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# (Un)safe Haven in Bangkok: Urban Refugee Protection in a Middle Income Country

Quentin Batréau

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# **(Un)safe Haven in Bangkok**

*Urban Refugee Protection in a Middle Income Country*

Quentin Batréau

*Thesis supervised by Françoise Mengin, Directrice de recherche, FNSP-CERI*

defended on 23<sup>rd</sup> June 2020

**Jury:**

Mme Virginie BABY-COLLIN, Professeure des Universités, Aix-Marseille Université,  
UMR Telemme (reviewer)

M. David CAMROUX, Maître de conférences honoraire des Universités, Université Paris-  
Est Créteil

Mme Françoise MENGIN, Directrice de recherche, FNSP-CERI

Mme Eugénie MÉRIEAU, Chercheuse invitée, Institute of Global Law and Policy, Harvard  
Law School

M. Darshan VIGNESWARAN, Associate Professor, University of Amsterdam (reviewer)

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### ***List of Acronyms***

CSO	Civil Society Organization
FBO	Faith-Based Organization
GMS	Greater Mekong Subregion
IDC	Immigration Detention Center
IOM	International Organization for Migration
OFPRA	Office Français de Protection des Réfugiés et Apatrides
PoC	People-of-Concern
RRC	Refugee Rights Collective
RSD	Refugee Status Determination
RST	Resettlement
RTG	Royal Thai Government
SRN	Save Refugees Now!
UNHCR	United Nations High Commissioner for Refugees
US	United States of America





## ***Introduction***

### ***Vanessa's Story***

At the end of June 2016, I sat in room with Angelica, a lawyer from Australia, and Vanessa, an asylum seeker from Central Africa. The room was in a four-story shophouse looking like countless others in Bangkok, with a discreet sign above the gate reading "RRC - the Refugee Rights Collective".<sup>1</sup> Vanessa had brought her 6-month-old daughter to the meeting. People coming to these meetings often brought their children, and so the room we sat in was littered with toys and picture books, to keep them busy when necessary. Vanessa's daughter, asleep in her arms, did not need distracting. The reason why I was present in the room with the two women was that Vanessa only spoke French, so Angelica had asked me if I could be their interpreter.

The meeting was taking place so that Vanessa could tell Angelica her story, and so that Angelica could advise her on what to do next. Vanessa started her story in the late 1990s, when she said people broke into her house, and raped her. She explained that it took her time to rebuild after that, and that she had trouble trusting men. She had eventually met someone, and they had a daughter. However, shortly after the birth, Vanessa said that her boyfriend started receiving threats demanding that he stop seeing her. She did not know where the threats came from but suspected it was related to her rape. Out of fear, she decided to leave the country. She made her way to Thailand, and applied for asylum. Angelica listened to the story, asking for clarifications from time to time. Little seemed to surprise her. Once Vanessa was through, Angelica was careful to look as empathic as she could, in spite of the distance inherent to any conversation taking place through an interpreter. She said that she could tell Vanessa had been through a lot, and that she believed her story. And yet the truth was that she did not have much good news for her, and a lot of explaining to do.

First, Angelica had to tell Vanessa about how her refugee application was going to be processed, and its chances of success. She explained that RRC, the organization she worked for, did not have any say in the outcome of her asylum application; that the

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<sup>1</sup> The name of the organization has been changed.

decision to grant Vanessa refugee status or not would be taken by UNHCR,<sup>2</sup> a separate organization, which she had no way of influencing. She explained that though she could not be sure, on the basis of what Vanessa had told her, the chances of her asylum application being successful were slim. She said that unless Vanessa could explain where the threats she said her boyfriend received came from and why people would have been threatening her, the officers working for UNHCR would probably not believe her. She added that even if they did, unless the threats were coming from high-ranking soldiers, or unless they had to do with Vanessa's religion, ethnicity or political opinions, her story did not seem to fit under the definition of a refugee spelled out in the Refugee Convention. Angelica also stressed that Vanessa had the right to see her application through if she wanted to, regardless of what she was told by anyone, including Angelica.

Angelica went on to explain to Vanessa what she should expect for her and her daughter in the weeks, months and years to come. She first asked whether Vanessa's visa had expired yet, and Vanessa answered that she still had a little under a month left before it did. Angelica looked relieved. She explained to Vanessa that she would receive an interview date from UNHCR in the coming weeks, and that the date was not going to be earlier than January 2018, which was more than a year and a half later. She told Vanessa that she would have to wait for her interview date in Thailand, and that she would not be able to renew her tourist visa. She added that if she did not have a visa, she could be arrested and put in jail. Vanessa seemed confused, and asked whether she could just ask UNHCR for an earlier date, since her visa was about to expire. Angelica told her that UNHCR would not accommodate such requests; that it was the same for everyone seeking asylum and that they all had to wait without a visa. She asked Vanessa if she had enough savings to last until her interview date, since it was unlikely that she would be able to work. Vanessa answered that she had some money, but nowhere near enough to last a year and a half. Angelica gave her the names of two organizations that could help her with rent and put her in touch with churches where she could get food and infant formula. She also warned her that everyone received a lot of requests for help and could not honor all of them.

Vanessa asked a few more questions about these other organizations and the logistics of receiving the interview date from UNHCR, and then the meeting came to an end.

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<sup>2</sup> The United Nations High Commissioner for Refugees (UNHR) is the United Nations' agency mandated with the protection of refugees and stateless people.

Angelica wished Vanessa luck, and added that she should consider her options before her visa ran out; that she had a right to see her application through, but that she also should not underestimate the hardship that doing so would entail. Vanessa left the room. After she closed the door behind her, Angelica sighed. She told me that that she could not tell Vanessa that her best chance was to leave Thailand, because it would be going against the mandate of her employer, RRC, but that for cases like hers, it was not worth it. We walked out of the room, I left the building and I caught up with Vanessa as she walked toward the nearby bus stop. We waited together, and I climbed into the next bus; she said she would wait for one without air-conditioning, because the tickets were cheaper. She would not be home for another hour and a half.

Vanessa's meeting with Angelica was probably not her first glance into the workings of asylum in Thailand, but was probably the first time someone sat down with her and laid it all out. Vanessa left the meeting apparently undecided on what she would do next, and needing time to process what she had learnt. With only a general idea of what it meant, she had stepped into Thailand's complex refugee management system.

Refugee management in Thailand shares a number of superficial features with that of other countries; it uses similar terminology, some of the actors involved are the same, and the 1951 Refugee Convention and its 1967 Additional Protocols have some currency. Yet in most regards, the situation for asylum seekers like Vanessa in Thailand is very different from that found in most countries which harbor refugees. Most of these differences come from the fact that though one can be recognized as a refugee by an administrative body in Thailand, that entity is not a part of the Thai State, but of UNHCR. The status of refugee given by UNHCR entitles the individuals who receive it to some amount of protection and a chance to rebuild a new life in a safe environment – but the Thai state does not give any value to UNHCR's decisions. It does not consider that Thailand has any obligations towards refugees, does not allow them to work nor provides any pathways for them to integrate in Thai society. As a result, people such as Vanessa are forced to live in hiding. This is also why Vanessa met with an Australian lawyer working for a small civil society organization rather than a Thai lawyer; one does not need to be versed in Thai law to give guidance to asylum seekers in Bangkok, because their fate is largely independent from it.

### ***What Brought Vanessa to Thailand?***

Vanessa's presence in Bangkok might seem odd. That she was seeking asylum in the country is not in itself surprising; people displaced by political turmoil in Southeast Asia

have come to the country in search of safety since the 1970s, and the country has harbored hundreds of thousands of refugees over the past half-century. But why would a French-speaking Central African attempt to seek asylum in Thailand? As it turns out, Vanessa was not alone. Thousands of people have come to Thailand from afar to seek asylum since the early 2000s; in fact, advising people just like Vanessa was Angelica's daily job.

There has been a shift in refugee fluxes over the past 20-odd years, which has gone somewhat unnoticed but explains how people like Vanessa end up in places like Bangkok. Until the mid-to-late 1990s, middle income countries like Thailand would receive refugees from countries in their immediate surroundings. Middle income countries then functioned as *local* or *regional* havens for people fleeing persecution. Meanwhile, a handful of wealthy, Western countries welcomed asylum seekers and refugees from around the world – these countries acted as *global* havens, and were the only ones to do so. The refugee issue had a very different profile in the developing countries of the Global South and in the developed countries of the Global North. Broadly speaking, countries from the Global South, including middle income countries like Thailand, would welcome very large numbers of refugees from neighboring countries, while countries from the Global North would welcome a smaller number of refugees coming from countries across the world. Mass fluxes was a key feature of refugee issues in poorer countries, and diversity was a key feature in richer ones. This picture was mostly accurate until the 1990s. Since then, the diversity of people seeking refuge in some middle income countries has dramatically increased. It has become routine to find Pakistani refugees in Brazil, Ethiopians in Korea, Somalis and Russians in Mexico or Congolese and Iraqis in Malaysia. In a sense the refugee populations in a number of middle income countries is starting to resemble that of Western countries. That is true of Thailand, which has harbored asylum seekers and refugees from more than 40 different countries since the mid-2000s (UNHCR, 2019a). Today, there are two types of global havens: the traditional global havens of the West, and new or emerging global havens of the South, found in middle income countries. To be clear, displaced people moving across continents, whether going to developed or developing countries, are not the norm. At present, UNHCR statistics show that the large majority of refugees, around 80%, are found in countries neighboring their country of origin. What is changing is the profile of a minority of refugees that reach certain middle income countries. There was a time when all refugees in middle income countries would come from neighboring countries. Since the mid-2000s, a growing minority comes from farther away.

It might not seem surprising that as living standards and the financial and technical capacity of the state of some developing countries converge with that of developed countries, their immigration profile would converge as well. With regard to refugees, it makes sense that richer middle income countries would be perceived as being able to offer safety and stability to an increasingly large range of people. This narrative however omits the fact that the emergence of middle income countries as global havens occurred not only as their living standards were rising but also as countries in the West were gradually closing their borders to asylum seekers. It has become increasingly difficult to seek asylum in North America, the European Union and Australia, because of a range of deterrence measures implemented to keep migrants out, whether they intend or not on seeking asylum. As summarized by Gibney and Hansen:

Since the early 1990s, all Western states have embraced as a chief policy goal (arguably the chief goal) the prevention of asylum seekers' arrival at their frontiers or territory. They have done so largely to avoid incurring responsibilities under the 1951 Refugee Convention (and other domestic and international legal instruments), and by so doing to escape the expenses of asylum processing and the possibility of political backlashes caused by the arrival of large numbers of entrants. (Gibney and Hansen, 2005, p.5)

As the number of asylum applications in the West has increased since the early 2000s, it could be argued that this restrictive asylum policy has failed; however, changes in absolute number ignore the counterfactual and should not be seen as a relevant metric. In fact, a different narrative emerges if one looks beyond traditional countries of asylum in the West. The transformation of the refugee issue in middle income countries suggests that the deterrence policy of the West towards asylum seekers is a partial success. At least some asylum seekers turn towards other destinations, creating new groups of refugees in middle income countries, including in Thailand.

In an apparent paradox, the refugees and asylum seekers that come to Thailand instead of the West are not allowed to stay in the country, and typically have no intention to do so. Instead, they hope to be sent somewhere else, where they could settle. Some succeed and eventually leave the country to start a new life, but others do not. Coming to Thailand is not a positive choice for asylum seekers, but a plan B, picked only because plan A, the countries of Western Europe, North America or Australia, were seen as too hard to reach. The increasing number of asylum seekers in Thailand and more generally in middle income countries appears to be a direct outcome of the changing asylum policies of traditional global havens.

These new groups of refugees and asylum seekers in middle income countries tend to be found in large urban centers, like Kuala Lumpur, Mexico City or Johannesburg, where they have access to economic opportunities and where the greater ethnic and religious diversity of the urban landscape gives them a better chance to find a community to welcome them. This holds particularly true in Thailand, where nearly all these news groups of refugees settle in Bangkok; for this reason, they are labeled “urban refugees” in the country, in opposition to “camp refugees”, who are all from neighboring Myanmar and represent a more traditional refugee population for a middle income country like Thailand.

Regardless of the factors that facilitated their emergence, the fact is that middle income countries are likely to keep playing the role of global havens. In the current political environment, it appears unlikely that Western countries would drastically shift their asylum policies away from deterrence, and even if they would the migratory pathways now established would continue to be in use. For many people, middle income countries have come to represent a second-best option to find safety; if they cannot make it to the West, where systems have been built to support their integration, they have another option beside refugee camps.

### ***Research Questions and Hypotheses***

The role played by countries in North America, Western Europe and Australia in the international asylum system is not unique anymore. While they used to be the sole havens for refugees functioning at a global scale, a number of middle income countries have also started to take on that role. Whether they are doing so knowingly is debatable, as the arrival of asylum seekers from new destinations is something largely out of the control of states. Nevertheless, the emergence of these new global havens, and the fact that it is linked with the efforts of traditional global havens to close their borders, suggests the possibility of a profound transformation of the international asylum system. It hints that a new era might be about to start, an era when the world’s richest nations successfully contain refugees in developing countries. The recent influxes of refugees from the Middle East into Europe and from South America into the United States might suggest that the possibility is remote, and indeed it might be, but focusing solely on these recent events can distract from deeper trends. Specifically, from the relentless political efforts made over the past 30 years by the countries of the European Union, North America and Australia to close their doors to asylum seekers. They are unlikely to succeed completely, but could still shrink in importance as countries of destination. The fact is that these

efforts have already led to the emergence of secondary global havens in middle income countries, and that these are likely to play an increasingly significant role in the international asylum system.

The question then arises of what kind of places these emerging global havens are for asylum seekers and refugees. The challenge in addressing this question is that these countries constitute a diverse group, with more differences than commonalities when it comes to the experience of refugees in their territories. Some have ratified the Refugee Convention, others have not, each has enacted various types of legislation on refugees, they have different kind of relationships with UNHCR, and different migration histories. There is also limited information available on the way they have been managing their new role of global havens. Hence it appears relevant to look at a specific case, to take the time to document and analyze the situation of one country, chosen not for its representativeness, but as an example of a country where an alternative model to refugee management exists and could grow in importance as the country's refugee population grows.

Thailand in that regard is a good place to start, or at least as good as any. It has ratified neither the 1951 Refugee Convention nor its 1967 Additional Protocols. Its refugee management system has evolved somewhat independently from the global refugee regime, and is therefore less likely to be just an example of something already known and well-studied implemented in a different locale. The country is also under an illiberal regime, a regime type that has been less studied when it comes to migration management, despite many major countries of immigration falling into this category. The issue of urban refugees in Thailand is in addition at an interesting crossroad. The issue was quantitatively marginal until 2012, with the number of urban refugees standing at about 2,000 and apparently stable. The issue until then could be understood as an anomaly, a situation that was perhaps regrettable, certainly strange, but likely to disappear on its own and not representative of a systemic change. However, the issue did not disappear. To the contrary, from 2012 to 2015, the number of urban refugees in the country grew to nearly 10,000. This sudden growth makes it harder to see urban refugees in Thailand as insignificant, or likely to go away, and hence the period from 2012 to 2015 marked the moment Thailand truly became a global haven. The way the state and the representatives of the international asylum system reacted to the situation, or failed to react, and what these choices meant for asylum seekers and refugees reaching the country, can help understand what is at stake in the emergence of new global havens in middle income countries. Finally, the case of Thailand is particularly relevant in the context of the



country's position as a regional hub for international organizations and other actors of the humanitarian and development sector, a number of which play a key role in the management of urban refugees. Their involvement creates a hybrid system, involving both a non-signatory state and organizations that are mandated to uphold the Convention.

The changing role of Thailand in the global asylum system despite it not being a signatory country to the Refugee Convention raises the question of whether or not the country is a safe alternative to global havens of the West for urban refugees. What approach has the Thai state taken to the management of urban refugees, without the constraint of the Refugee Convention? Can non-state actors fill gaps in refugee protection left by the state? What level of protection can be provided to urban refugees in a non-signatory country like Thailand? Answering these questions is a first step towards a deeper understanding of the changing nature of the current global asylum system.

Two hypotheses can be formulated with regard to the overall question of the Thai state's approach to urban refugee management. The state could be implementing a protection-based model of urban refugee management, providing some level of protection regardless of the fact that it has not committed to do so under international law. Alternatively, the state could be providing no protection, or even contribute to the worsening of the condition of urban refugees on its territory. These two hypotheses lie on a spectrum, and neither is likely to perfectly reflect the situation prevailing in Thailand. The answer will be found somewhere in between. Since the two ends of the spectrum are mutually exclusive, it is a relevant scale with which to assess the situation in Thailand.

The first hypothesis of the implementation of a protection-based model independent to the Refugee Convention is plausible for a number of reasons. To start, there is precedent. Thailand has a long history of hosting refugees from neighboring countries; hundreds of thousands have lived in border camps since the 1970s. Though the history of the treatment of camp refugees by Thailand is not one of pure benevolence, the state's current policies have been characterized by some authors (Muntarhorn, 1992, 2004, Moretti, 2018) as providing an acceptable level of protection and being in broad alignment with the letter of the Refugee Convention. The Thai state could have learnt from history that refugee issues are best addressed through the provision protection to vulnerable groups, and continued on that path. The continuous presence of active civil society actors and international institutions lobbying for the adoption of a protection-based model and playing the role of norm entrepreneurs (Finnemore and Sikkink, 1998) could have led to the adoption by state actors of the models of refugee protection

sanctioned by the international community. Or instead of simply adopting these norms as is, they could have been changed and translated to resonate with the values and representations of the Thai state and population, leading to the emergence of an original system of urban refugee management best suited to local needs, and yet not disregarding refugee protection (Acharya, 2004). Authors have argued that the protection of refugees by the state was ethical, and that could be enough of a reason for states to choose to adopt it (Gibney, 2004).

The second hypothesis is that the state does not implement policies to protect urban refugees, and/or that the state or its agents are involved in the worsening of the refugees' situation in the country. This hypothesis is also plausible on the basis of Thailand's history of asylum. As aforementioned, though the state's approach to camp refugees arguably has become more protective since the 1990s, refugees during the Indochina Refugee Crisis were not welcomed with open arms, and the outlook of the government does not appear to have radically changed; since 2017, the goal of the policies implemented with regard to the management of the Rohingya crisis by the junta in power has been to keep boats from landing in Thailand. If this were to be representative of the attitude of the Thai state towards all new groups of refugees or migrants, one would expect that in the absence of limits on the agency of the state to deal with these populations, for example in the form of binding international agreements, Thailand would by default reject any protection-based model of refugee management (Joppke, 1997).

The question of the level of protection for urban refugees achieved in Thailand in practice is not entirely determined by the willingness of the Thai state to provide it. It also depends on the other actors involved in the management of urban refugees, and the extent to which they can complete state protection or substitute for it. A first hypothesis in that regard is that a combination of civil society organizations and international agencies, in particular UNHCR, are able fill the gaps in urban refugee protection left by the state, regardless of whether these gaps are major or minor. The opportunity for civil society organizations to complement and even substitute for state intervention has been an important part of the global discourse on human rights and development since at least the 1980s (Kamat, 2004), and instances of international organizations taking on state functions have been noted in refugee literature (Slaughter and Crisp, 2009). However, a more traditional view of the nature of the refugee issue in the vein of the work of Arendt (1943) would suggest that the denial of state protection is the defining feature of the refugee, and therefore that no meaningful substitution can be achieved by non-state

actors. All the durable solutions for refugees under the international asylum system aim at bringing refugees back under the protection of a state, whether their own or another.

These two main hypotheses and sub-hypotheses will be explored in three parts. Part I focuses on state policy and its implication for urban refugee protection in Thailand. Part II looks at the roles played by UNHCR in the Thai urban refugee management system and with regard to refugee protection. Part III discusses the role played by civil society in filling the protection gaps left by the state and UNHCR and advocating for reforms in the overall approach of the state towards urban refugees.

Discussing issues of refugee protection in a vacuum is difficult. Though the thesis is a case study of urban refugees in Thailand, two comparisons will make recurring appearances throughout the argument. A first, explicit comparison will be between urban refugees and migrants in Thailand in general, with migrants playing the role of the reference group against which the situation of refugees will be tallied. Urban refugees being by definition a subgroup of migrants, the idea of giving additional protection to refugees only make sense in reference to that larger group; this idea is in fact embedded in the international asylum regime, where “the scope of entitlement is conceived as a function of the rights of aliens generally” (Hathaway, 2005, p.12). In other words, the status of refugees in a given locale must be understood in relation to other comparable groups in the same territory, and in particular other foreigners. A second, more implicit comparison will be between the situation of urban refugees in Thailand and in traditional global havens in Western Europe, North America and Australia. The context of these countries is a key point of reference to assess and understand the situation in Thailand. These countries collectively have an oversized influence over the international standards of refugee management and represent what countries like Thailand are becoming an alternative to. Despite these underlying comparisons however, the thesis cannot claim to be a true comparative endeavor and merely attempts to take advantage of the rich literature documenting the situation of labor migrants in Thailand and that of refugees in traditional global havens.

## **Methodology**

### ***The need for methodological innovation***

One way to approach the issue of refugee management and protection is from the top going down – looking at the texts that guide the actions of governments, the institutions they create to implement the content of these texts, and the ultimate impact of the work of these institutions. This approach is well suited to macro-level historical narrative or comparative studies. One authoritative study taking this approach is Loescher (2001)'s *The UNHCR and world politics: a perilous path*, chronicling more than 50 years of international institutions involved with refugee issues. The book focuses on the way the main texts guiding the action of UNHCR and governments have been negotiated and implemented. This approach, starting with the text of the law or convention and moving downward towards implementation, has been dominant among political scientists (Joppke, 1997, 1999, Betts and Collier, 2017, Kaye, 1994, Crisp, 2001, Tuitjer and Chevalier, 2015) and legal scholars (Chimni, 1993, 1994, 2004b, 2004a, Coleman, 2003, Collinson, 1996, Smrkolj, 2009, Heuser, 2008, Kelly, 1993) studying refugee issues.

This type of work coexists with bottom-up analyses of the outcomes of refugee policy, often taking a micro approach and documenting the experience of individual people dealing with the asylum system. This approach is often found among urban geographers (Coddington et al., 2012, Brun, 2001, Darling, 2014) and anthropologists (Horstmann, 2011, Hampshire et al., 2008), who talk about the way refugees navigate specific steps of the asylum system in specific countries. Though such work typically deals with the effect of an overall system or mode of management upon individuals, the focus tends not to be on the system itself. Such work does not typically attempt to understand the logic behind specific policies, for example why does refugee management rely on series of temporary statuses (Menjívar, 2006) or whether categorization of refugees in different boxes is necessary or fair (Zetter, 1991), but instead looks at how such measures affect the agency of their ultimate recipients and more broadly how these are experienced.

Both approaches are ill-suited to a holistic study of the urban refugee management system in Thailand. The classical policy approach starts from regulatory texts and works its way down rungs of administration and guidelines towards implementation. Whether it starts from laws or international conventions, it relies on the assumption that a formal legal framework exists and is the principal ordering mechanism of a given asylum system.

This assumption might be met in most contexts, but is unreasonable to hold for the study of the urban refugee management system in Thailand. Its most striking and defining features are not described in regulatory texts. As will be discussed in chapter 2, when it comes to foreigners in Thailand, the function of the law is not to guide the action of implementers by criminalizing behaviors and creating processes to inform enforcement. Instead, the law criminalizes groups, labels them as outside its scope, and empowers the lowest rungs of the chain of implementers to devise whatever process suits them best to deal with outlaws. All of the Thai refugee management system lies in what the law does not say, in the unofficial, which gives a lot of discretion to individual state agents. For that reason, a close study of central administrations and national laws would have little to say about how the urban refugee management system functions in practice.

Bottom up research on urban refugees does not have the same issue with handling a loose connection between formal rules and the actual practice of refugee management, since it uses tools that allow researchers to focus on the lived experience of the recipients of a given policy. However, this type of research in migration studies does not usually focus on systems, and instead tends to stay close to the refugee experience. In most cases, anthropological research can rely on the existence of other type of research, and in particular classical policy research, to shine a light on the nature of the broader structure forming the context in which their observations are inscribed. This type of work, however, does not exist in the case of urban refugees in Thailand. Therefore, existing studies giving a central role to the refugee experience struggle to place their data into the broader context of the system of refugee management in place in the country (Palmgren, 2013, Shum 2014, Tauson 2016).

The methodology followed in the thesis borrows from both approaches; it is rooted in fieldwork and micro-level data, but focuses on the understanding of the system in which refugee experiences are embedded, rather than on these experiences themselves. Taking an investigative approach, I attempt to document the functioning of a refugee management system, from the point of view of the refugees. I am only marginally interested in the rationales and motivations of those involved in running the system, and instead focus on the impact of their decisions. The thesis is in that sense akin to a policy impact assessment, though aimed not at a policy per se but a complex amalgam of administrative bodies, regulations and agents of implementation. It takes as its main metric not the objective of the policy as stated by the state or other stakeholders, but an independent measure of the system's capacity to fulfill a certain type of function, in this case refugee protection.

Research on large structures, such as state policies, typically relies on tools suited for macroscopic analyses, such as studies of legal texts and statistics, which protect against the risk of undue generalization. This thesis does use statistics at times, in particular when making statements on the situation of the thousands of urban refugees in Bangkok. However, faced with a situation where formal regulations cannot be taken at face value, alternative tools had to be used to be able to describe the functioning of the refugee management system – specifically, participatory observation with two types of observers of the system, refugees and workers of Civil Society Organizations (CSOs). Like all qualitative approaches, it has drawbacks, and in particular runs the risk of qualifying the system as a whole using anecdotal data. In the case at hand however, this risk was mitigated by the fact that the urban refugee management system in Thailand is small. Its core is made of a few dozen bureaucrats in a few offices: the Immigration Detention Center, the UNHCR buildings, and a handful of CSOs. Its outer shell includes a number of police stations across Bangkok in neighborhoods where refugees live, the churches, mosques and temples they frequent, and the courthouses where CSO lawyers attempt to obtain some leniency for their clients. The human scale of this system means that it is not out of reach for a single researcher, and that individual anecdotes can quickly add up to significant patterns. In many ways, the system as it currently exists appears to be little more than an embryo, a seed out of which a larger system might grow; that is, if asylum seekers continue to enter the Thai territory and the system requires to expand its management capacity.

The challenges of providing a holistic description of the urban refugee management system in Thailand led me to approach it from the outside. I looked at the system from the point of view of the asylum seekers and refugees caught in it, from whose perspective the existence of the system is obvious. This perspective allowed me to stay focused on practical matters, making clear how apparently separate and disjointed institutions in fact work in tandem, one picking up where the other ends. It also allowed me to witness the practice first-hand without my perspective being narrowed by legalistic concerns; though it can matter that being placed in immigration detention is not legally the same as being jailed, from the perspective of those in cells the difference might not be as pressing an issue as it would be for a UNHCR jurist.<sup>3</sup>

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<sup>3</sup> See Moretti (2018), discussed in more length in the literature review, to see an example of more legal-minded reasoning on the question of detention.

## ***Research method***

The methodological choices made for this study were informed by the need to obtain and maintain access to separate and somewhat independent fields. As I will discuss throughout the thesis, urban refugees in Thailand are not managed through a centralized administration and have no legal status. As a result, studying the systems that have arisen around them cannot be achieved by studying one central actor in detail; instead, one has to look at a whole range of actors, each presenting different challenges in terms of access. Among them are two government administrations, the immigration division and the police, one international organization, UNHCR, a dozen Civil Society Organizations (CSOs), each working independently, and informal support groups and religious organizations. During my fieldwork, I chose to focus my efforts on participatory observation with actors which were open to such endeavors and had a sufficiently holistic view of the overall system. This method was completed by key informant interviews and the extraction of some descriptive statistics from two databases.

Government bodies in Thailand are notorious for their lack of transparency, and that is especially true of the immigration division. Moreover, in Thailand the state refuses to handle refugee issues through a legal framework, or any form of official written guidelines. Therefore the administration does not create the type of records that make documentary research relevant; the state's policy has to be directly observed on the ground. UNHCR's Thailand office is reluctant to share information as well, in part out of fear of being shut down by the state, as its operations are not protected through a formal agreement. Even CSOs working alongside UNHCR on the ground are denied access to most of the agency's operational information, despite its relevance to their work. Some of the information that cannot be obtained directly through the country office, such as the number of refugees in the country, is in fact shared publicly by UNHCR's headquarters through its website, apparently regardless of the policy the country offices. CSOs working with urban refugees are very sensitive with sharing information with outsiders, since their beneficiaries are a criminalized population that is at risk of arrest. They also are small entities, presenting to the researcher fewer entry points than sprawling organizations like UNHCR. Informal support groups and churches are most approachable, the main difficulty being to locate them. This is also the main challenge with the refugees themselves, who work hard not to be easily found as to avoid arrest. They also are wary of outsiders, and it takes time and commitment to gain their trust.

In part as a result of these constraints, my analysis of the Thai urban refugee management system is based on data collected through a combination of participatory observation, unstructured key informant interviews, and interpretation of quantitative UNHCR and CSO data. My approach to data collection was reflexive and flexible, with successes or setbacks informing next steps almost on a daily basis, rather than approaching the issue with a fixed plan in mind. In the end, participatory observation appeared the best-suited strategy, and came to organically incorporate the other methods.

Participatory observation gave me a reason to spend time around CSO workers and refugees. By giving me an easy-to-understand role, it removed initial suspicions around my ultimate objectives. It allowed me not to have to always justify my presence by making it natural. That approach required a significant time investment, but I had the luxury not to have to organize my research under strict time constraint, as I lived full-time in Thailand from 2014 to 2019. In quantitative terms, my data collection can be summarized as follow:

1 - Main data collection:

- Participatory observation as a volunteer in an urban refugee CSO, two days a week from July 2016 to August 2017.
- Participatory observation with a group of visitors in the Immigration Detention Centre (IDC) one day a week from May 2016 to July 2017
- Participatory observation as a teacher in an informal refugee school one day a week from February 2016 to June 2016

2 - Additional data collection:

- Ten unstructured key informant interviews: two with UNHCR officers and eight with activists and CSO employees between January 2016 and July 2018.
- Extraction of descriptive statistics from two databases: the UNHCR Population Statistics database, publicly available;<sup>4</sup> and the client database of one refugee CSO.

Throughout my fieldwork privacy concerns were paramount, and a number of interviewees demanded not to be identified by name and asked that any details that

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<sup>4</sup> The full database is available on a dedicated website: <http://popstats.unhcr.org/en/overview>



would allow their beneficiaries to be identified also be hidden. Organizations working with urban refugees, whether large or small, are concerned with sharing information on their operations because they fear retaliation from the Thai government either towards their employees or their beneficiaries. These fears cannot be dismissed. The position of all organizations involved with refugees in Thailand is precarious, and though I argue in Part III that the risk to most activists is not as high as they perceive it, they are not null either. Besides, with regard to urban refugees themselves, there is no doubting the reality of the threat of official action; arrests are commonplace and result in indefinite detention. As a measure of precaution, I took the route of protecting by default the identity of all the individuals I met during my fieldwork by using pseudonyms, both for individual people and for the name of the organizations they work for. I did so regardless of whether it was explicitly requested. The number of urban refugee advocates in Bangkok is small enough that even giving a few names can by elimination betray the identity of others. The one exception is UNHCR, which role is too unique for a change of name to serve any purpose, and which has the means to protect its staff if necessary. With regard to refugees and asylum seekers, I took the additional step not to share details of their stories that would allow for them to be uniquely identified. In particular, for refugees with nationalities somewhat uncommon in Bangkok, I chose to remain vague regarding their country of origin – this is was especially necessary for African refugees coming from countries other than Somalia. Throughout the thesis, I tried not to share more information than strictly necessary to make my points. On the same ground of privacy concerns I did not take pictures during my fieldwork as to not give reasons for my respondents to worry. The only picture I use in the thesis is one that was publicly shared on social media, and was modified to the best of my ability to protect the identity of the people appearing in it.

### ***Main Method - Participatory Observation***

What turned out to be the best way to gain access to the people and organizations involved in urban refugee management in Thailand was to join them. Throughout my fieldwork I joined three types of structures: an urban refugee CSO, the Refugee Rights Collective (RRC),<sup>5</sup> an informal group of visitors to the immigration detention center, and an informal refugee school. In each case I joined as a volunteer, and shared beforehand that I was a PhD student and would be gathering material for my thesis during my time

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<sup>5</sup> The name of the organization has been changed.

with the organization. Beside general injunctions regarding the importance of protecting the privacy of refugees, none imposed limits on my research work. Whereas the figure of the researcher was somewhat suspicious in the world of urban refugees in Bangkok, that of the volunteer was natural, whether involved in research or not. Getting involved as a volunteer lifted ambiguities and helped me overcome trust issues I had initially faced.

My duties as a volunteer with RRC included working as a French to English interpreter during private meetings with lawyers or social workers, translate written documents between English and French, helping to manage and develop their client database, to develop a Monitoring and Evaluation framework using that database and a client survey, to help organize and run training sessions with refugees, to attend coordination meetings with other organizations, and more generally to help around the office. On two occasions I was contacted by another CSO, Save Refugees Now! (SRN), to help with English to French interpreting with some of their clients, and did help them. However, beside these punctual contacts, I did not spend significant time within SRN. Both organizations had compensation policies for their volunteer interpreters, who are typically refugees themselves. The amounts involved were minimal, but I declined them and asked for the stipend to be used for other purposes. With the IDC visitors' group, I joined the IDC visits, bought supplies for the detainees and helped bring in more volunteers. With the refugee school, I taught 7 to 14 year-olds first French then natural sciences. Just as importantly, in all three settings I spent time around CSO employees, volunteers and refugees, sharing meals and drinks, good times and, more often than I wished, bad ones. I saw them work, live, get upset, be kind, some of them quit, others join. By the end of my involvement with RRC and the visitors' group, I was frequently asked to brief newcomers on the situation in Thailand and guide people through IDC visits. These social times were crucial to piecing together the functioning of the urban refugee management system. Each of the conversations taking place in these settings explained the role of this or that institution, helping me narrow down what was the norm and what was exceptional, giving me details to fill in the gaps in my understanding. In the absence of written rules, the sharing of individual expertise by people working in the system was my most reliable source of information. The CSO workers were especially useful in that regard, as their day-to-day tasks requires them to interact with each of the other actors of the system, giving them a bird's-eye view of the whole structure, while themselves being in a position with lesser stakes than the authorities or UNHCR. The information gathered with RRC was the foundation on which this thesis was built.

Throughout my time with each organization I took meticulous notes as conversations or event were happening, or if impractical as soon as I could afterward. After each day of observation, I typed my notes, taking the time to add-in elements of context, and dated them. Every month I read through my most recent notes and prepared short summaries that were the basis for later analysis. The data collected through participatory observation were completed with data collected through the interviews and the extraction of descriptive statistics from databases.

Relating the results of my participatory observation was somewhat of a challenge. Going through my notes, I could relate anecdotes to illustrate specific points, but when it came to giving explanations on how the system of urban refugee management functioned, pinpointing the specific moment this or that part of it became clear was not always easy. Throughout my fieldwork, new information constantly made me reevaluate previously held convictions. As a result, associating a quote to each of my claims was a challenge, especially as I made sure to wait until information was confirmed by several sources before fitting it in my analyses. The issue is especially notable in chapter 2 and 3, where I discuss the behavior of the Thai authorities towards refugees. I tried to relay information that was representative of the norm, of what different people with relevant experience would tell me was what is expected in various situations, and avoided writing on issues on the basis of a single testimony. I feel confident that I have not misrepresented the situation; however, I do regret that my methodology limited the extent to which I could give the reader access to meaningful raw data to make up their own mind.

## ***Additional Methods***

### ***Interviews***

In addition to the countless informal conversations I had with various refugees, volunteers and CSO workers during my fieldwork, I conducted a number of interviews with people who appeared to have essential expertise. I did a total of ten interviews, seven of which took place at the beginning of my fieldwork, most of them in the first half of 2016, and three towards the end of my fieldwork, in 2017 and 2018. The first round of interviews was exploratory, and mostly unstructured, as my own understanding of the issue did not allow me yet to predict where conversations would land. They were centered around identifying who were the actors involved, what role they filled, what relationships they had with one another, as well as trying to get an idea of who were the asylum seekers coming to Bangkok. My original intent was to keep interviewing

stakeholders across a few months. However, the interviews were not especially successful. Interviewees were cautious of not sharing too much information with an outsider, and reluctant to go into details on sensitive topics. When given the opportunity to join RRC as a volunteer soon after interviewing one of its program officers, I jumped on the opportunity and left interviews aside. These initial interviews were far from useless. They helped me gain access, by giving me a reason to be introduced to the people who would eventually give me a chance to join their organizations as a volunteer. Moreover, it was not as if no valuable information was shared during the interviews; rather, it is only after more than a year of participatory observation that I was able to make sense of the information that was shared with me then.

Pseudonym	Position	Organization	Date	Length	Recording
Mark	Protection Officer	UNHCR	19/01/2016	60min	No
Sofia	Program Officer	Right of Passage (ROP)*	23/01/2016	90min	Yes
Nithaya	-	Independent Activist	18/02/2016	120min	Yes
Joshua	Founder	Soul Food Collective (SFC)*	08/03/2016	60min	Yes
Gloria	Director	Refugee Rights Collective (RRC)*	07/04/2016	60min	Yes
Angelica	Program Officer	Refugee Rights Collective (RRC)*	15/05/2016	60min	No
Arthur	Program Officer	Right of Passage (ROP)*	06/09/2016	45min	No
Frieda	Program Officer	UNHCR	13/03/2017	45min	Yes
Maria	Program Officer	Save Refugees Now! (SRN)*	29/09/2017	60min	No
Andrea	Program Officer	Save Refugees Now! (SRN)*	10/07/2018	90min	No

\*The name of these organizations has been changed

**Table 1 List of Interviews**

The second round of interviews, that took place mostly after I had finished my fieldwork, was an opportunity to fill in the remaining gaps. I reached out to individuals working in organizations I had not interacted with as much and presented them with some of my conclusions. These three interviews helped me make sure of the robustness of my arguments, correct faulty statements and identify topics and questions for which more research was required; mostly in the form of further looking into the UNHCR Population Statistics database. Since the last three interviewees worked for organizations I had not observed directly, I could through my conversations with them test whether what I had seen corresponded to what they had experienced. In other words, it allowed me to identify outlier observations as such. This set of interviews was more structured, as I approached each interviewee with a similar narrative, in essence giving them a

summary of my thesis, empathizing arguments from Part II or Part III depending on whether they worked for CSOs or UNHCR, and let the conversation flow from there.

Only half of the interviewees accepted to be recorded; for these interviews, I transcribed the recordings in the days following the interview. For the other interviews, I took manuscript notes, and immediately after the interviews revisited them, adding in detail and context from memory, and typed them. Most of the quotes I use throughout the thesis are extracted from the recorded interviews, though a few shorter ones come from my notes, when I was confident I had been able to write down verbatim what was said.

### ***Statistical Analysis***

I used data extracted from two databases to support my arguments: the UNHCR Population Statistics database, and the client database of RRC. The UNHCR Population Statistics database is compiled and published by UNHCR. It contains information regarding the organization's activities in all countries since its founding. In particular, it contains the number of asylum seekers, refugees, stateless people and returnees in every country where the organization works, for every year, broken down per nationality. It also contains information on UNHCR's Refugee Status Determination (RSD) decisions, including the number of first instance, appeal and reopening decisions made each year, broken down by nationality of the applicant, and the outcome of each decision, either positive or negative. The data is updated on a quarterly basis for RSD decisions, and yearly for population statistics. Population statistics for the most recent year are also masked if the numbers of refugees or asylum seekers of a certain nationality is lower than 10, as to prevent the database to be used to identify specific individuals. I used data lagged two years to avoid uncertainty regarding smaller national groups – the most recent data I discuss in this thesis are from 2017. Throughout the thesis, I used the subset of the database regarding refugee and asylum seekers in Thailand, which goes back to 1975, as well as data on other middle income countries and Pakistan when required to support specific arguments.

I used Microsoft Excel 2016 and Stata 12 to analyze the database, but relied solely on Microsoft Excel for the final analysis. The data contained in the UNHCR Population Statistics database is of limited use for complex statistical analysis, as it provides no data beyond refugee status and nationality. Hence only descriptive statistics and basic graphical analysis were used to interpret the data. Their extraction required some simple re-coding to separate urban refugees from camp refugees in Thailand, but the dataset was

not otherwise modified. The graphs presented in this thesis were created using Microsoft Excel 2016.

Data from the RRC client database is only used twice in this thesis; once to give an estimate of the relative risk of arrest of refugees and asylum seekers of different regions of origin, and once to give an estimate of the breakdown of Christians and Ahmadis among Pakistani refugees and asylum seekers. The database contains individual information about more than 2,000 clients of RRC, all of a personal and confidential nature. Access to the database was granted to me as a volunteer in the organization, as I was tasked to improve it and extract data from it to inform RRC's strategic planning. I was only allowed to share very aggregate information extracted from the database, and chose to do so sparingly as not to create any concerns regarding the privacy of the information shared by RRC clients with the organization. I used Stata 12 to analyze the database.

## ***Limits***

### ***Studying Urban Refugees and Managing Distance***

Working with a vulnerable public presents numerous challenges, especially when research methods include spending extensive periods of time in close contact with this public and the people working with and around them. Beside questions of access and ethics, maintaining some form of objective distance between oneself and the subject of study is difficult. Rather than taking the risk to self-assess my successes in that regard, I want to disclose some of the ways in which that distance changed during the course of my fieldwork and give readers a chance to make their own opinions regarding potential bias in the rest of my arguments.

My first contact with the refugee issue in Bangkok was through the request of a friend, who asked me whether I could help her organization with French to English interpreting – she was at the time working for one of the larger refugee CSOs in Bangkok. I accepted, and ended up sitting through a 90 minute counseling session between a social worker and a refugee from West Africa. The social worker told me after the interview that the refugee suffered from Post-Traumatic Stress Disorder. He left the session apparently undisturbed, it was clearly not his first, but it took me days to recover. As I would come to realize, the story I heard that day – of persecution in the country of origin, flight, then abuse and victimization in the country of asylum – was somewhat of an outlier, but encapsulated most of the salient issues faced by urban refugees. The interview took place in September

of 2014, as I had just moved back to Thailand to work on my PhD, then on a different topic – that of the management of street crime in the city, particularly looking at whether patterns of street crime in Bangkok were consistent with those observed in other settings, as there existed some tentative evidence that it did not. Less than a year later, I decided to reorient my research and focus on urban refugees. In part, the decision was informed by important roadblocks met during the first year of my thesis; in part, I was puzzled by the urban refugee issue and, to put it simply, drawn to it.

From the beginning to the end of my fieldwork, I have befriended a dozen or so refugees, and twice as many CSO workers. I have spent many more hours in Bangkok's IDC than my research called for, and have regularly invested money and time to help refugees make rent or find their way out of detention; including organizing a fundraiser campaign for an especially close friend, which allowed him to leave detention and the country. I tried never to frame these efforts as being part of my research; in fact, most went to people not involved in it, or came after I had largely finished my fieldwork. However, the opportunities presented by collaborating with a researcher were clear to refugees, who are keenly aware that any bonding with a Westerner has the potential to translate into some support down the line. These expectations have colored the data gathered from refugees directly, though I hope that by crosschecking claims made by refugees with information from separate sources, I was able to offset some, hopefully most, of that bias. Many among the CSO workers, especially among those who were my colleagues for more than a year, became close friends; several boarded planes to attend my wedding more than a year after I had stopped volunteering with them. These relationships need to be taken into account, especially with regard to Part III that is most focused on their work.

My situation was analogous to that of most foreigners invested in the refugee issue in Bangkok as volunteers, employees of CSOs or interested individuals. In fact, the figure of the researcher has become in some ways one more element of the refugee management system in Bangkok. Though academic literature on the subject is sparse, the issue has attracted attention and a constant trickle of post-graduate students has stumbled upon it in the years leading to my own work.<sup>6</sup> My experience working and doing research with refugees is a testament to the capacity of the issue to elicit empathy and emotional engagement. Though my analyses and opinions of the functioning of the refugee

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<sup>6</sup> See Tauson (2017) and Tuitjer and Batréau (2019) for example.

management system in Bangkok are grounded in facts, there is no denying that from the very start my interest in the issue was sparked by an emotional response more than it was by intellectual curiosity, and that throughout my fieldwork and to this day the latter has not eclipsed the former.

### ***Limited Access***

Notably absent from my work is data directly collected within the Thai administration. I was able neither to interview government officials, to observe them work from their side of the fence or the counter, nor to obtain direct access to government files. In 2017, I did reach out to members of the immigration division (the director of IDC), members of the justice department (junior official working on refugee issues), and police officers (of a suburban precinct where a refugee community lives), without obtaining replies. These rebuttals did not come as surprises, as I had not found a way into administrative circles by the point I made these requests, which hence were little more than bottles sent to drift at sea. Discussions with Thai activists, in particular Pii Nithaya, confirmed that gaining access to government officials took dedication and personal contacts of a kind I did not manage to gain during my fieldwork. CSOs, UNHCR, informal groups and the refugees themselves were somewhat inter-related fields, therefore my standing with each of them helped me gain access to all others, while the Thai administration was its own separate world. None of my successes in gaining access to the former opened up any door into the latter.

I tried not to make my analysis dependent on strong assumptions on the way different branches of the Thai administration function, as to avoid making claims my data could not substantiate. Since my focus was not on the inner functioning or motivation of the administration *per se*, but rather on the outcomes of the administration's action, I feel confident that lack of access was not an insurmountable challenge, though insights into this dimension of the refugee management system would certainly have been valuable. I do hope researchers better equipped to study the Thai administration directly will complete the picture I paint of the Thai refugee management system, or that I will myself have the chance to do so.



## ***Literature review***

### ***Studying Urban Refugees***

#### ***Defining Refugees***

The term “refugee” carries a crucial ambiguity. As illustrated in the opening of Hannah Arendt’s essay “We Refugees” (Arendt, 1943), there is a tension between two essentially different understandings of what a refugee is:

A refugee used to be a person driven to seek refuge because of some act committed or some political opinion held. Well, it is true we have had to seek refuge; but we committed no acts and most of us never dreamt of having any radical opinion. With us the meaning of the term ‘refugee’ has changed. Now ‘refugees’ are those of us who have been so unfortunate as to arrive in a new country without means and have to be helped by Refugee Committees. (Arendt, 1943, p.1)

A refugee can either be “a person driven to seek refuge” or “those [...] helped by Refugee Committees”. This tension, that runs throughout the refugee literature, can be expressed in terms of a conceptual approach and of a bureaucratic approach to the definition of refugee.

A conceptual approach to the definition of refugees would center on key characteristics of the refugee as a person or as a group, attempting to capture the essence of what makes a refugee different from a non-refugee. The core idea at the center of most definitions is that a refugee is someone that was forced to move, and that this lack of choice in the decision to migrate is what distinguishes refugees from other migrants. Shacknove (1985) refers to this idea as the conception of refugeehood, the basis on which later definitions were built. A number of refinements and translations of that conception can be found in refugee scholarship. An recent example can be found in Haddad (2008): “[a] ‘refugee’ is an individual who has been forced, in significant degree, outside the domestic political community indefinitely” (p.42). Despite the apparent simplicity of the definition, the author argues that in fact it leads to a significant broadening of current conceptions of refugees, allowing in particular for static refugees who would be “outside the domestic political community” without having physically left the national territory. The idea of expanding the scope of the definition is a common theme in academic attempts to redefine a refugee. Shacknove (1985) for example argues that consistency requires not

to focus on persecution but instead look at the extent of threat an individual is exposed to, and not to focus on the question of migration. In that sense, he goes beyond Haddad's attempt by entirely removing the question of the nature of the link between a state and an individual. Other examples include considerations on the value of recognizing environmental refugees (Cooper, 1997, McAdam, 2011). Such broadenings of the conceptual basis for a refugee definition are not however consensual among academics. Gibney (2004), commenting on Shacknove's definition, argues against removing the alienage clause from the international definitions (i.e. the requirement that individuals be outside of their country to be considered a refugee), to avoid creating too large a category encompassing too diverse a group to be useful in practice. Hathaway (1990) goes even further and argues that any universal conceptual definition will not be able to gather state support and therefore should be abandoned in favor of regional definitions more in tune with specific cultural symbols and strategic priorities, echoing the call by Malkki (1995) for refugee studies to stir away from the idea of a unique and generalizable "refugee experience".

A bureaucratic approach to the definition of refugee would be to follow the definition of a specific stakeholder, i.e. to consider someone a refugee because someone else does. For example, one can study "refugees according to UNHCR" or "refugees according to the French state", or according to any stakeholders, be they NGOs, the media, etc. States, UN agencies or any other institutions rely on conceptual definition to determine who is and is not a refugee, but how this idea of a refugee becomes a legal status is complex (Gaeremynck, 2013); in other words, an organization's stance on who is a refugee cannot be fully captured by solely looking at the definition it uses. The bureaucratic definition is the result of a process, carried out by people working within large structures. It is subject to idiosyncrasies, incoherencies and changes over time as procedures evolve. It is not elegant, but it is usually of great importance to the people falling or not falling within its bounds. Bureaucratic categories have immediate practical consequences. Being or not being a considered a refugee by a state can results in individuals receiving a visa, welfare and protection, or being sent back where they came from.

The logic in adopting a bureaucratic definition of refugees as an academic is that all falling under such a definition will be united by an identical bureaucratic status. That status will make a difference in their lives, and this unique and separate common experience will justifies treating refugees under that definition as a distinct group. From a practical standpoint, it also makes the work of researchers easier, enabling them to use knowledge and data generated by the bureaucratic process. Bureaucratic definitions are

often used in quantitative studies or macroscopic studies (Ostrand, 2015, Fazel et al., 2005, Beaman, 2011), and in applied research meant to directly influence policy-makers; Betts and Collier (2017)'s recent book *Refuge: transforming a broken refugee system* for example spends little time trying to redefine the concept of refugeehood and adopts without discussion that used by UNHCR.

The challenge of defining refugees in Thailand lays in the fact that the country does not enshrine a particular definition of what a refugee is in its domestic laws. The country has created specific bureaucracies to grant or deny entrance into the border camps. These bureaucracies therefore are empowered to choose who can be a refugee and who cannot, but that fact is of no help with regard to urban refugees in Bangkok. There exists however in the country an administration tasks with identifying refugees: UNHCR. It uses the Refugee Convention of 1951 as a basis for its definition, and informs its implementation with a number of policy-notes and other types of grey literature and informal policy used by its Refugee Determination Status (RSD) officers. The following passage of the 1951 Convention contains the essential elements of the definition that is the basis for UNHCR's process:

The term 'refugee' should be applied to any person who [...] owing to well- founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (United Nations General Assembly, 1951, Art. I) A.)

This definition is interpreted by UNHCR staff and has guided the creation of a bureaucratic process that allows individuals to seek asylum, in other words apply to become refugees, be interviewed, provide evidence and eventually be recognized as refugees. This status entitles them to a range of services and rights. As I will discuss in length in the rest of the thesis, extensive criticism can be made regarding UNHCR's process of refugee status determination and the provision of services to urban refugees by the organization. There are however still major practical implications to being recognized a refugee by UNHCR in Thailand, that set apart asylum seekers and refugees from other migrants in the country. It therefore makes sense to use UNHCR's definition.

This choice however has a very practical implication, which is that certain groups, which would fit any conceptual definition of a refugee well, fall out of the scope of this

definition because UNHCR does not consider them refugees. This applies in particular to the Rohingya living in Thailand and a number of Vietnamese and Laotian minorities, in particular Montagnard, all of which are barred from seeking asylum in Thailand. More generally, anyone who has not registered with UNHCR's offices in Bangkok would not be considered either – and this probably includes a number of people who were forced out of their countries of origin by persecution and a well-founded fear of serious harm. The fact that their situation will be not addressed in the thesis is not a veiled attempt at undermining their plight; as I argue in Part II, the fact that UNHCR can refuse to register these groups is highly problematic. But the fact is that the situation of migrants in Thailand who are asylum seekers or refugees differs in a number of essential ways from the situation of those who are not, and cannot easily be addressed within the same body of work.

Another caveat to highlight is that the use of an institutional definition means not only that people who would be included in a conceptual definition of refugees are excluded from the scope of the work, but also that some people who would not find themselves included in a conceptual definition of refugees can be included in the study. In other words, some asylum seekers and refugees have not lived through events that would justify granting them refugee status. One finds at times a certain shyness among researchers around this idea, understandable considering how it can be used politically to undermine the asylum system as a whole. Yet one should not assume that all individuals who apply and/or are granted refugee status by UNHCR do so on the basis of accurate information. There is *naïveté* in thinking that in a context where most alternative avenues for long-term migration are shutting down, an avenue to migration to the West would not attract a diversity of profile. There is also *naïveté* and more than a hint of self-importance in thinking that the prospect of getting the slimmest chance to move to West would motivate masses to flock the asylum system – in fact little is attractive or even functional in the asylum system in Bangkok.

A number of researchers however do work with the apparent assumption that holding a UNHCR card is a sure sign of having been victim of forced displacement (see for example in the context of Bangkok: Shum, 2014). The assumption is unnecessary for the study of asylum systems, and can be a distraction or even detrimental, as it participates in building a figure of the refugee that simply could not hold in view of the complex reality of human movement. Though it is tempting to argue “all refugees are ‘real’ refugees” as a counter argument to the populist notion that “most refugees are ‘fake’ refugees”, the fact is that both arguments are faces of a same coin. They both condition the treatment of people to

their conforming to unrealistic expectations of honesty and overall goodness. The fact is that refugees are people, not ideal types, and whether they are entirely truthful or perfectly deserving is irrelevant to the question of whether they should get a fair hearing, and even more irrelevant to discussions of whether they should be systematically re-traumatized or kept in indefinite detention in squalid cells, to mention a few examples that will be further developed in the rest of the thesis.

### ***The Special Cases of Asylum Seekers, “New Refugees” and Urban Refugees***

One moment which has left a dent in the discourse about refugees in the West, in academia as well as in the society at large, has been the appearance of what was then dubbed “new refugees”. The term was coined by Poul Hartling, the head of UNHCR at the time, and brought into the academic discourse by Martin (1988b). It refers to groups of asylum seekers who make their way directly from their place of persecution to Western countries by planes and through long land or sea journeys, a behavior contrasted with that of fleeing to the nearest safe place. Martin (1988b) opens his article with a quote from Hartling on the challenges posed to Western governments by emerging refugee fluxes:

[W]e live in an age when asylum-seekers are no longer only border crossers, but arrive by sea and by air in increasingly large numbers in countries far away from their homelands, in Europe, in North America and elsewhere. Their very presence and the problems resulting from the dimensions of this new phenomenon are exploited by xenophobic tendencies in public opinion. I well understand the dilemma facing many host countries, but I fear that these difficulties might tempt some Governments to consider adopting restrictive practices and deterrent measures which in my view should never be resorted to in dealing with refugees. I can propose no easy solution to this growing problem of intercontinental jet-age asylum-seekers and ‘refugees in orbit.’ But I would welcome your views on how the international community could come to grips with these problems in a positive way.

Poul Hartling, UN High Commissioner for Refugees, addressing the 1984 meeting of the UNHCR Executive Committee, quoted in Martin (1988b, p.1)

Much of the academic discussion around “new refugees” has died off and has been incorporated in a broader discussion of refugees in the West, blurring the difference between asylum seekers and resettled refugees. Yet it is relevant to the discussion of asylum seekers in Thailand and in middle income countries in general, where flows similar to that which emerged in the West in the 1980s are now making an appearance. Martin (1988) stresses two sides of the responses of Western countries during that period.

On the one hand, he connects the rise of asylum seeker fluxes to a rise in xenophobic sentiment across the West, centered on the notion that states could not afford welcoming large refugee influxes. Whether the analysis held water in the 1980s in the West is beside the point, but it is unlikely to play out in the same way in middle income countries where the new asylum seeker population exists alongside “traditional” refugee population many times larger. While Western countries had been allowed to forget about the refugee camps of the postwar period, these have remained a fixture in many middle income countries and the refugee question never really went away. On the other hand, Martin stresses that the arrival of large numbers of asylum seekers prompted a strong policy response that resulted in barriers being erected around Western countries, who scrambled to protect themselves from these fluxes without threatening their international moral posture.

Another argument proposed by Martin relates to deservingness. It was at the core of the issue created by the “new refugees” in the 1980s. What set them apart from other refugee groups was the level of hardship they had to endure and their prospects. While refugees languishing in camps for year could be assumed to be deserving of a new life, especially since countries of resettlement could handpick which of them would be offered that chance, those arriving directly at Europe’s and America’s shores were not faced with nearly the same level of hardship. And unlike refugees in camps for whom the prospects of a new life in the West were slim at best, it was the likely outcome for the asylum seekers choosing to make their way there directly. A solid enforcement of the rule of law gave them the benefit of doubt, decent life conditions while they waited for their application to be processed and even if their cases were denied, deportation was far from automatic and could be in many countries essentially delayed forever (Martin, 1988b, Joppke, 1999). The rhetoric that developed in that context was perhaps most straightforwardly worded in Australia in the early 2000s, where the analogy of “queue jumper” became a staple of political discourse (Pickering and Lambert, 2002, Gelber, 2003, Leach, 2003). The discourse around deservingness played an important role in justifying the rolling out of a number of measures that weakened the international asylum system and went against the spirit, if not the letter, of the Refugee Convention (see Levy, 2005 on the strategies deployed in the European Union post 9/11). What is noticeable is that the inclusion of refugees in the negative immigration discourse took place not on the background of mass resettlement but on that of the arrival of asylum seekers on Western shores and airports, and the connection to deservingness is clear. Asylum seekers arriving directly onto a country’s territory have not be screened, their claims have not been assessed; hence, they

are softer targets for xenophobic discourse. Since their suffering has yet to be documented and officially recognized, it is easier to question.

In Thailand, the question of the deservingness of emerging groups of asylum seekers and the way it has shaped the policy response plays out in a very different context, with regard to the strength of public institutions, the public and policy outlook on migration and the approach to rights in the legal system. Yet, there is no denying that the question of the “good” and “bad” refugees underlines much of the action of the state; in its most extreme embodiment, certain asylum seekers are quickly and publicly offered state protection and support (Mahtani and Fahim, 2019) while at the very same time others are threatened with deportation (Jones, 2019).

One important note regarding the question of the “new refugees” is one of terminology. The term never caught on, probably in part because from a Western perspective, in recent decades, most discussions about refugees have been about “new refugees”. Between the breakup of Yugoslavia and the beginning of the Syrian civil war, there has been a long stretch of time during which all refugees reaching Europe did so either after long-distance trips or through resettlement. Since resettlement quotas are controlled by the state, and generally have played a limited political role during this era, the only refugee issue in the West has been the “new refugee” issue. The same is not true of the rest of the world, where some countries, including Thailand, have hosted simultaneously “traditional” refugee populations, coming from neighboring countries, and long-distance or “new” refugees. The experience of these countries has not been enough however to lead to the development of a new terminology, and continuing to call people inscribed in a nearly 40 years-old trend “new refugees” does not make much sense. Another term appeared around the same time as “new refugees”: “jet-age refugees”. It is also unsatisfying. Not only does it sound dated, it also wrongly conveys the idea that planes are the defining characteristic in the long-distance journey of asylum seekers, which is somewhat true in Thailand but does not hold true in most contexts where maritime travel is just as important. Finally the term “asylum seeker”, which is also used in reference to these populations, is not specific enough. Asylum seekers refers to a specific legal step in the asylum system, one that people graduate from to become refugees, and does not distinguish traditional and non-traditional refugees and asylum seekers.

