

Are Sovereignty and Humanitarianism Mutually Exclusive?

An Exploration of the Role of Civil Society in Bridging the Gap

David Keegan, Evan Jones and Mitra Khakbaz

Introduction

Following their experience with the UNHCR during the Indochina refugee crisis in the 1970s, countries in Southeast Asia, notably Indonesia, Malaysia and Thailand, have generally permitted refugees to seek asylum in their territories on a temporary basis (Muntarhorn 2021: 426; Moretti 2022: 88) and to register with the UNHCR. Host countries in the region see asylum seekers as ‘transit refugees’ as they are often seeking resettlement in third countries outside of Southeast Asia, such as Australia and New Zealand. The Southeast Asian region is a temporary transit region for people seeking asylum as it has close geographical proximity to Australia, enables access to the UNHCR, has in some states, such as Malaysia and Indonesia, flexible visa-on-arrival policies for some nationals¹ and contains networks for transit by land, sea or air.

In 2022, Indonesia, Malaysia and Thailand were home to around 853,427 refugees, asylum seekers and stateless persons seeking protection from

persecution and harm. Despite refugee communities becoming more organized and having more access to institutional support over the last decade, refugees in the region remain primarily dependent on civil society actors and UN institutions for basic survival, with the relevant states taking little responsibility for these refugees. As a consequence of these inadequate durable solutions, a concerning, long-term ‘temporary’ migration situation is developing.

In relation to refugee issues, border security and sovereignty are ranked highly on many political agendas around the world. Despite a lack of supporting evidence, many states maintain the fearful belief that showing sympathy to refugees or legalizing their status will create an uncontrollable ‘pull factor’, causing more refugees to enter their territories, therefore resulting in a greater ‘burden’ at a time when the number of refugees globally is dramatically increasing. The increase in the number of refugees coincides with resettlement and return becoming more inaccessible. The solution to the problem of refugee protection is not straightforward and requires innovation and collaboration by multiple actors. We argue that in order to solve this predicament, multiple approaches and actors will be needed over an extended period of time to enable consistent and effective influence, with an emphasis on locally led action.

In this chapter, we will first summarize the background and context of refugee displacement and movement within the region to set the scene for the scale and composition of forced displacement. We will then provide an overview and regional analysis of civil society actors who have a mandate to protect refugees and asylum seekers. This analysis is intended to capture the diversity of actors and responses in the region and draws upon our collective experience as actors contributing to multiple civil society organizations.

The definition of ‘civil society’ employed in this chapter broadly refers to nongovernmental charitable organizations (charitable NGOs) and informal community groups, such as ethnospecific groups and refugee-led initiatives, which act for the benefit of refugees and asylum seekers in Southeast Asia. We include international and local community organizations in this definition, as well as volunteer groups, religious institutions, unions and independent advocates.² We contrast these actors with the international donor community, which is defined to encompass foreign governments, philanthropic organizations and UN institutions.

We rely on a case study that was sourced from our own work with HOST International, an international nongovernmental organization (INGO) that works with displaced people living in urban settings in the Southeast Asian region. This case study aims to illustrate an approach that we argue is effective and to offer reflections from our practice. We posit that an alternative approach to refugee protection is needed in Southeast Asia – an approach that recognizes the continued existence of tensions between humanitarian needs

and border controls in the context of increasing global displacement is preferable. We have observed that states in the region perceive human rights in confrontational terms (Kneebone 2019),³ and thus we argue for an approach that tempers the ‘naming and shaming’ methodology that is sometimes employed by INGOs and UN institutions, instead employing an approach that enables locally led collaborations to negotiate for change with the state. We argue that Amitav Acharya’s concept of ‘norm circulation’ is useful in this context (Acharya 2013). This involves the two ideas of ‘localization’ and ‘subsidiarity’. A localized approach is inward-looking. It involves making foreign ideas and norms consistent with ‘a local cognitive prior’ (Acharya 2009: 21; Acharya 2011: 97). Subsidiarity, on the other hand, is outward-looking. Its main focus is on relations between local actors and external powers, in terms of the former’s fear of domination by the latter (Acharya 2011: 97). We argue that this approach will improve access to rights and provide increased protection for forcibly displaced persons (Acharya 2013: 469). It enables state sovereignty and humanitarianism to coexist rather than be in competition with each other, while also proactively responding to the increasingly protracted period of displacement that many refugees in the region are facing.

Background and Context

Many Southeast Asian nations have an extensive history of hosting and providing sanctuary for refugee populations. From the ‘White Russian’ refugees who entered the Philippines in 1923 (Parrocha 2020) to the Vietnamese and Cambodian refugees who escaped to Thailand in the 1970s and 1980s (Chantavanich and Rabe 1990), the Southeast Asian region hosted large numbers of displaced persons for much of the twentieth century.⁴

While most refugees in Southeast Asia are, in principle, afforded safety and protection against refoulement (Moretti 2022: 109–16), protection has been provided in an ad hoc manner with limited social or economic support from host governments. Refugees are not able to fully integrate into local communities, nor can they access a range of fundamental rights, such as the rights to education, healthcare and the legal right to stay. Most refugees and asylum seekers are compelled to live in an indefinite state of ‘transit’, unable to return to their home country, integrate or access durable solutions, such as resettlement in a third country (see, for example, Chapter 3).

