals, is largely encompassed by a vision of life where people are rational, equal and autonomous members of society, having the capacity to make their own choices and determine their own destinies.¹¹⁰ Within the liberal society, human beings are free and independent selves, unbound by antecedent moral and kinship ties, capable of choosing their ends for themselves.¹¹¹ According to Rawls, when placed behind a veil of ignorance, persons do not know the particular circumstances of their own society and have no information about their position or social status.¹¹² They all are rational and autonomous beings.¹¹³ This original position results in abstracting personal differences away between rational beings and nullifies the content of their private ends.¹¹⁴ The individualistic conception of the person involves the notion that the best that someone can wish for is the unimpeded pursuit of their own path.¹¹⁵ Not being able to do so would mean incurring indignity for humanity.¹¹⁶

This liberal understanding of human dignity requires a rights-oriented philosophy in which individual rights are given priority over all other concerns.¹¹⁷ In the liberal society, as peoples are free and independent selves, capable of deciding their own ends, they must have a framework of universal rights that is neutral among ends and stands above all else.¹¹⁸ To base rights on some conception of the good would impose on some the values of others and thus, according to liberalism, fail to respect each person's capacity to make his or her own choices and fail to uphold human dignity.¹¹⁹ Moreover, this vision is deontological in nature which, contra consequentialism, sees rights as based upon absolute and rationally derived rules rather than upon the consequences of actions.¹²⁰

¹⁰⁹ Ibid, P. 3-4.

¹¹⁰ Ibid, P. 11. Immanuel Kant, *The Metaphysics of Morals*, 1797, 6: 462, in Mary J. Gregor (Edited and Translated), *Practical Philosophy*, Cambridge: Cambridge University Press, 1996. See also: Rhoda E. Howard and Jack Donnelly, *Human Dignity, Human Rights and Political Regimes*, *The American Political Science Review*, 80(3), 1986, P. 803.

¹¹¹ Immanuel Kant, *The Metaphysics of Morals*, 1797, 6: 462, in Mary J. Gregor (Edited and Translated), *Practical Philosophy*, Cambridge: Cambridge University Press, 1996. See also: John Rawls, *A Theory of Justice: Revised Edition*, Oxford: Oxford University Press, 1999, P. 561.

¹¹² John Rawls, *A Theory of Justice: Revised Edition*, Oxford: Oxford University Press, 1999, P. 137, 143.

¹¹³ Ibid.

¹¹⁴ Thomas Nagel, *Rawls on Justice*, in Norman Daniels (Ed), *Reading Rawls: Critical Studies on Rawls' 'A Theory of Justice'*, New York: Stanford University Press, 1989, P. 9-10.

¹¹⁵ Ibid. Immanuel Kant, *The Metaphysics of Morals*, 1797, 6: 462, in Mary J. Gregor (Edited and Translated), *Practical Philosophy*, Cambridge: Cambridge University Press, 1996. See also: John Rawls, *A Theory of Justice: Revised Edition*, Oxford: Oxford University Press, 1999, P. 561.

¹¹⁶ Ibid.

¹¹⁷ John Rawls, *A Theory of Justice: Revised Edition*, Oxford: Oxford University Press, 1999, P. 560, 574-575.

¹¹⁸ Ibid, P. 574.

¹¹⁹ Ibid, P. 560.

¹²⁰ Ibid, P. 184-185. See also: Nancy Ann Davis, *Contemporary Deontology*, in Peter Singer (Ed), *A Companion to Ethics*, New York: Wiley-Blackwell, 1993.

It is important to emphasise that for Rawls as well as Kant, the system of individual rights being prior to the good is understood in two ways. Firstly, individual rights outweigh considerations of the common good.¹²¹ Secondly, the principles of justice that specify our rights do not depend for their justification on any particular conception of the good life such as a social order, custom or tradition or inherited status.¹²² A typical liberal society would be one where the state has no business interfering with individual freedom unless the expression of this freedom causes harm to others (the harm principle).¹²³ To interfere with an individual's private life and personal activities is seen as denying respect to that person's dignity.¹²⁴ Interfering in someone's life for any reason not related to protecting their individual sphere of independence is seen as morally wrong.

This liberal understanding of human dignity has shaped the provisions of IRL and IHRL, on which the system of individualistic rights is derived. In particular, refugees, as human beings, have inherited a system of fundamental human rights based on an individualistic conception of the self,¹²⁵ wherein states only make efforts to mitigate harms to individuals as solitary rights-bearers.¹²⁶ An individualistic conception of the self, where humans are rational, free and independent, provides a robust framework for individual human rights that cannot be infringed upon by state, even in the name of the social good.¹²⁷ This framework of individualistic rights includes civil rights (such as to liberty, life or the pursuit of freedom) to economic, social and cultural rights (including the right to work).¹²⁸ This system of rights underpinning IRL and IHRL within the context of liberalism is meant to protect human dignity and the worth of individuals, including refugees. It is also important to note that when UDHR and other international human rights treaties, as cited in the previous section, speak of the dignity of human persons, they use "inherent dignity", an expression close to what Kant calls "intrinsic dignity or worth".¹²⁹

Although the liberal understanding of human dignity remains the most influential approach and constitutes the foundations for provisions of IRL and IHRL, it has been challenged by scholars in the

¹²¹ John Rawls, *A Theory of Justice: Revised Edition*, Oxford: Oxford University Press, 1999, P. 543.

¹²² *Ibid.*

¹²³ David E Guinn, *Human Rights as Peacemaker: An Integrative Theory of International Human Rights*, *Human Rights Quarterly*, 38(3), 2016, P.754-786. Rhoda E. Howard and Jack Donnelly, *Human Dignity, Human Rights and Political Regimes*, *The American Political Science Review*, 80(3), 1986, P. 804.

¹²⁴ *Ibid.*

¹²⁵ Callixte Kavuro, *The Value of Human Dignity in the Refugee Protection*, *African Human Mobility*, 5(1), 2019, P. 1512-1513. Rhoda E. Howard and Jack Donnelly, *Human Dignity, Human Rights and Political Regimes*, *The American Political Science Review*, 80(3), 1986, P. 805.

¹²⁶ Rhoda E. Howard and Jack Donnelly, *Human Dignity, Human Rights and Political Regimes*, *The American Political Science Review*, 80(3), 1986, P. 805.

¹²⁷ *Ibid.*

¹²⁸ See further in UDHR, ICCPR, ICESCR and the 1951 Refugee Convention and its 1967 Protocol.

¹²⁹ Oscar Schachter, *Human Dignity as Normative Concept*, *The American Journal of International Law*, 77(4), 1983, P. 849. Immanuel Kant, *Groundwork for The Metaphysics of Morals*, in Thomas. E. Hill and Arnulf Zweig (Edited and Translated), *Oxford Philosophical Texts*, Oxford: Oxford University Press, 2003, P. 214-215.

field, especially by communitarians.¹³⁰ I will now turn to the critiques of the liberal concept of human dignity.

2.2.2. The Communitarian Critique of Liberal Individualistic Concept of Human Dignity.

Firstly, the communitarians trace the limits of the liberal understanding of human dignity to the conception of the person and argue for a deeper and somewhat thicker understanding of the community than liberalism permits. Sandel states that “we cannot coherently regard ourselves as the sort of beings the deontological ethic requires us to be”¹³¹ because humans are not rational unencumbered selves. The individual is not asocial/apolitical or asocial/pre-social.¹³² He emphasises that the ideal of neutrality is impossible because as human beings we cannot wholly escape the effects of our conditioning, including our particular conceptions of the good.¹³³ Sandel argues that a radically socialised understanding of the self is both more accurate and promotes the social good as individuals are not neutral or set against a conception of community but are in fact embedded in community.¹³⁴ Humans are, within Sandel’s perspective, socially-constituted encumbered selves.¹³⁵ It is, for Sandel as well as other major communitarian thinkers like MacIntyre,¹³⁶ Taylor¹³⁷ or Michael Walzer,¹³⁸ difficult and perhaps impossible to have a life as free and independent selves, unbound by moral ties we have not chosen.

Sandel, like these major communitarian thinkers, emphasises that liberalism is founded on the idea of the a-social self, a solitary and sometimes heroic individual in confrontation with society.¹³⁹ Social instability and dissociation are therefore the actual and disheartening achievements of individuals of this sort.¹⁴⁰ The core idea of liberalism in its concept of the self contributes to the fragmentation of liberal society which divides and breaks down community unity.¹⁴¹ This individualistic conception of

¹³⁰ Such as Michael Sandel, Alasdair MacIntyre, Charles Taylor or Michael Walzer.

¹³¹ Michael J. Sandel, *Liberalism and the Limits of Justice*, 2nd Ed, Cambridge: Cambridge University Press, 1998, P. 65.

¹³² *Ibid*, P. 11. Michael J. Sandel, *Democracy’s Discontent: America in Search of a Public Philosophy*, Cambridge: Harvard University Press, 1998, P. 17.

¹³³ Michael J. Sandel, *Liberalism and the Limits of Justice*, 2nd Ed, Cambridge: Cambridge University Press, 1998, P. 11.

¹³⁴ *Ibid*. Michael J. Sandel, *Democracy’s Discontent: America in Search of a Public Philosophy*, Cambridge: Harvard University Press, 1998, P. 15.

¹³⁵ Michael J. Sandel, *Democracy’s Discontent: America in Search of a Public Philosophy*, Cambridge: Harvard University Press, 1998, P. xi, 11-15. Michael J. Sandel, *The Procedural Republic and The Unencumbered Self*, *Political Theory*, 12(1), 1984, P. 81-96.

¹³⁶ Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 3rd Ed, London: Gerald Duckworth & Co Ltd, 2007. Alasdair MacIntyre, *Whose Justice? Which Rationality?* London: Gerald Duckworth & Co Ltd, 1988.

¹³⁷ Charles Taylor, *The Sources of the Self: The Making of Modern Identity*, Cambridge: Cambridge University Press, 1989. See also: Charles Taylor, *Philosophy and the Human Sciences: Philosophy Papers 2*, Cambridge: Cambridge University Press, 1985, P. 289-317.

¹³⁸ Michael Walzer, *The Communitarian Critique of Liberalism*, *Political Theory*, 18(1), 1990, P.6-23.

¹³⁹ *Ibid*, P. 20-21. Michael J. Sandel, *Liberalism and the Limits of Justice*, 2nd Ed, Cambridge: Cambridge University Press, 1998, P. 11.

¹⁴⁰ *Ibid*.

¹⁴¹ *Ibid*.

the self cheapens the meaning of community, which for liberals, should be as close to the ideal of a voluntary/contractual society as possible.¹⁴² Sandel emphasises that for Rawls, according to the Kantian approach, individuals in society cooperate only for the sake of pursuing their private ends. Although they may make great sacrifices for each other as they are moved by affection and ties of sentiment, this is not demanded as a matter of justice or the common good.¹⁴³ Importantly, rationalistic individualism, by devaluing place and community, for the communitarians, produces systems of rights that arguably create unsustainable political imbalances that ultimately undermine the system of liberal rights itself.¹⁴⁴

The second communitarian challenge relates to the liberal idea of neutrality where the concept of the right (ie: the individualistic framework of rights) over the good reinforces the primacy of the individual over the community. It is important to stress, however, that Sandel, MacIntyre or Taylor do not argue that individual rights should rest upon the values that predominate in any given community at any given time (well-known as majoritarianism). They question not only whether particular individual rights are important but also whether or not these rights can be identified and justified in a way that does not presuppose any particular conception of the good life.¹⁴⁵ They argue that individual rights are important but that these rights cannot proceed without reference to the conceptions of the good that find expression in the cultures and traditions within which those deliberations take place.¹⁴⁶ In short, rights based language must be rooted in thicker and more comprehensive doctrines and indeed in an understanding of the community and the relationship between individual and community.¹⁴⁷ These major communitarian thinkers stress that the conception of the right given prior to a person's aims and attachments (what Rawls would call features of a person's particularities including family and kinship) can hardly lead to a dignified life.¹⁴⁸

¹⁴² Alasdair MacIntyre, *After Virtue*, Notre Dame: University of Notre Dame Press, 1981, P.190-209. Michael J. Sandel, *Liberalism and the Limits of Justice*, 2nd Ed, Cambridge: Cambridge University Press, 1998, P.177. They refer to Rawls, the Kantian approach of community: See further in John Rawls, *A Theory of Justice: Revised Edition*, Oxford: Oxford University Press, 1999, P. 13.

¹⁴³ Michael J. Sandel, *Liberalism and the Limits of Justice*, 2nd Ed, Cambridge: Cambridge University Press, 1998, P. 148-149.

¹⁴⁴ Michael Walzer, *The Communitarian Critique of Liberalism*, *Political Theory*, 18(1), 1990, P. 21-22. Charles Taylor, *Atomism*, in Alkis Kontos (Ed), *Powers, Possessions and Freedoms: Essays in Honour of C.B. Macpherson*, Toronto: University of Toronto Press, 1979, P. 39-61.

¹⁴⁵ Michael J. Sandel, *Liberalism and the Limits of Justice*, 2nd Ed, Cambridge: Cambridge University Press, 1998, P. x. Amy Gutmann, *Communitarian Critics of Liberalism*, *Philosophy and Public Affairs*, 14(3), 1985, P. 308-310.

¹⁴⁶ Michael J. Sandel, *Liberalism and the Limits of Justice*, 2nd Ed, Cambridge: Cambridge University Press, 1998, P. 186. Charles Taylor, *Atomism*, in Alkis Kontos (Ed), *Powers, Possessions and Freedoms: Essays in Honour of C.B. Macpherson*, Toronto: University of Toronto Press, 1979, P. 39-61.

¹⁴⁷ Alasdair MacIntyre, *After Virtue*, Notre Dame: University of Notre Dame Press, 1981, P.190-209. Charles Taylor, *The Sources of the Self: The Making of Modern Identity*, Cambridge: Cambridge University Press, 1989.

¹⁴⁸ Michael J. Sandel, *Liberalism and the Limits of Justice*, 2nd Ed, Cambridge: Cambridge University Press, 1998, P.175-183. See also: Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 3rd Ed, London: Gerald Duckworth & Co Ltd, 2007, P. 205-208.

Connected with these two critiques, another area of contention that has emerged between liberals and communitarians relates to the plausibility of collective rights.¹⁴⁹ Communitarians argue that the individualistic understanding of human dignity of classical liberals makes no room for recognising the worth of distinctive group traditions, and cannot justify collective rights. For instance, Taylor, in the same vein with other communitarians, argues that our own identity cannot be developed in isolation and crucially depends on our traditions, culture or dialogical relations with others.¹⁵⁰ He underscores the importance of recognising dignity in difference, which sees the unique particularities of each group.¹⁵¹ He contends that refusal to acknowledge the dignity of difference can inflict significant damage on those who are denied it.¹⁵²

In order to support his argument, Taylor takes into account his life experience in Quebec where multiple cultures – Francophone, Anglophone and indigenous First Nations are brought into dialogue. He emphasises that the liberal idea of complete cultural neutrality cannot apply the case of indigenous peoples. For him, this is because they exist as a group with a distinctive identity that is forged through shared elements such as language, history culture or tradition, which form part of the private dignity of collective members.¹⁵³ Taylor emphasises that the Kantian understanding of human dignity seems to have to assume that there are some “cultural difference-blind principles”.¹⁵⁴ He argues this is “inhospitable to cultural difference” because it cannot accommodate what the members of distinct societies really aspire to, including survival as a collective.¹⁵⁵ From the liberal perspective, individuals must come first and must take precedence over collective goals.¹⁵⁶ He states that group rights might, for classical liberals, therefore be seen to threaten individual rights.¹⁵⁷ It is important to note that collective rights should can be seen in different ways, including in ways that are complementary with individual rights. An in-depth analysis of this will be presented in the next chapter.

The Third World Movement, a critical approach focused on decolonisation that rose to prominence in the post-war period, shares many of these communitarian critiques. Though I will discuss this in detail in chapter 6, it is crucial to note here that for many Third World countries, the universalist regime of international human rights based on the liberal concept of human dignity is perceived as “an alien

¹⁴⁹ Michael Macdonald, *Should Communities Have Rights? Reflections On Liberal Individualism*, in Abdullahi Ahmed An-Na'im (Ed), *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, Philadelphia: University Pennsylvania Press, 1992, P. 134-156. Christopher Heath Wellman, *Liberalism, Communitarianism, and Group Rights*, *Law and Philosophy*, 18(1), 1999, P. 14, 27-28.

¹⁵⁰ Charles Taylor, *The Politics of Recognition*, in Amy Gutmann (Ed), *Multiculturalism: Examining the Politics of Recognition*, Princeton: Princeton University Press, 1994, P. 34.

¹⁵¹ *Ibid.*, P. 36-38.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*, P. 58, 62.

¹⁵⁴ *Ibid.*, P. 43.

¹⁵⁵ *Ibid.*, P. 61.

¹⁵⁶ *Ibid.*, P. 56.

¹⁵⁷ *Ibid.*, P. 55.

imposition from the West”.¹⁵⁸ It is not hard to explain why Third World countries take this position. This is because many Third World societies, including in East and Southeast Asia, do not always share this individualistic vision of a dignified life.¹⁵⁹ As in the case of Thailand, the country has been continually influenced by the Confucian communitarian emphasises on values of kinship ties, communality and the virtues of care, compassion and collective responsibility and views them as the central to a life of dignity. I will provide an in-depth discussion of how Confucian communitarianism has come to influence the tradition and culture of Thailand in chapter 6.

It cannot be denied that culture, tradition and belief have a crucial role behind the establishment and development of law and policy. Some modern liberal thinkers accept the shortcomings of the traditional Western liberal approach to human dignity and recognise the strength of communitarian arguments. They have tried to incorporate these critiques into their thinking and develop an approach to human dignity which looks beyond the constraints traditional liberalism to develop an understanding which can speak to other non-Western traditions and cultures like Confucian communitarianism. Nussbaum is one such theorist. I argue that compared with the traditional liberal approach to human dignity, that of Nussbaum comes closer to Confucian communitarianism and can speak to the traditions and needs of these indigenous Karen. Confucian communitarianism’s approach to human dignity and its alignment with that of Nussbaum will be discussed in depth in chapter 6.

I will now turn to examine Nussbaum’s approach to human dignity in order to seek a theoretical grounding for the recognition of rights and in particular, the right to work of Karen refugees in Thai camps.

2.3. Nussbaum’s Capabilities Approach and Her Aristotelian Conception of Human Dignity in the Protection of Rights of Karen Refugees in Camps.

In order to construct her Capabilities Approach, Nussbaum begins with a conception of the dignity of human beings and of a life that is worthy of that dignity.¹⁶⁰ She provides a more complex liberal understanding of human dignity than the traditional individualistic account as mentioned in section 2.2.1. Reflecting on the requirements of a dignified human life, Nussbaum refers to Aristotle’s ideal of human flourishing (*Eudaimonia*).¹⁶¹ For Aristotle a life of worthy dignity (living a well-lived life/a successful or happy life) means living “a life of entirely virtuous activities throughout an entire lifetime”

¹⁵⁸ Yvonne Tew, Beyond “Asian Values”: Rethinking Rights, CGHR Working Paper 5, Cambridge: University of Cambridge Centre of Governance and Human Rights, 2012, P. 5.

¹⁵⁹ Chang Yau Hoon, Revisiting the ‘Asian Values’ Argument Used by Asian Political Leaders and Its Validity, Indonesian Quarterly, 32(2), 2004, P. 155.

¹⁶⁰ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 74.

¹⁶¹ *Ibid*, P. 156-159. See also: Martha C Nussbaum, *Women and Human Development: The Capabilities Approach*, Cambridge: Cambridge University Press, 2000, P. 5.

and is necessarily a social and communal life.¹⁶² He views this kind of life as the best possible good for human beings and this is what it means to succeed as a human being.¹⁶³

Aristotle states that a dignified life should be a life of virtues and not be confused with a life of being powerful or wealthy. Moreover, it is a life which does not purely involve natural endowment or matters of luck.¹⁶⁴ He emphasises that although a flourishing life also needs some degree of such things, this does not mean that a good life is the same as having power, wealth or good fortune.¹⁶⁵ Such things are only valuable and contribute to human flourishing as long as persons make proper use of them while living.¹⁶⁶ Aristotle's definition of the dignified life indeed implies a life of understanding, a life of moral virtue and emphasises cultivation of excellence.¹⁶⁷

A person, within Aristotle's perspective, will be a happy or successful person and will behave in a dignified way if he or she lives life virtuously and enjoys moderate good fortune and is destined to do so until the end of their days.¹⁶⁸ Such a person is what Aristotle calls a "gentleman" who is "magnanimous".¹⁶⁹ Aristotle views the life of that virtuous person as worth living and praiseworthy for his or her virtues.¹⁷⁰ Though it will be discussed in chapter 6, it is important to note here that Aristotle shares a similar belief system with Confucius (*Kongzi*) who is the first and most important thinker of the Confucian communitarianism.¹⁷¹ Aristotle's concept of human dignity - *Eudaimonia* - has similarities to that of Confucian communitarian tradition, which also roots dignity in the virtuous and

¹⁶² EE 1214a30-B6; EE 1215a8-19; EE 1219a39-B4; EE 1219b8-16; NE 1098b9-99a21; NE 1099b9-25; NE 1101b10-02a4). Douglas Scott Hutchinson (Translated), *Ethics*, in Jonathan Barnes (Ed), *The Cambridge Companion to Aristotle*, Cambridge: Cambridge University Press, 1995, P. 202.

¹⁶³ EE 1218b31-19a39; NE 1097b22-98a20. Douglas Scott Hutchinson (Translated), *Ethics*, in Jonathan Barnes (Ed), *The Cambridge Companion to Aristotle*, Cambridge: Cambridge University Press, 1995, P. 202.

¹⁶⁴ EE 1214a1-8; EE 1214b6-27; EE 1215a20-25; EE 1214a30-B6; EE 1215a8-19; EE 1219a39-B4; EE 1219b8-16; NE 1101b10-02a4; NE 1098b29-99a7; NE 1099a22-31. See also: Douglas Scott Hutchinson (Translated), *Ethics*, in Jonathan Barnes (Ed), *The Cambridge Companion to Aristotle*, Cambridge: Cambridge University Press, 1995, P. 199, 202.

¹⁶⁵ EE 1248b8-49b25; NE 1099a31-B9; NE 1124a-4. See also: Douglas Scott Hutchinson (Translated), *Ethics*, in Jonathan Barnes (Ed), *The Cambridge Companion to Aristotle*, Cambridge: Cambridge University Press, 1995, P. 203.

¹⁶⁶ EE 1214a1-8; EE 1214b6-27; EE 1215a20-25; NE 1098b29-99a7; NE 1099a22-31. See also: Douglas Scott Hutchinson (Translated), *Ethics*, in Jonathan Barnes (Ed), *The Cambridge Companion to Aristotle*, Cambridge: Cambridge University Press, 1995, P. 199-200.

¹⁶⁷ NE 1142a23-43a24. Douglas Scott Hutchinson (Translated), *Ethics*, in Jonathan Barnes (Ed), *The Cambridge Companion to Aristotle*, Cambridge: Cambridge University Press, 1995, P. 197, 207.

¹⁶⁸ EE 1219b4-8; NE 1100a1-01b9. Douglas Scott Hutchinson (Translated), *Ethics*, in Jonathan Barnes (Ed), *The Cambridge Companion to Aristotle*, Cambridge: Cambridge University Press, 1995, P. 204.

¹⁶⁹ EE 1248b8-49b25; NE 1099a31-B9; NE 1124a-4. See also: Douglas Scott Hutchinson (Translated), *Ethics*, in Jonathan Barnes (Ed), *The Cambridge Companion to Aristotle*, Cambridge: Cambridge University Press, 1995, P. 203. It is noted that the term "magnanimous" is Aristotle's highest term of moral praise.

¹⁷⁰ EE 1214a30-B6; EE 1215a8-19; EE 1219a39-B4; EE 1219b8-16; NE 1098b9-99a21; NE 1099b9-25; NE 1101b10-02a4. See also: Douglas Scott Hutchinson (Translated), *Ethics*, in Jonathan Barnes (Ed), *The Cambridge Companion to Aristotle*, Cambridge: Cambridge University Press, 1995, P. 203.

¹⁷¹ Jiyuan Yu, *The Ethics of Confucius and Aristotle: Mirrors of Virtue*, New York: Routledge, 2007, P. 10.

communal life, referred to as “living in accordance with the Way (*Dao*)”.¹⁷² I will discuss this similarity in greater detail in chapter 6.

For Aristotle, the dignified life is shaped by exercise of the virtues of the intellect and persons can only practice and achieve virtues as part of a social and political community.¹⁷³ Aristotle states that “man is by nature a social and political animal”.¹⁷⁴ He defines human beings as one whose nature it is to live in a political community.¹⁷⁵ They are a being of a kind naturally adapted to live in a “*polis*”¹⁷⁶ (A Greek word meaning the complete or perfect type of community, ie: the city-state).¹⁷⁷ Individuals are therefore, within Aristotle’s ethics, essentially parts of a social whole.¹⁷⁸ The good of the individual is not merely independent of the good of the community and is identified with his or her contribution to the good of the community.¹⁷⁹ Individuals should accordingly cultivate social relations with others, should be as free as their circumstances permit, should be pleased to confer benefits on others such as being generous and just to others, should act responsibly and should respect and honour family, friends, different traditions and cultures.¹⁸⁰ For Aristotle, one cannot have a dignified life in isolation from others.¹⁸¹ The aim of the promotion of human flourishing is not only for the individual but also for the whole community.¹⁸² This Aristotelian conception of deeply social self is also shared by Confucian communitarianism.¹⁸³ This literature will be unpacked further in chapter 6.

Taking a cue from Aristotle’s understanding of human flourishing, Nussbaum articulates a concept of dignity for individuals as “squarely as part of the world of nature” and “does not posit a sharp split

¹⁷² Ibid.

¹⁷³ NE 1094b7-10; POL 1278a40-B5. Christopher Charles Whiston Taylor, Politics, in Jonathan Barnes (Ed), The Cambridge Companion to Aristotle, Cambridge: Cambridge University Press, 1995, P. 237, 241.

¹⁷⁴ POL 1253a1. Christopher Charles Whiston Taylor, Politics, in Jonathan Barnes (Ed), The Cambridge Companion to Aristotle, Cambridge: Cambridge University Press, 1995, P. 238.

¹⁷⁵ Ibid.

¹⁷⁶ POL 1252b27-31. Christopher Charles Whiston Taylor, Politics, in Jonathan Barnes (Ed), The Cambridge Companion to Aristotle, Cambridge: Cambridge University Press, 1995, P. 236.

¹⁷⁷ POL 1253a1-3. Christopher Charles Whiston Taylor, Politics, in Jonathan Barnes (Ed), The Cambridge Companion to Aristotle, Cambridge: Cambridge University Press, 1995, P. 235, 239.

¹⁷⁸ POL 1253a18-29. Christopher Charles Whiston Taylor, Politics, in Jonathan Barnes (Ed), The Cambridge Companion to Aristotle, Cambridge: Cambridge University Press, 1995, P. 240.

¹⁷⁹ POL 1279a28-32. Christopher Charles Whiston Taylor, Politics, in Jonathan Barnes (Ed), The Cambridge Companion to Aristotle, Cambridge: Cambridge University Press, 1995, P. 239.

¹⁸⁰ POL 1178a28-B3; NE 1124a20-B6; EE 1236a15-B26. See also: Christopher Charles Whiston Taylor, Politics, in Jonathan Barnes (Ed), The Cambridge Companion to Aristotle, Cambridge: Cambridge University Press, 1995, P. 211, 218, 235.

¹⁸¹ POL 1278b1-5; POL 1278a40-B5; POL 1337a27-30; NE 1094b7-10; NE 1140a25-28. See also: Christopher Charles Whiston Taylor, Politics, in Jonathan Barnes (Ed), The Cambridge Companion to Aristotle, Cambridge: Cambridge University Press, 1995, 240-242.

¹⁸² Ibid.

¹⁸³ Jiyuan Yu, The Ethics of Confucius and Aristotle: Mirrors of Virtue, New York: Routledge, 2007, P. 10.

between rationality and other human capacities”.¹⁸⁴ She envisions a life of dignity as one that is rooted in developing the virtues of benevolence/compassion and justice and where human beings find “fulfilment in relations with others”.¹⁸⁵ It is important to note here that benevolence is the core virtue in Confucian communitarianism (known as *ren*) and Nussbaum herself has, in fact, mentioned that this virtue remains important for many Asian cultures and traditions. I will discuss this further in chapter 6. Nussbaum agrees with Aristotle’s conception of the person and argues that people should not be imagined as independent units.¹⁸⁶ Instead, human beings are “needy enmattered” beings and social and political animals.¹⁸⁷ They are not separate from the community and depend on others.¹⁸⁸ They vary greatly in their needs, and the same person may have widely varying needs depending on their time of life.¹⁸⁹ Their interests are thoroughly bound up with the interests of others throughout their lives.¹⁹⁰

Nussbaum goes on to emphasise that persons seek a good that is social through and through, and share complex ends with others at many levels.¹⁹¹ The good of others is “not just a constraint on the person’s pursuit of her or his own good, it is a part of his or her good”.¹⁹² She explains that a virtuous person will develop sentiments of compassion towards others.¹⁹³ They start with compassion for and love of parents and family and extend it to those who are distant or in other words, the whole universe.¹⁹⁴ This is close with to the emphasis on the extension of kinship ties, feelings and benevolence to all human beings in the Confucian communitarian tradition. This approach is different from that of traditional liberalism, but can, as I argue later in chapter 6, be used to ground universal protection of human rights including the right to work for Karen refugees.

¹⁸⁴ Martha C Nussbaum, *Human Dignity and Political Entitlements*, in Barbara T Lanigan (Ed), *Human Dignity and Bioethics*, New York: Nova Science Publishers, Inc, 2009, P. 245. Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 159.

¹⁸⁵ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 85-86. Martha C Nussbaum, *Human Dignity and Political Entitlements*, in Barbara T Lanigan (Ed), *Human Dignity and Bioethics*, New York: Nova Science Publishers, Inc, 2009, P. 249.

¹⁸⁶ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 88, 158-159. Martha C Nussbaum, *Human Dignity and Political Entitlements*, in Barbara T Lanigan (Ed), *Human Dignity and Bioethics*, New York: Nova Science Publishers, Inc, 2009, P. 253.

¹⁸⁷ *Ibid.*

¹⁸⁸ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 88-89. Martha C Nussbaum, *Human Dignity and Political Entitlements*, in Barbara T Lanigan (Ed), *Human Dignity and Bioethics*, New York: Nova Science Publishers, Inc, 2009, P. 250-253.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 91, 158.

¹⁹² *Ibid.*

¹⁹³ *Ibid.*, P. 91.

¹⁹⁴ Martha C Nussbaum, *Upheavals of Thought: The Intelligence of Emotions*, Cambridge: Cambridge University Press, 2001, P. 388.

By compassion, Nussbaum explains that one includes the good of others as an important part of one's own scheme of goals and ends.¹⁹⁵ Accordingly, when other people suffer capability failure, the benevolent or dignified person will not simply feel this as a constraint on their own pursuit of self-interest.¹⁹⁶ They will feel compassion for others as part of their own good, and not as an imposition upon them.¹⁹⁷ For Nussbaum, there should be no traditional liberal distinction between the public spheres and the private spheres.¹⁹⁸ Human beings want to live together and indeed want to live well together and are held together by many altruistic ties.¹⁹⁹ Human beings cannot, within the view of Nussbaum's Aristotelianism, find fulfilment in isolation from others.²⁰⁰ These insights of Nussbaum's Aristotelianism align with the approach of Confucian communitarianism. I will discuss this alignment further in chapter 6.

With this conception of human dignity in mind, Nussbaum then identifies ten core capabilities as central requirements of a life with dignity.²⁰¹ The ten core capabilities are briefly listed as follows: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one's environment (including being able to work). She claims these capabilities are part of a minimum account of social justice and necessarily constituting the normative principles in determining a threshold level of human rights.²⁰² Nussbaum affirms that a society that does not offer opportunities for their development and does not guarantee these capabilities to everyone, at some appropriate threshold level, falls short of being a fully dignified and just society.²⁰³ Being able to work also appears as part of one of the core capabilities which for Nussbaum is important for a life of dignity. In fact, Nussbaum emphasises that a decent society is one that ensures that peoples in the community are able to have the right to seek employment on an equal basis with others in order to fulfil

¹⁹⁵ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 91. Martha C Nussbaum, *Women and Human Development: The Capabilities Approach*, Cambridge: Cambridge University Press, 2000, P. 265-270, 290-291.

¹⁹⁶ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 91, 158-159.

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*, P. 212.

¹⁹⁹ *Ibid.*, P. 88-91, 158.

²⁰⁰ *Ibid.* Martha C Nussbaum, *Human Dignity and Political Entitlements*, in Barbara T Lanigan (Ed), *Human Dignity and Bioethics*, New York: Nova Science Publishers, Inc, 2009, P. 252.

²⁰¹ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 75. Martha C Nussbaum, *Human Dignity and Political Entitlements*, in Barbara T Lanigan (Ed), *Human Dignity and Bioethics*, New York: Nova Science Publishers, Inc, 2009, P. 249.

²⁰² Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 75, 156. Martha C Nussbaum, *Human Dignity and Political Entitlements*, in Barbara T Lanigan (Ed), *Human Dignity and Bioethics*, New York: Nova Science Publishers, Inc, 2009, P. 245-249.

²⁰³ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 75. Martha C Nussbaum, *Human Dignity and Political Entitlements*, in Barbara T Lanigan (Ed), *Human Dignity and Bioethics*, New York: Nova Science Publishers, Inc, 2009, P. 249.

their human potential.²⁰⁴ An in-depth discussion of Nussbaum's thought on the link between human dignity and work will be presented in chapter 5. It is important to note here that this link is also present in Confucian communitarian tradition which I will demonstrate in chapter 7.

Nussbaum believes that this list of capabilities that are required for a life worthy of human dignity can gather broad cross-cultural agreement, similar to the international agreements that have been reached concerning basic human rights.²⁰⁵ She has given her list of capabilities a universal claim, raising some critiques, a topic to which I shall return. Nussbaum emphasises that the capabilities in question are held to be important for each and every one, in each and every nation and each person is to be treated as an end, not merely a means.²⁰⁶ She believes that peoples who hold different comprehensive conceptions of the good life would agree that these capabilities are necessary conditions for a decently just society and would hold them to be an implicit minimum requirement of a life that is worthy of human dignity.²⁰⁷ This list of core capabilities can, for Nussbaum, become the object of overlapping consensus among peoples. She views such a consensus as fully available internationally across lines of tradition and religion.²⁰⁸

It can be seen that Nussbaum's attempts to create a theory of rights within a vision of human dignity that balances between traditional liberalism and the strength of communitarian arguments as mentioned in section 2.2.2. By asserting a basic principle rooted in the Kantian mould of treating each person as an end rather than a means to an end, her Capabilities Approach lies squarely within the liberal mould. She in fact states that the Capabilities Approach is built upon ethical ideas only and is therefore able to facilitate an overlapping consensus - a Rawlsian idea of political liberalism.²⁰⁹ At the same time, Nussbaum turns to Aristotle's conception of the person, emphasising that persons are social and political beings, finding dignity in the exercise of virtue ethics and in the communal life, not in an ideal of rationality.

²⁰⁴ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 77, 170.

²⁰⁵ *Ibid*, P. 78. Martha C Nussbaum, *Human Dignity and Political Entitlements*, in Barbara T Lanigan (Ed), *Human Dignity and Bioethics*, New York: Nova Science Publishers, Inc, 2009, P. 251.

²⁰⁶ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 78, 216. Martha C Nussbaum, *Human Dignity and Political Entitlements*, in Barbara T Lanigan (Ed), *Human Dignity and Bioethics*, New York: Nova Science Publishers, Inc, 2009, P. 251-254

²⁰⁷ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 70, 78, 155-156. Martha C Nussbaum, *Creating Capabilities: The Human Development Approach*, Cambridge: Harvard University Press, 2011, P. 62-63.

²⁰⁸ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 163. Martha C Nussbaum, *Human Dignity and Political Entitlements*, in Barbara T Lanigan (Ed), *Human Dignity and Bioethics*, New York: Nova Science Publishers, Inc, 2009, P. 251.

²⁰⁹ Martha C Nussbaum, *Human Dignity and Political Entitlements*, in Barbara T Lanigan (Ed), *Human Dignity and Bioethics*, New York: Nova Science Publishers, Inc, 2009, P. 251. Martha C Nussbaum, *The Cosmopolitan Tradition: A Noble but Flawed Ideal*, Cambridge: Harvard University Press, 2019, P. 247-248.

Nussbaum softens the individualistic/rationalistic account of classical liberalism and has incorporated a richer view of the individual person and their relationship to the family and community. By doing so, I argue that Nussbaum offers a concept of human dignity and grounds a theory of rights in a way which is more appropriate and intuitive vis-à-vis non-Western societies like Thailand. The country has inculcated deep-seated Confucian communitarian values. This can be seen in Thai practices of ancestor veneration, as well as in the maintenance of kinship bonds and networks of material support and provision. This is also the case for the indigenous Karen in Thailand, who live a communal life within a clan-based kinship structure with strong familial ties encompassing extended family networks. The literature on how Confucian communitarianism has influenced in Thailand will be examined further in chapter 6. Although the similar insights of Nussbaum's Aristotelianism with Confucian Communitarianism have briefly been noted above, I will unpack them in more detail in chapter 6.

In other words, Nussbaum's approach, with her focus on a concept of human dignity emphasising social relations and the cultivation of virtue, has clear crossover and ability to speak with both Confucian communitarianism and with the traditions of the Karen and their indigenous needs. This is perhaps something which traditional liberalism, with its focus on individualism and rationalism, is unable to do. On this basis, I argue that Nussbaum's Capabilities Approach and her Aristotelian conception of human dignity can play a role in grounding a theory of rights for the indigenous Karen refugees in Thai camps. Regardless of their immigration status, the indigenous refugees in Thai camps as every human being should be given opportunities to develop all of their capabilities including seeking employment on an equal basis with others in order to fulfil their human potential. Enabling Karen refugees in Thai camps to develop these capabilities and granting them their right to work, for Nussbaum, is central to their human flourishing and helps uphold their human dignity. A detailed analysis of how developing these capabilities and recognising rights, in particular seeking employment, enables the Karen refugees to live a life of dignity will be provided in chapters 5.

Although Nussbaum's Capabilities Approach and her Aristotelian conception of human dignity contains strengths, like other philosophies, her approach is hardly free from criticism. Many scholars have paid attention to Nussbaum's conception of human dignity and criticise the insufficient theoretical elaboration of human dignity in her version of the Capabilities Approach and emphasise its internal inconsistency.²¹⁰ For example, Paul Formosa and Catriona Mackenzie argue that Nussbaum's understanding of human dignity exposes an internal and unresolved tension as she attempts to integrate

²¹⁰ Vasil Gluchman, Human Dignity as the Essence of Nussbaum's Ethics of Human Development, *Philosophia*, 47, 2019, P. 1131.

distinct and opposed Aristotelian and Kantian elements.²¹¹ On the one hand, she links her concept of human dignity to Aristotle's norm of human flourishing.²¹² On the other hand, she emphasises her commitment to political liberalism by referring to the Kantian ideal of seeing each person as an end in themselves.²¹³ Paul Formosa and Catriona Mackenzie argue that the fact that Nussbaum roots her conception of human dignity in Aristotle's ethics and social life and contrasts it with Kant's concept of human dignity grounded in autonomy and rationality shows that she is committed to a perfectionist liberalism rather than political liberalism.²¹⁴ Political liberalism requires a neutrality with regards to comprehensive conceptions of the good. Nussbaum, in her adherence to an Aristotelian conception of the good life, in practice holds to just such a comprehensive concept of the good.²¹⁵

In the same vein, Rutger Claassen and Marcus Duwell argue that Nussbaum's concept of human dignity clearly remains under-theorised.²¹⁶ Rutger Claassen and Marcus Duwell argue that while Nussbaum attempts to link her Aristotelian conception of human dignity with the deontological (Kantian) tradition her concept of human dignity cannot truly be interpreted as Aristotelian.²¹⁷ If Nussbaum views the notion of human dignity as playing a key role in the understanding of her Capabilities Approach, which she does, this key role has not been theoretically elaborated adequately so far.²¹⁸ They claim that Nussbaum's concept of human dignity fails to provide her Capabilities Approach with a firm foundation and particularly, cannot fulfil the role of the normative criterion that Nussbaum wants it to play in discovering capabilities.²¹⁹ Nussbaum's Capabilities Approach can therefore, for them, hardly be applied cross-culturally.²²⁰

It is important to note here that criticism relating to cross-cultural reach is something that concerns Nussbaum. She herself in fact acknowledges that while her ideal aim is to secure an overlapping consensus, this may not be possible given the diversity of human cultures and traditions.²²¹ In recognition of the difficulty of her task, Nussbaum therefore pursues the strategy of keeping her list of core capabilities as short and open-ended as possible in order to secure the widest possible agreement

²¹¹ Paul Formosa and Catriona Mackenzie, *Nussbaum, Kant and the Capabilities Approach to Dignity*, *Ethical Theory and Moral Practice*, 17, 2014, P. 876.

²¹² *Ibid.*

²¹³ *Ibid.*

²¹⁴ *Ibid.*, P. 891.

²¹⁵ *Ibid.*, P. 887.

²¹⁶ Rutger Claassen and Marcus Duwell, *The Foundations of Capability Theory: Comparing Nussbaum and Gewirth*, *Ethic Theory and Moral Practice*, 16(3), 2013, P. 493.

²¹⁷ *Ibid.*, P. 494.

²¹⁸ *Ibid.*, P. 495.

²¹⁹ *Ibid.*, P. 493.

²²⁰ *Ibid.*

²²¹ Martha C Nussbaum, *Human Dignity and Political Entitlements*, in Barbara T Lanigan (Ed), *Human Dignity and Bioethics*, New York: Nova Science Publishers, Inc, 2009, P. 251-252. See also: Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 78-79, 295-298.

and enable different traditions to develop understandings of, and adapt, the list of capabilities in accordance with their needs.²²² As I mentioned early on in section 2.1, the concept of human dignity is subject to differing interpretations, each of which could face distinct criticisms. It is important to engage a range of approaches in order to discover the one best suited to each circumstance, tradition and region. As shown above however, there is strength in Nussbaum's understanding. In my view it is capable of further reach within the context of Thailand regarding the recognition of the right to work for the Karen refugees, than the traditional mould of liberalism.

Conclusion:

In this chapter I firstly outlined the importance of human dignity in my theoretical framework and its place in relation to the protection of Karen refugees. I then unpacked the traditional liberal account of human dignity underpinning IRL and IHRL and engaged with the critics of this approach. On this basis, I then examined Nussbaum's approach to human dignity and her Capabilities Approach, seeking to ground a theory of right for Karen refugees in camps and in particular their right to work. I concluded that the concept of human dignity remains central in the modern system of human rights and in the provisions of IRL, IHRL and ILIP. This concept has a key role when thinking about the ongoing situation of the Karen refugees in camps in Thailand and progressing the realisation of their right to work. The chapter found that Nussbaum's approach to human dignity, rooted in the Aristotelian ideal of human flourishing, emphasising virtue and the communal life, goes beyond the individualistic account found in traditional liberalism. This approach is one which can more easily speak to non-Western societies, being more intuitively familiar for countries like Thailand and for the indigenous Karen. Nussbaum's approach shares fundamental principles with Confucian communitarianism and therefore can play a role in grounding a theory of rights with the right to work at its core for the Karen refugees in camps. With this theoretical framework in mind, I will now turn to build up a legal framework which I will use as the legal benchmark to analyse Thai law and policy throughout my work.

²²² Ibid.

Chapter 3: A Novel Legal Framework: The Interaction between International Refugee Law, International Human Rights Law and the International Law of Indigenous Peoples in the Protection of Karen Refugees in Camps in Thailand.

Introduction:

In this chapter I set out a legal framework that brings IRL, IHRL and ILIP together to form a network of complementary protections for indigenous Karen refugees in Thai camps. The provisions on international protection for refugees can be found in a range of legal sources and different fields of law with a diversity of rules. This diversity, which is a manifestation of the fragmentation of international law,²²³ does not mean that norms from various areas of international law necessarily conflict. Rather, these norms overlap and share a common goal.²²⁴ The central international legal regime is IRL, which has two core instruments: the 1951 Refugee Convention and its 1967 Protocol. IRL, however, has proved of limited value to the Karen refugees. Thailand has not acceded to the 1951 Refugee Convention and/or its 1967 Protocol. With “illegal migration status” under Thai law, the Karen refugees are denied the rights enshrined in the 1951 Refugee Convention which are conferred only upon recognised refugees.²²⁵

Although Thailand is not a state party to the 1951 Refugee Convention and/or its 1967 Protocol, the country is bound by IHRL,²²⁶ which contains rights applicable to all human beings, including Karen refugees. For this reason, I contend that the indigenous refugees in Thai camps are better protected under IHRL. However, I show that IHRL is not best equipped to uphold the rights of Karen refugees in Thai camps as indigenous peoples. The Karen value their collective dignity and want their collective way of life to be recognised and protected.²²⁷ It follows that provisions of ILIP have a critical role to play in protecting Karen refugees’ rights as indigenous people and in addressing their special needs — something that IRL and IHRL cannot achieve on their own.

I start by discussing how IHRL can fill the protection gap arising from the failure of Thailand to sign up to the provisions of IRL, leaving the Karen refugees in Thai camps beyond its scope. As IHRL cannot

²²³ Margaret A. Young, *Regime Interaction in International Law: Facing Fragmentation*, Cambridge: Cambridge University Press, 2015.

²²⁴ *Ibid.*

²²⁵ UN Human Rights Council, Working Group on the Universal Periodic Review, Summary of Stakeholders’ Submissions on Thailand: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/39/THA/3, 2021, Paragraph 47, 63, 64, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/224/10/PDF/G2122410.pdf?OpenElement> Accessed by 15 December 2022.

²²⁶ For more information on the ratification status for Thailand, see further at UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN Accessed by 28 November 2022.

²²⁷ Rhoda E Howard, *Dignity, Community and Human Rights*, in Abdullahi Ahmed An-Na’im (Ed), *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, Philadelphia: University Pennsylvania Press, 1995, P. 83-84.

fully protect the rights of Karen refugees as indigenous peoples, I then make the case for the key complementary role of ILIP in conferring protection on these indigenous refugees. This addresses a gap in the current literature in the field, where few studies consider how ILIP could bolster the rights of indigenous peoples in refugee situations. Indeed, while there is much literature on the protection of refugees, there is little that addresses indigenous peoples who are refugees. Bringing ILIP into dialogue with IRL and IHRL and situating the Karen refugees within this legal framework constitutes an original contribution.

3.1. IRL’s Limitations and the Role of IHRL in Protecting Karen Refugees in Thailand’s Camps.

3.1.1. IRL and its Limitations in the Protection of Karen Refugees.

Today, some three-quarters of the world’s states are legally bound by two core instruments of IRL, the 1951 Refugee Convention and/or the 1967 Protocol.²²⁸ Yet, while Southeast Asia is currently hosting a large population of refugees, the region has a very low level of ratification.²²⁹ Only two states, Cambodia and the Philippines, have ratified the 1951 Refugee Convention and its 1967 Protocol.²³⁰ As already stressed, Thailand continues to refuse to become a party to these fundamental IRL instruments.

Unsurprisingly, considering Thailand’s enduring refusal to become bound by the 1951 Refugee Convention and the 1967 Protocol, Thai law does not recognise the concept of refugee and the Thailand has continually looked at issues pertaining to refugees as ones of “illegal immigration”.²³¹ As discussed in chapter 4, the primary objective of Thai immigration law and policy has been to deter migrants, including those who need international protection, from entering and residing in Thailand.²³² Refugees

²²⁸ James C Hathaway, *The Architecture of the UN Refugee Convention and Protocol*, in Cathryn Costello, Michelle Foster and Jane McDam (Eds), *The Oxford Handbook of International Refugee Law*, Oxford: Oxford University Press, 2021, P. 171.

For more information, see further at:

For States Parties Including Reservations and Declarations to the 1951 Refugee Convention, see also:

https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=en Accessed by 5 December 2022.

For States Parties Including Reservations and Declarations to the 1967 Protocol Relating to the Status of Refugees, see also: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&clang=en

Accessed by 5 December 2022.

²²⁹ For information on the refugee population in Southeast Asia see further at: UNHCR, *Refugee Data Finder*, <https://www.unhcr.org/refugee-statistics/download/?v2url=e62f4b> Accessed by 20 January 2025. It should be noted that although the official number of refugees in Southeast Asia in UNHCR website is approximately 290,000 in 2024, due to the low level of ratification and refugee protection in the region, the actual figure is likely higher.

²³⁰ Sébastien Moretti, *Southeast Asia and the 1951 Convention Relating to the Status of Refugees: Substance without Form?* *International Journal of Refugee Law*, 33(2), 2021, P. 214.

²³¹ Anja Jetschke, *Does Forced Migration Increase Regional Human Rights Commitment? The Cases of Malaysia and Thailand in ASEAN*, *Asia Pacific Business Review*, 25(5), 2019, P. 712.

²³² Inga Gruß, *The Emergence of the Temporary Migrant: Bureaucracies, Legality and Myanmar Migrants in Thailand*, *Journal of Social Issues in Southeast Asia*, 32(1), 2017, P. 25.

in Thailand fall within the scope of the Thai Immigration Act B.E. 2522 (Immigration Act 1979)²³³ and under Section 12(1) of this Act are categorised as “illegal migrants”.