A nomenclature has emerged which addresses the need for a precise terminology in the Thai context, but can get in the way when comparing the case of Thailand with that of

other countries. In Thailand, refugees who are not from Myanmar are not allowed in the refugee camps and refugees from Myanmar, the largest group of traditional refugees in the country, are not allowed to leave the camps. Hence traditional and non-traditional refugees are physically segregated, either confined to camps or denied access to them. Non-traditional refugees have to live among the general population, typically in urban areas. Hence, they can be accurately referred to as urban refugees. The term, used by UNHCR, applies to both asylum seekers and refugees who live outside of camps. In Thailand some urban refugees come from within Southeast Asia (Laos, Cambodia, Vietnam) but the great majority does not. However, in most countries with large urban refugee population, in particular in the Middle East, “urban refugees” would not be an adequate way to distinguish between traditional and non-traditional refugees, because the category would include large numbers of both. In the absence of a better term, “urban refugees” is best suited to the study of emerging refugee fluxes in Thailand.

### ***Asylum Policy, refugee management and refugee protection***

A tension exists at the core of the idea of asylum policy between two distinct, and at times conflicting, objectives: refugee management and refugee protection. The state and other structures have stakes in the maintenance of public order, which they perceive can be threatened by migratory fluxes; they therefore get involved in the management of these fluxes in an attempt to shape their outcomes. Refugee protection, on the other hand, is the defining feature of an asylum system, what differentiates it from other forms of migration management. An asylum system, by definition, provides a subgroup of migrants with some form of differentiated treatment to account for their particular circumstances. The tension between protection and management runs throughout the long history of the asylum system, going back to the ancient traditions which have inspired modern asylum policies (Schuster, 2002, Marfleet, 2007).

That tension resides at the very center of the current international asylum system. Its bedrock is the Refugee Convention. It is largely seen as generous and constraining for signatory states, making it a central document to most discussions of refugee protection (Joppke, 1997, Bem, 2004, Hathaway, 1991). The generosity of the Refugee Convention has its roots in the fresh memory of the crimes committed during the Second World War and the politics of the Cold War. Yet, the urgency that brought states to hold international negotiations on the status of refugees in the first place, was a refugee management issue rather than a refugee protection issue – the war had left millions stranded across Europe and they disrupted reconstruction efforts (Loescher, 2001).



It is therefore no surprise that the main international instruments to guide states in their management of refugees, the 1951 Refugee Convention and the 1967 Additional Protocols, are documents regulating refugee management as much as they are a tool for refugee protection. The adequacy of a country's treatment of refugees is often discussed as a question of how closely its policies align with the letter and/or the spirit of the Convention, to the point where one might forget that the objective of the Convention itself was not to meet the needs of refugees but rather to put together a system of management that would safeguard the interests of states. This is in fact a statement applicable to the whole field of refugee law. Quoting Hathaway (1990, p.133):

[Refugee law's] purpose is not specifically to meet the needs of the refugees themselves (as both the humanitarian and human rights paradigms would suggest), but rather is to govern disruptions of regulated international migration in accordance with the interests of states.

This is not to say that references to the Refugee Convention as a source of refugee protection are invalid, but simply that the protection mandated by the Refugee Convention should be understood as one feature of the model laid out for refugee management, which accounts for and often gives primacy to the interest of the signatory states.

The most basic and essential protection afforded to refugees under current international law is *non-refoulement*, from the French word "to not send back", that scholars have argued is now part of customary international law and therefore binding to all states (Allain, 2001, Hathaway, 2005, or for a critical discussion Duffy, 2008); the binding nature of *non-refoulement* is in fact recognized, if implicitly, by a number of states non-party to the Refugee Convention, including Thailand (Moretti, 2018). The principle of *non-refoulement* is understood to mean that states cannot refuse entry to refugees fleeing persecution, or send refugees back to countries where they would face the risk of being persecuted. It is essential in the sense that if it is not upheld, all other principles enumerated in the Convention or any other instrument are of no effect, since those they would protect have no guarantee to be able to reach places where they would be applicable. In other words, *non-refoulement* is a way to guarantee that one can find a community willing to enforce all other basic rights.

The other type of rights afforded by the Refugee Convention have only recently come under scrutiny, as they had been taken for granted – see for example the content of the

global consultation on refugee rights held by UNHCR in 2003 (Feller et al., 2003). As Hathaway (2005, p.2) explains:

[In] the academic literature, only the core duty of *non-refoulement* and, to a lesser extent, the duties of non-expulsion and non-penalization, have received any serious attention. This analytical gap is no doubt largely the result of the tradition of most developed states simply to admit refugees, formally or in practice, as long-term or permanent residents. While not required by the Refugee Convention, this approach has led de facto to respect for most Convention rights (and usually more). Because refugee rights were not at risk, there was little perceived need to elaborate their meaning.

In recent years, however, governments throughout the industrialized world have begun to question the logic of routinely assimilating refugees, and have therefore sought to limit their access to a variety of rights.

The situation of refugees falls within the realm of a multiplicity of international conventions and instruments, which renders a complete discussion of refugee rights, the protection of these rights, and the enforceability of both difficult. Hathaway (2005) offers an extensive inventory of the special protection for refugees found in the Refugee Convention, in the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Right, as well as relevant jurisprudence on all three instruments by national and international courts. He discusses a sprawling list of seventeen rights that require some form of additional protection at different points during a refugee's journey. He starts with the protection mandated as soon as one seeks asylum in a country, before any Refugee Status Determination (RSD) process.<sup>7</sup> It includes *non-refoulement*, no penalization or detention for entry, the provision of essential security and economic subsistence until the completion of RSD, and entitlement for basic human dignity, including respect of private property, family unity, freedom of thought, conscience and religion, and right to primary education for refugee children. The list of rights receiving special protection expands after the completion of the RSD process, to include access to the labor market, to housing and welfare, and the

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<sup>7</sup> RSD refers to "Refugee Status Determination", the screening process through which asylum seekers are recognized as refugees, or not. It is based on the refugee definition found in Article I of the 1951 Refugee Convention. The consequences of being recognized a refugee are discussed in more length in the rest of the thesis, in particular in Part II.

issuance by the host country of travel documentation among others. A final set of rights surrounds durable solutions for refugees.

The issue of enforcing the additional protections given to refugees in countries signatory to the Refugee Convention is a topic extensively covered in refugee literature, especially with regard to the rights of asylum seekers and the boundaries of *non-refoulement* (Hathaway, 1991, Duffy, 2008, Hyndman & Mountz, 2008, Bruin & Wouters, 2003), as well as other socio-cultural rights such as access to education (Stevenson & Willott, 2007) or healthcare (Saleh et al., 2018). Though the literature on the issue is diverse, it is mostly concerned with contexts where refugees are recognized as a vulnerable group requiring specifying protection. What refugee protection means in a context where that premise does not hold, in countries like Thailand where the state is not party to the Refugee Convention and does not legally recognize refugees as a separate group from other migrants, is a separate issue.

When discussing refugee protection in non-signatory countries,<sup>8</sup> the question of the meaning of refugee protection takes a central importance. How should one judge the way refugees are treated in a given country when the state in that country does not consider itself bound by the main international instrument of refugee protection? The question has not been addressed as often as it could have in the literature, but several approaches can nevertheless be found.

A first approach consists of using the Refugee Convention as the yardstick of refugee protection regardless of whether or not a state is party to it. This approach makes sense considering that the Refugee Convention has become the *de facto* standard for refugee protection. Most claims made by academics regarding the mistreatment of refugees are framed first and foremost as violations of the Refugee Convention. As a result, the Refugee Convention has come to look like the sole relevant framework in discussions of refugee protection. The importance of the Refugee Convention in the field of refugee studies allows authors to draw from a rich literature comprising a plethora of case studies when

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<sup>8</sup> Non-signatory country is a short-hand for countries that have not ratified the Refugee Convention and have neither domestic legislation nor administrative bodies tasked with managing refugees as a group separate from other migrants. Some countries, like India, have not ratified the Refugee Convention but have domestic refugee legislation that plays a role similar to that of the Convention (Chimni, 1994, Menon, 2003) – Thailand is not among such countries.

making their arguments. An example of such an approach applied to the non-signatory countries of Southeast Asia can be found in Moretti (2018).

The argument presented by Moretti is that despite not being signatory countries, the management of refugees in Thailand, Malaysia and Indonesia is not as removed from the principles of the Convention as it is argued by other academics, and in particular in the work of Davies (2008). Moretti argues that though states in the region deny having any obligation towards refugees, in practice they usually respect the doctrine of *non-refoulement*, do not usually penalize refugees for entry and treat refugees differently from other migrants, though they do not do so through the attribution of a distinct legal status. The substance of Moretti's argument on the situation of refugees in Thailand differs starkly from the arguments presented in the rest of this thesis, and the root of these differences will be addressed in time; it can already be noted that most of his conclusions on Thailand are based on the treatment of Burmese refugees in the border camps, not urban refugees, which explains at least some of the divergence in our conclusions.

Moretti explicitly compares the situation of refugees' in Southeast Asia with the rights and protection afforded to them under the Refugee Convention, focusing in particular on *non-refoulement* and the protection against penalization and detention for entry. On the latter, the author argues that the fact that the Thai administration keeps asylum seekers and refugees in indefinite detention inside of Immigration Detention Centers does not go against the letter of the Refugee Convention. His interpretation is as follows: The Convention forbids the penalization of refugees for entry, i.e. protects refugees against imprisonment, but does not forbid states to limit a refugee's freedom of movement until their immigration status is regularized, nor does it oblige states to regularize that status. Immigration detention is not imprisonment, since it is not a penalty imposed by a court, and the fact that it is indefinite is irrelevant since states have no obligation to regularize asylum seekers under the Refugee Convention. Moretti therefore argues that the situation would be admissible under the Refugee Convention.

There are a number of limitations of this approach to the framing of refugee protection in non-signatory countries. First, it means that a given situation is assessed using standards explicitly rejected by the entities to which these standards are applied, i.e. the state, making the standards irrelevant – but this issue is often circumvented in the literature. One way to do so is to find principles in applicable legal instruments that parallel that of the Refugee Convention. This is the approach taken by Collewet (2012), who assesses whether the detention of urban refugees in Thailand is in violation of the

international treaties and conventions to which the country is party. The same approach is used by Moretti (2018) to complement his argument: he uses the Refugee Convention as a point of reference but uses other instruments, such as the Convention Against Torture and the International Covenant on Civil and Political Rights, to show that the countries of Southeast Asia abide by international law. Finding in applicable laws and regulation principles that reflect the spirit of refugee protection as it is understood by the Refugee Convention does avoid the issue of applying potentially irrelevant standards, and is useful to advocate for better application of existing regulation. It does not however solve a more basic issue with using the Refugee Convention, an international treaty, as the sole basis on which to define and assess refugee protection regimes.

The Refugee Convention is not a work of moral philosophy, but a treaty negotiated by states and implemented by institutions, within unique national and local contexts. As such, defining refugee protection purely on the basis of the content of the Convention is problematic, as it treats a legal instrument as a philosophical point of reference, which it is not meant to be. Moreover, legal texts are meant to be interpreted and implemented by specific institutions, usually the courts, and this process is not straightforward. In fact, Collewet and Moretti reach completely opposite conclusions regarding the standing of the detention of refugees in Thailand. Collewet finds it in violation of international treaties ratified by Thailand, and Moretti finds it consistent not only with ratified treaties but also with the principles of the Refugee Convention. The two authors are able to reach these conflicting conclusions because the legal texts they each consider are at times vague, contain conflicting clauses and exist within a broader legal system that transforms their meaning and applicability. The point here is not to discuss which of the two interpretations is correct. Rather, it is to point out that laws are not implemented through the mobilization of pure reason, but through bureaucratic processes that do not take place in a vacuum. Weighing on the debate of how refugees should be treated and offering novel interpretation of legal texts is an important role for academic literature, but attempting to establish whether a given state practice is in violation of vague and contradictory treaties is not an ideal way to evaluate them.

Another approach to talking about refugee protection in non-signatory countries is to rely not on legal texts but on moral reflections. That is, rather than using legal texts inspired by moral reflections but muddled through the interest of negotiating parties and the context of their adoption, turn directly to their source. On the specific question of refugee protection, authors rarely explicit their use of moral norms, but they nevertheless underline much of the academic discussion of the treatment of refugees.

## ***The Ethics of Refugee Policy***

Despite states claiming otherwise, there is little evidence that the interest of refugees is a major determinant in asylum policy overall. It would be naïve to think of governments which chose to adhere to the Refugee Convention as selfless organizations with only the interest of the most vulnerable at heart. The states that chose to ratify the Convention are not qualitatively different entities than states who did not, and the respect of the letter of the Convention should not be equated with moral good, even though some of its effects can be. Refugee policy is often approached as an ethical question, but in academic circles the ethical dimension too often hides behind the question of whether the Convention is or is not respected. It is regrettable, because the ethical implications of the treatment of refugees is an important question in itself, that does not need to be kept in the narrow confines of the upholding of the Refugee Convention.

The central ethical tension in the discussion of the ethics of refugee policy is one of resource allocation. Harboring refugees has an impact for the population of a given state, and debates on refugee policy often boil down to questions of how to balance the needs of refugees with that of the rest of a country's inhabitants. The question of whether or not refugees impact communities receiving them, and whether that impact is positive or negative, is therefore central and worth evoking. It plays a key role in the rhetoric deployed on both sides of the political discussion on refugee policy, and on the determination of what constitutes a "good" policy. One could hardly argue that the question is taboo considering the central place it has taken in everyday political debates, but discussions, including within academia, can at times feel like participants are mostly concerned with signaling their ideological leanings rather than engaging with evidence. Migration fluxes of any type are phenomena with extensive economic ramifications. Working under the assumption that migration always has a net positive or negative impact is neither wise nor necessary. Existing literature paints a complex picture on the question of the economic effects of refugee influxes.

One type of cost incurred from hosting refugees comes from the provision of welfare. Ruist (2015) estimates that about 1 percent of Swedish GDP is redistributed from nationals to refugees every year as a consequence of the relative high level of utilization of public services by refugees in comparison to nationals and their lower income and hence lower contribution to tax revenue. Weber and Weigand (2016) looked at refugee influxes to Germany over a 35 year period. They compare its macro-economic effect with that of non-refugee migrants, and find a more positive short term effect of refugee influxes,

as a result of state investment in localities receiving refugees, and negative medium term effects on unemployment rate and welfare dependency level as refugee tends to struggle to integrate in the local labor market. In the context of developing countries with more limited welfare entitlements for both refugees and the general population, measuring their impact in terms of cost to the state is likely to be irrelevant. Alix-Garcia and Saah (2009) look at the macro-economic impact of refugee influxes in Tanzania in the early 1990s and find additional inflation in non-aid food items as a result of the influxes, as well as a positive impact on household revenue in the areas surrounding camps and a negative impact on household revenue in urban areas. Akgündüz et al. (2015) looked at the impact on the labor market of the influx of Syrian refugees into Turkey. They find evidence of an almost null impact in the regions surrounding the border camps. Cherri et al. (2016) studied the impact of the influx of 1.2 million Syrians to Lebanon, a country with less than 5 million inhabitants, between 2011 and 2015. They find an overall negative impact of the influx on the labor market and income level countrywide. Fakhri and Ibrahim (2016), also studying Syrians in Lebanon, found that the influx of Syrian refugees had not had a significant impact on Jordan's labor market. The authors add that this effect was in part explained by the fact that refugees were blocked from joining the formal labor market and hence did not compete with most Jordanians. In Thailand Brees (2010), looking at Burmese refugees, finds an overall neutral impact, with some locally positive effects on the industrial sector along the border compensated by a negative impact in other parts of the country, in particular, in Bangkok. It is important to note that the study relied on secondhand analysis, a lot of which was done by UN agencies which could have overplayed the positive impact of migration, and that most of the data used does not distinguish between voluntary and forced migration.

The picture painted by research on the economic impact of refugee influxes is not a straightforward one and does not allow for one to argue in good faith that refugees are always an economic opportunity, nor that they are always a major threat. The evidence shows that there can be a net cost to the hosting of large refugee populations. Evidence also shows that this is accurate apparently whether one looks at countries with extensive welfare systems available to refugees, like Germany or Sweden, or non-signatory developing countries, like Lebanon. Hence, it's unclear whether taking a more punitive approach to refugee management does in fact translate into a lesser economic impact. Just as importantly, the fact that a policy has a net cost should not be the sole factor in deciding on its value; many policies that do have an immediate cost are nevertheless considered valuable, either because they are seen as a worthy long-term investment, or because their

results are valued in themselves. The benefits of saving lives, which policies allowing people under threat to seek safety abroad do, should be weighted in when assessing any given approach to refugee management. How to weigh in the cost of welcoming refugees when making policy decisions is however not straightforward, and brings the discussion into the realm of ethics and moral philosophy.

The question of the ethics of refugee policy was most explicitly tackled in *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*, by Gibney (2004). In the book, Gibney makes a Hegelian attempt at synthesizing the different sides of the immigration debate. He uses historical precedent and a realist analysis of the constraints that decision-makers in liberal democracies have to face to come to a workable ethical solution to the refugee issue for Western states. He calls the solution he reaches a humanitarian approach to refugee management. He argues that states have a responsibility to assist refugees and asylum seekers, including by letting them into their territories, as long as the cost of doing so for the state in question is low. This principle, as applied by Gibney, has more drastic implications than one could expect from its fairly subdued formulation. In particular, it does not provide ground to give priority to asylum seekers or refugees that are already present at a state's border over those who remain in camps. In other words, Gibney does not believe that it is legitimate to address the question of refugee resettlement separately, i.e. the practice of flying in refugees from camps and let them settle, and that of asylum seekers, i.e. people presenting themselves at the border demanding to be let in. As a consequence, he does not argue for the removal or extensive reform of the deterrence apparatus created by Western states to limit the flow of asylum seekers reaching their territories. He does not think that countries have a responsibility to make it easier to seek refuge directly, and instead advocates for a reinforcing of formal asylum channels. He argues against removing deterrence measures because it could potentially create a perverse incentive for potential migrants, opening the possibility that the number of migrants attempting to reach richer countries would increase, leading to an increase of exploitation and abuse at the hand of smugglers. Additionally, he argues that sudden mass influxes of migrants could lead to a backlash in the receiving countries.

The analysis of the ethics of asylum undertaken by Gibney is valuable in particular because it is explicit in its prescriptive approach. It also takes arguments against open borders seriously, which tend to be discarded in academic discussions of migration policy; it is problematic to start a discussion of such an issue by discarding the idea that there might be legitimate and theoretically grounded arguments in favor of a restrictive immigration policy. This said, Gibney's resistance to advocate for an open border policy



does not come from a desire to find a middle ground between partialists and impartialists, which is reassuring as the idea that the right ethical position would be one that is squarely in between two others would not be sound. Gibney ends up discarding the partialist argument entirely, finding it ethically untenable in the case of asylum. He focuses instead on amending the impartialist argument for open borders in view of what he considers can realistically be achieved. He argues that even if an open border approach to migration would be most ethically defensible, it is not realistic as it clashes against the fact that liberal democratic states as institutions answer to the will of their citizens, which do not generally support open border policies.

Gibney's contribution to the debate of the ethics of asylum policy is limited by the scope he chose for his analysis. By focusing on liberal democracies, he sets aside key questions that cannot be ignored when discussing an issue that is at its core, global. Pretending that the policy decisions of liberal democratic countries can be made in isolation of that of their less liberal and less democratic neighbors is shortsighted. Gibney claims that his approach is grounded in realism, and yet his solution solely focuses on the resettlement policies of liberal democracies, which is of questionable relevance to handle large and sudden refugee fluxes. The last time a truly mass resettlement effort by liberal democracies took place was in the fallout of the Indochina Refugee Crisis. Beside the question of whether the policy was successful, any discussion of a realistic amendment to the international refugee regime should not rely on the assumption that all future crises can be resolved in the same way it was during the Cold War. Perhaps more importantly, Gibney's acceptance of the deterrence policies implemented by liberal democracies brushes aside a key question. For deterrence to be acceptable and compatible with the need to provide protection to fleeing refugees, it must assume that at least some countries do not implement deterrence policies, so that they can be made into waiting rooms for Western countries to make their pick. In other words, it leads to the argument that the countries in the best position to provide protection to those in need, wealthy liberal democracies, should not take refugees in right away, while countries in less advantageous situations should let them in. He also does not address the question of how refugees should be treated once let in, in other words the question of adequate refugee protection. Implicit in his work is the idea that once let in, refugees would be treated like other migrants and given opportunities to locally integrate and become citizens.

The issue with a moral reflection not based on modeling of the working of the legal system is that it has a limited capacity to provide any recommendations that would be practically relevant. Gibney claims that his goal is to provide guidance to policy-makers.

He does so in the sense that his analysis provides a straightforward enough criterion to assess the ethical adequacy of a country's asylum policy. However, setting a goal and a path towards it are fundamentally different exercises. Practical recommendations must be based on a sound model of the knobs and levers that affect policy-making. That model should lay bare the ways actors can affect processes, so that policy-makers can know how to affect a given situation and meaningfully change policy. In other words, one can only be said to have provided ways to change a system if one has understood how this system works.

Determining the determinants of refugee policy, and migration policy more broadly in Thailand is a question that can only be addressed through an effort of comparison, which falls far beyond the scope of my work. In the absence of a comparative approach, the risk is to focus on the idiosyncratic rather than the general, and give an underserved importance to elements of a country's history or culture that a look abroad would reveal to be local expressions of more fundamental forces. However, the study of refugee policy in Thailand could provide an opportunity to test whether and how models of migration policy created in different contexts could be generalized. A challenge in that regard is that most theoretical works on migration have been written in the specific contexts of wealthy Western states. Hence, they are likely to be of limited applicability to a middle income country that only very recently became a country of immigration. One notable exception is the theories developed in by Joppke in the second half of the 1990s.

### ***Christian Joppke and Modeling Immigration Policy***

Christian Joppke's work on migration written in the late 1990s has remained influential to this day (Joppke, 1997, 1998, 1999), though his views and conclusions have hardly become dominant in academic circles. Joppke sees migration as an issue to be managed and argues explicitly in favor of a more restrictive immigration policy. Such views stand out in migration studies, where a lot of work is made in reaction to populist anti-immigrant rhetoric and therefore tends to paint migration as a positive or at least benign fact of life in a globalizing world. That is not Joppke's case. His reflection starts with establishing a paradox. In Western liberal democracies, the majority of the population opposes immigration. Accordingly, most Western liberal democracies have implemented zero-immigration policies. Yet, Joppke notes that there has been a constant flow of immigration to Western liberal democracies from the 1970s to the 1990s. Though he made his argument in the 1990s, one can argue that little has changed in that regard since then and immigration to Western liberal democracy has not stopped. Joppke has not

been alone in pointing out the gap between the stated objectives of liberal democracies with regard to immigration and the reality of migration trends: see for example Castles (2004) or Czaika and de Haas (2013). In other words, Joppke looks at what are the mechanisms at work to allow democratic states to ignore popular will, which has ramifications beyond immigration policy. Joppke's objective however is not so much to explore new theoretical tools but rather to apply existing theories on the functioning of the liberal democratic states to the immigration question.

Joppke's immigration policy paradox is supported by fact. Public opinion and more importantly an electoral majority do generally oppose immigration in Western democracies. Opinions towards immigrants in Western countries vary with time and among social groups, but it has tended to be negative among a majority of people since at least the end of the 1970s (Schlueter et al., 2013, Simon and Lynch, 1999, Espenshade and Calhoun, 1993). Joppke identifies specifically the 1973 oil shock as the key turning point in the history of immigration management in the West, and is in that regard in alignment with a number of scholars (Hansen, 2003, Hollifield et al., 2014a, Castles et al., 2013). Joppke does not question the legitimacy of anti-immigration ideas, and indeed the argument can be made that no matter what one thinks of them, democratic institutions should allow for ideas consistently held by a majority of voters to influence policy-making. And the fact that they have not resulted in the end of legal immigration in Western liberal democracies is worthy of inquiry.

The cornerstone of Joppke's argument is a refusal of what he paints as classic arguments regarding state sovereignty in a globalized world. He denounces the idea that states are losing sovereignty to supra-state bodies constituting the "international community" or "international human rights law". He writes that international rules meant to limit state agency fall in the realm of soft law, the violation of which carries no sanction. He also argues against the idea that modern states would be incapable of enforcing laws they create, an idea that found much support in the 1990s (Weiss, 1997), arguing that it misrepresents the capacity of states and fails to account for the constant increase in state budgets and technical refinement that has strengthened a state's capacity to enforce laws and implement policies. Joppke argues that the gap between official rhetoric, popular will and actual migration numbers is the result of processes within states that lead to sovereignty restrictions. The core idea he develops is that liberal democracies have incorporated a number of human rights principles in their legislation since the Second World War, through clauses contained in their constitutions, ratification of international treaties or conventions, or expansion of constitutional jurisprudence. Joppke argues that

the judicial branches of Western states have used these principles to empower individuals against the state, by erecting rights against the sovereignty of the state. In particular, because of the nature of human rights, these protections have been progressively extended to non-citizens. These protections granted by the judicial branches to non-citizens against the state have limited the capacity of executive and legislative branches to deliver on their anti-immigration rhetoric. Joppke's basic idea is that Western liberal democracies have made themselves unable to manage immigration in accordance with their populations' will. This self-inflicted restriction on their sovereignty had its roots in the human rights provisions contained in their constitutions, and grew with the help of an activist judiciary keen to protect the rights of non-citizens to enter and remain on the national territory. Joppke was not alone in the 1990s to associate the ongoing immigration fluxes into Western countries with strong judicial branches in liberal democracies: Hollifield (1992) also pointed out that judicial decisions in France and Germany had forced these states to renounce to reforms aiming at drastically limiting the scope of family reunification.

A key element of this reasoning is the focus on internal processes and enforceable norms. Through this lens, state action has not been limited because of the growth of an international human rights paradigm. According to Joppke, such an argument does not stand if one looks at the mechanism through which international human rights law is enforced. Instead, Joppke argues that it is national high courts empowered to interpret their constitution, including ratified treaties and conventions, and curb the arbitrary powers of the executive and legislative branches that are responsible for liberal democracies' inability to limit and/or end immigration. He originally grounded this argument in a comparative study of the United States, the United Kingdom and Germany.

From there, Joppke's argument goes as follow. Until the mid-1970s, immigration was not yet a politically sensitive issue, and there was little pressure from the general public to put a stop to it. Some states, like Germany, promoted labor immigration. Others, like the UK, let members of their former colonies immigrate without interfering. These policies constituted a "baseline" against which later development would have to be understood. When immigration became a central political issue after the 1970s, states faced pressure to reform their approaches to immigration management and limit influxes of foreigners, especially of unskilled laborers. According to Joppke, whether they were able to do so depended on two factors: the extent to which the state had actively been engaged in promoting immigration prior to the 1973 oil shocks and the extent to which the judiciary was able to block reforms.

The first factor identified by Joppke, immigration policy prior to 1973, is grounded in administrative inertia and popular sentiment. With regard to administrative inertia, he argues that countries that had entire administrations dedicated to promoting immigration could not easily reverse course on immigration as they had built extensive vested interests within the state. With regard to popular sentiment, the active involvement of the state in promoting immigration prior to 1973 created a sense among voters that their country has a moral responsibility towards immigrants and their families; an idea that gave legitimacy to the judiciary to increase the protection afforded to non-citizens. In his comparative analysis, Joppke stresses the attitude towards immigration prior to 1973 as a key difference between Germany and the UK, explaining in part why the former has a more liberal stance on immigration than the latter, since immigration to Germany post 1945 was promoted by the state, while the UK had no equivalent policy. His argument can be generalized beyond European states and their specific history by shifting focus away from a specific date, 1973, and reframing the factor as the historical stance of states towards immigration. Joppke predicts that states will be more likely to have a liberal approach to immigration at a given time if they historically had a liberal approach and/or if they have been actively involved in the promotion of immigration in the past.

The second factor identified by Joppke has to do with the role of the judiciary as protector of rights in liberal democracies. He shows that both in Germany and in the United States, attempts by the state to implement policies that would curb immigration have been thwarted or defanged by the courts, while the same has not taken place in the UK. Joppke's assumption is that the judiciary is activist by default with regard to immigration, i.e. that given the possibility it will rule counter to popular will. Hence, according to Joppke, whether a country will be able to shut its border or not is partly determined by how empowered the judiciary is by the constitution and ratified international treaties and conventions. In other words, Joppke argues that what stands between immigrants, immigration and the state, is the state's own institutions, and in particular how much the state has limited its own capacity to legislate by enshrining rights into its fundamental texts or becoming party to enforceable treaties. He argues that in the US and in Germany, the constitution gives much room for the judiciary to keep let migrants in independently of popular will. In the UK, it does not. Hence for Joppke, the UK has a superior capacity to control immigration compared to other European countries and the US; the former can deploy harsher policies because the state has not given up as much of its agency in matters of migration control.

The elegance of Joppke's argument lies in its simplicity. According to him, a state's immigration policy after the 1970s is shaped by two factors: its policy beforehand, and how much sovereignty over immigration matters the state has maintained. When a state voluntarily forgoes some of its sovereignty, the consequences follow it for decades, regardless of whether the conditions that led to the initial decisions have changed. The argument also presents the advantage of offering a metric to assess not only the question of how many refugees should be let into a country, but also the way they are treated once inside: a refugee policy can be usefully qualified, following Joppke's argument, by assessing how much the state has limited its own agency, its capacity to ignore the interest of the individuals affected by its policies. That metric presents the advantage of being relevant in a wide array of context, to present an absolute norm that is not solely grounded in moral reasoning, and to help focus academic enquiries. However, Joppke based his argument in the study of a limited number of states, which had much in common; all Western, industrialized and high income countries. As I will try to show, the case of Thailand and the managing of urban refugees in the country can provide further test of his model.

### ***The Study of Asylum Seekers beyond the West***

Much of the existing literature on refugee policy focuses on the receiving countries in the West, which have been at the center of migration studies more generally since their inception in the 1960s despite long standing efforts to broaden the scope of the discipline (Baby-Collin, 2017a). One of the consequences of the domination of a Western lens on the study of migration issues in general and refugee studies in particular has been the development of academic blind spots, in particular around the issue of the condition of urban refugees, including asylum seekers, in countries outside the West. One way the issue has been discussed is through discussions of the situation of transit countries, especially in recent decades as policies of offshore processing of asylum claims developed in Australia and in Europe.

This movement towards displacing the locale of implementation of asylum policy has created a renewed interest among researchers for critical analyses of such policies (Igllicka, 2017, Haferlach and Kurban, 2017, Brown, 2018, Noll, 2003, Schuster, 2005, Collyer, 2007). Such studies however still approach the question of transit from a Western perspective, looking at those stuck in it as candidates for resettlement. In practice however, "transit" countries for asylum seekers cannot be understood simply as one part of a conveyor belt leading to resettlement to the West, and the notion of transit and the

vision of migration it underlines needs to be questioned. Düvell (2012) and Oelgemöller (2011) critically analyze the appearance of the concept of transit migration, closely connecting its rise to the work of international organizations. Each focuses on a different one; respectively the International Organization for Migration (IOM) and an intergovernmental forum set up by UNHCR. Both authors stress that the concept of transit migration, by being closely associated with irregular migration and people smuggling from the start, had been used principally to justify the securitization of asylum policy and the deployment of resources in countries outside Europe to strengthen their border control capacity. Düvell calls this process the externalization of European border control, and connects it to the will to enable free movement within the European Union, which requires pushing out of the union the challenge of migration control.

Oelgemöller chases the concept further back in history, showing how it was developed by Western powers in the wake of the Indochina Refugee Crisis. Crucially, the article stresses that the transit country label serves a dual purpose. It is useful for Western countries, which uses it to justify projecting border control beyond their own border, but it is also useful to the countries labeled as “transit”. It allows them to forego their obligations towards refugees and asylum seekers, since the label shifts the responsibility for finding permanent solutions to other states. Labeling a country as a “transit” country is performative; under the guise of describing reality it changes it. The term carries with it the assumption that any asylum seeker reaching the country intends to move on towards a final destination, hence removing asylum seekers and refugees from the responsibility of that state, which then has no incentive to create the institutions and laws to offer permanent solutions. As a result, a transit country can be nothing but a place of transit to those who seek refuge, since it offers nothing but the hope of further movement.

The protection of asylum seekers and refugees in countries labeled as countries of transit is a key element of a functioning international asylum system. The absence of adequate protection can have dramatic consequences for those fleeing for safety, as they are put in situation of extreme vulnerability during transit, regardless of the strength of their claim. In Southeast Asia, the importance of ensuring safe transit was highlighted with the situation of the boat people coming out of Vietnam and trying to reach Thailand, Malaysia and Indonesia during the Indochina Refugee Crisis. They faced extensive abuse at the hand of criminal actors after they had left Vietnam (Pugh, 2004, Helton, 1989, Robinson, 1998, p.166-184). Yet the most compelling reason to be concerned with issues of protection in transit countries is that “transit” can in practice correspond to a very long period of time. Though the image conjured by the idea of transit is that of a short stop en

route to a final destination, asylum seekers and refugees can spend years in so called transit, and many will never reach another destination and will either remain in the country or turn back, voluntarily or through *refoulement*. The actual length of transit and the fact that it often does not result in transit to anywhere undermines the utility of the concept when studying the asylum seeker population present in non-Western countries at any given time, though the concept remain useful when studying the migration journey of people that did reach a given destination.

This aspect of transit remains under-studied, especially in Asia. D’Orsi (2015) gave a comprehensive analysis of the asylum dynamic within Sub-Saharan Africa, stressing that the great majority of refugees fleeing countries in Sub-Saharan Africa remained in the region and did not attempt to reach Europe, offering a welcome counterpoint to a majority of studies of refugee movement from the Global South that either assume that the ultimate goal of a majority of refugees is to leave their region of origin and reach the West, or do not make this assumption and yet only focus on the minority that does try to reach the West. The starkest difference between the situations described by D’Orsi in Sub-Saharan Africa and that existing in Southeast Asia is the states’ attitude towards refugees in both regions. In Sub-Saharan Africa states fall on a spectrum of punitive and accepting attitudes, with several setting up what the author called “mixed-solutions” (d’Orsi, 2015, p.230) providing some level of security and stability to refugees. The situation differs in Southeast Asia, where the attitude of nearly all states in the region has been repressive, grounded in an overall refusal to provide any sort of long-term solution.

Though focusing on asylum seekers intending to reach the West, Missbach’s (2015) account of the situation of protracted asylum seekers in Indonesia shows that the discourse of transit country often hides a reality of prolonged stay that is distinct from durable solution primarily because of the refusal of the transit countries to implement policies allowing for the regularization of asylum seekers and refugees. In the same context, Brown (2018) describes the way asylum seekers in protracted transit situation in Indonesia have started organizing their own education system to compensate for their lack of access to local schools, after realizing that their transit would take years and might in fact not end with them reaching their ultimate destination. The situation of asylum seekers in Indonesia is among the best documented among “transit” countries, because Australia has been especially successful and overt in its attempts to generalize offshore asylum processing (Ali et al., 2016, Sampson et al., 2016, Hugo et al., 2014). However, most of the literature takes at the idea of transit country at face value and tends to adhere to



the idea that asylum seekers in Indonesia, Thailand or Malaysia are only there because they are stuck on their way to Australia.

The study of asylum seekers and refugees outside of a Western setting must attempt to avoid falling into the trap of putting the consequences of migration for the richest countries at the front and center of the analysis, and avoid assuming that trends in asylum patterns are exclusively caused by the policies of Western countries. Taking this idea seriously requires looking at the situation of refugees in non-Western countries as a domestic issue that is being managed primarily through domestic institutions, even if these institutions do not take the same form everywhere – not ignoring the importance of the policies implemented by other states, but neither assuming that they are the sole determining factors. This balancing act has been managed well in the study of asylum in the West, where no assumption of the absolute dominance of outside forces are made, and the same methodological good practices should be extended to other locales, including Thailand and Southeast Asia more generally.

### ***How States Get Away with Rejecting Western models of Refugee Protection in Southeast Asia***

Western-centric refugee literature is not irrelevant to the study of refugees outside of the Western world. It provides tools and frameworks that can be applied outside of the contexts in which they were designed. However, using them as such requires an understanding of the new context of application. There are a number of essential differences between Thailand and the countries of Western Europe and North America. In particular, there is a distinctive regional dynamic to the management of refugee issues in Southeast Asia that is grounded in the region's specific history, and no country in Southeast Asia is a liberal democracy. Therefore, whether the conclusions of Western-centric refugee literature are relevant in the subregion should be treated as an open question. Though the history of refugee policies in Southeast Asian countries is not as well documented as in other contexts, it has been tackled by some authors whose work is essential to understanding the current approach to refugee management in Thailand.

Refugee policy in Thailand is inscribed in a regional dynamic. Southeast Asia is in a paradoxical situation with regard to refugees. It has hosted large refugee populations for nearly 50 years, and yet only three countries in the subregion have ratified the Refugee Convention. Moreover, no regional instruments have been devised to provide a framework to refugee management and some protection to refugees against the arbitrary

of the state, as it has been the case on the African continent.<sup>9</sup> Davies (2008) puts the paradox in these terms:

Southeast Asia has the highest number of refugees seeking asylum from a single UNHCR branch office (Malaysia) and the second highest number of asylum seekers submitting claims for refugee status from any single country (Burma). Furthermore, Southeast Asia hosts a large number of potential asylum seekers, who are forced to live as 'illegal migrants' because these states have no refugee recognition policy and many fear being refused refugee status by the UNHCR. Beyond the limited assistance provided by the UNHCR, there are no agreed procedures and bureaucratic infrastructure in Southeast Asia for determining refugee status. This means that most humanitarian relief is provided only on an *ad hoc* basis. Out of the twelve states in the Southeast Asian region, only two<sup>10</sup>—Cambodia (1994) and the Philippines (1981)—have acceded to the 1951 Convention and 1967 Protocol. Neither Cambodia nor the Philippines have incorporated the international instruments into their domestic law.

The Association of Southeast Asian Nations (ASEAN) has not demonstrated any collective interest in creating a regional refugee instrument that would at least provide all members with a common legal or political framework for responding to refugees in the region. (Davies, 2008, p.5)

One pitfall of taking a regional focus is that it can leave the impression that the understanding of countries in Southeast Asia requires using a separate framework; that there is something irreducible about the nature of states or culture in the subregion that would negate any attempts to understand it on general terms. An adjacent line of reasoning, that the Refugee Convention and human right-based international instruments fail in the region because of inherent contradictions with "Asian culture", has been popular among strongmen politicians and applied both to Southeast Asia and Asia more broadly. Some academics led credence to this line of thinking in the 1990s (Acharya, 2000, for South Asia, Suhrke, 1993), but most authors found that the argument is little more than an excuse for undemocratic leaders to resist reforms (Langlois, 2001, Thompson,

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<sup>9</sup> The Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa was adopted in 1969 and has since been ratified by 45 out of 54 countries on the African continent.

<sup>10</sup> The discrepancy in number between Davies' number of signatory countries in Southeast Asia (two) and mine (three) comes from whether Timor-Leste should be counted as part of Southeast Asia or not. The question is of little interest to the argument as Timor-Leste is not a major hotspot for refugee issues in the subregion, and the discussion will mostly focus on countries of mainland Southeast Asia and Indonesia.

2001, Barr, 2000). An entirely separate argument can be made however in favor of replacing Thailand within a broader context: the conditions in which the modern refugee issue emerged in Thailand were rooted in a regional phenomenon, the Indochina Refugee Crisis.

The regional dimension of refugee issues in Southeast Asia was studied in depth by Sara E. Davies in a series of publications (2006a, 2006b, 2008). Davies focuses on the ratification of the Refugee Convention, and articulates her arguments around two separate questions: first, why was the Convention not adopted in Southeast Asia in the 1950s and 1960s, and second why was it not adopted during the Indochina Refugee Crisis. The core of Davies' argument is that the initial refusal was the result of the Western-centric nature of the 1951 Refugee Convention, and that this refusal was later cemented by the way Southeast Asian countries were able to manage the Indochina Refugee Crisis, the first large-scale modern refugee crisis they faced.

Regarding the lack of interest in ratifying the Convention in the 1950s and 1960s, Davies' argument is in essence that its Western-centric design made it an inadequate tool for refugee management outside of the West, a view shared in most of the refugee literature (Loescher, 1996, p.5-8 & 129-138, Hathaway, 1990, Bem, 2004). Davies and other authors commenting on the Western-centric dimension of the Convention argue that the question is not whether Western values are inapplicable outside the West, but rather that the Convention was explicitly designed to address the post-Second World War situation in Europe, making it poorly suited to other contexts. That the Convention was tailored to the European situation after the Second World War was not a secret; the scope of the 1951 Convention was explicitly limited to European refugees created by events prior to 1951. This was addressed by the 1967 Additional Protocols, which removed that clause, but kept the rest of the text as it was. The Refugee Convention is Western-centric in a very literal sense: it is a text written to apply only to Europe and that was later applied unchanged to the rest of the world. Davies describes in what ways the definition of a refugee in the Convention was tailored for refugee situations characteristic of the European experience during the Second World War and the Cold War, and how that definition is poorly adapted to the rest of the world (Davies, 2008, p.23-56). She argues that the lack of relevance of the Convention and the absence of much of a refugee problem in Southeast Asia explain their initial lack of interest in the tool, at least up until the 1970s. This argument in fact can be applied to all non-European countries until then – in the 1970s Southeast Asia hardly stood out with regard to its approach to refugee management.

The second and main question tackled by Davies is why so few countries in Southeast Asia turned to the Convention when they were faced with an urgent refugee issue. She argues that Western powers were worried about upsetting their local allies during the Vietnam War. This gave leverage to non-Communist countries in the region during the Indochina Refugee Crisis. That leverage was used against Western powers to limit their interference on issues of refugee management. This peculiar power dynamic in Southeast Asia during the Indochina Refugee Crisis was also documented by Robinson (1998), who wrote the most authoritative account of the crisis. Hence instead of Western powers and their allies bending the arms of Southeast Asian governments to force them to handle refugees through institutions modeled after the principles of the Refugee Convention, Western powers facilitated the development of an alternative model. That model was based on short-term asylum and mass resettlement to the West. They provided financial support for the establishment and running of camps. They ensured that a sufficient number of refugees were resettled every year as to limit the growth of the camps. They did not condition their support to the creations of pathways towards local integration.

The countries of Southeast Asia were not forced to adopt the Convention during the Indochina Refugee Crisis, and instead it prompted the adoption of a model of refugee management giving primacy to national security over refugee protection. Instead of treating refugees as a vulnerable population in need of support, states in the region treated them as potential threats. Why this is the case is not self-explanatory; though it is not always acknowledged in the literature, the rejection of the specific framework of the Refugee Convention does not have to be equivalent to the rejection of a protection-based model. Countries in Southeast Asia could have developed a protection-based model of their own, especially since the rise of ASEAN provided a space for multilateral collaboration. Why the security-based model rose and remained dominant in the region can be understood by looking at the literature on the impact of refugee fluxes on national security.

The question of the security discourse surrounding refugees is sensitive in Western contexts, where it has recently become a political argument for countries to renege on their engagements to open their doors to asylum seekers. The association of refugees with security risks in the West is a somewhat recent innovation. Critical discourse on refugee policies were focused nearly exclusively on socio-economic arguments in the 1980s and 1990s. The figure of the refugee was associated with that of the economic migrant and the negative side of the discourse on refugee policy was centered on labor market competition and welfare abuse (Joppke, 1997, 1999, Sales, 2002, Park, 2008). A first

irruption of national security rhetoric took place in the aftermath of the 9/11 attacks. The attacks led to a backlash against immigration, and in the process refugees came under more scrutiny, with a particular attention to potential connection with terrorist groups (Kerwin, 2005, Levy, 2005, Adelman, 2002, Canetti et al., 2016). The securitization of borders post-9/11 impacted refugee policy, but the impact was mostly incidental. The idea that refugees posed a threat did not take center stage in public and political discourse. This was especially true outside of the United States where questions of immigration control stayed resolutely focused around socio-economic issues rather than security; see Huysmans and Buonfino (2008) on parliamentary discourse in the United Kingdom and Sulaiman-Hill et al. (2011) on the depiction of refugees in the print media in New Zealand. This changed after series of high-profile attacks in Europe linked with ISIS created fertile political grounds for the association of refugees coming from the Middle East and terrorism.

It is in this context that must be replaced the idea that refugees are irrelevant to national security, an argument made among others by Davies (2006b). The rejection of security-based arguments has become an important issue in Western academia. In the West, treating refugees as a security threat is disconnected from the reality of the risk they pose, and is used to make the erosion of asylum policies politically palatable. The resurgence of national security discourses after 2014 in Europe, and after 2016 in the United States, was followed by a wave of anti-refugee measures and a rise in anti-refugee sentiment (Heisbourg, 2015). Both gave further incentive to academics to keep their distance with such ideas. The fact is that national security frameworks are ill-suited to the refugee situation in Europe in the 2010s, and security rhetoric is used to justify xenophobic policies and fear-mongering by a broad range of political figures. Yet this should not make the approach taboo in all contexts. In particular, one should not assume that the security discourse that took hold around refugee issues in Southeast Asia is misguided or the result of populist pressure only on the grounds that it is the case in Western Europe and North America.

There is in fact a strong argument to be made that national security concerns around refugees can be made in good faith and correspond to a significant threat. Here one needs to qualify the nature of refugee movement in Southeast Asia during the Indochina Refugee Crisis. Robinson (1998) which makes clear that framing population displacements in the region from the 1960s onward as a national security issue was not just fear-mongering. First, refugees came in large waves in a relatively short time, creating significant destabilizing forces. Refugee camps, especially those located in Thailand, were strategic

positions for opposing armed forces. Active fighters could be found among refugees (Robinson, 2000, Van Der Kroef, 1983), and their presence and actions had the potential to escalate tensions between hostile neighbors. Lavoie and Knock (1990) offer a similar account of the unraveling of the Indochina Refugee Crisis, stressing that the mass influxes of refugees in Thailand destabilized poor rural areas. Evidence suggests that it was appropriate for states in Southeast Asia to consider refugees and refugee camps as a security issue throughout the Indochina Refugee Crisis.<sup>11</sup> The crisis concluded in the 1990s, but the security framework remained. In part, it can be explained by path dependency and administrative inertia. However, it is also important to note that the end of the crisis did not mark the end of security threats in the region. The conflict around Thailand southern border flared up in the early 2000s (McCargo, 2015, Askew and Helbardt, 2012), and has an international dimension that is often overlooked by analysts as pointed out by Camroux and Pathan (2008). The security situation in Burma/Myanmar remained unstable, with violence erupting across the Rakhine state in 2017 and leading to mass displacement despite the hopes created with the reform of the regime in the late 2000s (Holliday, 2012, Egreteau and Robinne, 2015). The border dispute between Thailand and Cambodia flared up again in 2011. The continuous existence of security threats in the region can help explain that Southeast Asian states would be sensitive to the security implications of any given issue, even if refugees have not been at the center of security questions since the 1990s.

The history of the Indochina Refugee Crisis and the lessons it taught the states of Southeast Asia gives ground to argue that Joppke's main assumption on the determinants of refugee policy would hold in the region. As in Western countries, the default approach to asylum management in Southeast Asia is restrictionist, because of more or less well-founded fears regarding the impact of refugee flows. In a significant departure from Joppke's however, there is no indication that the approach to migration management taken by states in the region is based on the opinion of a majority of citizens. Yet the result with regard to policy is the same, and therefore differences in policy could be explained

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<sup>11</sup> Saying this however should in no way be seen as a justification of the brutal policies implemented throughout the period to prevent refugee flows; the particularly egregious *refoulement* episode by the Thai army against Cambodian refugees Preah Vihear which left hundreds, perhaps thousands, dead (Robinson, 1998, p.45-50). Not ignoring the security risk posed by refugees, which is not an issue completely separate from ensuring the physical security of the refugees themselves, is not equivalent to treating them worse than enemy combatants.

by the extent to which states in Southeast Asia have limited their capacity to create and enforce restrictionist asylum policies.

Davies's argument is that Southeast Asian states have not accepted to restrict their repressive capabilities with regard to migrants, because they were able to put themselves in a position to resist foreign interference. The Indochina Refugee Crisis was for states in Southeast Asia a defining moment with regard to refugee policy; it was the first time that the newly independent states of the region were faced with mass displacement in the modern era. The way the asylum systems in Southeast Asian countries were influenced by the Indochina Refugee Crisis parallels the way European refugee institutions are grounded in that region's experience during and immediately after the Second World War. The respective nature of the two crises taught states in both regions different lessons. European states built institutions aiming to protect refugees to guard against another Holocaust, a project that was made politically palatable not only by the recent memories of the Second World War but also by the context of the Cold War. At the time, taking in refugees from the Eastern bloc was a way to score political points and prove the superiority of the capitalist system. States in Southeast Asia learnt during their formative refugee crisis that refugee camps could be used as advanced bases for guerilla fighters; that refugees come not trickling in, but in waves large enough to have a significant impact on local populations; that refugees could be let in only temporarily and taken in by wealthier nations without any negative repercussion for their country of first asylum. In other words, they learnt that refugees needed to be first and foremost approached as a risk and could be made ultimately someone else's problem. As a result, states in Southeast Asia, including Thailand, did not limit their agency with regard to refugee management the same way European countries did.

As the refugee issue in both regions changed over decades, the institutions at the disposal of the different states did not. Both in Southeast Asia and in Europe, states are managing refugees with tools and institution designed for a different era. In the past decade, refugee issues in both regions have somewhat converged. The collapse of Libya and the Syrian civil war brought mass displacement back to Europe by opening holes in its offshore migration management apparatus (Betts and Collier, 2017). Asylum seekers from across the world reached the urban centers of Thailand, Malaysia and Indonesia. The differences observed in the methods used by different states to address similar refugee issues should be understood not as the outcome of a peculiar tendency of states in either region to ignore or respect moral and ethical imperatives, but as states reacting to refugees with the tools at their disposal. In other words, states in Southeast Asia address

the refugee question the way Western countries wish they could. The underlying logic are not dissimilar, it is the means of enforcement that are.

### ***Old and New Refugees in Thailand***

Thai refugee policy, unlike that of other states in Southeast Asia, is fairly well researched, at least when it comes to refugee camps. They are a well-studied topic (Oh and Van Der Stouwe, 2008, Horstmann, 2014, Brees, 2008, Moore, 2013) and, the country facing a protracted refugee situation, have been studied for a long time, with a lot of work done in particular during the 1980s (Helton, 1989, Pongsapitch and Chongwatana, 1988) and 1990s (Cha and Small, 1994, Allden et al., 1996, Vickery, 1990). A lot of the research done in the camps is focused on the health of the refugees and clearly oriented towards policy recommendation for camp administrators (Hurwitz et al., 1981a, Biran et al., 2012, Mitchell et al., 2012, Ezard et al., 2012). The origin of the camps and their replacement in a broader regional historical context was also studied in Robinson's *Terms of Refuge* (1998), and the specific history of the latest group of refugees to reach the country from Burma was studied in length by Lang (2002) and more recently Brees (2010). The functioning of asylum in the camps and the consequences of living under the authority of an unaccountable bureaucratic system, including the Thai authorities, UNHCR and a constellation of NGOs, has been described in length by Saltsman (2014).

However, the situation in the camps and the literature that has developed around it is of little relevance to the study of refugees living outside the camps in Thailand, besides providing general context on the Thai state's approach to refugee. The policy of the Thai state regarding camp refugees, the institution built to manage them, the mode of interaction between the refugees, the state, UNHCR and the Civil Society Organizations (CSOs) in and around the camps are all completely independent of the way urban refugees are managed. The refugee populations themselves do not overlap. Only some Burmese ethnic groups are allowed to live in the camps, and only non-Burmese can seek asylum with UNHCR's Thailand Office in Bangkok. Two authors tackled both camp and urban refugee in the same work: Lang (2002) and Moretti (2018). Lang's book *Fear and sanctuary: Burmese refugees in Thailand*, written a couple of years before UNHCR started refusing to register Burmese outside of the border camps, includes a short chapter on Burmese urban refugees. The chapter describes the protection challenges they face, and though Burmese urban refugees have disappeared as a category since 2004, the description provided by Lang is still relevant in 2019, and in particular her account of the condition in the Immigration Detention Center, which have changed little since the



writing of her book. Moretti's article discusses the situation of refugees in Southeast Asia and though the core of its argument is based on the treatment of camp refugees, he does make references to the situation of urban refugees. However, his work uses no first-hand data on the situation of urban refugees, leading him to problematic generalizations, for example that urban refugees despite their legal status are treated with more leniency than other undocumented migrants – a claim that seem to be based on reports that policemen or immigration officers sometimes turn a blind eyes to refugees, but ignores the fact that only a small fraction of the more than a million undocumented migrants living in Thailand are ever detained, while this affects a significant portion of urban refugees. Moretti's overall argument, that if states in Southeast Asia claim not to be bound by international law to come to the help of refugees in practice they have reliably done so, in the case of Thailand at least, is strongest when limited to the question of camp refugees.

There is significantly less academic literature on urban refugees than on camp refugees in Thailand. In fact, one finds a total of four academic articles, to which one can add two shorter articles published in the *Forced Migration Review*. One PhD thesis has also been written on the topic by M. Tauson, though it is embargoed until 2020 (Tauson, 2017). There is little existing literature on this specific issue, and what does exist leaves major questions unanswered; it does not add up to paint a complete picture of the challenge of refugee management in Thailand, nor have these authors tried to replace what they found in the country into the broader context of the evolution of refugee issues.

Two of the academic articles treating of urban refugees in Thailand (Hedman, 2008, Shum, 2014), or half of the entire academic literature on the topic, are comparative work looking at both the Thai case and another country in Asia. Hedman (2008), in an article titled "Refuge, Governmentality and Citizenship: Capturing 'Illegal Migrants' in Malaysia and Thailand", discusses the way deportation of foreigners is handled in Thailand and Malaysia. The article focuses mostly on Malaysia, and uses Thailand as a control case, to highlight the specificities of the way deportation in the former. Though Thailand does not occupy much space in the overall argument, the comparison to the Malaysian case is helpful to understand how the problem of urban refugee relates to that of informal migration in both countries. The situation of refugees is somewhat more ambivalent in Malaysia, where the urban refugee population is significantly higher than in Thailand and less distinct from informal migrants. While in Thailand the groups are somewhat separate, because the people who represent the majority of migrants, Myanmar nationals, can only register as asylum seekers in the border camps, in Malaysia the groups are less clearly separated, and there is clear overlap between the policy applied to refugees and that

applied to migrants more generally. Hedman describes how the immigration policies in Malaysia and Thailand are designed to exclude migrants, and how the threat of deportation is one of the tools of the state to ensure that migrants can be kept in check, and how refugees end up as collateral damage of a broader set of policies designed not to affect refugees specifically but low-skill informal migrants from within Southeast Asia. This point is even clearer in the article when looking at the statistics of deportation in both countries. Hundreds of thousands of migrants are arrested for breaching immigration law every year in Malaysia and Thailand – Hedman quotes statistics of 300,000-400,000 in Malaysia and objectives of 300,000 in Thailand in the early 2000s. These numbers, especially for Thailand, show that the scale of the urban refugee issue, less than 1,500 people in Thailand at the time, is much smaller than that of undocumented migration, to the point of making them qualitatively different.

Hedman also shows that the current approach to immigration in both countries, which is openly treating migrants as means to an end, has a long history. That history is rooted in the management of the Indochina Refugee Crisis, supporting the argument made by Davies. One final point brought through in the article is that in the early 2000s at least, and arguably to this day, immigration policy is not a pivotal political issue in Thailand, especially in comparison to Malaysia where citizen volunteer groups actively participate in the arrest and deportation of migrants with state support and much media coverage; a development without any equivalent in Thailand. The point is important because much of the understanding of the approach of the Thai state to refugee issues used by professionals in Thailand is grounded in the assumption that the state cares deeply about the issue. Hedman's work shows that looking at Thailand's neighbor suggests that this assumption is not supported by facts.

Hedman does not dwell on the situation in Thailand, and its analysis of it is a bit simplistic, because the author is more concerned with establishing a control case for Malaysia than to write an in depth analysis of the Thai system. As a result, the argument misses the complexities of the Thai system to an extent and the ways in which it can be seen as another special case rather than a representative of a "default" and used as control. By insisting on the absence of citizen's anti-migrant militias in Thailand as evidence of the normalcy of its immigration management the author brushes aside some of the ways in which Thailand is an outlier, such as its blanket refusal of integrating ethnic minorities, leaving nearly 200,000 people living within the Thai border stateless (UNHCR, 2019a). This is not to say that the difference stressed in the article – the presence of a populist drive paired with Malay immigration policy made into a mass media spectacle – is

irrelevant, but that too little attention is devoted to the Thai system for the article to fulfill its comparative intent.

The second comparative article, authored by Shum (2014) is titled “Refugees’ Transnational Mobility: A Study of Asylum Seeking in Hong Kong and Urban Thailand” and takes a mobility lens to analyze the journey of asylum seekers from their country of origin to Thailand. The article is based on a series of long form interviews with urban refugees, and looks at the processes of “becoming a refugee” as they are experienced by individuals along their journey. The article is only interested in refugee management as a backdrop onto which individual journeys take place and personal experiences are formed. Hence, though its object of study is the same as that of my research, the questions it attempts to answer are far removed, as they are focused on each individual migrant, and on their experience prior to their arrival in Thailand or Hong Kong.

The data used by the author does however shed light on a number of key dimensions of the emerging role of Bangkok and Hong Kong as cities of first asylum and the type of journey asylum seekers have to take to reach these countries. In particular, Shum stresses that key determinants in the choice of destination for people deciding to leave their countries of origin is the price of flights and the availability of visas, both explaining the attractiveness of cities like Hong Kong and Bangkok despite their lack of an established communities for asylum seekers to join, and even goes further by arguing that candidates for departure purposefully chose to seek visas from countries with poor human rights records:

Kitty then applied for a tourist visa to China. According to Kitty, her elder brother’s failed attempt to obtain a tourist visa from the German embassy prompted her to apply for a visa from a country that does not recognize human rights. China was her first choice after reading about human rights issues there. (Shum, 2014, p.69)

In his chronicling of the reality of asylum seeking in emerging cities of Asia, Shum does miss an opportunity to explain the cause for the apparition of a new urban refugee issue in these cities. His article gives a relatively important amount of space to the stories of two asylum seekers who were told they would be taken to Europe only to be abandoned in respectively Bangkok and Hong Kong by their unscrupulous “smugglers”,<sup>12</sup> but a

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<sup>12</sup> Shum’s term. The use of loaded terms for the facilitators of migration in his article is not limited to individuals using deceit and abandoning their clients in parts of the world far away from everything they

handful of isolated incidents cannot explain how African and Middle Eastern asylum seekers end up in both cities in the thousands. He identifies push factors in the countries of origin of asylum seekers, and finds that both Hong Kong and Thailand put little barrier between themselves and asylum seekers, but the “pull” factor of these cities remains unclear at the reading of the article. He also does not discuss the various factors that make Thailand and Hong Kong less than perfect destinations for asylum seekers, and the one that he does stress, the lack of resettlement opportunities from Hong Kong, does not apply to Bangkok and in fact the resettlement policies in place in Bangkok are a clear pull factor, as will be discussed in Part II.