While most Southeast Asian governments broadly tolerate having refugees within their borders – albeit with some notable exceptions – they have taken minimal steps towards advancing any form of legal framework for refugee protection with the exception of Thailand’s new National Screening Mechanism (NSM) to implement the Aliens Regulation (see Chapters 5 and

10 in this volume), and ultimately see refugee protection as the responsibility of the international community.

A significant number of the asylum seekers in Southeast Asia have been displaced by ongoing ethnic and political conflicts in Myanmar and Afghanistan (UNHCR 2019a). The proportion of women and children on the move has increased and refugees have reported that escaping conflict now carries greater risks (UNHCR 2019a). Additional repatriation efforts in Thailand have enabled some refugees to return to Myanmar, but it is likely that these returnees may have been displaced again as a result of further political unrest in Myanmar, which began in February 2021. It was estimated that as of 31 May 2022, there were one million internally displaced persons in Myanmar (UN Office for the Coordination of Humanitarian Affairs (OCHA) 2022), which reflects the ongoing turmoil and uncertainty in the country.

As global refugee numbers grow and immigration policies tighten, refugees are experiencing longer periods of displacement in transit regions and related uncertainty due to an insufficient number of resettlement places and a lack of sustainable options for returning safely. During the COVID-19 pandemic, resettlement opportunities were dramatically reduced as the

Table 7.1 Changes in refugee statistics between 2010 and 2022. Table based on the following data: UNHCR 2010, 2021, 2022a, 2022b, 2022c

Malaysia		Thailand*		Indonesia	
2010	2022	2010	2022	2010	2021
132,856	182,230	649,430 total 11,348 urban 542,505 stateless	658,023 total 5,155 urban 561,329 stateless	2,882	13,174
70% male	67% male	51% male	49.5% male	85% male	73% male
30% female	33% female	49% female	50.5% female	15% female	27% female
20% <18	25% <18	44% <18	35.6% <18	21% <18	27% <18

Note: * The majority of refugees in Thailand are from Myanmar and reside in border camps, where they have lived since the late 1980s. Many children have grown up and, accordingly, the composition of the population has changed in the last decade. Additionally, the 2022 gender and age statistics for Thailand are only based on a refugee population of 91,331 people (UNHCR 2022c).

UNHCR and resettlement states temporarily paused resettlement processing. In Southeast Asia, this issue has been further compounded by the unwillingness of states to facilitate meaningful temporary or permanent local integration and adopt the 1951 Refugee Convention or the 1967 Refugee Protocol (Stange et al. 2019).

According to the UNHCR global figures (UNHCR n.d.b), over 84 million people (about 1% of the world's population) are forcibly displaced. This statistic includes internally displaced people. Of this number, approximately 26 million people are classified as refugees (UNHCR n.d.a). However, fewer than 110,000 places globally are available each year for refugee resettlement and the average length of displacement is now potentially more than twenty years (Devictor 2019). During the first half of 2021, while the world was still grappling with the COVID-19 pandemic, only 16,300 refugees were resettled (UNHCR n.d.b). Furthermore, in June 2014, Australia stopped accepting resettlement applications from people who were not yet registered with the UNHCR in Indonesia (Hirsch 2018; Hirsch and Doig 2019).

In many Southeast Asian hosting countries, refugee protection responses are generally only suitable for short-term and temporary interventions or crisis responses to humanitarian needs, which have either been determined by their initial design, or, subsequently limited by states. This is also driven by Southeast Asian states intending, as they have stated, to host refugees only temporarily and instead focus on the socioeconomic needs of their local populations (Legido-Quigley, Chuah and Howard 2020). In practice, this has meant that many protection services, such as camps, healthcare, food and basic financial assistance, have been delivered by international institutions, such as the IOM, the UNHCR, Save the Children, the International Rescue Committee and The Border Consortium. These organizations have predominantly focused on the provision of traditional aid (Brown and Mansfield 2009), with limited emphasis on delivering solutions that address the reality of long-term displacement. This tendency to provide temporary protection measures has typically led to the separation of the services provided to refugees and those supplied to host communities, despite the occasional overlap in their needs in relation to food security and access to basic services.