Critically, Thailand’s failure to recognise Karen refugees in the country’s camps as refugees within the meaning of the 1951 Refugee Convention and/or its 1967 Protocol means that these refugees cannot avail themselves of the rights enshrined in the Convention.²³⁴ The range of rights enshrined in the 1951 Refugee Convention only apply to persons who have been granted refugee status.²³⁵ Importantly, this means that Karen refugees in Thai camps cannot enjoy the protection of the right to work guaranteed in the Article 17 of the 1951 Refugee Convention.

The fact that Thailand has not ratified the 1951 Refugee Convention or its 1967 Protocol certainly limits IRL’s ability to protect Karen refugees and in particular, support the realisation of their right to work. This explains why my legal framework encompasses IHRL and ILIP in addition to IRL. However, this does not mean that IRL is of no relevance to Karen refugees in Thai camps. It is important to note here that the principle of *non-refoulement* (literally meaning an “obligation not to force/turn back”) stipulated in Article 33(1) of the 1951 Refugee Convention has acquired the status of a norm of customary international law.²³⁶ This provision is therefore legally binding upon Thailand even though the country has not ratified the 1951 Refugee Convention and/or its 1967 Protocol.²³⁷

Accordingly, under this principle *non-refoulement*, states including Thailand are not allowed to return a refugee to a country where their life or freedom would be threatened on the basis of their race, religion, nationality, membership of a particular social group or political opinion. The prohibition against the *refoulement* under Article 33(1) of the 1951 Refugee Convention applies to “those irrespective of

²³³ Anja Jetschke, Does Forced Migration Increase Regional Human Rights Commitment? The Cases of Malaysia and Thailand in ASEAN, *Asia Pacific Business Review*, 25(5), 2019, P. 712. Kate Coddington, *Landscapes of Refugee Protection*, Royal Geographical Society, 2018, P. 329.

²³⁴ UN Human Rights Council, Working Group on the Universal Periodic Review, Summary of Stakeholders’ Submissions on Thailand: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/39/THA/3, 2021, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/224/10/PDF/G2122410.pdf?OpenElement> Accessed by 15 December 2022.

²³⁵ Vincent Chetail, Moving Towards an Integrated Approach of Refugee law and Human Rights Law, in Cathryn Costello, Michelle Foster and Jane McAdam (Eds), *The Oxford Handbook of International Refugee Law*, Oxford: Oxford University Press, 2021, P. 208.

²³⁶ UNHCR, UNHCR Note on the Principle of Non-Refoulement, November 1997, <https://www.refworld.org/docid/438c6d972.html> Accessed by 9 July 2022. UNHCR, Declaration of States Parties to the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees, HCR/MMSP/2001/09, 16 January 2002, <https://www.refworld.org/docid/3d60f5557.html> Accessed by 11 September 2022.

²³⁷ UNHCR, *Refugee Protection: A Guide to International Refugee Law*, 1 December 2001, P. 14, <https://www.refworld.org/docid/3cd6a8444.html> Accessed by 12 July 2022. Hélène Lambert, Customary Refugee Law, in Cathryn Costello, Michelle Foster and Jane McDam (Eds), *The Oxford Handbook of International Refugee Law*, Oxford: Oxford University Press, 2021, P. 240.

whether or not they have been recognised as refugees”, including refused asylum seekers.²³⁸ Therefore, Thailand is, under this Article, not permitted to forcibly return Karen refugees to Myanmar. However, the absence of formal asylum procedures and, more generally, the lack of refugee law, produce an environment where it is not possible to comply with the principle of *non-refoulement*. Within the limited scope and focus of my research on the recognition of the right to work, an in-depth discussion of this principle is not present. I will now turn to analyse how IHRL is instrumental in addressing the limitations of the applicability of IRL in Thailand in the protection of the Karen refugees.

3.1.2. IHRL’s Role in Protecting Karen Refugees in Thai Camps.

IHRL contributes to mitigating the limitations of IRL in protecting the rights of Karen refugees in Thai camps in two ways. Firstly, although Thailand remains a non-signatory of the 1951 Refugee Convention and its 1967 Protocol, the country importantly is party to core human rights treaties, such as ICCPR, ICESCR, or CRC, and is therefore bound by the provisions of these conventions.²³⁹ Secondly, the rights enshrined in IHRL are applicable to all persons, including Karen refugees. However, it is also important to recognise here that the potency of IHRL in supporting the realisation of Karen refugees’ rights is undermined by the tensions between universal protection and the state’s right to control immigration that pervade this body of law.

In particular, as mentioned in the previous chapter, the ideal behind the system of modern human rights is that as human beings, regardless of their background are born free and equal in dignity, they all possess rights. Article 2 of the UDHR explicitly emphasises that every human being has inherent dignity and is entitled to all the rights and freedoms set forth in the Declaration. The system of human rights should accordingly be given to everyone without distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This emphasis on universal protection is also explicitly expressed in the range of subsequent human rights treaties including Article 2(2) of ICESCR and Article 2(1) of ICCPR or Article 2(1) of CRC.

It can be seen here that the scope of protections in IHRL goes beyond the category of refugees or asylum seekers, and cover all individuals.²⁴⁰ In other words, the system of rights articulated under human rights treaties are given to everyone plainly by virtue of being human. This broad acceptance of protection under IHRL creates a complementary system of protection for Karen refugees in camps. In particular,

²³⁸ UNHCR Executive Committee, Non-Refoulement No. 6 (XXVIII). A/32/12/Add.1, 1977, <https://www.unhcr.org/uk/excom/exconc/3ae68c43ac/non-refoulement.html> Accessed by 11 September 2022.

²³⁹ For more information on the ratification status for Thailand, see further at UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=172&Lang=EN Accessed by 28 November 2022.

²⁴⁰ Alice Edwards, International Refugee Law, in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (Eds), International Human Rights Law, Oxford: Oxford University Press, 2018, P. 539-540. Colin Harvey, Time for Reform? Refugees, Asylum-seekers, and Protection Under International Human Rights Law, Refugee Survey Quarterly, 34(1), 2015, P. 43-44.

Karen refugees are not able to access most of rights contained in the 1951 Refugee Convention and its 1967 Protocol which are, as mentioned in section 3.1.1, only granted to recognised refugees. However, these indigenous refugees in camps are bestowed protection of fundamental and basic rights under IHRL as human beings.

For instance, the right to employment is, in accordance with Article 17 (1) of the 1951 Refugee Convention, granted only to recognised refugees. In contrast, Article 6 of ICESCR that Thailand is party to provides that everyone is entitled to freely choose their work and obliges states parties to take appropriate steps to safeguard this right. It is important to note here that the right to work is also enshrined in other human rights treaties.²⁴¹ However, Article 6 of ICESCR is one of the most authoritative articulations of the right to work in IHRL.²⁴² In the process of specifying the content of the right to work, the CESCR, which monitors the ICESCR, provides an authoritative and extensive interpretation of the Covenant.²⁴³

The CESCR has emphasised that the right to work articulated in Article 6 of ICESCR applies to everyone including refugees, asylum seekers, stateless persons, migrant workers and victims of international trafficking.²⁴⁴ It is clear that IRL offers limited protection for Karen refugees in Thai camps. They have not been granted refugee status and cannot under IRL, enjoy the protection of the right to work. However, the Karen refugees as human beings are, in accordance with Article 6 of the ICESCR, entitled to this fundamental right. The scope and normative content of obligations in relation to the right to work under IHRL will be discussed in more details later in chapter 5.

As shown above, human rights treaties provide a vital source of refugee protection in the 43 United Nations Member States, including Thailand, that have not ratified the 1951 Refugee Convention and its 1967 protocol.²⁴⁵ Nevertheless, it is important to stress that within IHRL there still exists a tension between universal human rights protection and the right of states to control immigration.²⁴⁶ This tension

²⁴¹ Such as: Article 23 of UDHR or International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (Adopted 18 December 1990, Entered into Force 1 July 2003). It is noted that Thailand has not yet signed up to this Convention.

²⁴² Colm O Cinneide, *The Right to Work in International Human Rights Law*, Virginia Mantouvalou (Ed), *The Right to Work: Legal and Philosophical Perspectives*, London: Bloomsbury, P. 102.

²⁴³ Virginia Mantouvalou, *The Right to Non-exploitative Work*, in Virginia Mantouvalou (Ed), *The Right to Work: Legal and Philosophical Perspectives*, London: Bloomsbury, 2014, P. 41.

²⁴⁴ CESCR, 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), E/C.12/GC/20, 2 July 2009, P. 9, Paragraph 30, <https://www.refworld.org/legal/general/cescr/2009/en/68520> Accessed 30 December 2022.

²⁴⁵ Vincent Chetail, *Moving Towards an Integrated Approach of Refugee law and Human Rights Law*, in Cathryn Costello, Michelle Foster and Jane McAdam (Eds), *The Oxford Handbook of International Refugee Law*, Oxford: Oxford University Press, 2021, P. 203.

²⁴⁶ Emma Larking, *Human rights and the Principle of Sovereignty: A Dangerous Conflict at the Heart of the Nation State*, *Australian Journal of Human Rights*, 10(1), 2004, P. 15, 24-29. Ruth Rubio-Marin, *Human Rights and Migration*, Oxford: Oxford University Press, 2014, P. 4.

remains the overarching reason for this body of law's struggle to extend protection to groups of non-nationals with uncertain status²⁴⁷ like Karen refugees.

On the one hand, IHRL has committed itself to promoting universal respect for and observance of, human rights for all, regardless of background or other status. On the other hand, IHRL critically reserves a right for states to control immigration. This enables states to propagate the view that human rights protection remains intractably bound up with the structures of the nation-state and its forms of citizenship and immigration control.²⁴⁸ In this view, enjoyment of human rights depends on immigration status, which is determined by the state. In other words, states ultimately retain power to decide which groups, and to what extent, human rights are granted to.²⁴⁹ Consequently, human rights are not granted to everyone but instead are typically reserved only for nationals, or for non-nationals who reside lawfully in state territory.²⁵⁰

This seems to involve the implicit assertion that some people are “more equal” than others.²⁵¹ There is a widespread belief among leaders of states that nationals, as “insiders”, must be entitled to privileges.²⁵² This differentiates insiders from non-nationals who are often seen as “outsiders”.²⁵³ This view results in non-nationals who possess lawful residential status being entitled to a higher protection of human rights than migrants with a precarious status.²⁵⁴ In particular, those non-nationals, such as refugees, asylum seekers or irregular migrants are subjected to state restrictions or exclusions from access to basic and fundamental human rights.²⁵⁵ States often see exclusions or restrictions as a legitimate part of the exercise of power to control immigration and to disincentivise more migrants from coming.²⁵⁶

²⁴⁷ Elspeth Guild, Stefanie Grantt and C. A. Groenendijk, *Human Rights of Migrants in the 21st Century*, London and New York: Routledge, 2017, P. 11-12.

²⁴⁸ Marie-Bénédicte Dembour and Tobias Kelly, Introduction, in Marie-Bénédicte Dembour and Tobias Kelly (Eds), *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States*, London and New York: Routledge, 2011, P. 6.

²⁴⁹ Lindsey N. Kingston, *Full Human: Personhood, Citizenship, and Rights*, Oxford: Oxford University Press, 2019, P. 6.

²⁵⁰ Fernand De Varennes, *The Rights of the Marginalised in Asia: Increasing Protection or Vulnerability?* in Fernand De Varennes and Christie M Gardiner (Eds), *Routledge Handbook of Human Rights in Asia*, New York: Routledge, 2020, P. 9-10. Ruth Rubio-Marin, *Human Rights and Migration*, Oxford: Oxford University Press, 2014, P. 6.

²⁵¹ Emma Larking, *Human Rights and the Principle of Sovereignty: A Dangerous Conflict at the Heart of the Nation State*, *Australian Journal of Human Rights*, 10(1), 2004, P. 24.

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ Ruth Rubio-Marin, *Human Rights and Migration*, Oxford: Oxford University Press, 2014, P. 12. Mr François Crépeau, Special Rapporteur on the Human Rights of Migrants to the 66th session of the General Assembly, Third Committee—Item 69 (B), (C), 21 October 2011, Paragraph 2, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11523&LangID=E>. Accessed by 21 April 2023.

²⁵⁵ Arthur C. Helton, Oscar Schachter, Louis Henkin and Anne F. Bayefsky, *Protecting the World's Exiles: The Human Rights of Non-citizens*, *Human Rights Quarterly*, 22(1), 2000, P. 281.

²⁵⁶ Lucy Mayblin, *Complexity Reduction and Policy Consensus: Asylum Seekers, the Right to Work, and the 'Pull Factor' Thesis in the UK Context*, *The British Journal of Politics and International Relations*, 18(4), 2016, P. 812.

The protection of the right to work under IHRL is an example of this. Despite its universal claims, as mentioned above, when it comes to the right to access to the national labour market in article 6 of ICESCR, a person's immigration status remains significant. The right to access work is a right of nationals and some, but not all migrants.²⁵⁷ In other words, this right is typically made conditional on citizenship or a valid work permit.²⁵⁸ Non-nationals with precarious status are, often, restricted from, or refused access to, the national employment market.²⁵⁹ In particular, due to the status of "illegal migrant" under Thai law, Karen refugees in camps are prohibited from access to the national labour market. In essence, the tensions between the ideal of universal protection and the power of states to control migration impact upon IHRL's ability to support the realisation of Karen refugees' right to work. I will discuss this further in chapter 5.

Although the existence of these tensions can, to some extent, undermine the potency of IHRL in protecting Karen refugees in camps, this does not mean that IHRL has no value. In fact, provisions of IHRL offer standards of treatment that the law and policies of many states including Thailand today should uphold. Thailand should comply with its obligations under many human rights treaties, which the country is party to, to provide protections for Karen refugees in Thai camps. However, as Karen refugees in Thai camps are indigenous peoples, provisions of IRL and IHRL do not provide adequate protection of their indigenous rights and needs. In the next section below, I will now turn to demonstrate how ILIP complements provisions of IRL and IHRL in the protection of the Karen indigenous refugees in camps in Thailand.

3.2. ILIP's Role in Protecting Karen Refugees in Thai Camps.

3.2.1. The Karen as Indigenous People: A Historical Background.

As already highlighted, the Karen are indigenous people from the Thailand-Myanmar border region.²⁶⁰ While there are few written documents of the origins of the Karen peoples, Karen oral histories describe the arrival of their people as far back as 2,500 years ago, after migrating through Tibet and China to

²⁵⁷ Virginia Mantouvalou, *The Right to Non-exploitative Work*, in Virginia Mantouvalou (Ed), *The Right to Work: Legal and Philosophical Perspectives*, London: Bloomsbury, 2014, P. 43.

²⁵⁸ *Ibid*, P. 43.

²⁵⁹ Roger Zetter and Héloïse Ruaudel, *Refugees' Right to Work and Access to Labour Markets: An Assessment*, Knomad, 2018, P. III, 12. Office of the United Nations High Commissioner for Human Rights (OHCHR), *The Economic, Social and Cultural Rights of Migrants in An Irregular Situation*, 2014, P. 112, https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-14-1_en.pdf Accessed by 15 June 2023.

²⁶⁰ EthnoMed, *The Cultural Profile of the Karen*, 2008, <https://ethnomed.org/culture/karen/> Accessed by 13 December 2022. Frederic Kris Lehman, *Who Are the Karen, and If so Why? Karen Ethnohistory and a Formal Theory of Ethnicity*, in Charles F. Keyes (Ed), *Ethnic Adaptation and Identity: The Karen on the Thai Frontier with Burma*, Philadelphia: Institute for the Study of Human Issues, 1979, P. 215-253.

present-day Myanmar.²⁶¹ By the eighteenth century, they were well-established in the remote highland eastern region of Myanmar bordering Thailand.²⁶² The Karen form a population with various linguistic, sociocultural and religious backgrounds, with twelve sub-groups: Sgaw, Pwo, Pa-os, Paku, Maw Nay Pwa, Bwe, White Karens, Padaung (Kayan), Red Karens (Karenni), Keko/Keba, Black Karens and Striped Karens.²⁶³ They have their own language, with the two most widely spoken Karen languages being Sgaw and Pwo.²⁶⁴

Since their earliest history, the Karen lived in autonomous villages in the eastern region of Myanmar bordering Thailand and have always considered themselves different from the Burman group living the lowlands of Myanmar – the dominant and largest ethnic group in Myanmar.²⁶⁵ For a long time, the Karen have been struggling to maintain and practice their own collective identity, cultures and traditions, as the central Burmese government aims to Burmanise them.²⁶⁶ They have been largely marginalised by the central Burmese state and many have engaged in a long, armed struggle for autonomy.²⁶⁷

During the British colonial period in Myanmar, the Karen fought on the British side against the central Burmese state in order to secure their independence and autonomy.²⁶⁸ With the British withdrawal in 1948, there were even more massive the uprisings of the Karen against the central Burmese state.²⁶⁹ The Karen were the first ethnic group to take up arms against the central Burmese via the Karen National

²⁶¹ Minority Rights Group International, Myanmar: Karen, 2017, <https://minorityrights.org/minorities/karen>, Accessed by 10 December 2022.

²⁶² Ibid. Ronald D Renard, Studying Peoples Often Called Karen, in Claudio O. Delang (Ed), *Living at the Edge of Thai Society: The Karen in the Highlands of Northern Thailand*, London and New York: Routledge Curzon, 2003, P. 5.

²⁶³ Kirsten McConnachie, *Governing Refugees: Justice, Order and Legal Pluralism*, New York: Routledge, 2014, P. 23. Jessica Harriden, Making a Name for Themselves: Karen Identity and the Politicisation of Ethnicity in Burma, *Journal of Burma Studies*, 7(1), 2002, P. 84.

²⁶⁴ Kirsten McConnachie, *Governing Refugees: Justice, Order and Legal Pluralism*, New York: Routledge, 2014, P. 23.

²⁶⁵ Ronald D Renard, Studying Peoples Often Called Karen, in Claudio O. Delang (Ed), *Living at the Edge of Thai Society: The Karen in the Highlands of Northern Thailand*, London and New York: Routledge Curzon, 2003, P. 4-5. Ellen Huntly Bullard Mason, *Civilising Mountain Men: Or, Sketches of Mission Work among the Karen*, Philadelphia: American Baptist Publication Society, 1862.

²⁶⁶ Morten B Pedersen, Burma's Ethnic Minorities: Charting Their Own Path to Peace, *Critical Asian Studies*, 40(1), 2008, P. 56.

²⁶⁷ Ibid, P. 47-48.

²⁶⁸ Robert H Taylor, British Policy towards Myanmar and the Creation of the 'Burma Problem', in N. Ganesan and Kyaw Yin Hlaing (Eds), *Myanmar: State, Society and Ethnicity*, Singapore: Institute of Southeast Asian Studies, 2007, P. 74-75. Ivan Yan Chao Ng, State Approaches towards Managing Ethnic Diversity in Myanmar and Malaysia: British Legacies, Postcolonial Nationalism and Contemporary Issues, *Asian Ethnicity*, 23(1), 2022, P. 189-190.

²⁶⁹ Bertil Lintner, *Burma in Revolt: Opium and Insurgency since 1948*, Chiang Mai: Silksworm Books, 1999, P. 9-10. Kirsten McConnachie, *Governing Refugees: Justice, Order and Legal Pluralism*, New York: Routledge, 2014, P. 23.

Union (KNU).²⁷⁰ The KNU is viewed as one of the oldest active insurgent groups in the world today, having fought the government for autonomy continuously since 1949.²⁷¹ The Karen's self-determination movement is sometimes described as the world's longest running self-determination movement throughout history still in existence today.²⁷²

Although it will be discussed in chapter 4, it is important to note here that the ongoing protracted situation of the Karen in nine refugee camps along Thailand-Myanmar border has its origin in this long history of fighting for self-determination.²⁷³ The Karen peoples have, in particular, fled to refugee camps in Thailand since 1984 due to political persecution from the central Burmese state.²⁷⁴ In Thai camps today, the Karen refugees are still fighting for self-determination and to preserve their own indigenous identity often called "Karenness".²⁷⁵ Despite the limited opportunities available in refugee camps, the Karen still try to build up dynamic Karen communities and structure their daily life in camps in the manner of their traditional village and community life.²⁷⁶ Though discussed in depth in chapter 6, it is important to note here that this social ethics and communitarian culture present in indigenous Karen communities resonates strongly with values and belief of Confucian communitarianism.

They essentially maintain an autonomous village atmosphere which is often viewed as unique group-defining characteristics of the indigenous Karen.²⁷⁷ There are refugee-camp leaders, like in the Karen Refugee Committee (KRC), which manage camp affairs and maintain regular communication with the Thai authorities and with non-governmental organisations (NGOs) to promote the protection of their community.²⁷⁸ The refugee-led camp committee sets up schools, and manages education and determines policy on the content and form of education inside camps.²⁷⁹ They establish their own curriculum that is culturally appropriate and aims to maintain their indigenous collective identity.²⁸⁰ However, it is important to note that these efforts of the Karen are of limited impact and they have, under Thai policy

²⁷⁰ Morten B Pedersen, *Burma's Ethnic Minorities: Charting Their Own Path to Peace*, *Critical Asian Studies*, 40(1), 2008, P. 47. Kirsten McConnachie, *Governing Refugees: Justice, Order and Legal Pluralism*, New York: Routledge, 2014, P. 23.

²⁷¹ *Ibid.*

²⁷² Kirsten McConnachie, *Governing Refugees: Justice, Order and Legal Pluralism*, New York: Routledge, 2014, P. 28.

²⁷³ Gerard Clarke, *From Ethnocide to Ethnodevelopment? Ethnic Minorities and Indigenous Peoples in Southeast Asia*, *Third World Quarterly*, 22(3), 2001, P. 422-423.

²⁷⁴ *Ibid.*

²⁷⁵ Kirsten McConnachie, *Governing Refugees: Justice, Order and Legal Pluralism*, New York: Routledge, 2014, P. 45-46.

²⁷⁶ *Ibid.*, P. 45.

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*, P. 81.

²⁷⁹ Su-Anna Oh, *Refugee Education in Thailand: Displacement, Dislocation and Disjuncture*, in Lala Demirdjian(Ed), *Education as Humanitarian Response: Education, Refugees and Asylum seekers*, London and New York: Continuum International Publishing Group, 2012, P. 87-88.

²⁸⁰ Eva Ramírez Carpeño and Hannah Isabelle Feldman, *Childhood and Education in Thailand-Burma/Myanmar Border Refugee Camps*, *Global Studies of Childhood*, 5(4), 2015, P. 417.

and law, very limited control of their life choices in refugee camps and face marginalisation. Their distinct collective culture and values are at risk of being diminished.²⁸¹ I will discuss this further in Chapter 5.

The Karen refugees presently living in Thai camps are in need of the additional protections of their indigenous rights in order to guarantee their specific indigenous needs and collective dignity. These indigenous rights are largely collective rather than individual rights.²⁸² These rights relating to indigenous peoples largely focus on protecting the indigenous peoples as a whole group rather than the indigenous individual.²⁸³ I will now turn to analyse the role of ILIP in protecting the Karen refugees as indigenous peoples.

3.2.2. The Complementary Protections from ILIP.

Critically, the provisions of IRL and IHRL as analysed in section 3.1 mainly focus on individual rights rather than group rights and necessarily protect the Karen refugees as individuals rather than as groups. That said, IHRL offers some level of protection for group rights; for example, Article 27 of the ICCPR recognises the right of groups to enjoy their communal culture, profess their religion and use their language. IRL and IHRL alone cannot, however, fully protect the specific needs of the Karen refugees. This is clearly the case, especially when these indigenous refugees are, as mentioned section 3.2.1, left in a deeply vulnerable situation in a protection vacuum and exposed to the risk of cultural erosion and identity loss. Even when refugee status is granted to these Karen refugees, the international standards on the subject, particularly IRL and IHRL do not provide the necessary specific protection that guarantees the preservation of the cultural identities of the indigenous refugees.²⁸⁴ In the face of profound vulnerability, Karen refugees are in need of the indigenous collective rights framework articulated in ILIP in addition to and beyond the system of rights of IRL and IHRL.

²⁸¹ Ibid, P. 417-418.

²⁸² Fergus Mackay, *The Rights of Indigenous Peoples in International Law*, in Lyuba Zarsky (Ed), *Human Rights and the Environment: Conflicts and Norms in a Globalising World*, London: Earthscan Publications, 2002, P. 10-11.

²⁸³ Ibid. See also: Erika-Irene Daes and Asbjørn Eide, *Working Paper on the Relationship and Distinction between the Rights of Persons Belonging to Minorities and Those of Indigenous Peoples*, Geneva: United Nations, 2000, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/142/37/PDF/G0014237.pdf?OpenElement> Accessed by 30 December 2022.

²⁸⁴ Rickson Rios Figueira, *Indigenous Refugees and Cultural Erosion: Possibilities and Limits of International Refugee and Indigenous Peoples Law in the Protection of Indigenous Cultural Expressions Related to Traditional Land and Native Language*, *Revista de Direito Internacional* 17, 2020, P. 443.

To date, the 1989 Convention on Indigenous and Tribal Peoples, No. 169 (ILO Convention 169)²⁸⁵ and UNDRIP are the main international instruments on the protection of indigenous peoples.²⁸⁶ ILO Convention 169 is the only legally binding international treaty on indigenous peoples. It has been ratified by 24 countries, which does not include Thailand.²⁸⁷ It is important to emphasise that, although reluctance by States including Thailand to ratify is indicative of the existing challenge with ILO Convention 169, it is a fact that ILO Convention 169 has led to profound changes in the domestic legal systems of ratifying countries.²⁸⁸ It remains the only treaty open for ratification specifically and exclusively dedicated to the promotion and protection of indigenous peoples' rights and culture.²⁸⁹ The importance and contribution of ILO Convention 169 have become prominent.

ILO Convention 169 was the result of the revision of the preceding ILO Convention on Indigenous and Tribal Population, No. 107 (ILO Convention 107).²⁹⁰ ILO Convention 169 importantly lays down comprehensive protection standards for indigenous peoples; it explicitly aims at removing the assimilationist orientation of the earlier standards in ILO Convention 107.²⁹¹ ILO Convention 169 instead emphasises the aspirations of indigenous peoples to exercise control over their own institutions, education, ways of life and economic development and to maintain and develop their own indigenous identities, languages and beliefs.²⁹² ILO Convention 169 calls on states to value the distinctive contributions of indigenous peoples to the cultural diversity of humankind.²⁹³

Within this framework, ILO Convention 169 recognises indigenous peoples as “peoples” and takes a decisive stand on the collective nature of indigenous rights by laying down a series of provisions on

²⁸⁵ C169 Indigenous and Tribal Peoples Convention (Adopted 27 June 1989, Entered into Force 5 September 1991) 1650 UNTS 383, Hereafter Referred to as ILO Convention 169.

²⁸⁶ Corinne Lennox and Damien Short, Introduction, in Corinne Lennox and Damien Short (Eds), *Handbook of Indigenous Peoples' Rights*, New York: Routledge, 2016, P. 5.

I acknowledge that there are also other related Conventions such as The Convention on Biological Diversity (CBD) or The United Nations Framework Convention on Climate Change (UNFCCC). However, within the limited scope of this research, I cannot discuss all, instead focus on the core documents directly relevant to the situation of Karen indigenous refugees. To be clear, ILIP which is used throughout the thesis refers to ILO Convention 169 and UNDRIP.

²⁸⁷ For more information on ratifications of ILO Convention 169, see at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312314
Accessed by 15 November 2022.

²⁸⁸ Maria Victoria Cabrera Ormazá and Martin Oelz, *The State's Duty to Consult Indigenous Peoples: Where Do We Stand 30 Years after the Adoption of the ILO Indigenous and Tribal Peoples Convention No. 169?* Max Planck Yearbook of United Nations Law Online 23, 2020, P. 73.

²⁸⁹ *Ibid.*, P. 72. Lee Swepston, *The Adoption of Convention 169: Unions and Indigenous Peoples' Involvement*, *International Union Rights*, 25, 2018, P. 3.

²⁹⁰ C107 Indigenous and Tribal Populations Convention (Adopted 26 June 1957, Entered into Force 2 June 1959) 328 UNTS 247, Hereafter Referred to as ILO Convention 107. Rudiger Wolfrum, *The Protection of Indigenous Peoples in International Law*, *ZaöRV*, 59, 1999, P. 371-372.

²⁹¹ The Preamble of ILO Convention 169, Paragraph 4.

²⁹² The Preamble of ILO Convention 169, Paragraph 5. See further: Article 5(A) and (C) of the ILO Convention 169.

²⁹³ The Preamble of ILO Convention 169, Paragraph 7.

collective rights.²⁹⁴ Accordingly, indigenous peoples have rights to maintain and develop their own societies. States are accordingly urged to respect, recognise and protect indigenous social, economic and cultural identities, and the customs and traditions and institutions of indigenous peoples²⁹⁵ and to respect the integrity of these values, practices and institutions.²⁹⁶

While ILO Convention 169 is a legally binding international treaty, UNDRIP is a non-binding instrument (soft law) and has recently been adopted by the United Nations General Assembly (UNGA) in 2007.²⁹⁷ UNDRIP represents a global consensus on the standards relating to indigenous peoples and is considered as a landmark and innovative development in international law on the rights of indigenous peoples.²⁹⁸ Indigenous peoples were directly involved in the production of UNDRIP, who insisted on the inclusion of articles which responded to their needs.²⁹⁹ It is one of the very few United Nations' legal documents that have been elaborated in consultation with the victims of human rights abuses and with peoples who are to be the beneficiaries.³⁰⁰

It is important to acknowledge here that as soft law is not law per se,³⁰¹ UNDRIP thus has less legal effect on states including Thailand, compared with legally binding instruments. However, soft law and binding instruments such as treaties or customary law can interact and build upon each other as complementary tools for solving international problems.³⁰² Soft law instruments may acquire binding legal character as elements of a treaty-based regulatory regime or constitute a subsequent agreement between parties regarding the interpretation of a treaty or the application of its provision.³⁰³ Some soft law instruments are also important as they can become a first step in a process eventually leading to conclusion of a multilateral or regional treaty.³⁰⁴ Non-binding instruments can, with evidence of *opinio juris* (the belief

²⁹⁴ Luis Rodriguez-Pinero, *Indigenous Peoples, Postcolonialism, and International Law: The ILO Regime (1919-1989)*, Oxford: Oxford University Press, 2005, P. 321.

²⁹⁵ Article 2(2)(B) and Article 5(A) of ILO Convention 169.

²⁹⁶ Article 5(B) of the ILO Convention 169.

²⁹⁷ Corinne Lennox and Damien Short, Introduction, in Corinne Lennox and Damien Short (Eds), *Handbook of Indigenous Peoples' Rights*, New York: Routledge, 2016, P. 5.

²⁹⁸ Marco Odello, The United Nations Declaration on the Rights of Indigenous Peoples, in Corinne Lennox and Damien Short (Eds), *Handbook of Indigenous Peoples' Rights*, New York: Routledge, 2016, P. 64.

²⁹⁹ Julian Burger, From Outsiders to Centre Stage: Three Decades of Indigenous Peoples' Presence at the United Nations, in Corinne Lennox and Damien Short (Eds), *Handbook of Indigenous Peoples' Rights*, New York: Routledge, 2016, P. 322.

³⁰⁰ *Ibid.*

³⁰¹ Carlo Focarelli, *International Law*, Cheltenham: Edward Elgar Publishing Limited, 2019, P. 223.

³⁰² Gregory C. Shaffer and Mark A. Pollack, Hard vs. Soft Law: Alternatives, Complements and Antagonists in International Governance, *Minnesota Law Review*, 94, 2010, P. 721.

³⁰³ Alan Boyle, Soft Law in International Law-Making, in Malcolm D Evans (Ed), *International Law*, Oxford: Oxford University Press, 2014, P. 119. See also: Vienna Convention on the Law of Treaties, (Adopted 22 May 1969, Entered into Force 27 January 1980) 1155 UNTS 331, Article 31(3)(A).

³⁰⁴ Malcolm N Shaw, *International Law*, 9th Ed, Cambridge: Cambridge University Press, 2021, P. 100.

that action is legally necessary) and widespread practice amongst states, facilitate progressive evolution of customary international law.³⁰⁵

The importance of UNDRIP has especially become clear as some provisions of UNDRIP may acquire the status of customary international law binding all states including Thailand.³⁰⁶ In particular, although UNDRIP is a non-binding instrument, it was supported by an overwhelming majority of states, with 143 states including Thailand in favour.³⁰⁷ Since its adoption in 2007, there is significant emerging practice relating to UNDRIP.³⁰⁸ The significance of UNDRIP is also apparent in the Inter-American Court of Human Rights³⁰⁹ and the African Commission on Human and Peoples' Rights and its Courts³¹⁰, both of which reference it. Both courts have repeatedly cited UNDRIP provisions and use it as a legal basis for their findings and decisions. Domestic courts have also made use of UNDRIP.³¹¹

For example, the Constitutional Court of Peru³¹² and the Supreme Court of Belize³¹³ have used UNDRIP in some of their decisions. The Supreme Court of Belize emphasised that “Belize voted in favour of the Declaration and is not expected to disregard it”.³¹⁴ UNDRIP has also been used to develop specific national laws and amend existing legislation in some countries. Most significantly, Bolivia explicitly incorporated UNDRIP into Bolivia's National Law 3897 of 26 June 2008 and recognised indigenous peoples' rights.³¹⁵ Ecuador is another leading example that used the indigenous language of UNDRIP

³⁰⁵ Alan Boyle, *Soft Law in International Law-Making*, in Malcolm D Evans (Ed), *International Law*, Oxford: Oxford University Press, 2014, P. 130-133.

³⁰⁶ Siegfried Wiessner, *Indigenous Self-Determination, Culture, and Land: A Reassessment in Light of the 2007 UN Declaration on the Rights of Indigenous Peoples*, in Elvira Pulitano (Ed), *Indigenous Rights in the Age of the UN Declaration*, Cambridge: Cambridge University Press, 2012, P. 54–56. See also: Marco Odello, *The United Nations Declaration on the Rights of Indigenous Peoples*, in Corinne Lennox and Damien Short (Eds), *Handbook of Indigenous Peoples' Rights*, New York: Routledge, 2016, P. 64.

³⁰⁷ See the voting record for UNDRIP at <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> Accessed by 15 December 2022.

For more information on the view of Thailand in the voting for UNDRIP at: <https://press.un.org/en/2007/ga10612.doc.htm> Accessed by 20 December 2022.

³⁰⁸ Felipe Gómez Isa, *The UNDRIP: An Increasingly Robust Legal Parameter*, *The International Journal of Human Rights*, 23(1-2), 2019, P. 15.

³⁰⁹ In the *Saramaka People vs. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 28 November 2007, Series C No.172 or in another recent case *Kaliña and Lokono Peoples vs. Suriname*, IACTHR, 2015, Series C, No. 309.

³¹⁰ In *African Commission on Human and Peoples' Rights vs Republic of Kenya*, Application No.006/2012 Judgment of 26 May 2017, Paragraph 209.

³¹¹ Felipe Gómez Isa, *The UNDRIP: An Increasingly Robust Legal Parameter*, *The International Journal of Human Rights*, 23(1-2), 2019, P. 15.

³¹² In *Tres Islas indigenous community Case*, Sentencia del Tribunal Constitucional, Exp. No. 01126-2011-HC/TC, Judgement of 11 September 2012.

³¹³ In *Aurelio Cal et al vs. Attorney General of Belize*, (Claim No. 17 and 172 of 2007), Judgement of 18 October 2007 (Mayan land rights).

³¹⁴ *Ibid.*

³¹⁵ Marco Odello, *The United Nations Declaration on the Rights of Indigenous Peoples*, in Corinne Lennox and Damien Short (Eds), *Handbook of Indigenous Peoples' Rights*, New York: Routledge, 2016, P. 64.

in the Constitution 2008.³¹⁶ These examples have indeed shown an evolution of international consensus towards acknowledging the rights of indigenous peoples set out in UNDRIP.

Whether or not provisions of UNDRIP have achieved customary law status remains an open question. However, in addition to ILO Convention 169, provisions of UNDRIP remain important as a key legal benchmark for the treatment of indigenous peoples including the Karen in these refugee camps. Karen refugees as indigenous peoples should be eligible for the specific system of indigenous rights under ILO Convention 169 and UNDRIP. The Karen refugees should have a right to establish and control their own educational systems, institutions and facilities, in respect of their own collective cultures. They should have a right to engage economic activities and access vocational training towards employment which is appropriate to their indigenous needs and culture. This would enable the Karen to continue to preserve their own distinct values and tradition while staying in camps. I will discuss this further in chapter 5.

By bringing ILIP into the mix, it is important to acknowledge that there is much debate that the ILIP system of indigenous collective rights are in opposition to the individual rights contained within IRL and IHRL. The entitlement to indigenous collective rights may undermine their enjoyment of the system of individual rights articulated in IRL and IHRL.³¹⁷ However, I contend that these two systems of rights should not be seen as conflicting. It is crucial to stress that the indigenous collective rights articulated in ILIP are of such a nature that indigenous peoples can choose the extent of their participation in them.³¹⁸

The indigenous collective rights articulated in ILIP only seek to enhance their group life and experience, but still preserve the right of indigenous peoples to deviate or exit from that group life should they so choose. This is indeed explicitly stated in the Preamble of UNDRIP, emphasising that indigenous individuals are entitled without discrimination to all the human rights recognised in international law, and that these indigenous peoples at the same time possess collective rights which are indispensable for their existence, well-being and integral development as peoples.

Indigenous collective rights under ILIP are given to the Karen refugees on the basis of preserving their own cultures, values and traditions while seeking refuge in camps in Thailand. These indigenous group rights however should not be understood as being in opposition to the individual rights contained within

³¹⁶ Ecuador, Constitution, *Registro Oficial* 449, 20 October 2008, Articles 16, 29, 347, 379.

³¹⁷ Duncan Ivison, Paul Patton and Will Sanders, *Political Theory and the Rights of Indigenous Peoples*, Melbourne: Cambridge University Press, 2000, P. 1-5. Paul Patton, *Philosophical Justifications for Indigenous Rights*, in Corinne Lennox and Damien Short (Eds), *Handbook of Indigenous Peoples' Rights*, New York: Routledge, 2016.

³¹⁸ Will Kymlicka, *Liberalism, Community and Culture*, Oxford: Oxford University Press, 1989.

IRL or IHRL. Granting these indigenous rights would not prevent the Karen refugees from the enjoyment of protection under IRL and IHRL. Karen refugees should still have the right to access to the Thai education or have the right to engage in Thai labour market and protection at work, on equal terms with other Thai nationals. I will discuss this in more depth in Chapter 5. In other words, ILIP constitutes another layer of protection that complements IRL and IHRL and would only aim to create a protection regime more responsive to the rights and needs of refugees in camps in Thailand, especially for the special needs of the Karen indigenous refugees.

Conclusion:

In this chapter, I have constructed the legal framework by bringing together IRL, IHRL and ILIP in relation to the protection of Karen refugees in camps in Thailand. I have firstly stressed that the primary consequence of Thailand's failure to ratify the 1951 Refugee Convention and its 1967 Protocol is that IRL remains of limited value in protecting refugees in Thai camps. Indeed, these indigenous refugees have not been granted refugee status and therefore are not bestowed the rights attached to this status under IRL. I have then argued that although Thailand is not party to the 1951 Refugee Convention and its 1967 Protocol, it is bound by obligations enshrined in the international human rights instruments it has ratified. Importantly, IHRL addresses some of the limitations of IRL as the range of rights granted by this body of law are conferred on all human beings which includes Karen refugees. However, I have also shown that IHRL is not best placed to uphold the rights of Karen refugees as an indigenous people. The shortcomings of IRL in this respect are even greater. On this basis, I have then argued that ILIP has a vital role to play in filling this protection gap as it recognises Karen refugees' group rights as members of an indigenous people. I have shown that the range of collective indigenous rights enshrined in ILIP do not conflict with the system of individual rights under IRL and IHRL. Rather, by bringing ILIP into dialogue with IRL and IHRL, I bring to the fore the specific protection needs of Karen refugees as members of an indigenous people and how these can be best addressed. In the next chapter I will now discuss the history of Thai government's responses towards refugees, reflecting the country's approach to the ongoing situation of Karen refugees in camps.

Chapter 4: A Historical and Geopolitical Background to the Development of Thai Policy towards Refugees.

Introduction:

Thailand has a long history of hosting thousands of refugees fleeing violence and persecution in neighbouring states.³¹⁹ As Thailand sits in a central geographical position in the Greater Mekong Subregion, along with its relative economic growth and stability, the country has traditionally been a primary destination for migrants in Southeast Asia.³²⁰ In more recent times, and more precisely from the 1940s onwards, Thailand has seen a dual exodus of refugees from Indochina (which included the three present day independent states of Vietnam, Laos and Cambodia) and Karen refugees from Myanmar. While Thailand has a long history of hosting refugees, providing protection to these people has never been the core reason for the country's acceptance of refugees on its territory. The country's responses fluctuate between "harder and softer" approaches, depending largely on political trends in the region, relations with other countries and an ideology which favours the national interest as understood by the Thai government.³²¹ The country continues to uphold the same approach in relation to the ongoing situation of the indigenous refugees in camps.

In this chapter I provide a historical lens to Thailand's approach to refugees in order to shed light on its present policy towards these Karen refugees. I analyse four distinct periods in Thai history and trace the development of Thai policy towards refugees in each period. These four periods are respectively summarised below: Firstly, Indochinese refugees in Thailand in the period of anti-French colonial struggle in French Indochina throughout the 1940's. Secondly, Thai policy on Indochinese refugees within the context of the expansion of Communism from the onset of the Cold War. Thirdly, the Indochinese refugee crisis from 1975-1997 and finally the situation of the Karen refugees from 1984 to the present day.

4.1. Thai Policy towards Indochinese Refugees during the Period of Anti-French Colonial Struggle in Indochina in the 1940s.

During the 1940s, Thailand adopted an accommodating policy towards the arrival of Indochinese refugees on its territory. This is because the country supported independence movements in Indochina

³¹⁹ Pei A Palmgren, Irregular Networks: Bangkok Refugees in The City and Region, *Journal of Refugee Studies*, 27(1), 2014, P. 23. William Courtland Robinson, The Comprehensive Plan of Action for Indochinese Refugees: 1989-1997: Sharing the Burden and Passing the Buck, *Journal of Refugee Studies*, 17(3), 2004, P. 319.

³²⁰ Ibid.

³²¹ Kate Coddington, Landscapes of Refugee Protection, *Royal Geographical Society*, 2018, P. 331. Karen Jacobsen, Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes, *The International Migration Review*, 30(3), 1996, P. 661.

and hoped to gain more regional influence with the defeat of the French colonial power and regain its lost territories.³²² As France occupied the three countries of Indochina, especially Vietnam, for over a century since 1857, Indochinese people had suffered intense periods of French imperial repression, discrimination and extortionate taxation.³²³ In the 1940s, Thailand received a significant number of Vietnamese and Laotian refugees who had fled the French repression of pro-independence movements.³²⁴ The majority of refugees were Vietnamese from Cambodia, Laos and Vietnam, and members of the Viet Minh (members of the Vietnamese Communist Party) or Lao Issara (Free Laotians).³²⁵ There were also farmers who did not engage in national uprisings against French colonialism and who had to escape Indochina for other reasons, such as to avoid heavy French taxes and oppression.³²⁶

As Thailand lost significant portions of land in Indochinese territories (the area of Laos along the right bank (west side) of the Mekong and the Cambodian provinces of Battambang and Siemreap) to France by 1909, this led to an ongoing undercurrent within Thai politics in the early 1940s which sought to rid, Indochina, and Thailand itself, of French influence.³²⁷ Thailand feared being swept away by other more powerful countries and believed that they must recover their lost territories, that had been taken away by the French.³²⁸ At this time/era, the size of a country's population was the most important indicator of its national strength. From the viewpoint of the Thai government, the loss of a portion of Indochinese territory to the French also meant a loss of population, and the Thai leadership's hope was to regain population as a way to recover lost power.³²⁹

Therefore, Thailand assisted members of the Viet Minh, Lao Issara and the Khmer Issarak (the Free Khmer in Cambodia) liberation movements by carrying out a fundraising campaign and undertaking

³²² Sara E. Davies, *Saving Refugees or Saving Borders? Southeast Asian States and The Indochinese Refugee Crisis*, *Global Change, Peace and Security*, 18(1), 2006, P. 7.

³²³ Christopher E Goscha, *The Penguin History of Modern Vietnam*, London: Allen Lane, 2016. Pierre Brocheux and Daniel Hemery, *Indochina: An Ambiguous Colonisation, 1858-1954*, California: University of California Press, 2011.

³²⁴ Peter A. Poole, *The Vietnamese in Thailand: A Historical Perspective*, Ithaca: Cornell University Press, 1970.

³²⁵ Sara E. Davies, *Saving Refugees or Saving Borders? Southeast Asian States and The Indochinese Refugee Crisis*, *Global Change, Peace and Security*, 18(1), 2006, P. 7.

³²⁶ Eiji Murashima, *Opposing French Colonialism: Thailand and the Independence Movements in Indo-China in the Early 1940s*, *South East Asia Research*, 13(3), 2005, P. 345.

³²⁷ Kobkua Suwannathat-Pian, *Thailand's Durable Premier: Phibun through Three Decades 1932-1957*, Oxford: Oxford University Press, 1995, P. 256-257.

³²⁸ Wichit Wathakan, *Luang Wichit Wathakan's Addresses on Thailand's Demand for the Return of Its Lost Territories*, Bangkok: Department of Publicity, 1941, P. 37-38.

It is noted that the concern of the position of Thailand in the world was spread in the Thai government at that time and Luang Wichit Wathakan – the cabinet minister without portfolio expressed this concern in public and talked about the building of a powerful Thai nation on 17 October 1940 to students at the military academy.

³²⁹ Eiji Murashima, *Opposing French Colonialism: Thailand and the Independence Movements in Indo-China in the Early 1940s*, *South East Asia Research*, 13(3), 2005, P. 345.

military preparation against the French.³³⁰ The Thai government allowed the Indochinese independence movements to reside in Thailand and allowed the Indochinese groups to use Thai territory as an all-important rear base for their fight against French colonial rule.³³¹ As a consequence of the country's support for independence movements and anti-French anti-colonial agitation, Thailand welcomed the arrival of refugees from Indochina in Thailand during the 1940s.³³²

Accordingly, people from Laos and Cambodia (excluding Vietnamese living in Laos and Cambodia) were, in the Thai government's view, considered to belong to the *Chuachat Thai*, having "the same skin, the same Thai blood and more importantly the same French enemy".³³³ It should be noted that the phrase *Chuachat Thai* refers to those regarded to be part of the ethnic Thai group. From the perspective of the Thai government, Laos and Cambodia were former Thai territories that had to be recovered. All their inhabitants (excluding Vietnamese) were therefore viewed as part of the *Chuachat Thai*.³³⁴ The Thai government viewed refugees from these groups coming to Thailand as displaying loyalty to the homeland and helped them to quickly settle well in the country.³³⁵ Refugees from Laos and Cambodia, were, under Thai policy at the time, unconditionally granted Thai citizenship and were able to freely move within the country and work.³³⁶

For Vietnamese refugees, the Thai government did not view them as *Chuachat Thai*, but understood that the country and Vietnam had the same French enemy.³³⁷ The anti-French struggle of the Thai peoples to recover their lost lands, and the anti-French struggle of the Vietnamese to take back their independence were two sides of a joint struggle against French colonialism.³³⁸ The Thai government therefore believed that by supporting the Vietnamese as French colonialism weakened, Thailand could regain its lost territories.³³⁹ Vietnamese, were, therefore, seen as "brothers and sisters" of the Thai and

³³⁰ Ibid, P. 334-337.

³³¹ Ibid, P. 334. Eiji Murashima, *Thai-Japanese Alliance and The Chinese of Thailand*, in Paul H Kratoska (Ed), *Southeast Asian Minorities in the Wartime Japanese Empire*, London: Routledge, 2002, P 197.

³³² Ministry of Interior Decree, 20 December 1940 (Khao Khosanakan, 1941, P. 67-68). See also: Minister of Interior Note 444/2483 of the Same Date to the Provincial Governors (Thai Foreign Ministry, Documents Section, Archival Documents, NC3:3/ 4; Khao Khosanakan, 1941, P. 242-245).

³³³ Ibid.

³³⁴ Eiji Murashima, *Opposing French Colonialism: Thailand and the Independence Movements in Indo-China in the Early 1940s*, *South East Asia Research*, 13(3), 2005, P. 342.

³³⁵ Ministry of Interior Decree Concerning Exemptions from Immigration Fees and Procedures, 5 September 1940. See also: The Thai Publicity Department, *The Report on the Decree Concerning Exemptions from Immigration Fees and Procedures*, 19 September 1940 (Khao Khosanakan, 1940, P. 1669).

³³⁶ Ministry of Interior Decree, 20 December 1940 (Khao Khosanakan, 1941, P. 67-68). See also: Minister of Interior Note 444/2483 of the Same Date to The Provincial Governors (Thai Foreign Ministry, Documents Section, Archival Documents, NC3:3/ 4; Khao Khosanakan, 1941, P. 242-245).

³³⁷ Eiji Murashima, *Opposing French Colonialism: Thailand and the Independence Movements in Indo-China in the Early 1940s*, *South East Asia Research*, 13(3), 2005, P. 342.