Finally, using the idea of an “extended zone of crossing”, developed by Chu (2010), Shum details how the crossing of an international border, seen as the defining moment of migration, extends way past the physical space of the border both in time and space, starting at an embassy with a visa application process and extending during the settling period in the country of arrival. Throughout this process, Shum explains how asylum seekers have to fashion themselves as tourists or other types of legitimate travelers to go undetected; this process of disguise is useful beyond the border crossing, and a lot of the strategies mobilized during the actual event of crossing the border are still employed by refugees throughout their stay in Bangkok to avoid detection by agents of the state.

The two comparative works do not amount to a thick description of the Thai refugee policy. In large part, they are limited by having little existing literature to build upon. Shum chooses then to spend most of his article establishing basic facts on the urban refugee issue in Hong Kong and Bangkok, but for that reason is left with little space to develop his own argument. Meanwhile, Hedman uses Thailand only as a point of comparison for Malaysia and misses key specificities of the refugee issue in the country.

The two other academic articles discussing urban refugees in the city also leave unaddressed key questions, though for entirely different reasons. Palmgren (2013)’s article, titled “Irregular Networks: Bangkok Refugees in the City and Region” is an analysis of the coping strategies of urban refugees in Bangkok, with a focus on the assemblage of livelihoods and the networks on which refugees are forced to rely. Though the overall

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know, but to an array of people ranging from travel agency to straight up con men. I would argue the term is poorly chosen, but the usage of “smuggler” to anyone involved in facilitating informal migration is aligned with the Protocol against the Smuggling of Migrants by Land, Sea and Air (part of the Palermo Protocols) and has become increasingly common.

argument is framed as quite theoretical, the article relies on extensive data, and constitutes the best general overview of the condition of urban refugees in Thailand published to date. Palmgren focuses his argument on groups of refugees from bordering countries: Vietnamese, Khmer Krom<sup>13</sup> and Rohingya. The article tackles a breadth of issues with the way urban refugees are managed, and does so squarely from the point of view of the refugees themselves – describing their living conditions and focusing on the way they use their agency to cope. This “grassroots” research design allows the author to identify the way the criminalization-based approach to refugee management impacts lives, and captures the complexity of that impact and in particular that it does not entirely take away their agency. However, because it does not look at the institutional setup that has allowed for the current situation to emerge and perdure, it does not address the question of how to enable refugee protection per se, though the article makes clear why some level of protection is necessary. Another key insight from Palmgreen’s is the key role of pre-existing networks in the capacity of refugees to assemble a livelihood; and how refugees can benefit from the presence in Bangkok of well-settled compatriots, some of which not refugees, that can give them access to work and housing. What the focus on refugees from neighboring countries masks, however, is that most urban refugees in Bangkok cannot rely on such networks. The group studied by Palmgren is not representative of urban refugees more broadly. The Rohingyas come from a country with a long history of migration to Thailand, and have therefore access to networks that are not available to most urban refugees, who come from regions of the world without a comparably long history of migration.

Collewet (2012) wrote a short article published in the *Oxford Monitor of Forced Migration*. It asks whether the detention in immigration detention in Bangkok would be considered as cruel, inhumane or degrading and hence in violation of Thailand’s obligation under international law. The data used is based on interviews with 25 Pakistani families recently released from Bangkok’s Immigration Detention Center, a place that plays a central role in Thailand’s refugee management policy. The author concludes that the conditions in immigration detention do indeed fall under what would be considered inhumane condition under the European Convention on Human Rights. The data collected by the author stresses the most glaring issues with immigration detention in Bangkok, but

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<sup>13</sup> The Khmer Krom are a minority ethnic group in Vietnam.

whether there is a point in establishing that an administration violates laws that do not apply to it can be debated.

Two more academic articles address the issue of urban refugees in Bangkok. Both are shorter works published in the *Forced Migration Review* (FMR), seven years apart. The first was written by Vera den Otter (2007), an officer for the Jesuit Refugee Service (JRS) posted in Bangkok at the time. The article is very short and provides an overview of the situation of urban refugees in Thailand, stressing that they face challenges separate from those faced by refugees in camp, presents the legal counseling programs implemented by JRS and reports on a number of unfolding developments, in particular the suspension of all new registration for urban refugees by UNHCR – which lasted a few months. The article was one of the earliest published documents addressing the question of urban refugees in Bangkok, and is valuable as a point of reference, despite its length. The second article published in FMR (Larribeau and Broadhead, 2014) was co-authored by two officers of Bangkok-based CSOs, and addresses a specific issue: the strain put on religious institutions by the increase in the number of urban refugees in Bangkok after 2012, and the creation of a new forum for CSOs and UNHCR to coordinate, called BASRAN. The article is focused on operational matters, and stresses the fact that the system managing urban refugees in Bangkok was incapable of handling increases in the number of arrivals, and that the responsibility of keeping urban refugees alive spread far outside the organizations and institutions that had been playing that role until 2012.

Part of the challenge with the existing literature on urban refugees in Thailand is that its sole focus on refugees and migration issues leaves little room to place these questions into the broader context of domestic government. A specificity of refugee issues in Southeast Asia in general and Thailand in particular is that it has been managed by states as a domestic issue, on its face at least independent from the international refugee management regime. Analysis of refugee issues in Thailand that do not account for the way it is rooted in local affairs, whether it is the influence of the deep state in Thai political life to counter electoral politics (Mérieau, 2016), the role played by ethnicity and religion in national identity (Camroux and Pathan, 2008, Harish, 2006, Walker, 2001, Larsson, 2018), or the nature of Bangkok's urbanism (Sopranzetti, 2014), run the risk of focusing exclusively on commonalities with other contexts and leave unobserved what makes it unique.

## ***Conclusion to the Literature Review***

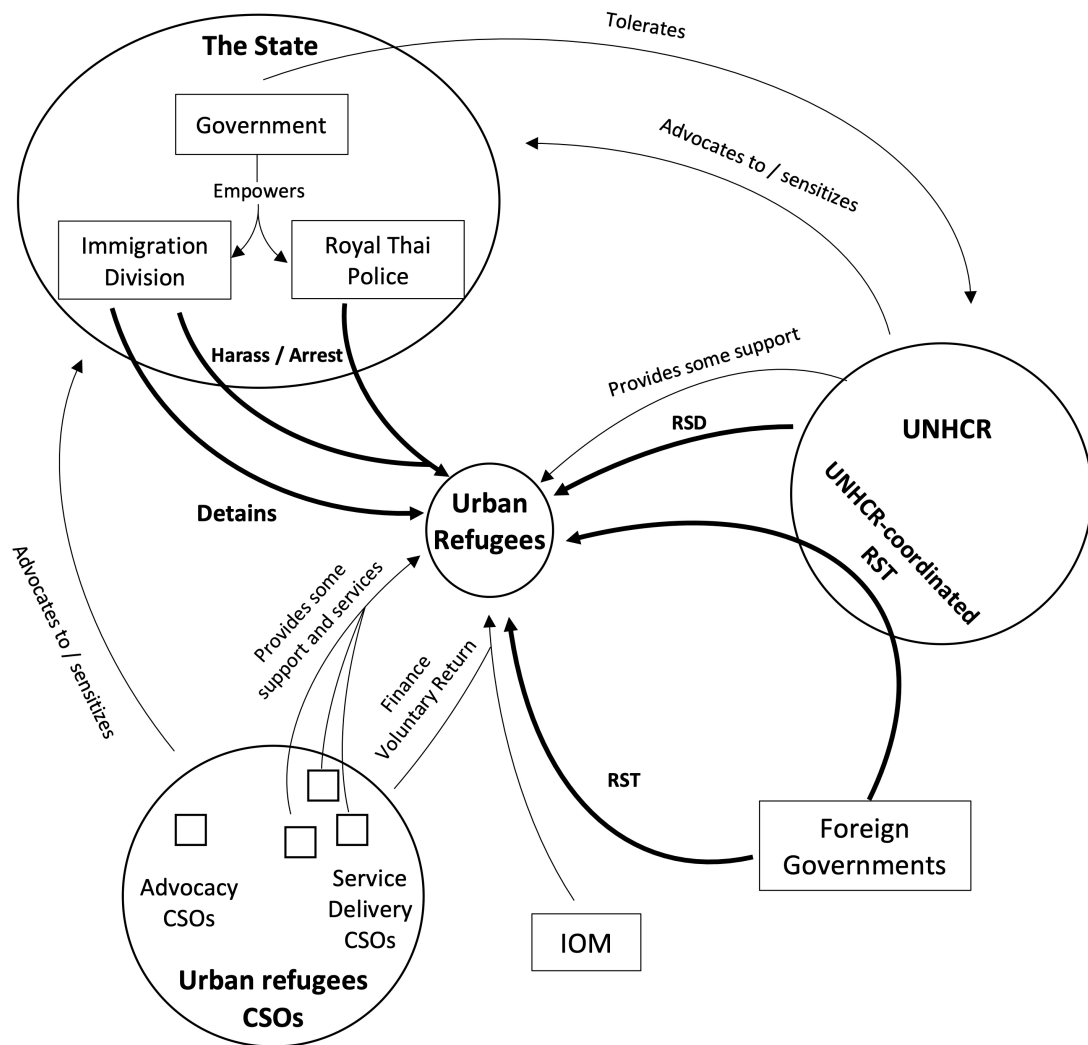
As countries in Southeast Asia become richer, and as the refugee issue they face increasingly comes to resemble that of Western countries, it is important to establish whether the approach taken by Western countries and middle income countries to refugee management also converges or whether their treatment of refugees is on a different path altogether. In other words, should one expect countries like Thailand to be able to play the same role on the global stage as countries like France or Germany? However, existing literature on the question, though providing an adequate model to understand the history of the dominant approach to refugee management in Southeast Asia, has largely ignored the systems created around urban refugee movements in countries like Thailand. Urban refugees in Bangkok have not been the subjects of much academic attention, and often used as a point of comparison or as an opportunity to talk about refugees' journeys in a different setting rather than understood as a distinct group of migrants managed by distinct systems and facing distinct issues.

The question of the protection of urban refugees in Thailand falls at the intersection of several academic blindspots, on the study of refugee issues beyond Western liberal democracies, of urban refugees, of the Thai State. Existing knowledge however does give the researcher tools to address the central questions that arise around the issue. The few works that have been published on the origin and nature of asylum policy in Southeast Asia can be combined with broader models developed in the West to make sense of the current context of refugee protection in Thailand. Seventy years of reflection on the nature of refugees and their specific characteristics are a solid basis to clearly identify urban refugee as a coherent group and relevant object of study. The plethora of research on the effect and rationale behind asylum policies in the West creates a basis for comparison, and the few articles that have been published specifically on urban refugees in Bangkok give some historical perspective on the issue.

## ***Outline of the Argument***

The structure of the thesis is informed by a key feature and challenge of the Thai refugee management system: it is constituted not of a single administration, nor a group, but a complex layering of practices of state and non-state actors, each playing their roles with some independence from one another (see Illustration 1). There is nothing approaching a central authority in Thailand with regard to the management of urban

refugees; there is little that is official policy at all. The simplest way to structure thinking on the system appears to be by sequentially discussing the role and implications of its different components. For clarity, these components are organized around three key actors, and the work divided in three parts, each discussing the elements of the refugee management system most relevant to each of the key actors: the Thai state, UNHCR, and Civil Society Organizations.



**Illustration 1 Thailand's Multi-Headed Urban Refugee Management System**

Part I centers on the Thai state and the various ways in which its laws and institutions shape the lives of urban refugees, despite its refusal to acknowledge them as a group separate from that of other migrants. It demonstrates that though complex, the approach to urban refugees taken by the Thai state can be easily qualified. It is hostile. Where laws exist, they are interpreted against the interest of refugees and asylum seekers. Where laws do not exist, their absence is interpreted against their interest as well. The approach



taken by Thailand is coherent with Joppke's understanding of the determinants of migration policy: in short, that states will treat migrant as poorly as they can. Thailand, having placed few restrictions on what it can do to urban refugees, approaches them in a way that shows little concern for their interest or basic dignity and does not attempt to pay lip service to any definition of refugee protection. Part I is divided in four chapters.

Chapter 1 provides an overview of the context of the urban refugee issue in Thailand, looking both at the history of asylum in the country and its management by the state, and at the nature of the emerging urban refugee issue. It goes back to the Indochina Refugee Crisis to explain who have been the people seeking asylum in Thailand since the 1970s, and how the Thai state managed these groups through *ad hoc* measures rather than the creation of a permanent administration tasked with refugee management. Using UNHCR data, it is then demonstrated that in parallel with the groups of refugees that have ventured in Thailand since the 1970s, new groups coming from further away have started to seek asylum in the country in the early 2000s. UNHCR statistics are used to describe the composition of these emerging groups of refugees, and the chapter concludes with a short discussion of the reasons why people from non-neighboring countries would seek asylum in Thailand.

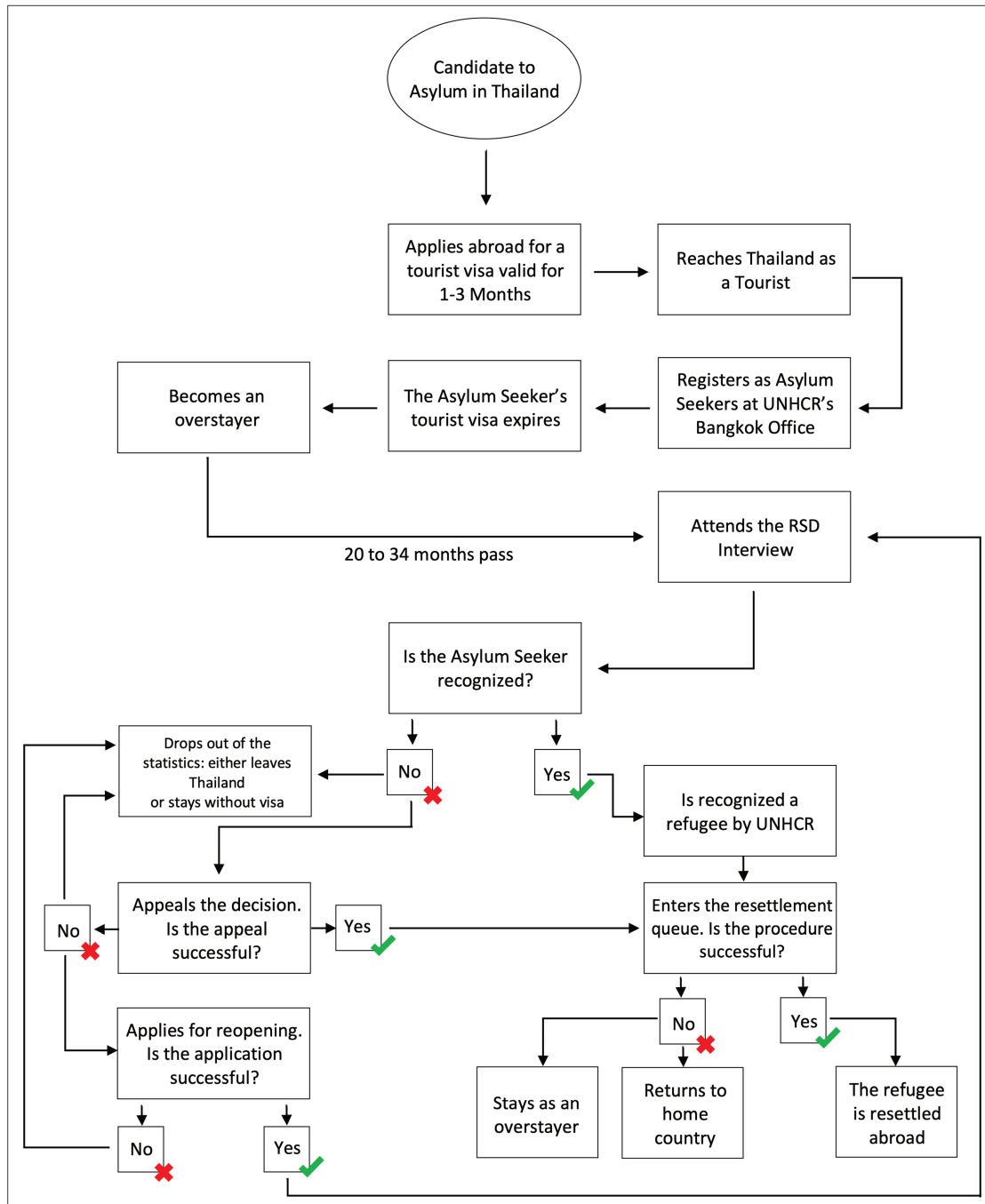
Chapter 2 establishes the Thai state as a central actor in the lives of urban refugees, and details how Thai immigration law does not recognize refugees as a valid legal category, and yet has a very different impact on their lives than on that of other migrants. It shows how immigration law, though not explicitly saying so, leads to the wholesale criminalization of the urban refugee population, and how this criminalization empowers individual immigration officers and police agents, the lowest rings of administrative enforcers, to follow their prejudices and persecute urban refugees. The chapter then discusses one unintended consequence of the lack of refugee law in Thailand: the regular stumbling of refugees into legal pits, situations where normal legal and administrative procedures break down, and where urban refugees can get stuck with little hope of getting out.

Chapter 3 describes the ways in which criminalization shapes the lives of urban refugees and intersects with their specific characteristics, including race and gender, to limit, though not extinguish, their capacity to have active and fulfilling lives in Bangkok. It explains how criminalization has different effects on the economic opportunities and mobility of different groups of urban refugees, distinguishing in particular between refugees coming from countries with a long history of migration to Thailand and those

coming from countries without. As the chapter shows, the challenges faced by urban refugees are so that most lead bare lives, locked up in small, insalubrious apartments, at the mercy of landlords and neighbors. To complete this picture, the chapter details how, despite the challenges that the city poses, urban refugees attempt to reclaim some agency and go beyond mere survival. It describes various strategies employed by urban refugees, from the creation of communal spaces out of networks of tiny rooms in apartment buildings, to the use of prejudice to their own advantage by adopting the outer appearance of more privileged groups of foreigners to safely move in the city.

Chapter 4 argues that the central element of the approach of the Thai state to the urban refugee issue is one of the legal pits opened by its refusal to create institutions tailored to the specific nature of the refugee issue in the country: immigration detention. The lack of legal safeguards permits the indefinite detention of refugees of all ages and medical conditions, in facilities not suited for any form of long-term stay. The chapter details the conditions in detention and the processes that allowed for their emergence, out of neglect rather than intentional design. It also argues that the existence of immigration detention is a requisite for the Thai state's approach to urban refugees to function, as it is credible enough a threat to keep refugees and their advocates scared. The chapter also describes how an alternative to detention started to emerge when the urban refugee issue grew quantitatively, but was eventually shut down, cementing the repressive approach of the Thai state and lifting the ambiguity on whether the situation of urban refugees in Thailand could be considered a mere oversight.

Part II, The Refugee Bureaucracy, is centered on the Thailand office of UNHCR, the unique nature of the organization in the country and the programs it runs for urban refugees. It finds that some of the choices made by the organization, in terms of reaction to sudden influxes and resource allocation among programs, are not consistent with UNHCR's broader mandate and directly worsen the situation of those the organization is mandated to help. It concludes that in the light of the conundrum in which the organization finds itself in Thailand, it should terminate its Refugee Status Determination (RSD) program for urban refugees, or commit the resources necessary to provide meaningful protection. Part II is divided in two chapters.



**Illustration 2 The Long Journey of urban refugees through Thailand**

Chapter 5 describes the scope of UNHCR's operations in Thailand, pointing out its sole focus on asylum claim assessment and refugee resettlement at the expense of refugee protection. The result of this situation is that at the end of a long process, 2 to 5 years (see Illustration 2), during which asylum seekers have to survive in a hostile environment without support from UNHCR, refugees whose applications are successful have a significant chance to be resettled in a Western country, thanks to the high rate of resettlement from Thailand. In other words, Thailand ends up as a high-risk, high-reward

option for asylum seekers. The other main argument of the chapter is that despite the limited scope of the programs run by UNHCR for urban refugees in Thailand, the organization plays a central role in their lives and future prospects by virtue of being the sole administration to accept to govern them. In that sense, the role of the organization with regard to urban refugees is more akin to that of a state than that of a charity. UNHCR is what stands between urban refugees and total lawlessness akin to what Arendt described in prewar Europe. Hence the chapter concludes by suggesting that UNHCR's key contribution to the protection of urban refugees in Thailand is the provision of a refugee bureaucracy. The provision of a dedicated bureaucracy is a role usually played by states, but the refusal of the Thai state to do would leave refugees in a state of complete lawlessness if it was not for the presence of UNHCR.

Chapter 6 analyzes the way UNHCR Thailand responded to a recent turning point in the urban refugee issue in the country, the surge in asylum application from Pakistani nationals between 2012 and 2015. It presents data on UNHCR's approach to the management of the surge, and shows that its outcome could not be distinguished from that of a deterrence strategy, the effects of which were most felt among Pakistani Christians, who represented the largest share of the new influx. This particular group were hit hardest because of the specifics of the criteria used by the RSD process, which benefited groups discriminated explicitly through national laws, such as the Ahmadis in Pakistan, but it provided more room to deny applications by groups persecuted through non legal means, which Pakistani Christians claim to be. UNHCR policy towards Pakistanis fed into a broader pattern in Thailand where harsh conditions and long procedures frequently result in the forced return, or *refoulement*,<sup>14</sup> of asylum seekers. The contribution of UNHCR to the protection of urban refugees in Thailand therefore appears to be limited; though the organization does eventually provide a large share of applicants with durable solutions, it does so only after leaving them vulnerable for several years. Moreover, changes in the number of resettlement slots made available to refugees from Thailand have made the model implemented in the country unsustainable.

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<sup>14</sup> *Refoulement* refers to the forceful return of asylum seekers or refugees to their country of origin, typically by agents of the state. The principle of *non-refoulement* is usually considered to be a customary rule binding all states, whether they are signatory to the Refugee Convention or not, though in practice no institutional body has the tools to oversee the enforcement of that rule.

Part III looks at the last component of the urban refugee management system in Bangkok, the ecosystem of CSOs that has developed to attempt to fill the gaps left by the state and UNHCR. These CSOs, ostensibly, advocate for the reforms of the Thai urban refugee management system. The chapter shows how the best intentions of foreigners – comprising the majority of CSO management – have done little, if anything, to challenge the system in place. All major CSOs in Bangkok have been cornered into narrowly focusing on service delivery and collaborative advocacy. They have created the sole safety nets existing in Bangkok for urban refugees, which make the difference for their beneficiaries between bad and worse situations at least, and life and death at most. Yet, by failing to diversify their advocacy strategy and keeping the urban refugee issue under wrap, they unwillingly serve the interests of the Thai state. Beyond the case of the specific issue of urban refugees in Thailand, the objective failure of CSOs in the country working with urban refugees to be successful advocates challenges the notion that young Westerners can ever be best suited to be norm entrepreneurs in faraway countries. Part III is divided in two chapters.

Chapter 7 describes the CSO ecosystem in Bangkok and establishes that despite the diversity of organizations and activists present in the city and working with urban refugees, one finds uniformity with regard to the means of action. All major organizations and most of the smaller ones focus on service delivery and praise the merits of working with the government towards reform rather than trying to force its hand through transgressive advocacy. The chapter argues that such uniformity, found all the way from large international CSOs with offices in multiple countries down to small informal groups of activists, suggests an underlying cause capable of affecting such a broad range of entities.

Chapter 8 argues that the cause of the incapacity of CSOs to innovate with regard to their strategic approach to advocacy is caused by their staffing model, heavily reliant on foreigners, mostly young and Western. CSOs are faced with a high turnover rate, created by low salaries, limited career prospects and poor working conditions. As a result, staff are kept from spending enough time in Thailand to build the expertise and network necessary to be successful advocates; one particular consequence of this lack of expertise is the systematic overestimation of the threat presented by the Thai state, often portrayed among activists and CSO employees as a looming force, ready to retaliate against any attempt to oppose it, without any history or lived experience of such retaliation. The chapter argues that as long as CSOs working on urban refugee issues in Thailand do not

address their turnover problem, for example by building up a local workforce, they will fail to challenge the status quo.

The study of the way urban refugees have been handled in Thailand by the state, UNHCR and CSOs holds practical as well as theoretical lessons. It shows that the approach taken by the Thai state is coherent with models developed in very different contexts; that the situation, despite its uniqueness, is not beyond understanding. It also highlights the limits of the capacity of the international administrative apparatus to impose global norms to reluctant states, by demonstrating the various ways in which ambassadors of the international refugee system, in this case UNHCR or CSOs, end up having to adapt to local conditions to the point where they are hardly the ambassador of any significant change. Thailand, though it has become a *de facto* global haven for refugees, is far from safe, and there is little to suggest that it could be any other way in the near future.

***Part I – The State***

## ***Chapter 1 - From Regional to Global Haven***

The urban refugee issue in Thailand is unusual in part because of where the people who end up seeking asylum in Bangkok come from, which confronts one's expectations and understanding of the role of cities like Bangkok within international migration routes. Discussions of the way the world has become smaller usually focus on South to North patterns of migration, as do discussions of growing urban diversity; and yet the type of diversity within the asylum seeker population that is normally deemed limited to cities like Paris, New York or London can be found, to an extent, in Bangkok. The following section documents and details the composition of refugee fluxes to Thailand since the 1970s, and shows how the country has entered a phase of transition between being a regional haven for refugees to being a global haven. This transition was associated with the appearance of urban refugees in the country.

As discussed in length in the literature review, the Thai state does not give any legal meaning to the term "refugee". Thailand is not a signatory to the 1951 Refugee Convention nor its 1972 Additional Protocols. The country is one of many in Asia and the Middle East that despite a long history of harboring refugees have never subscribed to the main international tool to protect refugee rights. In fact, the legal situation of refugees in Thailand stands out even among these countries. Many of them, even if they have not ratified the Refugee Convention, have created legal tools to manage refugees, giving them some form of status. That is not the case in Thailand. The state has developed specific policies to address specific populations at specific times, for example refugees from Burmese minorities in the camps East of the country, but no general framework exists. There is no such thing as a "refugee" in Thai law. Hence, the discussion that follows does not hinge on a Thai definition of a refugee, but instead on the definition used by UNHCR, who runs operations in Thailand and has set up a process through which asylum claims are assessed and either accepted or denied. The full implications of the existence of this parallel administration managing refugees in Thailand will be discussed in Part II, but in the meantime any reference to refugees or asylum seekers in Thailand should be understood as "asylum seekers or refugees according to UNHCR".



## ***Successive Waves of Arrivals***

Thailand has hosted hundreds of thousands of refugees since the 1970s. Until the beginning of the 1990s, all came from the Greater Mekong Subregion (GMS),<sup>15</sup> and to this day they represent the large majority of refugees in the country. There are three overlapping moments in the history of the refugee issue in Thailand. The first is the Indochina refugee crisis that unfolded over two decades, starting in the mid 1970s. It was the genesis of the modern refugee issue for Thailand as well as most of East and South-East Asia. This moment shaped the mindset of decision-makers and population in the region, and therefore policy, with regard to the question of asylum. The second moment is the Burmese refugee crisis, which has shaped the majority of refugee fluxes into the country starting in the 1990s, and defines the makeup of most of the refugee population to this day. The third and last moment is the appearance and growth of an urban refugee population, also starting in the early 1990s and picking up in the 2010s.

A discussion of the two first moments in quantitative terms will help set the stage for the rest of my arguments and cover the key events in Thailand's modern refugee history; but first, a precision on sources. All the graphs and figures provided, unless specified otherwise, have been extracted from UNHCR's Population Statistics Database (UNHCR, 2019b), which is publicly available and updated every 6 months. The database contains data on UNHCR's people-of-concern (PoCs) worldwide, including refugees, asylum seekers, stateless people and internally displaced people; I disaggregated data for refugees and asylum seekers in Thailand and computed totals and subtotals, but the data was not otherwise modified. The data presented in this chapter is up to date as of June 2019.

### ***Thailand's Traditional Refugees***

The contemporary history of refugees in Thailand has its roots in the colonial history of Southeast Asia and mirrors the series of conflicts and unrest that unfolded in the former French and British colonies after the Second World War. The first mass influx of refugees into Thailand came from the East, from former French Indochina, and was part of a broader exodus dubbed the Indochina Refugee Crisis. The immediate causes of the crisis

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<sup>15</sup> The GMS encompasses the five countries through and along which the Mekong flows: Laos, Cambodia, Vietnam, Thailand and Myanmar.

were the repercussions of the American defeat in Vietnam. During the war, Thailand was largely spared by the destruction that befell its neighbors Cambodia, Laos and Vietnam, and did not face much communist agitation. As a result, the country was one of the main destinations for displaced people during and after the war. UNHCR reports statistics on the number of refugees in the country starting in 1975, after the American withdrawal from Vietnam. According to the agency, there were a bit over 75,000 refugees in Thailand in 1975: 55,000 from Laos, 18,000 from Cambodia and 1,400 from Vietnam. The number of refugees on Thai territory increased after the official cessation of hostilities as the result of two factors. On the one hand, the new regimes that came to power in these three countries solidified their control over their populations and put pressure on political opponents and ethnically 'undesirable' groups, many of which had sided with the Americans during the war. On the other hand, the absence of all-out war increased the mobility of these groups and made it easier for them to seek safety somewhere else. To better control the people fleeing to its territory, the Thai state opened a number of camps alongside its Eastern border, and attempted to confine the entrants there.

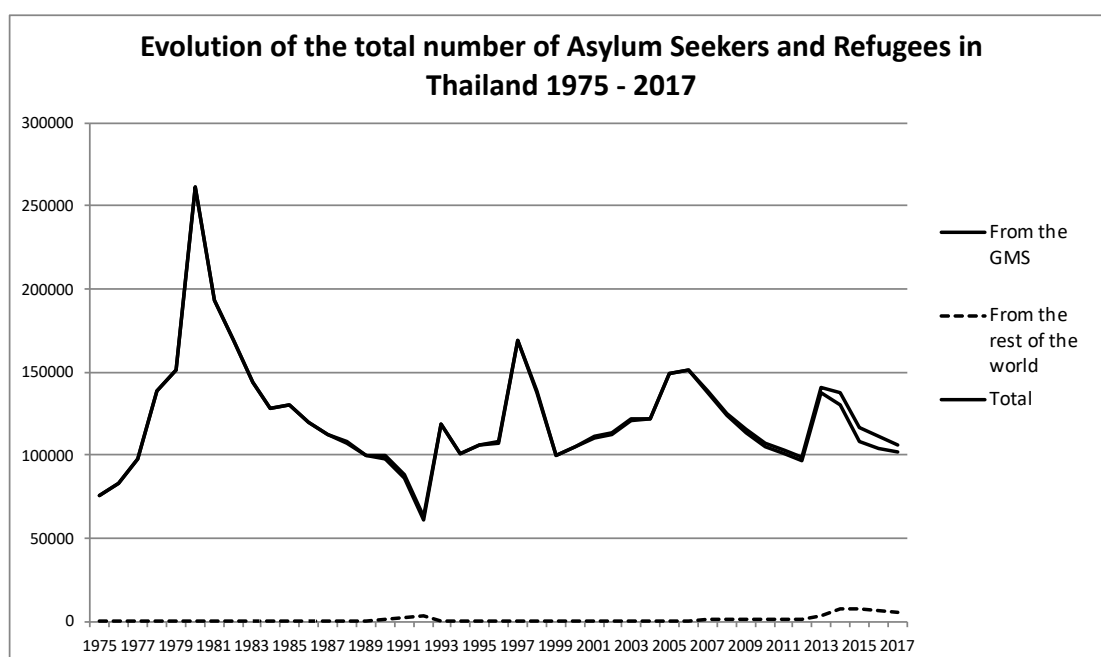
The Indochina Refugee Crisis lasted until the end of the 1990s.<sup>16</sup> The crisis, if a 25 year-long period can really be called a crisis, was marked by a large-scale effort from Western countries to resettle refugees. From 1975 to 1997, more than 1.9 millions people were resettled from the region to Western countries and Japan (Robinson, 1998, p.270), with China accepting another 320,000. Hence the refugee fluxes in Southeast Asia throughout the period were characterized by a relatively high turnover, with large refugee movements into the relative havens of Thailand, Malaysia, Hong Kong and Indonesia,<sup>17</sup> and movements nearly as large from these countries toward the West. The promptness of resettlement was a condition set by the host countries, which considered that the crisis had been caused by Western interference in the region and should therefore be solved by them; that condition was accepted by Western powers, which were careful not to upset their strategic allies in the region. In 1980 the number of refugees hosted by Thailand peaked. More than 260,000 people were then staying in and around the border camps. Though the numbers quickly declined afterward (see Table 2), it would

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<sup>16</sup> For more details regarding the Indochina Refugee Crisis, see Robinson (1998)

<sup>17</sup> Thailand, sharing a land border with both Laos and Cambodia, received a disproportionately large number of refugees. According to statistics gathered by Robinson (*Ibid*, p. 294), counting only refugees registered by UNHCR, Thailand received more than 750,000 people throughout the period, followed by Malaysia (255,000), Hong Kong (195,000) and Indonesia (121,000).

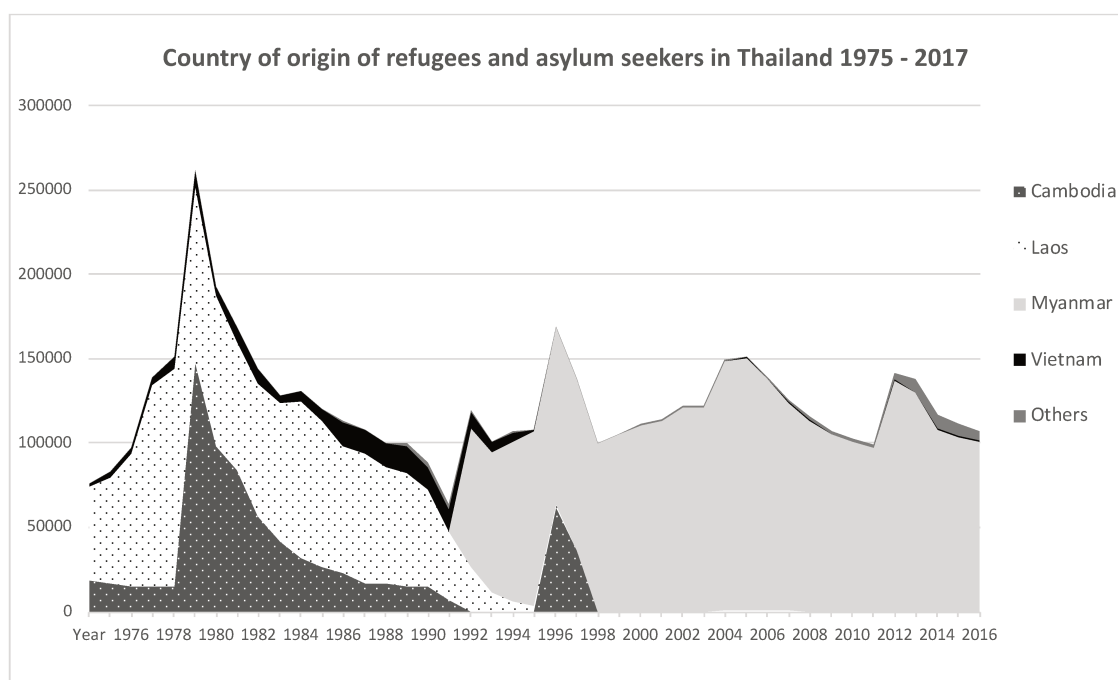
take until the beginning of the 1990s for numbers to reduce to zero, only for more than 60,000 Cambodian fleeing the sudden heightening of the civil war to repopulate border camps in Thailand after 1995. It is really only at the end of the 1990s that the Thai state was able to close the majority of the camps on the Eastern border, with a number of small camps remaining open for more than a decade after that – one of the last one was closed *manu militari* in 2009 (UNHCR, 2009).



**Table 2 Evolution of the Total Number of Asylum Seekers and Refugees in Thailand 1975-2017 (UNHCR Population Statistics Database)**

The closure of the camps along the Eastern border did not mark the end of the refugee issue for Thailand. At the beginning of the 1990s, as the number of refugees was steadily decreasing and the end of the crisis appeared in sight, an increasing number of refugees started arriving from Myanmar. Nearly all were from ethnic minorities, in particular Karen, Mon and Karenni. They were fleeing across the border, following the movement of the front lines of the civil war that had been raging in Myanmar since the end of the Second World War. The first Burmese refugees arrived in Thailand in the mid-1980s and established semi-permanent refugee camps (Lang, 2002, p.12). By the time UNHCR started integrating them in its statistics in 1993, more than 80,000 were in the country, most but not all of them in camps alongside the Western border. By 1996 the camps hosted more than 100,000 people, and have remained full since. UNHCR reported 97,000 refugees in the camps in June 2018 (UNHCR, 2019a) and the numbers have never dipped much below 100,000 in the last 20 years. At regular intervals since the camps' opening, both the Thai authorities and UNHCR expressed hopes that improving conditions in

Myanmar would soon allow for large-scale repatriation. Though conditions have cyclically improved, the repatriation has yet to take place. The recent democratization of the country has once again raised the hope that the camps might soon empty (UNHCR, 2016a), and the number of occupants has reduced since 2014, but the recent outbreak of violence in Rakhine state, which led to the displacement of hundreds of thousands of Rohingyas, casts a doubt on whether anyone should expect them to close anytime soon.



**Table 3 Country of origin of refugees and asylum seekers in Thailand 1975-2014 (UNHCR Population Statistics Database)**

### ***Policy in and around the Camps***

Refugee camps in Thailand and their inhabitants have been extensively studied. The Indochina Refugee Crisis, which led to the opening of refugee camps in Thailand, was a major world event. Academics realized the significance of the events at the time, not unlike the way the Syrian exodus has drawn academic interest in Europe since 2015. Researchers recorded the twists and turns of the situation as it unfolded. Robinson’s book *Terms of Refuge* (1998), the most definitive account of the crisis, finds itself in this legacy, though written from a historical perspective. In parallel to the work of historians and political scientists, a number of academics attempted to tackle the practical and technical issues that arose in and around the camps. This literature focused on the logistics of camp management in Southeast Asia, which appeared as soon as the camps opened, continues to represent an important share of refugee literature in Thailand, though its main focus shifted from health to education (Hurwitz et al., 1981b, Toole and Waldman, 1988, Ezard

et al., 2012, Biran et al., 2012, Oh and Van Der Stouwe, 2008, Helton, 1989, Vickery, 1982). The Thai camps seem not to have been fecund grounds for more critical work, as much of what is now written and said about the camps has changed little since the first ones opened in country in the late 1970s. The Thai camps, and the camps in the rest of Southeast Asia, have not assumed the same cultural significance that camps on the African continent did. The Thai camps are large, old and host vulnerable populations, but they are not the largest, not the oldest and do not host the most vulnerable populations. Critical and theoretical works on refugees have therefore not treated them as symbolic objects. As the countries of Southeast Asia became more prosperous after the 2000s, the regions' recent history faded from collective memory and discourse, taking the camps with it.

Though there is no legal recognition of the status of refugees in Thailand, the Thai state has been openly involved in the management of the refugee camps on its territory. Dedicated administrative bodies have been put in place to oversee the camps. However, to ensure that the state's involvement could not be confused with recognition of any form of international obligations towards refugees, a parallel nomenclature was developed. There are no refugees in Thailand, only คนพลัดถิ่น, “displaced persons”, ผู้อพยพ, “evacuees”, or ผู้อพยพผิดกฎหมาย, “illegal immigrants” (Muntarbhorn, 2004), and there are no “refugee camps” but พื้นที่พักพิงชั่วคราว, “temporary shelter”. Though there were many such shelters at the beginning of the 1990s, they were progressively consolidated into nine sites (Bowles, 1998). The government manages a form of administrative evaluation of refugee claims through Provincial Admission Boards (Muntarbhorn, 2004), and the Thai military forces ensure the policing of the camps. The camp residents have officially been granted temporary shelter by the Thai state, though the government has not done so through the creation of a special legal status, but through executive orders, administrative guidelines and court jurisprudence. Camp dwellers are therefore protected from *refoulement* and have access to a wide array of services, but do not have access to the entirety of the protection granted through the Refugee Convention.

The most thorough account of the Thai policy towards camp refugees can be found in Muntarbhorn (1992, 2004). The core of his argument is that despite the criticism that can be raised regarding Thai policy towards refugees, the country has played a key role as a regional haven throughout the second half of the 20<sup>th</sup> century. I argue that there is much to gain from a critical analysis of the history of refugee fluxes and their management in Thailand, and indeed the whole of my work aspires to be such a detailed critical account. However, Muntarbhorn's point holds: discussion of finer questions regarding Thailand's

treatment of refugees must be set against the backdrop of the millions who have been harbored in Thailand throughout the last 50 years in conditions that, though far from optimal, are not that of a country that entirely disregards basic responsibilities towards people in need of help. This reality is easy to forget, in large part because the rhetoric deployed by Thai officials has focused on making clear that the country has no obligation towards those whom it was placing in the camps. To a large extent, the state did not embrace Thailand's role as a regional haven for refugees; instead, the sheer number of people who slipped through its borders forced a reaction, and made it unrealistic not to be involved in their management. The fact is however that using repression was an available option to the state. It would have been a costly endeavor, could have failed or backfired, but was nevertheless a route that the state chose not to follow.<sup>18</sup> That the Thai state resigned to accept the responsibility that befell upon it must be recognized, if perhaps not celebrated. The articulation of initial resistance followed by reluctant acceptance is described, in the case of Laotian and Cambodian refugees, by Muntarhorn as follow:

With a few brief exceptions, Thai policy has been based upon a 'closed door' policy, as shown by a 1977 Cabinet decision which continues to guide action vis a vis refugees. Until the 1989 Comprehensive Plan of Action, policy was generally known as 'humane deterrence'. This was introduced in 1980 when the Thai border was closed to Cambodians, and then to Vietnamese and Laotian entrants. Humane deterrence was based upon the following principles:

1. The Thai border would be closed to new arrivals.
2. Those illegally entering Thailand would be kept under close detention in austere camps.
3. There would be no resettlement of new arrivals.
4. Treatment of those persons would be of a minimum standard not higher than strictly necessary for their subsistence.

As time passed, there was a modification of this policy. The 'no resettlement' stipulation was not adhered to strictly, and varied with the date of arrival...

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<sup>18</sup> Not that they were no attempts by the Thai military to forcefully prevent the entry of refugees. However tragic these incidents were, the fact is that they remained discreet incidents rather than official policy.

As for the Laotian asylum-seekers, in 1985 there was a significant development in that screening to determine their status was introduced to distinguish between bona fide cases (i.e. akin to refugees in the international sense), and mala fide cases.

(Muntarbhorn 2004, p.26)

There is no pretense in the rhetoric and policy deployed that Thailand welcomes refugees or even cares much about their plight, but the fact is that the drastic policies initially conceived were eventually amended in favor of refugees once it becomes clear that deterrence would not be enough.

One more precision needs to be made with regard to camp refugees. As of 2019, there are officially no Burmese refugees in Thailand outside the camps, and no non-Burmese refugees inside the camps. A large refugee population built up outside the camps since the 1970s, among which one found Burmese people. After the 1990s, the Burmese refugees were perceived and handled as a threat by the Thai government, following series of incidents in Bangkok, among which the storming by armed militant of the Burmese embassy 1999. Eventually in 2004, the government clashed with UNHCR over the question of the Burmese urban refugees. The agency was bullied into putting an end to the processing of asylum claims coming from Burmese people outside the camps.

At the same time the government worked to close down the remaining camps alongside the Laotian and Cambodian border. The last remaining camp to host non-Burmese refugees was forcefully closed by the Thai army in 2009 (UNHCR, 2009), leading to thousands of refugees, in that case Lao Hmong, being loaded into buses and driven to the border.

The result of this process was the creation of what amounts to two independent and exclusive refugee management systems in Thailand: a camp-based system for Burmese refugees and an urban system for non-Burmese refugees and asylum seekers. No Burmese can be a refugee outside the camps, and only Burmese can enter the camps. The Thai government is involved in the management of the camps in cooperation with NGOs and international organizations, including UNHCR. The same is not true for urban refugees. Not only does no legal text apply to them, but the government has not put in place administrative bodies to oversee them. They are dealt with by officers who follow the same guidelines and regulations as they do for other immigrants. No jurisprudence has allowed a *de facto* status for urban refugees to develop either.

The choice of the Thai state to address refugee influx with *ad hoc* measures and administration rather than legislative decisions has allowed it keep its hands free and deal with any group of refugees as it sees fit. The state did not limit its own agency in any way with regard to refugees. In practice, it has meant that once the number of refugees from a given country falls below a certain point, they can then be safely ignored and the state can pull back all support. Hence the Vietnamese, Laotians and Cambodians who fled their country in the 2000s were not offered temporary shelter in camps, and instead fall in the same legal limbo as Pakistanis, Sri Lankans, Afghans and Somalis. The protection and support, however limited, that is deployed towards refugees coming *en masse* to Thailand has had no impact on the situation of other refugees. Though the same label of refugee is applied to both groups, in Thailand they are by all means and purposes separate and independent.

Most discussions on refugees in Thailand have been focused on refugees coming from the Greater Mekong Subregion (GMS), first from Laos, Cambodia and Vietnam and then from Myanmar. They are legally barred from working, are given no pathways towards obtaining Thai nationality or even long-term residency, and are generally handled in an *ad hoc* manner. The forces that led them to seek refuge in Thailand are not mysterious. Neighboring countries were unsafe because of war or state repression, Thailand was not, and as is a common story for those living under difficult conditions, people crossed the border in search of safety. As Table 2 above makes clear, this story is that of the overwhelming majority of refugees in Thailand. However, a close look to the graph also reveals the existence of a growing number of refugees and asylum seekers coming from outside the GMS. They represent a small minority of the refugees present in the country, have appeared relatively recently, and are the focus of the thesis.

### ***Thailand's New Refugees***

While the refugee camps in Thailand are a legacy of the 20<sup>th</sup> century that has dragged itself into the 21<sup>st</sup> century largely unchanged, urban refugees are a distinctive 21<sup>st</sup> century problem. Their presence and the issues they pose do not have their roots in the proxy conflicts of the Cold War, nor the tensions inherent to the building of modern nation-states out of older polities, but of the emergence of cheap air travel, the post-industrial immigration policy of the West and the rise of middle income countries. Since urban refugees in Thailand are a recent phenomenon, as well as a quantitatively minor issue, they have received little attention from academics, especially in comparison to the country's camps.



As discussed in the literature review, the terminology around urban refugees can be somewhat confusing. The term “refugee” when used in every day conversations and in the media regroups two distinct groups of people: asylum seekers, who have requested the status of refugees, and refugees, whose request has been accepted. In other words, asylum seekers are people in the process of becoming refugees. UNHCR tends to always make very clear under which of these two categories an individual fall into. However, discussions of “urban refugees”, even within UNHCR documents, usually refer to both asylum seekers and refugees living outside of camps. Hence not to upset conventions, even when they are not the most coherent, in the thesis all numbers referring to urban refugees, unless specified otherwise, refer to both asylum seekers and refugees living outside of camps.

An overview of the recent history of urban refugees in Thailand can be cut in three distinct moments, each separated by a decade: the appearance of urban refugees in the early 1990s, a sudden increase in diversity after 2000 (see Illustration 3), and a sudden increase in numbers in the early 2010s. The first two of these moments were defined by apparent changes in UNHCR policy, and the last one by a sudden change in the size and mix of asylum seekers reaching the country. Throughout the discussion of these three moments, I will refer to Table 4, presenting the number of urban refugees in Thailand since the 1990s, and Table 5 presenting their distribution per country of origin in 2010, 2014 and 2017.

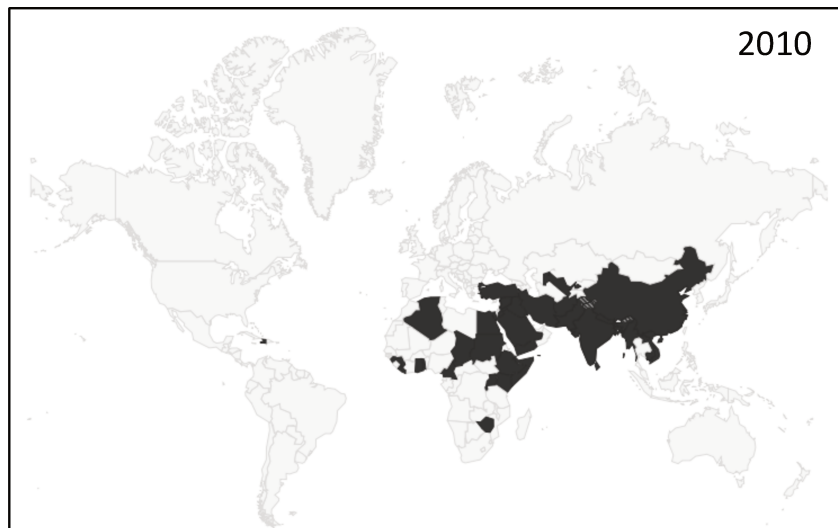
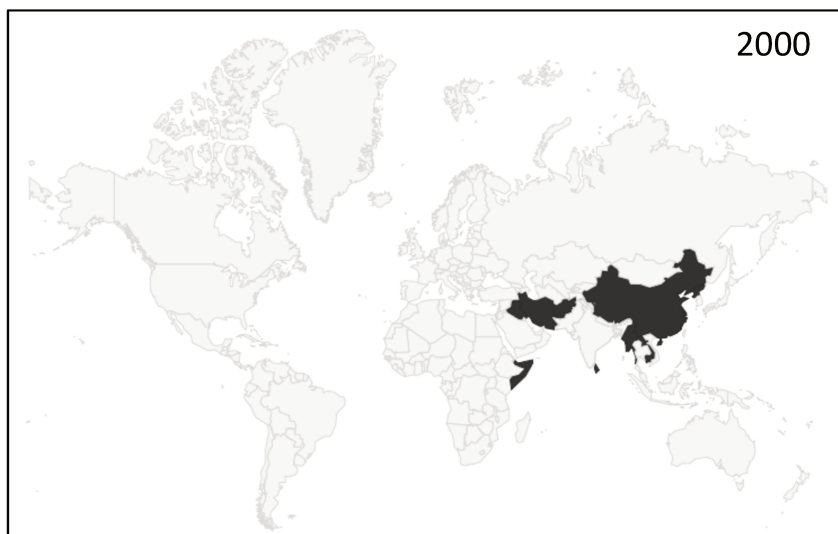
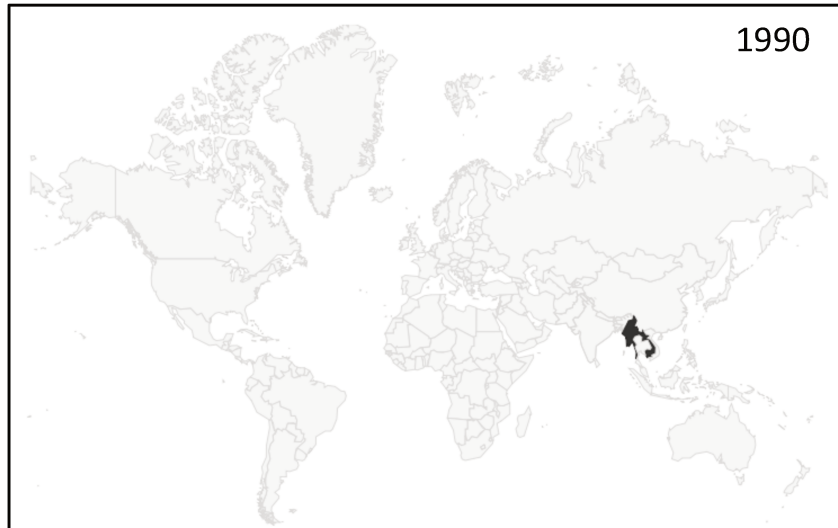
Urban refugees first appear in UNHCR statistics for Thailand in 1993, when slightly more than three hundred are registered amongst four nationalities: Sri Lankan (242), Chinese (59), Afghan (32) and Somali (2). Though I cannot confirm it, the appearance in the statistics of several hundred people at once suggests that they did not reach Thailand suddenly but rather that 1993 marked the year they were allowed to register with UNHCR. The question will be explored in more depth in Part II, but UNHCR does not accept asylum cases from all countries in all of its offices; each country office can set the rules on which application it accepts. For example, UNHCR Thailand currently refuses to consider applications from certain Vietnamese ethnic minorities and all Burmese people outside of the border camps. Hence though there might have been a longer history of people from outside Southeast Asia looking for asylum in Thailand, they did not have access to the protection awarded by UNHCR until 1993. Then for nearly ten years, the number of urban refugees in Bangkok remained around 300. The only notable change during that period was an increase in 2001 of the number of nationalities represented, going from four to seven, suggesting another round of changes in UNHCR Thailand’s rules. Then in the span

of two years, the number of urban refugees tripled to more than 900 in 2003, and the diversity of the group drastically increased, with more than 41 nationalities represented that year. Again, the change appears too sudden to correspond to a sudden influx, and in all likelihood marks a change of policy, with UNHCR accepting to register asylum seekers from all countries after 2002.

After that year the number of urban refugees in Bangkok<sup>19</sup> increased at a regular pace (see Table 4) until they reached around 2,500 in 2009. The number then appeared to stabilize, even lowering down to around 2,000 in 2011. Sri Lankans were the largest group throughout the period. In 2011, Sri Lankans urban refugees numbered around 700, representing around 30% of all urban refugees (see Table 5), followed by Pakistanis with 450 people representing 20%, and five other nationalities each accounting for between 5 and 10% of the total. From 2002 to 2010, the main shifts in the composition of urban refugees in the country had been the decreasing number of Laotians and Cambodians seeking asylum, and the arrival of a few hundred Pakistanis in 2008. None of these changes hinted at the possibility of a radical transformation of the urban refugee issue. Hence in the late 2000s it seemed that the rate of growth of the population would remain somewhat constant, and would more or less matched with the pace of urban refugees leaving the country to be resettled in Europe or North America, ensuring that the issue would remain under control for the foreseeable future.

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<sup>19</sup> There are no data on the exact location of urban refugees in Thailand. According to NGOs providing services for refugees, nearly all live in Bangkok or its outskirts, where members of their communities and service providers cluster. I did however hear anecdotally of refugees living in other cities in Thailand, though nothing has let me to believe that their numbers were significant.



**Illustration 3 Countries of Origin of Urban Refugees in Thailand in 1990, 2000 and 2010 (UNHCR Population Statistics Database)**

These assumptions however would have turned out to be optimistic. Starting in 2012, thousands of refugees coming from Pakistan arrived in Thailand. By 2015 there were 9,000 refugees in Bangkok, and more than 5,000 among them were Pakistanis. Though other groups grew in size around the same time, in particular Vietnamese and Palestinians, none had reached the 1,000 mark. The surge in urban refugee numbers between 2012 and 2015 was momentous. Though the absolute number remained dwarfed by the camp refugees, the rise was far too fast for the support systems that had developed in Bangkok since urban refugees first appeared. The situation of urban refugees worsened significantly, because of demand overwhelming supply. That period also represents a shift in the composition of the urban refugee population in the country. As mentioned above, urban refugees have been in a very diverse group since at least 2003, with dozens of nationalities, and though some groups were larger than others none represented a large majority. Since 2012, that situation has changed. Though there has been no significant change in the total number of nationalities represented among urban refugees, Pakistani have become quantitatively dominant. For a few years, from 2012 to 2017, the urban refugee issue in Bangkok became the Pakistani asylum seeker issue. Arrivals of asylum seekers mostly stopped after 2015, but the backlog in the refugee management system was still recovering from the shock in 2018. The total number of urban refugees in Bangkok then was still more than three times what it was before 2012, despite a drop between 2015 and 2017.

One key facet of the urban refugee issue in Thailand has been the constant refusal of the Thai state to formalize their presence on its territory. This can appear puzzling, considering that it went a different route with regard to camp refugees. The state does award them with have some form of administrative status, even if it is ambivalent and *ad hoc*. Two factors seem to have played a role in the difference of treatment between the two groups.

Firstly, from the 1970s to the 1990s the United States and their allies had put pressure on the Thai government to let refugees in and provide them with basic services. To overcome the government's resistance, they offered to foot the bill and to take refugees away as fast as possible. Thailand was able to negotiate not to have to provide long-term solutions to the refugees on its territory to enjoy foreign support because the country was a key strategic ally at the time. So, Thailand did create the administrative structures necessary to meet the demands of its allies, though it did not create a general legal status for refugees. Doing so, it avoided creating a precedent beside a general commitment that it would keep its borders open. Refugee advocates have been able to reliably shame the

administration into respecting this commitment.<sup>20</sup> This explains why Thailand's default answer to urban refugees has not been to give them a specific status; their arrival in Thailand over two and a half decades was in no way a major world event, the way the Indochina Refugee Crisis was, and so the state was under no international pressure to take an active part in their management, and the granting of any form of status never was part of the country's normal mode of operation with regard to refugees.

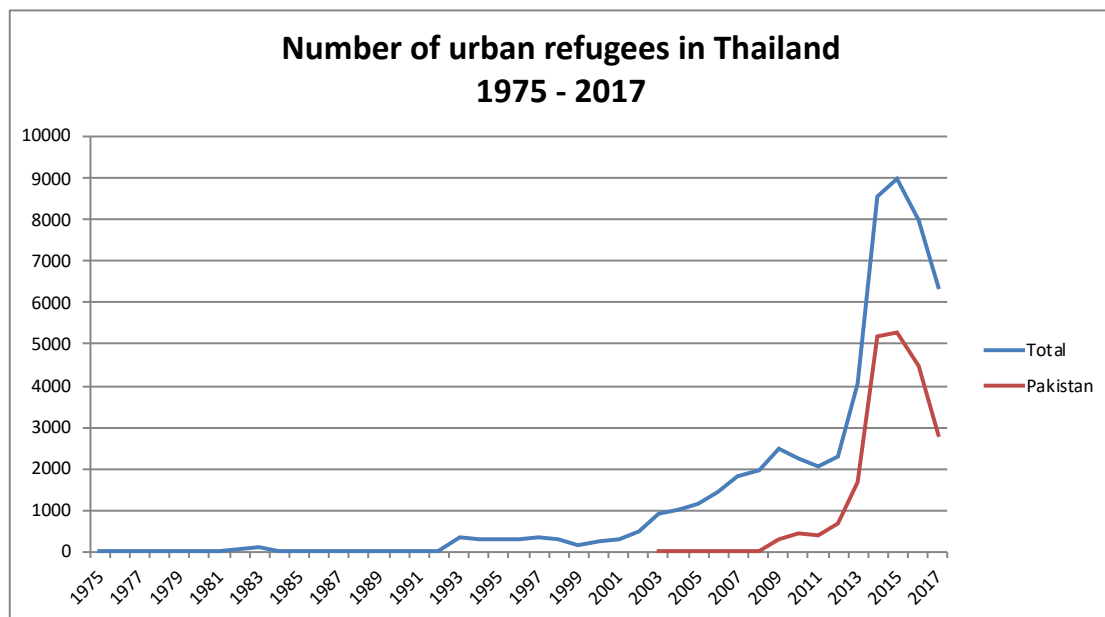
The second factor at play has been the size of the different refugee influxes. The sheer number of refugees entering Thailand during the Indochina Refugee Crisis meant that the state could not afford to completely disengage from the issue. A state cannot decide to ignore 700,000 people, including active combatants. Nor can a state casually get rid of such a problem through repression – doing so is certainly possible, but requires a major military and logistical commitment and the capacity to absorb a major political backlash. The same reasoning applied to Burmese refugees, who also entered the country in very large numbers, forcing the hand of the state into taking an active role. There again, the situation with regard to urban refugees is quite different. Their number, as discussed above, was never high enough for them to present a major concern for the state. They can be managed through the routine operation of the police and the immigration department, even if from the refugees' point of view it is far from an ideal solution.