In Indonesia and Malaysia, refugees primarily reside in urban settings; although, in recent years, a small number of Rohingya have been living in camps in the Indonesian province of Aceh (Missbach 2017). In Thailand, the majority of refugees live in refugee camps along the Thai-Myanmar border, with a smaller number, around 5,000 refugees (UNHCR 2022b), residing in the community in Bangkok and other cities. This means that with the exception of Thailand, refugees predominantly live among nationals in communities where the locals themselves may be experiencing significant daily stressors associated with economic and social insecurity (Peters 2018; see also Chapter 1). At times, tension and conflict can arise (Pak and Elitsoy

2020) between locals and refugees in urban contexts when refugees are perceived as gaining access to resources and opportunities that the locals are unable to realize (see also Chapter 1). Furthermore, many locals are unaware of the circumstances in which the refugees have fled their countries of origin and view them as illegal immigrants or security threats (Muntarbhorn 2004: 13–14) in accordance with state migration rhetoric. Reportedly, in Bangkok, this has led to locals calling the Immigration Police to arrest refugees. Similarly, in Malaysia, there have been instances where locals have lobbied the government for tougher measures against refugees (Chung 2020), as well as a growing xenophobic rhetoric, which was especially prevalent during the early waves of the COVID-19 pandemic (Walden 2020) and appears to be worsening.

Malaysia, Thailand and Indonesia do not currently have a legal status for refugees and asylum seekers (see Chapter 10). This is a critical factor that contributes to the precarity of life for refugees while they are seeking protection. The daily threat of arrest and potential refoulement is very real. It leads to poor mental health (Newnham et al. 2019; Nickerson et al. 2019) and increases the risk of exploitation and trafficking (Mixed Migration Centre 2021). In varying degrees across Southeast Asia, lack of legal status also prevents refugees from being able to legally earn a living, increases the risk of labour exploitation and abuse, and increases dependency on community support systems and civil society. However, the tension between day-to-day humanitarian needs and the prioritization of state sovereignty over securitized borders, including harsh detention and refoulement practices, has caused significant strain between civil society and states. The emphasis of states on securing their borders by eliminating ‘illegal’ migration, despite the cost to human rights (Kneebone 2019), has driven civil society and international institutions to focus their efforts on legal rights advocacy and public accountability.

Overall, these vulnerability factors, longer-term transit stays and protracted resettlement timeframes seem to be leading states to recognize the specific needs of refugees, as compared to the needs of other undocumented migrants, at least to some degree. That states may be prepared to show compassion to the refugees within their borders is arguably evidenced by PR 125 in Indonesia, the state focus on the special needs of detained children in Thailand (UNHCR 2019b) and the ultimately unsuccessful work rights pilot programme in Malaysia (Yi 2016). The ASEAN Human Rights Declaration (AHRD) (2013: cl 12, 16) reflects the need to acknowledge refugee protection concerns in the region and includes references to the right to seek asylum and freedom from arbitrary arrest or detention.

Despite these positive developments, Southeast Asian states predominantly remain focused on the securitization of borders and committed to outsourcing protection responsibilities to the international community (Kneebone

2017: 31–32, 37). Refugees are understood as irregular migrants and viewed as a potential threat to social cohesion and human security (Petcharamesree 2016). In Southeast Asia, states are concerned with controlling irregular migrant workers and trafficked persons. They believe that irregular migration is the collective responsibility of multiple states.⁵ States are suspicious of human rights approaches and perceive them as a threat to state sovereignty – a perspective that contrasts the Western view of human rights, where human rights are considered to be a universal aspect of democracy (Kneebone 2019: 75; Muntabhorn 2021: 426). For Southeast Asian states, refugees are an international problem rather than a domestic concern, and therefore resolving refugee issues is within the domain of resettlement states and the UNHCR (Nah 2016). In this context, and with very limited resources, local civil society organizations (CSOs) have not had much opportunity to engage with states and international organizations on matters of refugee protection. The advocacy that has occurred has predominantly focused on gaining access to legal rights and often results in resistance from states.

As long-term, ‘temporary’ displacement is becoming the status quo in many Southeast Asian states, stakeholders must reflect on the kinds of interventions that will best serve the needs of displaced refugees, consider who should be responsible and delegate aspects of this responsibility. There is a real tension between humanitarian responses to genuine ‘crises’ and the sovereignty of states (Bellamy and Beeson 2010) in relation to border control. In our view, the best solutions for the future of refugee protection will be those that recognize this tension and work within it.

Comparative Analysis of Civil Society Responses in Southeast Asia

CSOs in Southeast Asia have had to adopt various approaches to engaging with governments and communities to progress human rights and address the basic needs of refugees. In our view, many regionally based NGOs and civil society actors have had limited success in engaging with the state on solutions to displacement due to limited resources and specific mandates. Further, solutions are often crisis-driven and piecemeal. However, there are also numerous examples of local actors and coalitions driving progress through structural policy shifts, which have often been the result of many years spent developing relationships (Mitchell 2020), trust and credibility with governments in order to collaborate on solutions. This section describes some examples of successful engagement to produce norm circulation.

In Thailand, prior to the economic growth of the 1970s, there were a number of active Christian and other religious welfare organizations, but

secular charities and CSOs only had a limited presence. In contrast, the 1980s and early 1990s saw a rapid growth in the number of CSOs in Thailand, which was precipitated by increasing political openness in the country. By 1989, it was estimated that 12,000 CSOs were operating in Thailand (OECD 2002: 139). This development coincided with an increase in civil society activity across the region and the formation of INGOs (McGann and Johnstone 2005). This growth also made states increasingly accountable for the treatment of people within their jurisdiction. As a consequence, humanitarian responses from governments were increasingly outsourced to civil society. This outsourcing included a sizeable number of INGOs that were operating on the Thai–Myanmar border, with the overwhelming majority serving refugees and their needs (Simpkins 2003). These INGOs provided much-needed humanitarian support to thousands of displaced Karen, Karenni and Shan refugees from Myanmar, assisted by significant financial support from Western states. To date, these refugees remain in the nine camps along the border and have limited prospects for durable solutions (European Civil Protection and Humanitarian Aid Operations 2017).