³³⁸ Ibid.

³³⁹ Ibid.

part of the people of the Golden Peninsula (*Laem Thong*).³⁴⁰ Vietnamese refugees were very welcome in Thailand during this period, but were not treated as favourably as people from Laos and Cambodia. Vietnamese were not automatically given Thai citizenship, but were exempted from the need to register as foreign nationals and allowed to quickly resettle in Thai provinces.³⁴¹

It is important to note this period was an exceptional time in modern Thai history in that Thailand did not look upon Vietnam as a strategic threat or rival.³⁴² The Thai government at the time was largely unconcerned about having pro-communist Viet Minh migrants seek refuge in their thousands along their border regions.³⁴³ It is notable that no major East or Southeast Asian power had a Communist government at the time. With an expansion of Communism in the region later, there were significant changes in the relationship between these two countries. This then shaped Thailand's shift towards more restrictive policies towards the Vietnamese refugees. I will discuss this further in section 4.2.

It can be seen that the preferential treatment given to refugees from Indochina during the 1940s was not due to humanitarian ideals, nor due to sharing feelings of sympathy to those in need of protection. Rather, the ulterior motive behind the adoption of this accommodating policy was driven by the Thai national interest. It was the Thai government's efforts to recover the country's lost lands and eventually gain more regional influence that provided the ideological framework grounding a more open refugee policy. The status of people from Laos and Cambodia as *Chuachat Thai* for example only served as a rationale to justify the Thai government's demand for the return of these territories to Thailand. Once refugees from Indochina were no longer regarded as helpful for the building of a united Thailand, the country's leadership was willing to drop its support for these refugees off sharply. In particular, this welcoming policy of Thailand only lasted until the Cold War greatly intensified in the late 1940s. In the next section I will turn to discuss the situation of Indochinese refugees in Thailand from the onset of the Cold War and how these geopolitical events at the time brought about changes in Thai refugee policy.

4.2. Thai Policy towards Indochinese Refugees in Relation to the Expansion of Communism in East and Southeast Asia from the Onset of the Cold War.

As I outlined in the previous section, refugees who fled from Indochina were previously welcomed and used to be seen as on the same side with Thailand against French colonialism. In contrast, from the onset of the Cold War, fear of a rapid spread of Communism in the region and the risk of Communist

³⁴⁰ Ibid, P. 339-342, 344.

³⁴¹ Ibid.

³⁴² Ibid, P. 339.

³⁴³ Sara E. Davies, Saving Refugees or Saving Borders? Southeast Asian States and the Indochinese Refugee Crisis, *Global Change, Peace & Security*, 18(1), 2006, P. 7.

insurgency inside Thailand led to the Thai government's imposition of restrictions towards the Indochinese refugees.³⁴⁴ The country sought to return these refugees to their home states as soon as possible.³⁴⁵ This period marks the shift of Thailand towards more restrictive refugee policies.

When the Second World War came to an end, the world moved into the Cold War in the late 1940s, which saw the rise of an ideological conflict between the Eastern Bloc and Western Bloc. While the United States (US)'s goals were shaped, at least nominally, by democratic liberal values, Soviet Communism rested on Marxist-Leninist ideology.³⁴⁶ The victory of the Chinese Communist Party in 1949 and the establishment of Communist China was a major turning point in Asia. During the Cold War, US leaders saw the Soviet Union and Communist China as an expansionist threat which challenged the US's sense of its mission based on the promotion of liberal democracy and global capitalism.³⁴⁷ Vigilance against Communism was a national priority at the height of the Cold War, including both in the industrialised world and in developing countries.³⁴⁸

While the Cold War was intensifying, Communism grew in strength in Indochina, particularly in the North of Vietnam, in order to fight the French empire throughout the First Indochina War (1945-1954).³⁴⁹ There was a military confrontation led by the Communist Viet Minh supported by Chinese and Soviet Communists in order to defeat the French military.³⁵⁰ As the First Indochina War between the Vietnamese Communist party and the French was still ongoing, the Thai government became increasingly concerned about Communist sympathy within the country's Chinese and Vietnamese communities.³⁵¹ Thai leaders were highly fearful that these communities could become a vehicle for introducing and spreading Communist opposition in Thailand and the wider region.³⁵² These fears were heightened when Thailand realised that the Viet Minh refugee community in Thailand was receiving Chinese military aid to continue their struggle against French colonialism.³⁵³

³⁴⁴ Ibid.

³⁴⁵ Karl Hack and Geoff Wade, *The Origins of the Southeast Asian Cold War*, *Journal of Southeast Asian Studies*, 40(3), 2009, P. 446-447.

³⁴⁶ Mark Kramer, *Ideology and the Cold War*, *Review of International Studies*, 25(4), 1999, P. 540.

³⁴⁷ Klaus Dodds, *Cold War Geopolitics*, in John A. Agnew, Katharyne Mitchell and Gerard Toal (Eds), *A Companion to Political Geography*, Cornwall: Blackwell Publishing Ltd, 2003, P. 206. Ronald E. Powaski, *The Cold War: The United States and The Soviet Union, 1917-1991*, Oxford: Oxford University Press, 1997, P. ix-x.

³⁴⁸ Stephen J Whitfield, *The Culture of the Cold War*, Maryland: Johns Hopkins University Press, 1996.

³⁴⁹ Mark Atwood Lawrence and Fredrik Logevall, *The First Vietnam War: Colonial Conflict and Cold War Crisis*, Cambridge: Harvard University Press, 2007.

³⁵⁰ Pierre Asselin, *Vietnam's American War: History*, Cambridge: Cambridge University Press, 2018.

³⁵¹ Sara E. Davies, *Saving Refugees or Saving Borders? Southeast Asian States and The Indochinese Refugee Crisis*, *Global Change, Peace and Security*, 18(1), 2006, P. 7.

³⁵² Ibid.

³⁵³ Ibid. See also: Peter A. Poole, *The Vietnamese in Thailand: A Historical Perspective*, Ithaca: Cornell University Press, 1970, P. 44-45.

With the expansion of Communism in the region, Thai leaders became more concerned with the longer-term complexity of their relationship with neighbouring countries, especially China.³⁵⁴ Thailand therefore built its foreign policy with regard to Indochina on the belief that Thailand represented part of the “free world” against the “Communist world” that seemed on the rise throughout Indochina.³⁵⁵ Thai leaders came to emphasise that it was impossible for Thailand to live with Communist neighbours.³⁵⁶ The country adopted a suspicious attitude towards the rapid expansion of Communism in the region and positioned itself as a strong ally of the US in promotion of the anti-Communist cause during the Cold War.³⁵⁷ With enormous economic and military aid from the US, Thailand’s government was an enthusiastic participant in anti-Communist efforts, visiting allies and hosting soldiers in the region and strongly supporting the military’s counter-insurgency campaigns.³⁵⁸

With a political climate that had become distinctly anti-Communist, the Thai government came to see the Communism in the Indochinese states, especially in Vietnam, as a formidable enemy.³⁵⁹ Restrictions were then placed on the Indochinese refugees by the Thai government. The Indochinese refugees were now only allowed to live and work in the 13 provinces along the eastern and northern borders of Thailand.³⁶⁰ While in the previous period, the Thai government was unconcerned about having pro-communist Viet Minh refugees, the country now asked these refugees to close their office in Bangkok.³⁶¹ In 1950, Thailand formally recognised the French-sponsored Bao Dai government in Vietnam (which later transformed into the anti-Communist Southern Republic of Vietnam) and also acquiesced to France’s request that Viet Minh refugee activities on the Thai–Laos border would be restricted.³⁶² Travel within the region was limited for refugees. They were assigned to one of five Thai regions and had to seek permission from the Thai Ministry of the Interior before being allowed to travel to a neighbouring province.³⁶³

As soon as the First Indochina War came to an end with the French withdrawal from the three now independent states of Indochina after the Viet Minh victory at Dien Bien Phu in 1954, the Thai

³⁵⁴ Chris Baker and Pasuk Phongpaichit, *A History of Thailand*, Cambridge: Cambridge University Press, 2014, P. 144.

³⁵⁵ Surin Maisrikrod, *Thailand’s Policy Dilemmas Towards Indochina*, *Contemporary Southeast Asia*, 14(3), 1992, P. 291.

³⁵⁶ *Ibid.*

³⁵⁷ Matthew Phillips, *Thailand in the Cold War*, New York: Routledge, 2015, P. 3-6.

³⁵⁸ Kevin Hewison, *The Monarchy and Succession*, in Pavin Chachavalpongpun (Ed), *Routledge Handbook of Contemporary Thailand*, New York: Routledge, 2019, P. 120.

³⁵⁹ Surin Maisrikrod, *Thailand’s Policy Dilemmas Towards Indochina*, *Contemporary Southeast Asia*, 14(3), 1992, P. 291.

³⁶⁰ Sara E. Davies, *Saving Refugees or Saving Borders? Southeast Asian States and the Indochinese Refugee Crisis*, *Global Change, Peace and Security*, 18(1), 2006, P. 7.

³⁶¹ *Ibid.*

³⁶² *Ibid.*

³⁶³ *Ibid.*

government quickly sought to secure of return of the Indochinese refugees.³⁶⁴ In particular, with defeat of the French in Vietnam and the signing of the Geneva Accords in July 1954, it was agreed that Cambodia and Laos would be declared “neutral” states constituting a buffer.³⁶⁵ Vietnam would be temporarily divided into northern and southern halves pending elections. The Thai leadership was heavily concerned about the political involvement of Thailand’s Vietnamese in the political wrangling of the Second Indochina War (1954-1975) in Vietnam.³⁶⁶ The conflict occurred between the North led by the Vietnamese Communist party and backed by Soviet Union and China and the South backed by the US. Therefore, the Thai government put significant effort into returning these refugees to Vietnam as fast as possible.³⁶⁷

Like in the previous period, Thai policy towards Indochinese refugees from the onset of the Cold War squarely revolved around elite Thai conceptions of the national interest. Thailand’s restrictive policy in this period was in particular driven by the country’s anti-Communist position and its alliance with the US. This becomes evident given the fact that as soon as Thailand realised that the Viet Minh refugee community had connection with Chinese Communist party, the country tightened rules and put restrictions on these refugees. There was no interest in protecting these Indochinese refugees. The Thai leadership was willing to do everything to prevent the country from being dragged into further conflict and war in Indochina, including sending these refugees out of the country as quickly as they could. The shift of Thailand towards more restrictive policies in this period placed Indochinese refugees in a much harder situation compared with the previous period.³⁶⁸

In the next section I will discuss Thai policy toward the exodus of Indochinese refugees in the country immediately after 1975. This is known as the “Indochinese refugee crisis” or “the outbreak of Southeast Asia’s largest refugee crisis” since the Second World War,³⁶⁹ which did not come to an end until 1997. On nomenclature, it should be noted that, at the time, the terms “Indochina/Indochinese” were still used to refer to the countries/peoples of Cambodia, Laos and Vietnam even after they had become independent from each other. This crisis played an important part in the history of Thailand’s refugee policies, especially those concerning refugees in camps.

³⁶⁴ Ibid.

³⁶⁵ William Courtland Robinson, *Terms of Refuge: The Indochinese Exodus and the International Response*, London: Zed Books Ltd, 1998, P. 12.

³⁶⁶ Sara E. Davies, *Saving Refugees or Saving Borders? Southeast Asian States and the Indochinese Refugee Crisis*, *Global Change, Peace and Security*, 18(1), 2006, P. 7.

³⁶⁷ Ibid.

³⁶⁸ Ibid.

³⁶⁹ Ibid, P. 3.

4.3. Thai Policy towards the Indochinese Refugee Crisis (1975-1997).

4.3.1. From 1975 to 1980.

As the Second Indochina War came to an end in 1975 with the victory of the Vietnamese Communist Party, the US withdrew all its forces in the Indochinese region, leaving hundreds of thousands of US supporters in Cambodia, Laos and Vietnam to their fate.³⁷⁰ By October 1975, 15,000 Cambodians, 1500 Vietnamese and 39,000 Laotians fled into Thailand.³⁷¹ This Indochinese refugee crisis in Thailand was significantly intensified with the outbreak of war between the Vietnamese and the Cambodian regimes, with the Vietnamese invasion of Communist Cambodia (Democratic Kampuchea/the Khmer Rouge) in late 1978.³⁷² This conflict is known as the Third Indochina War (1978-1997). With the fall of the Pol Pot regime in early January 1979, Thailand saw large groups of Cambodian refugees who were the remnant forces of the Pol Pot government flee to the Thai border areas and use them as a zone to regroup and fight back.³⁷³ This led to over 70,000 Cambodians crossing into Thailand in a ten-day period in mid-October 1979.³⁷⁴

For the first time, Thailand received a very rapid and large number of refugees from the states of Indochina and in general responded to these Indochinese refugees with a hard-line and quite restrictive attitude.³⁷⁵ In particular, the country for the first time set up camps for temporary asylum.³⁷⁶ Displaced persons who entered Thailand had to report to relevant authorities and could only stay in camps.³⁷⁷ It is important to note here that registration with the Thai authorities only enabled refugees to stay in camps while waiting for third country resettlement or repatriation to their homes in the future.³⁷⁸ Thailand still did not consider these displaced Indochinese on its soil as refugees and never meant to allow these

³⁷⁰ Gil Loescher, *The UNHCR and World Politics: Perilous Path*, Oxford: Oxford University Press 2003, P. 190. Sara E Davies, *Saving Refugees or Saving Borders? Southeast Asian States and the Indochinese Refugee Crisis*, *Global Change, Peace and Security*, 18(1), 2006, P. 8.

³⁷¹ United Nations General Assembly (UNGA), "Report on UNHCR Assistance Activities in 1974–1975 and Proposed Voluntary Funds Programme and Budget for 1976, Addendum 2 Assistance to Displaced Persons from Indochina in Thailand", Executive Committee of The High Commissioner's Programme, 26th Session, A/AC.96/516/Add.2, 2 October 1975, P. 2. See also: Sara E Davies, *Saving Refugees or Saving Borders? Southeast Asian States and the Indochinese Refugee Crisis*, *Global Change, Peace and Security*, 18(1), 2006, P. 11.

³⁷² Rubén G. Rumbaut, *A Legacy of War: Refugees from Vietnam, Laos and Cambodia*, in Silvia Pedraza and Ruben Rumbaut (Eds), *Origins and Destinies: Immigration, Race, and Ethnicity in America*, Missouri: Wadsworth, 1995, P. 6.

³⁷³ Frank Frost, *Vietnam, ASEAN and the Indochina Refugee Crisis*, *Southeast Asian Affairs*, 1980, P. 364.

³⁷⁴ *Ibid.*, P. 365.

³⁷⁵ Supang Chantavanich and Paul Rabe, *Thailand and the Indochinese Refugees: Fifteen Years of Compromise and Uncertainty*, *Southeast Asian Journal of Social Science*, 18(1), 1990, P. 69.

³⁷⁶ *Ibid.*, P. 68-69.

³⁷⁷ *Ibid.*

³⁷⁸ *Ibid.* See also: Chan Kwok Bun, *Getting through Suffering: Indochinese Refugees in Limbo 15 Years Later*, *Southeast Asian Journal of Social Science*, 18(1), 1990, P. 14.

refugees to settle in its Thai territories.³⁷⁹ They were never given refugee status. As discussed in section 4.4, the country continues to apply this same approach to the ongoing situation of the Karen in camps.

It is important to note that compared with people from Laos and Vietnam, refugees from Cambodia were treated with a “softer” and “more open-door” policy. This is due to Thailand strongly supportive stance towards Cambodia (as they were fighting Thailand’s enemy, the Vietnamese) and its closer relationship with China in this period.³⁸⁰ Accordingly, no refugees from Cambodia were to be turned back or barred from entering Thai territory and temporary asylum in camps was automatically granted to these refugees.³⁸¹ The Thai government invited the United Nations Higher Commissioner for Refugees (UNHCR) as a leading agency of emergency relief operations for Cambodian refugees in the country.³⁸²

These refugees would be transferred to camps that were established with aid from the UNHCR.³⁸³ For example, Khao I Dang – the largest camp of Cambodian refugees in Thailand was established in late 1979 and administered by the UNHCR.³⁸⁴ The UNHCR provided Cambodian people in camps with education including vocational training and recreational activities.³⁸⁵ It is important to note that even though the UNHCR was allowed to support the Cambodian refugees, their role remained very limited and under the control of the Thai government.³⁸⁶ This remains the same in relation to the present situation of Karen refugees in camps, which I will discuss further in section 4.4.

It is not hard to see that this “softer” policy toward Cambodian refugees was driven by the fact that the geopolitical environment had now changed dramatically. In particular, while the Second Indochina War was, as mentioned in section 4.2, a Cold War conflict between Communist countries and the US and its allies, the Third Indochina War was a conflict between Communist victors, each fearing the dominance of the other within the Communist world. After the Second Indochina War ended in 1975, the antagonisms between China, Vietnam and Cambodia within the context of the Cold War surfaced.³⁸⁷ The Vietnamese government ultimately came to see Cambodia as a pawn of Chinese interests at a time

³⁷⁹ Supang Chantavanich and Paul Rabe, Thailand and the Indochinese Refugees: Fifteen Years of Compromise and Uncertainty, *Southeast Asian Journal of Social Science*, 18(1), 1990, P. 68-69.

³⁸⁰ *Ibid.*, P. 70.

³⁸¹ *Ibid.*

³⁸² Yumiko Suenobu, *Management of Education Systems in Zones of Conflict-Relief Operations: A Case-Study in Thailand*, Bangkok: United Nations Educational, Scientific and Cultural Organisation (UNESCO) Principle Regional Office for Asia and the Pacific, 1995, P. 1-6.

³⁸³ Frank Frost, *Vietnam, ASEAN and the Indochina Refugee Crisis*, *Southeast Asian Affairs*, 1980, P. 365.

³⁸⁴ Yumiko Suenobu, *Management of Education Systems in Zones of Conflict-Relief Operations: A Case-Study in Thailand*, Bangkok: UNESCO Principle Regional Office for Asia and the Pacific, 1995, P. 1-6.

³⁸⁵ *Ibid.*

³⁸⁶ Supang Chantavanich and Paul Rabe, Thailand and the Indochinese Refugees: Fifteen Years of Compromise and Uncertainty, *Southeast Asian Journal of Social Science*, 18(1), 1990, P. 70.

³⁸⁷ David Elliott and Gareth Porter, *The Third Indochina Conflict*, New York: Routledge, 2019.

when China had clearly signalled its hostility to Vietnam due to a perception of its pro-Soviet stance within the context of the Sino-Soviet split.³⁸⁸ In contrast, Pol Pot worried about potentially imperial ambitions from Vietnam's leadership, which had traditionally wished to dominate the entire region of what was formerly French Indochina.³⁸⁹ With the full-scale Vietnamese invasion of Cambodia in late 1978, the Chinese government was suspicious that Vietnam was acting as a surrogate for the Soviet Union³⁹⁰ and viewed Vietnam as a potential threat in Southeast Asia.³⁹¹ China sided with Cambodia and aimed to prevent what it saw as a Soviet encirclement of China in the consolidation of Vietnamese power.³⁹²

The failure of the US war effort in Southeast Asia in 1975 put Thailand in one of the most difficult situations in its history.³⁹³ The threat of the expansion of Vietnam in the region backed by Soviet assistance eventually moved Thailand into a closer relationship with China. From the Thai perspective, China was the only power that could apply relentless pressure against Vietnam to force a withdrawal from Cambodia.³⁹⁴ A strongly independent Cambodia could, in the view of the Thai Government, serve as a "buffer between Thailand and Vietnam".³⁹⁵ Thailand, China and Cambodia were now allied against the Vietnamese. While the Soviet Union supported the Vietnamese, the US pursued an anti-Soviet strategy and supported China, Thailand and its allies.³⁹⁶ Together with China, Thailand played a significant role in supporting and training various Cambodian resistance troops (the Khmer Rouge).³⁹⁷ This effort included launching a "softer" policy towards the Cambodian refugees in Thailand. However, the favourable treatment of Thailand towards these refugees only lasted until 1981.

³⁸⁸ Ibid. See also: Karl D Jackson, Cambodia 1978: War, Pillage and Purge in Democratic Kampuchea, *Asian Survey*, 19(1), 1979.

³⁸⁹ Stephen J Morris, *Why Vietnam Invaded Cambodia: Political Culture and the Causes of War*, California: Stanford University Press, 1999, P. 6.

³⁹⁰ Sally W Stoecker, Clients and Comments: Soviet-Vietnamese Relations 1978-1988, The Rand Corporation, 1989, P. 5 – 7, <<https://www.rand.org/content/dam/rand/pubs/notes/2009/N2737.pdf>> Accessed by 20 April 2021.

³⁹¹ Michael Leifer, The Third Indochina Conflict, *Asian Affairs*, 14(2), 1983, P. 126.

³⁹² William S Turley and Jeffrey Race, The Third Indochina War, *Foreign Policy*, 38, 1980, P. 102-103.

³⁹³ John Funston, The Third Indochina War and Southeast Asia, *Contemporary Southeast Asia*, 1(3), 1979, P. 282.

³⁹⁴ Khien Theeravit, Thai-Kampuchean Relations: Problems and Prospects, *Asian Survey*, 22(6), 1982, P. 573. See also: Leszek Buszynski, Thailand: The Erosion of a Balanced Foreign Policy, *Asian Survey*, 22(11), 1982, P. 1045.

³⁹⁵ John Funston, The Third Indochina War and Southeast Asia, *Contemporary Southeast Asia*, 1(3), 1979, P. 282-283.

³⁹⁶ Edward C. O'Dowd, *Chinese Military Strategy in the Third Indochina War: The Last Maoist War*, New York: Routledge, 2007, P. 6.

³⁹⁷ John Funston, The Third Indochina War and Southeast Asia, *Contemporary Southeast Asia*, 1(3), 1979, P. 283.

4.3.2. From 1981 to 1997.

The influx of refugees from Laos was continuing and the rate of intake from Cambodia had greatly increased and showed no sign of falling.³⁹⁸ With the ongoing instability in Indochina, especially the continued fighting between Vietnam and Cambodia, the Indochinese refugee crisis seemed to be without end. Consequently, the Thai government now introduced a new policy called “humane deterrence” in early 1981, which removed the previous open-door policy.³⁹⁹ This policy officially called for the closure of the Thai border to new arrivals as well as the elimination of incentives for Indochinese refugees to cross into Thailand.⁴⁰⁰ No more new arrivals of Indochinese refugees, including Cambodian refugees, were accepted. To discourage more refugees from choosing Thailand as a possible destination, no more third country resettlement was permitted under this policy.⁴⁰¹ There were only some exceptions, for example, those being granted permission to emigrate under family reunion provisions.⁴⁰² The Thai government repeatedly emphasised that repatriation was the only acceptable solution.⁴⁰³

The continuing practice of pushback, or forced repatriation, under this “humane deterrence” policy of Thailand in this period faced international criticism and attracted significant discussion among the international community.⁴⁰⁴ An international Conference was held in June 1989 in Geneva with attendance from 70 countries including Thailand.⁴⁰⁵ The conference adopted the Comprehensive Plan of Action (CPA) that was in place from 1989 to 1997.⁴⁰⁶ Its purpose was to end the ongoing tragedy and preserve asylum while reducing incentive for further exodus of Indochinese refugees.⁴⁰⁷ The CPA was, in particular, a model for multi-lateral cooperation, between the first asylum states in Southeast Asia (including Thailand), the third countries for resettlement (mainly Western countries) and the countries of origin (Cambodia, Vietnam and Laos).⁴⁰⁸ In other words, the CPA served as a model of how interlocking commitments – to asylum, third-country resettlement and repatriation – could be governed.

³⁹⁸ Frank Frost, Vietnam, ASEAN and the Indochina Refugee Crisis, Southeast Asian Affairs, 1980, P. 365.

³⁹⁹ Supang Chantavanich and Paul Rabe, Thailand and the Indochinese Refugees: Fifteen Years of Compromise and Uncertainty, Southeast Asian Journal of Social Science, 18(1), 1990, P. 70.

⁴⁰⁰ Ibid.

⁴⁰¹ Yumiko Suenobu, Management of Education Systems in Zones of Conflict-Relief Operations: A Case-Study in Thailand, Bangkok: UNESCO Principle Regional Office for Asia and the Pacific, 1995, P. 8.

⁴⁰² Ibid.

⁴⁰³ Ibid.

⁴⁰⁴ Sara E Davies, Legitimising Rejection: International Refugee Law in Southeast Asia, Leiden: Brill, 2007, P. 157.

⁴⁰⁵ UNGA, Declaration and Comprehensive Plan of Action of the International Conference on Indo-Chinese Refugees, A/44/523, 22 September 1989, <<https://www.refworld.org/docid/3dda17d84.html>> Accessed by 17 April 2021.

⁴⁰⁶ Ibid.

⁴⁰⁷ William Courtland Robinson, The Comprehensive Plan of Action for Indochinese Refugees: 1989-1997: Sharing the Burden and Passing the Buck, Journal of Refugee Studies, 17(3), 2004, P. 321.

⁴⁰⁸ Ibid, P. 319.

Under the CPA, Thailand as the first asylum state with support of the UNHCR had a responsibility to organise the screening interviews to determine the refugee status of people fleeing from Indochina.⁴⁰⁹ Those with a successful status were transferred to camps in order to prepare their resettlement to third countries, while rejected cases were then sent to camp “pending repatriation”.⁴¹⁰ It is important to note here that even if Indochinese refugees were successful in these screening interviews under the CPA, they were, under Thai law, never seen as or formally recognised as refugees.⁴¹¹ In fact, Thailand under the CPA only implemented the screening procedures on the condition that Western countries, mainly the US at the time, would agree to accept intakes of Indochinese refugees and that the countries of origin (Cambodia, Vietnam and Laos) would assist the return of refugees.⁴¹²

To some extent, the CPA brought the long-lasting Indochinese refugee crisis in Thailand to an end.⁴¹³ Indochinese refugees had by 1997 either been repatriated to their countries of origin, or had been resettled in third countries. However, one thing that is clear is that throughout this Indochinese refugee crisis, the protection of refugees was never the core objective of Thai policy. Thai policy towards Indochinese refugees from 1975-1997, like in previous periods, emphasised national interests.⁴¹⁴ In particular, the softer approach taken towards Cambodian refugees in this period was only granted on the basis that it would serve to maintain Cambodia as a buffer-state to weaken the expansion of Communist Vietnam in the region.⁴¹⁵ When the number of Indochinese refugees dramatically increased, only then was the country willing to impose restrictive rules.⁴¹⁶ To be clear, the adoption of the CPA and the implementation of screening procedures was never intended to provide these Indochinese refugees with protection and settlement. Rather, the focus of Thailand’s cooperation with other states was aimed at deterring and removing refugees from the country as fast as possible.

It is important to note that the approach prioritising what is perceived to be Thai national interests, evident with the Indochinese refugees, remains central to the strategy of the Thai government in dealing with the situation of Karen refugees presently living in nine camps along the Thai-Myanmar border.

⁴⁰⁹ UNGA, Declaration and Comprehensive Plan of Action of the International Conference on Indo-Chinese Refugees, A/44/523, 22 September 1989, <<https://www.refworld.org/docid/3dda17d84.html>> Accessed by 17 April 2021.

⁴¹⁰ Sara E Davies, *Legitimising Rejection: International Refugee Law in Southeast Asia*, Leiden: Brill, 2007, P. 203-204. UNGA, Note on National Procedures for the Determination of Refugee Status, Coordinating Committee for the International Conference on Indochinese Refugees, A/CONF: 148/4, 25-26 May 1989, P. 9-10.

⁴¹¹ Ibid.

⁴¹² Ibid.

⁴¹³ UNHCR, *Flight from Indochina*, in *The State of the World’s Refugees 2000: Fifty Years of Humanitarian Action*, Oxford: Oxford University Press, 2000, P. 102.

⁴¹⁴ Supang Chantavanich and Paul Rabe, *Thailand and the Indochinese Refugees: Fifteen Years of Compromise and Uncertainty*, *Southeast Asian Journal of Social Science*, 18(1), 1990, P. 68.

⁴¹⁵ Ibid, P. 70.

⁴¹⁶ Ibid.

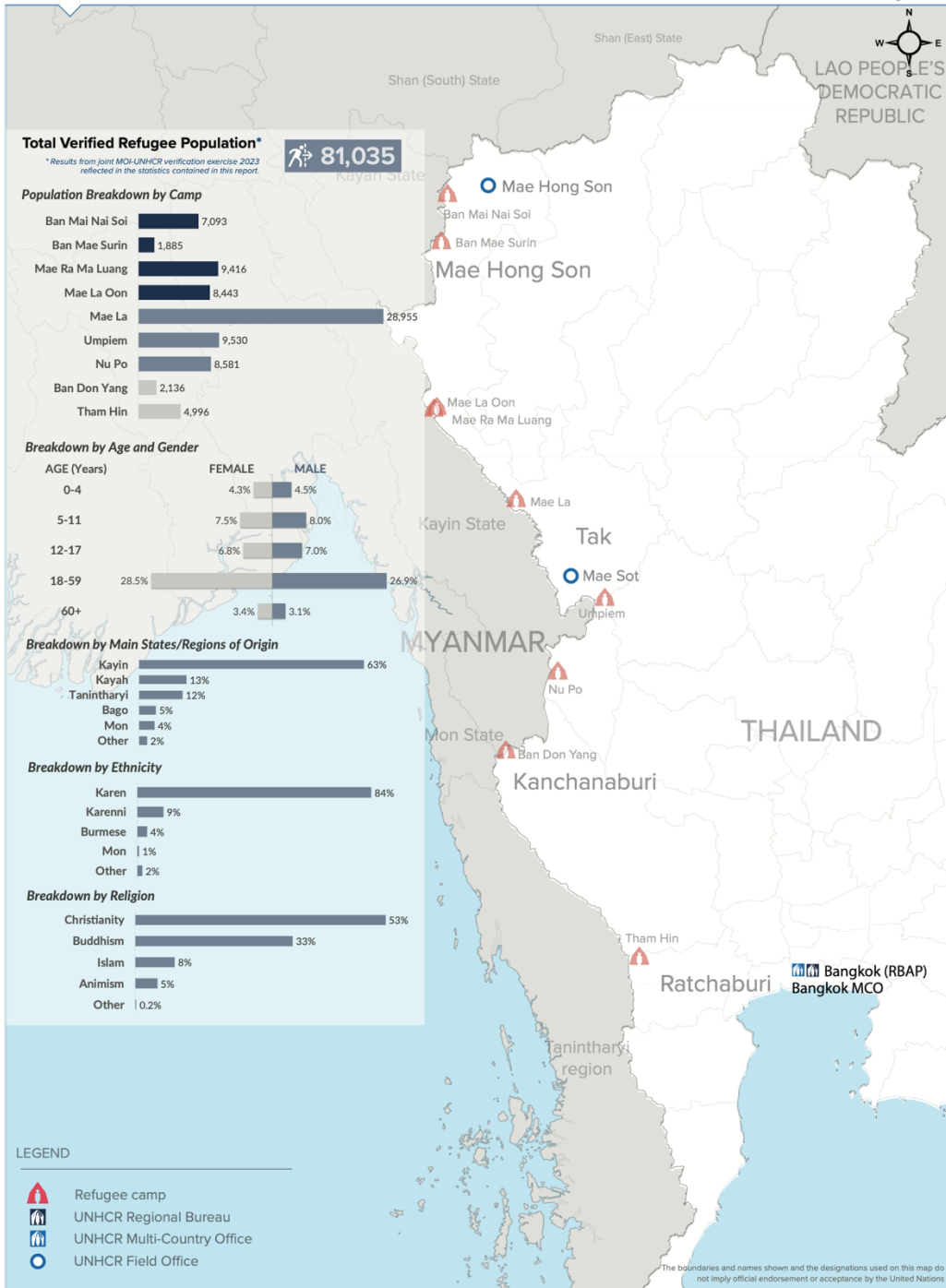
This approach has left the indigenous refugees in a protracted and uncertain situation for decades now, in particular without having access to the basic and fundamental right to work. An in-depth analysis of this will be discussed in chapter 5. In the next section I will analyse the origins of the situation of the indigenous Karen refugees in camps in present day in Thailand, and the development of Thailand's policies towards the indigenous refugees.

4.4. The Arrival of the Karen Refugees in Thailand and Thai Policy since 1984 until the Present.

Today in Thailand there are a total of nine refugee camps (Ban Mai Nai Soi, Ban Mae Surin, Mae La Oon, Mae Ra Ma Luang, Mae La, Umpiem Mai, Nupo, Ban Don Yang and Tham Hin) located in four provinces along the Thai-Myanmar border.⁴¹⁷ The map of refugee camps in Thailand can be seen below. As of November 2024, there are approximately 86,539 refugees presently living in these nine camps. They are from Myanmar and the significant majority of them are from indigenous Karen groups.⁴¹⁸

⁴¹⁷ UNHCR, RTG/MOI-UNHCR Verified Refugee Population as of November 2024, <https://www.unhcr.org/th/en/ekiiywkab-unhcr/unhcr-thailand#:~:text=At%20present%2C%20Thailand%20continues%20to,by%20the%20RTG%20as%20stateless> Accessed by 15 December 2024.

⁴¹⁸ Ibid.



Creation date: 09 September 2024 | Source: UNHCR Thailand MCO | Author: UNHCR Thailand MCO

For more information, visit: <https://data.unhcr.org/en/situations/myanmar>

(Source: UNHCR⁴¹⁹)

⁴¹⁹ Ibid.

The current protracted situation of the indigenous Karen refugees in Thai camps finds its origin in the long-lasting ethnic conflicts inside Myanmar, which remains ongoing. Thailand's policy vis-à-vis the indigenous refugees in camps was in the main shaped by its relations with Myanmar and remains restrictive to date. I will divide this section into two sub-sections as below, equivalent with two periods that marked significant changes in Thai policy toward refugees.

4.4.1. From 1984 to 1988.

When the first Karen refugees from Myanmar began to arrive in camps in Thailand in 1984, the Thai government thought it was a temporary problem and a relatively minor one compared to the massive influx of 200,000 Indochinese refugees that was occurring at the same time.⁴²⁰ Thailand adopted a welcoming policy towards the first Karen refugee arrivals.⁴²¹ This is because the strong anti-Communist stance of the Karen during this time aligned with the preferences of both Thailand and its US ally.⁴²² There was therefore political value for Thailand in welcoming and hosting Karen refugees, as a “valuable buffer” between Thailand and its enemy, Myanmar – which was moving towards socialism at the time.⁴²³

Myanmar has great ethnic diversity and has struggled to build up a cohesive and overarching sense of nationhood.⁴²⁴ In Myanmar, the dominant and largest ethnic group are the Burmans (confusingly often referred to as the Burmese).⁴²⁵ They mainly live in the lowlands or central regions of Myanmar and comprise approximately two-thirds of the overall population.⁴²⁶ Many other ethnic minorities (often called non-Burmans) such as Karen, Arakanese, Chin, Shan, Kachin and Mon are predominantly settled in the highlands of Thailand or at its frontier areas.⁴²⁷ The Burman majority often does not prefer the presence of non-Burman ethnic groups within the Burman-dominated areas.⁴²⁸ All the main political institutions, including the army, remain dominated by Burmans.⁴²⁹ Non-Burman groups were and are

⁴²⁰ Kirsten Mcconnachie, *Governing Refugees: Justice, Order and Legal Pluralism*, New York: Routledge, 2014, P. 33. See also: Upang Chantavanich and Paul Rabe, *Thailand and the Indochinese Refugees: Fifteen Years of Compromise and Uncertainty*, *Southeast Asian Journal of Social Science*, 18(1), 1990, P. 66.

⁴²¹ *Ibid.*

⁴²² Martin J Smith, *Burma: Insurgency and the Politics of Ethnicity*, 1st Ed, London: Zed Books, 1991, P. 296-300.

⁴²³ Kirsten Mcconnachie, *Governing Refugees: Justice, Order and Legal Pluralism*, New York: Routledge, 2014, P. 33.

⁴²⁴ *Ibid.*, P. 22.

⁴²⁵ Matthew J Walton, The “Wages of Burman-Ness:” Ethnicity and Burman Privilege in Contemporary Myanmar, *Journal of Contemporary Asian*, 43(1), 2013, P. 6.

⁴²⁶ David Steinberg, *Burma/ Myanmar: What Everyone Needs to Know*, Oxford: Oxford University Press, 2010 P. xiv.

⁴²⁷ Chatwara Suwannamai Duran, *Language and Literacy in Refugee Families*, London: Palgrave Macmillan, 2017, P. 40.

⁴²⁸ Morten B Pedersen, *Burma's Ethnic Minorities: Charting Their Own Path to Peace*, *Critical Asian Studies*, 40 (1), 2008, P.45.

⁴²⁹ *Ibid.* P. 54.

struggling to maintain and practice their own cultures including language and religion as the central Burmese government aimed to assimilate and Burmanise them.⁴³⁰

The failure to grant political autonomy to non-Burman groups within a wider framework arguably was and remains the primary cause of massive conflicts between these groups and the Burmese regime to date.⁴³¹ The first ethnic group to take up arms was the KNU in 1949.⁴³² This was followed by the sixty-one of armed non-Burman groups operating at different times between 1949 and 1998.⁴³³ In response to these insurgencies, the Burmese government built up a strong military regime in order to suppress the minority groups. Throughout the 1970s, the Burmese military followed a pattern of dry-season offensives and wet-season retreats, and non-Burman villagers under attack echoed this movement, crossing into Thailand to escape a military offensive and returning when the troops departed.⁴³⁴ With each dry season (from October to May), the Burmese military launched offensives against the armies of non-Burman groups.⁴³⁵

This consequently displaced large numbers of refugees, approximately 10,000 people into Thailand.⁴³⁶ Groups fleeing from Myanmar into Thailand were primarily of the indigenous Karen population. During the period from the late 1940s to 1983, the Thai government did not regard these Karen as refugees as they just, in the Thai government's perspective, engaged in repeated seasonal movements between Myanmar and Thailand.⁴³⁷ Throughout the dry season, the indigenous people crossed the border as refugees to make a living in Thailand in order to avoid the Burmese military offensives but returned to Myanmar in the rainy season when troops departed.⁴³⁸ However, for the first time in 1984, Myanmar Army troops did not retreat when the rainy season came and the Karen refugees were trapped in Thailand, causing the creation of the first temporary camps there.⁴³⁹

It is important to note here that Myanmar's politics and its foreign policy at the time stood in sharp contrast to that of Thailand, which then shaped the Thai government's approach to the first Karen

⁴³⁰ Ibid, P. 56.

⁴³¹ Kirsten Mcconnachie, *Governing Refugees: Justice, Order and Legal Pluralism*, New York: Routledge, 2014, P. 23.

⁴³² Ibid.

⁴³³ Bertil Lintner, *Burma in Revolt: Opium and Insurgency since 1948*, Chiang Mai: Silkworm Books, 1999, P. 485-495.

⁴³⁴ Kirsten Mcconnachie, *Governing Refugees: Justice, Order and Legal Pluralism*, New York: Routledge, 2014, P. 33.

⁴³⁵ Edith Bowles, *From Village to Camp: Refugee Camp Life in Transition on the Thailand-Burma Border*, *Forced Migration Review*, 1998, P. 10-11.

⁴³⁶ The Border Consortium (TBC), History, <https://www.theborderconsortium.org/about-us/history/> Accessed by 15 April 2021.

⁴³⁷ Sang Kook Lee, *Security, Economy and the Modes of Refugees' Livelihood Pursuit: Focus on Karen Refugees in Thailand*, *Asian Studies Review*, 38(3), 2014, P. 467.

⁴³⁸ Ibid.

⁴³⁹ Kirsten Mcconnachie, *Governing Refugees: Justice, Order and Legal Pluralism*, New York: Routledge, 2014, P. 33.

refugee arrivals. As mentioned in section 4.2 and 4.3, Thailand throughout the period of the Cold War, emerged as one of the main proxies in the region of the Western-led democratic world and was supported by its US ally in order to eliminate Communist influence in the region, especially from China. Conversely, Myanmar was preoccupied with strengthening socialism at home and pursued an isolationist approach.⁴⁴⁰ In particular, since independence from Great Britain in 1948, especially under the Ne Win administration (1962-1988), the socialist leaning military government of Myanmar had prevented foreign nations from gaining too much influence within the country.⁴⁴¹ This can be explained by the fact that Myanmar had gone through a long and painful period of British colonialism and the colonial experience was still fresh in the memory of the Burmese government. Therefore, at the time it was important to reduce any foreign domination within Myanmar that had, in the view of the Burmese leadership, resulted in the historically vulnerable position of the country.⁴⁴² The Burmese government had steadfastly, in the international community's view, upheld a "neutral" foreign policy.⁴⁴³

However, Myanmar's neutral foreign policy stance and movement towards socialism did not earn it much in aid from the US and its allies including Thailand but instead, it secured a certain amount of good will from China.⁴⁴⁴ It was reported that although the Burmese leadership asserted an independent posture of neutrality, there was an increase in contact between Myanmar and China, and China agreed to lend millions of dollars to Myanmar.⁴⁴⁵ Moreover, the US were always unwilling to assist Myanmar because they were suspicious of Burmese dictatorial authority and their connections with China.⁴⁴⁶ While Thailand remained a US ally and promoted an anti-Communist campaign viewing China as a major national security threat, Myanmar sought closer engagement with China so as to fend off Western pressure on its government.⁴⁴⁷

With Myanmar's movement towards socialism and the differences in political perspectives between Myanmar and Thailand, the latter was clearly on a collision path with Myanmar. Thailand, therefore, supported non-Burman groups in Myanmar, especially the Karen with their strong anti-Communist

⁴⁴⁰ Pavin Chachavalpongpun, Thailand-Myanmar Relations: Old Animosity in a New Bilateral Setting, in Narayanan Ganesan and Ramses Amer (Eds), *International Relations in Southeast Asia: Between Bilateralism and Multilateralism*, Singapore: Institute of Southeast Asian Studies, 2010.

⁴⁴¹ Robert A Holmes, Burma's Foreign Policy Toward China since 1962, *Pacific Affairs*, 45(2), 1972, P. 241.

⁴⁴² *Ibid*, P. 254.

⁴⁴³ Konsam Shakila Devi, Myanmar under the Military Rule 1962-1988, *International Research Journal of Social Science*, 3(10), 2014, P. 48.

⁴⁴⁴ Enze Han, Under the Shadow of China-US Competition: Myanmar and Thailand's Alignment Choices, *The Chinese Journal of International Politics*, 2018, P. 92.

⁴⁴⁵ Robert A Holmes, Burma's Foreign Policy Toward China since 1962, *Pacific Affairs*, 45(2), 1972, P. 242.

⁴⁴⁶ Li Chenyang and Lye Liang Fook, China's Policies Towards Myanmar: A Successful Model for Dealing with the Myanmar Issue, *China: An International Journal*, 7(2), 2009, P. 261. Morten B Pedersen, *Promoting Human Rights in Burma: A Critique of Western Sanctions Policy*, Lanham: Rowman and Littlefield Publishers, 2007, P. 84.

⁴⁴⁷ Enze Han, Under the Shadow of China-US Competition: Myanmar and Thailand's Alignment Choices, *The Chinese Journal of International Politics*, 2018, P. 102.

stance, as a means of exerting pressure against the Burmese government.⁴⁴⁸ In other words, in the perspective of the Thai government, supporting and hosting Karen refugees served the national interest which saw the Karen as a “valuable buffer” between Thailand and its enemy, Myanmar.⁴⁴⁹

In light of this buffer strategy, the Thai Government provided either direct or indirect support to the Karen insurgencies in Myanmar, for example by permitting KNU leaders and their families to stay in the refugee camps without interference.⁴⁵⁰ The indigenous Karen refugees from Myanmar were allowed to settle and to organise their own communities.⁴⁵¹ They were able to forage in the forest outside camp boundaries and to pursue income generation opportunities in neighbouring Thai villages such as by selling forest vegetables or charcoal.⁴⁵² Along with this, the Thai Government requested a consortium of donors that had been serving Indochinese refugees to also provide services (food and shelter assistance) to the Karen refugees on the Thai-Myanmar border.⁴⁵³

This consortium of donors is now known as The Border Consortium (TBC) and continues to play the primary role in supporting refugee camps in Thailand. The specific role and support of NGOs will be analysed in chapter 5. The welcoming approach from Thailand in this period positively impacted on the Karen refugees’ lives. They to some extent managed to live fairly autonomous lives, especially compared with the situation of Indochinese refugees in Thailand at the same time. However, like the approach to Indochinese refugees, once the political interests were no longer served, the Thai government sought the strategic flexibility to change policy and place restrictions on the Karen refugees which I will now discuss in the next sub-section.

4.4.2. From 1989 to the Present.

While Thailand previously supported the Karen refugees, this relationship dramatically changed after Thailand moved into closer relations with Myanmar in 1989 due to economic interests and the decline of Cold War ideology.⁴⁵⁴ Especially, the Thai policy towards these indigenous refugees in camps

⁴⁴⁸ Leszek Buszynski, Thailand and Myanmar: The Perils of “Constructive Engagement”, *The Pacific Review*, 11(2), 1998, P. 292.

⁴⁴⁹ Kirsten Mcconnachie, *Governing Refugees: Justice, Order and Legal Pluralism*, New York: Routledge, 2014, P. 33.

⁴⁵⁰ Hazel J Lang, *Fear and Sanctuary: Burmese Refugees in Thailand*, New York: Southeast Asia Program, Cornell University, 2002, P.141-142.

⁴⁵¹ *Ibid.*

⁴⁵² *Ibid.* Edith Bowles, *From Village to Camp: Refugee Camp Life in Transition on the Thailand-Burma Border*, *Forced Migration Review*, 1998, P.12.

⁴⁵³ Sang Kook Lee, *Security, Economy and the Modes of Refugees’ Livelihood Pursuit: Focus on Karen Refugees in Thailand*, *Asian Studies Review*, 38(3), 2014, P. 467.

⁴⁵⁴ *Bangkok Post*, 15 March 1990,

<https://eresources.nlb.gov.sg/newspapers/digitised/article/straitstimes19900315-1.2.23.8> Accessed by 30 April 2022. See also: Leszek Buszynski, Thailand and Myanmar: The Perils of “Constructive Engagement”, *The Pacific Review*, 11(2), 1998, P. 292.

became incredibly restrictive after the Burmese occupation of the headquarters of KNU at Manerplaw in 1995.⁴⁵⁵ Given the ongoing civil war and instability in Myanmar, Thai policy towards Karen refugees remains restrictive to this day and never places the protection of refugees at its core. Thailand continues to avoid making legally binding commitments and, as already mentioned, refuses to sign up the 1951 Convention and its 1967 Protocol – the two core instruments of IRL.

In particular, as the politics of the balance of power declined, in large part due to the absence of traditional security threats in the very late period of the Cold War (from 1988 onwards), Thailand was now no longer bound by the oppositional (Communist against Capitalist) logic of the Cold War.⁴⁵⁶ Thailand was therefore free to shape its foreign policy with its own vision which focused on creating a regional setting in which Thailand's national economic and strategic interests were best realised.⁴⁵⁷ Thailand, led by Chatichai Choonhavan from 1989, promoted closer relations with the ruling regime in Myanmar.⁴⁵⁸ Chatichai's leadership utilised a policy of "constructive engagement" that promoted peaceful coexistence between neighbours regardless of differences in political systems.⁴⁵⁹ The country no longer viewed Myanmar as a rival and rapidly promoted closer and friendly contact with the Burmese government.⁴⁶⁰

The justification for this strategic change was Thailand's growing economic stake in Myanmar through border trade since 1988 as well as Thailand's regional economic leadership aspirations.⁴⁶¹ Chatichai designated Myanmar as a "land bridge" or "golden land" between Southwest China and South Asia from which Thailand could benefit, and called for a "Thailand-Myanmar-Laos-Yunnan, China quadrangle".⁴⁶² With the "constructive engagement" policy with Myanmar in place, Thailand promoted bilateral trade and investment in order to develop its underdeveloped and landlocked western provinces.⁴⁶³ Moreover, in the fall of 1988, the South of Thailand faced devastating floods and

⁴⁵⁵ Hazel J Lang, *Fear and Sanctuary: Burmese Refugees in Thailand*, New York: Southeast Asia Program, Cornell University, 2002, P. 155-158.

⁴⁵⁶ Pongphisoot Busbarat, *Thailand's Foreign Policy Towards Neighbouring Countries and ASEAN*, in Pavin Chachavalpongpun (Ed), *Routledge Handbook of Contemporary Thailand*, New York: Routledge, 2019, P. 436.

⁴⁵⁷ *Ibid.*, P. 436-439.

⁴⁵⁸ Leszek Buszynski, *Thailand and Myanmar: The Perils of "Constructive Engagement"*, *The Pacific Review*, 11(2), 1998, P. 290-291.

⁴⁵⁹ Pongphisoot Busbarat, *Thailand's Foreign Policy Towards Neighbouring Countries and ASEAN*, in Pavin Chachavalpongpun (Ed), *Routledge Handbook of Contemporary Thailand*, New York: Routledge, 2019, P. 437.

⁴⁶⁰ *Ibid.*

⁴⁶¹ Leszek Buszynski, *Thailand and Myanmar: The Perils Of "Constructive Engagement"*, *The Pacific Review*, 11(2), 1998, P. 298.

⁴⁶² *Ibid.*, P. 292.