Though Pakistanis represents the vast majority of urban refugees in Thailand since 2014, the absolute diversity of the population, in terms of nationality, has not decreased. Between 2003 and 2017, the number of nationalities found among urban refugees has oscillated between 41 and 30. A large number of nationalities are represented by only a handful of individuals. In 2014 for example, when 41 nationalities could be found among urban refugees, 14 of them represented more than 98% of the overall population. All continents are represented among urban refugees aside from the Americas – one finds asylum seekers from East, Southeast, South and Central Asia, from the Middle East and from West, East and Central Africa. One even finds a few Europeans in these statistics, mostly from Eastern Europe.

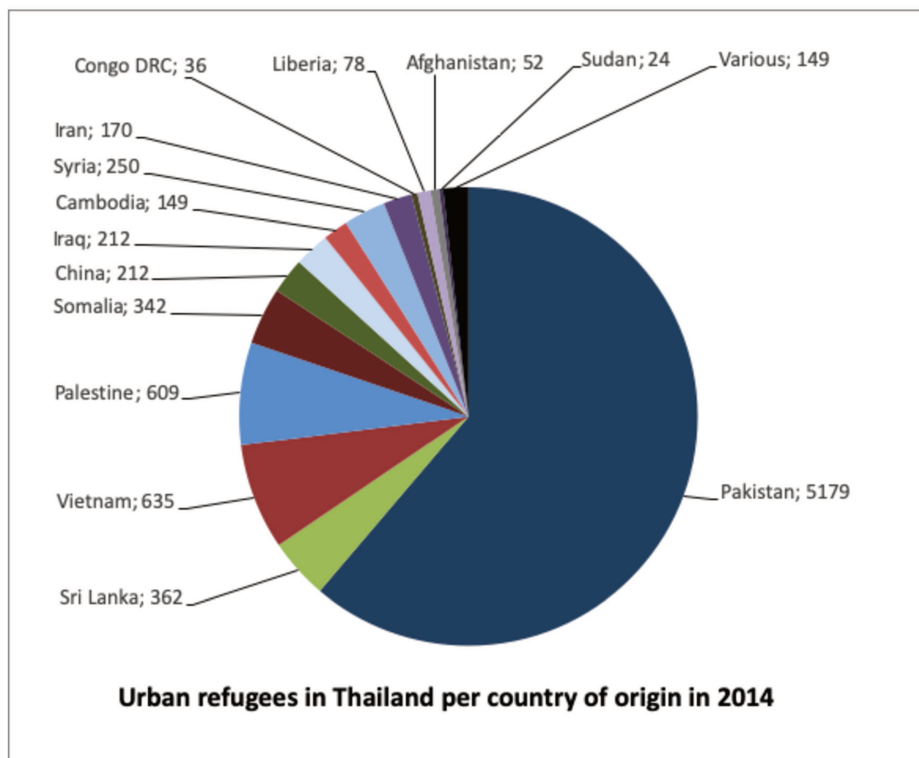
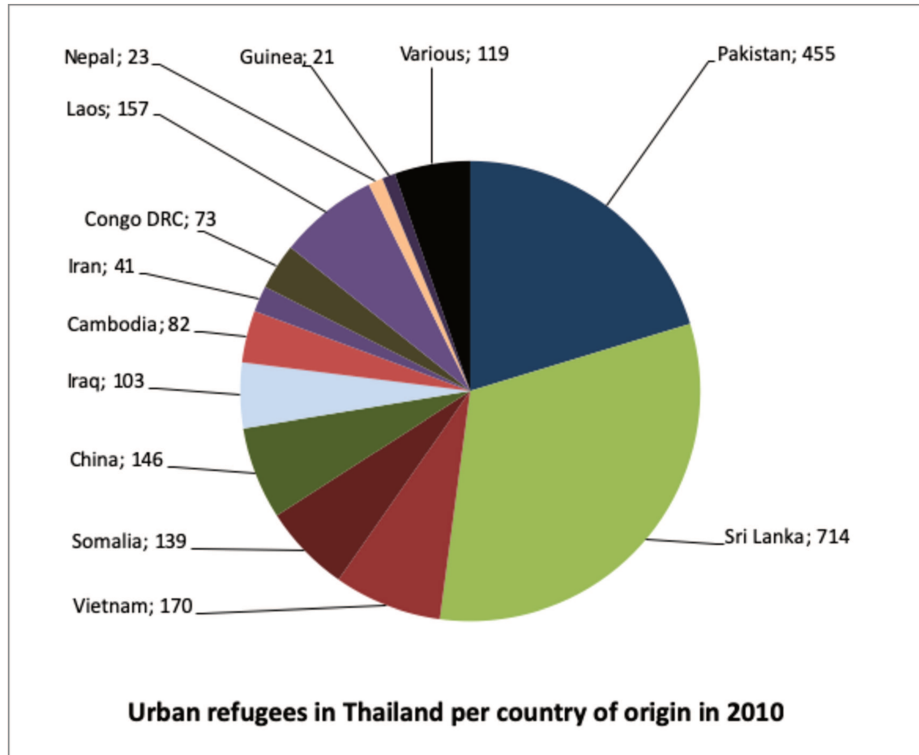
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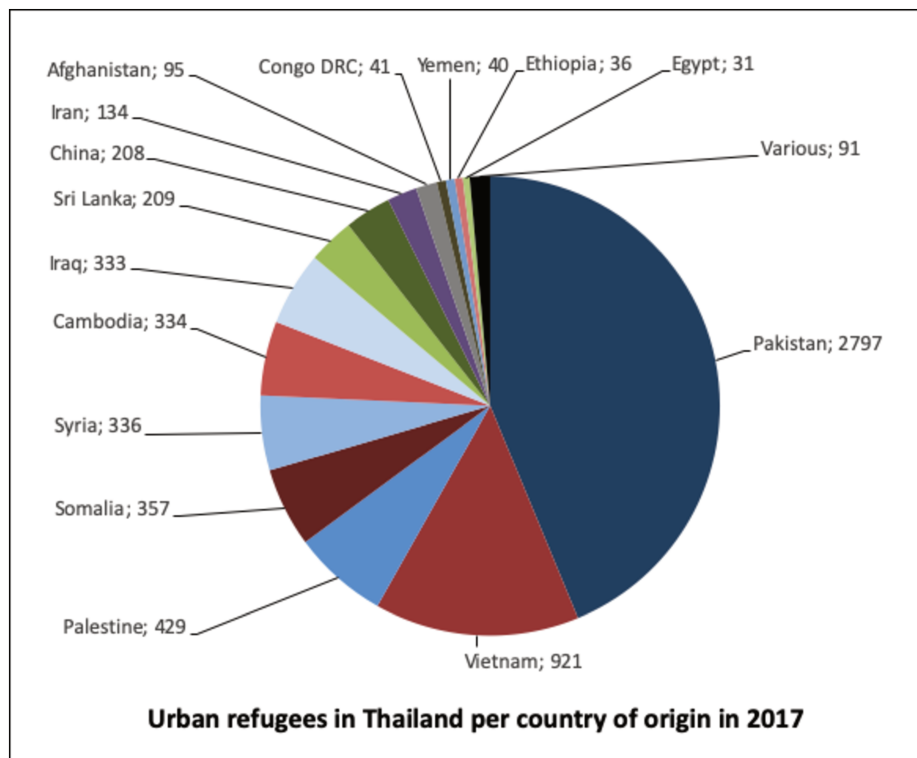
<sup>20</sup> Two particular examples are relevant to consider in this regard. The state has been providing *ad hoc* protection to a number of Rohingya through anti-trafficking laws since 2017; though not recognized, a number of legal cases have been decided in favor of providing some sort of relief to some Rohingyas. More broadly, the respect, though in a problematic fashion, of the principle of *non-refoulement* with regard to urban refugees shows that the state considers that it does have some responsibility towards refugees.

Throughout my research in Thailand, the fact that Thailand hosted refugees from the Ivory Coast, Palestine or Syria has been the source of much bewilderment, not the least among Thais. This element of surprise is best captured in Tauson (2017), who wrote the only long-form academic work on urban refugees in Thailand and opens her thesis with the following quote: “I am sorry, I thought you said Palestinian-Syrians refugees in Bangkok?” (Tauson, 2017, p.2). Few in Thailand and abroad are aware of the fact that Thailand’s refugee issue has changed since the 1990s, that the country has become a global haven for refugees, attracting people from faraway places with profiles that are more alike those of asylum seekers in Europe or the US rather than in the Zaatari or Kakuma refugee camps (respectively in Jordan and Kenya). That diversity is not just a curiosity, it is at the core of the problem faced by urban refugees in the country, who are mismanaged by systems which have been set up to accommodate a completely different set of people. At a different level, this diversity marks a change in the nature of the role played by Bangkok as a node in an international asylum system; a change that will also be faced by other large cities in middle income countries which are likely to also be caught unaware by their new status.



**Table 4 Number of urban refugees in Thailand, 1975-2017 (UNHCR Population Statistics Database)**





**Table 5 Urban refugees in Thailand per country of origin in 2010, 2014 and 2017 (UNHCR Population Statistics Database)**



## ***The Triggers of Urban Refugees Influxes***

The presence of such diverse refugee population raises the question of “why do they come?” This question really has two components: why do they leave their countries, and why do they come to Bangkok, of all places. Starting with why people leave, the diversity one finds among urban refugees in Thailand constitutes an incomplete atlas of persecution and abuse. Looking at the largest national and ethnic groups among urban refugees in Bangkok, I will give a quick overview of the dominant dynamics that can explain their decisions to flee.

Urban refugees who find themselves in Thailand have left their country of origin for the same reasons most refugees do: state persecution for reasons of religion, political affiliation or sexual orientation, denial of state protection against persecution by non-state actors, or generalized violence in their country of origin. Going into specifics requires to look separately at each community. The following paragraphs reflect the type of stories I have heard from refugees of various communities, as well as the experience of CSO workers. They are simplifications and are based on anecdotal evidence; they should therefore not be taken as representative but rather as general elements of context.

Pakistanis who reached Thailand in the thousands between 2012 and 2015 were mostly either Christians or Ahmadi,<sup>21</sup> with Christians representing the majority of asylum seekers. Members of both groups claim to be fleeing religious persecution. Pakistani Ahmadis claim to be persecuted by the Pakistani authorities, and there is ample evidence that such persecution does take place. The claims of Pakistani Christians are less focused on the state, and instead on the incapacity of the state to protect them against persecution and discrimination by private actors. The case of Pakistanis in Thailand is particularly interesting as it has had a clear temporality, with a sudden increase in the number of arrivals within a very short time, which one would expect to correspond to a specific event that could be identified. The early 2010s were a tense moment for the Christian minority in Pakistan, with in particular the high-profile blasphemy case of Asia Bibi; but I have not succeeded in tracing the increase in numbers seen in Thailand to a specific event. I will discuss in more details the dynamics explaining the presence of Pakistani asylum

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<sup>21</sup> The Ahmadi are a religious group within Islam; though many within mainstream Islam do not consider them Muslim. The specifics of their situation in Pakistan are detailed in chapter 4.

seekers in Thailand in chapter 4, as it constitutes a core issue in the way this group is perceived and managed by UNHCR.

Refugees from Vietnam, Laos and Cambodia fall roughly into two groups: minorities, ethnic and/or religious, and political figures. Regarding the first group, the persecution of minorities is a feature of all states in Southeast Asia. In the case of the groups who make their way to Thailand, in particular the Mon, Montagnard or Hmong, all have a long history of conflict with the central powers<sup>22</sup> of their respective states, and some of these conflicts have persisted until modern times. In Laos for example a number of ethnic groups aligned with the American forces during the Vietnam War, which left them exposed after the U.S. retreat and the seizure of power by the communist Pathet Lao in 1975. The second group comprising political refugees are the result of the illiberal political life that one finds across the GMS. Political life in Laos, Cambodia and Vietnam can be quite violent, and opposition party members, activists and journalists often face threats, whether from the state or elements of the party machine, and a number of them chose to leave.

Refugees coming from China flee state repression. A diversity of groups is targeted in the country, for a range of reasons including political activities, sexual orientation, ethnic identity, and religion. Among those reaching Thailand from China, a large share fall into the latter category of religious minority, and claim to belong to the Falun Gong religion, the practice of which is forbidden by Chinese authorities.

Sri Lankans, who for a long time represented the largest group of urban refugees in Thailand, are mostly ethnic Tamils displaced by the civil war that opposed Tamil separatist groups and the Sri Lankan state since 1983. The civil war officially ended in 2009, but a number of those who fled to Bangkok are wary of going back. They are concerned either because of links, alleged or real, Tamil separatist groups, or because of the general situation of Tamils in the country. Syrians also fled violent conflict, though the perspective of return for them is almost entirely closed in the foreseeable future considering the continuation of active combat in Syria. Most Iraqis and Somalis claim to flee low intensity wars in their respective countries, before a backdrop of religious and ethnic divisions.

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<sup>22</sup> For a thorough discussion of the logic of opposition between highland people and central powers in Southeast Asia, see Scott (2014).

This type of account of the causes for the presence of many members of various communities among urban refugees in Thailand highlights collective factors; wars, relationships between social groups, the nature of state power. However, the refugee themselves see first of all the highly individual processes that led to their decision to leave. The stories they tell can hardly be summarized as “I fled because of the war” or “I fled because I am an activist”, but have twists and turns, an array of named characters and individual relationships to and between them. Throughout my fieldwork, how to handle refugees’ stories was a recurring issue. A large part of my fieldwork took place while working for the Refugee Rights Collective (RRC), which put a strong emphasis on the respect of confidentiality and therefore does not encourage employees and volunteers to ask personal questions. But beside organizational guidelines, the direct experiences I had early on listening to the refugees’ stories stood as a warning that these stories were traumatic and not something one would easily share, nor should be forced to live again through retelling. From a personal perspective, simply hearing these stories would often lead to a posteriori recontextualization of existing relationships. I would start defining people first of all by their stories; a friend would stop being Noora, and would become a rape victim or a torture survivor. Such a unidimensional understanding of a person would do a disservice to my relationship with them, as well as getting in the way of analytic thinking. Therefore, I avoided asking people what their story was, though of course listened if they decided to share it nevertheless. I only got to hear about the individual stories of a handful of people. All were complex.

A woman had bought land from a high ranking official, who sold the same land to several people and when confronted, refused to refund her the money paid. As she would not relent, he sent goons to intimidate her. After she was raped and beat up, she obtained money from an uncle to make her way to Thailand.

A man landed a job as an interpreter for the education minister. The government, after accusations for crimes against humanity, was toppled by a coup d’état. The man fled to a neighboring country after his name was put on a blacklist. He waited in a refugee camp for a few years, until he managed to save enough money to take a flight to Bangkok.

A mid-level local official opposed a land development scheme supported by his superior. His house and his parents’ were visited by hooded armed men looking for him. He fled for the country’s capital, from where he took a plane for Thailand.

Each of these stories, anonymized to protect their main protagonists, highlight the complexity of what leads any given individual to flee, and the limitations inherent to any collective description of these factors. These stories and the number of different groups of urban refugees present in Thailand stress the diversity of this population, and yet all these stories and all these groups have one point in common: whatever led them to leave, it brought them to Bangkok, Thailand, of all places. The reason why is not obvious. Bangkok is not typically depicted as a global city.

The key reason why people come to Bangkok in the hope of being resettled somewhere else. If asylum seekers are able to successfully argue their case, they will be recognized by UNHCR as refugees. Obtaining the status of refugee in Thailand makes little immediate difference in the life of any given individual, because the Thai state recognizes neither the Refugee Convention nor the status awarded by UNHCR. However, becoming a refugee opens the possibility of resettlement, a process through which refugees are allowed to permanently migrate to another country, usually in the West. Resettlement is a long process, which fails for many, lasts years in the best of cases, and often stalls. It is not a guarantee. Any country could in theory resettle refugees, given that they provide them with sufficient protection against further persecution. In practice however, only countries in Europe, North America and Australia, admit significant numbers of refugees through resettlement.

To put it bluntly, what drives asylum seekers to spend hundreds or thousands of dollars to come to Thailand, a place most of them have hardly heard of and which none want to spend much time in, is the chance for a plane ticket to America, France or Germany. This is not to say that those who make their way to Thailand were not forced out of their home countries for valid reasons. As Part II will discuss, UNHCR does, in fact, find that in most cases those who reach Bangkok meet the requirements to be considered refugees, i.e. they were persecuted in their country of origin and at risk of suffering great bodily harm or death. But the reason why, once they have decided to leave, they choose to come to Bangkok, is dictated by the chance of resettlement. This is also the most significant difference between refugees in Thailand and other types of migrants, in particular unregistered labor migrants – the latter come to stay, at least for a while, while asylum seekers come to leave.

However, Thailand is not the only country from which a refugee can be resettled, so the question of “why Thailand?” is not entirely answered. The first thing to note is that Thailand hosts a relatively small urban refugee population, because most asylum seekers

and refugees would rather go somewhere else. They either prefer to reach their final destination directly, by making their way to Europe, North America or Australia, or drive across a border and find their way to a neighboring country, where they would more easily integrate. Worldwide, most refugees do in fact choose to go to the nearest safe country. The ones who would go further do so often because they can afford to embark on a longer journey and know that conditions in the closest refugee camps are poor.

This can be seen in the UNHCR Population Statistics Database, though the following points should be taken with a grain of salt as the database's reliability from country to country appears to be subject to important variations.<sup>23</sup> According to the database, in 1990, only five countries welcomed refugees from more than 10 different nationalities: Denmark, Italy, Sweden, the United Kingdom, and the United States. Each had on its territory more than 50 nationalities represented among its refugee population. The sixth country with the most diverse refugee population was Kenya, with 9 nationalities represented. This shows that countries hosting refugees up to the 1990s could clearly be divided into two categories: global havens, receiving refugees and asylum seekers from across the world, and local havens, receiving refugees and asylum seekers from nearby or neighboring countries.

Global havens were all found among the richest Western nations, and these countries have continued playing this role to this day. In 2015, still according to the UNHCR Population Statistics Database, the five countries with the most diverse refugee populations were respectively the United States, Canada, Germany, Australia, and the United Kingdom, with France, Sweden and Denmark not far behind. However, another group of countries started to emerge as global havens. While in 1990 there were only 6 countries with more than 30 nationalities represented among their refugee population, there were 36 countries in 2000 and 79 countries in 2015. Brazil had almost as diverse a refugee population in 2015 as France. It hosted refugees from the Democratic Republic of the Congo, Iran, Iraq and Somalia. The same kind of diversity can be found in Mexico, Korea and Malaysia, all with groups of refugees from all over Africa and the Middle East,

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<sup>23</sup> For a number of countries, especially wealthy Western countries, the nationality of large groups of refugees, up to several hundred thousand, is only recorded as "Various/Unknown", hence the diversity of the refugee population in these countries might be underestimated. This suggests issues with using the database for international comparison of the diversity of refugee population, though it does not seem to be an issue with regard to the specific point I am making. Besides, it should be noted that the problem is absent in Thailand, where the "Various/Unknown" category never amounts to more than a few dozens.

as well as Eastern Europe. These middle or upper middle income countries have seen a stark increase in the diversity of the refugee population they have received after 2000, just as Thailand has. Though in quantitative terms they might be handling fewer cases than the United States or Germany, a segment of their refugee population has started to resemble that of these countries. This shift of refugee fluxes has mostly gone unobserved, in part because the changes in the composition of refugee fluxes to middle income countries have not corresponded to major shifts in the size of these countries' refugee population. Thailand then is not an oddity for its growing urban refugee population. The rise in diversity among refugees going to middle countries can be found all over, as more and more countries have taken up the role of global havens.

The cause of the shift of some of the global refugee fluxes from high income countries towards middle income countries is the result of increasing efforts from traditional global havens, in particular of members of the European Union, the United States and Australia, to close their borders. As immigration has increasingly been seen negatively in these countries, and efficient policy tools for deterrence were identified, entering the territories of high income countries has become harder (Baby-Collin, 2017b, Fekete, 2005, Hyndman and Mountz, 2008b). Though politicians do not usually explicitly make that point, the same barriers that block legal and illegal labor migration also block asylum seekers. In particular, the systematic requirement of visa prior to arrival, and the enforcement of visa rules by airlines prevents asylum seekers to board planes unless they have secured a visa. The harder visas are to get, the fewer asylum seekers will manage to make their way to a country's airports. Hence, asylum seekers have to increasingly make their way to countries that have not traditionally been on the map as a country of refuge. One such place happens to be Thailand. The country did not see its change of status in the asylum system coming, and was neither prepared nor willing to become a global haven for refugees.



## ***Chapter 2 – Refugee Management in the Absence of National Refugee Law***

Thailand does not have a legal framework to handle refugees. A consequence of this is that discussions of state policy toward refugees cannot straightforwardly be compared to specific standards, because whatever standards do exist are not recognized as having any relevance for the actions of the authorities in Thailand. In other words, refugee policy, its enforcement and its practice, are indistinguishable. In Thailand, refugee policy is all practice. In terms of research, this means that uncovering the refugee policy of the country cannot be done from a distance through an analysis of relevant laws or jurisprudence. It has to be grounded in fieldwork and the overall picture inferred from the practice that can be observed. What the rules have to be reconstructed from the ground up because it has not been compiled by governing bodies.

This chapter details what the Thai administration does with urban refugees, and how its actions affect the refugees and asylum seekers living in Bangkok. It will present the policy of refugee management of the Thai state as I have pieced it together from my fieldwork, and will constitute the backdrop to the rest of my arguments. This chapter can also be read as a practical exploration of Joppke's argument on state agency and immigration policy; in this case, specifically refugee policy. Joppke argues that the way states treat immigrants is primarily a function of the extent to which each state has constrained its own capacity to dispose of them. The agency of a state on immigration depends on the strength and independence of its judicial branch, as well as the extent to which applicable law protects migrants' rights. The greater the agency of a state, the more utilitarian and ultimately punitive its immigration policy will be, including its asylum policy. This argument goes a long way to explain Thailand's approach to urban refugees. Joppke, in its original formulation of the argument, considers that Western democracies have gone too far in reducing their agency with regard to migrants, by ratifying protective international treaties and letting the courts expansively interpret the human rights clauses of their constitutions. As a consequence, he argues, the states of Western Europe and North America are now unable to control inward migration flows. In a sense, Thailand is at the opposite end of the spectrum, as it demonstrates what happens to asylum policy when a state uses unfettered agency to handle migration flows.



As this chapter will make abundantly clear, Thailand does not treat urban asylum seekers and refugees well. The way they are treated is deplorable enough that one would be forgiven for questioning the objectives and the morality of the officers, civil servants and elected officials in the Thai administration who take decisions on refugee policy. As I argue in this chapter, however, one does not need to assume that decision-makers within the Thai administration wish harm to refugees to explain the current functioning of the system. Furthermore, there is not in Thailand an overarching ideology stating that those who come to seek refuge should be chased away, put under house arrest or abused until they leave; though in practice what awaits asylum seekers in the country is not very different.

I do not mean to imply that Joppke would support any of what happens to refugees in Bangkok. His views on immigration policy in Europe cannot be transposed to the context of Thailand and are far beside my point. I want instead to show that, as he argues, the default approach to refugee policy is overwhelmingly utilitarian and punitive. In the absence of an explicit policy, the aggregate of enforcement practices that constitute the *de facto* policy of a country will mostly ignore the welfare and interest of refugees, not out of contempt or hatred, but out of indifference. As this chapter will show, the consequences of state indifference for vulnerable populations can be extreme.

### ***Thai Legal Framework and Urban Refugees***

Starting to talk about how the law intersects with urban refugee lives in Thailand is best done through a quick look at a concrete example, the life story of Isaac. I met Isaac during my fieldwork, and developed a trusting relationship with him that went on even after he had left Thailand. Because we met and talked regularly for more than a year, I became familiar with his asylum story from beginning to end. To protect his identity, I will limit the specifics to a minimum, but will come back to his story throughout this chapter.

Isaac first came to Thailand in 2014 from West Africa. He had never been to the country before and knew very little about it. One thing he did know was that Thailand, unlike France or the United States, would let him in. He had moved countries once before, crossing a border to reach a refugee camp after he first fled his home. He stayed in the camp several years before he was able to move on. He could not apply for a visa for Thailand outside his country of birth, but using someone else's passport he was able to easily obtain a tourist visa at a Thai Consulate in his country of asylum. The visa was valid

only for a few months after arrival, and expired long before he got a chance to leave the country. Isaac stayed in Thailand until late 2017 without a valid visa and in constant fear of being arrested.

Isaac's story, in particular the fact that he had to remain in Thailand without a valid visa for a long time, is typical of the experience of urban refugees in Bangkok. It is the result of a combination of factors, at the center of which is a contradiction between Thailand's openness to short-term stay and resistance to permanent settlement. The story would have been quite different had he chosen or had the possibility to go somewhere else. In many countries, asylum seekers are allowed to remain in the national territory until their application is processed. In other countries, Isaac would have been able to report to a refugee camp to be protected from deportation and have access to basic services and welfare during his stay. Perhaps if he had attempted to go somewhere else, he would have gone through an extensive vetting process to obtain a visa, which considering his circumstances would have failed. Thailand is quite different from a number of other possible destinations for refugees, and much of the difference originates in the particular way Thai immigration law intersects with the situation of urban refugees.

In the absence of a specific status for refugees, individuals reaching Thailand with the intent of seeking asylum are allowed into the country under the exact same conditions as any other foreigner. If they can secure a visa, they are allowed to enter the country and remain there until the visa expires. The fact that asylum seekers need to secure a generic visa not specifically designed for them before getting access to the national territory is not unique to Thailand and is in fact the rule rather than the exception for asylum seekers who flee via planes rather than land. States that have ratified the Refugee Convention do give asylum seekers a right to stay on their territory until their application is processed; however, they do not guarantee access to their territory to seek asylum in the first place. Though most Western countries offer opportunities to obtain visas explicitly for the purpose of seeking asylum, in practice access to such mechanisms is exceptional and most asylum seekers have to reach the country under a false premise to be allowed to seek asylum.

Since the second half of the 1980s, a series of measures have been enforced in all the Western global havens with the explicit goal of curbing the number of asylum seekers who could reach their territories (Gibney and Hansen, 2005, Collinson, 1996). The core of these measures has been an expansion of the numbers of nationalities which are required

to secure visas prior to their arrival and a generalization of carrier sanction<sup>24</sup> and pre-inspection policies (Gibney and Hansen, 2005). Taken together, these policies ensure that these states, though signatory to the Refugee Convention, are able to limit their commitment to grant asylum without violating the letter of the Convention, which demands that states provide protection to asylum seekers on their territory but does not require of states to facilitate arrival onto their territory – at least not according to signatory states, which is an interpretation of asylum law contested by academics (Stoyanova, 2008, Hyndman and Mountz, 2008a). Even when Germany proclaimed it would have an “open door policy” for refugees in August 2015, it did so without actually providing the means for asylum seekers and refugees to reach its territory (Betts and Collier, 2017).

Though it is less discussed in refugee studies, probably in part because most authors write from a Western perspective, wealthy Western countries do not have a monopoly on generalized visa-requirements and carrier sanction policies. Most lower and middle income countries impose visa requirements on citizens of other low and middle income countries, especially for nationals coming from other regions (Neumayer, 2010). Thailand is a case in point: citizens of most countries from the Global South are required to obtain a visa in order to board an inbound plane, and airlines are made into the private enforcers of these rules through carrier sanction laws. Hence in that regard the experience of an asylum seeker trying to reach Thailand is not essentially different from one trying to reach Canada, the United States or France. It starts in each case in an embassy or visa-processing center. The difference lies in the difficulty to obtain a visa. The requirements set by Thailand to obtain a tourist visa are easily met, even by members of persecuted groups.

The problems that arise from the fact that there are no specific laws in Thailand regarding refugees, a sort of legal “blindness”, are not immediately apparent, both from an analytical perspective and from the perspective of the asylum seekers themselves. Visa in hand, asylum seekers in Thailand face no exceptional hurdle, or at least none that is a direct consequence of the circumstances that brought them there. They are permitted to access UNHCR’s office in Bangkok where they can register as asylum seekers and initiate

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<sup>24</sup> Carrier sanction policies allow states to sanction airlines who transport foreigners without the adequate visas into their national territory, usually through fines. See Feller (1989) for a more complete discussion of the effect of such policies.

the process to be recognized as refugees. They might encounter Thai immigration officers en route, but if their documents are checked they will be sent on their way. If they can keep a valid visa, their situation with regards to the Thai authority will not significantly change throughout their stay in the country. However, and as this section will show, this turns out to be a big if. The root of the issues faced by urban asylum seekers and refugees in Thailand is the fact that the country's immigration law is not geared to facilitate long-term stay, especially for nationals of countries of the Global South. Thailand does not consider itself a country of immigration, and this perception is reflected in the rules it sets for the stay of foreigners. These rules, though applied in the same manner to all foreigners, create specific and enduring challenges for refugees.

### ***The State of Immigration Law in Thailand***

Understanding the nature of Thai immigration law is key to understanding the challenges faced by urban refugees in the country. Since at least the beginning of the 20<sup>th</sup> century, Thailand's approach to immigration has been utilitarian and protectionist, with hints of xenophobia; the country hardly stands out in that regard (Hollifield et al., 2014b, p.3-6). Many countries have symbolically important pieces of legislation in their recent or less recent past with regard to immigration policies, that come from a time when protectionist or xenophobic ideologies were accepted widely enough that they could be spelt out explicitly. The United States' had the Chinese Exclusion Act of 1882, Australia's had the White Australia policy.<sup>25</sup> The most egregious historical example of xenophobic immigration policy in Thailand is rooted in the violent anti-Chinese sentiment that developed in the country at the beginning of the 20<sup>th</sup> century. It was accompanied by a wide range of policies of official discrimination directed at Chinese immigrants (Ma and Cartier, 2003, p.99-102, Coughlin, 1952). The symbolic high point of the period is probably the publication in 1914 by King Rama VI of an essay inspired by European anti-Semitic rhetoric titled "The Jews of the East" (Zenner, 1991, p.55), but the anti-Chinese policies and discourse remained in full swing until at least the end of the Second World War. The center of the immigration and integration discussion in the country eventually moved away from Chinese immigrants and is now mostly articulated around more recent waves of immigration coming from Cambodia, Laos and Myanmar. Despite this change in focus, the spirit of Thai immigration policy has hardly changed since the early twentieth century. An understanding of the overall ideological foundations of immigration law in

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<sup>25</sup> Which is more recent History than the overtly racist name would suggest (Tavan, 2005).

Thailand and its functioning is a necessary first step to understanding the situation of urban refugees. Not only because the law that is applied to them is the same as what is applied to all foreigners, but also because the way the Thai state approaches immigration overall informs the way it deals with the refugees generally and urban refugees specifically.

Understanding Thai immigration law requires discussing both its stated objective and its actual function. Both are in fact quite different. Starting with the law, the core of the country's current immigration regime is a combination of two acts: the Foreign Employment Act of 1978 and the Immigration Act of 1979 (Chantavanich et al., 2007). Both were designed primarily to bar foreigners from unskilled occupations as to protect Thai workers from competition. Unless specified, foreigners in the country are barred from "general labor, farming, weaving and construction" (ibid, p.1). After the 1990s, such a restrictive approach to immigration became increasingly at odds with the needs of the Thai labor market. A dual movement was then taking place: the national workforce became increasingly skilled, creating labor shortages in a number of industries including farming, fishing and construction, and the country started to moved ahead of its neighbors economically, creating a pull factor for labor migration.

Immigration reforms gradually opened the possibility for enforcing agencies to allow for temporary exceptions to both acts, allowing foreigners to work. In practice, this led to series of *ad hoc* remedies, all designed with the understanding that immigration to Thailand was temporary and only legitimate if it served national interest. Immigration reform has become cyclical. Whenever demand for foreign labor in a local industry rises past a certain threshold, an act is passed allowing foreigners working in that specific province and employed in that specific sector to register for the right to remain in the country. These acts are designed to satisfy the need of the industry while limiting – to the extent possible – the benefits for foreign workers. These steps are repeated when another industry finds itself short of labor<sup>26</sup> or when the act expires. These acts are always temporary legislation, only allow foreigners to remain in the country and work for a few

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<sup>26</sup> The Thai labor market faces systemic labor shortages. Unemployment in Thailand has remained under 2% since 2002 and under 1% since 2010. Therefore, immigration policy is not typically discussed, as it often is in industrialized countries, in relation to its negative effect on the employment of Thai nationals.

years, and typically only allow a share of foreigners working in a given industry to regularize their presence in the country.

Though the cyclic nature of this process suggests the need for an overall reform, the possibility of the replacement of the two main immigration acts has proven elusive. IOM describes one of the more recent attempts at immigration reform, framed as an effort to make immigration law less restrictive, in the following terms:

The Alien Employment Act of 2008 regulates the employment of low-skilled migrant workers according to the three guiding principles of national security, protecting work opportunities for Thai persons, and establishing a level of labour migration that would support the growth and development of Thailand. [...]

Controversial provisions in the Act included a deportation fund to which all migrants must contribute through their employers. In addition, regulations related to the Act specified a reward scheme for informants who notify authorities about undocumented workers. It also permitted law enforcement officials to enter establishments suspected of hiring undocumented migrants from dawn to dusk without warrants and arrest anyone without proper documents. Punishments for breaching the Act were also increased when compared with past punishment provisions. Most of the Act remains unimplemented due to the delay in issuance of regulations required for it to take effect.

(Huguet and Chamrathirong, 2011, p.20)

The IOM report quoted above advocates for a holistic immigration reform in Thailand that would give equal weight to “national security, economic imperatives and human security”, a suggestion not unlike the ones made in a number of reports by other international organizations, including the International Labour Organization (Muntarbhorn, 2005, Rukumnuaykit, 2009). Most commentaries on Thailand’s law focus on unskilled immigration, because of its scale. There would be more than one and a half million unskilled migrants in Thailand, representing close to 5% of the total workforce (Chamchan and Apipornchaisakul, 2012). The focus on unskilled migrants can also be explained by the different approach taken by the state with regard to skilled labor immigration. The law is more permissive for skilled immigrants and does not forbid foreigners to work by default, though it is based on the same utilitarian and protectionist framework. A quotas system limits the number of foreigners that can be hired by any given company, and visas are conditional to one’s employment status.

Thai immigration law is always catching up with the needs of the labor market, and when the needs of an industry are addressed, it is in a way that is too rigid to truly meet them. Therefore, there is always a gap between the law and the reality of immigration in the country. The result of this situation is a widespread disregard of the law by enforcing officers, employers and migrants. IOM's 2011 report (Huguet and Chamrathirong, 2011) estimates that at least a million foreigners live and work illegally in Thailand. These foreigners, living in the country in breach of immigration law, do not hide in the deepest forests of the northern mountains or the darkest alleys of urban slums. They play a key role in several industries, especially fishing, and represent a majority of the residents in some parts of the Bangkok metropolitan area. That fact is hardly hidden: when the Burmese leader Aung San Suu Kyi visited Thailand in 2016, she went to meet with migrant workers in the Burmese-majority district of Mahachai, a coastal town and major center of the fishing industry, less than an hour by train from Bangkok's center.

The disconnect between Thailand's immigration law and the reality of migration to the country is not a recent development. International organizations have repeated that immigration policy reform was needed for more than a decade. They stress the inadequacy of the current system and its counterproductive effects, in particular the increasing number of migrants who are forced to live outside the law. They approach the problem as one of will and technical capacity of the Thai state: if members of the Thai government understood the problem, and were explained how to solve their illegal immigration problem, immigration law would be reformed and the numbers of those forced outside the law reduced. This view echoes that of whistle-blowers who have called out Thailand on the way migrants and refugees are treated on its soil (Frelick and Saltsman, 2012, Human Rights Watch, 2000, 2004, 2009, 2014b). Though these organizations play an important role by calling out agents of the state on the inadequacies of the country's policies, the logic they deploy misses the fact that what they see as negative side-effects of immigration law is in fact its intended function.

The fact that Thai immigration law has remained unchanged in spirit for decades suggests that it serves an objective. If, as the law states, this objective is to deter immigrants from reaching the country and give priority to Thai nationals on the labor market, it is an utter failure. Under the current legal framework, millions of migrants have entered and settled in the country where they have taken over whole industries, who had been staffed by Thai nationals until then.

However, the actual function of Thai immigration law differs from its stated objective. Thai law is intended not to deter immigration but to disenfranchise migrants, in a similar fashion to what Portes (1997) describes in the US: a share of the migrant population is criminalized to give industry access to an affordable and docile workforce. Undocumented migrants are not a regrettable side-effect of a failure to deter, but the natural product of laws that exclusively target employees instead of employers, and ensure that the latter have tools to keep their employees under control. Though the role played by immigrants in the labor force has not been as extensively studied in Thailand as in the United States, the situation in both countries with regard to foreigners working outside of immigration law appears similar. In Thailand, like in the US, the same two key factors are present. First, a significant fraction of the workforce is constituted by foreigners who do not have the right to work in the country and could be removed from the national territory at any time. Second, a political discourse around “the problem of illegal immigration” has coexisted with the large-scale involvement of foreigners in the workforce for decades and not led to significant policy changes.

The most dramatic evidence of the contradiction between political rhetoric and policy objectives in Thailand comes from the public expression of concern over sudden exoduses of foreign workers. In 2017, after Thailand was downgraded in the Report on Trafficking in Persons (United States of America Department of State, 2017) that ranks countries on their policy and programmatic responses on human trafficking, the Prime Minister, at the time the head of the unelected military junta, announced a series of measures to address the issue. These measures, seen as detrimental to foreign workers, led thousands of them to leave Thailand, creating a fear of a labor shortage among industrialists, who prompted the government to suspend the application of the new law until workers could be reassured (Arpon, 2017). A very similar exodus had been taken place in 2014 after another report denouncing the extent of human trafficking in Thailand launched rumors that the military, who had just seized power, would target foreign workers. The government had, in that case, as well come out and reassured the public that the strict enforcement of immigration law would not be its priority (Kyozyuka, 2014). Events such as these exoduses force Thai officials to say out loud what policy analysis suggests. Thailand’s punitive immigration laws are not about forcing foreign labor out, but about keeping them disenfranchised and serving the interests of the industries who employ them. When undocumented workers leave the country en masse, instead of rejoicing that they have finally made a dent in an intractable policy problem, leaders come together to



roll back whatever reform they had announced to reassure workers and keep the support of the segments of the industry that depend the most on foreign workers.

Thai immigration law is geared to fight against the integration and permanent settling of immigrants. Unlike other countries, Thailand does not offer a straightforward pathway for long-term residents to acquire Thai nationality, nor is it granted to children born on the national territory from foreign parents. Hence even second-generation immigrants can find themselves living outside the law. UNHCR estimates that more than 400,000 people living in Thailand are stateless, among which one finds the children of Burmese unregistered children, who do not have access to Thai nationality and often struggle to obtain a Burmese one. All this shows that the Thai state is comfortable maintaining a large part of the population living on its territory in a legal limbo rather than allowing these groups to join the polity. This is not to say that integration is impossible in Thailand, and in fact it is likely that Burmese, Laotians and Cambodians will eventually be allowed to integrate the way the Chinese immigrants from the first half of the 20<sup>th</sup> century were. My argument is instead that immigration law in Thailand resists rather than facilitates this process. From a technical perspective, this translates to a large number of regulatory hoops that foreigners have to jump through to obtain long-term visas, when they can get them at all. This facet of Thai law underpins the issue faced by urban refugees in the country.

### ***Corruption, State Power and Immigration***

Another argument could be made regarding the rather large gap between the stated objective of immigration law and the achievements of those entrusted with enforcing it: that the Thai state is not capable of implementing ambitious policies. Leaving aside the fact that Thailand is hardly alone in this situation, this argument ties in with the broader theme of corruption in Thailand and the way it limits state agency, which is worth addressing briefly. Though “corruption” and its denunciation play an important role in the discourse on the Thai state and Thai politics, I will not make use of this line of argument in this thesis, and instead will assume that the Thai state is basically functional, an assumption that is supported by comparative assessments of state capacity in Southeast Asia (Larsson, 2013, building on Slater, 2010).

In Thailand, the theme of corruption and its effects on the running of public affairs is omnipresent in the public discourse. This dominance in the discourse can in large part be attributed to a long-standing effort by monarchist actors to paint democratic politics as an inherently “dirty” business, and contrast it to the “purer” work of governing done by

royalty and the army (Handley, 2006); essentially the local flavor of the Asian Values argument that democracy cannot work in Asia. Though Handley's focus is on the role of the monarch and its entourage, the early 2000s have been marked by the instrumentalization of "corruption" as a theme by a succession of anti-democratic groups, not all associated with the monarchy. This gives the issue of corruption a more central place than it deserves in Thai politics and indirectly in the academic and journalistic discourse. In particular, accusations of corruption have been a central tool used against the Thaksin political family and the associated Red Shirt movement. Most recently, corruption has been used as a central theme throughout the movement that led to the 2014 coup d'état. Since then, extensive constitutional reforms have been undertaken by the regime to limit the power of elected officials on the ground that they would be more likely to fall victim of corruption (Reporter, 2018). In effect, the junta in power has cemented the influence of the military in civilian affairs by giving non-elected bureaucrats, many of which are army men, a veto power over most aspects of political life. Needless to say that in such a context, any discussion of corruption is loaded. Which brings the question: how much of a role does corruption play in the running of government in Thailand?

The repetition that Thailand's political class is deeply corrupted has led many foreign authors to overestimate the country's corruption problems, and to assume that the Thai state, mined by corruption, would be incapable of enforcing policies. There is in fact no evidence that Thailand would be an outlier with regard to political corruption, and some evidence that the country is squarely average in that regard. In academic literature, most mentions of corruptions are based on the work of Pongpaichit, and in particular her first book title *Corruption and Democracy in Thailand* (Phongpaichit and Phiriyarangsarn, 1996). The book provides insight into the inner working of local political machines and shows that political bosses play a key role in local politics, in particular in rural areas. The argument, though insightful, does not constitute evidence of a worse corruption situation in Thailand than in other comparable countries – few countries are spared by machine politics – but has been occasionally taken as such (Callahan, 2005). A comparative analysis with other Southeast Asian countries shows that Thailand is, if anything, better off than most of its neighbors (Quah, 2003). The same is suggested by Thailand's score on Transparency International's Perceived Corruption Index, which places it in the middle rather than at the bottom of the scale.

Thailand is far from a haven of transparency and accountability, and there is extensive evidence of policy-making geared toward private gain for government officials and their

allies in the business sector. The existence and influence of alliances within the Thai state however is less a paralyzing force than a tool to counteract electoral politics (Mérieau, 2016). In other words, corruption in Thailand, defined as the use of public offices to serve private interest, is an important issue, but the form it has taken in the country makes it largely distinct from that of state capacity. The Thai state is far from incapable, which has allowed it to become an economic leader in Southeast Asia. In fact, it has caught up with some of its neighbors in terms of capacity for fiscal mobilization over the last decade, despite the comeback of coup politics in the second half of the 2000s (Larsson, 2013). Contrary to what some of the dominant discourses within Thailand might suggest, the country should not be assumed to be a failed state made incapable of implementing policies by rampant corruption. In particular, the gap between a harsh immigration law and a large and growing undocumented foreign workforce should no more be assumed to be the result of an inept administration than in the context of Western countries.

### ***The Logistics of Refugees Reaching and Staying in Thailand***

The attractiveness of Thailand to asylum seekers is connected to the development of tourism as a major industry in the country, which has given it two key attributes: first, a low financial barrier to access thanks to cheap air travel, and second, an open-door visa policy towards tourists coming from the Global South.

Thailand has become a major tourist destination over the past 20 years, going from a little under 8 million international tourists in 1998 to more than 32 millions in 2016 (Department of Tourism of Thailand, 2016). The country has benefitted from two trends during this period: the lowering cost of air travel, thanks to the growing competition brought by low-cost carriers, and the rapid development of a number of Asian countries, raising the income of millions of people across the continent. Today, most travelers landing in Thailand come from within Asia. As the tourism industry grew to represent between 10% and 20% of the country's GDP (World Travel & Tourism Council, 2019), it put pressure on Thai immigration law to change and facilitate tourism, in particular for visitors coming from other Asian countries. The law has proven capable of adapting to the needs of these influxes and the process of obtaining a tourist visa for Thailand has become easier for most foreigners.

Unlike a global tourism hub in the Western world, such as France, Thailand does not appear concerned that large numbers of long-term migrants pretending to be tourists would be granted entry only to then settle. Hence, tourist visas are handled relatively freely. Even long-term visas are made available and easy to obtain for certain categories

of foreigners, as long as their presence is seen as economically beneficial to the country. Retirees in particular can obtain what amounts to life-long visas through a short and uncomplicated process. There is a clear contrast between the apparent eagerness for reform and plasticity of Thai immigration law when it comes to meeting the needs of the tourism industry and rigidity when it comes to foreign workers. When reforms serve the interest of those in power, for example by supporting the development of a sprawling tourism industry, no reports from international organizations or whistle blowers are necessary for the law to change and be implemented as designed.

This policy of easy visa for tourists and other “useful” foreigners makes it easier for asylum seekers to reach the country. They cannot do so as asylum seekers. To board a plane, they need to find their way into a category of foreigners recognized by Thai law. Some meet the requirements to obtain long-term visas. The ones most easily available to asylum seekers are retiree visas. It requires applicants to be older than 60 years old and to deposit a specified sum of money onto a Thai account. Many refugees who make their way to Thailand are not poor and the transfer of most of their savings to the country might not be much of a barrier, especially if they are aware of how long they are likely to remain in the country. However, few elderly asylum seekers and refugees make their way to Thailand on their own, and most are instead part of a multi-generational household. Hence even if retirement visas are available to some members of a households, most still need to find another category they can fit in. Other long-term visas are conditional to employment or education, entail more thorough examination and as a result are inaccessible to most refugees. What remains are tourist visas. Depending on the asylum seeker’s country of origin, tourist visas can either be issued immediately on arrival or need to be obtained at a Thai embassy or consulate. These visas’ validity can vary from two weeks to three months, depending on the applicant’s nationality, but can never be extended past 3 months without leaving the Thai territory.

A critical issue for urban refugees lies in the mismatch of timeline caused by the duration of tourist visas, at most 90 days, and that of the UNHCR asylum procedure which is at least a year, and at times up to five years or more. Refugees and asylum seekers have to therefore spend a lot of time in the country past the expiration of their visa. The issue is simple, to the point that it could appear trivial. In particular, it means that the problems faced by urban refugees is not that they are singled out and targeted by the Thai state or individuals in Thailand. Instead, the challenge resides in how hard it is for them not to end up breaking the law. A few do manage to wait for their claim to be processed without letting their visa expire. They secure long-term visas, whether through employment,

marriage, retirement or other means. The Thai state, since it does not “see” refugees, does not target them in any specific way, and they are left alone.

In practice, few refugees are able to secure long-term visas, and almost all who do have less lucky relatives who cannot. This is the result of a selection process. If refugees met the requirements to obtain a work permit in Thailand, they could obtain a long-term visa in most countries, and would go somewhere with a better-established community of migrants from their country. The ones who end up in Thailand have picked the country because obtaining a visa in another country with a UNHCR office, even a short-term one, was out of their reach. Hence, they tend to be the ones least likely to qualify for but the easiest to obtain visas, that are also the most short-term.

For the large majority of urban refugees, difficulties with immigration law start as soon as they approach the term of their visa. Tourist visas cannot be extended past three months, and cannot be converted into another visa category from within the country. This means in particular that even if refugees were able to find legal employment at the beginning of their stay, they would not be able to transform their employment into a long-term visa from within Thailand. Though some foreigners, coming from the West or Japan in particular, can travel to Thai embassies or consulate in nearby countries to change their visas, most foreigners do not have this option. Typically, individuals holding passport from countries in Africa, South Asia and the Middle East are required to travel back to their country of origin to obtain a new visa. This is not an option for asylum seekers. So most urban refugees have no choice but to let their visa expire and remain in the country illegally while waiting to be processed by UNHCR.

The Thai state’s approach to preventing long-term stay of individuals with short-term visas relies on stark punishment for visa violation, rather than on screening of applicants. This approach is coherent with the parameter under which the Thai state operates with regards to foreigners: since the administration is largely allowed to do as it pleases with them, their removal is not the major challenge it can be for states offering substantive procedural protection to migrants. Any individual residing in Thailand without a valid visa is considered an “overstayer”. Immigration law states that individuals found in the country past the expiration of their visas are to be placed in immigration detention until they can be removed from the country. Upon arrest by immigration officers or policemen, overstayers are criminally liable for breaking immigration law. Depending on whether they entered the country legally or illegally, and how long they overstayed their visa, sanctions range from minimal fines to prison sentences. In addition, overstay for more

than 3 months leads to an interdiction to enter the country ranging from 1 to 10 years. These elements of Thai immigration law are not essentially different from those in place in most countries. No state takes lightly people remaining on its territory without authorization, especially not states like Thailand that do not have a kind outlook on immigration. One key difference in Thailand lies in the state's approach to deportation. Thailand does not pay for deportation. This makes the country stand out in comparison to most Western countries, which are eager to remove unwanted individuals despite the higher cost that they face. This difference has far reaching consequences for refugees and asylum seeker in Bangkok, and in particular allows for their indefinite detention.

### ***The Emergence of Legal Pits***

In Thailand, individuals who find themselves in immigration detention are not eventually removed by the state. Immigration detention is not a waiting room for deportation as much as an incentive to leave the country. As the Thai state will not pay for foreigners to be deported, foreigners wishing to return have to finance their trip out of Thailand themselves, and are kept in detention until they do. Urban refugees and asylum seekers are not the only groups to find themselves in immigration detention. The cells are populated by a range of "undesirable" foreigners. Burmese, Laotian and Cambodian workers arrested at their workplace. Foreigners released after a jail sentence, forbidden to remain in Thailand. The occasional tourist who realized too late that they had let their visa run out. These detainees typically do not spend much time in detention. Workers from Thailand's bordering countries, Myanmar, Cambodia or Laos represent the majority of people passing through immigration detention. Deportation to these countries cost around 300 baht, or 9.5 US dollar. Three hundred baht corresponds to the daily minimal wage in Bangkok and is unlikely to represent more than a couple of days of work even for underpaid migrant workers. Though certainly an unwelcome expense for the detainees, 300 baht is not out of reach for them, especially as the price to pay for their freedom. Few would be unable to pay for it – even if it means borrowing money from a cellmate or a relative – and none would refuse to do so.

Thailand's immigration law and deportation system were designed with these migrants in mind. From the point of view of the Thai state, the system works well when applied to them. The cost of their removal is minimal and removal happens quickly. The migrants who themselves had to go through arrest, detention and deportation would paint this system in a different light. However, the Thai administration makes very clear that their perspective and wellbeing is not a relevant part of the question. Though the

following section will argue that the situation for urban refugees is worse than that of other migrants, it is important here to stress that migrant workers from neighboring countries face a broad range of abuse and right violation in detention, ranging from poor food and sanitation to violence, sexual abuse and rape, as documented by the Mekong Migration Network (2013).

Migrants coming from non-neighboring countries are not given the option of spending a nominal sum and being sent home. Instead, they have to buy plane tickets. Since not all airlines accept to fly deportees, they usually have to turn to national airlines, much more expensive than their low-cost competitors. Tickets cost at least several hundred USD and can go into the thousands for detainees coming from Africa or the Middle East. What is a large expense for a Western tourist who forgot to renew his visa is out of reach for many of the poorer foreigners, especially if they just invested whatever money they had in their trip into Thailand. If they cannot come up with the money, they end up stuck in IDC. Compounding the issue for urban refugees, the question of cost is often secondary to that of will. Refugees leave a country not to return, and going back is exposing oneself to the risk of further persecution. Moreover, leaving while in the pipeline for asylum, even casting aside the question of the personal risks involved, would invalidate their claim and result in the closure of their file with UNHCR.

Since immigration detention is not considered a criminal punishment but an administrative measure, it has no legal maximum length. I met one detainee who claimed to have been in IDC for 15 years. I could not attest of the veracity of his claim, but whether true or not, the fact is that no tool exists in IDC to prevent such a situation to occur. Thai law as currently interpreted by immigration officers allows for indefinite detention of all refugees and asylum seekers, regardless of their gender, age and medical condition. Among the detainees in IDC, one finds people with life threatening health conditions, pregnant women, children and newborns.

Thai immigration law allows for migrants in general and urban refugees in particular to be indefinitely detained. It does not do so by mandating it explicitly, but rather failing to take any steps to prevent it, by allowing it to occur. Or does it? Talking with certainty about the causes of this or that policy outcome would require insights from within the Thai administration, both from street level implementers and higher ranking civil servants involved in the design of these policies. As explained in the introduction, I was able to obtain neither. As far as I am concerned, the Thai Administration remained a black box. This is part of a larger question that of the relationship between policy design and

policy outcome, or how to approach intentionality with regard to policies. My discussion above of the way migrants were managed in Thailand could be supported by a number of positive statements, in the form of laws and explicit policies. However, the same is not true for most of my other arguments regarding the management of urban refugees in Thailand.

Their situation has less to do with the letter of the law, but rather about its silences. No institution has been given the specific responsibility to manage urban refugees as a group, the way camp refugees have been put under the responsibility of a consortium of NGOs, a branch of the Ministry of Interior and of the Army. Agents of the state are involved in the enforcement of a number of rules that are applied to urban refugees, but they do so without a specific mandate, and apply rules devised for a different, broader group of foreigners. As the next section will make clear, this does not mean that the consequences for refugees are lessened. My point is that if urban refugees are hit with the full force of the state's repressive apparatus, they appear to be so almost inadvertently. One cannot even find widely publicized statements by political figures on the question of urban refugees. Nor has a leader called for the indefinite detention of all Somalis refugees in Thailand, the way Rodrigo Duterte for example called for the killing of drug dealers by vigilantes and policemen in the Philippines. The abuses faced by urban refugees are not the result of a positive policy and not even an unofficial one.

What are the constitutive elements of the Thai policy towards urban refugees, if they are not legal texts, institutions or extra-legal mandates? At the core of the Thai policy towards asylum seekers is a legal crack. Policy systems, when set up, will present a number of such cracks. These cracks are the negative counterpart of loopholes. While loopholes are exploited, cracks are fallen into. Legal cracks, like legal loopholes, are the result of an absence of thought rather than of intention. Individuals fall into a legal crack when they find themselves in a situation not accounted for by the letter of the law. Legal cracks are a common feature of any legal system (Cox and Lippel, 2008), because legal texts are the results of institutional processes instead of perfectly coherent logical edifices. Under normal circumstances, cracks result in annoying administrative conundrums where some people find themselves unable to obtain a given document or subvention. In some cases, consequences can be serious. Increasing attention for example has given in the United States to the exclusion from civil life created by photo ID requirements for voters and the particular legal cracks that exist in the current procedure for some minority groups (Ansolabehere, 2007, Ellis, 2008).



The idiosyncrasies of the law do not have to have dramatic consequences. Logical conundrums are routinely resolved through arbitrary decisions taken by empowered individuals. Judges and bureaucrats, when faced with a situation not covered by explicit texts, make decisions with the intent to limit the emergence of absurd legal situations. This is more easily achieved where institutions capable of challenging the rigidity of the law have been set up. Such institutions typically have recourse to overarching legal principles found in constitutions, charters and international treaties, or simply through the application of common sense, to counterbalance the legalistic power of the state and side with those whose lives could be wrecked was the letter of the law to reign supreme. In Western democracies, the courts play that role most publicly and routinely plug the holes left in legal texts by the legislators. The same can be said of Thailand, which has a functioning judicial branch. However, the capacity of the courts to have recourse to overarching legal principles to challenge decisions made by other branches of the state is limited, because the rule of law is weaker in Thailand than in France or the United States – the country is famous for how often political transition takes the form of coups. With regard to urban refugees, this risk of falling into legal cracks is further increased because of their exclusion, as undocumented foreigners, from political life. They lie close to the bottom of the hierarchy of political influencers. They are marginalized by their status as foreigner, by their legal status, by the ethnic and racial labels that are applied to them, by their socioeconomic situation, and by their exclusion from the formal workforce. As a result, no one has yet bothered to plug the legal cracks to which they are exposed.

If it were not for the silence of Thai law regarding the maximum length a foreigner can be kept in detention, the state would have been forced to develop some form of explicit policy towards urban refugees. Faced with a choice between releasing individuals after they had spent that maximum length of time in detention, deporting them in violation of *non-refoulement* and keeping them in detention in violation of its laws, the administrative and legislative authorities would have had to pick a path. To settle the question one way or another would have meant opening the door to the incremental development of an explicit refugee policy. Instead, the existence of a legal crack allows the state not to consider the question, as it is not faced with a choice – refugees can be kept in, posing a threat to no one but themselves. Such a non-choice is hard to challenge, and so by the virtue of being useful and persistent, this specific legal crack has become the de-facto cornerstone of the Thai refugee management system.

This recalls the question of the intentionality of Thailand's policy towards refugees. A first question is whether one can speak of a policy at all if all one means is a random

assortment of rules, none of which were designed specifically for the object studied. In the case of Thailand's management of urban refugees, the assortment is not in fact random. As this section has shown, the fact that urban refugees are treated poorly in Thailand is consistent with the overall framework of immigration law in the country, which is to advance the interest of Thai citizens by limiting competition on the labor market. The legal cracks in which urban refugees can fall in Thailand are consistent with the stated objective of immigration law, which is to deter the long-term settlement of most foreigners. Hence these cracks cannot be dismissed as mere oversights: they serve a function coherent with that of the larger policy system in which they are inscribed. In other words, refugees fall into legal cracks because they are left to fall into them. Furthermore, these cracks cannot be said to represent freak and marginal cases. Though they impact a small fraction of all foreigners in Thailand, they are the way the country has dealt with a whole subcategory of migrants. Thousands of urban refugees have fallen into these legal cracks, under the eyes and the management of a number of public officials, who instead of standing in the way of the cold logic of the law have worked to keep it operating. The active engagement of agents of the state in the smooth operation of the legal cracks, which has become the main tool of management of urban refugees in Thailand, constitutes sufficient reason to consider it a fully-fledged policy.

The question of whether Thailand can be considered to have a policy regarding urban refugees is however only at best half of the answer to the question of intentionality. Can one consider that the current situation is the intended effect of at least some of the actors within the Thai state? And what sort of evidence can be presented to make a case one way or the other? Evidence-wise, proving intentionality beyond reasonable doubt would require insight from within the administration, in the form of interviews, official declarations of intent, internal documents, etc. As mentioned earlier, I could not get access to any such evidence. Hence, I cannot argue that anyone within the Thai administration meant urban refugee management to work in Thailand the way it does. However, I do know that the situation is no secret. The presence of refugees in immigration detention is known to the administrators of IDC, has been shared by activists with representatives of the Ministry of Foreign Affairs, and has been acknowledged by members of the Thai Administration; most recently in August 2018 through the announcement that an end would be put to the detention of children, which has still to take effect at the beginning of 2019. From there, I believe one can leave aside the question of intentionality and focus on that of responsibility. Whether the current outcomes of Thai policy towards urban refugees were intentional or not is beside the point. The fact is that the situation unfolds

out in the open, for all to see. Though individual decision-makers could claim ignorance, the Thai administration as a whole cannot. Failure to act, on a situation that has remained broadly unchanged for nearly two decades, constitutes enough ground to lay the responsibility squarely at the feet of the Thai state. Though a study of the rationale and specific arguments used within the administration would be a worthy endeavor, it is not a pre-requisite to mine.