In recent years, the role of NGOs and civil society in Thailand has matured to include policy advocacy and direct engagement with government. In the early 2000s, a core advocacy goal of Thai civil society was for Thailand to ratify the 1951 Refugee Convention. However, the government's priorities did not align with this goal, so it did not receive policy traction. It is likely that this occurred because forced displacement is treated as irregular migration and Thailand prioritizes human and border security (Kneebone 2019). The Thai government regards refugee protection as the province of its sovereignty (Muntarbhorn 2004).

In 2016, in response to acknowledged fragmentation within Thai civil society, the Coalition for the Rights of Refugees and Stateless Persons (CRSP) was formed (Choi 2020), which offered Thai civil society a unique platform to strengthen its advocacy, and strategic engagement with the Thai government. Over time, this has been further enhanced by strategic partnerships and engagement with other regional and national actors, such as the Asia Pacific Refugee Rights Network (APRRN), the International Detention Coalition (IDC) (Chawarangkul 2021) and HOST International. These partnerships have amplified progress towards two significant policy changes for urban refugees in Thailand: the conception and implementation of the Memorandum of Understanding on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centres (hereinafter the 'Detention Memorandum') (Chew 2019) and the NSM. The implementation of these policy developments was dependent on the collaborative and collegiate approach of local Thai civil society, the strategic use of international legal processes, such as the Universal Periodic Review (UPR) (APRRN et al. 2015),⁶ and avoiding the

traditional ‘naming and shaming’ approach to advocacy. Instead, the CRSP and its partners worked both together and individually to advance discussions about these policy developments on a national and a global level; an approach that was nuanced and contextually appropriate or ‘localized’ for decision makers and, at the same time, ensured that the Thai government was an active and genuine stakeholder throughout the entire process. This is an example of norm subsidiarity as a process whereby the government preserved its autonomy and agency from dominance (Acharya 2011: 97).

Additionally, Thai civil society engages with the relevant international legal frameworks, such as the Convention on the Rights of the Child (CRC) and the Global Compacts to influence policy in Thailand. By engaging with these legal frameworks, Thai civil society and the government have been able to collaborate on good and promising practices of migration management and have paved the way for ongoing domestic improvements.⁷ This was especially true for issues like the Detention Memorandum (ESCAP 2021).

In contrast to the relatively aligned working relationships between the Thai-based CSOs working on refugee protection, Malaysian-based CSOs are notably less cohesive and effective in achieving norm circulation. While collaboration and synergies between refugee protection organizations and service providers undoubtedly exist – and in many cases deliver strong humanitarian responses and advocacy messages to relevant actors – it is our view that Malaysian civil society lacks a visible sector-wide approach to collaborative engagement in service provision and advocacy with and on behalf of refugees. In part, this is due to the substantial size of Malaysia’s refugee-focused civil society sector (see also Chapter 6), the greater geographical spread of refugees, the ongoing competition for limited resources and a fundamental divergence in the approaches of key stakeholders.

Malaysia’s political history also plays a key role in the ability and willingness of civil society actors to engage with the state. In the 1990s and early 2000s, despite playing an important role in the provision of humanitarian and development support, Malaysian civil society actors were generally excluded from politically engaging with many issues, including refugee protection (Alatas 1997). This exclusion by the Malaysian government and tension between the government and civil society continued until May 2018, when Malaysia’s opposition coalition, Pakatan Harapan, was elected to power. This ended Barisan Nasional’s six decades of power and was a welcome result for Malaysia’s civil society community. Unfortunately, in early 2020, there was another change in government that resulted in an upsurge in xenophobia and a retraction in the country’s willingness to speak out in support of the Rohingya (Sukhani 2020), as well as a mass deportation of 1,086 Myanmar nationals in February 2021, some of whom were from ethnic groups that had been persecuted in the past (*BBC News*, 24 February 2021; see also Chapter 6).

Malaysia's CSO community is made up of a diverse range of actors, from internationally funded legal aid providers, such as Asylum Access Malaysia, to outspoken, homegrown advocacy groups, such as Tenaganita and Suara Rakyat Malaysia (commonly known as SUARAM), to grassroots organizations that work in multiple jurisdictions and have forged strategic government relationships, such as the Geutanyoe Foundation. While the divergent approaches of these NGOs bring vibrancy to the sector, they have partially contributed to creating an environment where organizations primarily operate through bilateral and multilateral partnerships rather than as a coordinated collective, like the CRSP in Thailand.