⁴⁶³ *Bangkok Post*, 15 April 1989,

<https://eresources.nlb.gov.sg/newspapers/digitised/article/straitstimes19890415-1.2.23.2> Accessed by 30 April 2022. See also: David Brenner, *Inside the Karen Insurgency: Explaining Conflict and Conciliation in Myanmar's Changing Borderlands*, *Asian Security*, 14(2), 2018, P. 89.

mudslides that were caused by Thai deforestation for the manufacture of wooden products for internal markets and the export industry.⁴⁶⁴

Under pressure, Chavalit Yongchaiyudt (Army Commander under Chatichai's administration) visited Yangon (formerly known as Rangoon – the largest city of Myanmar) on the 14 December 1988 to discuss logging concessions with Myanmar's military leaders.⁴⁶⁵ After Chavalit's visit, on the 15 January 1989, the Thai government immediately imposed a commercial logging ban in Thailand in response to the catastrophe and growing public concern for Thailand's forests.⁴⁶⁶ Thai businesses then sought access to Burmese forests and invested in Myanmar's timber sector.⁴⁶⁷ It was reported that approximately twenty Thai companies gained logging concessions in Myanmar as an outcome of Chavalit's visit in 1988.⁴⁶⁸

After Thailand and Myanmar moved into closer relations and, in particular, reached the agreement on logging concessions in 1989, there was a major shift in the relationship between Thailand and the Karen.⁴⁶⁹ This shift brought the more accommodating policy of Thailand towards the indigenous refugees in camps during the previous period (1984-1988) to an end. Thai leaders soon lost interest in terms of supporting the Karen insurgency as a strategic buffer force. The country began to cooperate with the Burmese government to manage the Karen refugees in the name of protecting Thai-Burmese border security.⁴⁷⁰ Throughout 1989, Thailand allowed the Myanmar's military to launch incursions against these Karen refugees inside Thai territory.⁴⁷¹ The Burmese military eventually overthrow Karen insurgency headquarters at Manerplaw, Myanmar in 1995.⁴⁷²

⁴⁶⁴ Gadsaraporn Wannitikul, *Deforestation in Northeast Thailand, 1975-1991: Results of a General Statistical Model*, *Singapore Journal of Tropical Geography*, 26(1), 2005, P. 102.

⁴⁶⁵ Leszek Buszynski, *Thailand and Myanmar: The Perils of "Constructive Engagement"*, *The Pacific Review*, 11(2), 1998, P. 292.

⁴⁶⁶ *Ibid.* See also: Claudia W Sadoff, *The Effects of Thailand's Logging Ban: A Natural Resources Accounting Approach*, Sectoral Economics Program: Thailand Development Research Institute, 1992, P. 26.

⁴⁶⁷ David Brenner, *Inside the Karen Insurgency: Explaining Conflict and Conciliation in Myanmar's Changing Borderlands*, *Asian Security*, 14(2), 2018, P. 89.

⁴⁶⁸ Bangkok Post, 14 December 1988,

<https://eresources.nlb.gov.sg/newspapers/digitised/article/straitstimes19881214-1.2.23.4> Accessed by 10 April 2022. See also: Leszek Buszynski, *Thailand and Myanmar: The Perils of "Constructive Engagement"*, *The Pacific Review*, 11(2), 1998, P. 292.

⁴⁶⁹ *Ibid.*

⁴⁷⁰ Ashley South, *Burma's Longest War: Anatomy of the Karen Conflict*, Amsterdam: Transnational Institute/ Burma Centre Netherlands, 2011, P. 20. David Brenner, *Inside the Karen Insurgency: Explaining Conflict and Conciliation in Myanmar's Changing Borderlands*, *Asian Security*, 14(2), 2018, P. 90.

⁴⁷¹ Leszek Buszynski, *Thailand and Myanmar: The Perils of "Constructive Engagement"*, *The Pacific Review*, 11(2), 1998, P. 293. Karen Human Rights Groups, *Attacks on Karen Refugee Camps*, <<https://Khrgh.Org/1997/03/Khrgh9705/Attacks-Karen-Refugee-Camps>> Accessed by 8 April 2021.

⁴⁷² Kirsten Mcconnachie, *Governing Refugees: Justice, Order and Legal Pluralism*, New York: Routledge, 2014, P. 30.

With the Burmese occupation of the headquarters of KNU in 1995, the Thai Government then stationed Thai soldiers in every camp, prohibited movement of refugees outside of the camps and introduced tighter controls on new arrivals who crossed the border.⁴⁷³ Karen refugees were no longer able to go out of the camps to work, to forage in the forest or to earn a cash income and they were forced to live in rural and overcrowded camps.⁴⁷⁴ The restrictions on camp refugees have remained the same or have even been tightened further since then. The ongoing civil war in Myanmar has recently seen tremendous violence and upheaval, resulting in more Karen refugees fleeing conflict zones.⁴⁷⁵

As already mentioned, as of November 2024 86,539 refugees have been living in a protracted and uncertain situation in nine camps along the Thai-Myanmar border. There is an absence of formal asylum procedures and a national asylum system in Thailand. Issues in relation to refugees in the country as mentioned in chapter 3 fall within the scope of Immigration Act 1979. It is important to note that in 2019 Thailand enacted the Regulation of the Office of the Prime Minister on the Screening of Aliens who enter into the Kingdom and are Unable to Return to the Country of Origin B.E. 2562 (the Regulation).⁴⁷⁶

Clause 3 of this Regulation introduced a National Screening Mechanism (NSM), which would assess aliens who cannot return to their country of origin for “Protected Person” classification. It is notable, however that the Regulation does not grant refugee status within the meaning of the 1951 Refugee Convention and its 1967 Protocol.⁴⁷⁷ Throughout the text of the Regulation Thailand deliberately avoids using terms such as “refugee” or “asylum”, and the legal status of the protected persons remains unclear.⁴⁷⁸ In addition, although the Regulation came into effect in 2020, the onset of the Covid-19 pandemic slowed the implementation of the NSM.⁴⁷⁹ The Regulation is therefore untested, many details remain unclear and there are no reports of anyone having been granted protected person status.⁴⁸⁰

⁴⁷³ Edith Bowles, *From Village to Camp: Refugee Camp Life in Transition on the Thailand-Burma Border*, Forced Migration Review, 1998, P. 13.

⁴⁷⁴ *Ibid.*, P. 14.

⁴⁷⁵ BBC, Myanmar Junta's War against Rebels Displaces Millions: UN, <https://www.bbc.co.uk/news/world-asia-67435786> Accessed by 10 September 2024.

⁴⁷⁶ Regulation of the Office of the Prime Minister on the Screening of Aliens who Enter into the Kingdom and are Unable to Return to the Country of Origin (Entered into Force 24 December 2019) B.E. 256225.

⁴⁷⁷ Jittawadee Chotinukul, Thailand and the National Screening Mechanism: A Step Forward for Refugee Protection? No. 25, Geneva: Global Migration Centre, Graduate Institute of International and Development Studies, 2020, P. 27, https://www.graduateinstitute.ch/sites/internet/files/2020-09/Edited%20Paper_Thailand%20%26%20NSM_Final.pdf Accessed by 10 September 2022.

⁴⁷⁸ *Ibid.*

⁴⁷⁹ Caroline Stover, Thailand's National Screening Mechanism, Refugee Protection, and the Human Rights Crisis in Myanmar, *Refugee Law and Forced Migration*, Refugee Law Initiative, 15 April 2021, <https://rli.blogs.sas.ac.uk/2021/04/15/thailands-national-screening-mechanism-refugee-protection-and-the-human-rights-crisis-in-myanmar/> Accessed by 10 September 2024.

⁴⁸⁰ *Ibid.*

The country therefore still does not have a national asylum system or formal asylum procedures. In other words, there is no difference between refugees and asylum seekers and other illegal migrants in Thai law and policy. Section 12(1) of Immigration Act 1979 accordingly provides that “aliens” will be excluded from entering into Thailand if they have no valid passport or travel document or a visa stamped by a Thai authority. Those who enter Thailand without the requisite documentation are classified as “illegal migrants”. As those who seek refuge in Thailand often enter without papers and are unlikely to meet entry requirements, they are, under Section 12(1) of Immigration Act 1979, categorised as “illegal migrants”.⁴⁸¹

To be clear here, admission of the Karen into Thai camps does not amount to being granted refugee status within the meaning of the 1951 Refugee Convention and its 1967 Protocol.⁴⁸² The Karen refugees retain the status of “illegal migrants” under Thai immigration law.⁴⁸³ The Thai government accordingly set up the Provincial Admission Boards (PABs) in refugee-hosting provinces. These PABs are responsible for determining if the indigenous refugees from Myanmar are eligible to remain in Thailand and to conduct formal registration of them for admission into nine camps.⁴⁸⁴ It is important to note that the Thai government has never published details of the PABs’ status determination process.⁴⁸⁵ There is very little information on this process and the PABs have unclear decision-making guidelines.⁴⁸⁶

The indigenous refugees from Myanmar arriving in Thai territories are first pre-screened by authorities responsible for border security such as by the National Security Council (NSC), the Ministry of Interior (MOI) and the military.⁴⁸⁷ The aim of the pre-screening is to briefly determine whether applicants are fleeing from fighting between ethnic insurgents and the Burmese military or political persecution.⁴⁸⁸

⁴⁸¹ Anja Jetschke, Does Forced Migration Increase Regional Human Rights Commitment? The Cases of Malaysia and Thailand in ASEAN, *Asia Pacific Business Review*, 25(5), 2019, P. 712.

⁴⁸² UNHCR, Analysis of Gaps in Refugee Protection Capacity: Thailand, 2006, <https://www.unhcr.org/protection/convention/457ed0412/analysis-gaps-refugee-protection-capacity-thailand.html> Accessed by 15 December 2022. See also: Human Rights Watch, Ad Hoc and Inadequate: Thailand’s Treatment of Refugees and Asylum Seekers, Bangkok: Human Rights Watch, 2012, P. 18-19, <https://www.hrw.org/sites/default/files/reports/thailand0912.pdf> Accessed by 20 August 2022.

⁴⁸³ Ibid.

⁴⁸⁴ UNHCR, Analysis of Gaps in Refugee Protection Capacity: Thailand, 2006, <https://www.unhcr.org/protection/convention/457ed0412/analysis-gaps-refugee-protection-capacity-thailand.html> Accessed 15 July 2022. Vitit Muntarbhorn, Refugee Law and Practice in the Asia and Pacific Region: Thailand as a Case Study, Research Paper, Thailand: UHNCR, 2004, P. 16.

⁴⁸⁵ The International Rescue Committee and Jesuit Refugee Service, Nowhere to Turn: A Report on Conditions of Burmese Asylum Seekers in Thailand and the Impacts of Refugee Status Determination Suspension and the Absence of Mechanisms to Screen Asylum Seekers, 2005, <https://reliefweb.int/report/myanmar/nowhere-turn-report-conditions-burmese-asylum-seekers-thailand> Accessed by 15 July 2024.

⁴⁸⁶ Ibid.

⁴⁸⁷ UNHCR, Analysis of Gaps in Refugee Protection Capacity: Thailand, 2006, P. 15, <https://www.unhcr.org/protection/convention/457ed0412/analysis-gaps-refugee-protection-capacity-thailand.html> Accessed by 10 July 2024.

⁴⁸⁸ Ibid.

They are then admitted to a Reception Centre in camps where their bio-data is taken⁴⁸⁹ and are sent to Holding Centres in camps in order to await the decision of the PAB.⁴⁹⁰ At the Holding Centres in camps, applicants are interviewed by a four-person panel, led by the district officer where the camps are located, joined by the deputy district officer, the UNHCR field officer for the area concerned and an interpreter.⁴⁹¹ The PAB, comprised of eight members from the Thai provincial and local authorities together with a UNHCR officer, will then make a decision based on a majority vote.⁴⁹² Notably, the UNHCR officer has a minimal role in the outcomes of PABs decisions and is only given observer status.⁴⁹³ By contrast with camp refugees in Thailand, the UNHCR conducts refugee status determinations for the small number of other refugees staying in urban areas of the country.⁴⁹⁴ Moreover, the UNHCR plays a much bigger role in facilitating access to healthcare and education services for urban refugees.⁴⁹⁵ However, even where urban refugees are granted refugee status by the UNHCR, Thailand still does not recognise this status and continues to categorise them as “illegal migrants” without the right to work.⁴⁹⁶

This is also the case for Karen refugees. Those Karen refugees whose cases are approved by the PABs are given formal permission to stay in Thai camps and are registered, but importantly, are not granted refugee status within the meaning of the 1951 Refugee Convention/its 1967 Protocol. It can be seen here that the nature of this admission to Thai camps as mentioned is not focused on protecting refugees and necessarily is not with a view to resettlement in Thailand. Instead, the Thai government views the stay of the Karen refugees in Thai camps as only a temporary matter.⁴⁹⁷ As “illegal migrants” under Thai law, the government only allows them to stay in camps in order to wait for resettlement in third countries or repatriation to Myanmar.⁴⁹⁸ Should the indigenous refugees as “illegal migrants” be found outside the camps without permission, they are subjected to fines and deportation to Myanmar.⁴⁹⁹ Due

⁴⁸⁹ Ibid.

⁴⁹⁰ Ibid.

⁴⁹¹ Ibid.

⁴⁹² Premjai Vungsiriphisal, Graham Bennett, Chanarat Poomkacha, Waranya Jitpong and Kamonwan Reungsamran, Royal Thai Government Policy towards Displaced Persons from Myanmar: Development and Current Status, in Premjai Vungsiriphisal, Dares Chusri and Supang Chantavanich (Eds), Humanitarian Assistance for Displaced Persons from Myanmar: Royal Thai Government, Policy and Donor, INGO, NGO and UN Agency Delivery, Dordrecht: Springer, 2014, P. 38.

⁴⁹³ Ibid.

⁴⁹⁴ UNHCR, Asia and Pacific: Thailand, <https://www.unhcr.org/where-we-work/countries/thailand> Accessed by 29 September 2025.

⁴⁹⁵ Ibid.

⁴⁹⁶ Angela Maria Carreno Malaver, Living in the Shadows: Urban Refugees in Thailand, Current Politics and Economics of South, Southeastern, and Central Asia, 25(2), 2016, P. 3-4.

⁴⁹⁷ Inge Brees, Refugee Business: Strategies of Work on the Thai-Burma Border, Journal of Refugee Studies, 21(3), 2008, P. 384.

⁴⁹⁸ Ibid.

⁴⁹⁹ Human Right Watch, Thailand: Recent Refugees Pushed Back to Myanmar, 2023, <https://www.hrw.org/news/2023/11/29/thailand-recent-refugees-pushed-back-myanmar> Accessed by 27 May 2024. See also: Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Thailand, CRC/C/THA/CO/3-4, 17 February

to this precarious immigration status, the Karen refugees cannot access the Thai labour market and protection at work. This will be discussed in depth in chapter 5.

With the long exposure of Thailand to multiple waves of Indochinese refugees, as examined in previous sections, one might think that the country would have formulated and implemented improvements to their policy over time. However, Thai decision makers still apply an approach to the Karen refugees that has similar priorities to the policies shaped in response to the Indochinese. Thai leaders ultimately still responded to the Karen refugees by prioritising what they saw as national, security and geopolitical interests. This was evident when they welcomed the first Karen refugees in 1984, seeing them as an ally against the threat of socialism in Myanmar. Or, when the threat faded, and economic benefits could be gained through cooperation and trade with Myanmar, Thai elites were willing to implement restrictions. As soon as they no longer determined the Karen refugees useful to Thai national and geopolitical interests, they discarded them. This has resulted in a prolonged and precarious situation for the Karen now trapped in a system designed purely to deter and punish. There is, at present, no end in sight, and a clear need for new analysis and fresh thinking.

Conclusion:

In this chapter, I analysed the history of Thailand's approach to refugees, with a particular focus on Indochinese refugees as well as the ongoing situation of the Karen refugees. I showed that while Thailand has a long history of hosting refugees, providing protection has never been the central reason behind Thailand's acceptance of refugees on its territory. Thai policy always depended on a range of geopolitical factors, and placed what the Thai leadership perceived as their national interests first. This was obvious in every major instance of refugees, such as when Thailand hosted refugees from Indochina in an effort to acquire greater regional influence and regain some of its lost territories with the defeat for the French Empire. It was also clearly the motivation during the Cold War, where Thailand's anti-Communism and the fear of Communist insurgency and expansion throughout the region incentivised the Thai leadership to host refugees as part of a wider strategy of containing Communism. This approach, prioritising what the Thai leadership perceives to be in the national interest, continues to this day vis-à-vis the Karen refugees, and has led to the protracted refugee situation and the denial of their fundamental right to work, which I will discuss in the next chapter.

2012, P. 15, Paragraph 70, <https://documents.un.org/doc/undoc/gen/g12/407/70/pdf/g1240770.pdf> Accessed by 25 June 2024.

Chapter 5: The Protection of the Right to Work for the Karen Refugees in Camps in Thailand.

Introduction.

The right to work is widely recognised as a fundamental human right for all. It is crucial for one to live a life of dignity.⁵⁰⁰ This basic right is mentioned in many legal instruments belonging to different areas of international law such as IRL, IHRL and ILIP. Analysis of the Thai government's policy and law in terms of the right to work for the Karen refugees in this chapter helps one to understand the scope and extent to which IRL, IHRL and ILIP offers protections for these indigenous refugees. This analysis also shows how Thailand fails to uphold its obligations under international law to protect this right for the Karen refugees who are, as mentioned in previous chapters, viewed as "illegal migrants" under Thai law. This prolonged situation merits a new and fresh approach which I will discuss in the coming chapters by turning to the values of Confucian communitarianism.

In this chapter I find that there is a tension between universal human rights protections and the state's control over immigration. This tension stands at the root of the struggle of the international legal framework to extend the protection of the right to work to these indigenous refugees in Thai camps. Due to their precarious status under Thai law, the Karen refugees in camps are excluded from access to the national labour market.⁵⁰¹ The majority are found to work in the informal economy where they face abuse and labour exploitation and results in serious violations of their human dignity.⁵⁰²

I firstly examine the importance and value of work in relation to advancing the cause of the Karen refugees' human dignity with reference to Nussbaum's theoretical framework which I developed in chapter 2. The protection of the right to work within international law involves various obligations upon states like Thailand which I divide into two categories: the right to access work and the right to just and decent working conditions. With this established, in the second section of this chapter I then turn to analyse the obligations relating to access to work under IRL, IHRL and ILIP and examine Thailand's compliance with these obligations to protect Karen refugees. In the third section I then do the same with regards to just and decent working conditions.

⁵⁰⁰ CESCR, General Comment No 18: The Right to Work, E/C.12/GC/18, 6 February 2006, P. 2, Paragraph 1, <https://www.refworld.org/legal/general/cescr/2006/en/32433> Accessed by 10 December 2023.

⁵⁰¹ CESCR, Concluding Observations on the Combined Initial and Second Periodic Reports of Thailand, E/C.12/THA/CO/1-2, 19 June 2015, P. 5, Paragraph 15, <https://documents.un.org/doc/undoc/gen/g15/150/41/pdf/g1515041.pdf> Accessed by 20 October 2024.

⁵⁰² Ibid. See also: UN Human Rights Council, Working Group on the Universal Periodic Review, Summary of Stakeholders' Submissions on Thailand: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/39/THA/3, 2021, P. 9, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/224/10/PDF/G2122410.pdf?OpenElement> Accessed by 15 December 2022.

5.1. The Value of Work in Protecting Human Dignity of the Karen Refugees in Thai Camps.

As work “forms an inseparable and inherent part of human dignity”,⁵⁰³ it is recognised as a basic right for all. The intrinsic link between work and human dignity explicitly appears in Nussbaum’s philosophical vision of the Capabilities Approach.⁵⁰⁴ Nussbaum places the value of work, and therefore the need for the right to work, within a concept of human dignity which is, as mentioned in chapter 2, informed by an Aristotelian notion of *Eudaimonia*, or human flourishing. Nussbaum develops a list of ten core capabilities which she argues are central elements of human dignity, including “control over one’s environment” which includes “seeking employment on an equal basis with others”.⁵⁰⁵

For Nussbaum, one aspect of the value of work relates to material gain.⁵⁰⁶ Nussbaum is very conscious that a life of dignity is one that requires a threshold level of economic and material sustenance.⁵⁰⁷ This includes adequate food, shelter, clothing, and more, all of which depend upon an economic basis which can be provided for through work.⁵⁰⁸ In other words, once individuals are able to access work, with just and favourable conditions, they are provided with a regular income, enabling them to satisfy basic and reasonable human needs.⁵⁰⁹ Without regular and decent income generated through work, people cannot enjoy an adequate standard of living.⁵¹⁰

Though discussed in-depth in section 5.2.1 and 5.3.1, it is crucial to emphasise here that due to their precarious migration status, many refugees, asylum seekers or irregular migrants are typically excluded or restricted from access to work. They are forced to engage in work in the informal economy where they receive unfair wages and lower pay than national workers.⁵¹¹ Lacking a regular and fair income

⁵⁰³ CESCR, General Comment No 18: The Right to Work, E/C.12/GC/18, 6 February 2006, P. 2, Paragraph 1, <https://www.refworld.org/legal/general/cescr/2006/en/32433> Accessed by 10 December 2023.

⁵⁰⁴ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 77-78.

⁵⁰⁵ Martha C Nussbaum, *Martha C Nussbaum, Women and Human Development: The Capabilities Approach*, Cambridge: Cambridge University Press, 2000, P. 80.

⁵⁰⁶ *Ibid.*

⁵⁰⁷ *Ibid.*

⁵⁰⁸ *Ibid.*

⁵⁰⁹ CESCR, General Comment No 18: The Right to Work, E/C.12/GC/18, 6 February 2006, P. 3, Paragraph 7, <https://www.refworld.org/legal/general/cescr/2006/en/32433> Accessed by 10 December 2023.

⁵¹⁰ CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 7 April 2016, P. 3, 5 Paragraph 9, 18, <https://www.refworld.org/legal/general/cescr/2016/en/122360> Accessed by 30 December 2022. See also: ILO, *Minimum Wage Systems*, 2014, P. 3, Paragraph 6, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40relconf/documents/meetingdocument/wcms_235287.pdf Accessed by 10 October 2024.

⁵¹¹ CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 7 April 2016, P. 12-13, Paragraph 47(e)(j), <https://www.refworld.org/legal/general/cescr/2016/en/122360> Accessed by 30 December 2022.

negatively impacts on these non-nationals' quality of life. In fact, for asylum seekers and refugees in many countries, without a secure livelihood, they are left only with access to small amounts of humanitarian assistance (including food, shelter and water) and live with prolonged dependence on state aid.⁵¹²

The Karen in Thai camps who are refugees, but under Thai law viewed the same as other “illegal migrants”, are not allowed to access the Thai labour market and suffer a low quality of life.⁵¹³ Given the lack of autonomy and their inability to gain income, over the decades they have been forced to depend on support from NGOs and in particular, receive basic food and relief assistance from the Coordinating Committee for Services to Displaced Persons in Thailand (CCSDPT) or TBC.⁵¹⁴ These NGOs provide households in camps with very basic food baskets including rice, split yellow hulled mung beans, fermented fish or soybean oil.⁵¹⁵ Due to an ongoing funding shortage, NGOs have reduced the Karen refugees' food rations.⁵¹⁶ There is an increased risk of malnutrition and extreme poverty, among nine camps.⁵¹⁷ This will be discussed further in section 5.2.2.

To be clear, it cannot be denied that humanitarian intervention, which focuses on the short-term alleviation of suffering, is important for refugees. However, humanitarian assistance programmes not only in the context of the Karen refugee camps in Thailand, but also around the world, are desperately underfunded.⁵¹⁸ The humanitarian assistance approach must therefore be complemented by a durable and long-term solution that provides refugees with greater life security and enables greater self-reliance. The humanitarian focus on “care and maintenance”, without work has only kept refugees in a continued

Advisory Opinion OC-18/03, "Juridical Condition and Rights of Undocumented Migrants", Inter-American Court of Human Rights, OC-18/03, 17 September 2003, Paragraph 132, 159,
<https://www.refworld.org/jurisprudence/caselaw/iacrthr/2003/en/90831> Accessed by 30 September 2024.

⁵¹² ILO, Employment and Decent Work in Refugee and Other Forced Displacement Contexts Compendium of ILO's Lessons Learned, Emerging Good Practices and Policy Guidance, 2020, P. 9,
https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_763174.pdf Accessed by 15 June 2023.

⁵¹³ CESCR, Concluding Observations on the Combined Initial and Second Periodic Reports of Thailand, E/C.12/THA/CO/1-2, 19 June 2015, P. 5, Paragraph 15,
<https://documents.un.org/doc/undoc/gen/g15/150/41/pdf/g1515041.pdf> Accessed by 20 October 2024.

⁵¹⁴ TBC, What We Do in Thailand, <https://www.theborderconsortium.org/> Accessed by 10 June 2023.
Coordinating Committee for Services to Displaced Persons in Thailand (CCSDPT), Our Work
<http://www.ccsdpt.org/#our-work> Accessed by 10 June 2023.

⁵¹⁵ Orapin Banjong, Andrea Menefee, Kitti Sranachoenpong, Uraiporn Chittchang, Pasamai Eg-kantrong, Atitada Boonpradern, and Sopa Tamachotipong, Dietary Assessment of Refugees Living in Camps: A Case Study of Mae La Camp, Thailand, Food and Nutrition Bulletin, 24(4), 2003, P. 360.

⁵¹⁶ Roger Norum, Mary Mostafanezhad, and Tani Sebros, The Chronopolitics of Exile: Hope, Heterotemporality and NGO Economics along the Thai–Burma Border, Critique of Anthropology, 36(1), 2016, P. 69.

⁵¹⁷ Panrawee Praditsorn, Piyani Churak, Wanphen Wimonpeerapattana, Timothy Moore and Maria Bovill, Prevalence of Undernutrition and Associated Factors Among Children 6 to 59 Months of Age in Refugee Camps Along Thailand-Myanmar Border, The Southeast Asian Journal of Tropical Medicine and Public Health, 50(2), 2019, P. 372-382.

⁵¹⁸ Alexander Betts and Paul Collier, Refuge: Rethinking Refugee Policy in a Changing World, Oxford: Oxford University Press, 2017, P. 7.

state of dependency, vulnerable to the volatility and shortfalls of humanitarian funding.⁵¹⁹ For example, under the Trump administration recent cuts to USAID – a very large source of funding for TBC - has resulted in very serious issues in Karen refugee camps, including the removal of healthcare services and food instability⁵²⁰. From Nussbaum's lens, this situation of long-term dependence, without the ability to secure material gain, constitutes a serious blocker for Karen refugees in the fulfilment of human flourishing and dignity.

In addition, for Nussbaum, the requirements of a life of dignity as mentioned in chapter 2 go beyond a focus on economic gain and should not be confused with just the accumulation of wealth. The good life instead emphasises practicing virtuous activities. The value of work is, for Nussbaum, not simply concerned with money but is related in part to the cultivation of virtues and human flourishing.⁵²¹ This includes the ability to economically support and maintain a family life, and develop the virtues and attitudes, including of care and compassion, associated with stable family life.⁵²² This is perhaps understandable, as for Nussbaum, the self is never seen in an isolated way and family is, as mentioned in chapter 2, the centre of one's ever-increasing network of social relations.

Therefore, a regular income that the indigenous Karen refugees are able to gain through access work, with just and favourable conditions, does not simply enable provision for themselves and their needs. It is also viewed as a means which enables them to take care and support their family. More than economic gain, it enables, within Nussbaum's perspectives, development of virtue, love, care and the upholding of responsibilities towards these indigenous refugees' family. This is mirrored in the Confucian Communitarian tradition, which sees kinship ties and familial responsibilities as central to human flourishing and a life of dignity.⁵²³ Although Confucian communitarianism appeared in ancient times and a very different social context, working and supporting family, children and parents for this tradition has always remained central to one's human dignity. In fact, care and compassion (*ren*) is the cardinal virtue in Confucian communitarianism. I will return to and analyse this in greater detail in Chapter 6 and 7.

⁵¹⁹ Paolo Verme, Chiara Gigliarano, Christina Weiser, Kerren Hedlund and Marc Petzodt, *The Welfare of Syrian Refugees: Evidence from Jordan and Lebanon*, World Bank Group and UNHCR, 2016, P. 15, <https://openknowledge.worldbank.org/server/api/core/bitstreams/a921e34d-9fef-55d3-98cc-0fab32b83c22/content> Accessed by 20 June 2024.

⁵²⁰ CNN, *No Doctors for Sick Children: This is the Reality of Trump's Aid Freeze in Remote Northern Thailand*, <https://edition.cnn.com/2025/02/11/asia/thailand-myanmar-refugees-us-aid-freeze-trump-intl-hnk-dst/index.html> Accessed by 20 January 2024.

⁵²¹ Martha C Nussbaum, *Women and Human Development: The Capabilities Approach*, Cambridge: Cambridge University Press, 2000, P. 79-80.

⁵²² *Ibid.*

⁵²³ Tu Wei-ming, *Confucius and Confucianism*, in Walter H. Stote and George A. De Vos (Eds), *Confucianism and the Family*, Albany: State University of New York Press, 1998, P. 13.

Furthermore, for Nussbaum as mentioned in chapter 2, one's ever-increasing network of social relations begins with the family and continues to expand outwards towards all. One's human dignity is rooted in this deeply social-self and associated with a virtuous and communal life. This perspective enables Nussbaum to see the value of work, which also relates to the development of a much wider array of capabilities and social relationships, and the ability to develop affiliations with others in society.⁵²⁴ In other words, work is also about "ones' development and recognition within the community",⁵²⁵ and inclusion into the wider community, belonging and social connectedness.⁵²⁶ Through work, people exercise practical reason including making choices, agreements and plans and form social relationships.⁵²⁷ They find their sense of worth, purpose and meaning for their lives.⁵²⁸

Often, what people do and are seen to do as part of their daily job is intrinsically linked with their social identity, showing how they are societally recognised and giving them clearly identifiable roles that define their status.⁵²⁹ In fact, for many migrants, employment is the most important factor in enabling their connection with and inclusion into a host society.⁵³⁰ There is a strong evidence base showing that restrictions or exclusion from access to work due to their precarious migration status has significant harmful effects upon these non-nationals far beyond economic loss. In particular, where access to work is restricted or denied, the opportunities for refugees, asylum seekers and irregular migrants to engage with social contact with others including friends or colleagues are minimised.⁵³¹ They are at risk of becoming socially excluded from the mainstream society.⁵³²

Under restrictions or exclusion from access to the labour market and training toward employment, many refugees, asylum seekers and irregular migrants are unable to set up a daily life structure and sense of

⁵²⁴ Martha C Nussbaum, *Martha C Nussbaum, Women and Human Development: The Capabilities Approach*, Cambridge: Cambridge University Press, 2000, P. 79-80.

⁵²⁵ C168 Employment Promotion and Protection against Unemployment Convention, (Adopted 21 June 1988, Entered into Force 17 October 1991), Preamble.

⁵²⁶ Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 78. Maria Ros, Shalom H Schwartz and Shoshana Surkiss, Basic Individual Values, Work Values, and the Meaning of Work, *Applied Psychology*, 48(1), 1999, P. 55.

⁵²⁷ Martha C Nussbaum, *Creating Capabilities: The Human Development Approach*, Cambridge: Harvard University Press, 2011, P. 9. Martha C Nussbaum, *Martha C Nussbaum, Women and Human Development: The Capabilities Approach*, Cambridge: Cambridge University Press, 2000, P. 82.

⁵²⁸ Hugh Collins, Is There a Human Right to Work, in Virginia Mantouvalou (Ed), *The Right to Work: Legal and Philosophical Perspectives*, London: Bloomsbury, 2014, P. 33. Tom Moberly, Work is Good for You, *British Medical Journal*, 353, 2015.

⁵²⁹ Vladimir B. Skorikov and Fred W. Vondracek, Occupational Identity, in Seth J. Schwartz, Koen Luyckx and Vivian L. Vignoles (Eds), *Handbook of Identity Theory and Research*, New York: Springer, 2011, P. 697.

⁵³⁰ Jenny Phillimore and Lisa Goodson, Problem or Opportunity? Asylum Seekers, Refugees, Employment and Social Exclusion in Deprived Urban Areas, *Urban Studies*, 43(10), 2006, 1719–1720.

⁵³¹ Caroline Fleay, Lisa Hartley and Mary Anne Kenny, Refugees and Asylum Seekers Living in the Australian Community: The Importance of Work Rights and Employment Support, *Australian Journal of Social Issues*, 48(4), 2013, P. 488.

⁵³² Kathleen Valtonen, Resettlement of Middle Eastern Refugees in Finland: The Elusiveness of Integration, *Journal of Refugee Studies*, 11(1), 1998, P. 45.

connectedness and purpose.⁵³³ They feel disconnected from their old life in their origin countries, yet a new life cannot easily be started.⁵³⁴ They suffer long periods of unpredictability and passive waiting, an uncertain future, have no direction and feel their skills and knowledge are being wasted.⁵³⁵ Many reportedly describe similar experiences in camps as largely constituting a life of “idleness and boredom”.⁵³⁶ It is not hard to see that asylum seekers or refugees in some cases undertake charity work from NGOs as a means to “keep themselves busy with purpose”.⁵³⁷ At the very least, these voluntary posts enable them to redress their social isolation and retain a sense of worth and feelings of fulfilment.⁵³⁸

Without access to work, many Karen refugees in particular see no use in education, feel hopeless and uncertain and suffer depressive disorders.⁵³⁹ They have been marginalised and constricted to a life in the camps, excluded from the wider Thai society. This will be discussed further in sections 5.2.2 and 5.3.2. Given Nussbaum’s vision of the good life as being deeply communal and social, the social isolation and hopelessness of these indigenous refugees which results from the prohibition of work can only be seen as a grave barrier to human flourishing and a violation of human dignity. This understanding of the value of work, rooted in a vision of dignity and the good life which emphasises social connection and communal ties, is one that is also deeply shared by Confucian Communitarianism. I will return to and discuss this further in chapter 7.

It is important to note here that my work focuses on the dignity-enhancing role of work for the Karen refugees and roots the value of work in an ideal of human dignity. However, granting these indigenous refugees access to work and decent working conditions entails mutual benefits. A wide body of research exists analysing the benefits, both to refugees and to host communities and states, of empowering

⁵³³ Lisa Hartley and Caroline Fleay, *Policy as Punishment: Asylum Seekers in the Community Without the Right to Work*, Centre for Human Rights Education: Curtin University, 2014, P. 13. Nicole Burchett and Ruth Matheson, *The Need for Belonging: The Impact of Restrictions on Working on the Well-being of an Asylum Seeker*, *Journal of Occupational Science*, 17(2), 2010, P. 88-89.

⁵³⁴ Helen Claire Hart, *Keeping Busy with Purpose: How Meaningful Occupation Can Shape the Experience of Forced Migration*, *Migration Studies*, 9(3), 2019, P. 1324.

⁵³⁵ Caroline Fleay and Lisa Hartley, *I Feel like a Beggar: Asylum Seekers Living in the Australian Community without the Right to Work*, *Journal of International Migration and Integration*, 17(4), 2016, P. 1044. Samuel Parker, ‘Just Eating and Sleeping’: Asylum Seekers’ Constructions of Belonging within a Restrictive Policy Environment, *Critical Discourse Studies*, 17(3), 2018, P. 250.

⁵³⁶ Petra Herzfeld Olsson and Tonia Novitz, *Access to Work for Those Seeking Asylum: Concerns Arising from British and Swedish Legal Strategies*, *Industrial Law Journal*, 53(3), 2024, P. 413.

⁵³⁷ Helen Claire Hart, *Keeping Busy with Purpose: How Meaningful Occupation Can Shape the Experience of Forced Migration*, *Migration Studies*, 9(3), 2019, P. 1322.

⁵³⁸ Samuel Parker, ‘Just Eating and Sleeping’: Asylum Seekers’ Constructions of Belonging within a Restrictive Policy Environment, *Critical Discourse Studies*, 17(3), 2018, P. 250.

⁵³⁹ Gracia Fellmeth, Emma H. Plugge, Suphak Nosten, May May Oo, Mina Fazel, Prakaykaew Charunwatthana, François Nosten, Raymond Fitzpatrick and Rose McGready, *Living with Severe Perinatal Depression: A Qualitative Study of the Experiences of Labour Migrant and Refugee Women on the Thai-Myanmar Border*, *BMC Psychiatry*, 18, 2018, P. 1-2.

refugees with the right to work. States can also benefit by allowing refugee participation in the labour market through higher tax revenue, addressing labour shortages and helping to drive economic growth.⁵⁴⁰

Thailand is the second largest economy in Southeast Asia, with a GDP (Gross Domestic Product) of 536.160 billion USD⁵⁴¹ and an unemployment rate of 1.0 % in 2022.⁵⁴² However, in more recent years, the country has faced the challenge of the “middle-income trap” - an economic development situation in which the country is trapped between the competitive edge of low wages among developing countries and the high value-added market of more developed economies.⁵⁴³ Moreover, the declining trend in the fertility rate together with the aging population in Thailand⁵⁴⁴ have significant impacts on the availability of workforce in the Thai labour market.⁵⁴⁵ According to the World Bank, the working-age share of the population is projected to decline from 71% of the population in 2020 to 56% in 2060.⁵⁴⁶

The labour shortage resulting from the aging population is identified in a considerable amount of economic empirical studies as one of the potential pressures slowing down the Thai economy.⁵⁴⁷ This is especially so given that Thailand’s economy heavily relies on the service and industry sectors, with exports accounting for around 65.4% of GDP in 2023.⁵⁴⁸ In this respect, indigenous refugees in camps

⁵⁴⁰ Ziad Ayoubi and Regina Saavedra, Refugee Livelihoods: New Actors, New Models, Forced Migration Review, 2018, P. 39. ILO, Employment and Decent work in Refugee and Other Forced Displacement Contexts Compendium of ILO’s Lessons Learned, Emerging Good Practices and Policy Guidance, 2020, P. 11, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_763174.pdf Accessed by 15 June 2023.

⁵⁴¹ International Monetary Fund (IMF), Report on GDP of Thailand, 2023, <https://www.imf.org/en/Publications/WEO/weo-database/2023/April/weo-report?c=578.&s=NGDPD,&sy=2018&ey=2022&ssm=0&scsm=1&sc=0&ssd=1&ssc=0&sic=0&sort=country&ds=.&br=1> Accessed by 25 April 2023.

⁵⁴² IMF, Report on Unemployment Rate of Thailand, 2023, <https://www.imf.org/en/Publications/WEO/weo-database/2023/April/weo-report?c=578.&s=LUR.LP.&sy=2021&ey=2028&ssm=0&scsm=1&sc=0&ssd=1&ssc=0&sic=0&sort=country&ds=.&br=1> Accessed by 25 April 2023.

⁵⁴³ Somchai Jitsuchon, Thailand in a Middle-income Trap, TDR Quarterly Review, 2012, P. 13,14.

⁵⁴⁴ United Nations Population Division Data Portal: Interactive Access to Global Demographic Indicators, <https://population.un.org/dataportal/home> Accessed by 25 April 2023.

In the period 1990-2023, the fertility rate in Thailand has fallen from 2.09 to 1.32. For information on population growth in Thailand, see at: The World Bank, Thailand, 2023, <https://data.worldbank.org/country/thailand?view=chart> Accessed by 25 April 2024.

⁵⁴⁵ Katikar Tipayalai, Impact of International Labour Migration on Regional Economic Growth in Thailand, Journal of Economic Structures, 9(15), 2020, P. 2. Kwanchit Sasiwongsaroj and Youngyut Burasit, Managing Thailand’s Ageing Population, Perspective: Yusof Ishak Institute, 2019, P.1.

⁵⁴⁶ The World Bank, Aging and the Labour Market in Thailand, 2021, [https://www.worldbank.org/en/country/thailand/publication/aging-and-the-labor-market-in-thailand#:~:text=The%20working%20age%20share%20of,%25\)%20and%20Japan%20\(34%25\)](https://www.worldbank.org/en/country/thailand/publication/aging-and-the-labor-market-in-thailand#:~:text=The%20working%20age%20share%20of,%25)%20and%20Japan%20(34%25)) accessed by 30 April 2023.

⁵⁴⁷ Katikar Tipayalai, Impact of International Labour Migration on Regional Economic Growth in Thailand, Journal of Economic Structures, 9(15), 2020, P. 2.

⁵⁴⁸ The World Bank, Exports of Goods and Services (% of GDP) – Thailand, 2023, <https://data.worldbank.org/indicator/NE.EXP.GNFS.ZS?locations=TH> accessed by 2 May 2023.

could, to some extent, become help to fill Thai labour shortages and alleviate some of the economic impacts of reduced fertility, mitigating the impacts of population transition on the Thai economic situation, and promote economic growth.

There is no doubt that states can economically gain from granting refugees the right to work, and in fact this is the focus of much literature covering the value of work in the field of refugee studies. On one level, this is understandable. Authors attempting to convince states to grant refugees the right to work typically pursue the strategy of linking the question to the national interest by showing that economic benefits to the host state will accrue. However, I contend that refugees should not be construed merely as a means to an end, and that there is a clear need to go beyond economic or GDP gains. This is because state actors often play to wider political concerns and narratives about social culture and values.⁵⁴⁹

This leads them to prioritise control over the border and national security narratives,⁵⁵⁰ which outweighs any prospect of economic benefits in the minds and motivations of political actors. Moreover, too strong a focus on the gains for states in prioritising an economic/national interest perspective on the value of work, in some cases, seems to lead to a situation where refugees remain vulnerable and only gain meaningful access to low paid and unstable work, or only to a restricted set of work opportunities which the state deems most in line with their interests.⁵⁵¹ This vision also leaves aside those refugees who either cannot work, say due to reasons of age or illness, or who may be able to work but in accordance with the levels of productivity expected of them.

I posit that what is essential is an approach that uses an intrinsic dignity-enhancing lens when looking at the value of work, and one that is rooted in the cultural traditions that are salient in a particular time and place. This is because different cultures uphold visions of human dignity, which contain within them valuable insights and resources when thinking about the value of work and its relationship to dignity. A more culturally salient vision of the value of work may be more able to address questions of politics and narratives concerning culture and values and may hold greater potential in the promotion and greater acceptance for the right to work for refugees and in this case, the Karen refugees.

⁵⁴⁹ Malee Sunpuwan and Sakkarin Niyomsilpa, Perception and Misperception: Thai Public Opinions on Refugees and Migrants from Myanmar, *Journal of Population and Social Studies*, 21(1), 2012, P. 48. Anna Triandafyllidou, Irregular Migration and Migration Control Policies, in Ilse van Liempt, Joris Schapendonk and Amalia Campos-Delgado (Eds), *Research Handbook on Irregular Migration*, Cheltenham: Edward Elgar, 2023, P. 15.

⁵⁵⁰ Ibid.

⁵⁵¹ Francesco Loiacono and Mariajose Silva Vargas, Improving Access To Labour Markets for Refugees: Evidence from Uganda, International Growth Centre, 2019, https://www.theigc.org/sites/default/files/2019/10/Loiacono-and-Vargas-2019-final-paper_revision.pdf Accessed by 10 August 2024.

Though discussed in-depth in chapter 6, it is important to note here that policy and law do not exist within a vacuum, they are situated within a complex cultural and political matrix unique to each time and place. Nussbaum's vision of the value of work captured in her capability theory reveals a way in which work is, as analysed above, rooted in a wider discussion of social context, virtue, familial values and the good life. This approach goes beyond traditional liberalism which emphasises individualistic modes of rationality and comes closer to other non-Western cultures and the insights of Confucian communitarianism on work which I will mention in chapter 7.

Undeniably, work is central and intrinsic to the human dignity of all, including for the Karen refugees in Thai camps. This is therefore why work is recognised as the basic right in a range of legal documents belonging to different areas of international law such as IRL, IHRL and ILIP. As mentioned early on in the introduction, the protection of the right to work encompasses two aspects – access to work and conditions at work. In the next section I will now turn to examine the Thailand's compliance with these obligations arising from access to work for the Karen refugees.

5.2. Thailand's Compliance with Obligations in Respect of Access to Work for Karen Refugees in Thai Camps.

In this section I will carry out two tasks: firstly, I will analyse the scope and normative content of obligations in relation to access to work under IRL, IHRL and ILIP. In discussing this, I will also discuss the obligations relating to the right to education, which serve as a key enabler in enabling the Karen refugees to actually access work. Secondly, I will examine Thailand's compliance with its obligations under according to these legal benchmarks.

5.2.1. The Right to Access to Work under IRL, IHRL and ILIP.

Access to work within this legal framework places on states wide-ranging obligations, but contains two core aspects: access to the national labour market and access to technical and vocational guidance and training programmes to secure employment. It is important to remember here that as mentioned in chapter 3, IRL remains limited in the context of Karen refugees in Thai camps. This is because like most other rights in the 1951 Refugee Convention, the right to work articulated under Article 17(1) is only granted to recognised refugees and this treatment is not given on equal basis with nationals. Thailand is not a signatory party to the 1951 Refugee Convention and its 1967 Protocol. The indigenous refugees in camps are, under Thai law, viewed as "illegal migrants", IRL therefore offers them limited protection. My focus primarily therefore looks into the provisions of IHRL and ILIP.

Regarding access to the national labour market:

One of the most authoritative articulations of the right to work in IHRL is, as mentioned in chapter 3, to be found in Article 6 of ICESCR which Thailand is party to. Section (1) of this Article accordingly affirms “the right of everyone to freely engage in all forms of work, whether wage-earning employment or self-employment”. In its interpretation, CESCR refers to the principle of non-discrimination set out in Article 2(2) of ICESCR and Article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW).⁵⁵² CESCR in particular emphasises non-discrimination in relation to access to employment opportunities for migrants regardless of their background.⁵⁵³ States have obligations to form national plans of action to promote such non-discrimination and take “appropriate steps/measures” (legislative or otherwise) to safeguard this right to access the national labour market for all.⁵⁵⁴

At first glance, Article 6(1) of ICESCR seems to embrace universal aspirations in its text and imposes obligations on states to extend access to the national labour market to all, which would include the indigenous refugees in Thai camps. However, as mentioned in chapter 3, while recognising universal protections, IHRL still reserves for states a power to control migration which, in practice, enables them to give priority treatment for nationals and other migrants with legal status within their territories. This is a case when it comes to access to the national labour market. In particular, the wording “appropriate steps/measures” appeared in Article 6(1) of ICESCR implies that states have a margin of discretion in assessing which measures are most suitable to meet its specific circumstances.⁵⁵⁵ Member states like Thailand accordingly retain a right to determine who, and the extent to which, they will guarantee access to the national labour market.⁵⁵⁶

Very often, states give this access only to nationals or other categories of migrants with a valid work permit.⁵⁵⁷ This means that those non-nationals with precarious migration status are excluded or restricted from access to the employment market. From the perspective of state actors, these exclusions or restrictions are often viewed as a legitimate part of the exercise of power to control immigration. There is a widespread belief among decision makers that granting legal access to the national labour

⁵⁵² International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (Adopted 18 December 1990, Entered into Force 1 July 2003).

⁵⁵³ CESCR, General Comment No 18: The Right to Work, E/C.12/GC/18, 6 February 2006, P. 6, Paragraph 18, <https://www.refworld.org/legal/general/cescr/2006/en/32433> Accessed by 10 September 2024.

⁵⁵⁴ Ibid.

⁵⁵⁵ CESCR, General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant, E/1991/23, 14 December 1990, Paragraph 4, <https://www.refworld.org/legal/general/cescr/1990/en/5613> Accessed by 10 July 2023.

CESCR, General Comment No 18: The Right to Work, E/C.12/GC/18, 6 February 2006, P. 10, Paragraph 37, <https://www.refworld.org/legal/general/cescr/2006/en/32433> Accessed by 10 September 2024.

⁵⁵⁶ Claire Lougarre, The Protection of Non-nationals’ Economic, Social and Cultural Rights in UN Human Rights Treaties, *International Human Rights Law Review*, 9(2), 2020, P. 259.

⁵⁵⁷ Cathryn Costello and Colm O’ Cinneide, The Right to Work of Asylum Seekers and Refugees, *Global Asylum Governance and the European Union’s Role*, 2021, P. 8.

market could become a “pull factor” that would only encourage more migrants to come.⁵⁵⁸ In many states including middle to high-income countries, while awaiting a decision on their asylum applications, asylum seekers are not legally allowed to access labour market.⁵⁵⁹ Even in countries where asylum seekers are entitled to access employment, they are only allowed to do so after a certain period of time of their arrival or their submission of asylum applications.⁵⁶⁰ This entitlement is often limited to a maximum number of working hours per month and to jobs on a government’s shortage occupations list.⁵⁶¹

Especially, those migrants who are deemed to be irregular, coming into a country without a visa and a work permit, have no right to access the national labour market at all.⁵⁶² Irregular migrants face extreme economic deprivation, end up working in the informal economy and commonly remain outside the protection of IHRL.⁵⁶³ Many states have no asylum system and do not differentiate between irregular migrants, asylum-seekers and refugees. Refugees are treated like those who have no permission to be in state territory, have no protection of the law and are subjected to exclusion from the employment market.⁵⁶⁴ This applies to the Karen refugees in Thai camps, who like other “illegal migrants” are, under Thai law, prohibited from access to the Thai national labour market. This will be discussed in depth in section 5.2.2. In other words, access to the employment market under IHRL is not universal but instead, made conditional on one’s immigration status which is essentially determined by states. It is a right of nationals and some (but not all migrants).