### ***Chapter 3 - Waiting and Coping in Bangkok***

In the previous chapter, one can see what are some of the challenges faced by urban refugees in Bangkok. In particular the way Thailand's restrictive and utilitarian approach to immigration combined with the length of UNHCR's RSD process in the country resulting in most urban refugees staying in Thailand past the expiration of their visa; and how this situation made urban refugees liable to be placed in indefinite detention. Discussing how urban refugees adapt and cope, or do not, to these challenges is best done through an examination of a single refugee's life. Again, I will turn to Isaac.

Isaac reached Thailand with his older brother. They settled together in a town 120km from the capital, where they made a living working with a gem wholesaler. They came to Bangkok from time to time, to meet up with friends in restaurants or bars of the tourist district. They were occasionally questioned by policemen during their journey, but pretended to be American exchange students, and were let go. When they lost their jobs, they moved to Bangkok looking for opportunities to make a living. Since Isaac spoke English, he was able to work part time as an interpreter for various NGOs, though he was hardly paid enough to make ends meet. One Sunday, the church Isaac attended, known to cater to Africans, was raided by the police after mass. He was asked to show a valid visa, and as he could not, was sent to IDC.

The story of Isaac's stay in Thailand echoes that of many urban refugees who end up in detention. It is, however, starkly different from the typical experience of the larger group of foreigners living without valid visas in Thailand. This chapter will discuss these differences and their cause. As the previous chapter discussed, the law in Thailand does not single out refugees and asylum seekers from other migrants. The law makes it hard for urban refugees to remain in the country legally, but that is a challenge they share with other groups of migrants. Low-skill workers working without the required visas and/or work permits are more than a million in the country (Huguet and Chamratrithirong, 2011). In addition, there is a growing number of high-skilled migrant workers earning a living in Bangkok irrespective of their immigration status. They typically have visas but no work permits, which in terms of immigration law makes no difference; one's visa is considered void if the conditions under which it was awarded are breached. These high-skilled workers also typically come from wealthy countries, and are found among the workforce of the large network of non-profit organizations that have emerged in Bangkok as it became the regional hub of the United Nations for Asia and the Pacific. This means

that there is a whole range of people living in breach of Thailand's immigration law. Though the same laws are applied to all, the lives they lead and the challenges they face are a lot less homogeneous than shared legal status would suggest.

The issues faced by refugees have to do with more than their legal status. Research focused on Refugee Law and the institutional settings through which it is enforced represents a significant share of studies in the refugee field. In part, this reflects the importance taken by the legal profession within refugee management. UNHCR in particular is deeply influenced by legalist thinking, and has maintained a close relationship with the Refugee Convention. This reflects downward in the focus of smaller organizations that have to play by UNHCR's rules. In Bangkok for example, among the three largest NGOs working with refugees, two focus on pro bono legal counsel. Focusing research and advocacy on changing the legal status of refugees is not misguided. In most contexts, the legal status of refugees defines much of the challenges and opportunities they will face during their lives. In particular, refugee's legal status is what differentiates their lives from that of other migrants. In some contexts, the right to work, access to social services, education and housing can make refugees a paradoxically privileged group among their counterparts. In other contexts, the absence of such rights leads to their further marginalization. In Thailand, one cannot turn to the law to get an idea of the nature of the refugee problem, and legal analyses are of little help. The law criminalizes urban refugees and other foreigners without visas the same way, and yet their lives are very different.

### ***Working and Living in Bangkok for Different Communities***

The majority of foreigners working despite their immigration status come from Thailand's poorer neighbors: Cambodia, Laos and Myanmar. Understanding what is singular about the refugee experience in Bangkok requires to first identify what sets it apart from the experience of unregistered foreign workers in Thailand. Urban refugees and unregistered low-skilled workers are similar in several regards, and in fact the categories overlap whenever an urban refugee works without the appropriate visa. The core of the similarity between low-skilled workers and urban refugees is the shared experience of being targeted by law enforcement. While high-skilled unregistered workers do break the same laws and hypothetically face the same sanctions if caught, in practice they can go about their activities without much interference from the authorities. They are not commonly asked for their papers and will not be suspected of not having any if they fail to produce them on the spot. Urban refugees and low-skill workers however

both are the object of routine official scrutiny and are put in the same detention centers if arrested (Mekong Migration Network, 2013). The core difference between unregistered low-skilled workers and urban refugees resides in their level of integration in Thai society. Foreign low-skilled workers are relatively well integrated in the urban landscape. They have access to employment, and though subject to frequent harassment and victimization, they can navigate the city. As discussed in the previous part, they represent a significant share of the workers in various sector, including construction, textile and fishing (Huguet, 2008), which has normalized their presence. As this chapter will show, urban refugees face a very different situation. They do not have access to the labor market, face routine rather than exceptional official police harassment, and more broadly find themselves marginalized not just because of their legal status but also as a result of their identity.

A refugee's place of origin is what exposes them to different challenges than unregistered workers. Thailand has, and has had for decades, somewhat porous land borders. The country's relative wealth compared to its neighbors has made it a common destination for labor migration. Like many countries in Asia, Thailand has not received large influx of migrants from non-neighboring countries, and even fewer from other continents – at least until the country became a tourist hub after the mid-2000s. This distinct history of migration created two groups among migrants, those coming from traditional countries of origin, i.e. Cambodia, Myanmar and Laos, and to an extent China and Vietnam, and those coming from non-traditional countries of origin, i.e. everywhere else. The following paragraphs will give a brief overview of the nature of refugee life in Bangkok, distinguishing between these two groups: refugees coming from countries in East and Southeast Asia, and refugees coming from other parts of the world. The challenges faced by each group are distinct based on their differential capacity to insert themselves in more or less well-integrated migrant networks.

### ***Refugees from Southeast Asia***

One of the effects of Thailand's migration history is that the presence of Southeast Asian foreigners is known and accepted. This allows refugees coming from Southeast Asia not to stand out. In the words of Gloria, the director of RRC:

Historically, if you are of Southeast Asian ethnicity but you are not Thai, people will just assume that you are a migrant worker and there are so many of them! So many people from bordering countries. They may discriminate against you but [...] they wouldn't suspect you to be a refugee.

This account is supported by the work of Pei Palmgren's (2013), who shows that refugees from Cambodia, Myanmar and Vietnam lead lives that are similar to that of migrants workers coming from the same countries. He presents an account of how some refugees find their way into the informal urban labor market. Rohingya refugees, who had been fleeing Myanmar long before the 2017 crisis, have for example carved themselves a niche among street vendors. They sell a sweet snack called *roti* (Palmgren, 2013, 32) and have developed an informal network among *roti* sellers that supports newcomers. Similar niches and networks can be identified for other groups. For example, Hmong people coming from Laos and Vietnam have developed a reputation for their craftsmanship and have settled as communities specializing in various crafts, such as pottery or woodcarving. Even where there exists no specific niche, coming from a neighboring country and speaking the same language than other migrant workers can be enough to gain access to employment networks in certain industries where they constitute a larger share of the workforce – construction, fishing, etc.

The capacity to blend in allows refugees from Southeast Asia to avoid detection, and their national and ethnic ties allow them to tap into existing social networks to access employment and support. Some of these networks are especially extensive and old, because migratory movements of minorities across national borders have a long history within the region. In fact, many of the minorities facing persecution in Laos, Myanmar, Cambodia and Vietnam belong to groups who have fled to Thailand for centuries. Many of these groups, like the Mon who came to Bangkok from what is now Myanmar before the 19<sup>th</sup> century, have shaped neighborhoods to this day and in some case have maintained a somewhat distinct identity (Intudom, 2012, Van Roy, 2010). Newer refugees can capitalize on this long history of migration and cultural linkages to gain access to labor markets and to evade unwanted attention from the authorities. Their presence, regardless of whether they are in the country legally, can be framed as the outcome of traditional migratory fluxes and is not perceived in the same way as the presence of other groups who cannot capitalize on a well-established tradition of national hospitality.

Yet being able to pass for a foreign worker presents some clear downsides for refugees. Immigrants from Myanmar, Laos and Cambodia, though numerous, can only be considered well integrated in comparison to the newer waves of immigrants. In other words, they might be better off, but they are far from well off. They remain marginalized, victims of discrimination and a target for both official harassment and xenophobic discourse. Several reports by regional and international NGOs have denounced the treatment of foreign workers in Thailand, and in particular the lack of protection they

have against abuse by the police or other representatives of the state (Human Rights Watch, 2014b, Mekong Migration Network, 2013, Robertson and Van Esveld, 2010). In the most extreme cases, the abuse of migrants can take the form of forced labor in slave-like conditions, instances of which are regularly mentioned by the foreign press especially when subsidiaries of Western companies are involved. The issue of trafficking in Thailand was brought back to the political forefront when the country was degraded from “Tier 2” to “Tier 2 Watch List” in the US State Department’s 2017 Trafficking in Persons report (United States of America Department of State, 2017). Whether the downgrading corresponds to a real change in trafficking trends is not evident, as the report’s tier rankings tends to be political as much as fact-based. But the downgrading happened against the background of a high ranking Thai policeman seeking asylum to Australia out of concern for his safety after heading trafficking investigation (Alcorn et al., 2015). The fact that state agents working on trafficking can feel compelled to leave the country does suggest that the issue is not under control. These highly publicized instances of abuse however are not representative of the experience of the great majority of migrant workers. Thailand is not a giant slave camp and most migrants are compensated for their work and free to leave. For most foreign workers, lack of protection from law enforcement makes them vulnerable to less extreme but more routine abuses. Examples documented in NGO reports include extortion, lack of recourse against abusive employers, arbitrary detention and police brutality. Hence if refugees from Southeast Asia have opportunities to access the labor market and do not stand out in Thailand, the tradeoffs include passing for members of an extremely marginalized group and exposing themselves to a wide range of abuses.

Another problem with being able to pass for an unregistered worker is that it exposes refugees to the risk of *refoulement*. Thailand has generally adhered to the principle of *non-refoulement*, i.e. immigration officials do not usually send back foreigners to countries where they would find themselves in harms’ way. The Thai administration has on several occasions handed over individuals to the authorities of their country of origin despite the risks it posed for them, but such instances have been the exception rather than the rule. The situation is however different for Southeast Asian refugees, who run the risk of being bundled up with migrant workers and deported by officials who can claim in good faith that they did not know of their specific status (Frelick and Saltsman, 2012, p.121-128). In most cases the problem does not lie with officials willingly ignoring a refugee’s status, but rather with the lack of a clear and transparent process to ensure that refugees are identified. Some refugees are not aware that they could leverage their status to avoid



deportation, others fear to identify themselves as refugees in crowded cells surrounded by potential persecutors, or do not trust Thai officials (Human Rights Watch, 2004, p.12). Being sent back does not always have dramatic consequences. Some refugees can cross back almost immediately into Thailand (ibid, p.12), though the costs incurred by missing work and bribing their way back can cripple their finances for a long time. Still, any time a refugee spends in their country of origin, they endure the risk of being recognized and further persecuted. Chances are especially high for refugees with a higher profile, whose names are likely to end up on lists at border crossings.

Refugees from Southeast Asia can pass for foreign laborers, but it only provides them with limited protection. Most urban refugees in Bangkok however do not come from Southeast Asia but from South Asia, Africa or the Middle East. The lived experience of this majority of refugees differs in essential ways from that of unregistered workers who represent the majority of migrants to Thailand.

### ***Refugees from Africa, South Asia and the Middle East***

The majority of urban refugees in Bangkok face issues that are distinct from that of Laotian, Cambodian and Burmese workers. The root of these differences lies in the fact that they come from a part of the world that have no historical migratory ties with Thailand. Not being part of an established migrant population creates a number of challenges for the majority of urban refugees in Bangkok, ranging from the routine experience of microaggressions and prejudice to overt violence at the hands of state officials.

Urban refugees have to spend several years in Thailand waiting for their claims to be processed by UNHCR. Few can live for such an extended period off their savings alone, and an immediate priority for most of them is to secure an income in Bangkok. This is in fact extremely challenging, and at the root of most of the issues they face. First, as already mentioned, urban refugees are blocked from formal employment. This is not in itself an insurmountable barrier to access employment in the country, as made evident by the hundreds of thousands of foreigners working without the necessary permits. Most of this thriving informal sector is however only accessible to members of specific networks, in particular ethnicity and nationality-based networks. This is what allows for refugees from East and Southeast Asia to secure employment, but also why refugees from other parts of the world have a hard time making a living. Such networks are not as developed, when they are present at all, for the ethnic and national groups to which the majority of urban refugees belong. Some do exist. There are businesses owned by Pakistanis, Somalis,

Ethiopians or Iranians that are known to hire staff regardless of immigration status and do provide a pool of potential jobs. However, this pool is far from being large enough to provide all urban refugees with a job. Refugee also find themselves barred from some of these opportunities, because many of the aforementioned businesses are owned or operated by people belonging to the majority groups in their country, often the same groups that persecuted the refugees or asylum seekers in the first place and not people who will welcome them with open arms.

Other sources of employment exist. NGOs, Faith-Based Organizations (FBOs) and other charities provide a separate pool of jobs, in particular for urban refugees fluent in English who are given opportunities to work as interpreters or as community outreach workers. The diversity of the refugee community in Bangkok, with more than 25 nationalities, presents major challenges for those working with them. One of these challenges is language, and these organizations have a constant need for staff able to communicate in the refugee's mother tongue. This situation creates opportunities for bilingual refugees to come to these organizations not as beneficiaries but as skilled workers. Such jobs are typically poorly paid, due to the limited resources available to these organizations, which often barely pay their own staff. Yet they are one of the few career opportunities offered to urban refugees. Unlike the rest of the informal job market, this one also tends to reflect the ethnic balance of the community: the more refugees from a single linguistic group in the country, the higher the staffing needs for individuals fluent in that language. Yet one does not get rich interpreting for NGOs. During my fieldwork I spent a large share of my time with interpreters, who despite their higher status within the refugee community and regular employment were unable to make ends meet.

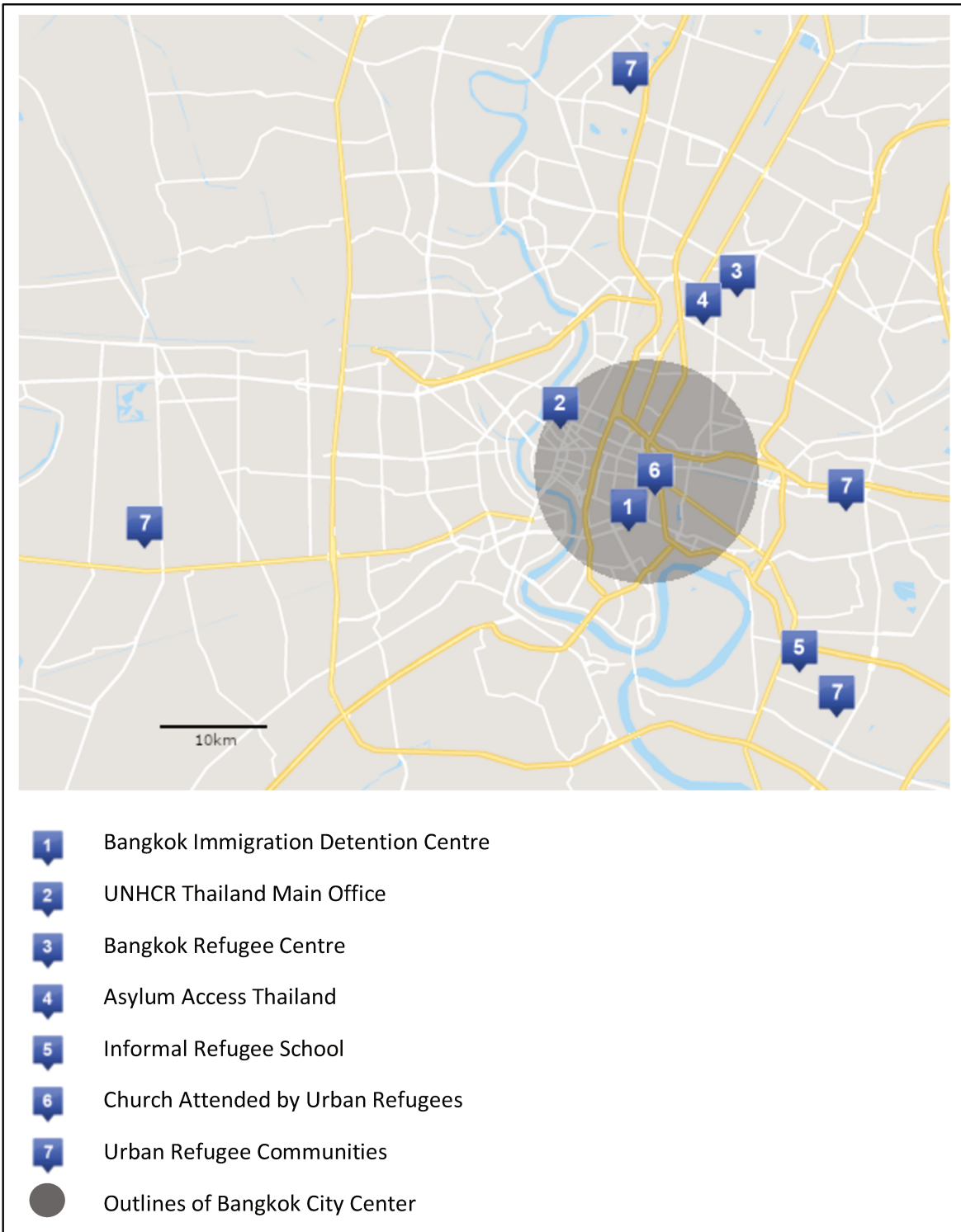
The combination of legal hurdles and the absence of a dynamic informal labor market available to urban refugees from Africa, South Asia and the Middle East in Bangkok pushes most of them into poverty. The few urban refugees who do have a regular income have to support not only themselves but the rest of their household, which can include several generations and family branches. Not all urban refugees in Bangkok are poor, but most are, and the challenges they face are inextricably linked with their economic status.

For example, urban refugees tend to live in inadequate housing in hard-to-reach parts of the city, which limits their opportunity to get access to employment and other services. That is because to save on rent, most refugee families have to live far in the outskirts of Bangkok, typically in one-room apartments that they share with 5 to 10 other people. These flats often come without a kitchen, forcing families to rely on portable equipment,

creating fire hazards and tensions with the building managers who typically do not allow cooking on the premises. Even if they had moved into housing initially in acceptable condition, over-occupancy degrades it over time, to the point of insalubrity after a few years. Living far away from the city center is a challenge in itself. Bangkok has some of the world's most congested roads, and any commute is notoriously difficult. Since the few services and employment opportunities available to refugees are all found in the city center, they often have to commute up to 4 hours a day if they want to take advantage of the few opportunities that do exist (see Illustration 4).

Another effect of economic vulnerability and isolation is to push refugees into relationships of dependency with third parties. Some take the form of romantic relationships with Thai nationals, which can lead to the creation of families. These could open the door to local integration: such relationships provide refugees with easier access to housing, opportunities to improve their mastery of Thai, and allies to support them in their search for employment or evading the authorities. However, marriage creates no protection against detention and deportation. Isaac, a few years after reaching Thailand, started a relationship with Bibi, a Thai woman, with whom he had a child. It did not prevent Isaac from getting arrested, nor facilitated his release from detention. In the year and a half he spent in detention, he only saw his child three times. His older brother also started a relationship with a Thai woman, who provided him with housing and an allowance. Having no other source of income, he grew increasingly dependent on this relationship, even after he had lost interest in it. He felt stuck. Situations of dependency can take a worse turn than just feelings of loneliness. Cases of domestic violence are common within the refugee community, and especially hard to handle, considering that involving the authorities is likely to result in detention for all parties, and that the victims often have little option but to stay with their abuser.

Economic struggle is neither the only nor the main challenge faced in Thailand by urban refugees. Since they have not been preceded by hundreds of thousands of migrants from the region they came from, their very presence in Bangkok is a remarkable fact to many. Foreigners coming from Africa, South Asia and the Middle East are not many in the city, especially outside of the main tourist districts. In the neighborhoods where most live, they often are the only foreigners. Being an isolated member of an ethnic and/or religious minority is challenging in any context, but Bangkok turns out to be especially unforgiving.



**Illustration 4 Some Key Locations for Urban Refugees in Bangkok**

## ***Being Brown and a Refugee in Bangkok***

The legal status of all foreigners without a valid visa makes them all vulnerable to law enforcement. The law however is not enforced uniformly on all foreigners, and in particular is shaped by the prejudice of policemen and immigration officials against certain ethnic groups. This part will unpack the way prejudice in Bangkok makes certain groups of refugees especially vulnerable to arbitrary enforcement and abuse by agents of the Thai state.

Taking a step back, one needs to look at the way in which power upon foreigners is distributed within the Thai administration. Thai immigration law criminalizes the presence of more than a million of foreigners living in Thailand. In practice, this large-scale criminalization constitutes a handing down of power from the central administration to its enforcers: when a rule is created so that it is always broken by everyone, it gives to the rule's enforcer the discretionary power to sanction anyone. Criminalization of that sort can take various forms, depending on the populations that are targeted, but its essential characteristic is a shift from criminalizing specific acts to criminalizing whole groups.

The role of criminalization is specific in the mechanisms it mobilizes. Laws targeting certain acts do not endow the law's enforcer with a particular surplus of power, but laws criminalizing a state of existence do. This dimension of empowering enforcers, and in particular the lowest hierarchical ring of enforcers, is what gives its specificity to the criminalization of whole groups. All law enforcement has an element of arbitrariness, since enforcers work with limited resources and need to prioritize. The patterns adopted by low-rank enforcers and field agents are key determinants of the actual impact of a policy (Lipsky, 1980, Prottas, 1978); in other words, implementation makes a policy. Policies of mass criminalization stand out because of how much leeway they give to enforcers. They are empowered to sanction any member of the criminalized group with heavy penalties. Though criminalization as a tool of governance for the state serves a specific function, the interests of street level bureaucrats are not entirely aligned with that of the state. In particular, they have no reason to limit the use of their expanded power to the repression of actions that threaten the state as a whole, such as political mobilization and free speech. The way they choose to implement immigration law, because of the degree of freedom they are given, is the main determinant of the way refugee law impacts the life of different groups of foreigners differently.

Thailand is hardly unique in criminalizing large groups of foreigners living on its soil, as the same forces that make it an attractive tool of control for the Thai administration are present in a broad range of countries (Willen, 2007, Bosworth and Guild, 2008, Aas and Bosworth, 2013, Miller, 2008). This phenomenon has been studied in a range of countries, including in the United States (Chacón, 2009, Welch, 2003), in the United Kingdom (Bosworth and Guild, 2008), in Spain (Calavita, 2003) and the rest of Europe (Barker, 2012, De Giorgi, 2010), and in South Africa (Vigneswaran, 2013). The success of mass criminalization of migrants is partly the result of the limited resistance it faces; from a political perspective, criminalization of migrants is easy to sell disguised as a policy to limit immigration, and has proven to be an efficient platform to win elections.

Immigration law in Thailand, though not concerned with refugees, impacts different groups of foreigners differently. Its specific effect on refugees constitutes the country's de facto refugee policy. Patterns of enforcement by street level bureaucrats in public spaces shapes the lives of the subjects of the law. One core aspect that informs the enforcement of immigration law by immigration officers and policemen in Thailand is racial or ethnic prejudice. The fact that the criminalization of migrants tends to operate alongside racial lines has been observed in both the American and European context (Cacho, 2012, Palidda, 2016), but has received little attention in the Asian context.

As mentioned earlier in this chapter, urban refugees can be divided in two categories; refugees coming from East and Southeast Asia, from groups or countries with a long history of migration to Thailand, and refugees coming from somewhere else, from groups or countries without such a history. For the sake of clarity, I will refer to the former as traditional and the latter as new urban refugees. As discussed earlier in this chapter, traditional urban refugees have an easier time in Bangkok. Though any interaction with policemen or other representatives of the Thai administration can lead to detention and expulsion, they are not much more likely to have to go through such interaction than the million of undocumented foreign workers living in Thailand. During such interactions, they are more likely to have to pay a bribe rather than be sent to detention, a type of racketeering by state officials well documented by CSOs (Mekong Migration Network, 2013), which though being a blatant abuse of power, is preferable to the alternatives for refugees – indefinite detention or *refoulement*.

New urban refugees find themselves in a different situation. Their interactions with law enforcement do not take place under the same terms, and in particular there is no assumption that they are legitimate residents of the country. New refugees come from

parts of the world that have not historically sent many migrants to Thailand, and hence their appearance sets them apart. Whereas Somalis in camps in Kenya can bribe officials to obtain national identification documents and blend in with the local population, using networks of Somalis traders to find support and make a living (Agier, 2008, p.54), Somalis refugees in Bangkok do not stand a chance of blending in. They stand out in Bangkok, and are unambiguously identified as foreigners by policemen and immigration officers. Thailand is portrayed as a welcoming and tolerant place, which is how it appears to wealthy white tourists, but the experience of South Asians, Middle Easterners and Africans is one shaped by prejudice.

Academic writing on prejudice and racism outside the West and beyond the American-centric White/Black dualistic framework is sparse and divided on the nature of racism beyond that context. One view supported for example by Washington (1990) frames racism outside the West as a colonial and/or post-colonial syndrome. He offers a general analysis of systematic prejudice of non-whites towards other non-whites, and uses evidence from countries on all continents to argue that whites do not have a monopoly on racism, and that many groups themselves victim of white prejudice look down on other non-whites. He emphasizes the way skin color structures some of these prejudices, leading to a hierarchy based on lightness of skin in many non-Western countries. He links this type of racism, which he calls “brown racism” with the transition from colonial to neo-colonial domination of the West. According to him, anti-black sentiment specifically outside the West is a sign of the cultural hegemony of the West, an unexpected import of modernizing countries. Washington writes that:

Brown racism, it should be noted, is not without its intrinsic irony. Brown groups themselves have long been the objects of racism and of the racial prejudice of whites about which they bitterly complain. In fact, nations such as India, Pakistan, and Egypt are among the harshest critics of South African apartheid. Yet oddly, they fail to recognize the problem of color prejudice in their own societies

(Washington, 1990, p.210).

Persaud (2005) applied this line of reasoning to Thailand, arguing that globalization and Western media shaped the perception of race and gender issues in the country. There is a certain logic in attributing some of the prejudice faced by black and brown people in Thailand and in Asia to Western influence, as it is puzzling to find patterns of prejudice mapping well onto those found in the West in countries with radically different histories

with regard to their relations with immigration from Africa, South Asia and the Middle East.

Yet other authors have explored native forms of racism and marginalization in Asia without considering the West a dominant influence. There is ample evidence of systemic racism in East and Southeast Asia towards groups who have only recently started to take part in South-South intercontinental migration. Prejudice against Africans and afro-descendants in China, one specific expression of this type of native racism, came under academic scrutiny in the late 1980s. It took a front stage after series of violent anti-African protests on university campuses in the country that through domino effects led to the Tiananmen Square protests. Though less was written on the matter since, more recent studies such as Cheng (2011) have shown that the issue has not since disappeared.

The idea that racism in the South can only be made sense of as a Western import, as argued by Washington (1990), Persaud (2005), is problematic. It appears to lie on the assumption that being a victim of exploitation and marginalization would somehow protect oneself against exploiting or marginalizing others – an assumption that has little grounding in reality. Washington's text does bring complexity to discussions of racism, too often framed through a black/white dichotomy imported from the United States, where much of critical race theory finds its roots. And as Washington points out, the cultural influence of the West and Western produced media does influence perception of race globally, but the idea that racism could always be linked back to Western influence is preposterous. The case of China in that sense is particularly telling, as the height of academic interest for the evidence of racial tension and animosity towards Black and Middle Eastern men took place in the late 1980s, at a time where Western influence over China was limited. It is notable here that while academic discussion of the events that unfolded in China then have focused on Black African students, a number of Middle-Eastern and Northern African students were also involved and targeted – an example of the tendency of discussions of race to be centered around a black/white dichotomy. Dikötter (1992) offers a non-Western centric history of the concept of race in China, and shows in particular that while some of the language and concepts of race were introduced by European after the Opium Wars, these concepts were absorbed and reinterpreted in an active rather than passive fashion.

Discussion of racism and its roots in China can inform the case of Thailand in the sense that they show that such ideological frameworks are present and active in East Asia, but are only indirectly related to the question of the nature of the prejudice faced by urban



refugees in Bangkok. Academic research on the question of race in Asia outside of China however is ever more limited. In the case of Thailand, the work that exists is mostly framed through a white and Western lens. Much has been written on the experience of white foreigners in the country (Botterill, 2017, Angeles and Sunanta, 2009, Maher and Lafferty, 2014, Sirijit, 2013, Howard, 2009), and specific attention is given to the interplay between race, gender and class in the sex industry (Thompson et al., 2016, Dahles, 2009). Less is written on non-Western-centric experiences. A separate type of literature has looked at the role of ethnicity (Askew and Helbardt, 2012) and religion (Larsson, 2018) in the making of the Thai state, with indirect implication regarding the perception of foreigners in the country. Muttarak (2004) looks at how race and gender dynamics shape the structure of employer-employee relations of domestic workers. She insists in particular on the role of the media in shaping racial views of the public, but focuses on Burmese, Laotians and Cambodians rather than migrants from other regions. Migrants from Southeast Asia and their perception in terms of race, gender and identity, is also analyzed by Traitongyoo (2008). Hongladarom (1999) also focuses on the influence of the media, but analyses representation of Thai ethnic minorities, referred to as hill tribes.

There is a lack of academic research on the specific form of South-South racism in Thailand, and the following paragraphs will be based on the data collected through my fieldwork, understood through the lens of anti-colonial and feminist literature as articulated by authors such as Gargi Bhattacharyya (2013, 2016), and Bourdieusian sociology as articulated by, among others, Loïc Wacquant (Wacquant, 1997, Wacquant, 1999). This will however remain a case of a white and Western author discussing issues of race and prejudice from a point of view decidedly different from that of the groups subject to the analysis. Considering the importance of these questions however, shying away from the discussion altogether would be just as problematic as imperfectly addressing it.

The impact of prejudice on the life of urban refugees is far-reaching and multi-faceted. Racial prejudice is complex and goes far beyond European/African or European/South Asian dichotomies. It intersects with dynamics of class, culture and gender. One commonality of all non-Southeast Asian foreigners in Thailand is that their appearance marks them as outsiders. Thailand has not a long history of migration from outside of the Southeast Asia peninsula and East Asia. Hence, Bangkok is not a global melting pot, and in comparison with Western mega-cities its inhabitants are somewhat homogeneous. Hence many foreigners in Thailand stand out, but all are not perceived in the same

manner. A complex web of categories and sub-categories exists that will affect the way one is perceived in Bangkok.

The new urban refugees stranded in Bangkok, coming from Pakistan, Sri Lanka, Iraq, Afghanistan, Syria, Somalia, Ivory Coast, the Democratic Republic of Congo and other parts of the African continent all face a similar issue in Bangkok: they stand out. As a result, they find themselves at the mercy of street level bureaucrats. This is an especially salient problem since urban refugees do not find themselves on the top of the political agenda, meaning that most of their contacts with the authorities are incidental. There is little effort made by the police or immigration division to find refugees, who are numerically marginal and whose arrest occasionally attracts unwanted attention. Hence, most refugees' stories of encounter with the authorities do not start with a bang on the door and the irruption of policemen into their homes, though some do. For most of them, the risk is less to be searched for and found no matter where they hide, and more to walk past a bored policeman on the way to the bus stop. In that context, standing out from the crowd is not an inconvenience, but a hazard.

Standing out means different things to different groups. Not all new urban refugees stand out to the same extent, nor are labeled the same way by law enforcement. Groups from different countries or continents will have different labels attached to them, men will not be handled the same way women will, people expressing their faiths in different ways will not face the same types of prejudice. In this section, I will discuss one type of experience, that of African men, to illustrate a broader issue. I will focus on their experience for two reasons. On the one hand, I built a meaningful and deep relationship with three African refugees during my fieldwork, which gave me an opportunity to understand better their situation and the challenges they faced. Hence from a practical standpoint, I have had access to better data and am more confident with my analysis with regard to their experience than for example that of Pakistanis. On the other hand, the situation of African men seeking asylum in Thailand is in many regards worse than that of other groups. They find themselves at the extreme end of a continuum, and understanding that end highlights the many ways in which the Thai refugee policy impacts the life of refugees for the worst. The issues they face are not unique to their situation; rather they stand as the logical conclusion of processes that affect all other urban refugees.

African men are more isolated, face worse discrimination and harassment, have access to a more limited pool of jobs, have a harder time getting out of detention, etc, than

other groups among the new urban refugees. Pakistanis and Sri Lankans for example stand out in Bangkok, but benefit from a long history of cultural exchanges between the Indian subcontinent and Southeast Asia, including the import of Buddhism, Thailand's main religion. One of the consequences of this long shared history is the presence in Thailand of a well-integrated South Asian community. The community is numerically very small and sees itself as distinct from urban refugees from South Asia, but their continuous presence has at least made the physique of South Asians somewhat less of an oddity to the inhabitants of the capital. Refugees from Middle Eastern countries cannot tap into this type of shared history, but still benefit indirectly from the development of South-South tourism. A large number of tourists from middle income countries visit Thailand every year, most of them coming from Asia and the Middle East. It makes it easier for people coming from these two regions to blend in, at least around tourist hotspots in the city center. Though tourism from African countries has grown during the same period, it remains marginal compared to tourism from other parts of the developing world.

Two aspects of the experience of foreigners in general, and Africans and afro-descendants in particular, can be analyzed sequentially: being out of place, and being labeled. The experience of being out of place is shared by most foreigners in Thailand. As a white European, it takes only a few turns down most streets in Bangkok to find oneself as the center of attention, on a sidewalk where your presence is unexpected and noticeable. The same is true for Africans. The difference here is one of scale. Africans are few in Thailand, and their physical presence in almost all spaces is a rare occurrence. In other words, African migrants are a novel and rare feature of the urban landscape. The situation is somewhat different for white foreigners, referred to as *farang* in Thai. As a group, *farangs* have slowly carved out spaces in the city where their presence is considered unexceptional. Their routine occupation of these spaces over years has made them part of the scenery on certain streets, shopping centers, tourist attractions and neighborhoods. This is not to say that they have integrated in Thai society – *farang* is very much still a structuring category that shapes most aspect of Thai-*farang* interactions – but it does mean that their physical presence is expected by all in these spaces and not a subject of particular curiosity. The increasing number and diversity among white Westerners living in Thailand is slowly increasing the size of these spaces, and one can go further and further away from the city center without having to feel out of place. The same process is taking place for Africans and afro-descendants, but because of the more recent history of population movement to and within Thailand and the difference in its scale, the spaces where their presence has become routine and accepted are a lot smaller.

Africans and afro-descendants are subjects of attention and curiosity in most spaces in Bangkok. This curiosity leads to a process of labeling. This too is a shared aspect of life as a foreigner in Thailand or in any country. The specificity of the experience of different groups in different places lies in the type of labels, preconceptions or prejudices people will apply to members of that group in each context, and the specific signifiers that will be looked for by the observers. A white westerner walking down a street in Bangkok, if noticed, will be assumed to be a backpacker, a customer of the sex-industry, an expatriate, etc. Which label is applied will be influenced by age, clothing, attitude, and more. The same is true of an African or afro-descendants, but the pool of labels from which to draw differs. Prejudice, racism and colorism make the pool of labels applied to Africans and afro-descendants in Thailand overtly negative compared to that applied to other groups.

A first type of assumption that should be stressed before moving further is that all blacks are Africans. Though Thailand is not an ethno-state and “Thais” as a category includes a wide diversity of ethnic identities, Thailand has not seen large-scale inter-continental migrations, as noted earlier. As a result, nationality and physical appearance are more associated in Thailand than in Western societies where large segments of citizens have ancestors coming from other continents. In other words, it is common in Thailand to assume that all Europeans, Australians and North Americans are white, and that non-white westerners are not “real” westerners. This understanding of the linkage between physical appearance and nationality often becomes clear in conversations with Thais commenting on their experience in Western cities, in the form of expressions surprise if not regret that cities like Paris or London do not look “European” enough anymore. This is of course a generalization that masks a subtler tension around the nature of the *farang* category and whether it corresponds to a racial distinction or one of nationality. Nevertheless, it is important to note that though most of the following conversation will look at the experience of Africans in Bangkok and not of afro-descendants, who do not come to Thailand as urban refugees, there is much overlap between the two.

The central and structuring stereotype faced by Africans in Thailand appears to be that of the Nigerian drug dealer. This stereotypical character, though defined by its nationality as much as by its activity, structures the way media, policemen and the general public think about all African men in Thailand. In particular, the association between Nigerians, and by extension all African and afro-descendants, and illegal drugs is at the center of the way these groups are policed. Large-scale police operations are launched during which policemen arrest all Africans and afro-descendants they find and bring them

in for drug testing. One of such operations made its way to national news, and aired on the 1<sup>st</sup> of April 2015.<sup>27</sup> It showed policemen rounding up black men arrested in various neighborhoods of Bangkok. They were brought to a facility for drug testing. A police officer clears all ambiguity on the racial motivation of this action by saying that “today it’s the blacks, tomorrow it will be someone else”, and the journalists added that “those testing positive for drugs will face charges while those lacking proper legal status will be deported”. The stereotype of the Nigerian drug dealer in Asia is echoed in academic publications studying international drug trafficking (Akyeampong, 2005, Chouvy, 2013), which reference series of highly publicized arrests of few dozens of what they called “Nigerian-run heroin smuggling ring” (Chouvy, 2013, p.19) in the 1990s. It seems likely that these events can explain the specificity of cliché, and in particular the focus on Nigerians, though whether these arrests are at the origin of the stereotype is beside the point.

As the news clip described above shows, having no connection with the drug trade provides no protection to urban refugees, as another stereotype faced by Africans and afro-descendants have is that of being in the country illegally – and hence that any group large enough will contain a number of people without a visa. Though it is beside the point, it is worth noting that the prediction is self-fulfilling, considering the more numerous and stringent bureaucratic processes nationals from all African countries have to go through to get a visa for Thailand or have it extended compared to people from other nationalities.

The impact of these two labels on African urban refugees is dramatic. For them, any additional attention translates into additional arrests. The fact that they are more likely than other foreigners to be labeled as criminals or illegal migrants makes it all the more likely that they will be checked for documents by passing police or immigration officers. The effects of prejudice on urban refugees, regardless of the culturally specific ways in which its prejudice has solidified in the figure of the drug dealer and the illegal immigrant, can be measured in Bangkok through its impact on detention. Specifically, the level of adverse bias of street level enforcers is reflected by proxy in the composition of the population detained in IDC. Since all refugees share the same legal status, that certain nationalities are arrested more often than others reflects exclusively differences in the way the law is enforced. There is no public record of the identity of the detainees in the Immigration Detention Center (IDC), but the database of RRC, one of the NGOs working

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<sup>27</sup> The clip can be found at [https://www.youtube.com/watch?v=uA57N8EU\\_UI](https://www.youtube.com/watch?v=uA57N8EU_UI).

with refugees in Bangkok, contains sufficient information to give an idea of the extent to which refugees of different nationalities are treated differently by law enforcement.

The database contains data on nearly 2000 clients of that NGO over a period of more than 5 years. In particular, it indicates whether any specific client has spent time in detention, and their nationality. Grouping nationalities per continent, I could compute for each nationality the ratio of urban refugees who had declared that they had been detained, and group these ratios per continent. In Bangkok, Africans and South Asian are the most likely to report to have spent time in immigration detention, while Southeast Asian are the least likely, confirming that the latter are better able to avoid detection or less targeted by law enforcement. The rates vary from 14% for Africans and 10% for South Asian to 2% for Southeast Asian. Chinese nationals fall somewhat in between with a rate of 7%. In other words, and with the caveat that these data are approximations, Africans refugees in Bangkok are seven times more likely than Cambodian or Vietnamese refugees to report that they have been detained.

These statistics are one expression of the challenges faced by African refugees. Another one is reflected in the qualitative experience of everyday life in a hostile city. At the beginning of my fieldwork I met Marc, a refugee in his early twenties from West Africa who had already spent several years in Thailand when our paths crossed. We met in RRC's office, where he had come to receive counseling with a social worker. A few weeks prior to our meeting, he had been stopped by two policemen while on his way to buy groceries. They demanded to see his visa, which had expired years before. After a back and forth in broken English, they demanded a bribe to let him go. When he said he could not pay, they became aggressive, and eventually brought him to a police truck. Once in, they became increasingly violent, and demanded for more and more money. They let him call a friend to procure the money, and after a while and the intervention of a third party, he was able to secure his release in exchange for 10,000 baht (300 USD), roughly equivalent to a starting policeman's monthly salary. When I met Marc, weeks after the incident, he was still in shock. He had spent all of his time indoor, only convinced to come to RRC for counseling by a friend. As we were having lunch together on the street after the session, he kept looking around, turning to glance behind his back, incapable of letting his guard down while out in the open.

Urban refugees are aware of how precarious their situation is, and how vulnerable they are to law enforcement. This feeling of vulnerability is exacerbated among African urban refugees, who know that stepping out of their house, no matter for how long,

exposes them to the risk of detection by policemen. Any interaction with agents carries enormous risk. It can, and often does, lead to nothing past a conversation; many policemen have better things to do than randomly arresting people on the street. However, it can also lead to an arrest and immigration, where refugees are likely to spend months if not years. Another outcome is abuse at the hands of officials. They know very well that refugees are vulnerable, that they can be sent to jail in a snap, that they will not report abuse, nor would be believed if they did. Some, like Marc, are asked for a bribe. The amount can be negligible, equivalent to less than a day's work, or as high as the policeman thinks they can afford. In the latter case, the situation can become akin to a kidnapping, as in the case of Marc. Others will be taken to a police van or a police station, and subject to abuse on the way. During my fieldwork, at least one female refugee and a minor, Sara, was raped in a police station.

African refugees spend most of their time in Bangkok being afraid. Some, like Marc and Sara, have to live with trauma. Others have merely heard of such stories, and are aware that it could have been them. What stands out the most in Marc's story is how humbly it begins: a man goes grocery shopping across the street from his apartment. Unlike Burmese political activists or construction workers, African refugees do not need to speak up or make trouble to be subjected to abuse. Criminalization for them does not just deprive them of their political rights, but reduces them to a state of "bare life", in which they can be victimized with impunity. Since they are so visible in the urban landscape, any step they take outside is a risk. The most immediate effect of the attack on Marc's life was to scare him out of leaving his flat. It taught him that he was only safe at home, a lesson learnt by most urban refugees quickly: going outside, no matter how near or how routine the reason, is taking a risk. Criminalization leads African refugees to hide and avoid public spaces. It renders them immobile, or rather puts an exorbitant price on their mobility.

When I sat with Marc and the social worker, the social worker explained that he knew that life in Bangkok was tough and unforgiving for young black men like Marc, and that he had heard stories like his by the dozen. He added that most had a happy ending, though I believe that could have been an attempt to cheer Marc up. His experience, though extreme, appeared to be somewhat representative of that of the hundreds of African urban refugees in Bangkok. Symbolically, it is representative of the life of all urban refugees. If Africans are more often victimized, because they have a harder time hiding, any refugee runs the risk of being unveiled. Once their status is revealed, they find themselves at the mercy of whoever found them out, without any tools to retaliate.

Neither Marc nor Sara had the chance to see those responsible held accountable. The letter of the law does protect them, but none of the lawyer who helped Marc dared even suggesting him to file a complaint or take any step towards reporting the incident. Though he faced specific prejudice because of where he was from, no more options would have been available to him if he had another nationality – being legally powerless is inherent to the condition of urban refugees in Bangkok.

### ***Agency against the Odds***

There are unique elements in the experience of African urban refugees in Bangkok, but in many ways the challenges they face are just more extreme examples of those faced by all urban refugees. All share the same lack of legal protections, all are vulnerable to abuse, and most are somewhat easy to pick from a crowd. As shown in the previous section, these challenges threaten the refugees' capacity to move through the city, as public spaces become dangerous grounds where one could bump into the wrong policeman. Such an account of the challenges faced by urban refugees in Bangkok is accurate, but presents them as passive victims of their fate; in fact, refugees have agency and do their best to cope with a hostile environment.

Agency is a divisive topic within refugee studies, because putting the emphasis on refugees' capacity for action can appear to bring into the picture a dimension of personal responsibility, taking away for a conceptualization of the refugee as a "pure" victim in need of support. One finds authors describing refugees as "stateless, rightless, and politically adrift" (Bradley, 2014, p.123), and others stressing the refugees' "agency against all odds" (Soguk 1999; quoted in Palmgren, 2013, p25). Though characterization of the refugee experience can put the emphasis on different facets of it, there is no contradiction between agency and victimhood. Stressing the agency of refugees does not mean ignoring the odds stacked against them. My fieldwork alongside refugees brought into sharp contrast the gap that exists between the idea of refugees as helpless victims and the reality of refugees as resourceful individuals. Accounts of refugee life too often bring readers to wonder: how can anyone live like that? How can they survive? These questions of course reflect the privilege of readers whose existence is too far removed from the struggle for survival to easily identify with it, but the onus is equally on authors not to leave aside half the picture by describing anyone's existence as hopeless.

Some of the first contemporary academic writing on refugees was concerned with agency: Arendt's arguments *The Origin of Totalitarianism* (1951) and *We Refugees*



(1943) closely ties agency to citizenship. By defining refugees as those to whom citizenship is denied, she puts their lack of agency at the core of the refugee question (Heuser, 2008, Stonebridge, 2011, Saussy, 2013, Bradley, 2014). Arendt's famous formulation describes stateless people, which she does not distinguish from refugees, as lacking the "right to have rights". Agency is there closely tied to the political institution of the nation state and the legal realm; Arendt was first and foremost concerned with the legal rights of refugees and their position inside or outside of the polity. Her words have retained much influence in the field nearly 70 years after appearing on print (Coddington et al., 2012, Bradley, 2014, Heuser, 2008), and have influenced more recent thinkers such as Giorgio Agamben, for whom refugees are the example par excellence of "bare life" (1998). His framing of the refugee as one that is "not protected by any state or citizenship but is nevertheless subjected to the violence of a sovereign power" (Gal, 2009, p.25) lands close to Arendt's, though Agamben inserted the figure of the refugee in a philosophical rather than a historical argument. Both Arendt and Agamben are major academic figures whose take on refugees deeply influences refugee studies and the broader social conceptualization of refugees. Both however write with a specific focus on the nature of the law as it relates to states and individuals. In these arguments "the refugee" is discussed as a concept rather than an individual – a symbol, used to make a point with regard to the nature of the law and its consequences. Focusing on the law almost naturally leads to the conclusion that refugees are powerless, because the law was often the tool of their persecutors in their country of origin, and what stands between them and a return to normalcy in their country of asylum – in both cases empowering others to act upon them. But as I have shown throughout this chapter, there is much beyond the law that influences the life of refugees and their agency. In other words, once it has been established that they are stripped of some or all legal rights, what is left can still make the difference between a fulfilling life and one of misery, or between life and death.

Other academics, relying more extensively on field research, have produced a rich literature on the question of refugee agency. This literature has tended to focus on refugee camps, which despite the fact that they host less than half of the global refugee population have retained a central place in refugee studies. The space of the refugee camp has been central in shaping academic discussion of the nature of refugee agency (Silverman, 2014, Andrijasevic, 2010), in part because camps are symbols as much as they are places, they are geographical embodiments of the refugee condition. As put by Agier:

The camps are both the emblem of the social condition created by the coupling of war with humanitarian action, the site where it is constructed in the most elaborate manner,

as a life kept at a distance from the ordinary social and political world, and the experimentation of the large-scale segregations that are being established on a planetary scale (Agier, 2002, p. 317-18).

Discussions of refugee agency in camps focus on the tools of control of the refugees' body in the camp, the biopower of Foucault. Researchers look at the various techniques deployed to curve refugee agency in the camps or the detention centers: daily head counts, fixed schedules, interviews for status determination, etc. These lines of enquiry, like Foucault's, tend to leave aside the question of refugee agency and stand as a critique of the project of making camps into total institutions. There they rejoin Agamben whose figure of the refugee is deeply rooted in the image of the hopeless masses warehoused in city-sized prisons.

There is real value in critical analyses of the working of the refugee camp, and in particular the mechanisms of disempowerment in these settings. There seems however to be a growing interest among researchers towards refugees' capacity to reclaim their agency and challenge the power the state holds over them in camps and detention centers (Bosworth, 2012, Edkins and Pin-Fat, 2005, Puggioni, 2014). These authors focus less on questions of legal rights and rather bring attention to how refugees, despite being apparently stripped of their political rights, have found ways to politicize their bodies and use them as a last bastion of protest. These authors show how bodies, through their mere existence, create agency. This agency is limited and requires to go to extreme lengths in order to be used in protest: this literature studies things like hunger strikes and self-mutilation, for example the sowing of lips in the Australian-run Nauru camps. Puggioni concludes that "[the] many bodily protests inside detention centers suggest not only that the body is a site of politics, but also that the body itself is political" (2014, p.563). The idea that political agency cannot be extinguished as long as one has a body can be generalized to all closed settings, including criminal detention. The more extreme the deprivation of agency, the more mundane acts can become acts of resistance. See for example the account of resistance in solitary confinement in U.S. prisons (Dayan, 2011) or the use of hunger strikes by Guantanamo detainees (Annas, 2006). Places of detention or confinement however are not the only settings in which individuals find themselves deprived of political rights. Siméant (1998) shows for example that hunger strikes played a central role in the *sans-papiers* movement in France, which was organized outside of detention centers.

Discussions of agency outside of camps are not limited to the study of extreme acts of self-harm, and are essential to identify what are the specific features of refugee agency. Arendt's argument on refugees lacking the right to have rights was concerned with the legal status of refugees rather than with the specific conditions of their encampment. The parallel that one can make between the situation of refugees in camps and that of other groups kept in closed settings suggests that though it is their legal status that allows for encampment to happen, their condition has a lot to do with life in confinement. In other words, the life of refugees does not have to be conceptualized as wholly separate from that of other groups whose rights have not been taken away in the same way. Though the deprivation of some rights is inherent to refugee life, the experience of detention is not. Besides, research focusing exclusively on the effect of the specific legal condition of refugees inside of camps misses more than half of all refugees. Urban refugees hold the same legal status that enabled encampment to become the dominant form of refugee management, but live alongside other citizens and migrants, with whom they may have everything in common besides their legal status. The project of understanding the full historical and philosophical implications of the legal status, or lack thereof, held by refugees is incomplete unless it is taken beyond the camps, where it can be analytically separated from the exceptional circumstances of encampment.

With the increasing recognition that urban refugees are valid subjects of academic attention, a body of literature has grown analyzing their agency. That literature has shown that refugees are capable of bringing change through less extreme means than hunger strikes and lip sewing. For examples, urban refugee mobilization in Uganda and Egypt have taken the form of protests and a media campaign, which has led to an improvement in their situation (Dryden-Peterson, 2006, Grabska, 2006). Such examples suggest that the extreme form that refugee mobilization has taken in camps and detention centers has less to do with their legal status and more with the constraints that the detention setting poses for mobilization. In particular, since urban refugees are not kept away from centers of power, they can obtain reactions from power holders in more mundane ways than camp refugees. They do not need to hurt themselves for cameras to be turned towards them. Their political agency goes beyond biopolitics and the mobilization of their bodies alone to include more traditional forms of political mobilization, including public protest that in some context can be reminiscent for example of the mobilization of *sans-papier* in Western Europe.

In countries not signatory to the Refugee Convention, the agency of urban refugees is more often framed in terms of mundane struggles and quiet encroachment (Bayat, 2000)

than explicit political mobilization. The literature on such situations explores the strategies employed by refugees to overcome the socio-political and material constraints they experience in environments where control and hostility take a more diffuse form than in camps or detention centers (Azis, 2014, Palmgren, 2013). In urban settings, refugee agency takes a quieter and more individual form, as there exists more room for their situation to improve without the need for overt political struggle. In particular, since refugees are not physically segregated from the general population and hence not readily identified, subversion can take the form of evasion and withdrawal from the scrutiny of the authorities.

In Bangkok, the legal vulnerability of refugees has so far been an effective gag against any form of explicitly political mobilization. Refugees in the city are players in a game that is rigged against them. Though they do express a rejection of the overall rules of the game in safe spaces, for example NGO classrooms, these spaces are few and far between. Outside of these safe spaces, explicit political mobilization is a sure way to get arrested, detained and deported. Some Burmese political refugees, in the early 2000s, engaged in explicitly political activities. The Thai government, who saw such mobilizations as a threat, forced UNHCR's Thailand office to shut down. The organization was only allowed to resume its work once it accepted to stop registering Burmese refugees outside of the border camps, a policy that is still in place nearly two decades later and ensures that Burmese exiles who would become too visible would not be protected against deportation by UNHCR as they would not have been able to register in the first place. Part III will focus on the forces that keep the refugee issue out of the public attention and the political debate, but the fact that overt political mobilization has not been a form of expression of refugee agency in Thailand does not mean that the agency in question is reduced to nothing. In fact, it is the relative surplus of agency that refugees have in urban setting compared to camp setting that can explain that political mobilization is less common, especially in its most extreme expressions. Refugee agency in urban settings can be expressed through clandestine efforts to weave themselves into the urban fabric, instead of being reduced to its most biological extreme.

A whole range of strategies are deployed by urban refugees in Bangkok to mitigate their risk of arrest, and sometimes attempt to reclaim their right to the city's public spaces; these strategies constitute somewhat of an answer to the question of how they survive.

## ***Staying Home***

The most straightforward strategy for refugees in Bangkok to reduce their risk of arrest or abuse is to limit their movement to a minimum in order to avoid detection. This was the strategy followed by Marc, and it had been successful: it's outside his home that he was eventually kidnapped by police officers. In terms of risk minimization, staying home makes sense. Stepping out of the house means exposing yourself to the risk of arrest, no matter the reason or the length of the trip, whether it is to go to school, to buy groceries, to receive help from an NGO or to take an interview with UNHCR. Choosing not to leave the house removes that risk, as Marc explained:

I used not to leave the house because of fear of getting arrested. I would just cross the road from time to time to buy food at the 7-eleven [a chain of grocery stores]. But one day, as I was crossing the road, policemen arrested me. [...] Now I'm not leaving the house anymore, I just wait inside. I'm too scared. (Marc, 2015)

Marc's story is not uncommon. As Angelica, an NGO worker, put it "[immobility] is the issue that affects all of our clients, like everybody in the [refugee and asylum seeker] community". Palmgreen (2013) similarly showed that to avoid detection, refugees reduce their mobility.

The extent to which they do depends on their perception of the risk. The more they see public spaces as hostile, the more they will limit their movement. For example, I met two teenagers from Sri Lanka, Harshal and Sahana, who had been in Thailand for over 10 years. They were both under ten when they reached and appeared confident while moving around the city. They spoke fluent Thai and explained that though they did not worry too much about being arrested, the situation was very different for their mother:

Researcher: What does your mom do?

Harshal: She stays at home.

Sahana: She doesn't speak Thai much, and she is quite scared of going out, so she mostly stays in.

At the core of the refugees' decisions to stay home or go out is the fear to be particularly vulnerable to law enforcement. Some see themselves as better equipped to get out of an encounter with the authorities, because they speak Thai or because they do not appear to present a threat and feel that they would be treated with leniency. Young men in particular feel that they are more likely to be arrested because policemen are more

likely to label them as criminals. The way different individuals perceive risk differently allows refugee households to organize to shield the members perceived as most likely to be arrested. Like in the case of Harshal and Sahana's family, the members of the household most able to avoid arrest were sent out to earn an income, collect benefits or do the groceries, allowing the most vulnerable to stay inside for weeks and months at a time.

As a strategy however, staying home has weaknesses. One is that refugees eventually have to go out to buy basic necessities, to receive benefits from NGOs or to honor their appointment with UNHCR. Few can afford to completely cut themselves off. No matter how much a given household organizes, some appointments have to be attended, people need to find a way to get an income, people fall sick, etc. More importantly, even if refugees could simply never leave, isolation takes a heavy psychological toll. This is particularly true for people who have lived through traumatic events, as many refugees have. Marc is an example of the mental health hazard presented by isolation. The first thing he told the social worker he was meeting with was that he had hardly left his room in the previous weeks, and that after spending all this time on his own, he was finding himself in a dark place. The social worker was worried he might attempt to kill himself. Within refugee literature the poor mental wellbeing and the high prevalence of suicide among refugees has been pointed out by many in the past (Alley 1982; Cohen 2008; Steel et al. 2006). In particular social isolation, typically arising from situation of detention or living in refugee camps, is a known risk factor (Nock et al. 2008; Trout 1980; Van Orden et al. 2010).

Some refugees in Bangkok mitigate the negative effects of isolation by living in groups in the same building or housing complex and creating safe spaces around where they live. In Thailand this has occurred more with certain groups than others. Hmong refugees from Vietnam or Laos have tended to create communities, and so have Pakistanis and Somalis. These communities can take different forms: groups of refugees from Southeast Asia, like the Hmong, live in low income neighborhood in partially self-built settlements, while Pakistanis and Somalis live in low-price apartment complexes, often occupying a one-room apartment per family. In these communities, interstitial spaces, for example the staircases, hallways and lobbies of the apartment buildings become the refugee's promenades, where they can release some of the stress and tension accumulated in a time of uncertainty. The challenges faced by refugees to have access to any kind of housing also incentivize collective living. Managers of cheap apartment building are often not used to deal with foreigners and are not always welcoming to prospective tenants. This can take the form of evictions after a few months, or worse, a call to the police. Hence once a building with an understanding landowner or a neighborhood with a welcoming

community is found, refugees tend to seize the opportunity and move in in groups, in parts to find support in numbers, in parts because they lack other options.

When a particular building hosts several families of the same community, it allows its refugee residents to expand the size of their “safe zone” to an entire complex of flats, corridors and staircases. Beside the common areas, each one-bedroom apartment takes on a dual function. At night, it is a bedroom for a household. During the day, it becomes a community space used for group activity. This way, the more refugees move in a building, the more the community can expand its communal spaces and give specific functions to each room, creating reasons to move around throughout the day and a semblance of normality. An NGO worker for example explained to me during a meeting that in a building where many refugees lived, they had open schools on the roofs for the children. The re-creation of communal spaces and simulacra of villages with a school, a church, a mosque, a function hall, are minor adaptation to a life indoors. Yet, they are central to refugees’ wellbeing, and the capacity to create them is far from being a given. For isolated refugees like Marc, life quickly comes to resemble solitary confinement, not something one can easily endure for long.

The development of small communities gives refugees the chance to enjoy some social life in a safe space and limits the impact of isolation. It is not a perfect solution. Living collectively, first of all, is not a choice for all refugees. Financial constraints lead many to pack several families into rooms meant for one at most, leading to poor living conditions. Cramped living is a source of tension among members of households, with a range of negative outcomes, from stress to domestic violence. Having to live in close proximity with members of their community can also be a challenge for some. LGBTI refugees coming from countries where a major stigma is attached to the challenge of traditional gender roles might be shunned by the rest of the refugee community, or face abuse. Collective living, whether chosen or imposed, also creates a different kind of safety trade-off. When several families move in together, their presence in a given neighborhood becomes more likely to be noticed. This visibility makes them potential targets of immigration raids.