Since the 2018 change in Malaysia's political landscape, civil society has actively pushed for greater engagement with government actors through private meetings and public advocacy, and by adopting successful practices used in other countries and developing regular forums to discuss specific issues of concern. This engagement, particularly on the issue of the immigration detention of children, has resulted in the formation of an interagency working group on child detention in Malaysia. It has also resulted in initiatives such as the All-Party Parliamentary Group Malaysia on Refugee Policy (APPGM), which is a forum for members of the House of Representatives to discuss refugee policy (Parliament of Malaysia n.d.). Chaired by local CSO the Geutanyoe Foundation, the APPGM is a strong example of local civil society and government actors coming together to address challenging policy decisions and humanitarian imperatives. This positive development is important, especially as the Malaysian government has been, and continues to be, hostile towards UN institutions, such as the UNHCR – a hostility that has generally developed due to Malaysia's wariness about the UNHCR's ambiguous authority (Nah 2019).

Indonesian civil society is similar to that of Thailand as it is relatively well organized. Consequently, it can respond to the immediate needs of refugee populations and engage with the Indonesian government to continually improve domestic legal and policy frameworks. In 2012, several CSOs came together to form SUAKA in response to growing awareness about the plight of refugees. Since May 2018, SUAKA has operated as a legally registered *perkumpulan* (association) and has been mandated to advance the human rights of refugees and asylum seekers in Indonesia. Since its inception, it has contributed to a range of projects that have provided legal support to refugees, sought to shift public opinion, informed refugees of their rights and engaged with government officials on refugee issues.

In regional areas such as Aceh, local CSOs have fostered strategic and long-term relationships with provincial authorities. This engagement is the foundation of mutually beneficial relationships that allow civil society, refugee arrivals and government bodies to respond to crises and

protection concerns as they arise. For example, the Geutanyoe Foundation has routinely brought together community organizations working with the Rohingya in Aceh to discuss better coordination, improved responses, the development of Standard Operating Procedures and advocacy for legislative change in the context of PR 125, which concerns refugees in Indonesia. The Geutanyoe Foundation in Aceh has also worked with Panglima Laot or 'Sea Commander' (Abdullah, Arifin and Tripa 2018), the fishermen's customary association in Pusong, Lancok and North Aceh, to improve rescue at sea operations. Panglima Laot is tasked with enforcing the customary law of the sea in Aceh, which includes conducting a rescue at sea for any boat or person in distress. These discussions have developed into ongoing collaboration with the Governor of Aceh, the Social Department, and the Women's Empowerment and Child Protection Department. This demonstrates the willingness of both civil society and the government to engage with issues of refugee protection.

Our observations suggest that in Thailand, civil society responses to refugees are successfully organized around a central advocacy group which engages with the state, whereas in Malaysia, civil society has formed around more traditional charitable services and is less engaged in broader coordinated advocacy with the state. As Alice Nah notes, 'states shape the level of influence that local civil society actors can have on national policy debates (Nah 2016: 227). In Indonesia, there are more refugee-led civil society responses that are localized and focus on livelihoods rather than advocating for strict adherence to human rights concerns. These differences highlight the value of locally led and coordinated responses to refugee protection that enable engagement with multiple state and civil society actors within the parameters of local culture and attitudes to irregular migration. This is an example of localization (Acharya 2013: 469). In Indonesia, PR 125 suggests a tentative move towards subsidiarity or the 'assertion of normative agency' by the state (Acharya 2011: 96). However, there is less evidence of norm creation or circulation through localization and subsidiarity in Malaysia. As Acharya explains, norm circulation leads from a process of contestations and feedback, which will not happen without the engagement of the state (Acharya 2011: 97–98).

These differences also highlight the need for multifaceted approaches that address both humanitarian needs and the demands of state sovereignty. If states in Southeast Asia are hostile to Western conceptions of human rights, then it is possible that locally led and coordinated strategies may carry more weight and have greater influence over states. This could result in finding a better balance between addressing the basic needs of refugees and advocating for advancement of their human rights.

Case Study: HOST International

This chapter's central argument of empowering locally led solutions to displacement and protection by working with the state is largely based on our own field experience, working with HOST International and other CSOs throughout the region over the last twenty years. HOST International was established in 2016 to improve the lives of people on the move and to empower and facilitate localized solutions to displacement.⁸ We acknowledge the challenges associated with providing a case study sourced from our own work and the risk of perceived and inherent bias that is associated with this approach; however, we believe that it provides valuable lessons from practice and is offered to illustrate our argument.

HOST International has developed an approach to refugee protection that seeks to support individual wellbeing, community inclusion and structural advocacy by building relationships with local communities and state actors that emphasize shared values and building solutions. It asserts that strong border control measures are not synonymous with inhumane punishment and discrimination against refugees. We believe that both maintaining sovereign borders and providing for basic human needs and rights can be realized where the needs of all stakeholders are understood and valued. HOST International therefore works with governments and local actors, including refugees, to find solutions that are based on compromise, cooperation and compassion and that are in alignment with domestic and regional needs. These solutions are dependent on building trusted relationships with states and, as a consequence, HOST International does not publicly scrutinize the human rights records of states and other actors. Advocacy and accountability occur within the confidence of trusted relationships and operational partnerships.