⁵⁵⁸ Bhanubhatra Kaan Jittiang, Human Capital and the Employment Situations of Urban Refugees in Thailand, Asylum Access Thailand, 2021, P. 4, https://asylumaccess.org/wp-content/uploads/2021/08/AAT_HUMANCAPITAL_Final_11.08.2021.pdf Accessed by 20 June 2024. Lucy Mayblin, Complexity Reduction and Policy Consensus: Asylum Seekers, the Right to Work, and the ‘Pull Factor’ Thesis in the UK Context, *The British Journal of Politics and International Relations*, 18(4), 2016, P. 812.

⁵⁵⁹ See further at the report which examines the policies of 20 countries hosting 70 percent of the world’s refugee. Roger Zetter and Héloïse Ruadel, *Refugees’ Right to Work and Access to Labour Markets: An Assessment*, Knomad, 2018.

⁵⁶⁰ Cathryn Costello and Colm O’ Cinneide, *The Right to Work of Asylum Seekers and Refugees*, *Global Asylum Governance and the European Union’s Role*, 2021, P. 8. Marko Valenta and Kristin Thorshaug, *Restrictions on Right to Work for Asylum Seekers: The Case of the Scandinavian Countries, Great Britain and the Netherlands*, *International Journal on Minority and Group Rights*, 20(3), 2013.

⁵⁶¹ Lucy Mayblin, *Troubling the Exclusive Privileges of Citizenship: Mobile Solidarities, Asylum Seekers, and the Right to Work*, *Citizenship Studies*, 20(2), 2016, P. 194.

⁵⁶² OHCHR, *The Economic, Social and Cultural Rights of Migrants in An Irregular Situation*, 2014, P. 112, https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-14-1_en.pdf Accessed by 15 June 2023.

⁵⁶³ Ibid. See also: ILO, *Protecting the Rights of Migrant Workers in Irregular Situations and Addressing Irregular Labour Migration: A Compendium*, 2022, P. 2, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_832915.pdf Accessed by 12 June 2023

⁵⁶⁴ Michelle Arévalo-Carpenter, *Refugee Work Rights Report: Refugee Access to Fair and Lawful Work in Asia*, *Asylum Access and Host International*, 2019, P. 18-38, https://asylumaccess.org/wp-content/uploads/2019/11/Asia-RWR_FINAL.pdf Accessed by 20 June 2024.

Along with IHRL, provisions of ILIP also offer another layer of the protection for the Karen refugees in camps who are also indigenous peoples. In accordance with Article 17(3) of UNDRIP indigenous peoples have a right to be free from any discrimination in terms of employment opportunities. States should, under Article 20(2)(a), do everything to prevent any discrimination between workers belonging to indigenous peoples and other workers, in particular regarding admission and recruitment to employment. States should within their framework of national laws and regulations and in co-operation with indigenous peoples, adopt special measures to ensure effective protection with regard to the recruitment of indigenous peoples.

Although equal access to the labour market is granted to indigenous peoples under ILIP, in practice, like many non-nationals with precarious status, they are also among those who face persistent and serious challenges in accessing job opportunities. Discrimination based on ethnicity and indigenous identity have also been identified among the factors preventing indigenous peoples from being able to gain access to employment opportunities. Various studies have shown that indigenous peoples are sometimes not selected for jobs on account of their indigenous origin, ethnicity or culture, and their physical appearance.⁵⁶⁵ The Karen are doubly vulnerable, as they are both an indigenous group at the same time as being refugees with precarious migration status. Their “illegal migration status” under Thai law renders these indigenous people vulnerable and unable to access their rights under both IHRL and ILIP, and excludes them from access to the national labour market. This will be discussed further in section 5.2.2.

Regarding access to technical and vocational training programmes towards employment:

In order to achieve full recognition of the right to work, Article 6(2) of ICESCR continues to impose obligations on member states including Thailand to take steps to provide individuals with technical and vocational guidance and training programmes, opportunities, policies, and techniques to facilitate access to employment. The justification for this obligation can perhaps be explained by the fact that there is an undeniable connection between education and employment.

In particular, engaging in learning activities, either academic or vocational training, provides individuals with recognised degrees, qualifications, knowledge and a range of skills such as teamwork, reasoning, or technology or communication skills necessary for work.⁵⁶⁶ They are better equipped to perform the duties that jobs require, and have a greater chance of finding decent work with a fair wage and just and

⁵⁶⁵ ILO and The International Work Group for Indigenous Affairs (IWGIA), *Indigenous Peoples in a Changing World of Work: Exploring Indigenous Peoples’ Economic and Social Rights through the Indigenous Navigator*, 2021, P. 44, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_792208.pdf accessed by 12 June 2023.

⁵⁶⁶ UNESCO and Right to Education Initiative (UK), *The Right to Education Handbook*, Paris: UNESCO 2019, P. 29-31.

favourable working conditions.⁵⁶⁷ In other words, even if states recognise the right to work in theory (in law), this does not exclude people from facing barriers to access to work and job opportunities in practice. The lack of skills training and education constitutes one of these challenges.

In regard to the right to education, IHRL allows states to have a substantial degree of latitude, depending on the specific level of education.⁵⁶⁸ The obligations of states in relation to provision of primary, secondary, higher and fundamental vocational education are not identical.⁵⁶⁹ In accordance with Article 13(2)(a) of ICESCR and Article 28(1)(a) of CRC which Thailand is party to, states have an obligation to make “primary education compulsory and available free to all persons”, without reference to nationality or immigration status. In its interpretations, the CESCR endorses the position taken by United Nations Children’s Fund (UNICEF) and states that “primary education must be universal to ensure that the basic learning needs of all children are satisfied”.⁵⁷⁰ The CESCR moreover adds that providing primary education free and compulsory for all is “a minimum core obligation”/ “an immediate duty” arising from the protection of the right to education,⁵⁷¹ which requires all signatories to uphold obliged under all circumstances.⁵⁷²

While education at the primary level should be free and mandated for all, regardless of their background, the provision of all other forms of education under IHRL, is to some degree left to the discretion of the state. IHRL reserves to states the right to determine the level that is provided within certain constraints.⁵⁷³ Under 28(1)(b) - (c) of CRC and Article 13(2)(b) - (c) of ICESCR, secondary and higher education “shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education”. The CESCR explains further that at the minimum, states are accordingly required to adopt and implement a national educational strategy which includes the provision of secondary, higher and fundamental education for all.⁵⁷⁴ However, it is important to note that the phrase of “every appropriate means” and “progressive introduction”, this

⁵⁶⁷ Fons Coomans, Education and Work, in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (Eds), *International Human Rights Law*, Oxford: Oxford University Press, 2018, P. 242.

⁵⁶⁸ Ibid, P. 241. Sital Kalantry, Jocelyn E. Getgen and Steven Arrigg Koh, *Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR*, *Human Rights Quarterly*, 32(2), 2010, P. 269-270.

⁵⁶⁹ CESCR, General Comment No. 13: The Right to Education (Art. 13 of the Covenant), E/C.12/1999/10, 8 December 1999, 51, <https://www.refworld.org/legal/general/cescr/1999/en/37937> Accessed by 10 June 2023.

⁵⁷⁰ Ibid, Paragraph 9, 51.

⁵⁷¹ Ibid, Paragraph 57.

⁵⁷² CESCR, General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant), E/1991/23, 14 December 1990, Paragraph 1 and 10, <https://www.refworld.org/legal/general/cescr/1990/en/5613> Accessed by 10 July 2023.

⁵⁷³ Fons Coomans, Education and Work, in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (Eds), *International Human Rights Law*, Oxford: Oxford University Press, 2018, P. 241.

⁵⁷⁴ CESCR, General Comment No. 13: The Right to Education (Art. 13 of the Covenant), E/C.12/1999/10, 8 December 1999, Paragraph 52, <https://www.refworld.org/legal/general/cescr/1999/en/37937> Accessed by 10 June 2023.

ultimately grants the state discretion to decide whether or not they have taken appropriate action (depending on time and resources).⁵⁷⁵ Secondary, vocational and higher education for all may be introduced over time, recognising the different circumstances of different countries.⁵⁷⁶

Often, governments prioritise nationals in the provision of higher education and vocational training opportunities. For many refugees and asylum seekers, these opportunities are a “very remote dream”.⁵⁷⁷ Where provided, they are largely financed from the emergency funds of NGOs, leaving little room for long-term planning.⁵⁷⁸ Low funding and a compromised quality of education cannot equip refugees with the knowledge and skills relevant for work, or for the development of their capabilities. I will discuss this further in section 5.2.2. Especially, those irregular migrants without identification documents find it impossible to access higher education and vocational trainings. An “illegal status” is, as mentioned above, associated with the situation of being outside the protection of law, and their educational needs and achievements by and large remain marginalised.⁵⁷⁹

Restrictions and prohibitions on these non-nationals to further education and technical and vocational trainings are often presented as constituting a defence of the legitimate interests of the state and as preserving economic resources and opportunities for their nationals and controlling migration.⁵⁸⁰ States fear that generous provision of education and technical and vocational training programmes will open up employment and settlement opportunities and lead to further migration. This situation, as mentioned earlier on, is something state actors do not want to happen. Therefore, the Karen refugees who are, under Thai law, bestowed with “illegal status” are only formally granted the right to access primary education on an equal footing with nationals under IHRL. When it comes to other levels of education

⁵⁷⁵ Sital Kalantry, Jocelyn E. Getgen and Steven Arrigg Koh, Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR, *Human Rights Quarterly*, 32(2), 2010, P. 268.

⁵⁷⁶ CESCR, General Comment No. 13: The Right to Education (Art. 13 of the Covenant), E/C.12/1999/10, 8 December 1999, Paragraph 14, 20, <https://www.refworld.org/legal/general/cescr/1999/en/37937> Accessed by 10 June 2023. CESCR, General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant), E/1991/23, 14 December 1990, Paragraph 4, <https://www.refworld.org/legal/general/cescr/1990/en/5613> Accessed by 10 July 2023.

⁵⁷⁷ Lisa Hartley, Caroline Fleay, Sally Baker, Rachel Burke and Rebecca Field, *People Seeking Asylum in Australia: Access and Support in Higher Education*, National Centre for Student Equity in Higher Education, Curtin University, Perth: Western Australia, 2018, P. 14, https://www.acses.edu.au/app/uploads/2018/11/Hartley_PeopleSeekingAsylum_FINAL.pdf Accessed by 20 January 2023. See also: Khalid Arar, Yasar Kondakci and Bernard Streitwieser, *Higher Education for Forcibly Displaced Migrants, Refugees and Asylum Seekers*, *Higher Education Policy*, 33, 2020, P. 197.

⁵⁷⁸ UNHCR, *Missing Out: Refugee Education in Crisis*, September 2016, P. 5, <https://www.refworld.org/reference/themreport/unhcr/2016/en/118447> Accessed by 30 June 2023.

⁵⁷⁹ Maheran Makhtar, Khairun-Nisaa Asari and Lotpi Yusob, *Right to Education for Irregular Migrant Children in Malaysia: A Comparative Analysis*, *Pertanika Journals: Social Sciences and Humanities*, 23, 2015, P. 2015.

⁵⁸⁰ Fons Coomans, *Education for Migrants: An Inalienable Human Rights*, UNESCO, 2018, <https://courier.unesco.org/en/articles/education-migrants-inalienable-human-right> Accessed by 20 June 2023.

including vocational, training and technical education in the preparation of employment, this is not always the case.

Moreover, as the Karen refugees in camps belong to an indigenous group, access to education in general and, in particular, vocational and training programmes and opportunities in preparing for them to access employment must also meet their special indigenous needs. Article 14(1) of UNDRIP and Article 27(3) of ILO Convention 169 reserve the right of indigenous peoples to establish and control their educational system and institutions providing educations in their own languages, in a manner appropriate to their indigenous culture. States have obligations to make sure that indigenous peoples are given appropriate and efficient resources in order to run their own educational institutions.⁵⁸¹

It is important to remember here that as mentioned in chapter 3, the system of collective indigenous rights under ILIP should not be understood as being in conflict with the individual rights under IRL and IHRL. The Karen indigenous refugees possess a right to establish and engage with their own educational systems and institutions under ILIP. This does not mean that they do not have the right, without discrimination, to engage in the Thai educational system under IHRL. In other words, they still have the right to choose the national education system should they wish.⁵⁸²

This includes access to vocational training measures and programmes in order to facilitate their employment. In accordance with Article 22(2)-(3) of ILO Convention No. 169, where existing programmes of vocational training of general application do not meet the special needs of indigenous peoples, states should, with the participation of these peoples, ensure the provision of special training programmes and facilities. Any special training programmes should accordingly be based on the economic environment, social and cultural conditions and practical needs of indigenous peoples.

Like those non-nationals with precarious status, indigenous peoples are also among those who face persistent challenges and inequalities in terms of education and vocational training measures toward securing employment.⁵⁸³ Indigenous peoples primarily rely on the low productivity of traditional economic activities to ensure their livelihood.⁵⁸⁴ They are typically excluded from access to formal

⁵⁸¹ Article 27(3) of ILO Convention 169.

⁵⁸² Article 14(2) of UNDRIP and Article 26 of ILO Convention 169.

⁵⁸³ ILO and IWGIA, *Indigenous Peoples in a Changing World of Work: Exploring Indigenous Peoples' Economic and Social Rights through the Indigenous Navigator*, 2021, P. 48, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_792208.pdf accessed by 12 June 2023.

⁵⁸⁴ Inter-Agency Support Group on Indigenous Peoples Issues, *Indigenous Peoples' Access to Decent Work and Social Protection*, 2014, P. 3, https://www.un.org/en/ga/69/meetings/indigenous/pdf/IASG%20Thematic%20paper_%20Employment%20and%20Social%20Protection%20-%20rev1.pdf accessed by 10 June 2023.

education and vocational training opportunities and lack necessary degrees, certificate or skills for work.⁵⁸⁵ Vocational and technical training are theoretically open to all, but due to structural marginalisation and historical exclusion, the opportunities for indigenous peoples are minimal.⁵⁸⁶ At the same time, the growth and durability of indigenous and cultural educational institutions and special training programmes are hampered by a lack of support, financing, and other constraints from states.⁵⁸⁷ This is particularly true in the case of the Karen indigenous peoples in camps, as their precarious migration status blocks them from access to the Thai educational system. Even where their own education and vocational training towards employment is permitted, it is constrained by the Thai government while resources are extremely limited. In the next section I will now turn to examine the Thai policy toward these indigenous refugees.

5.2.2. Access to Work for Karen Refugees in Thai camps.

The Thai government does not allow the Karen indigenous refugees to access any form of work, whether self-employment or wage-earning employment in Thailand.⁵⁸⁸ They are also not given vocational and training opportunities and education which are, as mentioned in previous section, central to enhancing their chances at acquiring work.⁵⁸⁹ In accordance with Section 9 of Working of Alien Act 2008⁵⁹⁰ and Section 8 of Foreigners' Working Management Emergency Decree 2018,⁵⁹¹ "no foreigner in Thailand shall engage in work without work permit". Section 10 of Working of Alien Act 2008 continues to state that foreigners who enter into the Kingdom without a valid visa are not eligible for a work permit. In other words, to be able to legally access the Thai national labour market, foreigners must have a valid visa and a work permit.

⁵⁸⁵ UNESCO, Indigenous Peoples' Right to Education: Overview of the Measures Supporting the Right to Education for Indigenous Peoples Reported by Member States in the Context of the Ninth Consultation on the 1960 Convention and Recommendation against Discrimination in Education, 2019, P, 1, <https://unesdoc.unesco.org/ark:/48223/pf0000369698?posInSet=8&queryId=232d107c-4daa-4c52-87ae-13eb1d69bed4> Accessed by 27 July 2023.

See also: ILO, Implementing the ILO Indigenous and Tribal Peoples Convention No. 169 Towards an Inclusive, Sustainable and Just Future, 2019, P. 18, 66, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_735607.pdf accessed by 15 June 2023.

⁵⁸⁶ Randall Akee, Socioeconomic Outcomes for Indigenous Students Attending a High-Performing School, *Journal of American Indian Education*, 57(2), 2018, P. 59. IWGIA and ILO, Indigenous Peoples in a Changing World of Work: Exploring Indigenous Peoples' Economic and Social Rights through the Indigenous Navigator, 2021, P. 28, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_792208.pdf accessed by 12 June 2023.

⁵⁸⁷ Adenike Margaret Dada, Global Challenges in Cultural and Indigenous Education, *Educational Perspectives*, 13(1), 2024, P. 38-39.

⁵⁸⁸ CESCR, Concluding Observations on the Combined Initial and Second Periodic Reports of Thailand, E/C.12/THA/CO/1-2, 19 June 2015, P. 5, Paragraph 15, <https://documents.un.org/doc/undoc/gen/g15/150/41/pdf/g1515041.pdf> Accessed by 20 October 2024.

⁵⁸⁹ *Ibid.*, P. 9-10, Paragraph 33.

⁵⁹⁰ Working of Alien Act, B.E. 2551, (Adopted and Entered into Force 22 February 2008).

⁵⁹¹ Foreigners' Working Management Emergency Decree No. 2, B.E. 2561, (Adopted and Entered into Force 24 March 2018).

Thailand as mentioned in previous chapters does not have a national asylum system or formal asylum procedures. The Karen indigenous refugees who enter into the country without valid passports or travel documents, or a visa stamped by a Thai authority, are viewed the same as other categories of “illegal migrant”. Therefore, they are, under Section 10 of the Working of Alien Act 2008, not granted work permits. The Thai government does not allow them to leave camps for work and in general, prohibits income-generating activities inside camps.⁵⁹² The only form of employment and income generation that the indigenous refugees have access to is work with NGOs inside camps, either as camp leaders, as camp committee workers, health workers, or teachers.⁵⁹³ However, there are major funding shortfalls, often leaving NGOs with the ability to employ only a very small and limited number of these posts inside camps.⁵⁹⁴ This therefore leaves the majority of indigenous refugees in camps in Thailand marginalised and without access to a livelihood.⁵⁹⁵

There is, moreover, a low quality of education and training when it comes to facilitating these indigenous refugees employment.⁵⁹⁶ The skills and vocational training programmes which run by support from NGOs such as TBC and CCSDPT often serve only small numbers of refugees, are fairly traditional in nature, and, in general, do not lead to economic opportunities.⁵⁹⁷ These barriers among the indigenous refugee population puts them at a highly disadvantaged position compared to their Thai peers if they are allowed to access employment.⁵⁹⁸ In particular, all non-Thai children, regardless of their nationality or legal status are, according to the Cabinet Resolution on 5 July 2005, allowed to enjoy free basic education (grade 1–9) in public Thai schools.⁵⁹⁹ However, it is important to note that migrant children without identification documents in practice face challenges in gaining admission to Thai schools.⁶⁰⁰

⁵⁹² UN Human Rights Council, Working Group on the Universal Periodic Review, Summary of Stakeholders’ Submissions on Thailand: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/39/THA/3, 2021, P. 9, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/224/10/PDF/G2122410.pdf?OpenElement> Accessed by 15 December 2022.

⁵⁹³ Debra Maynard and Janita Suter, The Challenges of Marketing and Income Generation Training to Support Women in Exercising Their Right to Self-Reliance in A Refugee Camp Context: A Case Study from the Thai-Burma Border, *Australian Journal of Human Rights*, 15(1), 2017, P. 133.

⁵⁹⁴ Inge Brees, Refugee Business: Strategies of Work on the Thai-Burma Border, *Journal of Refugee Studies*, 21(3), 2008, P. 389-390.

⁵⁹⁵ Ibid.

⁵⁹⁶ Su-Ann Oh and Marc Van Der Stouwe, Education, Diversity and Inclusion in Burmese Refugee Camps in Thailand, *Comparative Education Review*, 52(4), 2008, P. 593. Hang M Le, Language, Education and Power in Refugee Camps: A Comparison of Kakuma Refugee Camp (Kenya) and Thai-Myanmar Refugee Camps, *Current Issues in Comparative Education*, 23(1), 2021, P. 15-21.

⁵⁹⁷ Women's Refugee Commission, We Want Work: Providing Livelihood Opportunities for Refugees in Thailand, 2006, P. 3, <https://www.refworld.org/reference/countryrep/wcr/2006/en/61442> Accessed by 20 June 2024.

⁵⁹⁸ Su-anna Oh and Marc Van Der Stouwe, Education, Diversity and Inclusion in Burmese Refugee Camps in Thailand, *Comparative Education Review*, 52(4), 2008, P. 593.

⁵⁹⁹ Rule of Ministry of Education on Evidentiary Document for Pupils and Students Admission into Establishment of Education B.E. 2548, (Adopted 5 July 2005, Entered into Force 5 September 2005).

⁶⁰⁰ UN Human Rights Council, Convention on the Rights of the Child Coalition of Thailand Submission to the Universal Period Review of Thailand, 2021, P. 2, Paragraph 8.

The Karen indigenous refugees are, in fact, subjected a long-standing *de facto* policy of “no-access to Thai public schooling”.⁶⁰¹ Due to their “illegal status”, these indigenous refugees are not allowed to study outside their camps and have no access to officially recognised and accredited Thai education, at any level. Schools along the border inside the camps are established and operated by the Karen refugees themselves together with NGOs.⁶⁰² These educational programmes in camps are, however, still subjected to restrictions from the Thai government. Accordingly, NGOs fund infrastructure, teacher and staff salaries, provide school materials and resources and develop the capacity of education staff.⁶⁰³ NGOs often face funding shortfalls and this has a direct bearing on the low quality of education and vocational and skills training inside camps which do not match labour market needs.⁶⁰⁴

The refugee-led camp committees like the KRC are responsible for setting up schools and determining policy on the content, curriculum and form of education inside camps.⁶⁰⁵ Though having considerable control, the Thai government requires that knowledge distributed to the indigenous Karen refugees through textbooks in schools in camps have to avoid topics of controversy and cannot contain political ideas, attitudes or values.⁶⁰⁶ Teaching materials containing critical historical and political education that might promote hostility, revolution or war in the indigenous refugee community in Thailand against their historic enemy, Myanmar, are banned from use in camps.⁶⁰⁷ Particularly, the Thai government restricts the history taught containing sensitive content, such as Karen revolutionary history or topics concerning Karen hardships which are considered part of the indigenous Karen identity.⁶⁰⁸ These restrictions reflect the nature of Thai policy which, as mentioned in chapter 4, does not aim to protect refugees but instead, focuses on border control, national security concerns and prioritises state interests.

⁶⁰¹ Su-Anna Oh, *Education in Refugee Camps in Thailand: Policy, Practice and Paucity*, Paris: UNESCO, 2010, P. 4, <https://unesdoc.unesco.org/ark:/48223/pf0000190709> Accessed by 26 December 2022.

⁶⁰² Su-Anna Oh, *Refugee Education in Thailand: Displacement, Dislocation and Disjuncture*, in Lala Demirdjian (Ed), *Education as Humanitarian Response: Education, Refugees and Asylum seekers*, London and New York: Continuum International Publishing Group, 2012, P. 88-89.

⁶⁰³ *Ibid*, P. 88.

⁶⁰⁴ UN Human Rights Council, *Convention on the Rights of the Child Coalition of Thailand Submission to the Universal Period Review of Thailand*, 2021, P. 3, Paragraph 12. See also: Su-Anna Oh, *Education in Refugee Camps in Thailand: Policy, Practice and Paucity*, Paris: UNESCO, 2010, P. 7-8, <https://unesdoc.unesco.org/ark:/48223/pf0000190709> Accessed by 26 December 2022.

⁶⁰⁵ Su-Anna Oh, *Refugee Education in Thailand: Displacement, Dislocation and Disjuncture*, in Lala Demirdjian (Ed), *Education as Humanitarian Response: Education, Refugees and Asylum seekers*, London and New York: Continuum International Publishing Group, 2012, P. 87-88.

⁶⁰⁶ *Ibid*, P. 88.

⁶⁰⁷ *Ibid*.

⁶⁰⁸ Su-Anna Oh, *Education in Refugee Camps in Thailand: Policy, Practice and Paucity*, Paris: UNESCO, 2010, P. 7, <https://unesdoc.unesco.org/ark:/48223/pf0000190709> Accessed by 26 December 2022.

It is important to note here that qualifications from education or training received inside the camps are not recognised by the Thai government.⁶⁰⁹ This means their learning, skills and certificates gained from education and training inside camps are not valid outside these camps. As the Karen refugee students' achievements inside camps are of little of external value, they do not lead to employment opportunities even after completing these educational and training courses. Even if the Thai government recognised the right to work in law, lack of diplomas and skills training would constitute a serious barrier which, if left unaddressed, would prevent these indigenous refugees from access to a wide range of job opportunities. Though it will be discussed in section 5.3.2, many of the indigenous refugees choose involvement in the informal economy where they face vulnerabilities and exploitation from employers who place economic profits first.

It can be seen here that Thai government fails to uphold its obligations under both IHRL and ILIP to take steps to provide the Karen refugees in camps with access to work. It is hard to deny that this policy of deterrence and exclusion from Thai labour market and educational and training opportunities has negative impacts on the development of a life of dignity for the Karen refugees in camps. Many Karen refugees find themselves in a situation without purpose, direction and confidence in life and are struggling to see the values and use of education or training.⁶¹⁰ They continue to live a life of poverty, unrealised potential, and growing frustration.⁶¹¹ Children also remain nutritionally vulnerable and underweight and child undernutrition is reaching worrying levels in Thai camps.⁶¹²

Many young Karen refugees in camps find no purpose and turn to alcohol, drugs, and violence.⁶¹³ They have little access to the outside world, suffer social isolation from the mainstream of the Thai host society and face unhappiness and an unclear future.⁶¹⁴ Notably, many have been diagnosed with major

⁶⁰⁹ Duncan Maclaren, Tertiary Education for Refugees: A Case Study from the Thai-Burma Border, *Refuge: Canada's Journal on Refugees*, 27(2), 2010, P. 104. Barbara Zeus, Exploring Barriers to Higher Education in Protracted Refugee Situations: The Case of Burmese Refugees in Thailand, *Journal of refugee studies*, 24(2), 2011, P. 266.

⁶¹⁰ Ibid.

⁶¹¹ UNHCR and ILO, *Livelihoods Programme for Refugees: Executive summary*, 2007, P. 1, <https://www.unhcr.org/4691ec6f2.pdf> accessed by 12 June 2023.

⁶¹² CESCR, *Concluding Observations on the Combined Initial and Second Periodic Reports of Thailand*, E/C.12/THA/CO/1-2, 19 June 2015, P. 8, Paragraph 28,

<https://documents.un.org/doc/undoc/gen/g15/150/41/pdf/g1515041.pdf> Accessed by 20 October 2024. See also: Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Thailand*, CRC/C/THA/CO/3-4, 17 February 2012, P. 15, Paragraph 70, <https://documents.un.org/doc/undoc/gen/g12/407/70/pdf/g1240770.pdf> Accessed by 25 June 2024.

⁶¹³ Women's Refugee Commission, *We Want Work: Providing Livelihood Opportunities for Refugees in Thailand*, 2006, P. 3-4, <https://www.refworld.org/reference/countryrep/wcr/2006/en/61442> Accessed by 20 June 2024. See also: Gracia Fellmeth, Emma H. Plugge, Suphak Nosten, May May Oo, Mina Fazel, Prakaykaew Charunwatthana, François Nosten, Raymond Fitzpatrick and Rose McGready, *Living with Severe Perinatal Depression: A Qualitative Study of the Experiences of Labour Migrant and Refugee Women on the Thai-Myanmar Border*, *BMC Psychiatry*, 18, 2018, P. 6.

⁶¹⁴ Peter Kaiser, Marie T. Benner and Kai Pohlmann, *Prolonged Humanitarian Crises – Mental Health in a Refugee Setting at the Thai-Myanmar Border*, *Athens Journal of Health & Medical Sciences*, 7(2), 2020, P. 107.

depressive disorders. This desperate quality of life as a consequence of the denial of access to work, for Nussbaum as mentioned in section 5.1, remains a blocker for the Karen refugees in camps to achieve human flourishing and constitutes a serious violation of their human dignity. In the next section I will turn to discuss the second aspect of the right to work – working conditions.

5.3. Thailand’s Compliance with Obligations in Respect of Working Conditions for Karen Refugees in Thai Camps.

In this section I adhere to the same structure as the previous section. Firstly, I will analyse the obligations in relation to the conditions of work under IHRL and ILIP. With the relevant obligations established, I will then secondly examine Thailand’s compliance with these legal benchmarks.

5.3.1. The Right to Just and Favourable Conditions of Work under IHRL and ILIP.

In accordance with Article 7 of ICESCR, state parties including Thailand are required to recognise the right of everyone to “the enjoyment of just and favourable conditions of work”. In other words, work as specified under Article 6 of ICESCR cannot be of any nature, but must be meet certain conditions. A list of the fundamental requirements of just and decent conditions of work is found in Article 7 of ICESCR. These are, firstly, fair wages and equal remuneration,⁶¹⁵ secondly, safe and healthy working conditions,⁶¹⁶ thirdly, the opportunity to be promoted,⁶¹⁷ and fourthly, leisure and the reasonable limitation of working hours and provision of paid holidays.⁶¹⁸

It is important to stress here that while the right to access to work remains to a large extent contingent on immigration status, as analysed in section 5.2.1, the right to decent working conditions under IHRL is granted to all workers including the Karen refugees – irrespective of nationality and immigration status. In other words, when it comes to the issues of conditions at work, the states’ right to control immigration should have no bearing. However, precarious migration status means that those non-nationals are often subjected to labour exploitation and are, in practice, left vulnerable. In its interpretations, CESCR highlights that the right to just and favourable conditions of work is a right for all, without distinction of any kind.⁶¹⁹ CESCR emphasises that the reference to “everyone” reinforces the general prohibition on discrimination and highlights the fact that this right applies to “all workers

⁶¹⁵ Article 7(a) of ICESCR.

⁶¹⁶ Ibid, 7(b).

⁶¹⁷ Ibid, 7(c).

⁶¹⁸ Ibid, 7(d).

⁶¹⁹ CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 7 April 2016, P. 3 Paragraph 5, <https://www.refworld.org/legal/general/cescr/2016/en/122360> Accessed by 30 December 2022.

in all settings” including all “workers in the informal sector”, “migrant workers” and “refugee workers”.⁶²⁰

States must, in particular, enact legislation and policies ensuring that migrant workers are able to enjoy treatment that is “no less favourable than that of national workers in relations conditions at work”.⁶²¹ Accordingly, all workers, without discrimination must be paid a fair wage which is sufficient to ensure a decent life for them and their families.⁶²² Fair wages are, in the CESCR’s interpretation, equivalent to or above minimum wage. Where workers perform the same or similar jobs, they all without distinction of any kind must receive equal salary.⁶²³ Moreover, the provision of prevention and response to work-related accidents and disease is required to minimise hazards in the working environment and protect the health and safety of workers.⁶²⁴ Workers affected by a preventable occupational accident or disease should all have the right to receive equal and adequate compensation such as costs of treatment or loss of earnings.⁶²⁵

Furthermore, workers have the right to equal opportunity for promotion through fair and transparent processes.⁶²⁶ The number of hours of work should be within the limited and the statutory standard. These limitations should apply across all sectors and for all types of work.⁶²⁷ Where workers work overtime, regardless of their background, they must receive additional pay for these hours.⁶²⁸ They must get compensation for longer days with the provision of lieu time to enable compensatory shorter working days so that they can have time for rest and other leisure activities.⁶²⁹ All workers must have paid annual leave and benefit from a set number of public holidays with payment of wages equivalent to those for a normal working day.⁶³⁰ Rest, leisure, limitation of working hours and paid holidays helps workers to maintain balance between work and family and personal life and to protect their wellbeing.

In addition to legislation as an indispensable step, CESCR also stresses that states must effectively enforce the right to just and favourable conditions of work and sanction non-compliance by employers.⁶³¹ The state should establish a functioning system of labour inspectorates to monitor all aspects of this right for all workers.⁶³² This includes the need for a mandate of investigation and checks

⁶²⁰ Ibid.

⁶²¹ Ibid, P. 13, Paragraph 47(e), (i).

⁶²² Ibid, P. 6, Paragraph 23.

⁶²³ Ibid, P. 4, Paragraph 11.

⁶²⁴ Ibid, P.7, Paragraph 28

⁶²⁵ Ibid, P. 8, Paragraph 29.

⁶²⁶ Ibid, P. 8, Paragraph 31.

⁶²⁷ Ibid, P. 9, Paragraph 37.

⁶²⁸ Ibid, P. 10, Paragraph 37.

⁶²⁹ Ibid, P. 9, Paragraph 35.

⁶³⁰ Ibid, P. 11, Paragraph 45.

⁶³¹ Ibid, P. 14, Paragraph 51.

⁶³² Ibid, P. 15, Paragraph 54.

in the informal economy where the majority of migrants with precarious status often work.⁶³³ In the case of violations, such as failure of employers to respect minimum wage laws or violation of the requirements of a safe working environment, the enforcement authorities should issue adequate penalties or suspend the operation of enterprises.⁶³⁴ CESCR emphasises that the purpose of labour inspectorates should be to monitor and protect the rights of workers at work and not be used for other purposes such as checking the migration status of workers.⁶³⁵

Although the right to just and favourable working conditions under IHRL is given on universal grounds and one's immigration status should not matter, practice has shown that those non-nationals with an uncertain status are exploited and face the inadequate protection at work. States like Thailand invest very few resources in trying to reduce the informal sector or sanction employers, who profit from the exploitative conditions of work to boost their competitiveness.⁶³⁶ This perhaps makes sense when viewed within the wider context of state actions, given that states often focus on controlling migration. As mentioned in the previous sections, state actors often fear that making things better and easier for migrants will lead to further migration, and seek instead to disincentivise them through a hostile policy framework.

In particular, because of their precarious status, many refugees and asylum seekers are often concentrated in low-skilled and poor-quality informal employment.⁶³⁷ The informal economy can manifest in different ways, and can include unregulated and undeclared work, the absence of written contracts, and casual or seasonal employment.⁶³⁸ Within this informal employment, they remain vulnerable to abuse and get paid less than national workers.⁶³⁹ They routinely work for long hours, including overtime for which they are often not paid, and sometimes do not get their breaks or leave entitlements.⁶⁴⁰ They have to work under dangerous, unhealthy and sometimes inhumane conditions

⁶³³ Ibid.

⁶³⁴ Ibid, P. 6, Paragraph 24; P. 8, Paragraph 29.

⁶³⁵ Ibid, P. 15, Paragraph 54.

⁶³⁶ Laurie Berg, *Migrant Rights at Work: Law's Precariousness at the Intersection of Immigration and Labour*, London: Routledge, 2016, P. xiii.

⁶³⁷ ILO, *Employment and Decent work in Refugee and Other Forced Displacement Contexts Compendium of ILO's Lessons Learned, Emerging Good Practices and Policy Guidance*, 2020, P. ii, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_763174.pdf Accessed by 15 June 2023.

⁶³⁸ Keith Hart, *The Informal Economy*, *The Cambridge Journal of Anthropology*, 10(2), 1985, P. 54.

⁶³⁹ CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 7 April 2016, P. 12-13, Paragraph 47(i) <https://www.refworld.org/legal/general/cescr/2016/en/122360> Accessed by 30 December 2022.

⁶⁴⁰ Roger Zetter and Héloïse Ruaudel, *Refugees' Right to Work and Access to Labour Markets: An Assessment*, Knomad, 2018, P. 16. Laurie Berg, *Migrant Rights at Work: Law's Precariousness at the Intersection of Immigration and Labour*, London: Routledge, 2016, P. xiv

and are at high risk of accidents and injuries.⁶⁴¹ A number of studies have shown that occupational accident rates are higher among these migrants than nationals.⁶⁴²

A group who are refugees, but viewed as irregular migrants, like the Karen in Thai camps, find it extremely difficult to assert their rights at work. The situation of the Karen refugees will be discussed in-depth in the next section. Although these irregular migrant workers account for a significant percentage of the world's workforce, they are often excluded from national statistics and legal protections, support and safeguards, exacerbating vulnerabilities.⁶⁴³ They are often willing to do "dirty, difficult and dangerous" jobs that nationals will not, at the exploitative wages that "unscrupulous employers" will offer.⁶⁴⁴ They are unable to seek redress for abuses because they are in an irregular situation, do not have work permits and are usually afraid of being detected, detained and deported.⁶⁴⁵

Even when they do seek redress, pursuing a claim may be difficult, because irregular migrants cannot prove that they are in an employment relationship.⁶⁴⁶ They often have no contract and cannot produce witnesses or prove how many hours they have worked.⁶⁴⁷ If they do not speak the national language(s), they might be less aware of their rights.⁶⁴⁸ Most of them are consequently reluctant to risk complaining, protesting or publicly mobilising, preferring very often the coping strategy of "moving on".⁶⁴⁹ Such vulnerability is increased by abusive labour practices that give the employer control over the migrant worker's residence status or that tie migrant workers to a specific employer.⁶⁵⁰

Along with provisions of IHRL, the Karen indigenous refugees are also entitled to protection of the right to access decent working conditions under ILIP. In accordance with Article 17(3) of UNDRIP and

⁶⁴¹ Ibid.

⁶⁴² Ibid.

⁶⁴³ CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 7 April 2016, P. 12-13, Paragraph 47(d) <https://www.refworld.org/legal/general/cescr/2016/en/122360> Accessed by 30 December 2022.

⁶⁴⁴ Laurie Berg, *Migrant Rights at Work: Law's Precariousness at the Intersection of Immigration and Labour*, London: Routledge, 2016, P. xiii.

⁶⁴⁵ OHCHR, *The Economic, Social and Cultural Rights of Migrants in An Irregular Situation*, 2014, P. 113, https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-14-1_en.pdf Accessed by 15 June 2023.

⁶⁴⁶ Ibid, P. 114

⁶⁴⁷ Ibid.

⁶⁴⁸ CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 7 April 2016, P. 12-13, Paragraph 47(e) <https://www.refworld.org/legal/general/cescr/2016/en/122360> Accessed by 30 December 2022.

⁶⁴⁹ Laurie Berg, *Migrant Rights at Work: Law's Precariousness at the Intersection of Immigration and Labour*, London: Routledge, 2016, P. xiv. See also: ILO, *Protecting the Rights of Migrant Workers in Irregular Situations and Addressing Irregular Labour Migration: A Compendium*, 2022, P. 21 https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_832915.pdf Accessed by 12 June 2023.

⁶⁵⁰ CESCR, General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 7 April 2016, P. 12, Paragraph 47(e) <https://www.refworld.org/legal/general/cescr/2016/en/122360> Accessed by 30 December 2022.

Article 20(2)(b)(c) of ILO Convention 169, indigenous peoples have the right not to be subjected to discriminatory conditions of labour. This includes the provision of indigenous peoples with the same treatment as other workers, including equal salary when they perform the same jobs and social assistance, occupational safety and health and other occupation related benefits. In particular, migrant workers belonging to indigenous peoples should, under Article 20(3) of ILO Convention 169, enjoy the protection afforded by national law and practice to other such workers. They should be fully informed of their rights under labour legislation and of other means of redress available to them.

Although under ILIP, states should do everything possible to prevent any discrimination against indigenous workers, many indigenous refugees in practice endure a predicament which is similar with the case of non-nationals with precarious status.⁶⁵¹ Indigenous peoples' experience in the world of work is also marked by discrimination based on indigenous identity, low pay and poor working conditions.⁶⁵² Due to their lack of education, skills, vocational training and experience, and the pervasion of cultural discrimination and stereotypes, many are trapped in precarious forms of work, face situations of extreme vulnerability and struggle to make a living.⁶⁵³ The work performed by indigenous workers tends to be less well-paid, with no social protections and sometimes with high risks for health and safety, compared with other workers.⁶⁵⁴

Often, the stereotypes held by many recruiters and employers are that indigenous people lack awareness of existing labour legislation and are naturally "docile and noble" and "less antagonistic", less likely to question authority than other workers.⁶⁵⁵ These widespread stereotypes perpetuate the discrimination against and exploitation of indigenous peoples in the workplace.⁶⁵⁶ The indigenous groups like the Karen in camps who are in the situation of refuge in particular remains deeply vulnerable. Their "illegal status" under Thai law, and their status as indigenous peoples, renders them doubly vulnerable at work,

⁶⁵¹ Inter-Agency Support Group on Indigenous Peoples Issues, Indigenous Peoples' Access to Decent Work and Social Protection, 2014, P. 4, https://www.un.org/en/ga/69/meetings/indigenous/pdf/IASG%20Thematic%20paper_%20Employment%20and%20Social%20Protection%20-%20rev1.pdf Accessed by 10 June 2023.

⁶⁵² ILO, Implementing the ILO Indigenous and Tribal Peoples Convention No. 169 Towards an Inclusive, Sustainable and Just Future, 2019, P. 15, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_735607.pdf Accessed by 15 June 2023.

⁶⁵³ ILO, Cooperatives and the World of Work No. 5: Securing Rights, Creating Jobs and Ensuring Sustainability: A Cooperative Way for Empowering Indigenous Peoples, 2016, P. 3, https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---coop/documents/publication/wcms_496599.pdf Accessed by 10 June 2023

⁶⁵⁴ Inter-Agency Support Group on Indigenous Peoples Issues, Indigenous Peoples' Access to Decent Work and Social Protection, 2014, P. 5, https://www.un.org/en/ga/69/meetings/indigenous/pdf/IASG%20Thematic%20paper_%20Employment%20and%20Social%20Protection%20-%20rev1.pdf Accessed by 10 June 2023.

⁶⁵⁵ Blanca A. Camargo, Anke Winchenbach and Mario Vazquez-Maguirre, Restoring the Dignity of Indigenous People: Perspectives on Tourism Employment, *Tourism Management Perspectives*, 2022, P. 5.

⁶⁵⁶ Ibid.

with violations of both IHRL and ILIP taking place. This will be now examined in depth in the next section.

5.3.2. Protection at Work for the Karen Refugees in Thai Camps.

In Thailand, the Labour Protection Act B.E. 2541 (1998)⁶⁵⁷ sets out the fundamental principles and standards for employment. In theory, this Act equally applies to both locals and migrant workers in order to ensure that all workers are given fair treatment, safety, and proper working conditions. However, “illegal migration status” places the Karen indigenous refugees in exploitative employment arrangements where they remain perennially vulnerable to abuse.⁶⁵⁸ In other words, they are, in practice, outside of protection of Labour Protection Act B.E. 2541 (1998).

As mentioned in section 5.2.2 there are no job opportunities in camps, therefore, to survive many of the Karen refugees choose to leave the camps and engage in the external informal economy. Without formal access to work, recognised certificates, degrees and necessary skills, the local work outside camps available to them is overwhelmingly in the agricultural, farming, construction, garment, and unskilled industry sectors such as in rubbish collection, picking flowers, or cleaning.⁶⁵⁹ These job posts are often located within the proximity of camp boundaries, do not require qualifications or Thai fluency and are largely undesired by Thai locals.⁶⁶⁰

Many local employers often exploit the indigenous refugees to work for longer hours, under severe and dangerous working conditions.⁶⁶¹ In extreme cases, when indigenous refugees lose their lives at work, employers only offer a small amount of compensation, or hush money, for the surviving family members to remain silent.⁶⁶² The Karen refugees also are in no position to demand the minimum wage.⁶⁶³ On average, the indigenous refugee workers who leave and work outside camps are commonly paid half the daily minimum wage received by their Thai counterparts.⁶⁶⁴ This salary is not sufficient to afford

⁶⁵⁷ Labour Protection Act, B.E. 2541, (Adopted 12 February 1998, Entered into Force 20 August 1998)

⁶⁵⁸ Asylum Access Thailand, Asia Pacific Refugee Rights Network, People Empowerment Foundation and Refugee Rights Litigation Project, Refugee Rights Network in Thailand Joint Submission Universal Periodic Review of Thailand, 2021 P. 8, Paragraph 37, <https://asylumaccess.org/refugee-rights-network-in-thailand/> Accessed by 20 June 2024.

⁶⁵⁹ Inge Brees, Refugee Business: Strategies of Work on the Thai-Burma Border, *Journal of Refugee Studies*, 21(3), 2008, P. 390.

⁶⁶⁰ Women's Refugee Commission, We Want Work: Providing Livelihood Opportunities for Refugees in Thailand, 2006, P. 4, <https://www.refworld.org/reference/countryrep/wcr/2006/en/61442> Accessed by 20 June 2024.

⁶⁶¹ Ibid. Asylum Access Thailand, Asia Pacific Refugee Rights Network, People Empowerment Foundation and Refugee Rights Litigation Project, Refugee Rights Network in Thailand Joint Submission Universal Periodic Review of Thailand, 2021 P. 8, Paragraph 37, <https://asylumaccess.org/refugee-rights-network-in-thailand/> Accessed by 20 June 2024.

⁶⁶² Ibid.

⁶⁶³ Ibid.

⁶⁶⁴ Women's Refugee Commission, We Want Work: Providing Livelihood Opportunities for Refugees in Thailand, 2006, P. 4, <https://www.refworld.org/reference/countryrep/wcr/2006/en/61442> Accessed by 20 June 2024.

basic needs of the refugees and their families. They as mentioned in section 5.2.2 live under extreme poverty and children face malnutrition. Under the Notification of the Wage Committee on Minimum Wage Rate (No. 13),⁶⁶⁵ the new daily minimum wage rates for employees in Thailand fluctuates from THB 337-400 (worth about 10- 11.87 USD), depending on locations and provinces.

Reportedly, when it comes to disputes with employers in the informal economy outside camps, these indigenous refugees are afraid to seek justice and legal protections due to their precarious migration status.⁶⁶⁶ They fear detection, arrest and deportation by immigration and law enforcement officials for breaking the encampment policy restrictions.⁶⁶⁷ Under section 51 of the Working of Alien Act 2008, if an individual is discovered to engage in work without having a permit, they become liable to imprisonment for a term of up to five years or to a fine from two thousand THB (worth about 60 USD) to one hundred thousand Baht (worth around 3000 USD). The only way to avoid such penalties is to obey official orders to leave Thailand within 30 days.

Moreover, there is inadequate monitoring and enforcement of Thailand's labour laws. The Thai government rarely carries out investigations into the informal economy where these Karen refugees often work.⁶⁶⁸ If investigation occurs at all, the Thai authorities primarily aim to check their migration status to see if workers possess a valid visa and work permit, rather than to ensure that they are working under safe conditions and given fair treatment. This is understandable because, as stated in chapter 4, the focus for Thailand has never been on refugee protection, but has instead always been the control of migration and the protection of national security. If these refugees are discovered to have left the camps for work, they face serious consequences and will be treated in the same way that illegal migrants would be. This as mentioned above includes imprisonment, fines or deportation.

Their “illegal status” leaves the Karen indigenous refugees in a situation of significant precarity and desperation at work. It is impossible for them to access the just working conditions and standards firmly articulated IHRL and ILIP which, as mentioned in section 5.3.1 are meant to be available to all regardless of immigration status. Although the majorities of them leave work outside camps and

⁶⁶⁵ Notification of the Wage Committee on Minimum Wage Rate (No. 13), (Adopted 23 December 2024, Entered into Force 1 January 2025).

⁶⁶⁶ Women's Refugee Commission, *We Want Work: Providing Livelihood Opportunities for Refugees in Thailand*, 2006, P. 4, <https://www.refworld.org/reference/countryrep/wcr/2006/en/61442> Accessed by 20 June 2024. Human Rights Watch, *Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers*, Bangkok: Human Rights Watch, 2012, <https://www.hrw.org/sites/default/files/reports/thailand0912.pdf> Accessed by 20 August 2022.

⁶⁶⁷ Ibid.

⁶⁶⁸ Asylum Access Thailand, Asia Pacific Refugee Rights Network, People Empowerment Foundation and Refugee Rights Litigation Project, *Refugee Rights Network in Thailand Joint Submission Universal Periodic Review of Thailand*, 2021 P. 8, Paragraph 37, <https://asylumaccess.org/refugee-rights-network-in-thailand/> Accessed by 20 June 2024.

contribute to Thailand's workforce, they have been marginalised and out of the protection of law and suffer a serious violation of human dignity.

Here, it cannot be denied that the provisions of IRL, IHRL and ILIP together constitute a key set of legal benchmarks that all states including Thailand should uphold. These provisions, as discussed in this chapter, include the right to work – covering both access to the national labour market and just conditions at work. In practice however, as shown in many cases, particularly so for the Karen refugees, this legal framework does not achieve its purposes and fails to extend protection to deeply vulnerable people. The universalist liberal underpinnings of this system of human rights, with its ideal of dignity for all is, in fact, compromised.

This is because states retain the power, even within the legal framework, to control migration. They get to determine migration status, and the nature of the protections one receives in reality is determined by that immigration status. Under this system, regardless of the fact that rights should be universal, they are in fact limited to those who are nationals or who are otherwise granted formal, legal immigration status. Those like the Karen indigenous refugees, without status, are denied rights including the right to work, and will inevitably find themselves in an extremely precarious position with serious consequences to both their standards of living and to their life opportunities.

The long-lasting nature of this problem demonstrates that fresh thinking is required. It is time to consider new options and forge a new analysis. Investigating the nature of other philosophies may reveal new ways in which universal rights can be promoted that are more powerful within certain contexts. Different philosophies may provide for a new set of ideals through which universality can be achieved, which may be able to mitigate the tension between the international human rights regime on the one hand and the control of the state over immigration on the other. Exploring this possibility does not undermine or devalue the liberal human rights framework, but long-term problems in non-Western settings require us to think about how universal rights can be situated within, and perhaps enhanced by, different cultures in different times and places.