In Bangkok, immigration raids refer to the practice of immigration officers and policemen to come in large numbers to a given location where they to find many foreigners without visas. Immigration raids can target any location where foreigners congregate, though spaces used by poor and non-white foreigners are at a higher risk. This includes companies known to hire foreigners, such as construction sites or seafood-

processing plants, and sites of cultural and religious activities, including churches and mosques. It also includes places where foreigners live, such as specific low income neighborhoods or apartment blocks. Prejudice plays a significant role in the selection of raid targets – churches catering to Western worshippers do not get raided, but the ones catering to Africans do, on a regular basis. Isaac, for example, was arrested in church. At some point during my time with RRC and while I was helping Isaac with his case, I reached out to his church's pastor to write a support letter for him. The pastor declined out of fear that his church would be targeted again. During a raid, the immigration status of everyone present is checked, and those found without a valid visa are arrested and brought to police stations, where they are processed and then sent to IDC. In practice people without the necessary documentation are not systematically arrested, as the officers have the possibility to turn a blind eye. It seems to be a somewhat common occurrence in the case of refugees, as some immigration officers and policemen understand that the stakes are higher for them than for other groups of foreigners.

Anticipating raids and limiting their impact becomes an increasing concern as a refugee community grows in a given area. While a couple of families in a neighborhood might not attract attention, a dozen families in one building eventually will. In some neighborhoods, cooperative building managers have set up warning systems, with bells ringing in the building whenever policemen or immigration officers reach the gate. These alarms warn the refugees most likely to be arrested to leave. Working-age men are usually the first ones out, because they see themselves as more likely to be arrested than women and children. In other cases, policemen themselves warn apartment owners in advance of incoming immigration raids, allowing refugees to be ready. This is not to say that refugees are always welcomed with open arms and sheltered by a neighborhood's community. As often as not, refugees are arrested after being reported by neighbors or landowners, who are just as likely as policemen to be prejudiced against them. Helping refugees find allies or at least sympathizers among the police and the local community has become a core objective in the strategy of a number of NGOs, which see that protecting the growing refugee community in Bangkok requires a way to avoid immigration raids.

Bangkok is a hostile environment for refugees. This hostility pushes refugees to reduce their mobility, putting themselves under house arrest until a chance to leave the country presents itself. But refugees are not passive agents. They are resourceful and capable, and devise strategies to cope with their situation. Some of them choose to stay home, to lay low, and use their agency to fight isolation, mobilize allies to protect them from raids and bring to their lives a semblance of normalcy. When refugees do need or



decide to get out, they adopt a different range of strategies to limit the risk of arrest. Most of these behaviors are aimed at manipulating their identity and apparent “foreignness” to their advantage by mobilizing their understanding of the perception and motivations of Thai street level bureaucrats.

### ***Putting on a Disguise***

Urban refugees in Bangkok are aware of the risks involved in entering public spaces. This leads most refugees to take steps to mitigate risks when they do venture out. These strategies take a central importance in the refugees’ lives, as their capacity to mitigate the risk of arrest is a limiting factor for nearly all their other endeavors. If they are able to reliably avoid arrest, they can retain their right to move through the city’s public spaces, can secure a source of income and have access to a broader range of leisure opportunities.

At the core of any attempt by refugees to reduce the risks they take by occupying public spaces is the fact that, for refugees coming from outside of Southeast Asia, avoiding detection while on the street is not an option; no matter what they do, they stick out. What they can do however is transform their appearance and behavior to change the way they are perceived by others, including law enforcement. The question of projected and perceived identity is central to the refugee experience because foreigners in themselves are not a priority target for law enforcement. In fact, specific categories of foreigners are unlikely to ever be stopped and questioned. Tourists are considered a valuable resource for the country, and as such are not a target of police harassment – in fact Thailand has created a specific police unit, the tourist police, to ensure that visitors of the Kingdom enjoy extra protection. Western migrants with high-skill jobs are also regarded as beneficial to the Thai economy and are not specifically targeted by law enforcement. Hence urban refugees, when on the street, mobilize their foreignness to take the appearance of tourists or expatriates.

Shum (2014) documented how people crossing borders to seek asylum with a tourist visa would try to transform their appearance to look more like tourists and avoid additional scrutiny from border officials. This exercise would involve wearing specific clothing, putting on an air of confidence and rehearsing a holiday plan in case of questioning. In Western countries, deterrence policies have led to a situation where even with a valid visa in hand, asylum seekers know that going through the border is not a formality. If they do not look the part, regardless of how many vetting processes they had to go through to obtain a visa in the first place, they can be turned away. They also know that once in their country of destination, the situation will be different. Their visa will

provide them with a protection against eviction – the passing of the border therefore becomes something of a final test.

The situation is different in Thailand. The country's authorities are not concerned that refugees or other groups of long-term migrants would attempt to enter the country with short-term visas – or rather, the issue seems to be given a low priority. Hence, the crossing of the border does not present the same kind of challenge and refugees have been able to go through without having to modify their attitude or appearance. However, leaving the border behind does not protect refugees against immigration officers, since unlike in the West they soon find themselves without a visa and under the threat of arrest and detention. The border, in a way, follows the refugees into the city, expands its reach to the streets they walk. Refugees spend up to several years in the shadow cast by this widened border, and it is during that period that they have to take on different roles to stay out of trouble.

They are helped in this regard by a lack of awareness among the general public, including many branches of law enforcement, of what refugees are and look like. As explained by Gloria, the director of the Refugee Rights Collective (RRC), a refugee NGO (07/04/2016):

Gloria: People in Thailand know that we have refugees in the border areas with Burma [...] But those urban refugees here, well... because Bangkok is a tourist area! So people don't really recognize [them].

This idea that refugees in Thailand can only be found in camps is not only present among the general population but also among law enforcement. Unlike in Western countries, immigration control has not been a priority in Thailand and the expertise required to distinguish between types of migrants is lacking. The proximity between the tourist and refugee populations in the eyes of most in Thailand creates opportunities for refugees to jump out of their category and become tourists. In everyday practices, the figure of the tourist and that of the refugee are not neatly separated, and in the blur that lies in between refugees find the potential to go unnoticed through the gaze of the authorities.

Passing for a tourist requires for refugees to put on a disguise, to display the attributes symbolically associated with being a tourist: sunglasses, backpacks, brightly colored sleeveless shirts and loose printed pants are as many ways to convince the inattentive observers that one belongs to the class of the privileged travelers who are not to be

checked by law enforcement but rather helped. Convincingly embodying a tourist is not just an exercise in visual camouflage. To work, the disguise must be matched with an adequate behavior. An out of place tourist raises questions, which is the very thing refugees try to avoid. Tourists are expected to be wealthy, to have specific patterns of consumption, to limit their movements to certain parts of the city and favor certain modes of transportation. Tourists prefer to use Bangkok's relatively expensive metro or taxis rather than the city's buses, and especially not those bound for the city's far-flung suburbs. Refugees must try to match these patterns of behavior. The closer the match, the safer they are. The safest refugees can be in the city is in centrally located shopping malls, or around the temples and palaces of the old city. In a strange twist of fate, they can more safely walk the sidewalks around the Grand Palace or go have a drink on Khaosan Road, both touristic hotspots, than go grocery shopping to the 7-eleven across from where they live. Since taking on the role of a tourist goes beyond mere appearances and relies on a refugee's capacity and willingness to adopt certain patterns of movement and behavior, it shapes the agency of refugees in the city. Though putting on a disguise allows them to leave the confines of their rooms, embodying tourists does not allow refugees to freely go about; the disguises are their most efficient only in certain neighborhoods and when using certain modes of transportation. These limitations can appear marginal – the neighborhoods where one expects to find tourists are also the city's most attractive. There are, arguably, worse places where to be trapped. However, the issue for refugees comes from the gap between the resources available to them and that necessary to sustain the lifestyle of a tourist.

Passing for a tourist is an attractive strategy, but is out of reach for many refugees. To take on the appearance of a tourist requires to spend money on clothes and accessories when many refugee families hardly have enough to feed themselves and their families. All the NGOs working with refugees take donations of clothes, and their stocks never last because new sets of clothes are a luxury among their beneficiaries. Adopting the habits of a tourist is even more problematic than adopting their dress. Touristic hotspots are located in the city's most expensive neighborhoods. The rents in these parts of town are far beyond what most urban refugees can afford. Refugees tend to live in the city's outskirts, where rents are more reasonable because connectivity to the city center is limited. Hence the great majority of urban refugees in Bangkok need to go through long commutes to reach the neighborhoods in which they would be the safest. This issue is compounded by the fact that traffic is worst in the city center, adding even more time to the typical commute of refugees; Bangkok having one the world's worst traffic, daily

commute easily adds up to several hours a day. Alternatives to road-based modes of transportation, such as the city's metro, are too expensive for most refugees as well, who find themselves confined to the city's bus system. Though passing for a tourist would protect refugees from police harassment, and allow them to lead an almost normal life, it comes at a cost, which only permits most refugees to exceptionally indulge in the safety it provides. Finding safety by taking the guise of a tourist poses another type of issue. Not all refugees are willing to compromise with their cultural identity to look like a Western tourist. For example, the traditional clothing of many Somali women makes it harder for them to pass as tourists, and compromising on the wearing of traditional dress can create tensions with other members of their community.

Looking like a tourist is an efficient yet expensive strategy for refugees. It affects their physical appearance as well as their habits and use of space. However, it provides them with little protection in case they are forced to interact with the police or immigration division. When they do fall under the scrutiny of street level bureaucrats, whether out of bad luck or because their disguise has failed them, refugees need to resort to a different kind of strategy to tackle the challenge of convincing their interlocutor that they should not be detained.

### ***Looking Respectable***

The stakes are high for refugees in Bangkok when a police or immigration officer stops them. Their capacity to talk themselves out of the encounter will make the difference between walking free and spending years in jail.

Pretending to be a tourist and not to be carrying a passport can be a strategy, and so is a straightforward call to the officer's mercy, but the chances of either to work are low. The fact that the refugee was stopped in the first place suggests that they were identified as suspicious. Officers would not normally engage in routine identity check, therefore acting ignorant will not provide much protection. Hoping that the officer will recognize that the refugee poses no threat and turn a blind eye to her immigration status will work better for certain refugees than others. If the refugees are Middle Eastern, African or South Asian, they will have to convince the officers that they are unlike the way they are portrayed in the broader culture and present no threat. Young men in particular will have a harder time overcoming the prejudice of the officer. Besides, all refugees will have to find a way to communicate with the officer, which is a challenge: few police and immigration officers speak English, and even fewer refugees speak Thai. If no acceptable

medium of communication can be found and the officer is left in doubt, he is likely to take the refugees in.

Refugees have therefore devised a number of strategies to get themselves out of such situations by providing evidence that they are not in fact a threat nor a bad person, unlike what prejudice might suggest. An example of this form of subversion was presented by Tuitjer and I through the story of an asylum seeker named Zahid:

Opening his backpack, he took out a neat folder with individually wrapped documents. The one he showed us was an odd little piece: a handwritten note in Thai on a paper receipt. The paper stated that Zahid had lost his passport and was in the process of obtaining a new one. The note bore a telephone number and the stamp and signature of a large FBO in the city. Zahid smiled at our puzzlement, and when asked how this note was helping him in dealing with the authorities, he smiled even wider. He told us that when the police read the note they called up the FBO and his Thai friends assured the officers that Zahid was a respected member of the community and in the processes of obtaining a new passport.

(Tuitjer & Batreau, 2019, p. 12)

The strategy deployed by Zahid in this example works because urban refugees are not a priority for law enforcement officers in Bangkok, and are few among the broader group of migrants in Thailand without a visa. Their relative rarity makes it unlikely that any given officer would have had the chance to develop a routine to handle their case or to have received specific guidance from its superiors. The rules that apply to refugees are clear, they have no valid visa and therefore should be detained until they leave the country, but agents in the lowest rungs of the Thai administrative hierarchy are unlikely to have been briefed on their situation and told that it was clear-cut. Hence if refugees are able to muddy the water enough, the fact that police officers are likely to be operating without guidance nor precedent gives them a chance to sway the situation and walk free.

This is why Zahid mobilized artifacts proving his good morals and his usefulness to society rather than a passport or an UNHCR card. The latter in particular would give the officer no reason not to bring the individual in. In all likelihood, he has not encountered a refugee or asylum seeker certificate before and will need to seek advice as of its legal value. Moreover, the documents are in English, a language the officer is unlikely to read fluently; one more reason not to take the refugee's word that the document grants some sort of immunity. Since the law in Thailand does not protect refugees, taking the conversation with an officer to legal grounds is not to the refugees' advantage. Hence

during interactions with officers, the priority for refugees is to distance themselves from prejudice and the security discourse that are mobilized against them. They want to bring the officers to make use of their own agency, turn a blind eye and leave the procedure aside. Refugees enlist respected voices of neighbors, friends, employers or anyone who could make them appear unthreatening. They carry these tokens of trust around in the forms of letters, employment documents, pictures and phone numbers. The offering of money or valuables can play a role as well, but buying their way out of a situation is not a straightforward affair and still requires them to shift the conversation away from the strict following of procedures. If the officers' assumptions are that they are bringing back to the station a potential terrorist or drug dealer, they are unlikely to be ready to accept a bribe, or at least not one the refugees would be able to afford.

Refugees are vulnerable, because their legal status puts them at the mercy of law enforcement. Their vulnerability is the highest when they venture on Bangkok's streets, leading them to reduce their displacement to a minimum. However as I showed, thinking of refugees as helpless victims ignores the wide range of strategies they deploy to improve their situation. Refugees do have agency and in Bangkok they use that agency to reclaim access to the streets. They hide themselves in plain sight by adopting the looks of tourists and carry with them a range of artifacts to mobilize as allies in case of questioning by an officer. It is however not always enough, and what happens to refugees for whom disguises and bartering fail is the darkest side of Thailand's refugee policy.



## ***Chapter 4 – Detention, or Management through Neglect***

If refugees are arrested, they are sent to Bangkok's infamous Immigration Detention Center (IDC). This fact has broad implications, but before taking a more analytical approach, I want to share the end of Isaac's story. While he was in detention after being arrested in church, I visited Isaac at least once a week for more than a year, and his story was central to my fieldwork. Also a caveat: the rest of this chapter is written with a sense of detachment that is necessary to academic work, but utterly fails to convey the emotional weight that the topic of detention carries among urban refugees and anyone working with them.

Isaac stayed in IDC for nearly a year and a half. After he had spent about a year in detention, his application for resettlement was rejected. He appealed the decision, and initially appeared determined to fight until the end, but after a few more months in detention, with his health deteriorating, he gave up. He reached out to a charity to finance his flight back home, and after a few more months of waiting and the help of a crowd-funding campaign, he was able to leave. On the day he flew out, he was given back the clothes he wore when he had been arrested. They were loose and made him look pale and emaciated. His girlfriend and twenty-month-old daughter came to the airport to see him leave. His daughter was four-months old when he was arrested. While he was in detention, he only saw her twice, because visits were limited to weekdays, and her mother had to work. Throughout Isaac's time in detention, he had two particularly rough patches. The first one started with a cough that would not go away. He was terrified it was tuberculosis, because another detainee in his cell had been diagnosed just before the cough started – and that detainee had spent weeks coughing in the small, confined space of the cell. Eventually the cough went away and he was less worried about his health. The second rough patch lasted a few weeks, and was caused by a cell "cleanup". Everyone in his cell was moved to another while it was cleaned. The cell where he ended up was where the most violent detainees were kept, referred to as "the punishment cell" by detainees and NGO workers. He stayed there two weeks, and throughout that time looked livid whenever I saw him. He explained that fights erupted on a regular basis in that cell and that he feared for his safety. He was eventually moved back to his cell, but remained restless. The conditions in detention had ground him down and he decided to leave his family behind for a chance to start anew, though at the risk of being identified at home and further persecuted. This chapter will explain the functioning of the Thai detention



system when applied to refugees, a system that leads fathers to leave behind babies to go back to countries they fled, and makes them routinely fear for their lives.

Chapter 2 described how Thai immigration law made refugees vulnerable to law enforcement, and chapter 3 discussed several ways through which refugees attempt to limit their exposure to law enforcement. Across both chapters, I argued that the current status of refugees in Thailand is not an oversight of the Thai state, but a by-product of its instrumental approach to immigration combined with its lack of interest for the wellbeing of urban refugees. That combination results in the criminalization of the urban refugee population. Criminalization in turn makes them vulnerable to law enforcement, and this vulnerability is compounded by prejudice for those among the refugee population who come from countries without a long history of migration to Thailand. Despite having some agency to mitigate the effect of criminalization, most refugees limit their movements in the public space out of fear of being arrested.

Taken together, these elements constitute a system that ensures that the refugee issue stays under control. Criminalization ensures that urban refugees keep a low profile and do not rise in the political agenda and become a source of embarrassment for the Thai government. However, for criminalization to be an efficient tool of control, it needs to come with consequences, to be backed up by a system of sanctions. The final piece of the Thai urban refugee management system, what holds it together, is what happens after an urban refugee is arrested. Given that the situation of urban refugees before they are arrested already involves confinement at home, the absence of economic opportunity and a complete vulnerability to abuse, whatever sanction follows arrest needs to be significantly worse to ensure that refugees will fear arrest enough not to contest the overall system. This part will talk about the sanctions, and how the way IDC is managed shapes the overall functioning of the Thai refugee management system, and opens or closes avenues towards a less punitive approach.

As mentioned in chapter 2, foreigners caught without a valid visa in Thailand are sent to immigration detention. There are immigration detention centers in every Thai province, urban refugees are only found in large numbers in a few in and around Bangkok. Most IDCs function as processing centers, where foreigners wait for a short time until their removal. In the case of refugees, this removal can only take two forms: either refugees find the funds to buy a ticket to their country of origin, which is the only country that will grant them passage since they are being deported, or they are resettled to a third country through the UNHCR procedure. Refugees, given a meaningful choice, are not

willing to go back to their country of origin, which they fled by fear of persecution. Resettlement, on the other hand, is only offered to some refugees, and being resettled typically happens no sooner than 3 years after their arrival in Thailand. Therefore, urban refugees typically spend a long time in an IDC, either waiting to be resettled or to renounce their claim and accept to go back to the country they fled. Leaving the country was not always the only way to be released from detention. For a few years, release on bail was another way out, but after 2015 bail has been systematically denied to nearly all who apply – I will discuss the defunct bail system in more detail later in this chapter.

Detention in IDC is not a punishment under Thai law, but an administrative decision. Its function, like in most countries, is to safely store foreigners to ensure that they will be available for removal when the time comes. In the case of refugees, immigration detention pushes to its logical limit the idea of “refugee warehousing”. Since refugees can find themselves in the situation of having no way to leave the country, and that leaving the country is a pre-requisite for release, detention becomes indefinite. Some inmates claim to have been in IDC for more than a decade, and many among the ones I visited had spent more than a year in their cells. The lack of publicly available statistics on the management of IDC gets in the way of computing an average length of incarceration. Several months is definitely common, several years seem to happen but to be somewhat rare, and ten years or more would certainly be an outlier.

In practice therefore, the existence of a legal loophole allowing for indefinite detention in IDC does not mean that immigration detention routinely becomes a life sentence. Urban refugees are usually not kept forever – they are simply kept until they cannot take it anymore, and decide to go back. Though the Thai government does not pay for expulsion, nor provide any support to detainees willing to leave, a number of organizations fill that role. Several charities raise funds to ensure that detainees willing to be flown back to their country do not get stuck in detention, though obtaining access to these funds is not automatic, and refugees often remain on waiting lists for several months before they can eventually be released. A number of volunteers, who have built relationships with detainees over time through weekly visitations, raise money to help specific detainees and complement charities. I found myself joining this category in 2017, when I launched a fundraising campaign to help obtaining the release of Isaac. Several among the group of volunteers I visited IDC with had done the same at some point. The most significant program that finances refugee removal is run by the International Organization for Migration (IOM), which has funding far beyond that of local charities, but also a more thorough and systematic vetting process. These various ways for a detained

urban refugee to fund his or her way out are as many ways of ensuring that indefinite detention remains, mostly, a possibility rather than a routine occurrence.

In a sense, the programs helping refugees to get out of detention legitimize *refoulement* by sending people back to countries where they could be further persecuted without forcing the Thai state to take responsibility for violating the *non-refoulement* principle. Smaller charities in particular do not have any kind of safeguard procedures in place, and will fly back whoever asks, if they can find available funds. Some organizations refuse to send detained urban refugees back if the decision does not meet certain standards of voluntariness, or if their countries are deemed unsafe – the program run by IOM for example is selective with regard to which countries are safe enough for repatriation. And even then, determining which countries are safe is a contested process. The next chapter will discuss the relationship between *refoulement* and repatriation as it is practiced in Thailand in depth, but any critical analysis of the organizations and charities financing these programs must acknowledge the fact that they constitute the only way out from many detainees, and are responding to a demand of urban refugees in detention. Leaving aside the ethical dilemma this poses for a moment, these programs create a soft limit to the length of detention of refugees in Thailand and explain that the average time spent in detention appears closer to 2 than to 10 years. Considering the conditions in detention, limiting the length during which one has to remain in an IDC is not a marginal achievement.

There are refugees in IDCs all over Thailand, but my field work focused on Bangkok's IDC, which hosts the largest number of refugee and has proven easier to access than the ones in the rest of the country. Since the large majority of urban refugees in Thailand live in the Bangkok metropolitan area, Bangkok's IDC is the most relevant to an understanding of the Thai refugee system.

During my fieldwork, I spent extensive time in Bangkok's IDC. It is located on ถนนสวนพลู (Suan Plu road), a few blocks down the street from one of the city's major business districts, ชองนนทบุรี (Chong Nonsi). I visited the center once to three times a week during a 14 months period, from May 2016 to July 2017. Over that period, I built a trusting relationship with several detainees, their families and the volunteers visiting them. The center and the way it is managed cast a long shadow over the life of refugees in Bangkok. It is the end point of the Thai refugee management system, the stick with which urban refugees are kept under control. Understanding the conditions inside goes a long way to

explain the lengths refugees are ready to go to avoid detention – even, as I explained, to the point of organizing their own de-facto home detention.

### ***Life and Death in Indefinite Detention***

The length of immigration detention for refugees is not the sole reason why refugees would do nearly anything to avoid it. Many see their time in Bangkok merely as time spent waiting for resettlement to a third country. Considering the hardship they face on the outside, one might think that detention could at least for some become the lesser of two evils; one way for refugees in waiting to ensure that they will keep a roof above their heads and eat two meals a day until they get a chance to leave. This is however not the case. When I was teaching in a refugee school, I heard once the sentence “you will be sent to IDC” used as an insult during a dispute among two children; it made the class go quiet as would the worst swear words. The confrontation almost escalated to become physical. The children understood that IDC was not a place to be taken lightly, but was akin to a very real hell they could in fact end up in. No refugee of sound mind would willingly be placed in IDC because the conditions there are, to use the euphemism used by international organization officers, “very poor”. The ultimate consequence of these very poor conditions, in IDC, is that detainees routinely die.

The issues posed by the conditions in IDC are rooted in a mismatch between the intended use of the facilities and their actual use. IDCs in Thailand were not designed to hold detainees for extended periods of time. The centers were meant to be secure waiting areas; facilities detainees would pass through rather than stay in. Urban refugees, though they now represent a large share of the detainee population, are a new issue and not a population that could have been in the mind of the conceivers of IDCs. Since they were intended as temporary, they were built with no canteen, no recreational areas, limited sanitation, poor ventilation, and no medical facility. In a country where conditions in prison are notoriously poor (Fédération Internationale des droits de l'Homme, 2017), IDCs have the dubious honor to be even less fit to house human beings than other detention facilities. According to an unpublished report by Tankulratana and Janamporn (2017), the Immigration Bureau claims that Bangkok’s IDC has the capacity to host 1,185 detainees in 16 cells, with a total area of 1,660 square meters. It translates, using the Immigration Bureau’s own numbers, to 1.44m<sup>2</sup> per inmate at maximum capacity. This means that if detainees were given individual cells, they would have been designed to have a surface smaller than that of a single bed (1.70m<sup>2</sup>). This surface, aside from being far too small to house a human being over long periods of time, is inferior to the 2.55m<sup>2</sup>

required by law for Thai prisons. For reference, the International Committee of the Red Cross (ICRC) recommends a minimal surface area per detainee in shared cells of 3.40m<sup>2</sup> (Nembrini and Croix-Rouge, 2005). These numbers are certainly not representative of the actual occupancy of either Thai prisons or Bangkok's IDC, which both suffer from chronic overpopulation, but the discrepancy shows that IDCs were from the ground up designed with lower standards than Thai prisons. Again, using more flexible standards for temporary facilities is, though certainly regrettable, not shocking. It would have been less of an issue if IDCs were indeed keeping detainees for a few weeks at most. However, immigration detention facilities now have a large number of long-term inmates.

Statistics on the number of detainees in Bangkok's IDC are not publicly available, and therefore the number of 1,050 detainees in total reported in Tankulratana and Janamporn (2017) cannot easily be verified. A portion of this total number of detainees is made of short-term inmates: Burmese, Laotian and Cambodian workers who have no specific fear to be brought back to their country and will pay the few hundred baht the deportation costs them as soon as they can. The rest are long-term inmates coming from other countries for whom deportation is more expensive and among whom are urban refugees who fear deportation. Their numbers in detention are not public, but a well-informed activist estimates their number at 400 in Bangkok in 2018 while RRC's Director estimated they were more than 700 at some point in 2015.

The regulations governing the number of square meters made available to each detainee in Bangkok's IDC are important because a central issue with the facility is the overcrowding of the cells. All its inadequacies as a long-term detention facility are compounded by chronic overcrowding. The center was designed to offer 1.44m<sup>2</sup> per inmate, but in practice the available space for most detainees, and especially long-term ones, is significantly lower. The official numbers reported by Tankulratana and Janamporn are not consistent with other accounts and appear to overestimate the total available space in IDC. The calculation they present are based on 16 cells, a number obtained from the Immigration Bureau, but the authors of the report indicate that only 12 of these cells appear to be in use, which is corroborated by testimony of former detainees and NGO workers. Total average available space per inmate, regardless of whether 12 or 16 cells are available and the exact number of detainees at any given time, masks the important difference in the occupancy of each cell. Cells in IDC are organized by nationality and, when there are not enough detainees of a given nationality to fill an entire cell, by race. Room 3 for example, holds South Asians: Pakistani, Sri Lankan and Bangladeshi detainees. Room 6 holds African: Nigerian, Congolese, Ivorian detainees, etc.

Burmese, Cambodian and Laotian detainees are kept in others cells, and one cell is set apart for women, who are fewer in the facility as they are not arrested as often. This mode of cell attribution creates the risk of grouping refugees with members of groups persecuting them in their country of origin, and also means that certain cells are a lot more crowded than others. One cell, hosting Westerners, is nearly empty, while the one holding women and the one holding South Asians are beyond full.

It is hard to get an idea of the exact number of detainees in each cell and the exact size of each cell, but it is important not to stop at numbers and look at the qualitative experience of life in detention. Overcrowding in Bangkok's IDC is not uncomfortable, it is hazardous and cruel. The cells holding urban refugees are the fullest, with very practical consequences. Inside, bodies are constantly pressed against one another. In several cells, there is regularly not enough space for all detainees to lie down, forcing them to take turns sleeping, or to sleep sitting up. There is limited space to exercise or even move. The cells lack any form of privacy. And people are kept in such conditions for years at a time. IDC pushes to its logical limits the concept of "refugee warehousing", a common trope of academic literature on refugee camps (Smith, 2004, Crisp, 2003). Overcrowding in IDC is not a temporary fluke. It is the natural outcome of Thailand's refugee management system, which makes all 9,000 urban refugees in the city potential inmates while making it hard and rare for detainees to leave IDC. There is a profound imbalance between the numbers of detainees being brought in and the number of detainees trickling out. Under the current system, the population of IDC will keep on rising as long as Bangkok continues to attract asylum seekers.

The conditions in IDC go beyond questions of comfort. They put the life of detainees at risk. There are no windows in IDC cells, and no air-conditioning. The cells have a handful of fans, but not enough to make much of a difference. Thailand is a tropical country, where temperatures rarely drop below 25°C at night and stay above 33°C during the day, with humidity levels hovering around 78% throughout the year. Without the adequate tools to deal with the heat, the cells in IDC are unbearably hot throughout the year. The heat combines with the extreme overcrowding and poor sanitation to create a lasting stench, shocking enough that the smell is usually the first thing people who have had access to the cells comment on. That smell is an indicator of a more serious problem. The same conditions that are responsible for it make the cells into perfect breeding grounds for a wide range of diseases. As a result, inmates are perpetually sick. Some suffer from the poor quality of the drinking water and the food, but in such close quarters the inmates' biggest concerns are infectious diseases. The flu, colds and diarrhea jump from

detainees to detainees despite their best attempt to use facemasks and obtain drinking water from visitors. Angelica, an officer working for RRC, said when asked what kind of diseases were affecting detainees in IDC:

Angelica: Well there is TB [tuberculosis] but really they get all sorts of things. A particularly bad, dramatic one is a thing, a skin condition, that makes their nails fall off, really I haven't heard of that anywhere else, but ask anyone about the IDC nail thing and they know. Also there is hepatitis A and B, and all sorts of rashes.

Among the ailments listed, the most problematic one is tuberculosis, a significantly more serious disease than any of the other ones on that list, and that has become a major concern for NGOs.

It is worth here to go on a short tangent relative to tuberculosis to understand the significance of allowing the disease to roam freely in cells in the middle of Bangkok. Tuberculosis has been a major force throughout much of human history but has been somewhat forgotten in the West. It is a highly contagious disease. Around a third of the world population (Jasmer et al., 2002) has been infected with *mycobacterium tuberculosis*, the germ responsible for the disease. Transmission of the germ is most common in enclosed, warm and humid spaces, especially if they host large numbers of individuals – a description that applies to IDC's cells. For most people infected with the germ, it lays dormant in their lungs, for years or decades. Factors leading latent infection to develop into active tuberculosis are wide, but have to do with the overall health of the host – the healthier one is, the less likely one's immune system is to be overwhelmed by the germ. Tuberculosis is an opportunistic disease, a disease that preys on the weak. Active tuberculosis is a slow but efficient killer. Seventy percent of the sick, left untreated, die after 3 years (Tiemersma et al., 2011). Treatment for tuberculosis is possible since the 1950s through chemotherapy. The success rate of treatment is high if the treatment is adequate and the full course is administered. The drugs however have severe side effects, including permanent deafness and blindness, and must be taken during several months, or even years for certain strains. Keeping people under treatment when the treatment can be worse than the disease is a major challenge for doctors and service providers working with TB patients. Achieving treatment adherence requires holistic care and extensive monitoring. That is to say, developing active tuberculosis is a serious health problem in the best of conditions. The illness and its treatment have a long-lasting impact on individuals and can lead to permanent handicap for the ones who survive. Being exposed to tuberculosis is not something to take lightly, especially for people with weakened

immune systems – tuberculosis is the first killer of people living with HIV, responsible for more than a third of all HIV-related deaths. The fact that tuberculosis is rampant in IDC and that no steps are taken to protect detainees, personnel and visitors, creates a major health hazard not only for people inside the center, but for their families and anyone around them. Inside of IDC, the risks posed by exposure are compounded by the poor conditions in the cells that weaken detainees over time, while exposing them to repeated infections, increasing the chance that they develop active tuberculosis.

Not only are refugees exposed to a whole range of health hazard in detention, they also have limited access to medical care. There is a nurse stationed in IDC, who is tasked with looking after the health of the detainees. In practice, the nurse only accepts to see detainees with severe symptoms, and even then, often only after weeks of requests for medical attention; this is how Isaac and his cell mates were kept in an enclosed space with someone showing the symptoms of active tuberculosis. The general approach to detainee care in detention seems to be that unless a detainee's condition presents an immediate and mortal danger, no action will be taken. This holds apparently no matter how easy and cheap preventive care would be, or how dramatic the consequences of withholding treatment would be.

Angelica shared the following example with me. She visited a detainee after he contacted RRC requesting an urgent visit. She found him visibly sick. He explained that he was diabetic and had been given insulin tablets instead of injections since his arrest. As he immediately felt sick, he requested to be allowed to switch back to injections, which he explained he could do himself. The nurse however denied his request and kept him on the tablets. His health quickly worsened and he told Angelica that he was scared for his life. Angelica, who found his state alarming, asked that the detainee be sent immediately to a hospital, but was told that it could not be done. She called a doctor and described the symptoms to her, and the doctor urged for the detainee to be given immediate attention, for the symptoms suggested he was having a diabetic shock, which can be fatal. Angelica went back to IDC and requested again that the detainee be sent to a hospital, stressing that his life was in danger. The request was rejected once again. Eventually, after she staged a daylong sit-in in front of the detention center, the officers in charge accepted to let the detainee be hospitalized, considering his weakening state. The detainee was then rushed to the hospital, where he was diagnosed to be in diabetic shock, and the doctors commented that they did not think they would have been able to save the detainee had he arrived just a few hours later. This example is extreme, but even accounting for a level of exaggeration from the narrator, it shows how the health of detainees is approached in



IDC. The priority is put not on preserving health, but rather on avoiding the embarrassment of death in detention. As a result, detainees are routinely denied treatment unless the administration is put under pressure and the detainee's death appears imminent, at which point their condition might be too severe to be treated.

The cells of Bangkok's IDC are insalubrious and expose detainees and staff to a range of health hazards, including tuberculosis. These conditions result in a high mortality rate among detainees. There are no public statistics on the number of deaths in immigration detention, and this type of information is particularly well guarded because of its sensitive nature. NGOs however usually are notified of the death of their clients, or at least they tend to hear about them. According to Angelica, there would have been at least 5 deaths of refugees in detention over a period of about 40 weeks, from August 2015 to May 2016. This number would represent a death every 8 weeks for a population of somewhere between 400 and 700 refugees in detention. To allow for comparison, and even though the unreliable nature of the mortality data I use for IDC limits the usefulness this number, the figure given above translates to a mortality rate somewhere between 950 and 1,600 per 100,000, among a detainee population of mostly young men. As a comparison, the mortality rate for detainees aged 18-44 in the US oscillated between 50 and 100 per 100,000 between 2001 and 2014 (Noonan, 2016). Detainees in IDC die at a rate between ten and twenty times that of US prisons; in other words, if the IDC was decently run, and assuming here that this descriptive applies to US prisons, a detainee would pass away in the facility about every year and a half, not every eight weeks.

Despite the poor conditions in detention, IDC runs somewhat smoothly. Detainees neither routinely escape nor riot. The control of inmates in IDC is not obtained through some institutional panopticon or bourdieusian total institution. The detention center is run as a pre-modern facility. The cells are few and large, each holding anywhere from a few dozens to nearly a hundred inmates. They look like camps, with the detainees' personal effects hanging from colorful plastic bags on the wall, and are very much the detainees' own space where the physical presence of guards is exceptional (see Illustration 5). Each cell is its own economic microcosm, where detainees buy, sell and rent supplies and services. Money and goods are supplied through visitors, and IDC has a shop that sells food, clothes, health products and other goods, all at a significant mark-up. Order in the cells is maintained through cells' chiefs, detainees nominated or elected to be an intermediary between the guards and the detainees. The guards control detainees by providing incentives for collaboration though regulating the access to commodities, for example phones. Cellphones are forbidden in the center, but in practice a number of

them are present in each cell, and detainees can rent access to them from their owner to call friends, family, lawyers or UNHCR. Regularly, cells are raided and phones confiscated, only to be then resold to other cells by the guards. Increasing or decreasing access to phones is an effective tool for IDC managers to obtain cooperation – aside from providing guards with an additional source of income.

The other side of this picture is the negative incentives that are used in IDC. The center is a brutal place, where detainees are denied a wide range of basic services. Hence, one can expect the tools used for discipline to be even more brutal. It is something of an open secret among people working with urban refugees in Bangkok that detainees are subject to abuse in detention, but establish facts from rumors is not easy. Leaving aside claims heard during my fieldwork that could not be corroborated through several sources, the following picture of discipline in IDC emerged. One of the cells in IDC is used for punishment. Detainees involved in fights or other violation of discipline are sent to that cell for varying length of time. What happens in the cell is not consistent from interlocutor to interlocutor. Some mention clearly identified torture techniques, with detainees chained in uncomfortable positions, but the most common punishment seems to be beatings by the prisoners in the cell. The use of violence by the detainees in that cell is not perceived as random outbursts, but very much as a tool for punishment; this was why Isaac was so concerned when he was sent to that cell for two weeks during the cleanup of his cell. Such forms of violence were not used against female detainees, for whom they were replaced with extreme forms of deprivation, such as the rationing of drinking water or bathroom access.



**Illustration 5 Inside of an IDC cell; photo taken by a detainee with a smuggled phone**

One particularity of the Thai Immigration Detention system is the routine detention of children in unsegregated facilities. Children are kept in IDC, and share the same cells as adult detainees. There is no lower age limit under which a child would not be detained. In at least one case, a pregnant detainee was sent to the hospital to give birth, only to be immediately put back in detention with her newborn baby (Human Rights Watch, 2014b). At the time of writing, IDC held at least a dozen pre-teens, alongside a number of teenagers.

Thai law does not permit the keeping of children in prison under a certain age, but IDC is not a prison under Thai law, so detaining underage urban refugees is not illegal. Still, national guidelines recommend against the keeping of young children in any detention facilities. These guidelines are however circumvented in the case of refugees, on the basis of Thai laws on family separation. These laws state in essence that families with young children should not be forcefully separated by the state. These laws are meant to protect children, but the Thai authorities have chosen to interpret them as requiring that children be detained alongside their parents rather than leaving them on their own on the outside (Human Rights Watch, 2014a). This interpretation of prevention of family separation is preferred to the alternative, which would be not to detain families with young children. This is made all the more cruel by the fact that families are in fact separated in IDC: men and women are kept in separate cells, and detainees kept in different cells are not allowed to meet and interact. Families can spend months without seeing their relatives of the opposite sex. This mode of management also leads to minors being isolated. Until they turn 16, all children are kept with female detainees, but as soon

as they turn sixteen, boys are sent to a male adult cell, regardless of whether or not they have relatives in that cell. This situation put minors in a vulnerable situation. They find themselves alone in a cell filled not only with refugees in various states of desperation and mental distress, but also with foreigners coming out of jail and awaiting deportation.

The immigration department, which manages the immigration detention centers, does not appear to be comfortable with the routine detention of children. In the past few years, it accepted to let IOM finance a daycare center for the benefit of the children kept in Bangkok's IDC. It lets children spend part of their days outside the cells and receive some sort of education, as well as restores some normalcy to their lives. The daycare alleviates some of the worst aspects of the detention of children. However, it only takes them for a few hours per days – they still spend most of their time in the cells. Besides, it is only available for children under 16.

The routine detention of children is not a surprising feature of a temporary holding center. It can be conceived that holding children with their parents for a few days or weeks, even in poor conditions, is preferable to leaving them behind, potentially on their own. Beside the trauma of temporary separation, and the question of how children would manage without a caretaker, it would mean running the risk of losing track of children left on the outside. Such situations would lead to parents being deported without their children, who would be left behind stranded and isolated. Temporary detention of children pending deportation is an imperfect solution to a real problem, and under certain conditions it might be defensible. The problem again arises when these rules and logic are applied indiscriminately to refugees, for whom IDC becomes a long-term detention facility.

Children in IDC are an extreme manifestation of the refusal of the Thai authorities to directly address the refugee question. It is also a liminal issue that shows both how punitive the Thai administration can allow itself to be and where it will consider taking some sort of action. The detention of children in IDC is not the result of cruelty, or at least not solely, but the outcome of the same kind of logic that is at the root of most of the issues in the management of IDC – a legacy of the original design of the center as a temporary holding center. The existence of the daycare center is to my best of knowledge the sole initiative taken to improve the conditions in immigration detention in at least a decade, and this shows that the issue was considered problematic enough to warrant a reaction. The reaction in this case is far from satisfactory. In fact, marginally improving the conditions for children in detention normalizes their long-term detention. It does

however show that there is a limit past which the worsening of the conditions in detention warrant some form of action. To be clear, the opening of a daycare did not require much effort on the part of IDC administrators or the administration more generally, since it is run and funded by an international organization. Still, it was allowed to open, whereas a number of other service providers, who could for example provide health services to detainees at no cost, have been denied access.

The case of the daycare shows that the Thai administration's approach to refugee management is not irrational. If the cost of the maintenance of a given policy creates excessive risks, steps are taken towards attenuating the consequence of the policy. The detention of children presents reputational risks – if one were to die in detention, it would be harder for the immigration department to hide behind a narrative of protection of national security. Children cannot easily be portrayed as underserving criminals, illegal workers or terrorists, because they will always be victims in the eye of the public – regardless of how much their parents are labeled as undesirable or dangerous. One can see for example how criticism of the migratory policy in the United States and in Europe since 2015 has only been able to gain mainstream traction when pictures of children in cages or drowned have been made public. Hence letting a daycare be opened on the premises not only improves the daily life of the youngest inmates but also works as a form of protection against scandal. Pictures of the daycare, with its floor covered with toys and walls with colorful drawings, will without a doubt turn up if too much attention was to be given to the detention of children, and will allow officials to claim that the situation in IDC is nothing like what whistleblowers pretend.

### ***The Role and Meaning of the Immigration Detention Center***

IDC is both the endpoint of the Thai refugee management system and where that system goes from punitive to inhumane. The facility creates issues beyond the confines of its walls. It is, to a large extent, the reason why urban refugees are such a vulnerable population. In their daily lives, urban refugees have to walk a tight rope. Any misstep, hesitation or light push will send them plummeting towards squalid cells. One can understand how, in such a situation, individuals would resort to extreme measures in the hope of sparing themselves such a fate. The desperate will to avoid detention creates opportunities for exploitation. This also means that IDC is a powerful tool of control, a stick heavy enough to ensure that no refugee would dare speaking up, knowing what the consequences would be.

The conditions of detention in IDC serve as a deterrent. Deterrence is at the core of the overall Thai immigration policy, but a distinction has to be made between function and design. IDC plays a functionally useful role within the Thai urban refugee management system, but there is no evidence suggesting that it was designed to fulfill that role. The type of extreme hardship detainees face inside of IDC was not foreseen by policy-makers and is not considered a policy success, though it might be considered useful. Rather, IDC in its current state, much like the overall system of urban refugee management, is the logical result of the overwhelming will in the Thai administration and government not to take any actions that might signal that Thailand welcomes refugees and asylum seekers. In other words, the Thai state is less concerned with organizing deterrence than with not interfering with deterrence. IDC in that sense was not designed as much as it was let happen, not the result of a plan as much as of an oversight and layers upon layers of makeshift attempts to deal with its consequences.

The unintentional nature of the current situation is visible in the paradoxical attitude of the guards and officers running IDC. For each instance of a blind rule abiding and petty cruelty I witnessed in IDC, I saw another of camaraderie and casual support between guards and detainees. These acts were all of course inscribed in a relationship where one of the parties held extensive power over the other one, but there is a lingering sense in the facility that its administrators are as much collateral victims as accomplices of a system they were never meant to be part of. They were unlucky enough to work in a place whose function suddenly changed for the worse, leaving them to pick up the pieces but without the authority to transform the overall system.

Since the Thai refugee system has not been designed, some of its key features are the result of a lack of coordination among its different administrative components. This is true of the issue of overcrowding, for example. Overcrowding in IDC is in large part the result of a lack of coordination among branches of the administration and not of an active policy of the Immigration Department. The people in charge of the administration of Bangkok's IDC have no interest in seeing their cells overflowing. They are low-level civil servants with an only remote idea of what a refugee is, let alone any familiarity with the approach of their government towards them. Keeping more detainees makes their work physically and psychologically harder; hence their interest falls squarely towards keeping the cells empty enough to be comfortable. However, they have no control over the inflow of inmates. Decisions over raids are managed by a different branch of the immigration department, which itself does not have control over all arrests since some are made by the police. While one would think that raids and arrests would become less common as

the detention centers fill up, the reality is that one hand does not appear to know or care about what the other one is doing, and the inflow of detainees goes on.

There has been however attempts by the managers of IDC to address the problem of overpopulation. At a time where the numbers of detainees appeared to grow out of control, a program that set the basis of an alternative to detention was launched. This system, based on bail, was eventually put on hold, but its creation and collapse are informative with regard to the working of the Thai refugee immigration system.

### ***The Rise and Fall of an Alternative Management Model***

The way IDC is run sets the tone for the overall approach of the Thai state towards urban refugees. If conditions were to improve in IDC, or if urban refugees thought that they could avoid detention after their arrest, changes could cascade down and lead to significant improvement of the overall situation of urban refugees in Thailand. Refugees would not be under as much of a pressure to hide, would be able to go about the city more freely, would be less at the mercy of employers and landowners, could earn more money, live in better conditions, afford treatment, complain about abuse, etc. The situation would not become ideal overnight, but improvements to the conditions in IDC and the development of alternative to detention for urban refugees would certainly have repercussions beyond the confines of the center. The current situation of urban refugees is so poor that it is easy to build scenarios for it to improve. What stands in the way of most of these scenarios is the fear to be thrown in IDC. The severity of the threat keeps the whole system together. Hence it is worth reflecting on what it would have taken for a different “normal” to take hold, starting with the management of IDC. There existed in fact the embryo of a complete revision of the Thai administration’s approach to detention. This embryo was the bail system.

The bail system grew out of a slight opening in Thai immigration law. As explained by Tankulratana and Janamporn (2017), quoted from a draft translation:

According to Section 54 of the Immigration Act BE 2522 (1979) [...] the Immigration Bureaus [sic] may allow aliens to stay outside the Immigration Detention Centers by bail out [sic] the detainees [sic]. Therefore, the Immigration Bureaus has issued the order no. 88/2544 dated 17 June 2001 on ‘Guidelines of aliens’ bail while awaiting deportation per Section 54 of the Immigration Act BE 2522 (1979)’. (p.32)

In other words, detainees can be released early, without being deported or resettled, as long as they can make bail. Tankulratana and Janamporn explain that the bail system was originally designed to provide a mechanism to allow detained foreigners to gather the documents necessary for their deportation. If true, this stresses how little flexibility the system allowed until then, since even detainees wanting to help the authorities by making their deportation possible were still not allowed out. Either way, the flexibility allowed by the bail system was eventually used to resolve a number of situations beyond the one it was meant to address. For example, detainees would be allowed out temporarily to go to the hospital or attend their interview with UNCHR. But more importantly certain detainees, families with young children or detainees with special needs, were eventually allowed to wait for their deportation outside of the center for years at a time. In other words, the Thai administration started to offer alternatives to detention to urban refugees, opening the door to a complete reimagining of the Thai refugee management system; though as I will discuss, the experiment was cut short.

### ***The Bail System***

The 1979 law legalizing bail was broad enough to allow for the policy to be adapted to the management of refugees in detention without the need for legislative change. Release on bail, for renewable terms of up to one year, was opened to a significant share of the refugees in detention between 2012 and 2015. The use of bail as a widely accessible form of conditional release represented a real improvement for the refugees in detention. It limited the overcrowding of cells and it gave detainees hope that they would not have to wait inside for years. The practice also met the needs of the administration managing IDC. Low-level bureaucrats are less concerned with grand principles and symbols than with the smooth functioning of the facilities under their jurisdiction, and deteriorating conditions in the center made their work harder. With bail, they finally had a tool to address overcrowding, the most important determinant of the conditions in the cells. Hence, bail was a win-win policy, serving the interest of both the jailed and the jailers.

The opening of long-term bail in 2012 did not seem to have been done out of concern for the welfare of detainees. The timing suggests rather that it was introduced to serve the interest of the managers of IDC, who needed a tool to handle overcrowding. The year 2012 marks the beginning of the sudden increase in the number of asylum seekers reaching Thailand, which was matched with an increase in the number of detainees in IDC. The year the policy started to be rolled back, 2015, marks the end of the increase in the number of urban refugees in Thailand. The idea that the policy was not designed with the



interest of detainees in mind is also suggested by the fine print. The process through which bail was granted was not prioritizing the needs and interest of detainees. Bail conditions were stringent, perhaps because the officers in charge of IDC were aware that they were bending the rules by allowing detainees to be released for more reasons and longer periods than what was explicitly permitted under the law. Whether this was the case or not, the policy really appeared to be designed to create as little risk as possible for the administrators. The process was opaque, complex, and impractical for detainees and their families.

The bail policy implemented between 2012 and 2015 allowed some detainees to live outside of IDC for a fixed term or until they left the country. The length of bail was up to one year, and could be renewed. The bail was typically set at 50,000 baht (1,450 USD), and it was not a disguised bribe: individuals and organizations who had provided bail money said they were confident that it would be returned after the detainees had left the country or come back to their cell. Bail however was never an option for all detainees, even at the peak of the policy when hundreds of refugees lived on bail outside of IDC. Detainees who wanted to be released on bail had to apply. Applicants had to go through an opaque vetting process, and many bail applications were denied. Hence being bailed was not just a matter of finding money, but also of meeting a number of criteria. What these criteria were exactly was never made explicit, and they were therefore a topic of endless discussions. The bail process could remain opaque because it was not set by law or lesser official text, but according to Tankulratana and Janamporn (2017) directly by the officers in charge of IDC.

Applying for bail required the intervention of several parties beyond the detainee and the IDC administrators. First, detainees had to find a guarantor, a person or organization who would vouch for the detainee and was considered trustworthy by the IDC administrators. In 2016, when the last bails went forward, there were at most a handful of people who could become guarantors, and only one of them would accept to submit applications on behalf of detainees who were not in a critical health condition. People on the potential guarantors list were mostly members of religious organizations: priests, monks or imams. The bail money, regardless of its provenance, was channeled through the guarantor.

Second, detainees had to prove that they neither presented a threat nor were likely to flee. Since calming fears related to national security is an inherently subjective process, it left a lot to the discretion of officers. Prejudice played an important part. For example, as

Isaac's girlfriend was trying to get him out on bail, she was advised by an officer from RRC to "tell them he is a good man, because they think South Africans just come here to commit crime and join gangs." Bail was easier to secure for women than for men because the latter were considered more likely to commit crimes or be involved in activities threatening national security. For the same reasons, bail was easier to obtain for detainees of certain nationalities than for others, depending on whom officers were most prejudiced against. Most of the women who came to Bangkok to seek asylum came with family members, and would often be arrested with them during immigration raids. They could more easily be considered for bail, leading to situations where men would be kept inside while their wives, sisters, daughters and mothers would be let out. Eventually the bias against men became explicit and they were excluded from the bail policy altogether in 2015. Exceptions were only made from that point on for men with health conditions requiring immediate attention. Meanwhile, bail remained open for all women for more than a year after it was closed for men.

Third, while on bail, refugees do not have complete freedom of movement. They still have to report to the detention center twice a week, a process that takes most of them several hours spent in buses and waiting in line. Reporting to IDC has to be done on weekdays, which renders finding and keeping any sort of employment even more of a challenge for bailed refugees.

### ***The Visits***

Even though bail was not set up to be convenient for refugees and was open to only some of them, being bailed did free refugees of the fear of arrest. Bail papers were the one official document that refugees knew they could present to representatives of the Thai state to be let free. Bail in effect created a sub-group among urban refugees in Bangkok: refugees whose lives were constrained in new ways, who had to report regularly to IDC but were protected against official harassment.

The need to go back to IDC regularly for bailed detainees and the bias against men in the bailing practices has led to the development of a peculiar form of social life around the facility. The story of two women, Sajida and Umara, illustrates that phenomenon. I met them outside of IDC, and their situations were typical of the daily reality of people who had benefitted from the bail policy. They both were arrested with their families during a raid in their apartment building and brought to IDC alongside other families arrested that day. Three months later, Sajida, Umara and their respective daughters were let out on bail. Their husbands and sons had applied for bail as well, but their applications were denied.

This denial did not come as a surprise. Bail had been systematically denied to men older than 16 for several months at the time of their application. As a result, the release of Sajida and Umara was for them a mixed blessing. They were relieved to be outside of IDC's cells, but had to make ends meet on their own, after using up their savings to pay for bail. Not only had their households lost a source of income, they now had to support their relatives in detention, diverting some of the little resources they had to send them food and health products.

Detainees are allowed to receive food, sanitary products and money from visitors. However, detainees on bail are not allowed to visit other detainees, even though they often have relatives or friends still detained to whom they want to pass supplies. Hence bailed detainees are always trying to find people with a valid visa and time to spare on weekdays to carry supplies for them to the detainees. These supplies represent the only way for detainees to supplement the little that is provided in the cells, and are therefore very valuable. Finding ways to pass on these supplies is the core of the social life that has developed around IDC. Dozens of refugees, most of them women, come every day and try to find people to visit their relatives. Volunteers groups, many organized around churches, hold regular group visits. Volunteers take the names given to them by the relatives waiting outside, listen to the stories attached to each, usually centered around how little visit is received, and try to find ways to evenly visit the different detainees that end up on their lists. Many of the people who stumble upon the urban refugee issue in Bangkok do so through a visit to IDC, often upon request from a regular visitor hoping to break one less promise of a visit on that particular day.

IDC has become a central interface for refugees to meet and interact with non-refugees, because unlike the neighborhoods where refugees live, it is in the city center. The requirement for refugees on bail to report several times a week makes it one of the few places where one can be sure to always find urban refugees. The sharing of space, as the line for visitors waiting to be let in and that for reporting refugees waiting to sign their names are next to each other, ensures that refugees and visitors get opportunities to meet and exchange, even if within a setting that is not conducive to casual chitchat. Because a lot of the people invested in refugee issues in Bangkok have been drawn to it through IDC, the type of sociability that emerges there influences the way many perceive refugees in the city. The interactions that take place there are shaped by a clear power dynamic: bailed refugees seek resources that visitors have in abundance, whether it is money, freedom of movement or access to the detainees. Refugees themselves have little to offer and can only appeal to the goodwill of visitors, each presenting their case as more

deserving than everyone else's. From the perspective of the bailed refugees waiting around IDC, the exercise is degrading. Their agency is entirely removed, and every day there is a chance that they will not be able to send supplies to their relatives, located only a few meters away and yet unreachable. Furthermore, as each visitor can only visit one detainee, they have to compete for the visitors' attention, and make themselves stand out through friendly conversations, displays of despair or stories of persecution. Those who refuse to enter this game do not get to pass on any food, and those who are too good at it end up seen as manipulative and untrustworthy by visitors. From the perspective of visitors, the experience also takes a toll. I joined a group of visitors for 15 months as part of my fieldwork, and the routine of being handed contact numbers and list of needed supplies by desperate people while knowing that only a few could be honored was heartbreaking. Finding oneself in the situation of having to choose whom to help and whom not to, as all parties attach to their request claims of despair, was not pleasant. In addition, it means that most people who come into contact with refugees in Bangkok do so in a space where urban refugees actively engage in forms of deception, in the hope of getting some support in the form of supplies and visits to their relatives. At first, most visitors take all claims they hear at face value, and come to see refugees as entirely devoid of agency and facing active persecution from all sorts of parties including UNHCR and the Thai state. If they stick around, they start seeing through some of these claims and become guarded and distrusting of refugees in general.

Still, the interface created by the IDC policy around bail enabled refugees to build a web of contacts outside their usual networks. These contacts have access to resources hard to come by for refugees, and have a generally positive attitude towards refugees, since they commit to visit detainees. However, the nature of the interface limits the type of relationship that refugee can build, and puts them in a situation of dependency towards strangers. Bail allows for IDC to work as such an interface, and shapes the functioning of this interface by the way its modalities of implementation shape the agency of bailed refugees. In particular, by forbidding bailed refugees to visit detained relatives.

Despite the occasional support of IDC visitors, the situation of women like Sajida and Umara often becomes too much to handle. When it does, some make the choice to fly back to their country, despite the risk of further persecution. I met a woman who had made that choice. She had scraped together enough money to fly herself and her two-year-old son to her country of origin. She was terrified of what laid ahead, and she knew she would have to face it on her own – her husband was still in IDC. He had spent many months inside

by the time she was ready to leave, and had seen neither her nor the rest of his family since he had been arrested. She did not get the chance to see him before she left.

### ***The End of Bail***

The way the bail policy was managed created numerous challenges. It separated families, only allowed some to be let out, forced many among them to be dependent on the goodwill of strangers, and worsened the situation of the ones bailed out to the point where many would choose to go back rather than wait for a chance to be sent somewhere else. Despite the way it was administered, bail, was superior to no bail. Detainees lived in less crowded cells, bailed refugees could live in Bangkok freed from the fear of arrest and the officers in IDC ran a more peaceful and less toxic facility. Yet, the policy was rolled back between 2015 and 2016. By 2017, bail had ended. From that point on, no detainee had access to bail unless critically ill. From time to time one hears of a woman or a child let out on bail, but what was once a stream was reduced to a trickle. The hundreds of refugees out on bail at the beginning of 2015 had shrunk to a few dozens. Tankulratana and Janamporn (2017) indicate that:

[during] 2014-2015, over 400 asylum seekers and refugees in urban area were temporarily released, mostly as the whole family (parents and children), mother and child, and those suffering serious health problem. [...] Nevertheless, during 2016, none of them has [sic] been temporarily released, and there is no clear reason for this. (p.46).

The rollback of bail started in late 2015. The dominant narrative on the cause of the rollback among refugee advocates and IDC visitors was that the Erawan shrine bombings in August 2015 triggered a tougher approach to refugee issues which translated in the cancellation of the bail policy. The Erawan attack was the worst seen in the Bangkok in more than a decade; a bomb went off in a major shrine and killed dozens. The attack was attributed to a group of Uighur nationalists by the police, who they said had been retaliating against the deportation of a hundred Chinese Uighur to China by the Thai authorities in the weeks preceding the attack. Whether that was indeed the case is hard to establish, as no group claimed responsibility and the transparency of the police procedures on such a sensitive case was limited. The trial of the two men accused of carrying the attack started in May 2017, and was still ongoing two years later at the time of writing. Considering the political context in which the trial is taking place, it is unlikely that it will shed much light on what happened at the shrine. All this said, it is important to note that the attack had no direct link with the bail program. None of the accused or anyone connected to the inquiry had been released on bail or detained in IDC. Uighurs

deported by the Thai government before the attacks were however seeking asylum in Thailand, creating a tenuous connection between that attack and refugee issues in the country. Whether the indirect connection was the trigger for the ending of bail or not, in the months following the attack, IDC started rolling back its policy, starting with men and extending throughout the months to finally include all detainees. The rollback was unexpected and traumatic, because bail had taken a central stage in the lives of everyone concerned with refugee issues in Bangkok

For urban refugees, whether detained or scarred they might, bail was a glimmer of hope. Detainees face a large range of mental health issues in IDC, and many flow from the absence of things to do and a lack of control over their own destiny. Bail, by being a reachable objective, provided something to strive towards. Building up connections, writing letters, maintaining relationships with NGO workers and volunteers were all ways detainees could increase their chances to find someone to vouch for them and raise enough funds to make bail.

Bail had also by that point become a key tool in the hands of NGOs and charities to mitigate the worst effects of detention. For years NGO workers knew that if they vouched for a detainee, and if their organization was able to come up with the 50,000 baht of bail money, the bail application had a good chance of going through. They lacked the money to bail out as many people as they wanted, and prioritizing whom to support and whom not to was a harrowing process. Yet, bailing out detainees was a concrete action that could be taken to provide immediate relief. This agency was central in keeping volunteers and NGO employees invested and hopeful, in a context where burnout and feelings of uselessness are common and an impediment to the functioning of these groups and organizations. When it struck, the end of bail wreaked havoc among all those linked in one way or another with the urban refugee issue. It was about the only topic of conversation among them for nearly two years. A lot of resources were spent by NGOs trying to understand and reverse the change in policy. The centrality that bail kept in the urban refugee world even after its cancellation was caused in parts by the way the policy was ended.