Using this approach, HOST International developed a relationship with the Thai government through CRSP and implemented a pilot project that released mothers and children from immigration detention in Bangkok. The CRSP had developed a relationship of trust with the Thai government and utilized the government's commitment to end child immigration detention in Thailand. HOST International was invited to implement the project as the CRSP identified that it was not within its capacity to do so.

Between January 2019 and December 2021, the project enabled two-hundred and eleven children and one-hundred and ten related adults to be released from detention and be supported as they integrate into the general community while remaining compliant with immigration bail conditions. By working with these refugees in the community, HOST International has identified that many Thai nationals who are part of these same communities face similar challenges with regard to food security, access to income and threats to personal safety.

After this pilot, funding was secured to implement a project that brought together refugees, local community members and institutions through a community garden that enabled access to low-cost fruit and vegetables. This project helped community members build trust, gain access to additional local networks, strengthen their personal safety and improve their overall wellbeing, in addition to addressing food security concerns.

Through the relationships it has with the Department of Children and Youth and the Department of Immigration, HOST International is now able to provide support to and advice about community-based strategies associated with the implementation of the NSM under the Aliens Regulation 2019 (see Chapters 5 and 10 in this volume) that are alternatives to arrest and detention. These results would not have been possible without the focus on solutions and shared outcomes, and the commitment to incremental progress in securing refugee protection.

HOST International's partnership with UNICEF in Malaysia is another relevant example. The organizations worked together in the Protecting Children Affected by Migration in Southeast, South, and Central Asia Project, receiving financial support from the European Union and UNICEF. This project specifically aimed to build the child protection capacity of the Rohingya community in Kuala Lumpur through local capacity building and has continued with support from the UNHCR in Malaysia.

HOST International brought together two refugee-led community organizations, the Rohingya Women Development Network and the Elom Community Center, with the UNHCR and a local Malaysian child welfare agency, the Malaysian Council for Child Welfare, to form a partnership that addresses the immediate needs of refugee children – in particular, unaccompanied and separated minors from Rohingya and Muslim Burmese communities in Kuala Lumpur – while also building capacity for the ongoing protection of children. To achieve this, HOST International has identified and trained twenty Rohingya and Muslim Burmese community advocates to work in their communities to identify and support children at risk of harm and their families. The training and capacity-building activities have been designed to increase the capacity of the community to identify risks, including gender-based violence and exploitation, and develop skills and referral pathways for reducing harm. It has also built bridges between mainstream child welfare organizations and the Rohingya community to ensure that a child protection response capability exists beyond the funded project. This project was made possible by building relationships with refugee and host community stakeholders to understand local needs and co-design solutions. The project is indicative of a way of working with communities that is sustainable and supports working practices that integrate international and local actors.

An Alternate Way Forward

For decades, civil society has played a key role in human rights advocacy and emergency responses to humanitarian crises in Southeast Asia. It is critical for engaging refugee and local communities to deliver aid and information to people on the move. The role of CSOs in advocacy is essential to exposing human rights abuses and state policies that harm people and deny their basic rights. However, in our experience, many CSOs in the region struggle to generate reliable financial support and rely heavily on volunteers. In some areas, large INGOs or UN institutions tend to dominate service delivery and government engagement as they have more resources and infrastructure. Additionally, states outsource their protection responsibilities to these larger bodies, which tends to leave civil society with charitable and public advocacy roles.

We have observed that when civil society has a strong focus on human rights advocacy and lacks the resources to pursue high-level stakeholder relationships, this, paired with state hostility to Western-style human rights obligations, often leads to adversarial relationships between governments and refugee-focused civil society actors in Southeast Asia. This is compounded by the changing nature of civil society in Asia and its historical role of providing charity, as well as the dominance of international organizations in advocacy work. The governments of Indonesia, Thailand and Malaysia are, at times, suspicious of civil society and especially suspicious of international organizations that work in the refugee protection and migration space. Consequently, governments can act defensively, believing that the sector is only interested in attacking governments and calling out their failings rather than working with them (Maude 2020). However, there are exceptions to this pattern of distrust: in Thailand, the CRSP managed to bridge the gap between the government and civil society, and in Malaysia, collaboration between the government and civil society led to the working group on Alternatives to Detention (ATD), which secured a pilot project to facilitate community foster care as an alternative to detention for unaccompanied and separated minors. These examples have leveraged local voices and balanced accountability and practical solutions.

Civil society must establish a multifaceted and locally led approach that addresses both humanitarian needs and the reality of the driving forces behind ‘protecting’ state sovereignty, including politics, culture and economics. It must generate solutions that consider alternate legal protection pathways and guarantee basic living standards for asylum seekers that exist without the traditional international protection instruments, such as the 1951 Refugee Convention. For an asylum seeker, this need for better living and legal standards exists from the moment that they begin seeking asylum to when they secure a durable solution, be it voluntary repatriation, local

integration or resettlement. Importantly, these necessary solutions should not lose sight of the objectives of refugee protection and durable solutions globally (McNevin and Neumann 2017) and must be locally designed and led with support from the international community.