The approach I seek to explore and develop in the coming chapters focuses therefore on Confucian communitarianism. This tradition, although rooted in a different worldview from liberalism, and from a very different time and place than the modern West, still contains within it core ethical ideas, including ideas of human dignity. The values and insights of Confucian communitarianism may be able to play a role in promoting the universal protection of human rights and reduce the tension under the current legal framework in relation to the right to work for Karen refugees. As discussed in the following chapters, Confucian communitarianism is grounded in Asian traditions and values, and has significantly influenced Thailand and the wider East and Southeast Asian regions. It may therefore hold real potential

to influence and promote, at both a governmental level and for the wider Thai public, the upholding of the obligations under IRL, IHRL and ILIP to recognise the right to work for these refugees.

Conclusion.

In this chapter I firstly discussed the importance and value of work in relation to promoting the cause of the Karen refugees' human dignity through the lens of Nussbaum's theoretical framework, a worldview which shares similar views with Confucian communitarianism. I then examined the protection of the right to work for Karen refugees in camps - respectively focusing on access to work and working conditions, looking at the provisions of IRL, IHRL and ILIP as the legal benchmarks. I concluded that a tension between universal human rights protections and the state's power to control over immigration is central to why the international legal framework struggles to extend protection of the right to work to these indigenous refugees. In particular, the right to access work via the national labour market is not universal, but remains dependent on one's immigration status which is essentially determined by states. This chapter found that those with precarious status like indigenous refugees in camps are excluded from job opportunities as well as training in support of employment. Thai nationals or other migrants with legal status are prioritised for these work and training opportunities. When it comes to the right to decent working conditions, this is granted to all workers, irrespective of immigration status. Even though that is the case, precarious status means that these indigenous refugees in practice suffer abuse and labour exploitation and beyond the protection of law. Although they are physically present in the country, they remain silent and marginalised and face serious violations of human dignity.

The prolonged nature of this situation calls for new, fresh thinking. It is important to examine whether philosophies like Confucian communitarianism have values and concepts that can play a role in promoting universality and mitigating the tension under the current legal framework of human rights in order to improve the situation for the Karen refugees. In the next chapter I will now turn to understand and discover the historical background, values and beliefs of the Confucian communitarian tradition.

Chapter 6: The Background to Confucian Communitarianism and its Perspective on Human Dignity

Introduction:

In this chapter I analyse Confucian communitarian values and traditions, with a particular focus on the concept of human dignity. Confucian communitarian traditions did not directly use the terms and language of human dignity as such because as mentioned previously, this concept was later developed by liberal thinkers. The tradition nonetheless develops values that resonate with human dignity, emphasising virtue and communality, seeing the world through the lens of kinship ties and extending care towards all among the human family.⁶⁶⁹ This resonance becomes stronger when looking at the ideal of human dignity through the lens of Nussbaum. I argue that this meeting of values provides a strong rationale for turning to Confucian communitarianism to support the protection of the right to work for Karen refugees in camps. Importantly, the traditional concepts and beliefs of Confucian communitarianism are rooted in Asian values and traditions and have profoundly influenced Thailand.⁶⁷⁰ I posit that re-examination and application of these Confucian communitarian values may hold real potential for local acceptance (both among the Thai government and the wider population) of Karen refugees' right to work. I will explore this proposition in-depth in the next chapter.

I contend that my turn to Confucian communitarianism should not be seen as weakening the existing international standards of human rights or as downplaying the contributions of liberalism. Rather, engagement with local and regional traditions rooted in Confucian Communitarianism constitutes an integral path through which the realisation of universal human rights can be framed and achieved.⁶⁷¹ I deploy the values of Confucian communitarianism, which advocates a different way of framing and justifying human rights than liberalism, but which nonetheless provides grounds for the protection of the right to work for Karen refugees in Thailand. My engagement with Confucian communitarianism yields unique insights and contains original contributions.

On this basis, in this chapter I firstly analyse the background to debates about the relevance of cultures and cultural legitimacy to human rights, with a particular focus on the Asian values debate and Confucian communitarianism. Secondly, I then examine the background to the impact of Confucian

⁶⁶⁹ Luo An' Xian, Human Dignity in Traditional Chinese Confucianism, in Marcus Duwell, Jens Braarvig, Roger Brownsword and Dietmar Mieth (Eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*, Cambridge: Cambridge University Press, 2015, P. 181.

⁶⁷⁰ Jianghua Han, The Chinese Wuxia Culture in Thailand: Dissemination and Influence, *Comparative Literature: East and West*, 5(1), 2021, P. 8. Katarzyna Anna Nawrot, Does Confucianism Promote Cooperation and Integration in East Asia? *International Communication of Chinese Culture*, 7(1), 2020, P. 1-2.

⁶⁷¹ Abdullahi Ahmed An-Na'im, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, Pennsylvania: University of Pennsylvania Press, 1995, P. 2-3. Alison Dundes Renteln, *International Human Rights: Universalism Versus Relativism*, New Orleans: Quid Pro Books, 2013, P. 4.

communitarianism in Thailand. Finally, I analyse Confucian communitarianism's approach to human dignity and develop a dialogue between this approach and that of Nussbaum's.

6.1. Confucian Communitarianism and the Role of Cultural Legitimacy in Universal Human Rights Discourse.

The culturally situated challenge in human rights debates has generated significant attention. Many East and Southeast Asian countries, including Thailand, have called for a regime of human rights that is conscious of Asian values and cultural experiences.⁶⁷² It is important to note here that the cultural source of "Asian values" has been primarily traced to the former leader of Singapore, Lee Kuan Yew, and to the ideas and principles from Confucian communitarianism which he drew on.⁶⁷³ This debate has resulted in a major division between liberal universalists and Third World critics.⁶⁷⁴ I advocate for a middle way and contend that cultural concepts and institutions hold relevance for promoting the universal protection of human rights and argue that values of Confucian communitarianism can support this position. I am proposing a more nuanced approach which turns to Confucian Communitarianism, seeing it as complementary to, and not a substitute for, the universal protection of human rights.

This debate came into being in the post-war period, when the world was shaken by a wave of decolonisation and the deconstruction of Western empires.⁶⁷⁵ As new states became independent, they came together at the Bandung Conference of 1955 in Indonesia.⁶⁷⁶ This was the first ever conference attended solely by African and Asian States, including Thailand, and came to symbolise a rising spirit of solidarity throughout the Third World.⁶⁷⁷ The principles flowing from this conference came to define Third World politics for decades, and range from promoting self-government to forging a non-aligned third way between the great powers.⁶⁷⁸ This became known as the start of the Third World movement, which swept across Asia, Africa and Latin America.

⁶⁷² Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights, A/CONF.157/ASRM/8, 2 April 1993, Paragraph 8.

⁶⁷³ Michael D. Barr, Lee Kuan Yew and the "Asian Values" Debate, *Asian Studies Review*, 24(3), 2000, P. 311. Parama Sen, Do Asian Values Still Exist? Revisiting the Roots in Search of Plausible Future, *South Asian Survey*, 21(1-2), 2014, P. 54.

⁶⁷⁴ Alison Dundes Renteln, *International Human Rights: Universalism Versus Relativism*, New Orleans: Quid Pro Books, 2013, P. 4. Julie Fraser, *Human Rights and Their Cultural Connection*, in *Social Institutions and International Human Rights Law Implementation*, Cambridge: Cambridge University Press, 2020, P. 21.

⁶⁷⁵ Anthony John Christopher, *Decolonisation without Independence*, *GeoJournal*, 56, 2002, P. 213-214. Raymond F. Betts, *Decolonisation: A Brief History of the Word*, in Els Bogaerts and Remco Raben (Eds), *Beyond Empire and Nation: The Decolonisation of African and Asian Societies, 1930s-1970s*, Leiden: Brill, 2012, P. 25.

⁶⁷⁶ The Ministry of Foreign Affairs, Republic of Indonesia, *Final Communiqué of the Asian-African Conference of Bandung*, 24 April 1955, Accessed by 20 May 2024.

⁶⁷⁷ Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance*, Cambridge: Cambridge University Press, 2003, P. 74.

⁶⁷⁸ *Ibid.* See also: The Ministry of Foreign Affairs, Republic of Indonesia, *Final Communiqué of the Asian-African Conference of Bandung*, 24 April 1955,

As a result of this global post-imperial turn and the resulting decolonisation movement in the post-war period, TWAIL was formed.⁶⁷⁹ TWAIL advocates and scholars hold that the universalist regime of international law is a predatory system that constitutes “a continuance of Western colonialism” and sustains the subordination of the Third World to Western domination.⁶⁸⁰ In other words, international law has come to constitute a new mode of imperial power and remains a tool of Western hegemony and Eurocentric ideology.⁶⁸¹ TWAIL proponents were united in their efforts to create a system of international law that acknowledged and furthered the interests and beliefs of the peoples of the Third World.⁶⁸²

TWAIL critique spans the whole range of international law but has a natural focus on areas of law, like human rights law, which are seen to possess Western liberal values or serve as a smokescreen for the interests of Western states.⁶⁸³ Originating within this context, the rise of the Asian values discourse within the global human rights debate took shape.⁶⁸⁴ This debate has received much attention, being seen as critically important by many leaders of East and Southeast Asian states.⁶⁸⁵ The argument made principally by these leaders later on held that rights are dependent on cultural norms and need to be appropriate for, and accepted in, specific local contexts in order to be politically legitimate.⁶⁸⁶

They argue that the international legal framework of universal human rights results from the responses of Euro-American states to the atrocities committed during the Second World war.⁶⁸⁷ This system of

https://www.cvce.eu/en/obj/final_communique_of_the_asian_african_conference_of_bandung_24_april_1955-en-676237bd-72f7-471f-949a-88b6ae513585.html Accessed by 20 May 2024.

⁶⁷⁹ Makau-wa Mutua and Antony Anghie, “What Is TWAIL?” Proceedings of the Annual Meeting (American Society of International Law), 94, 2000, P. 31-32. Antony Anghie, Rethinking International Law: A TWAIL Retrospective, European Journal of International Law, 34(1), 2023, P. 7.

⁶⁸⁰ Ibid.

⁶⁸¹ Andrea Bianchi, Third World Approaches, in International Law Theories: An Inquiry into Different Ways of Thinking, Oxford: Oxford University Press, 2016, P. 205-206. Brian-Vincent Ikejiaku, International Law is Western Made Global Law: The Perception of Third-World Category, African Journal of Legal Studies, 6(2-3) 2014, P. 353.

⁶⁸² Antony Anghie, Rethinking International Law: A TWAIL Retrospective, European Journal of International Law, 34(1), 2023, P. 8.

⁶⁸³ José-Manuel Barreto, Human Rights from a Third World Perspective: Critique, History and International Law, Cambridge: Cambridge University Press, 2013, P. 6. Larissa Ramina, TWAIL – “Third World Approaches to International Law” and Human Rights: Some Considerations, Revista de Investigações Constitucionais, 5(1), 2018, P. 266-267.

⁶⁸⁴ Jau-hwa Chen, Asian Values? Why Not, but How, in Damien Kingsbury and Leena Avonius (Eds), Human Rights in Asia: A Reassessment of Asian Values Debate, New York: Palgrave Macmillan, 2008, P. 41-42. Karen Engle, Culture and Human Rights: The Asian Values Debate in Context, NYU Journal of International Law and Politics, 32, 2000, P. 291.

⁶⁸⁵ Two leading voices in this debate were the former prime minister of Singapore and of Malaysia, respectively Lee Kuan Yew and Mahathir Mohamad.

⁶⁸⁶ Yvonne Tew, Beyond “Asian Values”: Rethinking Rights, CGHR Working Paper 5, Cambridge: University of Cambridge Centre of Governance and Human Rights, 2012, P. 5.

⁶⁸⁷ Balakrishnan Rajagopal, International Law from Below: Development, Social Movements and Third World Resistance, Cambridge: Cambridge University Press, 2003, P. 174. José-Manuel Barreto, Human Rights from a

human rights is seen as unduly based on a Western liberal conception of the individual as self-interested and rationally autonomous with a corresponding vision of human dignity.⁶⁸⁸ Societies like East and Southeast Asia do not always share this conception and individualistic vision of a dignified life, but instead have been shaped by Asian values.⁶⁸⁹

From this perspective, the implementation of international standards of human rights are seen as “an alien imposition from the West”, only reflecting specifically Western values.⁶⁹⁰ The West’s attempts to impose universal standards of human rights on the Third World is described as a disguised “cultural or ideological imperialism”.⁶⁹¹ At one extreme stand the rejectionists, who as cultural relativists take this argument to its furthest possible reach and contend that human rights cannot be reconciled to East and Southeast Asian or other non-Western cultures.⁶⁹² In other words, human rights cannot be seen as universal and neither can they be globalised.

I argue that the continued confrontation between universality and cultural relativism in human rights discourse needs to be overcome, as it only negatively impacts on the actual implementation of human rights protection. My approach is to create a middle way which recognises cultural context and uniqueness, while at the same time promoting the universal nature of human rights as a crucial part of human dignity as mentioned in chapter 2. This is because legal systems do not develop in a vacuum but instead, are deeply embedded in national and local cultures that vary greatly according to history and geography.⁶⁹³ Despite the various ways of harmonising law and legal practice in the age of globalisation, the impacts of tradition and cultures in forming conceptions of law and government in a given society are evident.⁶⁹⁴

Third World Perspective: Critique, History and International Law, Cambridge: Cambridge University Press, 2013, P. 7.

⁶⁸⁸ Andreas Follesdal, Human Rights and Relativism, in Andreas Follesdal and Thomas Pogge (Eds), *Real World Justice: Grounds, Principles, Human Rights, and Social Institutions*, Dordrecht: Springer, 2006, P. 265.

⁶⁸⁹ Ibid. Chang Yau Hoon, Revisiting the ‘Asian Values’ Argument Used by Asian Political Leaders and Its Validity, *Indonesian Quarterly*, 32(2), 2004, P. 155.

⁶⁹⁰ Yvonne Tew, Beyond “Asian Values”: Rethinking Rights, CGHR Working Paper 5, Cambridge: University of Cambridge Centre of Governance and Human Rights, 2012, P. 5. Damien Kingsbury, Universalism and Exceptionalism in Asia, in Damien Kingsbury and Leena Avonius (Eds), *Human Rights in Asia: A Reassessment of Asian Values Debate*, New York: Palgrave Macmillan, 2008, P. 24.

⁶⁹¹ Chang Yau Hoon, Revisiting the ‘Asian Values’ Argument Used by Asian Political Leaders and Its Validity, *Indonesian Quarterly*, 32(2), 2004, P. 156.

⁶⁹² Michael C. Davis, Constitutionalism and Political Culture: The Debates over Human Rights and Asian Values, *Harvard Human Rights Journal*, 11(109), 1998, P. 109.

⁶⁹³ Stephen Zamora, The Cultural Context of International Legal Cooperation, *Journal of Legal Education*, 51(3), 2001, P. 462. Lawrence M. Friedman, Legal Culture and Social Development, *Law and Society Review*, 4(1), 1969, P. 29-30.

⁶⁹⁴ Werner F Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*, 2nd Ed, Cambridge: Cambridge University Press, 2006. Esin Orucu, *Critical Comparative Law: Considering Paradoxes for Legal Systems in Transition*, *Geschriften van de Nederlandse Vereniging voor Rechtsvergelijking* 59, Nederlandse Vereniging voor Rechtsvergelijking, Deventer: Kluwer International Law, 1999.

Human rights discourse has to be embedded within the language of specific cultures in particular times and places.⁶⁹⁵ Culturally contextualising rights should not be viewed as compromising international human rights standards, but instead, should be seen as a necessary part of their realisation.⁶⁹⁶ In other words, internal cultural discourse and cross-cultural dialogue is essentially a means to enhancing the universal legitimacy of human rights and maximising the effectiveness of human rights standards. Accordingly, by tracing the linkages between cultural values on the one hand, and the concepts, ideas and institutions which are central to various traditions, support for fundamental human rights can be expanded and the claim to universality vindicated.⁶⁹⁷

I contend that more thought and effort therefore must be given to enriching the human rights discourse by explicit reference to other non-Western cultural traditions, like Confucian communitarianism. These cultural traditions have their own concepts all of which may both enrich human rights discourse and crucially add to their legitimacy and reach.⁶⁹⁸ As I will unpack in depth in section 6.3, Confucian communitarianism contains its own perspectives on human dignity, ethics and more. These perspectives often take a different path from liberalism, but can provide support for universal human rights protection. It is important to stress here that, when reflecting on this debate, it should be understood that the values and language of Confucian communitarian ethics have been incorporated into the first and most important global human rights document – the UDHR.⁶⁹⁹

This inclusion into UDHR in particular comes through the contributions of Chinese co-drafter, Pengchun Chang (P. C. Chang). P. C. Chang, a Chinese diplomat to the United Nations, as Vice-Chairman of the United Nations Commission on Human Rights (UNCHR) participated in the leadership of the drafting of the UDHR in the years 1947 and 1948.⁷⁰⁰ P. C. Chang's aim was to prevent the UDHR from being rooted only in one specific Western culture, and to preserve its universal and abstract character.⁷⁰¹ His deep knowledge of Confucian communitarianism and Western philosophy and his role as a diplomat

⁶⁹⁵ Tore Lindholm, *The Cross-Cultural Legitimacy of Universal Human Rights: Plural Justification across Normative Divides*, in Francesco Francioni and Martin Scheinin (Eds), *Cultural Human Rights*, Leiden: Brill, 2008, P. 17.

⁶⁹⁶ Abdullahi Ahmed An-Na'im, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, Pennsylvania: University of Pennsylvania Press, 1995, P. 3. Federico Lenzerini, *The Culturalization of Human Rights Law*, Oxford: Oxford University Press, 2014, P. 217-219.

⁶⁹⁷ Mary Robinson, *Human Rights at the Dawn of the 21st Century*, *Human Rights Quarterly*, 15(4), 1993, P. 629, 632.

⁶⁹⁸ Antony Anghie, *Rethinking International Law: A TWAIL Retrospective*, *European Journal of International Law*, 34(1), 2023, P. 80.

⁶⁹⁹ Frederic Krumbein, P. C. Chang – The Chinese Father of Human Rights, *Journal of Human Rights*, 14(3), 2015, P. 332.

⁷⁰⁰ Sun Pinghua, *Pengchun Chang's Contributions to the Drafting of the UDHR*, *Journal of Civil and Legal Sciences*, 5(5), 2016, P. 1-2. See also at the website of United Nations: *Universal Declaration of Human Rights (1948), Drafting History*, <https://research.un.org/en/undhr/draftingcommittee> Accessed by 10 September 2023.

⁷⁰¹ Frederic Krumbein, P. C. Chang – The Chinese Father of Human Rights, *Journal of Human Rights*, 14(3), 2015, P. 337.

enabled him to make propositions in the UNCHR and the Drafting Committee that were acceptable to both the Western and non-Western delegates, to mediate between different positions.⁷⁰² During the debates and meetings for drafting, P. C. Chang was widely reported to possess strong coherence and was viewed as a bridge-builder between East and West.⁷⁰³

He successfully integrated Confucian communitarian values into UDHR.⁷⁰⁴ The most explicit and direct link to Confucian communitarian philosophy can be found in P. C. Chang's contribution to Article 1 of UDHR. P. C. Chang successfully proposed the inclusion of the word "conscience", meaning an attitude of "sympathy", "benevolence" or "consciousness of his fellow men" in Article 1 of UDHR.⁷⁰⁵ He also inserted the phrase "in a spirit of brotherhood" in the second sentence of Article 1 of UDHR.⁷⁰⁶ This idea of human beings, with sympathy and conscience acting towards one another in a filial spirit of brotherhood which P. C. Chang mentioned Article 1 of UDHR, reflects important concepts in Confucian ethics. This attitude was traced back to Confucian communitarian thought regarding manners and the importance of kindly, benevolent and considerate treatment of others (*Ren*). An in-depth of values of Confucian communitarianism will be present in section 6.3.

During the meetings of the Drafting Committee, P. C. Chang put forward the Confucian concepts of *ren* and harmony and repeatedly advocated that "human beings as members of a large family should adopt a broad mind and be constantly conscious of others, in whose world they live".⁷⁰⁷ He made clear that the aim of the United Nations should not be to ensure the selfish gains of the individual but to try and increase peoples' moral stature and reflect a benevolent approach.⁷⁰⁸ P. C. Chang was reported to urge that the Confucian communitarian attitude of sympathy towards other human beings should be an

⁷⁰² Ibid, P. 335-336.

⁷⁰³ Ibid, P. 335.

⁷⁰⁴ Nick Gier, The Day Confucius Went to the United Nations: Chinese Influence on the Declaration of Human Rights, <https://www.webpages.uidaho.edu/ngier/declaration.htm> Accessed by 15 December 2023.

⁷⁰⁵ United Nations Commission on Human Rights (UNCHR), Summary Record of the 8th Meeting, 1st Session, Leke Success: New York, 31 January 1947, P. 2-4, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/GL9/902/38/PDF/GL990238.pdf?OpenElement> Accessed by 25 September 2023. See also: Frederic Krumbein, P. C. Chang – The Chinese Father of Human Rights, *Journal of Human Rights*, 14(3), 2015, P. 347.

⁷⁰⁶ Ibid.

⁷⁰⁷ Sun Pinghua, Pengchun Chang's Contributions to the Drafting of the UDHR, *Journal of Civil and Legal Sciences*, 5(5), 2016, P. 5-6.

For more information on meeting records, see at: UNCHR, Summary Record of the 11th Meeting, 1st Session, Leke Success: New York, 19 June 1947, P. 10-11, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/NG9/001/19/PDF/NG900119.pdf?OpenElement> Accessed by 25 September 2023.

UNGA, Summary Record of 182nd Plenary Meeting, Palais De Chaillot, Paris, 10 December 1948, P. 895, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL4/812/22/PDF/NL481222.pdf?OpenElement> Accessed by 20 September 2023.

⁷⁰⁸ UNGA, Third Committee, Summary Record of 95th Meeting, 3rd Session, Palais De Chaillot, Paris, 6 October 1948, P. 87, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL4/804/36/PDF/NL480436.pdf?OpenElement> Accessed by 20 September 2023.

important precondition for grounding and protecting human rights.⁷⁰⁹ He stressed that human beings, with conscience acting towards one another in the spirit of brotherhood would know and respect the rights of others.⁷¹⁰

P. C. Chang's contribution is not simply the inclusion of Confucian terminology, but the placing of emphasis on the core concept of Confucianism as the essential attribute of human beings, with this core concept becoming a philosophical foundation of human rights in the UDHR.⁷¹¹ In other words, this inclusion is significant and opened a window for the West to understand Chinese Confucianism and traditional culture. The influence of this tradition, even at the birth of the international human rights system, suggests the compatibility of Confucian communitarianism and human rights discourse. I argue that turning to Confucian communitarianism, a culture which as discussed in the next section, has deeply shaped East and Southeast Asian countries including Thailand, is crucial. Basing rights upon these familiar values and concepts offers new insights and may hold real potential to secure local acceptance for improving the recognition of the fundamental right to work for Karen refugees in the country. In the next section I now turn to explain how Confucian communitarianism came to and continues to hold a key influence in Thailand in order to begin teasing out how the tradition can enhance the reach of universal protection of human rights and in particular, the right to work for the Karen refugees.

6.2. The Influence of Confucian Communitarianism in Thailand.

East and Southeast Asian countries including Thailand have been profoundly shaped by Confucian communitarianism. Although Thailand is one of the world's most predominantly Buddhist countries, the country has experienced twin cultural influences from both India (Buddhism) and China (Confucian communitarianism).⁷¹² The traditions of Thailand have partly been built upon Confucian communitarianism which emphasises similar values to Buddhism.⁷¹³

Both China and Thailand belong to the Eastern cultural circle, and their cultural exchanges have a long history, having a significant level of cultural similarity and acceptance.⁷¹⁴ In particular, for more than

⁷⁰⁹ UNCHR, Summary Record of the 11th Meeting, 1st Session, Leke Success: New York, 19 June 1947, P. 10-11, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/NG9/001/19/PDF/NG900119.pdf?OpenElement> Accessed by 25 September 2023.

⁷¹⁰ Ibid.

⁷¹¹ Sun Pinghua, Pengchun Chang's Contributions to the Drafting of the UDHR, *Journal of Civil and Legal Sciences*, 5(5), 2016, P. 3. Sun Pinghua, P. C. Chang's Concept of Human Dignity for the Universal Declaration of Human Rights, *Journal of East Asia and International Law*, 12(1), 2019, P. 98-99.

⁷¹² David C Kang, *East Asia Before the West: Five Centuries of Trade and Tribute*, New York: Columbia University Press, 2010, P. 52. See also: Katarzyna Anna Nawrot, Does Confucianism Promote Cooperation and Integration in East Asia? *International Communication of Chinese Culture*, 7(2), 2020, P. 25.

⁷¹³ Amartya Sen, Human Rights and Asian Values, *The New Republic*, 14 -17 July 1997 http://histtheory.tripod.com/Human_Rights_Amartya.html Accessed by 29 August 2023.

⁷¹⁴ Jianghua Han, The Chinese Wuxia Culture in Thailand: Dissemination and Influence, *Comparative Literature: East and West*, 5(1), 2021, P. 8.

two thousand years the Han, Yuan, Ming and Qing dynasties of China had diplomatic exchanges with the ancient kingdoms in Thailand including the Sukhothai Kingdom and the Lanna Kingdom.⁷¹⁵ The Thai government maintained diplomatic relationships with China through the Chinese tributary system, which was built upon Confucian ideals.⁷¹⁶

This system of tribute was key to spreading the ideals of Confucian communitarianism in Thailand. The tribute system was a set of institutions and norms that regulated diplomatic and political contact, cultural and economic relations, and explicitly stated a hierarchical relationship between two political units.⁷¹⁷ The tribute system was formalised in two key institutions: firstly, recognition by the superior state – which was China as the central trading focus of East and Southeast Asian states at that time and, secondly, the sending of tribute missions from inferior states to the superior state.⁷¹⁸ The superior state acted with benevolence, and protected and recognised the sovereignty and peoples of the inferior states in such a way that imposed restraints on the dominant state.⁷¹⁹

This tribute system was based on the Confucian communitarian ideal of “paternal rule”, the superior state acted as a “father” towards the inferior states.⁷²⁰ As a political framework, it allowed for diplomacy, travel and official and private trade between all states and contributed to the stability and harmony of the entire region.⁷²¹ The Confucian concept of paternal rule has been criticised for supporting authoritarian regimes and suppression. In fact, this the paternal structure has been abused and can be misinterpreted by the leadership of states including Thailand. However, it is important to note that the Confucian familial paternalistic structure of rule is not purely “top-down”⁷²² and rather contains ethical value consistent with the egalitarian modern framework of human rights. I will discuss this issue further in section 6.3.

This Confucian tributary system later on played a key role in Thailand’s process of internal state formation.⁷²³ In pre-modern times, the country was divided into different city-states, known in Thai as *Mueang*.⁷²⁴ A *Mueang* could, however, be anything from a village to a larger city-state, but each *Mueang*

⁷¹⁵ Liping Li, Sino-Thai Relations in the Yuan, Ming and Qing Dynasties, *Journal of Literature and Art Studies*, 12(12), 2022, P. 1346-1347.

⁷¹⁶ David C Kang, *East Asia Before the West: Five Centuries of Trade and Tribute*, New York: Columbia University Press, 2010, P. 55.

⁷¹⁷ Ibid.

⁷¹⁸ Ibid, P. 56, 59.

⁷¹⁹ Ibid, P. 63.

⁷²⁰ Ibid.

⁷²¹ Ibid, P. 62-63.

⁷²² Joseph Chan, *Confucian Perfectionism: A Political Philosophy for Modern Times*, Princeton: Princeton University Press, 2014, P. 39.

⁷²³ Chris Baker and Pasuk Phongpaichit, *A History of Thailand*, Cambridge: Cambridge University Press, 2014, P. 9.

⁷²⁴ Ibid, P. 7-9.

as a basic political unit was under the influence of a superior *Muaeng* and paid tribute to it.⁷²⁵ Over time, the leaders of the most powerful city-states became dominant over the entire country and often defended the subordinate *Muaeng*.⁷²⁶ The superior *Muaeng* was in turn subordinate to a central King. The King acted in accordance with “benevolent principles” and protected the well-being of all peoples in his territories.⁷²⁷ This is sometimes referred to as the Southeast Asian ‘mandala’ system, through which the internal incorporation of the Chinese tributary system became a key part of Southeast Asian state formation, including Thailand.⁷²⁸

Furthermore, the ideal of Kingship, which remains central to Thailand’s constitutional identity to date, is historically built not only upon Buddhism but also Confucian Chinese ideas.⁷²⁹ According to Buddhism (originating in India), the King plays a key role in providing patronage for the Sangha (the Buddhist community) and promoting the *thamma*, or Buddhist teachings, in society on the model of the early Indian emperor Ashoka.⁷³⁰ The King, therefore, rules his people with fairness and compassion and governs for the material and spiritual benefit of the people.⁷³¹ While Thai Kingship was primarily influenced by Buddhism, King Ramkhamhaeng – the third monarch of the Sukhothai state based his conception of law, government, and the administration of justice on a filial father-son arrangement borrowed from Confucian ideas.⁷³²

Ramkhamhaeng adopted the Confucian conception of the King as “the father of the nation”, effectively merging the ideals of Confucian Kingship and ideals of Buddhist Kingship through the ideal of paternal rule.⁷³³ Sarit Thanarat - the former Prime Minister of Thailand from 1958 until 1963 – continued to emphasise the Sukhothai style of leadership through the principle of *phoban phomuang* (father of the family or father of the nation).⁷³⁴ To this day, the Thai administration follows a quasi-Confucian ideal of a father looking after his children. The King is traditionally revered by people in Thailand and explicitly recognised as the head of the state in section 5 of the current Constitution of Thailand.⁷³⁵ It is important to note here that the Confucian communitarian ideal of the King as “the father of the nation” has been wrongly interpreted in nationalistic or wholly exclusive terms. This ideal is more inclusive in

⁷²⁵ Ibid, P. 8-9.

⁷²⁶ Ibid, P. 9.

⁷²⁷ Ibid, P. 8-9.

⁷²⁸ Ibid.

⁷²⁹ Ibid, P.19. It is noted that Siam is the former name of Thailand and was changed to Thailand in 1939.

⁷³⁰ Ibid, P.19.

⁷³¹ Ibid.

⁷³² Sarasin Viraphol, Law in traditional Siam and China: Comparative Study, Journal of the Siam Society, 1977, P. 83.

⁷³³ Ibid.

⁷³⁴ Thak Chaloemtiarana, Thailand: The Politics of Despotic Paternalism, New York: Cornell Southeast Asia Program, 2007, P.106, 119.

⁷³⁵ Constitution of the Kingdom of Thailand, B.E. 2560, (Adopted and Entered into Force 6 April 2017).

nature than it may at first appear and refers not just to peoples in the national context, but also to peoples in the whole world (“all under Heaven – tianxia”). This will be discussed later on in section 6.3.

In addition to diplomatic exchanges through the tribute system, China and Thailand also had close non-governmental exchanges.⁷³⁶ A history of extensive trading and economic interactions bound these two states together and also contributed to the influence of Confucian communitarianism in the traditions of Thailand. By the time of the Song dynasty, China had expanded its international trade relationships with Southeast Asia, and this became a major source of wealth and revenue for the Chinese government.⁷³⁷ Chinese traders had reached the “Golden Land” of Thailand as early as the thirteenth or the fourteenth century.⁷³⁸ By the sixteenth or early seventeenth century, the Chinese had already achieved economic pre-eminence in Thailand.⁷³⁹ Ayutthaya had become a centre of regional economic activity, sending deer hides, tin, lac and rare woods to China, in return for Chinese silk.⁷⁴⁰

The Chinese were the most important of all foreign traders for Thailand and were granted full privileges.⁷⁴¹ The Chinese were able to move freely throughout the country and came to manage successful commercial enterprises or to run Thai government enterprises including tin-mining and state overseas trade.⁷⁴² These extensive China-Thailand trade relations also facilitated population exchange, particularly with Chinese emigrating to Thailand in search of work and business opportunities.⁷⁴³ By 1767, the ethnic Chinese community in Thailand numbered perhaps thirty thousand.⁷⁴⁴ There was a tremendous increase in the Chinese population in Thailand throughout the nineteenth century, reaching over four hundred thousand Chinese in 1960.⁷⁴⁵ For a long time, Chinese civilisation was highly respected in Thailand.⁷⁴⁶ Throughout these trading activities in Thai history, Chinese traders brought

⁷³⁶ Jianghua Han, *The Chinese Wuxia Culture in Thailand: Dissemination and Influence*, *Comparative Literature: East and West*, 5(1), 2021, P. 8.

⁷³⁷ David C Kang, *East Asia Before the West: Five Centuries of Trade and Tribute*, New York: Columbia University Press, 2010, P. 130.

⁷³⁸ Joseph P L Jiang, *The Chinese in Thailand: Past and Present*, *Journal of Southeast Asian History*, 7(1), 1966, P. 40.

⁷³⁹ *Ibid.*, P. 43.

⁷⁴⁰ David C Kang, *East Asia Before the West: Five Centuries of Trade and Tribute*, New York: Columbia University Press, 2010, P. 131. Dhiravat Na Pombejra, *Ayutthaya at the End of the Seventeenth Century: Was There a Shift to Isolation?* in Anthony J. S. Reid (Ed), *Southeast Asia in the Early Modern Era: Trade, Power, and Belief*, New York: Cornell University Press, 1993, P. 254.

⁷⁴¹ Joseph P L Jiang, *The Chinese in Thailand: Past and Present*, *Journal of Southeast Asian History*, 7(1), 1966, P. 50.

⁷⁴² David C Kang, *East Asia Before the West: Five Centuries of Trade and Tribute*, New York: Columbia University Press, 2010, P. 131. See also: Leonard Andaya, *Interactions with the Outside World and Adaptation in Southeast Asian Society: 1500-1800*, in Nicholas Tarling (Ed), *The Cambridge History of Southeast Asia: From Early Times to c. 1800*, Cambridge: Cambridge University Press, 1992, P. 349-350.

⁷⁴³ David C Kang, *East Asia Before the West: Five Centuries of Trade and Tribute*, New York: Columbia University Press, 2010, P. 130.

⁷⁴⁴ *Ibid.*, P. 133.

⁷⁴⁵ Joseph P L Jiang, *The Chinese in Thailand: Past and Present*, *Journal of Southeast Asian History*, 7(1), 1966, P. 39, 41.

⁷⁴⁶ *Ibid.*, P. 54.

with them their religious observances and beliefs that were built primarily upon Confucian communitarianism and which helped them preserve their social communities in Thailand.⁷⁴⁷

Even today, there is still a large Chinese community in Thailand (for example, in the Chinatown located on Yaowarat road in Bangkok).⁷⁴⁸ Their culture, in particular their deep-seated Confucian ethical values, have continually spread into the larger Thai society.⁷⁴⁹ Thai traditional culture has therefore been deeply influenced by Chinese culture. The concepts of “kinship ties”, “benevolence”, “filial piety”, and “harmony” advocated by Confucian communitarianism deeply inculcate the traditional Thai moral model.⁷⁵⁰ These concepts will be unpacked later on in section 6.3. In Thailand it is largely taken as a given that people express their loyalty to the Monarch, respect their parents and ancestors, show compassion towards the weak and vulnerable and stress the importance of the extended family and communal life.⁷⁵¹

Importantly, the collective nature of Confucian thought and behaviour has relevance to the traditional indigenous beliefs and traditions of the Karen population in Thailand. As analysed in chapter 4, the Karen typically organise themselves in local communities within a clan-based kinship structure. In traditional Karen society, the village community is the largest social unit and a village can consist of anything from several to as many as fifty households which are composed of an extended family consisting of multiple generations.⁷⁵² Each Karen village remains an autonomous unit, within the national administrative and economic structure, and is under a ritual village leader.⁷⁵³

The role of this leader involves, among other things, preventing conflict and performing rituals to maintain harmony between the village and the spirits of the forest.⁷⁵⁴ Should the leader fail to do so and this harmony be undermined, the result could be a breakdown of the community and failing harvests.⁷⁵⁵ This is not dissimilar to the Confucian idea of the King as the father of the nation who receives the

⁷⁴⁷ Walwipha Burusratanaphand, Chinese Identity in Thailand, *Asian Journal of Social Science*, 23(1), 1995, P. 47.

⁷⁴⁸ Hongmei Wu and Sethawut Techasan, Chinatown in Bangkok: The Multilingual Landscape, *Manusya: Journal of Humanities*, 22, 2016, P. 39.

⁷⁴⁹ Jiangyu Li, Expanding or Accepting: Nation-Work of International Chinese Teachers in Confucius in Thailand, *Asian Journal of Social Science*, 48, 2020, P. 79-80.

⁷⁵⁰ Jianghua Han, The Chinese Wuxia Culture in Thailand: Dissemination and Influence, *Comparative Literature: East and West*, 5(1), 2021, P. 8-9.

⁷⁵¹ Hans-Dieter Bechstedt, Identity and Authority in Thailand, in Craig J. Reynolds (Ed), *National Identity and its Defenders: Thailand Today*, Chiang Mai: Silksworm Books, 2002, P. 244. Liang Chua Morita, Religion and Family of the Chinese and Thai in Thailand and Influences, *Studies in Language and Culture*, 28(2), 2007, P. 136.

⁷⁵² Yoko Hayami, To Be Karen and To Be Cool: Community, Morality and Identity among Sgaw Karen in Northern Thailand, *Cah. Sci. Hum*, 29(4), 1993, P. 748.

⁷⁵³ Ibid.

⁷⁵⁴ Ibid, P. 751.

⁷⁵⁵ Ibid.

Mandate of Heaven upon the condition of protecting the well-being of the people and performing rituals to maintain cosmic harmony. The traditional community is necessarily the basis for Karen identity which, as examined in chapter 4, the Karen continue to preserve and develop while seeking refuge in camps along the Thai-Myanmar border.

For the indigenous Karen, every member of the community is identified with the community as a whole, and they believe that personal well-being is inseparable from communal well-being.⁷⁵⁶ They care for and support each other, live together peacefully, maintain their communal networks and as analysed in chapter 3, preserve their collective dignity and their collective way of life.⁷⁵⁷ The Karen have passed down bard literature called *htas* orally from generation to generation which is often sung around villages.⁷⁵⁸ These *htas* constitute a form of collective meaning-making through which significant narratives of Karen history, culture and life events provide a sense of shared identity and belonging.⁷⁵⁹ Central to the ancient *htas* are characteristic teachings of the love of harmony and union, filial gratitude to their parents and ancestors and espousal of the values of benevolence, respect, service, and wisdom.⁷⁶⁰

It is common to see that in the Karen New Year (falling in the tenth month in the calendar, and typically, December or January), people in villages practice customs of hospitality, inviting each other to visit homes, eat food, sing and dance to mark the transition from the old season to the new.⁷⁶¹ Honouring parents is an integral part of the Karen New Year celebration among Karen communities.⁷⁶² Accordingly, Karen children dress in traditional clothes, then approach their parents and present them with an envelope containing a 'thank you' card - their *da ma lar k'paw*.⁷⁶³ Children often offer food first to their parents at the table as is custom amongst Karen.⁷⁶⁴ They take care of their parents in illness and show great sorrow over their death.⁷⁶⁵ They care for their parents as they were cared for by them, extending that care to all elders in their community.⁷⁶⁶ The social ethics and communitarian culture

⁷⁵⁶ Ibid, P. 753. See also: Major J. P. Andersen, Some Notes about the Karens in Siam, *Journal of the Siam Society*, 17(2), 1923, P. 51-58.

⁷⁵⁷ Sang Kook Lee, Scattered but Connected: Karen Refugees' Networking in and beyond the Thailand-Burma Borderland, *Asian and Pacific Migration Journal*, 21(2), 2012, P. 263-285. Pia Jolliffe and Shirley Worland, Honouring the Elders: The Common Good among Karen Communities – A Multi-sited Ethnography, *The Australian Journal of Anthropology*, 29, 2018, P. 160.

⁷⁵⁸ Min Zin, Karen History: In Their Own Words, *The Irrawaddy*, 8(10), 2000, P. 1-3.

⁷⁵⁹ Ibid.

⁷⁶⁰ Pia Jolliffe and Shirley Worland, Honouring the Elders: The Common Good among Karen Communities – A Multi-sited Ethnography, *The Australian Journal of Anthropology*, 29, 2018, P. 163-164.

⁷⁶¹ Ananda Rajah, *Remaining Karen: A Study of Cultural Reproduction and the Maintenance of Identity*, Canberra: The Australian National University Press, 1986, P. 128.

⁷⁶² Pia Jolliffe and Shirley Worland, Honouring the Elders: The Common Good among Karen Communities – A Multi-sited Ethnography, *The Australian Journal of Anthropology*, 29, 2018, P. 164.

⁷⁶³ Ibid.

⁷⁶⁴ Ibid.

⁷⁶⁵ Ibid.

⁷⁶⁶ Ibid.

present in Karen communities resonates strongly with those of Confucian communitarianism. These values continue to guide the Karen to this day, even when they remain in the protracted circumstance in Thai camps as examined in chapter 4.

The influence of Confucian communitarianism in Thailand provides an important grounding and rationale for turning to its traditions and values to investigate its potential for the promotion of the realisation of the right to work for Karen refugees. In the next section I will, in particular, turn to demonstrate the Confucian communitarian vision of human dignity and how, though originating from different times, this approach can be brought to harmonise with that of Nussbaum's, which I analysed in chapter 2.

6.3. Confucian Communitarianism's Approach to Human Dignity and the Dialogue with that of Nussbaum.

6.3.1. A Confucian Virtue-based Account of Human Dignity.

Although human dignity, as mentioned in chapter 2, is explicitly a Western concept, it has a close Chinese correlate.⁷⁶⁷ The latter's contemporary literal translation is *Zun Yan*, a word often used in conjunction with a familiar Confucian term, *Ren Ge*, which is sometimes translated as "moral personality".⁷⁶⁸ Although neither word explicitly appears in the classical Confucian texts, Confucian communitarianism's understanding of human dignity is best captured in the moral teachings of Confucius and Mencius - two core classical Confucian thinkers.⁷⁶⁹ While Confucius (*Kongzi*) was the first and most important thinker of the Confucian communitarian tradition, Mencius (*Mengzi*) was arguably the second most important figure of Confucian communitarianism and is regarded as the true transmitter of the teachings of Confucius.⁷⁷⁰

A life of dignity (a fully human/successful life) as conceptualised in Confucian communitarianism is a life of strenuously practicing virtuous activities in relation to others and emphasising right action.⁷⁷¹ In

⁷⁶⁷ Qianfan Zhang, The Idea of Human Dignity in Classical Chinese Philosophy: A Reconstruction of Confucianism, *Journal of Chinese Philosophy*, 27(3), 2002, P. 305.

⁷⁶⁸ Ibid.

⁷⁶⁹ Ibid.

⁷⁷⁰ It is noted that Confucius (551-479 BCE) lived in the sixth century BCE and lived in what is known in Chinese history as the 'Spring and Autumn Period'. He was China's earliest teacher and moral thinker. He travelled from one feudal state to another, hoping to convince rulers and to put his political ideas of a humane government into practice, but never won. Two hundred years after Confucius's death, Mencius (372-289 BCE) took Confucius's teaching, helped to keep his idea alive and contributed to the Confucian movement.

⁷⁷¹ Confucius, The Analects 12.4. Mencius 6A10. See also: Luo An' Xian, Human Dignity in Traditional Chinese Confucianism, in Marcus Duwell, Jens Braarvig, Roger Brownsword and Dietmar Mieth (Eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives*, Cambridge: Cambridge University Press, 2015, P. 181.

It is noted that I employ the English translation of Anping Chin of the Analects throughout this chapter and my thesis. See: Confucius, *The Analects (Lunyu)*, Anping Chin (Trans), London: Penguin Books, 2014 (hereafter

other words, for Confucian communitarianism, a dignified life is not associated with the individualistic vision of traditional liberalism as described in chapter 2, but instead refers to living a communal and flourishing moral life.⁷⁷² This approach comes very close to Nussbaum's conception of human dignity which, as also examined in chapter 2, is built upon Aristotle's understanding of human flourishing. I will discuss this point of dialogue later on in section 6.3.2.

This Confucian communitarian approach to human dignity is, in particular, rooted in its conception of the deeply social self. Unlike traditional liberalism, the Confucian communitarian view does not regard the self in isolation. Rather it has a vision of man as being conditioned by interconnectedness.⁷⁷³ Accordingly, a person as conceptualised is an encumbered-self, a socially embedded individual. They realise and reproduce their everyday life in and as a community under the Confucian communitarian tradition.⁷⁷⁴ They flourish and actualise their full human potential/capabilities in relation to and in the treatment of other human beings.⁷⁷⁵ The social network in which one is embedded is extended on a continuum from the individual to the family, to the society, to nation and to Heaven/the world (*tianxia*).⁷⁷⁶ One begins life in a family and then extends connections and virtues outwards to an ever-increasing web of relations.⁷⁷⁷ As Mencius states "the root of the world lies in the state; the root of the state lies in the family; the root of the family lies in oneself".⁷⁷⁸

Confucius, *The Analects*). It is noted that the *Analects* are to standard book and passage number (12.4 refers to Book 12, passage 4).

The *Analects* is a collection of ideas and teachings attributed to Confucius, thought to be written down by his disciples and later scholars. The *Analects* consists of twenty books, each divided in sub-sections.

Also, I employ the English translation of D. C. Lau of Mencius throughout this chapter and my thesis. See: Mencius, D. C. Lau (Trans), London: Penguin Books, 2003 (hereafter Mencius). It is noted that Mencius are to standard book, part and passage number (6A10 refers to Book 6, Part A, passage 10).

Mencius is a record of his conversation with rulers of the days, his disciples and philosophical thinkers and thought to be compiled or written down his disciples.

⁷⁷² Shirong Luo, Happiness and the Good Life: A Classical Confucian Perspective, *Dao: A Journal of Comparative Philosophy*, 18(1), 2019, P. 41-42.

⁷⁷³ Rita Mei-Ching Ng, College and Character: What Did Confucius Teach Us about the Importance of Integrating Ethics, Character, Learning, and Education? *Journal of College and Character*, 10(4), 2009, P. 3

⁷⁷⁴ Ya Lan Chang, Communitarianism: Properly Understood, *Canadian Journal of Law and Jurisprudence*, 35(1), 2022, P. 124. Beng Huat Chua, *Liberalism Disavowed: Communitarianism and State Capitalism in Singapore*, Ithaca: Cornell University Press 2017, P. 60-61.

⁷⁷⁵ Sungmoon Kim, *Confucian Democracy in East Asia: Theory and Practice*, Cambridge: Cambridge University Press, 2014, P. 31. David Wong, Relational and Autonomous Selves, *Journal of Chinese Philosophy*, 31(4), 2004, P. 420-421.

⁷⁷⁶ Canglong Wang, Confucianism and Citizenship: A Review of Opposing Conceptualisations, in Zhonghua Guo and Sujian Guo (Eds), *Theorizing Chinese Citizenship*, Lanham: Lexington Books, 2015, P. 66. A. T. Nuyen, Confucianism and the Idea of Equality, *Asian Philosophy*, 11(2), 2001, P. 137.

⁷⁷⁷ Rita Mei-Ching Ng, College and Character: What Did Confucius Teach Us about the Importance of Integrating Ethics, Character, Learning, and Education? *Journal of College and Character*, 10(4), 2009, P. 3.

⁷⁷⁸ Mencius, 4A5.

The centrality of one's life of dignity in Confucian communitarianism is not identified with a life filled with desires of wealth, rank, or political power but rather with a life rich in ethical pleasure.⁷⁷⁹ It emphasises moral self-cultivation - "the root of everything besides"⁷⁸⁰ and a life of "living in accordance with the Way (*Dao*)".⁷⁸¹ The Way as conceptualised in Confucian communitarianism partly means "the morally right way to do something" and, in particular, speaks of how human beings should behave towards others in the society.⁷⁸² Each and every human being "from the Son of Heaven on down to commoners all without exception"⁷⁸³ are accordingly urged to act in accordance with the Way to become a morally superior person known as a gentleman (*junzi*) and live a dignified life.⁷⁸⁴

This process of moral refinement which is central to human dignity, cannot for Confucian communitarianism be expressed in isolation.⁷⁸⁵ The family is accordingly the first and foremost environment where the person begins their moral self-cultivation.⁷⁸⁶ In other words, the first test for our self-cultivation is our ability to cultivate virtues and meaningful relationships with our immediate family members. The set of family-oriented principles and ethics goes on to guide how one should behave in other nonfamilial relations.⁷⁸⁷ The central concept in Confucian communitarian ethics is the virtue of *ren* translated as benevolence, kindness, compassion or humanity.⁷⁸⁸ For Confucian communitarianism, one of the most telling expressions of the virtue of *ren* is the ethic of "filial" and "fraternal" feelings and responsibility toward one's family members (*xiaodi*).⁷⁸⁹ Confucius repeatedly states that the way to enhance a dignified life is not to "alienate ourselves from family but to cultivate our genuine feelings or compassion for our parents, children and develop brotherly duty".⁷⁹⁰ Mencius also emphasises that a benevolent person "never harbours anger or nurses a grudge against a brother.

⁷⁷⁹ Ibid, 6A10. Confucius, The Analects 6.11. See also: Shirong Luo, Happiness and the Good Life: A Classical Confucian Perspective, *Dao: A Journal of Comparative Philosophy*, 18(1), 2019, P. 56-57.