The end of bail was a slow rollback rather than a sudden change, and it was not complete since the policy is still used for medical emergency. It was not preceded or followed by an official statement explaining the change of policy and the motivations behind it. The practice just ended, leaving practitioners and detainees in the dark as to what was happening and whether the change was temporary or permanent. While bail

was being rolled back, most assumed at first that it was a temporary and symbolic measure, and that it would be limited to certain nationalities or profiles – perhaps only young males would be barred from bail, perhaps just Muslims, perhaps just Pakistanis. Bail had been an arbitrary process since its inception, and as it was not the first time that more applications were rejected than usual many assumed little had changed. Once it became clear that something had in fact changed, that the wave of rejections was not a mere fluke, theories started running wild among practitioners and refugees regarding the fate of bail.

When I started to visit IDC regularly in May 2016, bail was at the center of every conversation. Detainees I met each felt they would make strong bail applicants, either because of their legal status, the fact that they had Thai children or partners, because they found someone willing to lend them the money, etc. Everyone within the refugee community was in denial and expected bail to resume any time soon. It is only as 2016 drew to a close that detainees and CSO workers really started to realize that what they were going through was not a temporary suspension but a real policy change. The nature of the causal link with the Erawan attacks was also questioned around that time, and another narrative emerged: that searching for a rationale was pointless, and that when it came to refugees the authorities did what they wanted and did not need to justify their actions to anyone.

The reversal of the bail policy also has to be placed in the broader context of one of Thailand's cyclical return to a more authoritarian running of the state. The army seized power in the country in June 2014, and though it is unlikely that the bail policy had enough of a policy profile to be a direct victim of the coup d'état, the fact that it was cancelled in that specific political context limited the possibility of recourse against the decision. By suspending the rule of law and promoting the recourse to secrecy when dealing with the general public, the junta that took power further weakened the durability of informal agreements between policy implementers and policy recipients. The state became less accountable to outside forces and therefore more capable of acting erratically, depending of the whims of individual decision-makers.

### ***Bail as the Beginning of an Alternative Model***

Bail was an important policy with regard to the Thai state's approach to urban refugees. The conditional release of long-term detainees is a sensible response to the risk of indefinite detention. The current situation where indefinite detention is the only possible endpoint of refugee management in Thailand is beneficial to no one. The fact that

bail arose as a way out of that dead end suggested that the state, or at least some of its arms, was not completely closed to a less punitive approach to the refugee issue. At the very least, it showed that the administration was not ready to entirely sacrifice the safety of detainees to uphold some general principles of national security and deterrence. Bail was not devised in the office of high-ranking officials of the immigration division, and therefore was not part of a grand plan to reform refugee policy in the country. Yet it was not run in secret, and the fact that it was tolerated for years suggests that it was not seen as an issue by the higher ranks of the immigration division and above. Bail was the kind of practical and rational innovation standing between principles and actual human lives, ensuring that the former would not carelessly disregard the latter. The policy was not the fruit of selfless practitioners who knew something had to be done to improve the way refugees were handled. It was not an idealist approach to the issue, but a practical one, which made it stand in stark contrast with the symbolic and principled attitude of policy-makers towards refugees in Thailand.

Bail from immigration detention hinted that the country could take a different path in the management of urban refugees. Looking at the country's history, it is unlikely that Thailand would take a political commitment to protect asylum seekers, for example by signing the Refugee Convention. This argument however is not equivalent to saying that Thailand had to have a punitive approach to refugee issues, and especially not as punishing an approach as it currently has. The fact that bail arose and was scaled up shows that some part of the Thai authorities, whether at the top or bottom of the chain of command, could have used existing legislation creatively to open the door toward of a less punitive handling of refugees. The legal basis on which bail was established is an example of a broader range of existing legal texts that could be used by the Thai administration to prevent the denial of any right to asylum in Thailand and/or mitigate its effects. Another example of such existing laws is the guidelines on family separation, currently used to detain children. These guidelines could be interpreted as preventing the detention of children's caretaker rather than mandating that children be detained with them. Texts relative to unusual and cruel punishment could be used as a basis for jurisprudence that would set a limit on the length one could spend in immigration detention; the international commitments taken by Thailand on torture and a range of other human rights issues could be used to justify extraordinary measures to reduce the overcrowding in IDC's cells and improve access to health services. The list goes on, each item on it constituting a missed opportunity to create a different refugee management system



without requiring the country to take additional international engagements or even to change its legislation.

Pointing out the existence of such tools is a reminder that the current situation of urban refugees in Thailand was not predetermined. Things could have taken a different course, and reform is still possible. The other side of that coin is that the current system should then be considered intentional, even though it was not explicitly designed. Researchers and activists alike have stressed this fact and advocated for more innovative enforcement of existing laws to improve the lot of refugees. Tankulratana and Janamporn (2017), who I quoted extensively in this last section, try to show that alternatives to indefinite detention are possible in Thailand in the current legal framework. Collewet (2012) shows that Thailand violates a number of conventions and national laws through the way it treats refugees and asylum seekers, each violation she lists a chance for jurisprudence to develop. Several reports by NGOs and international organizations take a similar approach in their recommendations (Human Rights Watch, 2014a, Human Rights Watch, 2014b, Asylum Access Thailand, 2011, Human Rights Watch, 2009).

On the other hand, the fact that bail proved to be short-lived is a warning regarding the limits of advocating for changes in practices without advocating for changes in legal norms. The end of bail, and the way it was ended, is a warning of the nature of incremental and practical policy changes within a hostile legal framework. Changes in policy implementation do not automatically build up. Without a way for existing practices to set precedent and constrain the future actions of implementers, edifices built on practice alone are fragile and gains can easily be cancelled. The more hostile the overall framework, the more vulnerable innovative practices are to changes of individual bureaucrats or sudden rise in scrutiny, whether from the administration or the public. The more disconnected from the overall framework a practice is, the less likely it is to be maintained over the long run. Bail was an innovative practice. Despite all its flaws, it stood out as singularly in tune with the needs of refugees and at odds with the way refugees were otherwise treated. Though it was a solution satisfactory for implementers as well as those upon which it was implemented, it could not oppose any resistance to the sudden change of whims of whatever bureaucrat decided to put a stop to it. Worse, because bail was implemented through *ad hoc* arrangements that were not sanctioned through official public records, it could be and in fact was ended without any form of justification. The way bail was ended left refugees and advocates in the dark as of how to fight to reverse the change, and much time and resources were wasted on initiatives that led nowhere.

Bail and its eventual downfall bear a dual and contradictory message. On the one hand, punitive policy practices should not be regarded as the unavoidable consequences of an adverse legal framework. Legal texts leave implementers room for interpretation; and so, if they are systematically interpreted in the most hostile fashion possible, the resulting system should be treated as an intentional policy rather than a regrettable side-product. On the other hand, changes in implementation and enforcement do not create the type of ratchet mechanisms necessary to ensure that progress builds up. Advocates who see changes in implementation by street level bureaucrats as indications of overall changes in the state's attitude are unduly optimistic. Changes in practices are as easy to initiate as to cancel and therefore cannot be relied upon to bring about broad policy shifts, at least not in all contexts. Many legal systems create avenues for practice to become rule and eventually law, as citizens can use precedent to support their claims in court. Such avenues are on paper present in Thailand. However, in practice the rule of law is too weak for transfers of practices into law to occur reliably.

## ***Conclusion to Part I***

The policy of Thailand towards urban refugees is a complex edifice, a layering of laws, loopholes, prejudice and improvised solutions. Any serious analysis of the issue must therefore start from a thick description. It is easier to talk about refugees in camps, where one can find an explicit structure to describe and rely on accounts of similarly closed settings. Urban refugees, because they inscribe themselves more deeply into the local context, make for a harder subject of study. Their circumstances are more ground and therefore less immediately readable. This is particularly true in countries where, like in Thailand, the policy response to the refugee issue grew through a process of accretion, without clear intent or leadership. A refugee policy that tries to deny the existence of refugees is complex to capture.

Despite these complexities, qualifying the policies of the Thai state towards urban refugees is straightforward. The way the Thai state approaches urban refugee management is hostile. This chapter shows that at no point do agents of the state attempt to be in tune with the needs of refugees and asylum seekers. Thai administrative bodies interpret laws or the lack of thereof in the way most detrimental to the interest of urban refugees. In practice, this results in refugees being kept in indefinite detention, since no law prevents it, children being detained alongside adults, to prevent family separation, and refugees being sent back to countries where they face the risk of further persecution, because no channel exists for local integration. The fact that at each fork of the road agents of the state opt for the route most at odds with the protection of refugees shows that there is a coherence in the state's approach to their management, even if there is no formal urban refugee policy.

The overall hostility of the Thai refugee system is coherent with Joppke's account of the key determinants of national migration policies. He argues that the state will by default be as punitive as it is allowed to be by the laws constraining its agency. All other things being equal, countries that have ratified more international agreements or have more generous human rights standards in their constitutions will be more generous towards migrants, including refugees. Thailand appears to be a case in point: it has ratified few treaties and international instruments protecting the rights of migrants, and by criminalizing their presence on its territory it excludes them from most protection recognized to foreigners by its national laws and blocks them from accessing legal recourse against abuse. The law allows police officers and immigration agents to arrest urban refugees anytime, anyplace, and to keep them in detention indefinitely. The

criminalization of urban refugees ensures that they can be extorted for money, labor, or worse, with impunity, and that they have no ways to report violations of due process. In other words, there are very few things the state through its agents cannot do to urban refugees.

The Thai state has surrendered very little of its agency with regard to urban refugees. Joppke's model would suggest that a state in that situation would not have generous policies towards refugees. This part has shown that indeed, in the absence of institutional constraints, the Thai state does not put in place policies to protect refugees, and as a result their condition in the country is poor, not to say alarming. Thailand however is not unique. A number of upper middle income countries share the characteristics that make Thailand both attractive to refugees and hostile to them: high standards of living, low barriers of entry, no legal protection. With the ever-tighter closure of the borders of high income countries, finding refuge in the large metropolises of countries like Thailand is becoming an increasingly attractive option for asylum seekers and refugees who can afford to hop on a plane rather than walk or drive to a camp. The reality of seeking refuge in countries like Thailand must be an important part of the global conversation around refugee policy. In particular, any discussion of the closure of the borders of the world's richest states must be understood in the context of the remaining options available to asylum seekers.

The Thai state is not involved in the protection of urban refugees, in the sense that it does nothing to limit the agency of its agents in their dealings with refugees. However, it is not the sole actor involved with urban refugees in Thailand. Two other types of actors play a role in refugee protection in the country: international organizations, in particular UNHCR, and CSOs. In the following two parts, I will show that these organizations have taken very different routes in response to the challenges of providing some protection to refugees against the arbitrary of the state, and advocating for a change in the state's approach to refugee management. UNHCR has left both advocacy and service delivery aside and is now functionally aligned with the interests of the Thai state, becoming part of its deterrence strategy; but it also provides urban refugees with a parallel administrative process that guides them out of the legal limbo created by the Thai state. CSOs, which could be calling UNHCR and the state out, focus narrowly on service delivery, leaving for the most part advocacy aside. Neither UNHCR nor CSOs appear to be destabilizing the status quo enough to make reform likely, but the way in which each came to play their current role in the Thai refugee management system can do a lot to inform the understanding of refugee protection in non-signatory countries like Thailand.



***Part II – The Refugee Bureaucracy***



## ***Chapter 5 – The parallel bureaucracy of UNHCR in Thailand***

The United Nation's High Commissioner for Refugees (UNCHR) is the UN body mandated with the provision of protection and permanent solutions for refugees, stateless people and returnees. The organization was created in 1949 to support states' efforts to address the refugee issue in Europe inherited from the Second World War, and after the signature of the Refugee Convention in 1951 to support its implementation by signatory states. Throughout the ensuing decades its role has evolved. It became an administration with enough resources and legitimacy to come to the direct help of those abandoned by states. It now provides emergency relief, runs refugee camps and monitors resettlement efforts. Though UNHCR has been granted a global mandate,<sup>28</sup> not all states have ratified the Refugee Convention or the later Additional Protocols from which the organization draws its legitimacy. The existence of the Refugee Convention has meant that states have had a choice since the 1950s regarding whether they would take on specific responsibilities toward refugees, asylum seekers and the stateless. Some chose to ratify the Refugee Convention, committing to certain standards of treatment with regard to the groups protected by the Convention. On the other hand, many states have declined ratifying the Convention. Thailand is one of the countries that ratified neither the 1951 Refugee Convention nor its 1967 Additional Protocols. Yet UNHCR has operated in Thailand since the 1970s. The fact that the organization operates in the country without an explicit mandate has implications for its functioning as well as for those to whom it grants protection. This chapter and the next will look at these implications.

When UNHCR began its operations in Thailand, it was to deal with hundreds of thousands of people displaced from Laos, Cambodia and Vietnam to Thailand, as a result of the repercussions of the breakdown of former French Indochina. The Thai state then welcomed foreign funding to deal with a situation that it was not inclined to handle on its own. UNHCR, like many other UN agencies, established its regional office in the relative stability of Bangkok. It has remained in the country ever since, collaborating with other international organizations, NGOs and the Thai government to manage Thailand's refugee camps, first along its eastern border and later along its western one. The involvement of

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<sup>28</sup> See Loescher's history of UNHCR for more details on the rise of the organization as a global actor and more generally its changing role (Loescher, 2001).



UNHCR with urban refugees is more recent, and more *ad hoc*. Urban refugees were not an expected part of UNHCR's activities in the country, but have since the early 2000s been officially recorded and addressed as a separate group by the organization.

What sets apart urban refugees from camp refugees in Thailand is that no part of the Thai administration was set up to collaborate with UNHCR in the management and processing of urban refugees. The absence of formal state involvement created a vacuum reminiscent of the pre-Second World War Europe. People are denied "the right to have rights" by the state. The implications of that vacuum have been described in Part I. It shows how the everyday life of urban refugees is affected first and foremost by the Thai state, its agents and policies. On the other hand, what puts the lives of urban refugees and other migrants on different paths are the programs and policies of UNHCR. Without UNHCR, few would have come to Thailand in the first place. UNHCR is the central structuring force of the Thai urban refugee management system, even if the organization's work is not what influences the day to day life of refugees the most.

Urban refugees, because they are not confined to a specific geographical area, present unique challenges for both their host states and UNHCR. The unique institutional arrangements that have been set up to address these challenges bring to the forefront a theoretical consideration with regard to the nature of the refugee condition. The core feature of that arrangement is that urban refugees in Thailand live under a dual legal system. One half of that system denies they have any rights and controls an army of enforcers who constantly threaten the freedom and agency of urban refugees. The other half of the system is mandated to help and protect refugees, but lacks the means to deliver on most fronts.

This chapter will show that UNHCR plays a unique role with regard to urban refugees, distinct from that of other international organizations, NGOs or charities. Instead, UNHCR in Thailand has taken up a role typically left for states to fill, that of providing refugees with a dedicated bureaucracy. The existence of that bureaucracy is what stands between urban refugees and a state of lawlessness akin to what existed prior to the creation of the international asylum system.

### ***The Uneasy Standing of UNHCR in Thailand***

Though Thailand has no laws regarding refugees, it is possible for individuals to be legally recognized as refugees in the country, a status that gives them a certain number of

rights and creates obligations for third parties. This apparent paradox comes from the fact that refugees in Thailand live under two legal systems: Thai law, implemented by the state and its agents, and international refugee law, based on the Refugee Convention as understood and implemented by UNHCR. The Thai state is not bound by a convention it has not signed, hence it ignores international refugee law almost entirely. UNHCR, whose mandate is to protect refugees, applies international law regardless of the views of its host state.

This dual legal system can appear odd, yet the situation of UNHCR in Thailand is not unique, especially among developing countries. The organization runs programs in a number of states that are not signatories to the Refugee Convention. In fact, out of the organization's ten largest programs outside of Africa<sup>29</sup> – ranked by size: Columbia, Syria, Iraq, Turkey, Yemen, Pakistan, Afghanistan, Ukraine, Myanmar and Lebanon – only half are in signatory countries.<sup>30</sup> This does not always mean that countries have no legal arrangement with UNHCR as to the situation of refugees. Many have some sort of legal framework in place through Memorandums of Understanding with UNHCR, though the extent to which they improve the situation of refugees has been debated, especially in the Middle East (Kagan, 2006, Zaiotti, 2006). In other countries, including Thailand, there is no framework at all and yet UNHCR runs massive operations. This situation is about to disappear; recent crises have been handled the same way. In 2017, the refugee emergency in Bangladesh witnessed the arrival of 600,000 Rohingyas from Myanmar in a matter of weeks, and neither country has any standing refugee law.

In Thailand, UNHCR runs a long-term, large-scale service provision program targeting refugees, stateless people and asylum seekers. The organization spends more than 15 million dollars annually on more than 100,000 refugees living in 9 camps, half a million stateless people and less than 10,000 urban refugees. That is to say, UNHCR's operations in the country are neither an underground endeavor nor a marginal effort. This all takes

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<sup>29</sup> Largest in terms of the number of people-of-concern (PoCs) affected. People-of-concern is UNHCR terminology for any individuals the organization decides to provide some sort of support for, whether they have formally entered the asylum system or not; for example it can include internally displaced people. The African continent is a special case with regard to the Refugee Convention. Acceptance of the Convention is more common among countries on the continent than other developing countries, and the Convention has been completed by a regional convention.

<sup>30</sup> Columbia, Turkey, Yemen, Afghanistan and Ukraine are all signatories to the Refugee Convention.

place despite the fact that Thailand is not party to the international agreement that gives UNHCR its mandate and does not recognize any specific refugee rights. The scale of the programs UNHCR currently runs in the country is not a recent development. The organization has been running programs at a comparable scale in Thailand since the 1970s, helping to keep several hundreds of thousands of people alive over nearly 50 years.

UNHCR programs in Thailand are not implemented without the knowledge of the state. Though the Thai government does not officially recognize the validity of the organization's mandate, it does collaborate with it and creates legal tools to deal with some of UNHCR's people-of-concern in the country. UNHCR's programs for camp refugees and stateless people are implemented with the active participation of the Thai state. A division of the Ministry of Interior looks after the camps along the border with Myanmar in coordination with branches the military and the immigration division. Crucially, the terms of the collaboration between UNHCR and the Thai state are specific to certain groups of migrants, defined by nationality and ethnicity. The Thai state has avoided creating legal categories that could set precedents and allow for the development of refugee law in the country. Hence, the state deals with the Burmese issue, the Hmong issue or the Rohingya issue, but never with the refugee issue. Such arrangements are common between UNHCR and non-signatory countries. If a country receives a large influx of refugees of a given nationality or ethnicity, whether it is a signatory to the Refugee Convention or not, it is usually ready to create some form of official framework to manage them. From a state's perspective, lacking any sort of tools to handle large populations living on its territory could become a major issue. Hence "nécessité fait loi"<sup>31</sup> and some form of arrangement can usually be found between UNHCR and host states. These arrangements however, beside typically guaranteeing to refugees only some of the rights present in the Refugee Convention, usually narrowly define the groups to which they apply, and leave out any group that is small enough to be ignored. In Thailand, those left out of the arrangement between the Thai state and UNHCR are the urban refugees. There is no official structure in place for them, because they are too few to represent a threat for the state and require it to explicitly take a stance, even after their sudden growth in number from 2012-2014.

Some authors have argued that the management of refugees by the state in Thailand, though taking place outside of the framework of the Refugee Convention, could be

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<sup>31</sup> Literally "necessity is Law", a French idiom corresponding to "necessity is the mother of invention".

considered to be in broad alignment with its principles and even benevolent (Muntarhorn, 2004, Moretti, 2018). Such a line of argument can hold in the case of camp refugees, which are the focus of both authors. However, the situation of urban refugees in the country is different. They are not explicitly targeted by state policy, but are nevertheless the victims of systematic harassment at the hands of agents of the state, who are imbued with enormous discretionary powers by the way the situation of urban refugees intersects with Thai immigration law. This is most obvious with regard to the management of refugees in immigration detention, a situation which cannot be regarded as just a case of “bad apples” among street enforcers, and is clearly in violation of basic human rights. It is really hard to argue, on the basis of the observed reality of urban refugee life in Thailand, that the state’s approach to urban refugees is in broad alignment with the principles of the Refugee Convention. Thai law creates very few limits to the arbitrary powers of the state with regard to its treatment of urban refugees; in other words, the state of urban refugee protection in the country is very poor, with major consequences for their wellbeing and odds of survival.

The open tension between UNHCR’s mission and the state’s actions makes the organization’s staff extremely careful regarding the sharing of information with outsiders. For this reason, this chapter and the next will be mostly based on indirect sources, which hint to the strategies followed by UNHCR. An obvious drawback to this methodology is that it cannot provide an idea of the mindset and private reasoning of UNHCR officers – which though not an issue central to my work, would be of some interest as an element of context. The organization does publish annual reports, which seem to be primarily meant as internal documents though publicly accessible online. These reports are somewhat candid, and I will use them as a point of reference throughout the next two chapters, as a substitute for more direct evidence from within UNHCR.

Through these reports, one can see that UNHCR staff are keenly aware of the reality described in Part I. The 2014 report, written at the peak of the episode of sudden growth of the urban refugee population, describes the situation as follow:

In the urban context, post-coup, arrest/detention of non-Myanmar persons of concern (PoCs) on charges of illegal entry/stay, doubled. The assumed upward trend of new arrivals continued, but has moderated. The major registration backlog was eliminated, but refugee status determination (RSD) remain scheduled into 2018. The resettlement (RST) target was exceeded, but resettlement countries signalled [sic] reductions in quotas. (UNHCR, 2014a) [...]

PoCs have no specific rights to work or stay, which means that many have serious socio-economic and health needs which UNHCR cannot fully respond to. Prioritization has occurred in the context of health care and social assistance as UNHCR simply does not have the funds to meet all needs. While several international and national NGOs and other groups also provide support, they too are constrained by the increased need. Impacts, in addition to the obvious (e.g. poor housing, nutrition, medical care) include enhanced exposure to exploitation and abuse, increases in frustration related SGBV [Sexist and Gender-Based Violence, in that case referring to domestic violence] and child abuse, and decreased access to psycho-social support, among many others. (UNHCR, 2014a)

These extracts also capture a central paradox in UNHCR's work in Thailand. Though it has continuously operated in the country for over 40 years, it has not had the sort of impact one would think a major international organization could have on the policies of a small middle income country. UNHCR has a complex relationship with the Thai state, leading to a combination of smooth, large-scale operations and a failure to disturb the status quo. The result is that in the face of increasing needs, it had to schedule interviews 4 years after they are requested, while being unable to provide for the most basic socio-economic and health needs of people-of-concern as they wait.

Judging from outcomes alone, with regard to urban refugees in Thailand, as an advocate and as a service provider, UNHCR fails to deliver. The rest of this section will argue however that this might not be the right approach to understanding the role played by the organization. I will show that it provides urban refugees with a certain number of services and procedures that fill the administrative and legal gaps left by the Thai state, which puts UNHCR at the core of the urban refugee management system in Thailand.

### ***Assessment without Protection***

The space left by the Thai state's decision not to be directly involved in the management of urban refugees present on its territory has been filled by UNHCR in three ways. UNHCR is involved in advocacy, and lobbies the Thai government to improve the situation of both camp and urban refugees in Thailand. That advocacy work is discussed alongside that of CSOs in Part III. The organization also provides a certain amount of services to refugees to meet some of their vital needs. It has also set up procedures to provide durable solutions to urban refugees. The range of services provided to urban refugees is limited, and UNHCR does not play a key role in their everyday life. The only service asylum seekers can obtain from UNHCR is support for life-threatening medical emergencies. Urban refugees who have been through the lengthy Refugee Status

Determination (RSD) process and have been officially recognized as refugees, have access to more support, in the form of a monthly allowance and support for a wider range of medical expenses. UNHCR also finances a local CSO that runs the Bangkok Refugee Centre. The center includes a school, a social worker and a nurse. The school welcomes around fifty children. Finally, a UNHCR officer is posted in Bangkok's IDC. In other words, asylum seekers, unless they are dying, hear very little from UNHCR. Refugees receive more support, but still could not survive if they relied entirely on the organization. That is because the core of UNHCR's operation in Thailand with regard to urban refugees is not the provision of healthcare, housing, employment opportunity or a financial allowance, but is the system through which asylum requests are processed and answered. This system starts with UNHCR's Refugee Status Determination (RSD) process. It ends with resettlement to a third country, though many do not make it to that step. The opportunity to be resettled, i.e. put on a flight to a high income country with a long-term visa, is what makes asylum seekers different from other groups of migrants in Thailand. For asylum seekers, the road to resettlement in Thailand starts with RSD.

RSD is the cornerstone of modern refugee policy. It assumes different names in different contexts, but is similar everywhere. It is a set of procedures, typically including interviews and the review of material evidence, which is used by a refugee agency to determine whether an asylum claim is legitimate. Before going through RSD, everyone is an asylum seeker. Through RSD, some see their claims accepted and become refugees, while others see their claims rejected and lose their asylum seeker status. What the outcome of the RSD process entails in practice for the applicants varies from country to country.

A rejected asylum application usually initiates a deportation procedure, though the likelihood of it actually taking place can be quite low depending on national regulations (Joppke, 1999). An accepted application, in a signatory country, means that the asylum seeker is recognized and that he or she receives the status of refugee. This status comes with a number of rights, enshrined in the Refugee Convention, including to remain in the country, to work, to access welfare, healthcare and education. Beside the rights enshrined in the Refugee Convention that are upheld in all the signatory countries, at least in theory, different countries will provide various types of support through different modalities. That is because the architects of the 1951 Refugee Convention envisioned a system where each signatory country would set up its own institutions in charge of enforcing the principles of the Convention.

Being a refugee, for that reason, can mean very different things depending on where one is, and this was part of the original vision of how the post-Second World War refugee management system would be set up: UNHCR would play a role of guidance and monitoring, and states would organize the vetting and integration of refugees in whatever way best suited them within general guidelines. A key aspect of that vision was that UNHCR would not usually be directly involved in working with asylum seekers and refugees. In particular, the organization would not get to decide who would be a refugee and who would not. That responsibility would be that of states alone, through their own RSD programs. This vision however was not realized, and UNHCR quickly found itself in a position a broad diversity of programs and relief operations for refugees, asylum seekers and stateless people, some very large in scale. UNHCR's direct involvement with refugees has made the agency what it is today; "saving refugees" has become what UNHCR does, regardless of what the original vision for the agency was. Few challenge the legitimacy of the expansion of UNHCR's scope of work beyond monitoring and lobbying, as noted by Barnett (2001) in her criticism of UNHCR's increasingly political role.

When it comes to the running of RSD programs however, the official position of the United Nations is that RSD should be the responsibility of governments. UNHCR is not meant to run RSD itself, and should only play a supporting role (Kagan, 2006). Yet today, more than 70 years after the creation of the organization, state-led RSD is more the exception than the rule in many parts of the world. In 2013, UNHCR ran RSD programs in 70 countries (UNHCR, 2019c), down from 80 in 2006 (Smrkolj, 2009). This role was neither envisioned in the 1951 Refugee Convention nor given to the agency by the United Nations' General Assembly. The organization justifies taking this role on the account that the governments of the countries where it runs RSD programs lack the will and/or the administrative capacity to have their own programs. Hence in practice UNHCR carries on RSD as long as it is permitted to do so, and whether or not the government of the country in question actually recognizes the outcome of the UNHCR-run RSD process (Kagan, 2006).

### ***The Refugee Status Determination Procedure in Thailand***

Thailand is one of the countries where UNHCR runs an RSD program (see Illustration 2, p.74, for an overview of the entire process). From the applicants' perspective, access to RSD in Thailand starts with their registration at UNHCR's Thailand office, in Bangkok's historical district. There, from behind a counter, a UNHCR officer will provide them with an asylum seeker certificate and schedule them for an interview. By registering, the

asylum seekers initiate the first instance procedure, to be distinguished from the two other procedures of RSD, appeal and reopening. In first instance, the claims of the asylum seekers will be evaluated on the basis of whatever evidence they provide and one or several interviews with a UNHCR staff member. On the day of their first instance interview, the asylum seekers will be asked by an RSD officer, usually through an interpreter, series of questions regarding their application. The RSD officer will compare the answers he or she receives during the interview with the evidence provided by the applicant and relevant elements of context, especially what is known of the situation in the claimant's country of origin. Using these elements, the officers will determine whether the claim that was presented to them is credible, and whether its specifics fall under the Refugee Convention's first article.

This last part is essential. The claims of an asylum seeker do not just have to be credible for the application to be successful; they must also be the certain kind of claims that would trigger the special protections given to refugees. The essential conditions a refugee's claim must meet are based on one clause of the first article of the Refugee Convention:

#### Article I

For the purpose of the present Convention, the term refugee shall apply to any person who: [...]

(2) owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

If the claimant's testimony is considered credible and the circumstances of the case correspond to what is covered by the Refugee Convention, persecution for the reasons listed in Article I, the claimant will be informed that she or he has been recognized as a refugee. Sometimes, before taking a final decision, the claimants will be called in again to provide additional information.

If the RSD officer considers that the claims made by the asylum seeker are not credible or fall outside of the scope of the Convention, the claimant will be informed by a letter that his or her application has been denied. Through the same letter the claimants will be



informed that they can file an appeal to that decision within a month. The appeal procedure differs little from the first instance procedure. The claimants are encouraged to provide additional information, and are called again for interview. At the end of the appeal procedure the claimant is either recognized or his or her case is closed. In case of closure, the claimant can file for a reopening of their case. For a case to be considered for reopening, the claimant needs to provide evidence that there has been a significant change in their situation that justifies the reopening. Most reopening procedures fail. If the procedure succeeds, the claimants must start the process again with a first instance procedure.

In these respects, the RSD process in Thailand differs little from that of most other country where one can seek asylum. One element omitted from the description above, and that makes the procedure in Thailand stand out from that of many countries, is its length. Seeking asylum in Thailand takes a long, long time. Data on the matter is not published systematically by UNHCR, so it is incomplete. The Jesuit Refugee Service, an NGO working with refugees and asylum seekers in Bangkok, estimates in a report (Jesuit Refugee Service, 2012) that the RSD process in Thailand in 2010-2011 took about 14 months. The report was written before the sudden increase in the number of asylum seekers between 2012 and 2016, and the situation has worsened since. The lengthening of the process is mentioned in UNHCR's 2015 end of the year report, though the report mentions incoherent numbers. In one section, the average length of RSD (from registration to first instance decision) is estimated at 16 months, while another section gives a 20 to 34 months estimate. This later estimate is said to be for non-Pakistani asylum seekers, and another estimate is given for asylum seekers from Pakistan: 48 to 62 months.<sup>32</sup> Since most of the claims by Pakistani asylum seekers had not yet been processed in 2015, this last number is certainly based on the date for interview that applicants were given when they registered; in practice, additional resources deployed at the end of 2015 allowed for many interviews to be reschedule earlier. Data from the RRC client database on the cases of more than 2,000 refugees and asylum seekers between 2012 and 2016, suggests that the 16 months estimate given by UNHCR is an underestimate, and that 20 to 34 months is closer to the mark. The RRC data, completed through discussions with NGO workers, indicates an average of two years waiting time from registration to first instance interview. To these two years one needs to add a 3 to 6

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<sup>32</sup> I will come back to the reasons why Pakistanis tends to be disaggregated in UNHCR's statistics on Thailand.

months delay between the interview and the notification of the result, meaning that most of the asylum seekers in Thailand have had to wait at least two and a half years before receiving their first instance decision. If the first instance decision comes back negative and the asylum seeker decides to file for appeal, another year and a half needs to be added to that figure.

To put these numbers in perspective, in France the *Office français de protection des réfugiés et apatrides* (OFPRA) reports that it took 216 days (7 months) on average to process a file in 2015, and 183 days (6 months) in 2016 (Office Français de Protection des Réfugiés et Apatrides, 2016), with over 80,000 decisions given per year. 230,000 people were protected by the OFPRA in 2016, and the organization was operating on a budget of 55 million euros (65 million USD), to be compared with the UNHCR's 15 million USD. A direct comparison of the OFPRA and UNHCR Thailand should account for a wide range of parameters, in particular the scope of their responsibilities. The OFPRA does not run refugee camps, and its budget does not include many of the services that are offered to asylum seekers and refugees through France's extensive welfare system, services which UNHCR Thailand would need to pay for from its own pocket. Besides, running RSD is not the primary role of UNHCR in Thailand, which spends most of its budget on the management of the refugee camps. Finally, the two organizations are set up in very different ways.

In spite of all these caveats, comparing UNHCR Thailand to administrative bodies in rich countries is not is not farfetched. The salaries paid to UNHCR staff are comparable if not superior to that of the public servants working for the OFPRA, or that of most refugee agencies in high income countries. The context of operation of UNHCR and OFPRA is of course different, but in the handling of RSD at least UNHCR acts alone, and does not interact at all with Thai officials – hence the blame for any inefficiencies cannot be laid onto the Thai administration. UNHCR Thailand is not a burgeoning administration ran and paid for by a developing state. Yet, UNHCR Thailand is unable to give decisions in less than 2 years even when it receives fewer than 1,000 demands from urban refugees per year (1.5% of the number received by the OFPRA), despite its sizeable budget (equivalent to 27% of that of OFPRA). Comparing performance, it is relevant here to note that the longer process of UNHCR does not appear to come from a more thorough vetting process or a procedure more respectful of the rights of the applicants. In fact, the OFPRA offers

stronger procedural safeguards than UNHCR,<sup>33</sup> allowing lawyers to attend the RSD interviews for example, which UNHCR Thailand does not.<sup>34</sup> The OPFRA also accepts the claim of a smaller share of all applicants, suggesting that it has a comparable if not stronger vetting process than UNHCR Thailand – whereas UNHCR accepts around 40% of applications in first instance, OPFRA accept between 20 and 30% in 2015-2016. In other word the RSD process as it is run by UNHCR is both less protective of due process for applicants and less stringent, while taking somewhere between 4 and 5 times as long.

Yet, the length of the RSD process in Thailand is neither the sole nor the main difference between the programs run by UNHCR and the OPFRA. The most fundamental difference between the procedure in Thailand and in countries signatory to the Refugee Convention lies in the consequences of being recognized a refugee. As described in the opening of this section, being recognized as a refugee gives one access to a certain range of services, varying from country to country, and a certain number of rights, guaranteed by the Refugee Convention. Crucially, recognized refugees are allowed to remain where they are and to work. In most countries where UNHCR operates, the refugee status the organization grants through RSD is somehow recognized by the state and gives access to some level of protection (Kagan, 2006, Kagan, 2011). This is true even in several countries that have not ratified the Refugee Convention, especially in the Middle East, though the recognition of the refugee status in these contexts is usually informal, and does not give access to much additional services or rights.

This is not the case in Thailand. There are neither formal nor informal agreements between UNHCR and the Thai government with regard to urban refugees. Refugees recognized by UNHCR are treated the same way by the Thai authorities as any other foreigners, with consequences discussed in Part I. This extends even to the principle of *non-refoulement*, the foundational doctrine of refugee law. The Thai government has on several occasions allowed the deportation of refugees and asylum seekers to countries where they would be persecuted (Reuters, 2015). These deportations are not routine

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<sup>33</sup> UNHCR has a rather poor track record in matters of due process and transparency compared to programs run by signatory states, in part because of the lack of independent recourse against the organization and the limited legal training of many of its staff (Alexander, 1999, Smrkolj, 2010 & Asylum Access Thailand, 2009).

<sup>34</sup> In 2016 UNHCR Thailand launched a pilot program through which it allowed lawyers to be present in the room as their clients are interviewed. The program however has only been applied to a few cases and the lawyers were only allowed in as observers, with limited capacity to intervene during the interview.

occurrences, and the Thai government does not honor every request it receives to hand over foreigners (Muntarbhorn, 2004). This has led some authors to argue that the Thai state did act as if it was bound by *non-refoulement* (Moretti, 2018). The question of how many exceptions to a rule one needs to allow before considering that the rule is not truly binding can be debated, but the fact that refugees in Thailand have no guarantee that they will not be deported should be noted, even if the risks are low.

Being recognized a refugee changes nothing with regard to the relationship between a foreigner and the Thai state; if the foreigner is in possession of a valid visa, good for him or her, and if the foreigner is not, she or he can be arrested and deported regardless of refugee status. What the refugee status does is transform the relationship of the individual with UNHCR. The organization provides recognized refugees with a monthly financial allowance and some healthcare coverage. More importantly, refugees recognized by UNHCR in Thailand get to enter the queue for resettlement, the crux of the urban refugee management system in Thailand.

### ***Resettlement***

Resettlement must be placed in its broader context. The final outcome pursued by UNHCR is the provision for all its people-of-concern of ways out of dependency, known as durable solutions. UNHCR recognizes three types of durable solutions for refugees: voluntary repatriation, local integration and resettlement to a third country. As a rule, the organization favors local integration, meaning for refugees to stay where they are with some form of long-term residency, the right to work and overall, a status as close as possible to that of nationals. Local integration usually takes place in low or middle income countries, which host the majority of the refugee population. Local integration is a preferred option because it is relatively easy; no one needs to be moved around and wealthier states are happy to finance large programs that keep people they see as undesirable candidates to migration away from their own territory. Voluntary repatriation, or the return of refugees to their country of origin once the conditions underlying persecution are removed, often paired with some sort of financial support, is on paper the ideal solution to a refugee crisis. After the end of whatever troubles forced people to flee, they would be supported to return home and to start reconstructing their lives. In practice voluntary repatriation is often resisted by refugees, and requires not only for what forced them out to be over, which can take decades, but also for refugees to trust that they will be able to start anew. Resettlement, finally, is the sending of a refugee to a country where he or she will be best protected, typically in North America, Western

Europe or Australia. It is the preferred solution of a lot of refugees, but one that is only available to few, as countries of resettlement set quotas which only allow a small fraction of candidates to resettlement to get through.

In Thailand, the durable solution offered the most frequently to refugees is resettlement. The primacy of resettlement in the country is a consequence of the state's refusal to give urban refugees a legal status or any pathway towards long-term stay. Since it offers no way for refugees to remain over the long-term, it closes the door to local integration as a durable solution. UNHCR then can only offer urban refugees two options, voluntary repatriation or resettlement. Repatriation is not an option for all refugees. It is only possible for refugees from countries that have been declared safe for return. Refugees from Vietnam, Palestine, China, Somalia, Iraq, Cambodia represented together more than 50% of the urban refugee population in 2013, and in each of these countries the situations that were causing people to flee are unlikely to change radically in the short-term. Until the massive influx of Pakistani Christian asylum seekers in the past 5 years, the only large group of refugees for whom voluntary repatriation was considered a viable option was Sri Lankans, and many among the ones still in Thailand then preferred to continue to stay in the country, even without a legal status, rather than go back. The next chapter will discuss in length the question of repatriation, but the fact is that it was not seen as a viable option for most urban refugees until recently. As a result, resettlement has been UNHCR's main tool to offer durable solutions to urban refugees in Bangkok.

Nearly all recognized urban refugees in Thailand give resettlement a try, but not all get a chance; resettlement is not the automatic consequence of being recognized a refugee. There are more candidates than slots every year, and resettlement requires an additional round of vetting. Some refugees must wait for their turn for years, some knowing that it is unlikely they will ever be picked. There are no data available regarding where urban refugees from Bangkok are resettled, but it can collectively be characterized as "the West". Worldwide, the countries taking in the largest numbers of refugees through resettlement from 2013 to 2016 were the United States (78,000), Canada (21,000), Australia (7,500), the United Kingdom (5,000) and France (1,300), noting that the numbers provided here are only for UNHCR facilitated resettlement, which depending on the country can

represent only a fraction of all resettlement (UNHCR, 2016c).<sup>35</sup> Though no statistics are available for urban refugees in Thailand, during my fieldwork these countries were the most represented among departing refugees, along with a few other northern European countries; though I could not find data to provide an estimate of the ratio going to each country. Resettlement, whether for urban refugees in Thailand or refugees more generally, means departure to the West. The few exceptions that exist, countries like Japan, South Korea or even the Philippines, are quantitatively negligible.

Refugees are only remotely involved in the resettlement procedure and they are often hardly aware of which states are being considered to welcome them. UNHCR's role is to match refugees with open resettlement slots, which are made available by each resettlement country. When it comes to resettlement, the organization is only a middleman, with no control over how many slots are made available and by which countries. UNHCR has to prioritize the attribution of resettlement slots in short supply. It does not control the size of the pie, and can only influence who gets a slice. A refugee's file is submitted in sequence to each country offering slots, usually ranking from most to least likely to accept the file. If a refugee gets denied too many times, or belong to certain categories in principle excluded from resettlement, the file will eventually stop being sent to countries, to make room for cases with better chances. The main example in Bangkok of refugees barred from resettlement is found among Sri Lankans. Most of the Sri Lankan refugees in Bangkok are Tamils who fled the civil war and some among them are suspected to have had links with the Tamil Tigers, considered a terrorist organization by the United States and 31 other countries. Nearly all countries offering resettlement slots have policies that bar suspected members of terrorist organizations from resettlement; as a result, many Sri Lankan Tamils have spent more than a decade in Thailand, unable to go back and unable to move on.

As a general rule, resettlement is only available to a small fraction of all refugees, with fluctuations from year to year. In 2012 about 70,000 refugees were resettled by UNHCR worldwide, and that number had grown to 115,000 by 2016 (UNHCR, 2017). If resettlement independently managed by governments is included, the number reaches 190,000 in 2016, so about 1.1% of the more than 17 million refugees registered with

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<sup>35</sup> In particular a number of countries have humanitarian visa policies, which are managed independently from UNHCR but serve a function that is similar to that of resettlement, and understood as such by urban refugees in Bangkok.

UNHCR that year. The share of urban refugees who get access to resettlement in Thailand is however much higher than that world average.

UNHCR Thailand does not publicize much information on its operations, and its employees do not easily share hard facts regarding the inner workings of the organization. In particular, the organization does not systematically include information on the number of people it resettles in its end of the year report, and does not make it clear what year the figure mentioned in their reports are for. However, a figure for the number of resettlements is given in the 2014 and 2015 end of the year reports (UNHCR, 2014a, 2015), which can be used to estimate the share of all recognized refugees resettled from Thailand during these years. The 2014 report reads “BO Bangkok submitted 801 PoCs (including 84 Rohingya) to eight countries. 588 urban refugees (including 50 Rohingya) departed to nine resettlement countries, reaching 73 per cent of the number of submissions” (UNHCR, 2014a, Section “Refugee and Asylum seekers (urban)”). In 2015 the report mentions 880 submitted files, though no numbers are provided regarding the number of urban refugees who actually left. Assuming the success rate of submission was similar to that of 2014 (73%), 628 refugees would have left for resettlement in 2015.<sup>36</sup> There were respectively 1,374 recognized refugees in Bangkok in 2014 and 1,905 in 2015 (UNHCR, 2019a), which translates to resettlement rates of 42% in 2014 and between 29% and 38% in 2015, assuming a success rate of the submissions that year similar to that of 2014 ( $\pm 10\%$ ). These rates are in broad alignment with a statement made during my interview with UNHCR’s Protection Officer, who said that 50% of refugees in Bangkok in 2015 had been resettled. There was a continuous increase in the number of recognized refugees in Bangkok after 2015, up to 4,243 in 2017, the latest available statistics. That increase was not matched with an increase in the number of available resettlement slots, and instead in 2016 the number of available slots for resettlement dropped to around 200.

All these estimates, unreliable as they might be, show that the chances for a recognized urban refugee to be resettled from Thailand were at least until 2016 on a different scale altogether than the world average; somewhere between 10 and 40 times higher. And as the UNHCR yearly report indicates, this is not a fluke but a conscious

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<sup>36</sup> These numbers are overestimated, since UNHCR in its reports include the resettlement of Rohingyas in the resettlement figures. Rohingyas cannot register with UNHCR and therefore are not included as asylum seekers or refugees in UNHCR statistics, hence the ratios calculated are a bit higher than they should be. Since Rohingyas represent only a small share of all resettlement from Thailand, the difference is likely to be slight.

decision built in the office's yearly performance target – it was expected that out of the 1,300-odd refugees present in the country in 2014, 800 would be resettled, and the same objective was set for the following year. If the same targets were set for refugees in Thailand's border camps, UNHCR would be aiming to send 40,000 of them abroad every year, and the camps could have been emptied in 3 years.

RSD and resettlement are the main programs run by UNHCR for urban refugees in Thailand; they are what the organization does in the country. With regard to RSD UNHCR is sovereign: the organization sets its own rules regarding who can be recognized a refugee, and implements itself the rules it sets. No quotas limit how many refugees can be recognized in a given year or in a given country by the organization. Resettlement on the other hand is merely facilitated by UNHCR. The organization is given a number of slots to fill every year and allocates refugees to these slots, without a guarantee that their files will be accepted and with no control over the total number of slots in each country. The organization cannot move resettlement slots from a country to another, for example sending fewer refugees from Thailand and more from Malaysia or Turkey. UNHCR in essence has used two tools to manage the urban refugee issue in Bangkok; it is fully sovereign with regard to one of the tools, RSD, and it is not with regard to the other, resettlement. RSD and resettlement are what the organization does in Bangkok, but what it means to urban refugees, the role it plays in their lives, cannot be reduced to a few interviews and a letter of acceptance or rejection. The role played by UNHCR Thailand in the lives of urban refugees needs to be understood in the broader context of the tensions at the core of the organization's mandate.

### ***The role and nature of UNHCR globally and in Thailand***

UNHCR was created as an advisory body. Its mandate was centered on facilitating the enforcement of the Refugee Convention, but out of necessity and following the vision of its early leaders, it quickly became one of the major humanitarian agencies of the United Nations (Loescher, 2001). The transformation in the organization's role created tensions between its mandate, to support the implementation of the Convention and more broadly to defend refugees' rights, and the compromises and bureaucracy that come with the running of large-scale operations.

The tension between UNHCR's mandate and its practice has not received as much attention as in the case of other United Nations bodies. Various bodies of the United Nations have been assessed by academics interested in tallying up their mandates and



objectives against their achievements. The publications obtaining the most coverage have typically been negative, focusing on the UN agencies' (in)capacity to bring about change (Moyo, 2009, Collier, 2008), the horrific consequences of some of their actions (Sontag, 2012, Murray, 2002) or the new form of Western colonialism they embody (Alesina and Dollar, 2000, Dufour, 2010, Atlani-Duault and Dozon, 2011). A lot of these criticisms can be applied to some aspect of UNHCR's work, but do not engage with the specific issues at the core of its mandate. Academics have at times taken a critical look to UNHCR work: see Verdirame et al. (2005) for an example of frontal challenge of the organization's work in refugee camps in Kenya and Uganda, or see Scheel and Ratfisch (2014) for a critical discussion of UNHCR's adoption of a migration management framework; but these publications have received little attention.

The criticism of the overall achievements of the agency with the highest profile was an article in the *New Left Review* by Stevens (2006) titled "Prisons of the Stateless". It challenged the work of the organization and the narrative it had created around itself, and the article created a visible shockwave among scholars working on refugee issues, though it did not transpire into mass media to the same extent as other attacks on UN agencies. Immediately after Stevens' article publication, Morris (2007) answered through an article in the *New Left Review*, and a number of articles published in the following years framed themselves as responses to "Prisons of the stateless" (Kagan, 2011).

Stevens' article was written as response to the publication by former head of UNHCR, High Commissioner Sadako Ogata, of his memoir titled *The Turbulent Decade: Confronting the Refugee Crisis of the 1990s* (2005). Stevens paints a grim picture of UNHCR's programs under Ogata and his predecessor Jean-Pierre Hocké, from 1986 onwards. In essence, Stevens argues that both men presided over a shift in the organization's priorities, away from the protection of refugees and towards the containment of refugee fluxes far from the borders of Western states. Stevens writes that as immigration fell out of favor in the West, the big donors that kept UNHCR afloat started pressuring it to keep refugees in the South rather than helping them reach safe havens in the North. The author accuses first Hocké and then Ogata of essentially having accepted to sell out UNHCR's mandate. The result, he argues, is the current state of the refugee issue: sprawling camps where millions wait for their country of origin to be declared "safe" so that they can be deported back, whether they want it or not.

"Prisons of the Stateless" is unambiguous about how Steven's felt reading Ogata's memoir: outraged. There is no doubt many academics were put off by the tone and the

intent of the article. Stevens believes that Ogata committed a moral wrong by not resisting pressure from Western donors, and should not have made what he calls “often bloody compromises” with the organization’s mandate (Stevens, 2006, p. 54). The scholars who wrote to distance themselves from his analysis made various arguments centered on the idea that one needed to understand the reasons why decisions had been made a certain way rather than passing moral judgments. This line of argument suggests that they believed that passing moral judgments was not what academics should do. They did not, however, disagree with Stevens’ central thesis that UNHCR had shifted its priorities toward containment and repatriation, and that this shift had been motivated by the changing priorities in the West rather than by the changing needs of refugees. The main difference between Stevens and the academics that answered his piece was his decision to take UNHCR’s mandate seriously, and to tally the organization to its own standards. Stevens’ verdict in this regard was clear: the agency fell short, and should not indulge in the kind of self-congratulation that one reads in Ogata’s memoirs.

The debate that arose from Stevens’ article reflects two approaches to the criticism of the organization that one believes to be involved in bringing morally desirable outcomes, such as the protection of refugees. Stevens believes that organizations that claim to pursue a mandate should be held accountable and shamed if they betray the trust people have in their will to do so. His critics, though agreeing in large part regarding the verdict, take a more “constructive criticism” approach and advocate the avoidance of moral judgments, or at least for them to be conveyed mildly and with academic distance.

In the case of UNHCR in particular, the former sort of criticism, which takes the organization’s mandate seriously, is relevant. First, because while refugee issues are highly controversial, UNHCR itself is not at the center of the public debate. Hence it is unlikely that nuanced criticism and balanced assessments of academics regarding UNHCR would be distorted and used as an excuse to further reduce the funding and political support given to the agency. Second, because UNHCR is in a position to make a lot of unilateral decisions. It is a powerful actor that should be held accountable for its choices. This has become increasingly true as the organization moved away from its role as a watchdog. Stevens’ criticism could be effective because UNHCR’s mandate is to promote adoption of the 1951 Refugee Convention and uphold its content. The organization was meant to be lobbying and calling out states on their refugee policy, but quickly started running humanitarian programs. This situation created a growing gap between the organization’s mandate and the reality of its day-to-day operations. Authors like Chimni (2004a) stress that criticism from NGOs and academics is the only way to keep UNHCR

accountable to its beneficiaries, since no amount of internal reporting and monitoring can replace independent evaluation. This is particularly true in a context where the organization, at least at the country level, is extremely secretive and defensive, a fact already observed by Loescher (2001, quoted in Chimni 2004a) and Alexander (1999). This would only come as a surprise if one thought international organizations were somehow different from other large organization, which all tend to create internal cultures that enshrine the organization's survival as their primary goal.

The following chapter will develop several lines of criticism against the way UNHCR Thailand runs its operation. The fact that there are many problems with the way UNHCR works in the country should not come as a surprise. The organization is a sprawling administration that no one should expect to function perfectly and please everyone, especially considering that UNHCR's task is to remedy an intractable problem. UNHCR's operations create inescapable moral conundrums, and those working for the organization know that much of the decisions they take on a daily basis are tough calls that can draw criticism. They would be the first ones to agree that some things could be done better and that occasionally the organization can stray away from the right path. For these reasons criticizing UNHCR, especially from the distance of an academics' desk, is easy.

Criticism therefore should come in a context of understanding. That understanding in the case of UNHCR Thailand requires a discussion of the role played by the organization in the life of urban refugees. UNHCR does not provide to urban refugees in Thailand a broad range of services without which they would be unlikely to survive. The organization is also largely incapable of protecting them against agents of the Thai state, by far the greatest threat to their wellbeing and physical safety. Moreover, UNHCR has limited control over the ultimate fate of refugees, though it is not immediately apparent for the asylum seekers reaching Thailand's shores. The organization is in control of RSD, but not of resettlement. UNHCR acts as a middleman, handing tickets to the resettlement lottery without organizing the lottery itself; and a ticket is far from a guaranteed resettlement slot.

Yet one only needs to spend a few hours with refugees in Bangkok to see that they hardly ever stop thinking about UNHCR. This is true regardless of whether they are asylum seekers, waiting to go through RSD, or refugees, on whom UNHCR has a lot less influence. This in part reflects the fact that UNHCR is the face of the resettlement process for refugees, but stopping at that underestimates the refugees' understanding of the resettlement process, which is in fact quite fine-grained. Instead, the focus on UNHCR

found among urban refugees suggests that they understand the unique role played by UNHCR in their lives at a deeper level; that of the sole thing standing between them and the complete absence of a legal status. UNHCR in that sense should not be understood as just another charity in its relation with urban refugees; its main contribution to urban refugees is the creation of procedures and norms that prevent them from falling into complete legal limbo. That role is usually played by state bureaucracies, but in the absence of one in Thailand, UNHCR fills that role.

The idea that UNHCR could in low and middle income countries come to adopt state-like functions has been proposed before with regard to its role in refugee camps. Wilde (1998) looked at whether UNHCR could be considered a subject of international law. He argued that considering the practical extent of UNHCR's power and responsibility in the refugee camps it runs, UNHCR finds itself in the same category as states and has some responsibility in terms of international law – though only to the extent that it takes on the responsibilities of a state. This same idea was taken up by Farmer (2006), who speaks of the nexus of UNHCR, NGOs and host government as performing state-like functions in refugee camps, and argues that for this reason this nexus should be responsible for putting in place accountability mechanisms in the camps that respect the refugees' right to access justice. The two authors assimilate UNHCR to a state with regards to the organization's responsibility to its people-of-concern, including to establish whether grounds exist to hold it to higher standards than other similar organizations. However, the articles do so without trying to make a broader argument about the nature of the organization; the state-likeness of UNHCR is used instrumentally, to argue that the organization should change its way in a number of regards.

Slaughter and Crisp (2009) built on the parallels between UNHCR and a sovereign state and coined the term "surrogate state" to describe the practical reality of UNHCR's work. Their argument is not normative but rather descriptive. They are not arguing that UNCHR should in one way or another transform its behavior, but instead attempt to more accurately understand its behavior and create a conceptual category better suited to the reality the organization faces. Their argument starts with a number of practical observations, showing that the nature of UNHCR's work has changed since its inception. They point out three factors:

1. Refugee crises have become increasingly intractable.
2. Richer states have displayed increasing unwillingness to admit large numbers of refugees on their soil and developed a clear preference toward financing large

humanitarian operation on the condition that host states would keep people where they were.

3. Host states, seeing the trend of refugee camps becoming permanent settlements, have retreated from the management of refugee issues.

According to Slaughter and Crisp, this combination of factors led to a situation where developing host states have completely retreated from refugee issues, reducing their role to refraining from harming refugees and asylum seekers, leaving UNHCR in charge of everything else. The organization ends up with free reins in refugee camps, where it leads coalitions of non-state actors fulfilling all essential state functions, becoming a surrogate state “complete with its own territory (refugee camps), citizens (refugees), public services (education, health care, water, sanitation, etc.) and even ideology (community participation, gender equality)” (Slaughter and Crisp, 2009, p.132).

The wording of the definition of the surrogate state found in Slaughter & Crisp is modelled after the Montevideo Convention, but focused in particular on the fact that UNHCR is an essential service provider within the camps. It might not be the most adequate measure of how state-like an entity is. Though service delivery is an important component of modern nation-state, it is by no mean a distinctive feature. UNHCR does not stand out because of how much money it can afford to spend on refugees, but rather because from the point of view the refugees in the camp, UNHCR is assimilated to “the authorities” in a broad sense. It can be argued that UNHCR is not in fact the ultimate norm creator in camps, that it is merely allowed by the state to operate within certain constraints, and that it lacks key features of states, such as the willingness and ability to tax, and a monopoly over legitimate violence. Such criticisms are valid, and the idea of surrogate state could certainly use some conceptual refinement, but it does provide for an interesting lens to understand UNHCR’s role with regard to refugees.

The concept of surrogate state captures the key element in the relationship between UNHCR and its peoples-of-concern: the way the creation and development of the organization has transformed the very nature of what refugees are. Refugees and asylum seekers are different from other marginalized groups by virtue of their legal status, or rather the way they defy traditional legal categories by existing outside and beyond the world of nation-states. Arendt explored the consequences of living by definition outside the law in *The Origins of Totalitarianism*, and her analysis is worth quoting in length:

It would seem that the very undeportability of the stateless person should have prevented a government's expelling him; but since the man without a state was ‘an

anomaly for whom there is no appropriate niche in the framework of the general law' – an outlaw by definition – he was completely at the mercy of the police, which itself did not worry too much about committing a few illegal acts in order to diminish the country's burden of *indésirables*. [...]

All discussions about the refugee problems revolved around this one question: How can the refugee made deportable again? The Second World War and the DP [Displaced Persons] camps were not necessary to show that the only practical substitute for a nonexistent homeland was an internment camp. Indeed, as early as the thirties this was the only 'country' the world had to offer the stateless.

Much worse than what statelessness did to the time-honored and necessary distinctions between nationals and foreigners, and to the sovereign right of states in matters of nationality and expulsion, was the damage suffered by the very structure of legal national institutions when a growing number of residents had to live outside the jurisdiction of these laws and without being protected by any other. The stateless person, without right to residence and without the right to work, had of course constantly to transgress the law. He was liable to jail sentences without ever committing a crime. (Arendt, 1951, p. 283-6)

Though Arendt's analysis is very much grounded in the historical context in which she wrote, her description of the condition of the refugee pre-Second World War bears striking resemblance with the condition of urban refugees in Thailand, from the exposure to illegal act by the police, the camp as the only refuge, and the constant violation of the law as a result from being barred from the right to work to sustain oneself. To an extent, the essential facts of her analysis have not changed. We still live in a world of nation-states, and many of them consider their obligations towards non-citizens to be minimal at best and void at worst. More recent work on the refugee condition stresses the continuity from the time of Arendt; Agier (2008) describes the most salient consequences of refugee life outside the realm of laws in camps and shanty towns to this day. Living outside of normal social and legal structures put refugee life in suspension, makes it a life in waiting, denying the individual a chance to make plans and preserve hope.

In the West, the issue of the lawlessness that comes with statelessness, or the withdrawal of state protection to certain citizens, has been addressed by the creation of specific legal categories and dedicated bureaucratic structures and procedures. They made refugees legible again to the state, gave state agents a set of labels they could attach to individuals, and with each label, a corresponding procedure to follow, each leading towards an eventual resolution to the absence of state protection. In countries signatory to the Refugee Convention running their own refugee programs, the role UNHCR plays in

the life of refugees is comparable to that of other international organizations. In signatory countries, refugees still face challenges caused by the withdrawal of state protection in their country of origin. Yet, this withdrawal does not create the sort of legal void that it once had, because signatory states have restricted their ability to deny basic rights to individuals, regardless of their nationality or lack of thereof. However, in regions where states have never limited their sovereignty in the management of foreigners, and not developed extensive refugee management procedures, the situation of refugees bear striking similarities with what Arendt described.

The major change for refugees since the early 1950s has been the creation of UNHCR and its rising to prominence. The change brought by the organization did not come from its capacity to alleviate the suffering of refugees, which charities of all sorts and sizes have done as long as there has been refugees. UNHCR changed the refugee condition by creating a bureaucracy that was capable and willing to govern those who would otherwise be governed by no one. It provided them with a set of procedures, statuses, rights and obligations that recognizes them as subjects. The relief one can find in falling under the authority of anyone or anything might not be immediately apparent, but it is for those who know what the alternative looks like. In countries without a dedicated legal status for refugees, they are at the mercy of a whole range of legal limbos and cracks, in which one can fall and never come back. Talk of limbos and cracks might read as poetic license, but as discussed earlier their implications are in fact very practical, as the refugees stuck in indefinite detention in Bangkok's IDC can attest. The recognition of the refugee as a subject of law and therefore their reintegration in the polity, the legal normalization of their existence, creates ways out of these cracks and is a profound departure and significant progress from Arendt's world.