In its passion for the pursuit of human rights, civil society sometimes fails to identify the opportunities that exist between the current and desired state of affairs. When states are under pressure to secure borders and respond to migration crises, civil society must be flexible and build trust to create policy advisory relationships and partnerships with states that enable civil society to propose and explore alternate approaches and perspectives. This includes demonstrating to decision makers that effective border management, immigration compliance monitoring *and* maintaining basic rights and standards of living for people on the move is possible. Of course, the necessary action is not to debate whether human rights or sovereignty is preferable. Both are necessary and, in some instances, the human rights approach can create space for more nuanced and collaborative approaches. A delicate balance between a rights-based discourse and a more diplomatic relationship, built on trust and shared values, that influences decision makers is needed.

We have observed that the diplomatic approach is more effective when CSOs can effectively coordinate advocacy and appropriately present marginalized voices, such as refugees' voices and refugee-led initiatives, to inform policy debate. This is evidenced by the advances made by the CRSP network in Thailand and SUAKA in Indonesia. Unfortunately, in some cases there are not enough resources to facilitate this kind of cooperation and the capacity building required.

Acharya argues that the creation of 'norms' is never a one-way or one-step process, nor is it furthered by a single agent. Instead, norms are usually created by a diversity of sources, multiplicity of agents and plurality of contexts (Acharya 2013). Advancing the humanitarian needs of refugees will therefore require multiple strategies, actors and persistence over time. An appropriate technique needs to recognize localized concepts of sovereignty and human security, and understand the influential factors for key actors, which are based both locally and internationally.

Governments are generally slow to adopt changes, but, at a minimum, require trust and a political 'safety net'. In our dealings with bureaucrats, we have found that many feel conflicted about their roles in implementing harsh policies and are able to appreciate that refugees and other vulnerable migrants have special needs and circumstances that make them different from other immigrants who reside in or have entered a country illegally. Partnerships with civil society allow bureaucrats to develop better migration policies, pilot new approaches and advocate internally for incremental change. However, for this to work, civil society needs to reconcile with the

ethics associated with incremental change, as sometimes this means that the standards accepted by governments do not meet their expectations. Yet it may also be a step in the right direction and further advances can follow. In our experience, small steps can build trust and develop mutual learning.

For ensuring immigration compliance and status resolution, evidence demonstrates that incentive and case management-based monitoring approaches that emphasize trust in the system are more effective than punishment-based approaches such as detention, the removal of rights or other arbitrary threats (Sampson et al. 2015). It has also been proved that providing refugees with work rights makes a significant positive impact on the host economy by generating jobs and helping to fund essential services through increased tax revenue (Legrain 2020). This evidence indicates that best practice is significantly different from the approaches employed in Southeast Asia. Achieving change may be more likely if civil society takes an incremental approach that includes educating and collaborating with decision makers, engaging multiple stakeholders to maximize influence and providing support to local organizations to navigate political pressures and build strategic relationships over time. The balance between advocating for change and enabling steps in the right direction is delicate and requires co-operation from multiple actors with different roles.

The private sector can also help to advance refugee policy in Southeast Asia, but has been underutilized to date. Businesses and industry have more influence over government policy than civil society as they are integral to the economic advancement of the country (Felker 2003). The private sector is also increasingly concerned about consumer expectations of corporate social responsibility and there has been some wider regional interest in addressing slavery, poverty and environmental issues (Breuker et al. 2019). For example, in December 2019, twenty multinational and local businesses that were operating in Malaysia called upon the government to provide legal work rights for refugees (*Tent News*, 9 December 2019). For civil society, private sector allies can increase the opportunities for influence and may facilitate greater access to resources, improve local community awareness of refugee issues and provide economic levers for improving human rights.

With Southeast Asian economies on the rise, there is capacity for influential business leaders to assist in the protection of refugees. In this context, punitive migration approaches must be challenged, and tangible and realistic alternatives must also be available. This may include negotiating better access to employment pathways for refugees that address industry, skill or labour shortages.

In order for refugee protection in Southeast Asia to be strengthened, civil society must balance strategic and collaborative engagement with governments and other stakeholders, and the need for advocacy to address government-created refugee issues, including the systemic inequality and

discrimination faced by refugees due to the persistent refusal of states to grant any form of protection. CSOs must also collaborate more, while financial and technical resources must be available to support their joint efforts. This must include mobilizing locally led strategies with support from the international community, as only by facilitating this collaboration will there be opportunities for genuine legislative and policy reform, and true social and economic participation. This engagement should be a part of sector-wide and long-term advocacy that uses the ability of national actors to engage across the public and political spheres. Solutions that are offered and discussed with governments and in public discourse should be pragmatic, seek to empower localized responses to protection needs and fundamentally uphold the rights of all vulnerable groups.