⁷⁸⁰ Confucius, The Great Learning, in Nicholas Tamblyn (Trans), Complete Confucius: The Analects, The Doctrine of the Mean and The Great Learning, London: Golding Books, 2016, P. 87.

⁷⁸¹ Confucius, The Analects 7.6; 14.42.

⁷⁸² Bryan W. Van Norden, Confucius and the Analects: New Essays, Oxford: Oxford University Press, 2000, P. 24.

⁷⁸³ Confucius, The Great Learning, in Nicholas Tamblyn (Trans), Complete Confucius: The Analects, The Doctrine of the Mean and The Great Learning, London: Golding Books, 2016, P. 87.

⁷⁸⁴ Confucius, The Analects 4.16.

⁷⁸⁵ Rita Mei-Ching Ng, College and Character: What Did Confucius Teach Us about the Importance of Integrating Ethics, Character, Learning, and Education? *Journal of College and Character*, 10(4), 2009, P. 3.

⁷⁸⁶ Tu Wei-ming, Confucius and Confucianism, in Walter H. Stote and George A. De Vos (Eds), *Confucianism and the Family*, Albany: State University of New York Press, 1998, P. 13. Qingping Liu, Filiality Versus Sociality and Individuality: On Confucianism as "Consanguinitism", *Philosophy East and West*, 53(2), 2003, P. 240.

⁷⁸⁷ Gu Zhengkun, Confucian Family Values as Universal Values in the 21st Century Family – Nation – World, in Klaus Muhlhahn and Nathalie Van Looy (Eds), *The Globalisation of Confucius and Confucianism*, Chinese History and Society - Berliner China-Hefte: Lit Verlag, 2013, P. 50.

⁷⁸⁸ Confucius, The Analects 4.15; 12.2. Wing-Tsit Chan, Chinese and Western Interpretations of *Jen* (Humanity), *Journal of Chinese Philosophy*, 2(2), 1975, P. 107.

⁷⁸⁹ Confucius, The Analects 1.2; 17.21. See also: Sungmoon Kim, Beyond Liberal Civil Society: Confucian Familism and Relational Strangership, *Philosophy East and West*, 60(4), 2010, P. 481-482.

⁷⁹⁰ Confucius, The Analects, 19.17.

All he does is to love him. Because he loves him, he wishes him to enjoy rank; because he loves him, he wishes him to enjoy wealth”.⁷⁹¹

For both Confucius and Mencius, these practices of kinship love and care are a starting point. This is then developed beyond its particularistic limitations by extending the feelings of compassion and responsibilities for one’s family members to others all over the world, even strangers.⁷⁹² Confucius’s best-known interpretation of *ren* is on display in his Golden rule which states “do not impose on others what you yourself do not desire”.⁷⁹³ Mencius, like Confucius states in his doctrine of extending compassion/benevolence - “treat with respect the elders in your family and then extend this treatment to the elders in other families, treat with kindness the young in your family and then extend this treatment to the young in other families, and you can roll the empire on your palm”.⁷⁹⁴ He adds that “no person is devoid of benevolence in the sense of sensitivity to the suffering of others in society”.⁷⁹⁵

The virtues of compassion and the ethical concern for human suffering articulated in Confucius and Mencius’ moral teaching is potentially unlimited in scope and these “others” are not confined to those personally known but include everyone.⁷⁹⁶ This is because within Confucian communitarianism, regardless of diversity and differences, all people universally identify themselves with one human family and one kinship bond and live under one harmonious world (“*tianxia*” - all under Heaven).⁷⁹⁷ The literal meaning of *tianxia* refers to an all-inclusiveness with “no outside - *wuwai*” and involves the entire world becoming harmonious and interiorised, with no outside.⁷⁹⁸ Accordingly, the whole world directly comes to terms with human relatedness where all others in the public sphere are seen not just as “social strangers” as conceptualised under traditional liberalism, but rather are “our brothers” even if personally unknown to us (known as “relational strangers”).⁷⁹⁹

⁷⁹¹ Mencius, 5A3.

⁷⁹² Tu Wei-ming, *Centrality and Commonality: An Essay on Confucian Religiousness*, Albany: State University of New York Press, 1989, P. 51-52. Hsieh Yu-wei, *Filiality Piety and Chinese Society*, in Charles A. Moore (Ed), *The Chinese Mind: Essentials of Chinese Philosophy and Culture*, Hawaii: East-West Centre Press, 1967, P. 173.

⁷⁹³ Confucius, *The Analects* 15.24.

⁷⁹⁴ Mencius, 1A7.

⁷⁹⁵ *Ibid*, 2A6.

⁷⁹⁶ *Ibid*, 7A46. Confucius, *The Analects* 1.6.

⁷⁹⁷ Mencius, 1B3, 1A7. Zhao Ting Yang, *The Tianxia System: An Introduction to the Philosophy of World Institution*, Beijing: China Renmin University Press, 2011, P. 28.

⁷⁹⁸ Zhao Ting Yang, *All under Heaven: The Tianxia System for A Possible World Order*, California: University of California Press, 2016, P. 62.

⁷⁹⁹ The term “sociable strangers” and “relational strangers” is deployed by Sungmoon Kim’s work - one of the leading voices of Confucian communitarianism political theory. For more details, see at: Sungmoon Kim, *Beyond Liberal Civil Society: Confucian Familism and Relational Strangership*, *Philosophy East and West*, 60(4), 2010, P. 480, 488-489. Sungmoon Kim, *Filiality, Compassion, and Confucian Democracy*, *Asian Philosophy*, 18(3), 2008, P. 291-294.

Striving for a life of dignity, people aim for goodness, cultivate the virtues of love and care (*ren*) and hold responsibility for each other as sincerely and truthfully as they are in one harmonious family.⁸⁰⁰ They are aware that there are people in need of help and are motivated to provide support and love for others, even strangers, as if they were part of one human family (recognising that “all are our brothers”).⁸⁰¹ They are able to treat everyone with genuine care and respect, to strengthen human relationships and to uphold the harmony and unity of society as the whole.⁸⁰² They recognise differences and diversity in society and seek to encourage the coexistence of these differences and sincere and mutual respect in order for all to live under one harmonious human family.⁸⁰³

Though discussed in depth in the next chapter, it is important to mention here that Confucian communitarianism contains an inclusive worldview. As mentioned in chapter 3, modern nation-states, possesses strong powers to control borders. To discourage further migration, non-nationals with precarious status are often restricted or excluded from universal human rights protections. There are tensions, which as mentioned chapter 5, cause the failure of the existing legal framework to extend the protection of the right to work for the Karen refugees. Given this situation, this inclusive worldview of Confucian communitarianism, which emphasises the extension of kinship consciousness and care to the global level,⁸⁰⁴ holds potential and can to some extent play a role in reducing these tensions.

In particular, Confucian communitarianism’s emphasis on the cultivation of our particularities and the graduated extension of sincere and strong kinship ties among each and every one necessarily grounds the modern framework of equal and universal human rights.⁸⁰⁵ The universal protection of human rights in the Confucian communitarian tradition can be built upon compassion, obligations and mutual support networks intrinsic to the kinship connection.⁸⁰⁶ This approach is different from the current one, underpinned by traditional liberal values, which as mentioned in chapter 2, sees rights as given on the premise of protecting autonomous and rational individuals. Looking through this lens of Confucian communitarianism, the protection of the right to work would not just be given to Thai nationals but

⁸⁰⁰ Ibid.

⁸⁰¹ Joseph Chan, *Confucian Perfectionism: A Political Philosophy for Modern Times*, Princeton: Princeton University Press, 2014, P. 118. Qiyong Guo, Tao Cui, Liu Junping and Xiong Ying, *The Values of Confucian Benevolence and the Universality of the Confucian Way of Extending Love*, *Frontiers of Philosophy in China*, 7(1), 2012, P. 23-24.

⁸⁰² Confucius, *The Analects*, 13.23. Mencius, 5B1. Wei Xiaohong and Li Qingyuan, *The Confucian Value of Harmony and its Influence on Chinese Social Interaction*, *Cross-Cultural Communication*, 9(1), 2013, P. 61.

⁸⁰³ Confucius, *The Analects*, 13.23. Shijie Wei, *Harmony in Confucian Thought and Building a Community of Shared Future for Mankind*, *SHS Web of Conferences*, 153, 2023, P. 3, 4.

⁸⁰⁴ Ruihan wu, *Confucian Cosmopolitanism: The Predicament and the Way Forward*, *Religions*, 14, 2023, P. 3. A. T. Nuyen, *Confucianism and the Idea of Citizenship*, *Asian Philosophy*, 12(2), 2002, P. 136.

⁸⁰⁵ Qiuqi Li, *The Confucian Approach to Justifying Human Rights: Beyond the Opposition between Universality and Particularity*, *International Journal of Philosophy of Culture and Axiology*, 17(1), 2020, P. 193. May Sim, *A Confucian Approach to Human Rights*, *History of Philosophy Quarterly*, 21(4), 2004, P. 347.

⁸⁰⁶ A. T. Nuyen, *Confucianism and the Idea of Citizenship*, *Asian Philosophy*, 12(2), 2002, P. 132.

May Sim, *A Confucian Approach to Human Rights*, *History of Philosophy Quarterly*, 21(4), 2004, P. 347.

extended to Karen refugees in camps as they all are members of one human family. I will discuss this further in the next chapter.

Like other theories, the Confucian communitarian tradition and its approach to human dignity also faces critiques. One of the major critiques stems from Liu Qingping. He argues that the Confucian communitarian concept of the deeply social and relational self and role-based ethics supports a hierarchical society and is incompatible with the egalitarian nature of human rights as such, as the roles define the personhood of each individual.⁸⁰⁷ Liu Qingping particularly points out the Confucian communitarian conception of the king as the father of the nation, in a parent-child model vis-à-vis his subjects. He critiques the inegalitarian nature of the relationship between the ruler and the ruled in Confucian communitarian tradition.⁸⁰⁸ This critique raises concerns about the scope of power for governments in Confucian communitarian systems and the risk of the oppressive use of state power.

I do not deny that this Confucian communitarian concept of the king as the father of the nation has been abused by some state leaders to support their authoritarian governments and suppress human rights. In fact, the King in Thailand is, under section 5 of the 2017 Constitution, viewed as the head of the state.⁸⁰⁹ Accordingly, Thailand's punitive *lèse-majesté* law under Section 112 of Thai Criminal Code 1957 makes it a crime to "defame, insult or threaten" the King and other members of the royal family.⁸¹⁰ Any criticism of the King carries a penalty between three and fifteen years in prison.⁸¹¹ This *lèse-majesté* law in Thailand has repeatedly been criticised for serving as a tool to silence people and suppress their rights, with many arguing it has no place in a democratic country.⁸¹²

However, I argue that it is important to properly understand the nature of the Confucian communitarian notion of the king as the father of the nation. The king or government as conceptualised in Confucian communitarianism has obligations to protect the well-being of all people in the whole world as one harmonious family (as already mentioned early on in "all under Heaven – *tianxia*").⁸¹³ In Confucian communitarianism when a ruler as the father of nation is said to have received Heaven's Mandate, it

⁸⁰⁷ Liu Qingping, An Analysis of the Confucian Idea of People as Roots: Means or Ends, Academic Monthly, 41(8), 2009, P. 52-58.

⁸⁰⁸ Liu Qingping, The World for the Public or for the Family in Confucianism, Exploration and Free Views, 11, 2013, P. 71. Zhonghua Guo and Sujian Guo, Theorising Chinese Citizenship, Lanham: Lexington Books, 2015, P. 58.

⁸⁰⁹ Constitution of the Kingdom of Thailand, B.E. 2560, (Adopted and Entered into Force 6 April 2017).

⁸¹⁰ Criminal Code, B.E. 2499, (Adopted and Entered into Force 1 January 1957).

⁸¹¹ Ibid, Section 112.

⁸¹² Office of the United Nations High Commissioner for Human Rights (OHCHR), Thailand: UN Experts Alarmed by Rise in Use of Lèse-Majesté Laws, 2021, <https://www.ohchr.org/en/press-releases/2021/02/thailand-un-experts-alarmed-rise-use-lese-majeste-laws>, Accessed by 30 December 2024.

⁸¹³ Confucius, The Analects 13.4. Mencius, 7A46. See also: Leonard Shihlien Hsu, The Political Philosophy of Confucianism: An Interpretation of the Social and Political Ideas of Confucius, His Forerunners and His Early Disciples, New York: E. P. Dutton and Co, 1932, P. 108, 145.

means that the ruler has received the right to rule (*tianming*).⁸¹⁴ Power is only for the sake of the people and conditional on the ability of the ruler to protect and promote the well-being of people within the “Four Seas”, namely, peoples from everywhere around the world.⁸¹⁵

Mencius famously states that the interests of the people are more important than that of the ruler: “the people come first, the altars of the earth and grain (signifying political authority or the state) come afterwards; the ruler comes last”.⁸¹⁶ If the government is not acting in accordance with the Way (*Dao*) and the people “within the Four Seas are not satisfied and find themselves in a dire direction”, “Heaven will withdraw its blessings (the Mandate of Heaven)” and the government would lose its legitimacy and could be forcibly overthrown.⁸¹⁷ The Confucian communitarian familial paternalistic structures of government therefore contain ethical values⁸¹⁸ and should not be seen or used by states to suppress people and their rights or promote authoritarian regimes.

Although possessing different forms of reasoning and different worldviews from the liberal tradition, using a different language rooted in a different historical time period, Confucian communitarianism still contains within it important values which resonate in modern times. Most importantly, I have demonstrated in this section that Confucian communitarianism possesses a conception of human dignity, which as mentioned previously is central to the international legal framework – IRL, IHRL and ILIP. Within this approach to human dignity, the tradition contains language and concepts which promote inclusiveness and equality, where rights apply universally. This can play an important role in promoting the extension of the protection of the right to work for Karen refugees in camps. Moreover, the harmony between both the values of Confucian communitarianism and Nussbaum’s Aristotelian vision of human dignity⁸¹⁹ provide a strong rationale and grounding for my turn to Confucian communitarianism.

6.3.2. Confucian Communitarianism and Nussbaum on Human Dignity: A Meeting of Minds.

⁸¹⁴ Mencius, 1B3. See also: Joseph Chan, *Confucian Perfectionism: A Political Philosophy for Modern Times*, Princeton: Princeton University Press, 2014, P. 29.

⁸¹⁵ Ibid.

⁸¹⁶ Mencius, 7B14.

⁸¹⁷ Ibid, 1B8; 4A9; 5A6. Confucius, *The Analects* 20.1. See also: Joseph Chan, *Confucian Perfectionism: A Political Philosophy for Modern Times*, Princeton: Princeton University Press, 2014, P. 31, 38, 49, 160.

⁸¹⁸ Joseph Chan, *Confucian Perfectionism: A Political Philosophy for Modern Times*, Princeton: Princeton University Press, 2014, P. 39.

⁸¹⁹ There has been research seeking to establish dialogue between Nussbaum and Confucian communitarianism, though this has been in other contexts. For example, in relation to Animal Capabilities/Rights. See further: Shui-chuen Lee, *On Nussbaum’s Theory of Justice and Animal Capabilities: A Confucian Evaluation and Response*, *Hsuan Chuang Journal of Buddhism Studies*, 23, 2015, P. 75-99.

By taking a cue from Aristotelian ethics, Nussbaum's approach to human dignity, as analysed in chapter 2, comes into close alignment with Confucian communitarianism. Critically, Confucius and Aristotle share a similar belief system.⁸²⁰ Confucian communitarian and Aristotelian ethics were developed more than 2000 years ago, in social contexts that were sharply different from our own and from each other.⁸²¹ Each ethical system is shaped by its own language, culture and traditions. While Confucius is rooted in ancient Chinese tradition, Aristotle works within the ethical traditions of ancient Greece.⁸²² However, both the ethics of Confucius and Aristotle have been viewed as mirrors of each other, and their central questions concern the nature of the good and dignified life and the kind of person one should be.⁸²³

More strikingly, both ethical frameworks answer this question by focusing on virtue, that is, the qualities and habits that makes a person good.⁸²⁴ For both, a dignified life does not imply a life of being powerful or wealthy, but rather a life of moral virtue.⁸²⁵ In Aristotle, as mentioned in Chapter 2, the question is "what is *eudaimonia* (happiness/ human flourishing)?" In Confucius, as analysed above in section 6.3.1, it is "where is the Way (*Dao*) to be a good person?". Aristotle famously states that "*eudaimonia* is an activity of soul in accordance with complete virtue (*arete*)".⁸²⁶ Confucius says that "the good life is that I set my heart on *Dao*, base myself on virtue (*de*), lean upon human excellence for support and take my recreation in the arts".⁸²⁷ For both, a person will be a happy or successful person and will behave in a dignified way if they live life virtuously and are determined to do so until the end of their days.⁸²⁸ Both Aristotle and Confucius use the word "gentleman" to refer to such a person.⁸²⁹

The parallel between Aristotelian ethics and Confucian communitarianism is also rooted in their shared beliefs on the conception of the self, that we all grow and live in a social web within which each person is formed.⁸³⁰ For Aristotle, this belief is, as mentioned in chapter 2, expressed in his well-known thesis that man is a social and political animal. Aristotle explicitly states that "the state is a creation of

⁸²⁰ Jiyuan Yu, *The Ethics of Confucius and Aristotle: Mirrors of Virtue*, New York: Routledge, 2007, P. 10.

⁸²¹ *Ibid.*, P. 10.

⁸²² *Ibid.*, P. 10, 24. See also: Xueming Zhang, *A Comparative Study of Aristotle's and Confucius' Views on Literature*, *Advances in Social Science, Education and Humanities Research: Atlantis Press*, 615, 2021, P. 2495.

⁸²³ Jiyuan Yu, *The Ethics of Confucius and Aristotle: Mirrors of Virtue*, New York: Routledge, 2007, P. 4, 24.

⁸²⁴ *Ibid.* See also: Shirong Luo, *Moral Virtue and Inclusive Happiness: From Ancient to Recent in Western and Confucian Traditions*, *Comparative Philosophy*, 12(2), 2021, P. 175.

⁸²⁵ *Ibid.*

⁸²⁶ NE 1102a5-6. See also: Jiyuan Yu, *The Ethics of Confucius and Aristotle: Mirrors of Virtue*, New York: Routledge, 2007, P. 24.

⁸²⁷ Confucius, *The Analects*, 7.6.

⁸²⁸ Shirong Luo, *Moral Virtue and Inclusive Happiness: From Ancient to Recent in Western and Confucian Traditions*, *Comparative Philosophy*, 12(2), 2021, P. 175.

⁸²⁹ Confucius, *The Analects* 4. 16. EE 1248b8-49b25; NE 1099a31-b9; NE 1124a-4. See also: Douglas Scott Hutchinson, *Ethics*, in Jonathan Barnes (Ed), *The Cambridge Companion to Aristotle*, Cambridge: Cambridge University Press, 1995, P. 203.

⁸³⁰ Jiyuan Yu, *The Ethics of Confucius and Aristotle: Mirrors of Virtue*, New York: Routledge, 2007, P. 108. May Sim, *Remastering Morals with Aristotle and Confucius*, Cambridge: Cambridge University Press, 2009, P. 134-165.

nature”⁸³¹ and that “individuals are a part of the *polis* - the city-state”.⁸³² He emphasises that humans are sociable by nature and should live with and for parents, children, wives and in general for their friends and fellow citizens.⁸³³ For Confucius, the same belief is shown in his emphasis on humanity as deeply relational beings, where kinship ties and social roles partially constitute his conception of the self as previously unpacked in section 6.3.1. For both Aristotle and Confucius, a person is by nature a social being and cannot live or develop independently of society.

On this basis, they share the same ideal that the virtuous and happy life must be associated with the communal life and emphasise the cultivation of excellence.⁸³⁴ They both expound and develop similar virtues.⁸³⁵ For example, both Aristotelian and Confucian ethics ground themselves in the virtue of compassion or benevolence. As mentioned in section 6.3.1, for Confucius and Mencius, this is referred to as *ren* and emphasises feelings toward others. For Aristotle, this is called “magnanimity”.⁸³⁶ In Aristotelian ethics, a person who is magnanimous will be able to display virtue on a grand scale and is pleased to feel (*pathos*) for⁸³⁷ and confer benefits on others who are in need of help without expecting things in return.⁸³⁸ Similar to Confucius, Aristotle views “magnanimity” as the central virtue, in particular, “a crown of the virtues”.⁸³⁹

Rooting her concept of human dignity in this Aristotelian ideal of Eudaimonia, Nussbaum’s approach to human dignity therefore goes beyond the classical liberal tradition and as mentioned in chapter 2 can more easily speak to other non-Western cultures and traditions like Confucian communitarianism. Like Confucius and Mencius, as analysed in chapter 2, she also rejects a concept of human dignity purely based upon rationality and envisions a life worthy of human dignity as one that is rooted in developing

⁸³¹ POL 1252b28-1253a4.

⁸³² POL 1253a18-29. See also: Christopher Charles Whiston Taylor, Politics, in Jonathan Barnes (Ed), The Cambridge Companion to Aristotle, Cambridge: Cambridge University Press, 1995, P. 239-240.

⁸³³ NE 1097b9-11. See also: Jiyuan Yu, The Ethics of Confucius and Aristotle: Mirrors of Virtue, New York: Routledge, 2007, P. 108-109.

⁸³⁴ Morimichi Kato, Confucius and Aristotle on the Educational Role of Community, Educational Philosophy and Theory, 53(2), 2021, P. 113. Matthew D. Walker, Punishment and Ethical Self-cultivation in Confucius and Aristotle, Law and Literature, 31(2), 2019, P. 2-4.

⁸³⁵ It is noted that the most representative Confucian virtues are benevolence (*ren*), righteousness (*yi*), ritual (*li*), wisdom (*zhi*), trustworthiness (*xing*), filial piety (*xiao*), loyalty (*zhong*) and harmony (*he*).

The Aristotelian virtues are courage, temperance, justice, liberality, magnanimity, proper pride, proper ambition, good temper, truthfulness, wittiness, friendliness, modesty, and righteous indignation.

⁸³⁶ EE 1232a38-b31; NE 1100b30-33; NE 1124a4-20; NE 1124b6-25a16. See also: Christopher Charles Whiston Taylor, Politics, in Jonathan Barnes (Ed), The Cambridge Companion to Aristotle, Cambridge: Cambridge University Press, 1995, P. 227-228.

⁸³⁷ NE 1106a4. See also: Jiyuan Yu, The Ethics of Confucius and Aristotle: Mirrors of Virtue, New York: Routledge, 2007, P. 103.

⁸³⁸ EE 1232a38-b31; NE 1100b30-33; NE 1124a4-20; NE 1124b6-25a16. See also: Christopher Charles Whiston Taylor, Politics, in Jonathan Barnes (Ed), The Cambridge Companion to Aristotle, Cambridge: Cambridge University Press, 1995, P. 227-228.

⁸³⁹ EE 1232a19-38; EE 1232b31-33a16; NE 1123a34 -24a4; NE 1125a16-34. Christopher Charles Whiston Taylor, Politics, in Jonathan Barnes (Ed), The Cambridge Companion to Aristotle, Cambridge: Cambridge University Press, 1995, P. 227.

the virtues and where human beings find “fulfilment in relations with others”. For a dignified life, Nussbaum emphasises that people therefore should recognise diversity in society and have the ability to become associated with other things and people outside of themselves and develop concern and compassion towards all.⁸⁴⁰

As shown in chapter 2, Nussbaum provides a careful and detailed analysis of emotion, love and compassion. For Nussbaum, we should start with the intense love of our parents and our passionate need for comfort and security, and compassion then extends the boundaries of that which we know to that which we can imagine.⁸⁴¹ She highlights that “we each live within a set of concentric circles, with the innermost circle being ones’ own body, the next rung out being our close family, and the furthest being the whole universe”.⁸⁴² The task of moral development is to move these circles progressively closer to the centre, or rather to cultivate compassion and love to extend outwards from the intense dependency of childhood to a more mature sense of interdependence.⁸⁴³ For Nussbaum as mentioned in chapter 2, the compassionate person would feel and be aware of the seriousness of misfortune or suffering of others and see the suffering person as similar to themselves. This motivates them to help the sufferers who are in need of help, including those who are distant.

To interpret this concept of compassion, Nussbaum employs the Aristotelian notion of imagination and magnanimity⁸⁴⁴ which as previously mentioned in this section, is similar to the virtue of *ren*. Indeed, this is a kind of moral feeling towards all others or rather, the gradual extension of kinship feelings and compassion to the utmost extent – the virtue of *ren* in Confucian communitarianism. As described in section 6.3.1, this is a central virtue in the Confucian tradition and remains dominant in the early moral teaching of Confucius and Mencius. Confucian communitarianism aligns with what Nussbaum has been explaining about the concept of compassion.⁸⁴⁵ In fact, when Nussbaum starts to raise compassion as her core idea of ethical thinking at central of human dignity, she herself has highlighted that this notion is also central in many Asian cultures.⁸⁴⁶

⁸⁴⁰ These are the capabilities of emotion, affiliation, senses, imagination and thought in the Nussbaum’s list of ten capabilities. For more information see: Martha C Nussbaum, *Frontiers of Justice: Disability, Nationality and Species Membership*, Cambridge: Harvard University Press, 2007, P. 76-77.

⁸⁴¹ Martha C Nussbaum, *Upheavals of Thought: The Intelligence of Emotions*, Cambridge: Cambridge University Press, 2001, P. 388.

⁸⁴² *Ibid.*

⁸⁴³ *Ibid.*

⁸⁴⁴ *Ibid.*, P. 321-323, 355.

⁸⁴⁵ Shui-chuen Lee, *On Nussbaum’s Theory of Justice and Animal Capabilities: A Confucian Evaluation and Response*, *Hsuan Chuang Journal of Buddhism Studies*, 23, 2015, P. 90.

⁸⁴⁶ Martha C Nussbaum, *Upheavals of Thought: The Intelligence of Emotions*, Cambridge: Cambridge University Press, 2001, P. 301.

The alignment between Nussbaum's Aristotelian conception of human dignity and that of Confucian communitarianism reveals that, although they originate from very different times and places, they share fundamental values. The interdependent and social self, familial and kinship ties and the cultivation of virtues of care and compassion, central to human dignity in Confucian communitarianism, still makes sense to us now throughout the ages. In fact, as mentioned in chapter 2 Nussbaum's turn to Aristotle was partly motivated by a sense that there was something lacking in the Enlightenment autonomous and rationalistic view of the self. It is clear that something in this view of the person was unable to account for the full range of human experience and so unable to fully engage with other cultures and traditions from non-Western societies like Thailand.

Confucian communitarianism's approach to human dignity is able to productively dialogue with Nussbaum constitutes key evidence that the tradition is able to speak to the modern world and ground the universal protection of modern human rights. The protracted nature of the Karen refugee situation in Thailand, as mentioned in previous chapters, calls for fresh thinking. Although Confucian communitarianism cannot, on its own, resolve this highly complex refugee situation, it holds tremendous strengths. The tradition contains within it the concept of human dignity, broadly aligned with trends in Nussbaum, but rooted in the culture of Asia and Thailand. Greater cultural salience suggests it may have greater impact. Moreover, Confucian communitarian influence is found at the fountainhead of the modern human rights framework in the UDHR. All of this provides a strong rationale that warrants turning to and investigating the potential for the tradition to improve the protections for the right to work for Karen refugees.

Conclusion:

In sum, in this chapter I found that Confucian communitarian values and concepts have deeply shaped East and Southeast Asian countries including Thailand, and are widespread among peoples in the country including the Karen. Although Confucian communitarianism finds its origin in a very different historical context, the tradition develops values which encapsulate the concept of human dignity, a concept central to the provisions of IRL, IHRL and ILIP. The Confucian communitarian approach to human dignity is different from the individualistic account in the liberal tradition and is built upon a vision of the deeply relational and social self. Central to human dignity in this tradition is the cultivation of virtues within particular relations, like among family and kinship ties, and the extension of them to their utmost extent, recognising all as family ("our brothers") and promoting universal care, benevolence and responsibilities upon all. This approach comes very close to Nussbaum's and holds potential for grounding the equal and universal protection of human rights. In turn, re-examination of these traditional values and concepts which are more salient in Thailand may, to some extent, help to support the realisation of the right to work for the indigenous refugees in Thai camps. My application

of Confucian communitarian values in the promotion of this right for these Karen refugees will now proceed in-depth in the next chapter.

Chapter 7: The Potential of Confucian Communitarianism in the Realisation of the Right to Work for Karen Refugees in Thai Camps.

Introduction.

In this chapter I demonstrate how the Confucian communitarian conception of human dignity, discussed in previous chapters, can support the advancement and promotion of the right to work (including both elements covering access to work and conditions at work) for Karen refugees. The Confucian communitarian approach can support the realisation of this right for these indigenous refugees in three ways. I firstly argue that though originating thousands of years ago in a very different context from modern times, Confucian communitarianism has always recognised the central role of work in ones' human dignity. Secondly, as mentioned in chapter 5 the tension between universal human rights protection and the exercise of the right of the state to control borders pervade the legal frameworks of IRL, IHRL and ILIP. These tensions are at the root of the struggle of the international legal framework to extend the protection of the right to work for Karen refugees.

Confucian communitarianism, as analysed in the previous chapter, sees dignity as embodied in the extension of a consciousness shaped by a sense of kinship connection and the virtues of care and the obligations of mutual support that we have, to all, as part of one human family.⁸⁴⁷ Taking a different path from traditional liberalism, this Confucian communitarian approach can play a role in the advancement of protection of human rights for all,⁸⁴⁸ including Karen refugees. I posit that this approach can to some extent help to mitigate acute tensions under the legal framework. On this basis, it thirdly follows that Confucian communitarianism can help the realisation of the right to work for Karen refugees. Looking through this lens of the Confucian communitarian tradition, Karen refugees and Thai nationals should be seen as one human family and share kinship bonds and ties. The protection of the right to work should therefore not just be granted to nationals, but also extended to these indigenous refugees.

To be clear, I recognise that Confucian communitarianism is not a silver bullet. However, as mentioned in the previous chapter, revisiting the traditional concepts and values associated with Confucian communitarianism that are common to Thailand may hold potential for acceptance and further cooperation from the Thai government and wider society. Revisiting salient philosophical traditions can also reveal important tools for critique. Ultimately, this approach may help to foster a more inclusive reading of Thailand's obligations in relation to the right to work under IRL, IHRL and ILIP, extending

⁸⁴⁷ Gu Zhengkun, Confucian Family Values as Universal Values in the 21st Century Family – Nation – World, in Klaus Muhlhahn and Nathalie Van Looy (Eds), *The Globalisation of Confucius and Confucianism*, Chinese History and Society - Berliner China-Hefte: Lit Verlag, 2013, P. 50.

⁸⁴⁸ May Sim, A Confucian Approach to Human Rights, *History of Philosophy Quarterly*, 21(4), 2004, P. 347.

protection of this right towards Karen refugees. I also contend that the approach pursued herein can have a wider application than the one I have focused on here. In particular, this approach may also have valuable contributions that can apply to a wide range of other human rights and other migrants who find themselves in similar situations to the Karen, or other indigenous groups in the region.

In what follows, I start by discussing Confucian communitarianism and the importance it places on work in relation to a life of dignity. I then turn to analyse how Confucian communitarianism can help to mitigate the tension between universal human rights protection and the power of states to control migration under the legal framework. I finally demonstrate how this Confucian communitarian approach can promote the protection of the right to work for Karen refugees in camps.

7.1. Confucian Communitarianism on the Significance of Work for Human Dignity.

Originating over 2000 years ago, Confucian communitarianism always believed in the importance of work and the link between training and education and decent employment. Both Confucius and Mencius recognise that the ability to seek work and gain sustenance is one of the most vital basic needs for all and an expression of human dignity.⁸⁴⁹

Mencius in particular states that “a clear-sighted ruler must ensure a constant means of livelihood for people to support themselves, for parents and wife and children and care for the community”.⁸⁵⁰ For Mencius, “people should always have adequate material goods, have sufficient food in good years and escape starvation in bad”.⁸⁵¹ Put differently, for Confucian communitarianism, work provides an underpinning for a dignified life partly because material gain improves the living standards of people and their family members. This is a perspective which holds significance when reflecting on the protracted situation of the Karen refugees in camps. As shown in chapter 5, through access to decent work, the Karen refugees would achieve a greater measure of income and reduce their dependence upon prolonged aid. This would enable them not just to support themselves, but lead to improved quality of life.

Beyond purely economic concerns, for the Confucian communitarian tradition, work is also about discovering life purpose and moral cultivation.⁸⁵² As mentioned in chapter 6, this is central to a life of dignity. As already shown, the Confucian communitarian tradition sees people as deeply social-selves

⁸⁴⁹ Confucius, *The Analects*, 1.5. Mencius, 2A3. Sungmoon Kim, *Confucianism, Moral Equality and Human Rights: A Mencian Perspective*, *The American Journal of Economics and Sociology*, 74(1), 2015, P. 164-165.

⁸⁵⁰ Mencius, 1A5; 1A7.

⁸⁵¹ *Ibid*, 1A7.

⁸⁵² Sungmoon Kim, *A Confucian Case for Equal Membership for Foreign Domestic Workers*, *Global Policy*, 10(1), 2019, P. 124. Sungmoon Kim, *Confucian Democracy in East Asia: Theory and Practice*, Cambridge: Cambridge University Press, 2014, P. 154-178.

and rooted deeply in particular families and communities. Within the perspective of the Confucian communitarian tradition, through work, people can build and support families, upholding filial and familial responsibilities.⁸⁵³ They can contribute to society, build social relations and find purpose in life.⁸⁵⁴ Mencius in particular states that people, “lacking a constant means of livelihood, will lack constant minds”, and that lacking direction, purpose and means of sustenance there will inevitably be negative consequences.⁸⁵⁵

He continues to explain further that if the government fails to secure people with a reasonable and steady livelihood people can turn to crime and then be subjected to punishment. In this circumstance, Mencius states that “the ruler does nothing other than to entrap the people”.⁸⁵⁶ For both Mencius and Confucius, people in this case are victims of bad government and are deprived of dignity.⁸⁵⁷ As mentioned in chapter 6, if people “within the Four Seas are not satisfied and find themselves in a dire direction, without support”, “Heaven will withdraw its blessings” and the government would lose its legitimacy and likely be forcibly overthrown.⁸⁵⁸ For Confucian communitarianism, a caring and benevolent government following the “*Kingly Way*” must ensure that a “constant means of livelihood is available to everyone within Four Seas (all around the world)”.⁸⁵⁹ A good government includes “exercising due care over education provided by village schools” for all in preparation for work, driving them towards a life with purpose and teaching responsibilities to family and society.⁸⁶⁰

It is important to note here that the importance of training and education in support of work opportunities has always been recognised in Confucian communitarian tradition.⁸⁶¹ Confucius himself was famously depicted and referred to as “The Great Sage” or the great educator/teacher.⁸⁶² For Confucius, education and training is of paramount importance to everyone, including those who have moved from more

⁸⁵³ Mencius, 1A5; 1A7.

⁸⁵⁴ Ibid.

⁸⁵⁵ Ibid, 1A7.

⁸⁵⁶ Ibid. See also: Sungmoon Kim, Confucianism, Moral Equality and Human Rights: A Mencian Perspective, *The American Journal of Economics and Sociology*, 74(1), 2015, P. 165.

⁸⁵⁷ Mencius, 1B12; Confucius, *The Analects* 20.1. See also: Sungmoon Kim, Confucianism, Moral Equality and Human Rights: A Mencian Perspective, *The American Journal of Economics and Sociology*, 74(1), 2015, P. 166.

⁸⁵⁸ Confucius, *The Analects* 20.1. Mencius, 1B8; 4A9; 5A6. See also: Joseph Chan, *Confucian Perfectionism: A Political Philosophy for Modern Times*, Princeton: Princeton University Press, 2014, P. 31, 38, 49, 160.

⁸⁵⁹ Confucius, *The Analects* 2.3; 12.7; 16.1; 19.10. Mencius, 1A7; 1B12; 1B13; 2A3.

⁸⁶⁰ Mencius 1A7. See also: Daniel A Bell, *Beyond Liberal Democracy: Political Thinking for an East Asian Context*, Princeton: Princeton University Press, 2006, P. 47.

⁸⁶¹ Chenyang Li, Education as a Human Right: A Confucian Perspective, *University of Hawai’I Press*, 67(1), 2017, P. 40-41.

⁸⁶² Confucius, *The Analects* 2.4. See also: Chen Lai, The Ideas of “Educating” and “Learning” in Confucian Thought, in Xu Di and Hunter McEwan (Eds), *Chinese Philosophy on Teaching and Learning: Xueji in the Twenty-First Century*, New York: State University of New York Press, 2016, P. 77.

distant lands, and must thus be viewed as one of the top priorities of government.⁸⁶³ Confucius explicitly lists “education alongside population and wealth as the three essentials of a harmonious state”.⁸⁶⁴ Any good government must accordingly ensure that all individuals should equally have the chance for education regardless of their background or social status (*you jiao wu lei*).⁸⁶⁵ Confucius advocates educational and training opportunities for all⁸⁶⁶ and states that that “in educating, one should let go of all distinctions of class and other categories and accept all to learn”.⁸⁶⁷

In interpreting training and learning processes, Confucius states that “day by day one is aware of what one lacks, but month by month never forgets what one is capable of”.⁸⁶⁸ In this process of learning, according to Confucius, people have opportunity to gain knowledge through, for example, studying the classics and the wisdom of others and by reflecting on materials of knowledge, adapting and extending their learning and skills to illuminate their lived experiences.⁸⁶⁹ Mencius like Confucius also states that “learning helps people develop talents and skills, understand human relationships and become affectionate with one another and realize virtue to the full”.⁸⁷⁰ For both Mencius and Confucius, education is a means to develop both virtue and talents and consequently, qualify people for job roles and contribute to their overall development and a stable and prosperous society.⁸⁷¹

To give an example, in Confucian times, civil service examinations were implemented to look for people to work for the government.⁸⁷² An ideal was that anybody, from any background, who studies hard and develops knowledge and skills can secure employment in government by passing the national

⁸⁶³ Charlene Tan, *Confucianism and Education*, in George W. Noblit (Ed), *Oxford Research: Encyclopedia of Education*, New York: Oxford University Press, 2017, P. 2.

⁸⁶⁴ Confucius, *The Analects* 13.9.

⁸⁶⁵ Baoyu Li, Jesper Sjöström, Bangping Ding and Ingo Eilks, *Education for Sustainability Meets Confucianism in Science Education*, *Science and Education*, 32, 2023, P. 884. Phuc Quang Bao Tran, Khalida Parveen, Ha Thi Minh Tran and Anh Quynh Hoang, *Confucius' Thought of Education and Insights for Today's Moral Education*, *Journal of Social Sciences Advancements*, 2(1), 2021, P. 1.

⁸⁶⁶ Betty Yung, *Can Confucianism Add Value to Democracy Education*, *Procedia Social and Behavioural Sciences*, 2, 2010, P. 1920, 1922. Thomas H.C. Lee, *Education in Traditional China: A History*, Leiden: Brill, 2000, P. 12.

⁸⁶⁷ Confucius, *The Analects* 15.39.

⁸⁶⁸ *Ibid*, 19.5.

⁸⁶⁹ *Ibid*, 2.15; 19.6. See also: Juanjuan Zhao, *Confucius as a Critical Educator: Towards Educational Thoughts of Confucius*, *Frontiers of Education in China*, 8(1), 2013, P. 13.

⁸⁷⁰ Mencius, 3A3, 7A40. See also: Chenyang Li, *Education as a Human Right: A Confucian Perspective*, University of Hawai'i Press, 67(1), 2017, P. 40.

⁸⁷¹ Marinette Bahtilla and Hui Xu, *The Influence of Confucius's Educational Thoughts on China's Educational System*, *Open Access Library Journal*, 8(5), 2021, P. 6. Baoyu Li, Jesper Sjöström, Bangping Ding and Ingo Eilks, *Education for Sustainability Meets Confucianism in Science Education*, *Science and Education*, 32, 2023, P. 882.

⁸⁷² Zongyi Deng, *Confucianism, Modernization and Chinese Pedagogy: An Introduction*, *Journal of Curriculum Studies*, 43(5), 2011, P. 561-563. Serene H.J. Choi and Timo A. Nieminen, *Factors Influencing the Higher Education of International Students from Confucian East Asia*, *Higher Education Research and Development*, 32(2), 2013, P. 161-163.

examinations.⁸⁷³ Confucius explicitly states that “careers in office and government are open to all who devoted to hard learning and studying”.⁸⁷⁴ It was common to see in the Confucian communitarian tradition that passing the national examinations opened the way for many from different backgrounds to enter into civil service jobs which enabled access to the most prestigious careers available at that time.⁸⁷⁵

The relevance of this example is that it shows that Confucian communitarianism has historically seen education as a means to display merit and as a pathway, open to all, to access careers. The career success which is achieved through training, learning and education significantly enhances quality of life and enables support for family and contributes to the development of society.⁸⁷⁶ It therefore enables people to make social connections, find purpose and live in accordance with the Way (*Dao* – as mentioned in the previous chapter, a life of dignity).⁸⁷⁷

The emphasis of Confucian communitarianism on the value of work in relation to moral cultivation and life purpose is important and relevant for Karen refugees in camps. As already shown in chapter 5, without work, many Karen refugees are facing frustration. Without work and training and educational programmes to facilitate employment, these indigenous refugees often feel hopeless and cannot see their future. In other words, for Karen refugees, work is also about the refugees’ feelings of having purpose, belonging and social connectedness and inclusion into the community. Through work, these indigenous refugees can also contribute to economic growth which is of paramount importance to Thailand, especially given that the Thai economy is, as mentioned in chapter 5, falling behind its Southeast Asian peers amid growing fears of the middle-income trap.

It is important to acknowledge, as the language used by the tradition, including in relation to work and the economy, was formed in a very different historical time period and place, it might be considered outdated or lacking in relevance. This is because the nature and needs of a modern economy are vastly different from ancient and Medieval Asia. However, the principles underpinning the tradition are timeless. The Confucian communitarian understanding of the value of work, with reference to both the material provision of livelihoods and moral cultivation and purpose, still holds relevance. As

⁸⁷³ Ibid.

⁸⁷⁴ Confucius, *The Analects* 19.13.

⁸⁷⁵ Serene H.J. Choi and Timo A. Nieminen, Factors Influencing the Higher Education of International Students from Confucian East Asia, *Higher Education Research and Development*, 32(2), 2013, P. 161-163.

⁸⁷⁶ Chenyang Li, *Education as a Human Right: A Confucian Perspective*, University of Hawai’I Press, 67(1), 2017, P. 41.

⁸⁷⁷ Confucius, *The Analects* 13.5; 15.38. See also: Xiao Qu, *Confucianism and Human Rights: Exploring the Philosophical Base for Inclusive Education for Children with Disabilities in China*, *Disability and Society*, 2022, P. 1455-1457.

highlighted in chapter 5, Nussbaum, a core modern liberal thinker, also acknowledges both of these elements when reflecting on the importance of work and its relationship to dignity. It is clear therefore, that the Confucian communitarian vision of the relationship between dignity and work remains significant when thinking about the realisation of the right to work for Karen refugees. In the next section I will now turn to demonstrate how the Confucian communitarian approach to human dignity can play a role in supporting the extension of protection of universal human rights for the Karen refugees.

7.2. Confucian communitarianism as a Means to Extend and Strengthen Human Rights Protection for Karen Refugees in Thai Camps.

The tensions between the universal premise of human rights protections and the state's right to control migration is, as shown in chapter 5, at the root of the struggle of the legal framework of IRL, IHRL and ILIP to extend protections for Karen refugees and in particular, the recognition of their right to work. Human rights are supposed to provide protections for all, however, one's migration status, which is granted through state power, determines to what extent one can access these protections.⁸⁷⁸ States therefore often give priority treatment for nationals and other migrants with legal status within their territories.⁸⁷⁹ Consequently, with the status of "illegal migrant", the Karen refugees are excluded from accessing the universal protections of human rights. As mentioned in chapter 5, these exclusions ultimately aim to punish and discourage further migration to Thai territories. In this section, I show that, although taking a different path from traditional liberalism, Confucian communitarianism's approach to human dignity provides grounds for universal human rights protections. I argue that, to some extent, this approach has the potential to mitigate these tensions pervasive under the current legal framework and therefore help to extend and advance the protection of human rights to Karen refugees.

It is important to remember here that traditional liberalism, as mentioned in chapter 2, contains within it a conception of human dignity which prioritises concepts of individual autonomy and rationality. The system of human rights within this viewpoint comes into being by seeing people as unbound and unencumbered by their social relationships and particular identities. In other words, in the traditional liberal approach, universal human rights are achieved and secured by putting aside and abandoning all antecedent moral ties and particular identities, including our family and kinship ties.

In contrast with this liberal perspective, the Confucian communitarian perspective of dignity, as mentioned in chapter 6, sees humanity as deeply embedded within social relationships – families and

⁸⁷⁸ Lindsey N. Kingston, *Full Human: Personhood, Citizenship, and Rights*, Oxford: Oxford University Press, 2019, P. 6.

⁸⁷⁹ Ruth Rubio-Marín, *Human Rights and Migration*, Oxford: Oxford University Press, 2014, P. 6.

communities - and understands that virtues are developed within particular relationships. These virtues create obligations, duties of mutual support and universal care among people, which when extended to all within a vision of one harmonious human family, ground rights. In other words, “what is universal is extended from what is particular”.⁸⁸⁰ This promotes an inclusive and egalitarian vision of rights, achieving the same ends as the liberal tradition but with a different societally and culturally rooted approach.

In particular, as demonstrated in chapter 6, Confucius and Mencius’s moral teaching points to a fundamentally inclusive vision which encompasses everyone and everything in a holistic and integrated view of the world. Confucian communitarianism, as an ancient philosophy which predates the modern structures of the nation-state, rests upon a pre-national conception of one harmonious world (“*tianxia*” - all under Heaven).⁸⁸¹ The root significance of the Confucian communitarian concept of *tianxia*, is the ideal of “all-inclusiveness” or in other words, of “a world with only interiority and no exteriority”.

In this inclusive “no outside” of the *tianxia* Confucian communitarian worldview, there are no predetermined cultural boundaries as people are encouraged to view others, regardless of their background or views, as part of one human family.⁸⁸² Central to this, each and every individual as analysed in chapter 6 should extend “kinship consciousness” to its utmost extent and recognise all “close or remote” within “the Four Seas (around the world) as our brothers”.⁸⁸³ The movement of peoples within Confucian communitarianism in the *tianxia* system is traditionally understood through a welcoming prism as those coming are seen as family and are treated with respect and generosity.⁸⁸⁴

In fact, Confucian communitarianism is broadly open to movement of people and stresses the importance of the number of people in a state as one of three essentials.⁸⁸⁵ Confucius explicitly states that immigration as “a movement of people into ones’ realm (migration) is a sign of good government”.⁸⁸⁶ For Confucius, “there is good government when those who are near are pleased, those

⁸⁸⁰ Wing-tsit Chan, *A Source Book in Chinese Philosophy*, Princeton: Princeton University Press, 1963, P. 86-87. A. T. Nuyen, *On the Confucian Idea of Citizenship*, in Sor-hoon Tan (Ed), *Challenging Citizenship: Group Membership and Cultural Identity in a Global Age*, Burlington, VT: Ashgate, 2005, P. 180-181.

⁸⁸¹ A. T. Nuyen, *Confucianism and the Idea of Citizenship*, *Asian Philosophy*, 12(2), 2002, P. 136. Ruihan Wu, *Confucian Cosmopolitanism: The Predicament and the Way Forward*, *Religions*, 14, 2023, P. 2.

⁸⁸² Zhao Ting Yang, *All under Heaven: The Tianxia System for A Possible World Order*, California: University of California Press, 2016, P. 66, 220.

⁸⁸³ Confucius, *The Analects* 12.5.

⁸⁸⁴ Leonard Shihlien Hsu, *The Political Philosophy of Confucianism: An Interpretation of the Social and Political Ideas of Confucius, His forerunners, and His Early Disciples*, New York: E. P. Dutton and Co, 1932, P. 144-145.

⁸⁸⁵ *Ibid.* Confucius, *The Analects* 13.9.

⁸⁸⁶ Confucius, *The Analects* 13.4; 13.16. Leonard Shihlien Hsu, *The Political Philosophy of Confucianism: An Interpretation of the Social and Political Ideas of Confucius, His forerunners, and His Early Disciples* New York: E. P. Dutton and Co, 1932, P. 144-145.

who are far away are drawn to immigrate to the country”⁸⁸⁷ and “people from all directions flock⁸⁸⁸ to it from all directions with their babies on their backs”.⁸⁸⁹ He emphasises that “those who are far off, disadvantaged and immigrate into the country should be welcomed, given compassionate and indulgent treatment and loved and cared for as they are all our brothers”.⁸⁹⁰

In other words, this Confucian communitarian worldview constructed around the concept of *tianxia* carries within it universal connotations and involves the cultivation of an inclusive mindset, which weakens differences in the treatment between nationals and non-nationals. Looked at through this lens, non-nationals like the Karen refugees are viewed as more than mere “social strangers”, or autonomous individuals with protection and rights, as conceptualised in the tradition of liberalism.⁸⁹¹ Rather, the Confucian communitarian tradition would see them as “relational strangers”, as if they were part of one human family. These non-nationals and Thai nationals are under Confucian communitarianism seen to share one kinship bond that binds all humans and the ties of obligation that flow from that. They all possess equal dignity and are therefore entitled to protection, treatment, care and rights.