Conclusion

In this chapter, we have argued that there is a need for structured collaboration between states, INGOs and other CSOs to identify solutions that are strongly localized in their design and implementation to recognize the local wisdom and needs of communities where refugees are hosted, including the wisdom of refugees themselves. INGOs are core to bridging discrepancies in technical expertise and resources while also brokering key relationships at a regional level. However, local organizations have greater potential for negotiating support from authorities and leveraging assets in the local community. This also requires an integration – rather than a segregation – approach that addresses refugee needs within the context of local communities, including consideration of legal, cultural and social frameworks.

Solutions that are offered to and discussed with governments and in public discourse should be pragmatic, results-oriented and fundamentally uphold the rights of all vulnerable groups. Proactive and incremental solutions must coexist with a strong human rights base. This will require multiple actors to cooperate and careful consideration of long-term and short-term goals.

Across Southeast Asia, refugees and asylum seekers remain in a challenging situation. Access to formal education is limited, securing livelihoods is difficult and obtaining durable long-term solutions is, for the most part, impossible. However, despite the inadequate legal and policy environment, opportunities are emerging for innovative responses to refugee protection that redistribute protection power from institutions to individuals and communities. There are real opportunities in Southeast Asia for advancing refugee protection in a ‘non-Convention’ legal context, albeit in a small and incremental manner at times. Civil society will be critical to advancing these opportunities in a way that preserves the human dignity of and fairness for forcibly displaced populations.

Although humanitarianism and sovereignty were historically considered in isolation, they do not have to remain mutually exclusive when it comes to refugee protection. There is a significant opportunity for locally designed advances and solutions to bridge this divide. Partnerships between local civil society and government bodies can create trust and open communication practices. This approach will enable civil society to create constructive dialogues and reinforce the notion that border management, immigration compliance monitoring *and* treating people on the move decently is possible.

David Keegan is a qualified social worker (University of Sydney) with twenty years of expertise in supporting vulnerable populations to break cycles of dependence and in building resilient individuals and communities. After a senior role in refugee settlement in Australia and a short period running a programme in Nauru, he founded HOST International, which provides practical support to refugees and host communities in the Asia-Pacific region with a focus on promoting sustainable local integration. He has completed a Master's in Community Management at the University of Technology in Sydney and has co-authored papers on refugee resilience and psychological coping for those in contexts of sustainable uncertainty (see https://www.researchgate.net/profile/David_Keegan7/publications).

Evan Jones is a humanitarian and development professional with more than a decade of experience working in refugee protection throughout the Asia-Pacific region. He started his career in the Australian Public Service before relocating to Asia, where he worked with advocacy organisations and international humanitarian NGOs in Afghanistan, Bangladesh, Malaysia and Thailand. He is currently based in Bangkok and primarily focusses on issues of smuggling and trafficking. He has a Master's in International Social Development from the University of New South Wales and is widely published in the mainstream press on refugee protection issues. He has been a director of HOST International since August 2020.

Mitra Khakbaz is an international development practitioner and has over twenty years of experience working across humanitarian resettlement, higher education and community. She has worked across areas of regional development, economic participation, gender equality, community, youth and children wellbeing, and crisis intervention. She has completed a Master's in Social Administration, a Master of Arts in Applied Linguistics and a Postgraduate Diploma in Social Planning. She was awarded the Churchill Fellowship in 2013, for which she contributed to the development of knowledge and understanding of the global response to humanitarian needs, particularly women at risk, children and families.

Notes

1. Although in some instances, these flexible visa options have been tightened – for example, Iranians in Indonesia in 2013 (Brown 2013). See Chapter 6 in this volume for further details of Malaysia’s visa regime.
2. Editors note: these actors are referred to generally in this chapter as ‘CSOs’ – civil society organizations.
3. See also Muntabhorn (2021), who argues that lack of acceptance of democratic values guides the response of states.
4. See also Chapter 2 of this volume, which describes the reception of displaced persons in Thailand in earlier decades.
5. During the Indochinese crisis (from 1975 onwards), the ASEAN was instrumental in brokering an international agreement (UN Doc. A/44/253). This has left a legacy of thinking that collective action should be taken on refugee issues (see e.g. Jakarta Declaration on Addressing Irregular Movement of Persons 2013; Ministry of Foreign Affairs Malaysia 2015).
6. The UPR is a periodic review process of the human rights records of all 193 UN member states. The reviews themselves are conducted by the UPR Working Group from the Human Rights Council; however, any member state can engage in the discussions. NGOs can make submissions that form the substance of the ‘Other Stakeholders’ report, which is also considered to be part of the review.
7. For example, the CRSP worked with the Thai government to ensure the implementation of the GCM and the GCR (Asylum Access Thailand 2021). It also made a submission to the Special Rapporteur on the human rights of migrants (Coalition for the Rights of Refugees and Stateless Persons n.d.). Additionally, several CSOs collaboratively contributed to UPR reports in 2015 and 2021, which mentioned the Thai government’s violations and lack of implementation of the CRC (APRRN et al. 2015, 2021).
8. Headquartered in Sydney, Australia, HOST International has developed a footprint in Indonesia, Malaysia, Thailand, New Zealand and Australia, and previously worked in the Nauru community.

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