The legal protection of human rights, which is central to human dignity, in a Confucian communitarian approach does not just apply only to Thai nationals, but is extended to the Karen refugees in camps who find themselves in a precarious position. For the Confucian communitarian tradition, the extension of universal human rights protections to these indigenous refugees comes through a wider vision of a united humanity as part of one kinship group.⁸⁹² Every human being, within this vision of dignity, is due the compassion and obligations of mutual support that come from the virtues cultivated within actual kinship connections.⁸⁹³ This culture and tradition regulates the exercise of universal rights protection through emphasising shared/co-responsibilities.⁸⁹⁴

In other words, for Confucian communitarianism, these obligations, embodied in universal human rights, should not rely for their implementation on immigration status. Instead, they are rooted in the virtues of care that flow from this to all within the human family, and the upholding of rights that this

⁸⁸⁷ Confucius, *The Analects* 13.16.

⁸⁸⁸ The term translated as “flock” here lacks pejorative connotations and is an accepted translation.

⁸⁸⁹ Confucius, *The Analects* 13.4.

⁸⁹⁰ Zisi, *The Doctrine of the Mean*, in Nicholas Tamblyn (Trans), *Complete Confucius: The Analects, The Doctrine of the Mean and The Great Learning*, London: Golding Books, 2016, P. 78.

⁸⁹¹ For more details, see at: Sungmoon Kim, *Beyond Liberal Civil Society: Confucian Familism and Relational Strangership*, *Philosophy East and West*, 60(4), 2010, P. 480, 488-489. Sungmoon Kim, *Filiality, Compassion, and Confucian Democracy*, *Asian Philosophy*, 18(3), 2008, P. 291-294.

⁸⁹² A. T. Nuyen, *Confucianism and the Idea of Citizenship*, *Asian Philosophy*, 12(2), 2002, P. 132. Tu Wei-Ming, *A Confucian Perspective on Human Rights*, in Wong Sin Kiong (Ed), *Confucianism, Chinese History and Society*, Singapore: World Scientific Publishing, 2012, P. 15.

⁸⁹³ May Sim, *A Confucian Approach to Human Rights*, *History of Philosophy Quarterly*, 21(4), 2004, P. 347.

⁸⁹⁴ *Ibid*, P. 341. See also: Niu Geping, *Liberalism and Confucianism: Rights and Virtues*, *Core Ethics*, 7, 2011, P. 239.

entails.⁸⁹⁵ Within this Confucian communitarian viewpoint, states should not pursue hostile policies, including the imposition of restrictions on or exclusions from human rights, aimed at controlling and deterring further migration. Rather, both Thailand and the wider society have responsibilities to assist non-nationals like Karen refugees as if they were part of one human family, to help them access their rights and promote their dignity regardless of their background. If anything, as mentioned above, for Confucian communitarianism these indigenous migrants are in a situation of extreme disadvantage, meriting a greater level of welcome, help and support.

It is however important to note, as I have mentioned throughout, that Confucian communitarianism is not a panacea. The Confucian communitarian tradition, and the way it approaches topics of universal rights through the concept of the social self and emphasis on kinship ties as described above, is not without criticism. Seung-Hwan Lee argues that as the Confucian communitarian concept of the deeply relational self goes against the liberal presupposition of individuals as autonomous and independent selves, it cannot serve as a ground for theories of rights and sits uneasily with the ideals of equality and rationality.⁸⁹⁶ He argues that the kinship role-based virtue ethics binds individuals to such an extent that their individuality is wholly subsumed by their relational roles.⁸⁹⁷

As mentioned in the previous chapter, Liu Qingping builds upon this and presents Confucianism as promoting a deeply hierarchical and static society. For him, those designated as holders of higher roles, such as when the King is seen as Father of the Nation, are served by those in lesser roles. He further argues that the relational-selves Confucian communitarianism conceptualise, in practice, limit rights and obligations to a tightly bound blood relation in-group, which in some visions has the King at its head.⁸⁹⁸ For him, anyone outside of the perceived blood-group, including non-nationals, is at best seen as an outsider less deserving of help, and at worst as a threat. He used the term “consanguinitism” to describe what he sees as the Confucian communitarian prioritisation of family members or those who are seen as part of the wider blood-nation, and sees the tradition as therefore unable to ground a system of universal rights.⁸⁹⁹ On this basis, one could argue that actually existing Confucian-Asian states like Thailand suppress rights, including the rights of Karen refugees, and that this by itself constitutes proof that the tradition cannot ground rights.

⁸⁹⁵ May Sim, A Confucian Approach to Human Rights, *History of Philosophy Quarterly*, 21(4), 2004, P. 347.

Quiqi Li, The Confucian Approach to Justifying Human Rights: Beyond the Opposition between Universality and Particularity, *International Journal of Philosophy of Culture and Axiology*, 17(1), 2020, P. 195.

⁸⁹⁶ Seung-hwan Lee, Was There a Concept of Rights in Confucian Virtue-Based Morality? *Journal of Chinese Philosophy*, 9(3), 1992, P. 241–261.

⁸⁹⁷ *Ibid.*

⁸⁹⁸ Liu Qingping, Filiality versus Sociality and Individuality: On Confucianism as “Consanguinitism”, *Philosophy East and West*, 53(2), 2003, P. 234.

⁸⁹⁹ *Ibid.*

It is important to acknowledge elements of these critiques. I agree that a society which strictly binds people into specific roles by emphasising a vision of the deeply-relational self would be both authoritarian and undesirable. Liu Qingping is right that a particularly negative version of this could see the King as Father of the Nation hold unlimited power over all, who serve him. Such a society would place significant limitations upon life choices, to such an extent that would impede the realisation of human dignity and rights. However, it is important to understand that role-based virtue ethics in the Confucian communitarian tradition does not consist of burdening “inferiors”.⁹⁰⁰ Rather, the tradition imposes significant obligations on those who hold power, to such an extent that their power – “their Mandate” – can fall away.⁹⁰¹ It is certainly true that those with political power, including in Thailand as already mentioned in the previous chapter, can and have, at times, misused some of the intellectual resources in the tradition.

However, this can happen for any philosophy of statecraft – including liberalism.⁹⁰² The fact that a tradition can be misused does not render it irrelevant or mean that it possesses nothing of value. Although Confucian communitarianism came into being in the pre-modern world, and much in society has changed since then, so much about the human condition remains the same. The bonds of kinship and the virtues of care and compassion cultivated within humanity remain of incredible importance today. As shown above, the Confucian communitarian emphasis on kinship ties and virtues of obligations towards all within the human family creates an inclusive vision of care for all. To be clear, the Confucian communitarian tradition does not limit this vision to a tightly bound blood-based in-group. This egalitarian and inclusive vision through kinship ties contains new grounds for universal rights and is important in supporting the extension of human rights protections to non-nationals like Karen refugees. To some extent, this vision complements the liberal one, holding the same end, and helps to lessen the tension between human rights protections and the right of the state to control immigration within the current international legal framework.

On this basis, in the next section I now turn to discuss how this Confucian communitarian approach can contribute to extend the advancement of a specific right - the right to work - for Karen refugees in camps.

⁹⁰⁰ Joseph Chan and Sungmoon Kim are major modern Confucians, both of whom present visions of Confucianism which are substantially egalitarian, especially so in the case of Sungmoon Kim: See at: Joseph Chan, *Confucian Perfectionism: A Political Philosophy for Modern Times*, Princeton: Princeton University Press, 2014, P. 39. Sungmoon Kim, *Confucian Constitutionalism: Dignity, Rights and Democracy*, Oxford: Oxford University Press, 2023.

⁹⁰¹ Ibid.

⁹⁰² For more information on potential misuses of the liberal tradition by leaders in liberal democratic states, see: Johannes Von Rosen, *The Securitization of Migration as a Threat to Liberal, Democratic Societies, Populism, Peace and Security*, 37(1), 2019, P. 35-40.

7.3. Implications for the Protection of the Right to Work for Karen Refugees in Thai Camps.

7.3.1. The Implications of Confucian Communitarianism for the Access to Work.

Regarding access to the national labour market:

One's immigration status, as mentioned in chapter 5, remains significant when it comes to the realisation of the right to access the national labour market under Article 6 (1) of ICESCR. Due to the status of "illegal migrant" the Karen refugees are excluded from access to the Thai national labour market. These indigenous refugees in camps also are, as already mentioned, excluded from the protection of this right under ILIP and in particular, Article 17(3) of UNDRIP and 20(2)(a) of ILO Convention No. 169. In this section I will demonstrate how Confucian communitarianism can help to read these Articles in a more inclusive light, extending access to the Thai national labour market for all including Karen refugees.

As previously demonstrated in section 7.1, the Confucian communitarian tradition always believed that the ability to seek work and gain sustenance is vital to human dignity and constitutes one of our most basic needs. Access to the national labour market and employment opportunities is seen as essential for everyone, enabling them to support themselves, family, society and cultivate virtues and generate life purpose. Looking through the lens of the Confucian communitarian tradition, non-nationals with precarious status like Karen refugees in camps are, as analysed in section 7.2, seen to share bonds of kinship connections and ties with Thai nationals.

Therefore, access to work in the national labour market under Article 6(1) of ICESCR, Article 17(3) of UNDRIP and 20(2)(a) of ILO Convention No. 169 should be granted not just to Thai nationals, but also extended to the indigenous refugees in camps regardless of migration status and background. These Karen refugees should receive the same care and treatment as that given to Thai nationals. For Confucian communitarianism, extending protections and enhancing access to work in the Thai labour market for Karen refugees in camps, as mentioned in section 7.2, flows from the cultivation of virtues of compassion and benevolence and the resulting obligations to all in the harmonious human family.

It is important to note that Thailand is not an exception, but is one among many countries facing demands to allow refugees access to the national labour market. There has been variation in how states have responded to these demands, and a restrictive approach to the right to access work prevails, with most states reluctant to ease these restrictions.⁹⁰³ However, there are a few states that have made some positive progress in legalising access to the national labour market for non-nationals with precarious

⁹⁰³ Roger Zetter and Héloïse Ruaudel, *Refugees' Right to Work and Access to Labour Markets: An Assessment*, Knomad, 2018, P. III.

immigration status.⁹⁰⁴ Though the example I focus on below is far from perfect and requires further improvement,⁹⁰⁵ it shows that there is a lot that the Thai government can learn to improve the protection of access to work for Karen refugees.

Uganda is an example of a non-Western state that has taken measures to extend access to the national labour market to its refugee population. Central to its approach has been its inculturation of human rights ideals into concepts and language that are rooted within its own traditions and culture, most notably in its use of the Pan-African concept of *Ubuntu*, which like the Confucian communitarian approach has communitarian and virtue ethics groundings.⁹⁰⁶ Despite being classified as a low-income country⁹⁰⁷ Uganda hosts the largest number of refugees in Africa.⁹⁰⁸ In particular, by the end of July 2024, the country provided a home to over 1.7 million refugees and asylum seekers.⁹⁰⁹ Most are staying within twelve refugee camps across 12 districts.⁹¹⁰ As already shown, by November 2024, Thailand hosts some 86,539 refugees from Myanmar in the nine camps along Thai-Myanmar border.

Uganda has a far smaller population than Thailand,⁹¹¹ but is hosting a higher number of refugees in camps than Thailand. The government of Uganda has one of the most progressive refugee policies in Africa and serves as a model example in affording refugees access to the same rights as its citizens, including access to work.⁹¹² In 2006, the country passed the Uganda Refugee Act into law, which in section 29(vi) grants refugees in camps right to access employment opportunities and engage in gainful

⁹⁰⁴ Alexander Betts and Olivier Sterck, Why Do States Give Refugees the Right to Work? Oxford Review of Economic Policy, 38(3), 2022, P. 514.

⁹⁰⁵ Paul Ogwang Tulibaleka, Keneth Tumwesigye and Kuluthum Nakalema, Protracted Refugees: Understanding the Challenges of Refugees in Protracted Refugee Situations in Uganda, Journal of African Studies and Development, 14(1), 2022, P. 1-11.

⁹⁰⁶ Daniel A. Bell and Thaddeus Metz, Confucianism and *Ubuntu*: Reflections on a Dialogue between Chinese and African Traditions, Journal of Chinese Philosophy, 38(1), 2011, P. 78-95.

⁹⁰⁷ The World Bank, World Bank Country Classifications by Income Level (Uganda), 7 July 2022, <https://www.worldbank.org/en/news/factsheet/2022/07/07/world-bank-country-classifications-by-income-level-uganda#:~:text=Q8%3A%20What%20is%20the%20current,issued%20on%20July%201%2C%202022> Accessed by 8 August 2024.

⁹⁰⁸ UNHCR, Uganda Shows How Including Refugees Can Lift Up a Whole Society, <https://www.unhcr.org/uk/news/stories/uganda-shows-how-including-refugees-can-lift-whole-society#:~:text=The%20Bidibidi%20settlement%20alone%20hosts,move%20around%20the%20country%20freely> Accessed by 8 August 2024.

⁹⁰⁹ UNHCR, Uganda, 31 July 2024, <https://data.unhcr.org/en/country/uga>, Accessed by 10 August 2024.

⁹¹⁰ Ibid. See also, UNHCR, Uganda, 31 December 2023, <https://reporting.unhcr.org/operational/operations/uganda#toc-populations> Accessed by 10 August 2024.

⁹¹¹ In the end of December 2023, Population in Uganda is nearly 49 million while population in Thailand is nearly 72 million. See further: The World Bank, Thailand: Population, Total, <https://data.worldbank.org/country/thailand> Accessed by 8 August 2024. World Bank, Uganda: Population, Total, <https://data.worldbank.org/country/uganda> Accessed by 8 August 2024.

⁹¹² ILO, Employment and Decent Work in Refugee and Other Forced Displacement Contexts: Compendium of ILO's Lessons Learned, Emerging Good Practices and Policy Guidance, 2020, P. 68 https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@migrant/documents/publication/wcms_763174.pdf Accessed by 12 August 2024. UNHCR, Uganda Employment Policy Brief: Using Socioeconomic Evidence to Promote Solutions for Refugees in Uganda, July 2021, <https://www.unhcr.org/sites/default/files/legacy-pdf/61371d364.pdf> Accessed by 10 August 2024.

work. It is important to note that Uganda is a signatory to the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention).⁹¹³

The treatment envisaged by OAU Convention derives from and is understood in terms of the African philosophical concept of *Ubuntu*.⁹¹⁴ *Ubuntu*, a traditional African worldview, sees human society as deeply interconnected and emphasises sensitivity to the needs of others, through care, respect, empathy, consideration and kindness - “I am because we are, and since we are, therefore I am”.⁹¹⁵ *Ubuntu* requires giving a warm welcome to others and assisting them to create their own happiness and pursue their own destiny.⁹¹⁶ In this way, the OAU Convention calls African countries to recognise the need to create conditions where refugees can achieve improved lives and futures.⁹¹⁷ Refugees within this concept of *Ubuntu* should therefore be given basic and fundamental rights including socio-economic opportunities so that they can attain a dignified standard of living comparable with that of others or those around them.⁹¹⁸

The president of Uganda, Museveni at the Global Refugee Forum (GRF) in Geneva 2023 stressed that the country continues its commitment to care for refugees.⁹¹⁹ He links the country’s open-door policy towards refugees to Pan-Africanism and Ugandans’ commitment to the principle of *Ubuntu*.⁹²⁰ He emphasises that “accepting refugees is part of unity with our brothers and sisters”.⁹²¹ He explains that “it is also a component of our Pan-Africanist strategy to work for unity, in order to ensure our prosperity

⁹¹³ Organisation of African Unity Convention Governing the Specific Aspects of Refugees Problems in Africa (Adopted 10 September 1969, Entered into Force 20 June 1974) 1001 UNTS 45.

⁹¹⁴ Callixte Kavuro, Human Dignity and the Realisation of Socio-Economic Rights of Refugees in Africa, in Ebenezer Durojaye, Robert Doya Nanima, Abiola Idowu-Ojo and Gladys Mirugi-Mukundi (Eds), *Realising Socio-Economic Rights of Refugees and Asylum Seekers in Africa: Our Lives Matter*, London: Palgrave Macmillan, 2023, P. 85.

⁹¹⁵ John S Mbiti, *African Religions and Philosophy*, 2nd Ed, Portsmouth: Heinemann, 1970, P. 141. John L.B. Eliastam, *Exploring Ubuntu Discourse in South Africa: Loss, Liminality and Hope*, *Verbum et Ecclesia*, 36(2), 2015, P. 1427.

⁹¹⁶ Callixte Kavuro, Human Dignity and the Realisation of Socio-Economic Rights of Refugees in Africa, in Ebenezer Durojaye, Robert Doya Nanima, Abiola Idowu-Ojo and Gladys Mirugi-Mukundi (Eds), *Realising Socio-Economic Rights of Refugees and Asylum Seekers in Africa: Our Lives Matter*, London: Palgrave Macmillan, 2023, P. 85-86.

⁹¹⁷ Paragraph 1 of the Preamble of the OAU Convention.

⁹¹⁸ It is noted that there has been a number of research that goes into unpacking how Ubuntu is helpful in promoting more humane treatment and inclusive protections of the rights of refugees and other migrants in Africa.

For more information, see at: Mokoko P. Sebola, *Refugees and Immigrants in Africa: Where is an African Ubuntu? Africa’s Public Service Delivery and Performance Review*, 7(1), 2019, P. 1-7. Mokgoro Justice Yvonne, *Ubuntu, The Constitution and the Rights of Non-citizens*, *Stellenbosch Law Review*, 21(2), 2010, P. 221-229.

⁹¹⁹ Ismael Kasooaha, *Museveni Calls for African Integration to Resolve Refugee Crisis*, Office of the Prime Minister: The Republican of Uganda, 2023, <https://opm.go.ug/museveni-calls-for-african-integration-to-resolve-refugee-crisis/> Accessed by 14 August 2024.

⁹²⁰ *Ibid.*

⁹²¹ *Ibid.*

and the prosperity of our brothers and sisters”.⁹²² This is something that is also reflected in the Confucian communitarian tradition, which as mentioned early on, has Pan-Asian influence and sees the provision of support and rights for Karen refugees through the lens of kinship and family.

To be clear although the Ugandan model has, as already mentioned, shortcomings, it constitutes an approach that is far more progressive than the one seen in Thailand. One key thing to understand here is that the achievement of progressive refugee policy in Uganda has, to some extent, been enhanced by rooting rights in a language and cultural framework that is relevant, in *Ubuntu* and through Pan-African ideals. The case of Uganda is important to highlight as, like my own research, it seeks to ground rights in culturally salient values and traditions. There is much to learn from this approach, which in the case of Thailand can be used to extend access to the Thai labour market for Karen indigenous refugees.

Regarding access to technical and vocational training programmes towards employment:

As I mentioned in chapter 5, even where Thailand recognises the right to access the national labour market in law (in theory), this does not mean that significant barriers to employment in practice for non-nationals who are in a precarious status, like the Karen refugees, are removed. The fact that they face a lack of access to relevant skills, language training or education due to their status of “illegal migration”, places them in a highly disadvantaged position compared to their Thai peers in terms of actual gaining employment.

As previously demonstrated in section 7.1, the Confucian communitarian tradition, though in a different historical context and language, always recognised the importance of training and education for all and its value in relation to occupational opportunities. As analysed in section 7.2, when training programmes and education are seen through the prism of Confucian communitarian thought, which treats all as part of one human family and kinship ties, the Karen refugees would be included as bearers of this right. This means that the right to access all levels of Thai education articulated under Article 28 of CRC and Article 13 of ICESCR, including access technical and vocational guidance and training toward employment under Article 6(2) of ICESCR, should be extended to the Karen refugees regardless of their migration status.

Moreover, as mentioned in chapter 6, the provisions of the programmes of vocational training and education in the preparation for employment for these Karen migrants also need to meet and take into account their special indigenous needs. As already shown, the Confucian communitarianism *tianxia* system promotes a vision of an inclusive and united humanity as part of one family in harmony through kinship ties. Mencius explicitly states that among the three important things in human affairs, harmony

⁹²² Ibid.

among people is of the greatest significance: “good timing is not as good as being advantageously situated, and being advantageously situated is not as good as having harmonious people”.⁹²³ The harmony that Confucian communitarian thought seeks is not mere agreement without recognising difference and diversity in society.⁹²⁴ Instead, Confucius states that “the gentleman or *junzi* harmonises but does not seek sameness, whereas the petty person (*xiaoren*) seeks sameness but does not harmonise”.⁹²⁵

For Confucius, harmony is different from “sameness”, which is intolerant of difference.⁹²⁶ Harmony, however, not only contains difference, but also encourages coexistence in difference.⁹²⁷ This approach recognises differences without imposing conformity and minimises conflicts without undermining autonomy.⁹²⁸ In fact, the Confucian communitarian view of harmony attaches great importance to openness, equality and sincerity and stresses mutual respect.⁹²⁹ This is important when considering a Confucian communitarian approach towards indigenous peoples and their collective and indigenous needs and interest.

The tradition would seek to enable the Karen refugees to maintain and practice their indigenous culture and traditions, and to have these reflected in their education and training. In the Confucian communitarian view, these Karen should therefore receive training programmes and education that is appropriate to their special indigenous needs as articulated in Article 14(1) of UNDRIP, Article 27(3) of ILO Convention 169 and Article 22(2)-(3) of ILO Convention No. 169. The provision of these technical and vocational training programmes is crucial for the indigenous refugees in enhancing their chances to actually acquire employment, which for Confucian communitarianism, is central to human dignity.

Taking Uganda once again as an example, with the enactment of the Uganda Refugee Act 2006 and in particular, Section 29(vi), Uganda guaranteed refugees in camps freedom of movement within the country and access to employment opportunities on a par with nationals. The government includes

⁹²³ Mencius, 2B1.

⁹²⁴ Chenyang Li, *Confucian Harmony: A Philosophical Analysis*, in Vincent Shen (Ed), *Dao Companion to Classical Confucian Philosophy*, Dordrecht: Springer, 2014, P. 389.

⁹²⁵ Confucius, *The Analects*, 13.23.

⁹²⁶ Wei Xiaohong and Li Qingyuan, *The Confucian Value of Harmony and its Influence on Chinese Social Interaction, Cross-Cultural Communication*, 9(1), 2013, P. 61. Chenyang Li, *The Philosophy of Harmony in Classical Confucianism*, *Philosophy Compass*, 3(3), 2008, P. 432.

⁹²⁷ Shijie Wei, *Harmony in Confucian Thought and Building a Community of Shared Future for Mankind*, SHS Web of Conferences, 153, 2023, P. 3, 4.

⁹²⁸ Derk Bodde, *Harmony and Conflict in Chinese Thought*, in Arthur Wright (Ed), *Studies in Chinese Thought*, Chicago: University of Chicago Press, 1967, P. 46, 47. Baogang He, *Confucianism Versus Liberalism over Minority Rights: A Critical Response to Will Kylicka*, *Journal of Chinese Philosophy*, 31(1), 2004, P. 112.

⁹²⁹ Wei Xiaohong and Li Qingyuan, *The Confucian Value of Harmony and its Influence on Chinese Social Interaction, Cross-Cultural Communication*, 9(1), 2013, P. 62.

refugee protection within its own domestic framework for economic development, aiming to assist refugees and host communities by promoting socio-economic development in refugee-hosting areas.⁹³⁰ As part of these efforts the country has developed an “out-of-camp policy”, enhanced land ownership for refugees to develop agricultural production and, crucially, allows refugees access to all levels of education and training programmes towards work to increase their self-reliance.⁹³¹

As I already stated in this section the Ugandan experience is far from perfect. Wide ranging structural challenges remain, including economic crises, high unemployment and limited state funding for policies like this aimed at supporting refugees.⁹³² However, the approach represents a positive step in the right direction from which Thailand has much to learn. Upholding the values of Confucian communitarianism would mean extending assistance, including training and education, to Karen refugees in order to facilitate their actual access to work. I will now turn to demonstrate how Confucian communitarianism can help to support just and decent working conditions for Karen refugees.

7.3.2. The Implications of Confucian Communitarianism for the Protection of Working Conditions.

Compared with access to work, when it comes to conditions at work, the exercise of the state’s right to control immigration has less weight as previously highlighted in chapter 5. However, a precarious immigration status means that non-nationals like the Karen refugees are often more vulnerable to exploitation and more likely to be experiencing working conditions that breach international standards. They are excluded from entitlements that protect working conditions, articulated under Article 7 of ICESCR, Article 17(3) of UNDRIP and Article 20(2)(b)(c) of ILO Convention 169. I will demonstrate in this section how Confucian communitarian thought can understand and interpret these Articles in a more inclusive manner and therefore enhance the protection of working conditions for all, including the Karen refugees.

⁹³⁰ UNHCR, Uganda National Action Plan to Implement The Global Compact on Refugees and Its Comprehensive Refugee Response Framework (CRRF) 2018-2020, March 2019, P. 10-11, <https://globalcompactrefugees.org/sites/default/files/2019-12/Uganda%20National%20Action%20Plan%20for%20GCR%20implementation%20%282019%20revision%209.pdf> Accessed by 10 August 2024. See also: ILO, Employment and Decent Work in Refugee and Other Forced Displacement Contexts: Compendium of ILO’s Lessons Learned, Emerging Good Practices and Policy Guidance, 2020, P. 68 https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_protect/@protrav/@migrant/documents/publication/wcms_763174.pdf Accessed by 12 August 2024.

⁹³¹ UNHCR, Uganda Shows How Including Refugees Can Lift up a Whole Society, <https://www.unhcr.org/uk/news/stories/uganda-shows-how-including-refugees-can-lift-whole-society#:~:text=The%20Bidibidi%20settlement%20alone%20hosts,move%20around%20the%20country%20freely> Accessed by 12 August 2024.

⁹³² Charles Kilza Wamara, Munyaradzi Muchacha, Benard Ogowok and Cornelius Dudzai, Refugee Integration and Globalization: Ugandan and Zimbabwean Perspectives, *Journal of Human Rights and Social Work*, 7, 2021, P. 168-169.

As mentioned in section 7.2, Karen refugee workers are not merely thought of as “social strangers” or “outsiders” in the Confucian communitarian tradition. Between these non-nationals and Thai nationals, the Confucian communitarian paradigm sees kinship connections, compassion and filial responsibilities. In other words, for Confucian communitarianism, they are all part of one human family and deserve the same levels of care and treatment. Support and protection of working conditions should therefore be given to both Thai workers and the Karen refugee workers, regardless of their precarious immigration status.

Beyond economic gain, as mentioned in section 7.2, the tradition sees the extension of protections at work for Karen refugee workers through the lens of kindness, responsibility and the mutual support that all within one harmonious family should uphold. In fact, Confucius explicitly states a principle of “justice before profit” and that “righteousness comes first, not money” (*Yi yi zhi shang*).⁹³³ He stresses that “the mind of the gentleman (*junzi*) is conversant with righteousness; the mind of the villain is conversant with gain and profit”⁹³⁴ and “wealth and honour that one possesses in the midst of injustice are like floating clouds”.⁹³⁵

For Confucius, when it comes to the balance between morality and self-interest, individuals should adhere to morality first,⁹³⁶ “love all and be kind”⁹³⁷ and “do not do unto others what you would not have them do unto you.”⁹³⁸ To some extent, these human-centred virtues of Confucian communitarianism, which emphasise a service-based ethic and prioritise the people and their needs, has importance for shaping the behaviours/attitudes of employers⁹³⁹ and advocates treating all employees with dignity and respect.⁹⁴⁰

It is vital to stress here that, as mentioned in chapters 6, a positive relationship between the local community and refugees remains a significant factor when it comes to the protection of refugees.⁹⁴¹ This is true in the case of the protection of refugee workers in the workplace. There are countries which

⁹³³ Confucius, *The Analects* 4.16.

⁹³⁴ *Ibid.*

⁹³⁵ *Ibid.*, 7.16.

⁹³⁶ Xixiong Xu and Maochuan Wang, *Confucianism and Employee Treatment: Evidence from China*, *Corporate Social Responsibility and Environmental Management*, 2024, P. 2653.

⁹³⁷ Confucius, *The Analects* 1.6.

⁹³⁸ *Ibid.*, 12.2.

⁹³⁹ Xixiong Xu and Maochuan Wang, *Confucianism and Employee Treatment: Evidence from China*, *Corporate Social Responsibility and Environmental Management*, 2024, P. 2652-2653. Li Yuan, Robert Chia and Jonathan Gosling, *Confucian Virtue Ethics and Ethical Leadership in Modern China*, *Journal of Business Ethics*, 182(1), 2022, P. 119–133.

⁹⁴⁰ Weimin Xie, Jialu Guo and Hengxin Zhang, *Confucian Culture and the External Pay Gap*, *China Journal of Accounting Research*, 16, 2023, P. 6.

⁹⁴¹ Roger Zetter and Héloïse Ruaudel, *Refugees’ Right to Work and Access to Labour Markets: An Assessment*, *Knomad*, 2018, P. 16.

demonstrate that, although the right to access work has not been legally implemented, *de facto* tolerance of refugee employment has brought benefits and has attracted support from local people and communities.⁹⁴² Although the case below falls short of international standards,⁹⁴³ it has resulted in material benefits for refugees and local host communities, improving their living conditions and their social connections and standing.⁹⁴⁴

The Kakuma refugee camp in Turkana County, Kenya, is a good example of the above approach. Kakuma is Kenya's the second largest refugee camp.⁹⁴⁵ Kenya adopted an 'encampment' policy for refugees from the early 1990's, placing legal restrictions on their right to work and freedom of movement.⁹⁴⁶ Despite Kenya's reluctance to formally implement the right to work for refugees, a high degree of tolerance for refugees working is present on a *de facto* level, alongside support from local communities and civil society organisations.⁹⁴⁷

There is a vibrant economy in the Kakuma camp marketplace⁹⁴⁸ where there are over 2000 small businesses present, that buy and sell and hire employees.⁹⁴⁹ Locals both in Kakuma town and the wider Turkana County use the camp market and carry out trading with refugees, generating economic benefits for both refugees and locals, and creating greater levels of social interaction and cross-community ties and mutual assistance.⁹⁵⁰ Compared with the rest of Kenya, Turkana County remains supportive of refugees notwithstanding the resistance of the central government to formally grant refugees access to

⁹⁴² Alexander Betts, Antonia Delius, Cory Rodgers, Olivier Sterck and Maria Stierna, *Doing Business in Kakuma: Refugees, Entrepreneurship, and the Food Market*, Refugee Studies Centre, 2019, <https://www.rsc.ox.ac.uk/publications/doing-business-in-kakuma-refugees-entrepreneurship-and-the-food-market> Accessed by 16 August 2024.

⁹⁴³ UNHCR, *Understanding the Socioeconomic Conditions of Refugees in Kakuma Camp, Kenya – Summary*, <https://www.unhcr.org/uk/media/understanding-socioeconomic-conditions-refugees-kakuma-camp-kenya-summary>, Accessed by 15 August 2024.

⁹⁴⁴ Daniela Henrike Klau-Panhans and Luba Shara, *Kakuma as a Marketplace: A Consumer and Market Study of a Refugee Camp and Town in Northwest Kenya*, Washington, DC: International Finance Corporation, World Bank Group, 2018, <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/482761525339883916/kakuma-as-a-marketplace-a-consumer-and-market-study-of-a-refugee-camp-and-town-in-northwest-kenya> Accessed by 15 August 2024.

⁹⁴⁵ UNHCR, Kenya, February 2024, <https://www.unhcr.org/ke/wp-content/uploads/sites/2/2024/04/UNHCR-Kenya-Operational-Update-February-2024.pdf> Accessed by 14 August 2024.

⁹⁴⁶ Alexander Betts, *The Kalobeyi Settlement: A Self-reliance Model for Refugees?* *Journal of Refugee Studies*, 33(1), 2020, P. 189.

⁹⁴⁷ Alexander Betts, Antonia Delius, Cory Rodgers, Olivier Sterck and Maria Stierna, *Doing Business in Kakuma: Refugees, Entrepreneurship, and the Food Market*, Refugee Studies Centre, 2019, <https://www.rsc.ox.ac.uk/publications/doing-business-in-kakuma-refugees-entrepreneurship-and-the-food-market> Accessed by 16 August 2024.

⁹⁴⁸ David K. Androff, *Refugee Solutions in the Age of Global Crisis: Human Rights, Integration, and Sustainable Development*, Oxford: Oxford University Press, 2022, P. 130.

⁹⁴⁹ *Ibid.* See also: Daniela Henrike Klau-Panhans and Luba Shara, *Kakuma as a Marketplace: A Consumer and Market Study of a Refugee Camp and Town in Northwest Kenya*, Washington, DC: International Finance Corporation, World Bank Group, 2018, <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/482761525339883916/kakuma-as-a-marketplace-a-consumer-and-market-study-of-a-refugee-camp-and-town-in-northwest-kenya> Accessed by 15 August 2024.

⁹⁵⁰ *Ibid.*

work.⁹⁵¹ In fact, locals living close to the Kakuma camp have positive perceptions of camp refugees and maintain their close social and economic connections with them.⁹⁵²

As I said, although this example falls short of international standards and is far from perfect, one can see that benefits have come from the wider society's more accommodating approach towards refugees. The Kenyan experience in Kakuma provides evidence for the Confucian communitarian belief that the cultivation of harmonious relations upholding rights and obligations leads to positive results. High levels of intergroup trust and sympathy from local communities are crucial foundations for securing better protection for refugees.

The ideals of kinship connection and the human-centred virtues of humaneness, care and righteousness in Confucian communitarianism are important and guide local employers to further progress and cooperation in extending protection of decent working conditions for Karen refugee workers. This in particular includes providing Karen refugee workers with protection at work, on an equal footing with Thai workers (including fair wages and healthy and safe working conditions), as articulated under Article 7 of ICESCR, Article 17(3) of UNDRIP and Article 20(2)(b)(c) of ILO Convention 169. This helps the indigenous refugees to live a life of dignity and, as mentioned in section 7.1, would also have positive benefits for the Thai economy.

Along with complying with labour law, employers should also work with NGOs, the UNHCR and the ILO seeking to improve decent working conditions for refugee workers. Any abuses of authority, including opportunistic rent-seeking behaviour or manipulating the disadvantaged situation of Karen refugees are unacceptable. While pursuing their own interest and their business wealth, employers have to respect the rights and needs of the indigenous refugee workers and treat them with humanity and dignity as they are all part of our one human family within the Confucian communitarian lens.

As discussed above, I acknowledge that the protracted Karen refugee situation is an incredibly complex one. The Confucian communitarian tradition is not a panacea, and as mentioned in the previous section, is not without criticism and has at times been misused. However, the situation the Karen face themselves in is alarming. It is clear that the status quo is not tenable and is not delivering the promises and protections that these people desperately need. There is a clear need for a new approach and fresh thinking. It cannot be denied that the Confucian communitarian tradition contains strengths within it and in particular, possesses cultural relevance and salience in Thailand. As I have discussed, this is an

⁹⁵¹ Alexander Betts and Olivier Sterck, *Why Do States Give Refugees the Right to Work?* *Oxford Review of Economic Policy*, 38(3), 2022, P. 518.

⁹⁵² David K. Androff, *Refugee Solutions in the Age of Global Crisis: Human Rights, Integration, and Sustainable Development*, Oxford: Oxford University Press, 2022, P. 131.

essential element when it comes to promoting and extending universal human rights. Therefore, rearticulation of the values and philosophy of this tradition is critical. To some extent, this approach may hold potential in promoting the advancement of Thailand's obligations under international law in order to protect the right to work for Karen refugees.

Conclusion:

To sum up, in this chapter I showed that though expressed in a different language and historical context, Confucian communitarianism always recognised the importance of work in relation to dignity. The Confucian communitarian approach to human dignity, which emphasises the extension of kinship consciousness, benevolence and compassion to the utmost extent, takes a different way from the tradition of liberalism, but can ground universal human rights protection. This approach can, to some extent, help to reduce the tension between the state's right to control immigration and universal human rights protections under the current legal framework. Within this perspective, non-nationals with precarious status, like the Karen refugees, are seen as part of one human family alongside Thai nationals. Karen refugees should therefore possess the same protections for their human rights, in particular for the right to work in both of its elements (access to work and conditions at work). As Confucian communitarianism is rooted in Asian traditions and has shaped Thailand's culture and traditions, these values hold potential and strength in promoting a more inclusive interpretation of the obligations of Thailand regarding the right to work under international law, ultimately to protect Karen refugees.

Chapter 8: Conclusion.

In this chapter, I start by summarising the key findings of my work. I then highlight my original contributions, before finally putting forward recommendations for future research.

8.1. Key Findings.

My thesis demonstrates that Confucian communitarianism can play a role in progressing the realisation of the right to work for Karen refugees in Thailand's camps. I found that although formed in a different historical and social context, Confucian communitarianism offers values that resonate with the concept of human dignity. Though taking a different path from traditional liberalism, the understanding of human dignity in Confucian communitarianism is deeply rooted in Asian tradition and Thai culture and can ground universal protection of human rights. I found that this approach can help to mitigate the tension between universal human rights protections and state control over immigration, which stands at the root of the difficulties of the existing international legal framework (IRL, IHRL and ILIP) to extend the protection for the Karen refugees. Therefore, with these Confucian communitarian insights, the realisation of the right to work should be extended to these Karen refugees on the basis that they are all as part of one human family, connected by kinship ties and therefore receive the same care and love as Thai nationals. I will now go into more detail on these key findings of my work as I address the findings of my sub-questions in turn below:

- *To what extent does IRL, IHRL and ILIP offer protections of the right to work for the indigenous Karen refugees in Thai camps?*

My research found that the existing tensions between universal human rights protections and the state's right to control immigration lies at the root of the struggle of IRL, IHRL and ILIP to extend protection for the right to work for Karen refugees. On the one hand, the liberal ideal is that everyone is born with inherent dignity, therefore they should have rights on an equal and universal basis, regardless of background and nationality. On the other hand, the legal framework reserves to states the power to control borders and designate migration status. States hold the power to determine which groups acquire protected status, and therefore control the extent to which rights are enjoyed. This leads to a case where the protection of the right to work is not universal and instead, is granted only to nationals and migrants with legal status. States often prioritise protections for them over non-nationals like the Karen refugees who are under Thai law viewed as "illegal migrants".

In particular, Article 17(1) of the 1951 Refugee Convention only grants recognised refugees the right to engage in wage-earning. This provision makes recognised refugees a "privileged" category of migrants when it comes to access to work. IRL therefore remains limited in protecting Karen refugees' the right to work as these indigenous refugees are not recognised refugees, but are categorised as "illegal

migrants”. On this basis, I turned to IHRL to see what protections may be available for the Karen. Although IHRL embraces the universal aspiration to extend protections to all regardless of immigration status, this is not always the case in practice. When it comes to the right to access the national labour market under Article 6(1) of ICESCR, one’s immigration status remains determinative. The Karen refugees, due to their status as “illegal migrants”, are therefore excluded from the Thai national labour market. They are also excluded from access to technical and vocational training programmes, which would enhance their chances at securing work and forms part of their rights under Article 6(2) of ICESCR.

Compared with the issue of access to work, the protection of just and decent working conditions under Article 7 of the ICESCR is granted for all, regardless of their nationality or background. In other words, ones’ migration status, which is decided by states, should have no bearing on access to this right. However, in practice, precarious status often exposes these non-nationals like Karen refugees to exploitation and abuse at work. Although the Karen refugees also contribute to the Thai workforce, “illegal migration” status means that they are beyond the protection of national labour law and vulnerable to protection standards under IHRL. Moreover, as an indigenous group, the Karen are entitled to the protections under the provisions of ILIP. According to Article 17(3) of UNDRIP and Article 20(2)(a) of ILO Convention No. 169, Karen refugees have a right to be free from any discrimination in terms of employment opportunities.

States should, under Article 22(2)-(3) of ILO Convention No. 169, enact programmes of vocational training towards employment to meet the special needs of indigenous peoples. The Karen refugees should also have the right to be free from discriminatory conditions of labour, as articulated in Article 17(3) of UNDRIP and Article 20(2)(b)(c) of ILO Convention 169. However, in practice, like other non-nationals with precarious status, indigenous people also lack protection for the right to work they should be entitled to under ILIP, due to discrimination against their indigenous ethnicity. Indigenous peoples who also are in the situation of refuge like the Karen in camps especially remain deeply vulnerable. Their “illegal migration status” under Thai law, and their status as indigenous peoples, render them doubly vulnerable, with violations of both IHRL and ILIP taking place in Thailand’s denial of their right to work. In other words, the right to work under the existing international legal framework is supposedly universal and given to all, but this is not the reality for the Karen refugees in Thai camps.

- *Can Confucian Communitarianism ground a vision of human dignity consistent with the liberal tradition?*

My research found that although the term “human dignity” does not appear in Confucian communitarian texts, as this concept was formed and later developed by liberal thinkers, the worldview contains ideas which can be used to ground a conception of human dignity that resonates with modern ideals.

Accordingly, for Confucian communitarianism, human dignity is not associated with the individualistic and autonomous vision of traditional liberalism but instead refers to living a communal and flourishing moral life. Confucian communitarian does not view the self in isolation as conceptualised in traditional liberalism, but rather has a vision of man as being interconnected. Therefore, Confucian communitarianism regards dignity as embodied in the extension of a consciousness shaped by a sense of kinship connections and the virtues of compassion and care (*ren*) and the obligations that we have, to all, as part of one human family.

I found that that the Confucian communitarian approach to human dignity share similarities with Nussbaum's which rests upon an Aristotelian framework. This is partly because Confucius and Aristotle share a similar value and belief system. In particular, Nussbaum bases her concept of human dignity upon the Aristotelian ideals of *Eudaimonia* and virtue ethics and constructs a list of core human capabilities based upon these which she roots rights within. She does not base her concept of human dignity purely upon autonomy and rationality and highlights that each individual lives within a set of concentric circles, with the innermost circle being ones' own body, the next rung out being our close family, and the furthest being the whole universe. This is a vision of interconnectedness that is similar to the Confucian communitarian idea of the deeply social self.

She envisions human dignity as an ideal that is rooted in developing the virtues of care and compassion and where human beings find "fulfilment in relations with others". This approach looks outside the classical liberal tradition and comes into close alignment with that of Confucian communitarianism. Nussbaum is, in fact, one of the few modern liberals who attempt to construct a concept of human dignity which can speak to other non-Western countries. This dialogue is important as it shows that although Confucian communitarianism originates from a different culture and society over a thousand years ago, the tradition contains within it values and concepts that can speak to the modern world and in particular serve as a ground for the justification of universal human rights. In my view, this is a key finding demonstrating the potentials to promote the right to work for Karen refugees contained within the Confucian communitarian tradition. With the Confucian communitarian vision of dignity firmly grounded, in order to answer my main research question, my project went on to establish how the tradition sees the importance of work in relation to human dignity and what it means for the situation of the Karen refugees.

- *Does Confucian communitarianism see a link between human dignity and work?*

At the centre of the Confucian communitarian understanding of human dignity as outlined above is also the recognition of the value of work. My research found that although originating over a thousand years ago in a vastly different social and economic context from the modern world, Confucian communitarianism has always seen a strong link between work and human dignity. For Confucian

communitarianism, being able to work not only relates to material gain for improving people's living standards, but also enables filial responsibilities to care and support family members and contribute to wider society. Within a Confucian communitarian perspective, access to work is more than about the acquisition of money, but also concerns the discovery of a life of purpose, connecting people within society and developing moral cultivation. Under Confucian communitarianism, a government must act with virtues of care, compassion and responsibilities to ensure that a "constant means of livelihood" is available to everyone. This includes the extension of care and compassion to non-nationals with precarious migration status like Karen refugees and provision of job opportunities for them, which is a crucial part of their human dignity.

- *How can the Confucian communitarian approach to human dignity play a role in promoting the protection of the right to work under IRL, IHRL and ILIP for the Karen refugees?*

I found that the Confucian communitarian conception of human dignity, which emphasises a sense of kinship connections and the virtues of compassion and care and the obligations we all have, as part of being one human family, can promote egalitarian and universal human rights protections. This approach grounds rights in a different way than via traditional liberalism. My research found that this way can help to ease the tension between the state's right to control immigration and the demands of universal human rights protection. This tension as found above is at the root of the struggle of the existing legal framework of IRL, IHRL and ILIP to protect the right to work for the Karen indigenous refugees in Thai camps.

In particular, traditional liberalism roots the concept of right in the individualist vision of human dignity. People are accordingly entitled to universal rights as they all are autonomous and unencumbered selves. In other words, universality within traditional liberalism is only achieved through the nullification and abandonment of particularities, including our culture, family and kinship ties. I found that in contrast with liberalism, Confucian communitarianism achieves universality through the principle of "what is universal is extended from what is particular", embracing contingency and particularity. This tradition does so by rooting universal rights within a vision of humanity as constituting one family. In this inclusive "no outside" of the *tianxia* Confucian communitarian worldview, there are no predetermined cultural boundaries as individuals are encouraged to view others, regardless of their background as part of one human family and network of obligation.

Within the context of the family and kinship ties, one learns virtues of benevolence and justice and an ethics of care and compassion, promoting family harmony. When cultivated, this set of virtues can be extended outwards to eventually encompass all and bind all together in a network of obligations ultimately derived from the family. In other words, within the perspective of Confucian communitarianism, universal human rights can be built upon an inclusive worldview through the

cultivation of kinship ties. I found that the inclusive and universal framework of rights that flows from kinship consciousness and the broader worldview of *tianxia* has significant implications for non-nationals who hold precarious status like Karen indigenous refugees. Within this worldview, they would be viewed as part of one human family with nationals and therefore as bearers of the same rights including the right to work articulated under IRL, IHRL and ILIP.

My approach emphasises the importance of cultural traditions, particularities and context as crucial elements in the promotion of universal human rights. In my view, rearticulating rights within Confucian communitarianism, a tradition which is rooted in Thailand and Asia, may hold real potential both as a tool of critique and to advance local acceptance and cooperation with international standards. This includes both at the level of the Thai government and among the wider population, helping to promote the protection of the right to work for the Karen refugees. Ultimately, my research calls on Thailand to examine the requirements of its own traditions and uphold these values to bring about greater compliance with their obligations under international law to grant the Karen refugees the right to work.

8.2. Original contribution.

My research contains two aspects of originality. Firstly, I examined the situation of the Karen in Thai camps as both refugees and indigenous peoples. This is important, as from a legal perspective it enabled me to bring forward a legal framework – consisting of IRL, IHRL and ILIP - which takes all elements of their identity into consideration. This original framework served as a legal benchmark throughout my research when analysing Thai policy towards the Karen refugees in camps. This is a holistic perspective which is not seen in any other work. Secondly, I deployed new insights on human dignity from the Confucian communitarian tradition to promote the protection of the right to work for Karen refugees under this legal framework. In doing so, I charted a middle ground between those who promote the liberal universal human rights system and those who reject it and emphasise instead the role of culture and tradition. My novel approach, which seeks this balance and elevates it to the centre of academic legal discourse, is one which I believe has wide ranging consequences for how to engage with human rights discourse in non-Western settings. Central to this contribution is my experience and motivations as a scholar interested in the interplay between culture and law. It is built upon my desire to help bridge Eastern and Western traditions to discover new ways of thinking and promote change and is an approach which I think has significant potential for future research.

8.3. Recommendations for Future Research.

While my research has made valuable contributions, opportunities for further research remain. As already mentioned, knowledge of what is happening in the camps in Thailand is limited and piecemeal, and Thailand's policy approach is often either in the Thai language or not formalised in documentary

form. The most reliable information we have depends on reports from under-resourced third-sector actors, who are limited in what they are able to achieve. Future research could therefore conduct empirical research via direct engagement with both Karen refugees along with NGOs located inside camps like CCSDPT or TBC. This could even take the form quantitative analysis relating to questionnaires, interviews partly in order to build up a more detailed and holistic picture of what is happening, but also partly to explore and test ideas, gain feedback and give voice to those who are struggling.

Moreover, future research could be built upon the key findings and contributions of my work. In particular, my approach which uses the Confucian communitarian values and virtues of kinship ties to extend obligations and care to all to ground universal protection of human rights under international law could have further applications. Future research could deploy these insights to promote the realisation of Karen refugees' other human rights, beyond the right to work (eg: the right to healthcare). For example, given the cuts to USAID by the Trump administration in the USA and the serious impact this has had on medical care in these Karen camps, the situation is one of pressing need but was beyond the scope of my research. Further work could utilise my approach based upon Confucian communitarianism to spotlight and promote universal protection of the right to healthcare for these Karen refugees.

Furthermore, my approach could also be applied to support the recognition of the rights of other marginalised or vulnerable groups in countries in the region where the Confucian communitarian heritage and tradition is embedded. For example, Singapore and South Korea both share Confucian communitarian values but have restrictive and unique approaches to the topics of asylum and refugees. Singapore does not accept any refugees, and although South Korea has a special approach to North Korean refugees it typically only accepts an extremely limited number of refugee applications from other states. Refugees in both of these countries are in protracted situations lacking recognition of basic rights under international law. Future research could use the Confucian communitarian emphasis on kinship ties and the extension of universal care for all to promote the advancement of refugees' rights in these states. Human rights studies are a vast topic, and I have no doubt that Confucian communitarianism holds insights which could be applied to a wide range of rights and issues within the field. The end of this PhD does not constitute the final word on many of the important issues grappled with throughout. For me this project has only deepened my interest in how culture and law, rights relate and I intend to explore these further possibilities in my future academic projects.

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