The camp is an essential feature the concept of surrogate state coined by Slaughter and Crisp (2009), because they include a territorial dimension to the idea of the withdrawal of the state. Urban refugees in Thailand then are in a more ambivalent position than their counterparts in camps, since no piece of land has been allocated to UNHCR for their parking and management. Urban refugees, because they are not segregated from the rest of the population, are not physically removed from the reach of their host state. Hence, unlike in the camps, there is no confusion regarding whether the state or UNHCR constitutes to them the ultimate norm creator – the police and immigration agents are enough of a reminder that “the authorities” is the Thai state, and has little to do with the UNHCR employee they once saw behind a counter and have not heard from since. Yet, the nature of their relationship to their host state is inherently

different from what it would have been had they sought refuge in a signatory state. The Thai state's sovereignty over them is a negative one, built over a refusal to govern them; its priority is not to make the refugees' situation legible; but to get rid of their situation. Mass criminalization, the key tool of urban refugee management employed by the Thai state, is incapable of resolving the refugee's situation. All it does it push them out of state's view, into dark cells or remote apartment buildings out of which it offers no way out. The Thai state's approach is a form of denial of sovereignty, which bears parallel to the situation described in refugee camps by Slaughter and Crisp, minus its territorial dimension.

What UNHCR provides to refugees in Thailand is a way out, in fact a whole bureaucracy dedicated to putting an end to the refugee's state of lawlessness. That bureaucracy uses labels and a set of corresponding procedures which give refugees clear short and longer term goals, "register with UNHCR", "prepare my interview", "attend the interview", "appeal", "check whether my file has been submitted for resettlement", "wait for the letter from the American Embassy", etc. These labels and procedures create a parallel legal realm in which refugees face radically reduced uncertainty, where their lives are determined by binary outcomes and set timelines, rather than silences and question marks.

A final consideration to note with regard to UNHCR taking state-like functions is the role of the states on the receiving end of that process. As Kagan (2011) noted, critics of UNHCR's operations in the African context have argued in particular that the organization was "usurping the responsibility of states for refugee policy and facilitating refugee rights violations in the process." (Kagan, 2011, p.5). He argues that this line of arguments has it backward – it is the retreat of the state that has led UNHCR to take a prominent role in the refugee policy of many developing countries, and not the other way around. When it came to the handling of refugees, he argues that even poor states are far from powerless victims of Western neo-colonialism. Whether this is true or not in the context in which Kagan deployed the argument, it very much is true in Southeast Asia in general and in Thailand in particular. States in the region have successfully resisted attempts by Western powers to shape their refugee policy, as shown throughout their management of the Indochina refugee crisis (Robinson, 1998). And this is where shifting from looking at UNHCR as a humanitarian organization to UNHCR as fulfilling state-like bureaucratic functions can help better understand some of the choices made by the organization that are discussed in the next chapter. The organization has found itself in a position it did not want because states would not take their responsibilities. What type of refugee bureaucracy UNHCR is



and should be is an important discussion to have, but also one that cannot ignore the fact that the organization only took on this role after those who should have did not.

Conceptualizing UNHCR as a refugee bureaucracy, taking up a role in the life of refugee typically occupied by state-bodies, is not only useful to get a deeper understanding of the role played by UNHCR in the lives of urban refugees, but can also be a guide when it comes to the standards against which UNHCR's actions should be measured. As Kagan (2011) discusses, much of the criticism addressed to UNHCR is centered on what is its proper role in the refugee system, as somewhere between a defender of refugee rights and a manager of refugee populations. In the case of UNHCR Thailand, understanding that its key contribution to refugee lives is the provision of a bureaucratic framework for their lives that leads them towards a resolution is the first step to any serious assessment. Then comes the question of what kind of refugee bureaucracy UNHCR is in Thailand, whether it does or does not protect refugees against the arbitrariness of the state. The record of the organization in Thailand shows that when faced with a major challenge, it sides not with its mandate and people-of-concern, but with the state.

## ***Chapter 6 – Cracks in the Protection Mandate***

UNHCR in Thailand is the one entity that has accepted to fill the void left by states with regard to urban refugees, thereby becoming the country's refugee bureaucracy. The previous chapter described RSD and resettlement, the tools in the hands of UNHCR, and this chapter will show how UNHCR uses these tools, and has done so in a way that is better aligned with the interest of the Thai state rather than that of urban refugees, or its mandate.

UNHCR in Thailand relies almost exclusively on resettlement as a durable solution for urban refugees, which raises problems for the organization. UNHCR does not have the power to set the number of resettlement slots offered by each country nor the number of asylum seekers coming in. Any change in the number of arrivals or the number of departures would lead to an increase in the number of urban refugees stranded in the country. Until 2012, the system appears to have worked relatively smoothly. Processing refugees took time, but after a slow increase until 2009 the number of urban refugees appeared to be stabilizing between 2,000 and 2,500 people (including both recognized refugees and asylum seekers). Using the resettlement objective of 800 submissions set for 2014 as a reference, though it might not have been as high then, in 2012, UNCHR could have hoped to resettle most urban refugees within 2 to 3 years of the end of RSD; the ratio between the stock of urban refugees and available resettlement slots was not too high to be handled.

However, in 2012 the situation changed dramatically. Thousands of asylum seekers arrived in the span of a couple of years. Between 2012 and 2014 the number of urban refugees in the country grew from 2,280 to 8,530. Most of the new arrivals came from Pakistan. As the number of candidates for asylum shot up, leading to an increase of the overall urban refugee population in the country, the number of available slots for resettlement, far from increasing to match demand, stagnated and then fell. In 2016, the number of available slots for resettlement dropped significantly, from around 800 per year in preceding years to around 200. UNHCR had no say in the sudden change, because it has no control over how many slots are made available for each country.

The most likely explanation for the change is that a shift in resettlement priorities at the global level lowered the priority given to refugees from Asia in favor of refugees from the Middle East, and in particular Syria. Western European countries in particular were

dealing then with what was dubbed the “migrant crisis” and refugees from Thailand receiving little media attention, it is likely that they were the first quotas to be cut to make room for other groups. Then late in 2016 Donald J. Trump was elected on an anti-immigrant, anti-refugee platform, and early in 2017 announced a moratorium on all refugee resettlement to the United States. Though the decision was quickly overturned by the courts, it sent a clear signal that resettlement was going to become harder for all refugees. Since the United States is the largest destination for resettled refugees by a wide margin, policy decision in the country have a broad influence over the entire global refugee management system and even a marginal change in its priorities can lead to important repercussions in a country with a small resettlement quota like Thailand.

These sudden changes drove a wedge between UNHCR Thailand’s mandate and its role as a refugee bureaucracy. As an administrator, it needed to take back control of the situation and provide durable solutions to refugees within an acceptable timeframe. The only lever available was a reduction in the number of refugees coming in, as the number of them leaving was out of its control. As a UN agency with a mandate to protect refugees, it could do nothing but keep its office open to whoever needed protection. Public data on UNHCR operations in Thailand shows that as the organization was faced with this mismatch between the number of arrivals, its capacity to process them and the number of available resettlement slots, it started recognizing fewer refugees, especially among asylum seekers coming from Pakistan. However it came to be, the way UNHCR processed Pakistani asylum seekers was better aligned with the interest of the Thai state, which saw any move towards helping refugees as a risk of attracting more refugees, than it was with the interest of its people-of-concern.

### ***Deterring New Arrivals***

UNHCR has been faced since 2012 with two major threats to its mode of operation in Thailand with regard to urban refugees: the drying up of resettlement slots and a sudden increase in the number of asylum seekers. Both challenges resulted in the swift growth of the number of urban refugees in the country as inflows and outflows moved in opposite direction. UNHCR has reacted to this dual challenge in two ways. The first change was rhetorical, and did little besides acknowledging the transition that was unfolding. The second change was a change in the outcomes of the RSD process, and had far reaching consequences.

## ***Changing discourse***

A new rhetoric started making its way through UNHCR Thailand's official communication after 2012. It was focused on underplaying the central role of resettlement and stressing the existence in Thailand of an alternative option, "community-based protection". Though presented as an intentional shift away from resettlement, the fact is that downplaying resettlement from Thailand simply acknowledged a reality over which UNHCR Thailand had no direct control: with the increasing number of asylum seekers and refugees in the country, and later the decrease in the number of resettlement slots, resettlement was mechanically going to be an option for a smaller share of the refugees in the country, and the lucky ones would have to wait longer to be resettled.

UNHCR's renewed messaging around resettlement appeared first in the organization's 2014 end of the year report. The arguments deployed in the report works on two fronts. On the one hand, emphasis is put on a downside of resettlement, the increased risk of "fraudulent cases":

Resettlement is the main protection/solutions tool for the urban PoCs and Rohingya, although this also raises the risk of fraudulent cases and claims, and likely contributes to the on-going increase in new arrivals in Bangkok.

(UNHCR, 2014a, Section "Refugee and Asylum seekers (urban)")

On the other hand, the organization starts promoting what it sees as an alternative to resettlement, which it dubs "community-based protection":

[UNHCR] met resettlement targets both on the border and in the urban context, while managing expectations and reducing future resettlement targets in line with the subregional resettlement strategy and in support of both voluntary repatriation at the border areas and the progressive transition to a community-based protection model for urban refugees.

(UNHCR, 2016a, Section "Overview")

In line with the multi-year strategy, in the urban and statelessness contexts 2017 prioritization will be given to supporting the transition from the current RSD/RST [RST is short for resettlement] intensive model to a community-based protection model. Further prioritization is envisioned with respect to alternatives to resettlement as a the only 'solution', and increased voluntary repatriation and consideration of joint activities with IOM in connection with their Assisted Voluntary Return (AVRR) programme to

increase options for [people] of concern, as resettlement is scaled down. This assumes, of course, tangible increases in ‘protection space’ for people-of-concern through policy adjustments by the Government, including movement to joint UNHCR-Government registration and eventually screening.

(UNHCR, 2016b, Section "Needs and response/Prioritized Operations Results")

These extracts show that “community-based protection” was framed as an alternative to durable solutions in Bangkok. In fact, “community-based protection” described not a new approach for the organization but the reality of the urban refugee experience in the city. The term “community-based protection” is relatively new in UNHCR lingo. Official UNHCR documentation uses it to stress the importance to involve refugees in its security-related programs, typically to address issues internal to the refugee community such as domestic violence (UNHCR, 2014b). What community-based protection means in the context of UNHCR programs is that less top-down approaches to problem solving should be favored. What its use means in the context of urban refugees in Thailand, however, is that UNHCR does not have an alternative to replace its resettlement-intensive model. Therefore, urban refugees should expect to stay in Bangkok for an indefinite length of time and find ways to cope with that situation themselves. Saying so explicitly would be problematic for UNHCR, hence it fell back onto inoffensive sounding jargon. That jargon presents what amounts to the abandonment of refugees in hostile territory as a fleshed-out strategy, by using a term implying their empowerment.

UNHCR officers understand that leaving urban refugees in Bangkok is not a satisfying solution unless their safety can be guaranteed, or in organizational lingo unless the “protection space can be increased”. The quote above, explaining that any switch away from resettlement is conditional to “tangible increases in ‘protection space’ for people-of-concern through policy adjustments by the Government”, shows awareness within the organization of the limits of a community-based protection model considering the policies of the Thai state towards urban refugees at the time of writing. Presenting tangible increases in “protection space” as a prerequisite condition to any switch away from resettlement as the sole long-term solution available in Thailand is however misleading. In fact, the switch had already happened by 2016, without significant improvement in the protection space. To be charitable to the organization, that switch was not in its control; UNHCR directly caused neither the sudden increase of asylum seekers nor the drying up of resettlement, and had to come up with some way to deal with the situation.

UNHCR after 2012 acknowledged that its previous model was not sustainable anymore, but had no alternative. Internally, it appears that a narrative emerged linking the resettlement-intensive model and the sudden increase in the number of asylum seekers. Officers within UNHCR thought that asylum seekers were coming in droves between 2012 and 2014 because they knew that seeking asylum in Bangkok was a sure way to be sent to the United States with a green card; in other words that the high ratio between resettlement slots and overall urban refugee population became public knowledge among certain communities, namely Pakistanis, and acted as a pull factor. This is what UNHCR's protection officer for Thailand explained to me in 2016. During our interview, when asked what he thought had been the cause of the surge in arrivals, he explained that the inciting incident had been one mass arrest in 2011 that had led to the fast-track resettlement of many refugees. He said that the mass arrest and the resettlement efforts were reported in the newspapers, and that from there the information was passed on within certain groups that one only needed to seek asylum in Bangkok to be put on a flight to Europe or the United States a few weeks later. Whether this understanding of the events within UNHCR Thailand was accurate will be discussed in more depth later in this chapter, but either empirically supported or not, the fact that this is the explanation that was shared shows that the idea had influence within the organization.

The belief was that the crisis of the organizations' model had been built-in from the start, that relying on high resettlement rates was bound to create an overwhelming pull factor, and that the people coming in were migrants attracted by the perspective of resettlement rather than legitimate asylum seekers. This idea explains UNHCR's need for a new rhetoric. Official communication needed to stress that resettlement was not the automatic consequence of seeking asylum, in the hope that the word would be passed on and help staunch the flow; and so, the message changed in internal documentation, and more importantly during interaction with asylum seekers. UNHCR officers, when interacting with communities seen as having a higher rate of false claims, stressed that resettlement was in short supply, constituted an exceptional measure and that refugees from Bangkok would not be prioritized. The discourse stressing that resettlement was not the automatic consequence of seeking asylum could become quite blunt. As the protection officer put it during our interview in 2016:

UNHCR is not there to substitute to state protection [sic]. It's not its mandate, and I want national lobbies [a reference to Pakistani Christian groups based in London] to question their own governments rather than UNHCR. They need to take a realistic view of the

world, in which hardship exists and does not automatically give you the right to resettlement and a house as you wait for it.

The changes in the discourse of UNHCR officers around resettlement was much resented among refugee advocates in Bangkok, with stories of what had been said to this or that group during this or that meeting being passed around in indignation. Their grievance was rooted in the belief that UNHCR should not be in the business of telling refugees not to come; and though that is a reasonable argument, the discourse coming out of the organization in Bangkok was never really that tough. A few words here and there might have been insensitive, and the underlying logic of the discourse was indeed to encourage asylum seekers to think twice before coming to Thailand, but the fact is that the change in rhetoric was hardly more than a slight realignment, a little more of checking expectations and underplaying resettlement. The new discourse coming out of UNHCR was not a misrepresentation of the situation in Thailand; if anything, it was closer to reality.

The outcry of refugee advocates against UNHCR's discourse was only somewhat of an overreaction however, because the change in rhetoric came at the same time as a change in the outcome of the RSD process.

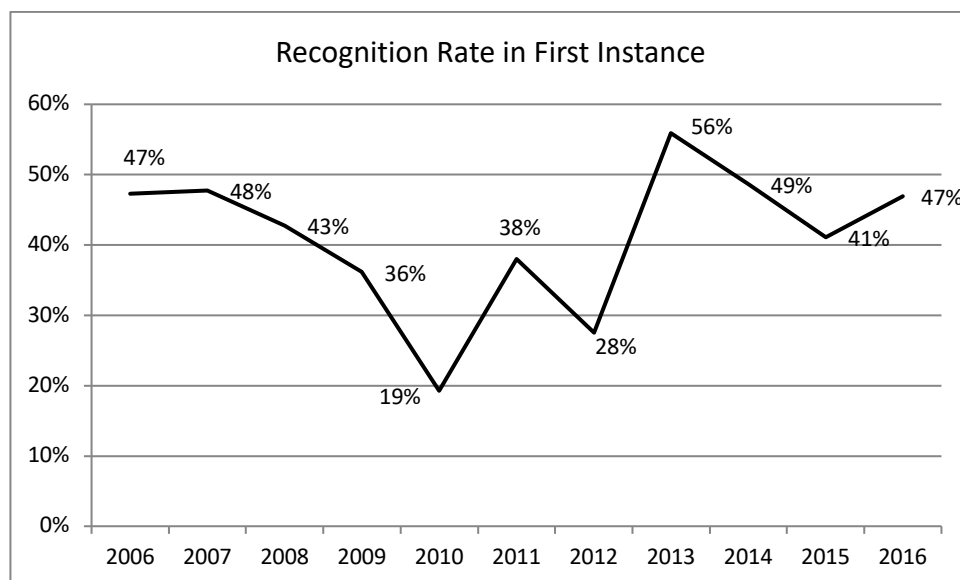
### ***A Problem with Pakistan***

Around the same time as UNHCR changed its discourse on resettlement, the share of asylum seekers who were recognized as refugees through the RSD process decreased. The decrease was especially swift for Pakistani asylum seekers, who represented the bulk of new arrivals after 2012. This change in the expected outcome of seeking asylum in Thailand, in particular for Pakistanis, participated in deterring new asylum seekers.

The outcome of the RSD process in Thailand is documented in publicly available statistics. UNHCR reports annually on their caseload in the UNHCR Population Statistics Database (UNHCR, 2019b), and the data is structured to allow the computation of recognition rates per place of asylum, type of procedure (first instance, appeal or reopening) and country of origin. To give a quick overview of the data, from 2006 to 2016 the Thailand office of UNHCR recorded a total of 19,819 decisions, including first instance and appeals, out of which 8,153 were positive, i.e. led to the recognition of the applicant as a refugee. Looking at first instance decisions, 16,251 over the period, about 45% were positive. Throughout my analysis, I will focus on first instance decisions, as they represent the great majority of decisions (82%) and are the most straightforward step of the RSD

process; appeals are fewer and usually denied, with just under 23% succeeding over the period. Besides, many asylum seekers receive legal counseling before their appeal, adding additional parameters to consider, and appeals can be decided years after the first instance decision, creating a subgroup of somewhat lagged data which would be harder to interpret.

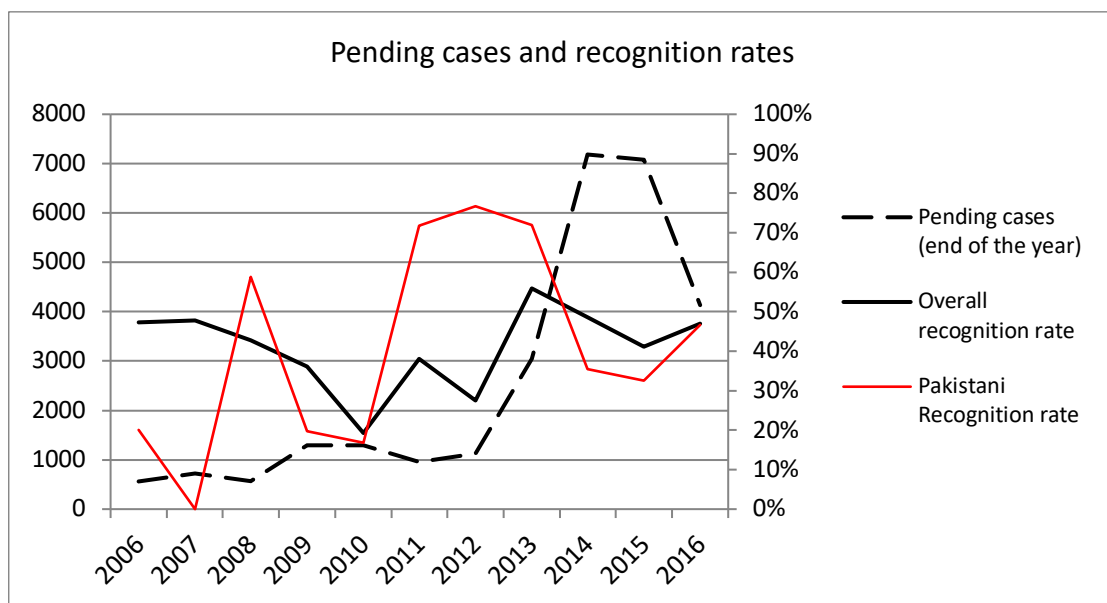
Over the 2006-2016 period, the average recognition rate in first instance, i.e. the total number of positive decisions divided by the total number of decisions, stood at 45%. It saw important year-to-year variations, from 19% in 2010 to 56% in 2013. Table 6 shows UNHCR’s Bangkok office yearly average recognition rate. To put these numbers in perspective, in 2015 the recognition of the OFPRA, the French refugee agency, was 22.6%, and it increased to 28% in 2016; over the same period the recognition rate of UNHCR in Bangkok went from 41% to 47%. An asylum seeker therefore is nearly twice as likely to be recognized a refugee in Thailand as in France, and part of that difference comes from an essential difference between the two organizations. When the OFPRA gives a positive decision, it creates a new permanent resident in France, a fact that does not always align well with current political agendas (Legoux, 2006). When UNHCR Thailand gives a positive decision, it adds one more name on the waiting list for resettlement, and little else. Little obligation is created for the organization, and none for the Thai State or any other stakeholders with the capacity to influence it. UNHCR is under little pressure to depress the recognition rate, while the OFPRA is.



**Table 6 Recognition Rate in First Instance in Thailand (UNHCR Population Statistics Database)**



The data published by UNHCR on its Thailand RSD operation shows a drop in the recognition rate in 2014, at a time when the organization felt overwhelmed by the number of new arrivals. This drop appears at a particular time, a year when the urban refugee issue in Bangkok appeared to change qualitatively. Across 2013-2014, a total of 8,173 people sought asylum in Bangkok;<sup>37</sup> more than quadrupling the total urban refugee population in the country. The majority of the new arrivals were Pakistani asylum seekers; they represented 63% of new arrivals over these two years, with the second and third largest groups, Vietnamese and Somalis, representing respectively 5% and 4% of arrivals. The new arrivals completely clogged the RSD queue, which took years to recover. At the beginning of 2013, they were 892 asylum seekers awaiting a first instance decision; a few more than at the beginning of 2012 and a few less than at the beginning of 2011. At the beginning of 2014, they were 2,792, and by the beginning of 2015 they were 6,806; and about the same number still a year later. It's really only by the end of 2016 and the processing of nearly 5,000 claims in less than 12 months that the queue finally came back to its 2012 length.



**Table 7 Pending cases and recognition rates (UNHCR Population Statistics Database)**

<sup>37</sup> Some of the asylum seekers registered in 2014 had in fact reached Thailand in 2013, but UNHCR struggled to keep up with the pace of new arrivals that year, and a registration backlog ensued. The backlog was cleared by the end of 2014, but therefore the increase in arrivals appear somewhat sharper in 2014 than it really was. It is unclear how many asylum claims were shifted from 2013 to 2014.

Throughout 2014, as the refugee population was quickly growing, the recognition rate in first instance for asylum seekers in Bangkok lowered somewhat, from 56% to 49% across all groups. Looking at disaggregated data, one sees that the drop in the recognition rate was largest for certain groups. Pakistanis represented the large majority of new arrivals that year, and their recognition rate in first instance went from 72% in 2013 to 35% in 2014, as shown in Table 7.<sup>38</sup> Such year-to-year variations in recognition rate for a group of asylum seeker are not exceptional, as UNHCR Thailand typically only makes a few dozen decisions a year per nationality; hence random variations can appear more important than they are when expressed as percentages. The situation of asylum seekers from Pakistan after 2012 is however different: that year, UNHCR gave 146 decisions on claims by Pakistani asylum seekers, and the numbers only grew from there, to 160 in 2013, 820 in 2014 and 941 in 2015. These are high enough numbers to be confident that the change in recognition rate was not simply a coincidence. In other words, at the very same time than thousands of new asylum requests were pouring in from Pakistani nationals, the chance of a Pakistani asylum seeker to be recognized a refugee by UNHCR in Thailand halved, and by the following year the influx of asylum seekers from Pakistan dried out.

Two different factors could have contributed to this sudden drop in the recognition rate of Pakistani asylum seekers. On the one hand, the individuals seeking asylum might have been qualitatively different from their predecessors of the same nationality, and have had on average weaker claims. On the other hand, the RSD process could have become harder to clear for Pakistani asylum seekers because of shifting standards, either as the result of individual bias or organizational guidelines. Before discussing what explanation appears most coherent, it should be pointed out a key issue with the latter one. The RSD process is meant to be an objective evaluation of the strength of an asylum claim. It should take into account the credibility of the testimony given by the asylum seeker, to which extent it is supported by material evidence, and whether it is coherent with what is known of the context in the asylum seeker's country of origin. It is an individual process, in the sense that each claim is meant to be evaluated separately. Just as importantly, there is no limit or quota to how many people can be recognized refugees

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<sup>38</sup> The recognition rate of Somali and Vietnamese, respectively second and third most represented groups amongst the new arrivals in 2014, also saw their recognition rate lower in 2014, from 88% to 65% for Somalis and 40% to 24% for Vietnamese; though for both these groups the total number of decisions per year is too low to be confident that variations in average rates are more than just a fluke.

in Thailand or any country; in that sense RSD is essentially different from resettlement. While resettlement slots are limited in number, “refugee slots” are not. This means that any policy aiming at lowering recognition rates, making it harder to be recognized a refugee, would not be a case of triage, making tough but necessary choices to administer best a finite resource; instead, it would be a violation of the standards of fair process that UNHCR claims to implement and recommends to states.

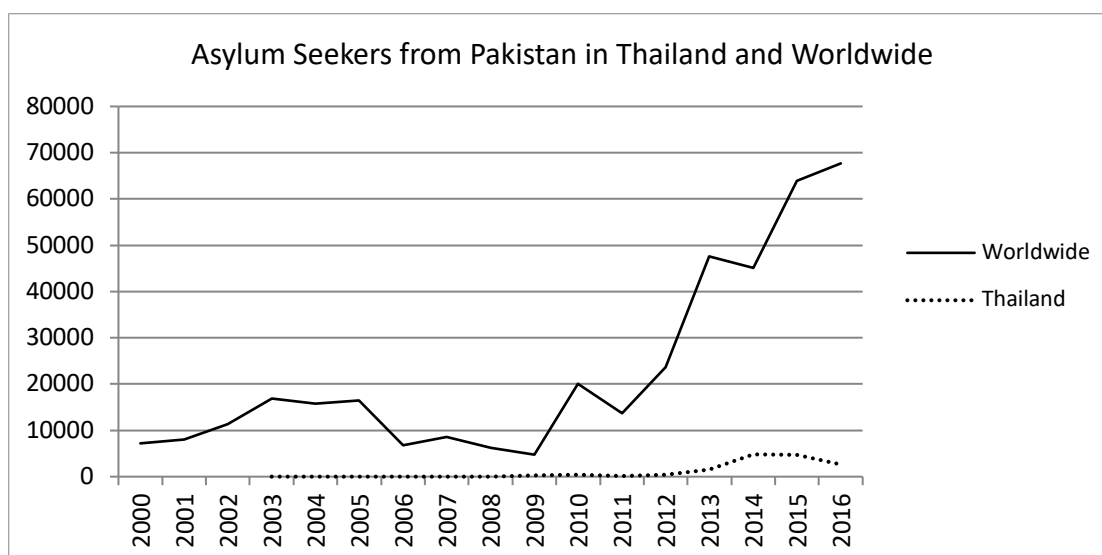
Establishing whether the change in recognition rate came from a change within UNHCR or a change in the group of asylum seekers then comes down to the question of assessing the quality of the claims UNHCR officers were faced with prior to and after 2014. Either 2014 marked a drop in the credibility of asylum claims, in particular of asylum claims made by Pakistanis, or it marked an increase of the standards to which the claims were held, in violation of procedural fairness. Both propositions are entangled with a discussion of the cause of the sudden influx of Pakistani asylum seekers after 2012: were they candidates to migration lured in the asylum system by the promise of easy and fast resettlement to the West, as argued by UNHCR’s protection officer for Thailand in 2016, or were they members of persecuted minorities fleeing worsening conditions at home? In other words, what was the respective influence of push and pull factors in the sudden influx of Pakistanis to Thailand? Assessing the overall quality of claims cannot be done without access to documentation that UNHCR does not share as to protect the safety and privacy of its people-of-concern. Thankfully, whether Pakistani asylum seekers arriving in 2013 and 2014 were primarily pushed out of Pakistan or pull towards Thailand is easier to test. If push factors were the primary cause of asylum claims by Pakistanis in Thailand, i.e. if the influx to Thailand was caused by worsening conditions for minorities in the country around that time, one would expect to see a rise in the number of people fleeing Pakistan and seeking asylum in countries other than Thailand around 2012; the arrival of Pakistani asylum seekers in Thailand would be part of a global trend, as people would be reacting to domestic pressure and making their way wherever they could. If pull factors were the primary cause of asylum claims by Pakistanis in Thailand, one would expect Thailand to be an outlier in the number of Pakistani asylum seekers it has received after 2012; the sudden influx should be anomalous with regard to global trends since it would have been mostly determined by conditions in Thailand and not in Pakistan.

The data supports the primacy of push factor over pull factor; in other words that pressure on minorities in Pakistan had been increasing around 2012 when their numbers in Thailand started rising. Table 8 shows the worldwide number of asylum seekers

coming from Pakistan and registered by UNHCR,<sup>39</sup> and the number that have reached Thailand. It shows that asylum requests from Pakistan globally hit a low point between 2006 and 2009, before increasing in 2010. Starting from about 5,000 asylum seekers worldwide in 2009, it rose to more than 20,000 in 2010 and it kept on rising to reach 64,000 in 2015. Over the same period, the number of Pakistani asylum seekers in Thailand went from 292 to 4,712 (UNHCR, 2019b). As the graph makes clear, what happened with Pakistani asylum seekers in Bangkok in the early 2010s was not anomalous, but was part of a global trend: people were leaving Pakistan in droves, and most were not going to Thailand. These numbers strongly suggest that push factors were at play in Pakistan. Table 9 presents more detailed numbers on the share of all asylum seekers from Pakistan who sought asylum in Thailand. It shows two things. First it shows that overall, the share of Pakistanis who sought refuge to Thailand has been low, and confirms that asylum to Thailand is not a major driver of the global increase in the numbers of Pakistani asylum seekers, supporting the argument of the primacy of push factors. Second, it shows that there was indeed something peculiar about 2014. The share of asylum seekers from Pakistan received by Thailand nearly tripled to reach 11%. To an extent, that jump was caused by UNHCR's effort to clear its registration backlog in 2014, which had artificially deflated the arrival numbers in 2013 and inflated those of 2014. Over the two years, Thailand received about 7% of all Pakistani asylum seekers, and it is likely that the real number for 2014 stands somewhere between these 7% and 11%. Even then, 2013-2014 would still represent a sudden increase in the share of Pakistanis choosing to turn to Thailand for asylum; in other words, that around that time Thailand was put "on the map" for Pakistani asylum seekers. Out of 77 countries that had asylum seekers from Pakistan on their territory that year, Thailand had the fourth most, after Germany, South Africa and Italy. Even accounting for the distortion in the numbers brought by UNHCR's backlog clearing, it is clear that around 2013, Thailand became an important, though not major, destination for Pakistanis seeking safety.

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<sup>39</sup> I use the number of asylum seekers rather than refugees because around the same period large numbers of Pakistani, largely rural populations living in border areas, crossed the border to Afghanistan and were recognized by UNHCR as *prima facies* refugees. Though there might be a link between the factors that pushed them out of the country and those which affected the more urban and middle class religious minorities that sought asylum around the same period, the two types of movements appear different enough that they should not be conflated in the analysis.



**Table 8 Asylum Seekers from Pakistan in Thailand and Worldwide (UNHCR Population Statistics Database)**

	Pakistani Asylum Seekers		
	Worldwide	In Thailand	% in Thailand
2006	6,758	3	0%
2007	8,614	18	0%
2008	6,254	14	0%
2009	4,756	292	6%
2010	20,017	395	2%
2011	13,695	94	1%
2012	23,709	419	2%
2013	47,568	1,500	3% (7%) *
2014	45,165	4,817	11% (7%) *
2015	63,955	4,712	7%
2016	67,748	2,648	4%

\*The numbers for 2013-2014 were affected by UNHCR's registration backlog that decreased the number registered in 2013 and increased it in 2014. In brackets I provide the average over the two years.

**Table 9 Share of Total Pakistani Asylum Seeker Population in Thailand (UNHCR Population Statistics Database)**

The evidence presented above suggests that push factors were at the root cause of the influx of Pakistani asylum seekers in Thailand, but also that the country received a somewhat larger share of the fluxes out of Pakistan than usual. These numbers require adding complexity to the issue of refugee management in a country like Thailand. The data on asylum seekers from Pakistan suggests that the situation in Pakistan degraded enough after 2010 to lead more than 200,000 people to leave the country, which is not to

say that pull factors, or the perception those fleeing had of their country of destination, played no role. Though the narrative of desperate refugees escaping by whatever means necessary from an imminent death is enduring, it is unlikely to be representative of the experience of most Pakistani asylum seekers who ended up in Thailand. Since those who made it there could afford plane tickets, had a passport, and could obtain a tourist visa for Thailand, they could not have been part of the most destitute segments of society nor have been forced to leave overnight. During my fieldwork, I became acquainted with several Pakistani asylum seeker families, all of which appeared to be middle class. Some had in fact enough savings to be able to live in Thailand for several years without significant supplementary income – though none came close to showing signs of affluence. This is not to say all newly arrived Pakistanis were millionaires, but rather to stress that they were neither starving peasants who arrived in Thailand with nothing but the shirts on their backs after their villages were burnt down. They were what David A. Martin called “new asylum seekers” (Martin, 1988a) or what Poul Hartling, then High Commissioner for Refugees, called “jet-age refugees” (Hartling, 1984). In other words, they were not entirely constrained in their choice of destination. There is therefore some truth in saying that pull factors played a role in bringing so many Pakistani asylum seekers in Thailand. They probably would have left Pakistan anyway, but their perception of Thailand as a safe haven, perhaps built through word of mouth from people belonging to the same communities, did make them chose the country over other alternatives like Cambodia or Papua New Guinea, that each received a dozen of Pakistani asylum seekers in 2014.

The story told by the data on asylum seeking out of Pakistan and in Thailand since 2012 is not one that paints UNHCR in a positive light. As people started fleeing Pakistan in droves, in search of a safe haven, it appears that a number of them thought that Thailand could be one. Even though the country is not welcoming to asylum seekers and refugees, one can see what it has to offer on paper to prospective asylum seekers, especially ones only informed through word of mouth: religious tolerance, easy-to-obtain visas, and a good chance to be resettled somewhere more welcoming within a few years. As a consequence, the numbers of asylum seekers, in particular from Pakistan, grew far beyond what anyone in UNHCR Thailand had seen coming, and they started to be seen as a problem. To be fair, from the perspective of the organization in charge of managing the issue, it was; additional resources needed to be mobilized, the eight staff members in

charge of RSD grew strained,<sup>40</sup> the protection needs increased, and the perspective of ever clearing the backlog and offering durable solutions to the newcomers grew ever more remote. The Thailand office of UNHCR is secretive, to the point of refusing to share data that are in fact public, so what happened afterwards is not clear. What the data shows is that the Pakistani recognition rate dropped, and that at the same time push factors in Pakistan were driving dozens of thousands of people out of the country. Such a sequence of event is coherent with UNHCR Thailand adopting a deterrence policy towards Pakistani asylum seekers in the hope of reducing the numbers reaching Thailand. The credibility of this idea is reinforced by the change of discourse around resettlement that took place in UNHCR Thailand's official publications and communication to urban refugees. However, in the absence of testimony from RSD officers or their supervisor, whether an active policy of deterrence was adopted cannot be established. It is however certain that no particular effort was deployed by UNHCR to strengthen Thailand's role as a safe haven for Pakistani asylum seekers. It took years before additional resources were deployed to cope with the increase in demand. Therefore, most asylum seekers arrived in 2013 had to wait two years or more to see their case examined, and at a time when needs were increasing, UNHCR reduced the range of services it offered to asylum seekers, since its budget lagged behind. Whether blame lies solely on the inertia of UNHCR's funding structure or somewhere else can again not be answered with the data at hand.

What can be said however is that regardless of whether reducing the recognition rate of asylum seekers from Pakistan and keeping budgets stable despite the increasing demand was intentional, its deterrence effect was just the same. It made UNHCR into the objective ally of the Thai state. And in fact, it is their combined policies of deterrence which eventually put an end to the growth of the urban refugee population in Bangkok. After 2014, it appears that the visa application procedure in the Thai Embassy in Islamabad was strengthened; around the same time, Pakistani asylums seekers saw their claims denied more often than usual. As a result, by 2016, arrivals had returned to their pre-2012 level, and as UNHCR was going through its backlog of claims, the number of Pakistani asylum seekers lowered. Some, less than half, were recognized as refugees, the others were not and unless they appealed the decision, they dropped out of the statistics. In that story, the outcomes of UNHCR policies were better aligned with that of the interest

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<sup>40</sup> There were eight UNHCR staff dedicated to RSD in 2014, and their numbers did not grow significantly until 2016, when the Japanese aid money allowed for a team to come to Bangkok and help clear the RSD backlog.

of the Thai state than with its mandate; the organization who was providing refugees with a state-like bureaucratic defense against lawlessness started acting like a state, prioritizing the integrity of its processes over the protection of its people-of-concern. At the end of the day, the combined actions (or inactions) of UNHCR and the Thai state were efficient. Fewer asylum seekers came, but not before thousands had to spend years surviving in Bangkok with little to no support for years, only to be turned away.

Not everyone in the Pakistani community in Bangkok faced the same odds with UNHCR. The specifics of the issues faced by religious minorities in Pakistan made it so that deterrence hit certain groups more than others. Separate discourses emerged around the two main groups represented among Pakistani asylum seekers, Ahmadis and Christians, and it is in the details of these two discourses that the mechanisms through which the unofficial deterrence policy was allowed to develop and take hold can be found.

### ***The Differential Treatment of Christians and Ahmadis***

Pakistani asylum seekers in Thailand are not a uniform population. Most belong to either of two religious minorities in Pakistan: Christians and Ahmadis. Both groups are not treated the same by UNHCR, and were affected differently by the changes in RSD standards. The difference in treatment was obvious to asylum seekers. It created tensions between the two communities, and structured a lot of the discussions around the refugee issue in the country. Beyond providing context regarding the refugee problem in Bangkok, the logic of the differentiated approach to the two communities highlights holes in the global refugee protection apparatus.

Christians have represented the largest share of the 6,500-odd asylum seekers from Pakistan that arrived in Thailand between 2012 and 2015. Official UNHCR data is not disaggregated enough to be more specific on the ratio between them and Ahmadi Muslims. The RRC's client database however does include data on the religion of applicants. It contains information on more than 550 asylum claims made between 2008 and 2016, with 227 made by Pakistanis. Among the cases reported in this database 29% of Pakistani asylum seekers were Ahmadi, and the rest Christian, which appears coherent with the qualitative assessment of NGO workers for whom Ahmadis were a significant minority of Pakistani claims.

Asylum seekers from both groups claim to be fleeing some form of religious persecution, but overall, Ahmadis are perceived by UNHCR as having more legitimate claims than Christians. This is reflected in the two communities' respective recognition



rates. Again relying on data from the RRC database, among the 227 decisions on asylum claims made by Pakistanis, the average success rate for Christians was 17%, while it was 60% for Ahmadis. The database covers only a small minority of all asylum claims, but I was aware of no systematic bias in client selection that could explain such a stark difference in outcomes between the two communities. Even accounting for the large margin of error considering the small sample size, these data strongly suggest that the recognition rate of Ahmadis was several times higher than that of Christians. In addition, there is no question that both communities were perceived differently by UNHCR. As I was told by the UNHCR Protection officer in 2016:

For the Ahmadis, I believe there is actual institutionalized persecution. But in the case of Christians, if there is some persecution it doesn't seem to be state sponsored. [...] There are Christian politicians, lawyers, doctors in Pakistan, and a report from 2012 showed that the situation was not so bad.

After which he repeatedly compared the situation of Christians in Pakistan to that of minorities in the West, for example saying that "being a Christian in Pakistan is not fun, the same way being a Muslim in France isn't".

For context on the broader issue of the status of religious minorities in Pakistan, I was not able to identify with certitude the 2012 report which the UNHCR protection officer referenced. I did find two widely cited reports on the question of religious freedom in Pakistan published in 2012, one published by the U.S. Commission on International Religious Freedom (USCIRF) and one by the Immigration and Refugee Board of Canada. It would be a stretch to say that either describes the situation of religious minorities in general, and Christians in particular, as "not so bad". The USCIRF report reads:

The government of Pakistan continues to both engage in and tolerate systematic, ongoing, and egregious violations of freedom of religion or belief. Pakistan's repressive blasphemy laws and other religiously discriminatory legislation, such as the anti-Ahmadi laws, have created an atmosphere of violent extremism and vigilantism. Sectarian and religiously-motivated violence is chronic, and the government has failed to protect members of the majority faith and religious minorities.

(U.S. Commission on International Religious Freedom, 2012, p.120)

And the Immigration and Refugee Board of Canada report reads:

Quoted in an Agence France-Presse (AFP) article, the Minister for National Harmony stated that Christians are among 'the poorest and most marginalised people' in the

country and suggested that discrimination against Christians is motivated not only by religion but also by caste (30 Aug. 2012). Other sources similarly report that anti-Christian sentiment is motivated by caste prejudice (*The Georgia Straight* 11 Sept. 2012; *The Guardian* 8 Jan. 2011; BPCA 14 Dec. 2012). An article published by the Vancouver-based weekly newspaper the *Georgia Straight* explains that the 'poorest and most despised section of the population converted to Christianity' and, as a result, 'everybody knows that most Christians are really untouchables' (11 Sept. 2012).

(Immigration and Refugee Board of Canada, 2013)

Both reports give some credence to the idea that religious minorities in Pakistan are facing some form of hardship, though whether that hardship should fall under the refugee definition cannot be directly inferred from such accounts. In addition, the reports should be taken with a grain of salt. The United States does not have a particularly smooth relationship with Pakistan, and the Canadian report extensively relies on press sources from countries other than Pakistan, which should not be expected to be the best informed on these matters. Still, the fact that these sources and narratives were endorsed in government reports does give them some credibility. More importantly, neither report contains evidence sufficient to justify the wholesale dismissal of asylum claims made by Pakistani Christians, so UNHCR's protection officer on the matter must have originated somewhere else than a global consensus on the safety of being Christian in Pakistan.

An important difference, from the UNHCR protection officer's point of view, between the difficulties faced by Ahmadis and Christians in Pakistan is the nature of the persecution. The religious practices of Ahmadis are explicitly targeted and banned by blasphemy laws in Pakistan, and these laws are actively implemented (Siddique and Hayat, 2008, Siddiq, 1996). There is therefore little room to argue that the religious freedom of Ahmadis is not curtailed in Pakistan. There is no equivalent legal ban on Christian religious practices in the country, and blasphemy laws do not explicitly target Christians. Instead, asylum claims by Pakistani Christians tend to be articulated around communal violence or intimidation, such as the burning of churches, and socioeconomic discrimination. The lack of state protection that could be at the root of these issues is harder to substantiate, since it is neither printed in criminal codes nor officially documented. An additional obstacle is built in the RSD guidelines followed by UNHCR. They stipulate that to be recognized a refugee, asylum seekers have to show that crossing international borders was a reasonable step to ensure their protection; in other words, that they could not just have moved within their country to end the threat (UNHCR, 1992). When the persecution of a given group is based in law, applicable in the whole territory

of their country of origin, this box is easily ticked. Pakistani Christians, and any other groups claiming to be targeted by people not officially connected to the state, have to prove not only that the alleged persecution is real, but that their persecutors would have continue threatening them no matter where they went within Pakistan, giving them no choice but to flee abroad; a much harder claim to substantiate. The claims of Pakistani Christians are therefore more vulnerable to additional scrutiny throughout the RSD process than that of Ahmadis. As a result, the former have borne the brunt of the decrease in Pakistani recognition rates.

UNHCR's management of Pakistani Christians has created strong resentment within the Pakistani community in Bangkok, and has also sparked very critical coverage of the organization's operations in Thailand by international sources. Though as I have shown there is some basis to the resentment of Pakistani asylum seekers, the criticism that has been made so far of UNHCR in Thailand employs problematic arguments which are largely unsubstantiated. The organization has been repeatedly called out for its alleged mistreatment of Pakistani Christians, in particular by Europe-based faith groups (Chowdhry, 2016, World Watch Monitor, 2017), culminating in a newspaper article run by the BBC in February 2016 (Roger, 2016) and a report published by the All-Party Parliamentary Group for International Freedom of Religion or Belief (APPG), a group of British MPs (Thane, 2016).

All these materials, including the BBC article and the APPG report, uncritically use poor sources and misrepresent the number of asylum seekers in Bangkok and their composition. In particular these sources imply that all urban refugees in Bangkok are Christians and discriminated against by the Thai government because of their religion. Such sources clearly play into the narrative cliché of the persecuted Christians, merging together the persecution in Pakistan and the alleged persecution in Thailand. Though as I have shown, UNHCR does recognize Pakistani Christians at a lower rate, there are no reasons to believe that Thai authorities target asylum seekers on the basis of their faith, as many of these sources imply. As importantly, these documents all specifically target UNHCR and underplay the role of the Thai state. Though UNHCR's operations in Thailand leave much room for criticism, the organization can at most be indirectly blamed for the situation of refugees in the country. UNHCR does not run the immigration detention centers and has no authority over the Thai police and immigration officials who raid places of worship and apartment blocks. Shifting attention away from the Thai state and towards UNHCR is common occurrence among asylum seekers in Bangkok, who focus not on the macro strategy of the organization but on their prospects for resettlement and that

of their close ones. Such accounts however are hardly based on much factual evidence, and tend to include extreme claims on the behavior of UNHCR officers; after all asylum seekers have little to lose and much to gain in exaggerating a story to get additional attention.

Despite the lowering of the recognition rate, the surge in asylum seeker arrivals between 2012 and 2015 translated to a significant increase in the number of recognized urban refugees in Bangkok. All of them found themselves in the queue for a resettlement slot, but as the queue was getting longer, the number of available slots reduced from 800 to 200. As a result, the urban refugees currently in Thailand are likely to have remained in the country for even longer than their predecessors. UNHCR official communication talks about plans to enhance community-based protection for them, but as argued at the beginning of this chapter this is in reality a way for the organization to say that it does not have a plan. What UNHCR appears to be anticipating, and what appears most likely to happen, is that an increasing number of refugees will chose to return to their country of origin.

### ***Promoting Refoulement through Neglect***

The founding principle of refugee law is the principle of *non-refoulement*. The term, from the French word for “not sending back”, describes a simple idea: no one should ever be forced to return to their country of origin if it exposes them to persecution. *Non-refoulement* is considered by legal scholars to be a customary rule of international law, which would be binding to all states regardless of their ratification of the Refugee Convention (Allain, 2001, Duffy, 2008, Coleman, 2003), though in the absence of any enforcement mechanism the binding nature of the rule is theoretical at best. This section will argue that *refoulement* is commonplace among urban refugees in Thailand, but hidden under the fallacy that refugees who leave Bangkok after spending years stranded in the country without support are returning voluntarily.

### ***The Issues around Voluntary Repatriation***

Voluntary repatriation is one of the three durable solutions promoted by UNHCR, along with local integration and resettlement. The term covers a wider range of situations than the two others. In theory, voluntary repatriation is the gold standard of refugee protection: once the problem which led to displacement has been resolved, individuals return to their country of origin. They can be helped to rebuild and resume their lives

under the care of their own government. Voluntary repatriation is particularly relevant when displacement is caused by a traditional armed conflict, with civilians fleeing to avoid being caught in the crossfire. On paper, in such cases, once the conflict situation has ended and the country is peaceful again, those who fled can return and help the reconstruction effort, whether they fled abroad, becoming refugees, or stayed within their country, becoming internally displaced people (IDPs). The situation is not as simple for refugees who have fled persecution rather than generalized violence; many forms of persecution deeply permeate the social body and may not be easily addressed through public policies. At best they fade away over long periods of time. In such situations, whether a country is safe enough to allow for voluntary repatriation to take place is hard to assess.

At the global level, voluntary repatriation has risen to the top of the hierarchy of sustainable solutions for UNHCR. Its rise followed a clear logic: repatriation is cheap and requires no country but the refugees' own to handle migratory influxes – beside, many refugees do want to return, and will do so without the help of anyone. However, voluntary repatriation does not have particularly positive reputation among refugee scholars (Webber, 2011, Blitz et al., 2005, Black and Gent, 2006, Chimni, 1993). In countries in the immediate surroundings of a conflict zone, “promoting voluntary repatriation” can mean the closure of refugee camps against their occupants' will and/or the creation of incentive schemes at times close to coercion.<sup>41</sup> In industrialized countries, voluntary repatriation can be a euphemism for expulsion and its promotion, an excuse for governments not to give refugees the option to integrate locally. The promotion of voluntary repatriation clearly reflects the current balance of power in UNHCR, where donor countries harbor no-immigration priorities that the organization is expected to internalize.

There is little debate over whether in the abstract, voluntary repatriation would be a positive outcome; most people agree that if refugees want to go back, they should be allowed to and supported in their effort. The debate arises with regard to practicalities. There are two separate steps to voluntary repatriation. First, the events that led to the flight of the refugees must end and her or his country of origin be considered safe enough to warrant return. The Refugee Convention does not directly address voluntary repatriation, but the clauses related to the cessation of the refugee status clarify the

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<sup>41</sup> Stevens (2006) claims that coercion disguised as incentives took place under High Commissioner Hocké. In particular he explains that Ethiopian refugees were threatened with the cutting of their food ration if they refused to return.

circumstances under which a refugee can lose his or her status and therefore be expected to return. The cessation clauses are important because were they to apply to individuals, their refugee status could be lifted and with it all protection afforded by the Convention; in particular, a state could then decide to forcibly remove the individuals in question, depending of the content of their immigration law. The details of UNHCR's interpretation of the clauses are explained in the organization's 1996 *Handbook on Voluntary Repatriation: International Protection*. The organization's interpretation is designed as a balancing act between the need to protect the rights of refugee against forced deportation and the desire of states not to be liable for the refugee's well-being indefinitely:

The 'ceased circumstances' cessation clauses (5) referring to nationals and (6) referring to stateless persons, are based on the consideration that:

international protection is no longer justified on account of changes in the country where persecution was feared, because the circumstances in connection with which a person has been recognized as a refugee have ceased to exist. Thus the person can no longer refuse to avail himself or herself of the protection of the country of his or her nationality/country of former habitual residence.

'Circumstances' refer to fundamental changes in the country of origin, which can remove the basis of the fear of persecution. A mere - possibly transitory - change in the facts surrounding the individual refugee's fear of persecution, which does not amount to a fundamental change of circumstances, is not sufficient to make this clause applicable. A refugee's status should not in principle be subject to frequent review to the detriment of his or her sense of security, which international protection is intended to provide.

Even when the circumstances in the country of origin have undergone a fundamental change, individual refugees may continue to have a well-founded fear of persecution or compelling reasons not to return arising out of previous persecution. Has this been determined, the 'ceased circumstances' cessation clauses should thus not apply to them.

The cessation clauses are negative in character and are exhaustively enumerated. They should therefore be interpreted restrictively, and no other reasons may be adduced by way of analogy to justify the withdrawal of refugee status.

(UNHCR, 1996, p.8)

Though UNHCR recognizes in its interpretation the fact that one can lose the protection given by the refugee status, it does so prioritizing refugee protection over state sovereignty.

The same guidelines however make a distinction between the removal of a refugee's status and the possibility of voluntary return. The text clarifies that "voluntary repatriation of refugees can take place at a lower threshold of change in the country of origin than cessation" (UNHCR, 1996, p. 10). In other words, with regard to the condition in the refugees' country of origin, there are strict standards for when the situation would allow for the complete removal of the protection afforded by the Convention. The standards under which a place can be considered to be safe for the purpose of allowing refugees to return, however, are looser. This distinction is necessary to protect the freedom of movement of refugees. They should not be barred from returning home unless absolutely imperious. And yet, the distinction introduces ambiguities that come to the surface in places like Bangkok.

After a country has been established to be safe enough, the second step of voluntary repatriation starts. Ideally host states, the state of origin and UNHCR work together to support voluntary repatriation and the reintegration of refugees. Two lines of criticism arise with regard to this process, which have led to extensive comments in the refugee literature and the society at large: one regarding when a country should be declared safe and one regarding where should the line be drawn between incentive and force.

The first type of criticism addresses the way a country can be declared safe, and in particular who should be entitled to take that decision. "Safety" is a continuum, through which organizations have to draw straight lines, and this type of decisions are prone to be polarizing. UNHCR has been repeatedly attacked for condoning return to countries deemed too dangerous. Academics have questioned among others the attempts by UNHCR to create a safe zone in war-torn Somalia in 1992 (Chimni, 2004b), the 1996 campaign to support return of Rwandese refugees (Takahashi, 1997), the return of refugees to the Balkan states between the end of the 1990s and the beginning of the 2000s (Englbrecht, 2004) and the removal by the UK of Afghani refugees in 2003 (Blitz et al., 2005). In Bangkok, NGO workers and volunteers criticize the return of Tamil refugees to Sri Lanka, on the ground that the country is not yet safe for supporters of Tamil independence. The core of the problem seems to lie in the absence of a consultative process to assess of the safety of a country. The power to make the final decision lies entirely with the organizations running a country's refugee program, which is either a government agency or UNHCR. Considering the nature of the decision and the fact that there are no agreed upon international standards, it is not surprising that specific decisions are criticized.

Beside the one-sidedness of the decisions, the root of the problem with countries being declared safe is one of conflict of interest. UNHCR is incentivized to declare any given country safe, because it allows the organization to shut refugee camps and redeploy its resources, in a context where the organization is always strapped for resources. In Thailand for example, the promotion of voluntary return in the border camps has been on UNHCR's agenda for "next year" every year since 2014 (UNHCR, 2014a, UNHCR, 2015, UNHCR, 2016a). Every following year, the projection for the number of voluntary returns given in the reports fails to materialize, and the camp population does not rapidly decline. At the same time, the organization estimates its annual financial needs to be about twice as large as its available budget every year. Moreover, the organization is under constant pressure from countries that host large refugee populations to declare the country of origin of these populations safe, so that the refugee camps can be cleared and the "undesirable" flushed out – and Thailand is no exception. Hence one sees why the organization could be tempted to declare Myanmar safe for the ethnic minorities hosted in the camps, and why the fact that it can take such a decision unilaterally is problematic.

In practice however, UNHCR's internal incentives to shut down camps should not be overplayed. Its officers are aware of the risks inherent to repatriation, and an important share of its budgets are tied to specific areas of operation, meaning for example that the closing of camps in Thailand might not allow for more resources to be allocated to other programs and could instead lead to layoffs. The political pressure, while real, is limited by the financial independence of UNHCR from most host countries. As explained previously, the organization runs refugee programs in developing countries with little contribution from the host countries, leaving fewer avenues for host states to influence it. Still, since establishing whether a country is "safe" is a unilateral, top-down decision taken by actors with a questionable incentive structure, public criticism is the only form of accountability at play, and it is widely used. As a result, one would struggle to find an instance in which discordant voices did not rise to denounce a decision to declare a destination safe as endangering the safety of refugees.

The second type of criticism focuses on the second step of the process: the actual return of the refugees. Refugees routinely cross borders to go home, whether or not a country has been declared safe, particularly if the situation in their host country is poor. In fact this comparison between conditions in camps and in their country of origin was the justification given by the then UNHCR High Commissioner Sadako Ogata, quoted in Takahashi (1997), to give a higher priority to voluntary return:



[One of UNHCR's primary goals is] to pursue every opportunity for voluntary repatriation. In a world where most refugees are confined to over-crowded, makeshift camps in conditions as dismal—if not more dismal—than the situation they have fled, the right to return to one's homeland must be given as much recognition as the right to seek asylum abroad. (p. 595)

Just as it is important to highlight the dynamic flux that exist between refugees' place of origin and their host country, as well as stress the very good reasons why some refugees might want to go back, the complexity of the situation of refugees should not mask the simple facts that people tend to move away from places that are unsafe, and prefer staying where they are once they have made their way to safety. Which is why refugee camps do not typically empty on their own after a few years. Hence the “right to return” that Ogata mentioned, though real, is clearly a lower priority to refugees than their right to safety, and in practice many refugees do not go home on their own, even after their country of origin has been declared safe. This can happen for a large array of reasons, including but not limited to trauma experienced in the country and fear of further persecution. Hence UNHCR finds itself having to “[promote] the voluntary repatriation of refugees once conditions are conducive to return” (UNHCR, 1996, p. 7), in other words nudge refugees towards voluntary return.

The question of what constitutes appropriate means of promotion, that respect the “voluntary” nature of the repatriation, is a key issue. At one end of the spectrum one finds states like Thailand. Here, the authorities have at times emptied camps by deporting their occupants by force – the most recent example of such an event in Thailand took place in 2009 and involved 158 Lao Hmong (UNHCR, 2009). Such policies, especially if the refugees' home country is unsafe, constitute *refoulement* and tend to be denounced by UNHCR and the broader international community. At the other end of the spectrum, states routinely offer material assistance to incentivize refugees to return, which can be done in good faith. Returning home and rebuilding lives is costly and it is not absurd that states who wish for return to take place cover some of the expenses.

Incentives however are not always benign. UNHCR considers that in situations where the rights of refugees are not upheld, the existence of material incentives can be akin to coercion:

One of the most important elements in the verification of voluntariness is the legal status of the refugees in the country of asylum. If refugees are legally recognized as such, their rights are protected and if they are allowed to settle, their choice to repatriate is likely to

be truly free and voluntary. If, however, their rights are not recognized, if they are subjected to pressures and restrictions and confined to closed camps, they may choose to return, but this is not an act of free will. (UNHCR, 1996, p. 10)

In between these two extremes one finds negative incentives, which can take the form of the slow de-financing of programs implemented in refugee camps, leading to the slow erosion of living conditions. Such policies are not always framed or intended as negative incentives, they can reflect the natural evolution of protracted refugee situations as they go down the funders' list of priorities, but they are functionally identical. In Thailand's border camps for example, a funding shortfall in 2011 forced UNHCR's local partner tasked with food provision to cut rations down to 1,622 kcal per person per day the following year (Mizzima News, 2011), far below the standard of 2,100 kcal per person per day recommended by the WHO in refugee camps (United Nations High Commissioner for Refugees and World Food Programme, 1997). Negative incentives present a range of ethical problems and are not endorsed in UNHCR's guidelines. However, the question of their legality under the Convention is not clear.

From a legal standpoint, the issue comes from the tension between the cessation clauses of the Refugee Convention, which indicates that someone whose country is safe stops being a refugee, and UNHCR's statute and guidelines which make voluntariness a pre-requisite for the return of refugees (Chimni, 2004b, Hathaway, 1997, p. 553). As both Chimni and Hathaway explain, the cessation clauses lead to the end of all procedural protections associated with the refugee status. In other words, the cessation clauses remove one's status as a refugee and therefore all protections granted by the Refugee Convention, leaving nothing to stand in the way of deportation once a country has been declared safe. However, UNHCR statutes contain clauses that clearly protect refugees from being simply stripped of their status and repatriated at a moment's notice. In practice, the cessation clauses are rarely invoked, even if they are legally relevant. UNHCR does not blindly follow legal reasoning. The organization does not wash its hands of the fate of refugees after their country have been declared safe and prefers to avoid controversy and encourage orderly repatriation over forced deportation. However, in the case of the urban refugees' in Thailand, the shortcomings of UNHCR programs create a situation where *refoulement* has become routine.

### ***Voluntary Repatriation as Refoulement in Bangkok***

In Bangkok, the poor conditions refugees have to face during their stay in the city and the extreme length of the RSD and resettlement process lead to a situation where large

numbers of refugees and asylum seekers give up and decide to go back to their countries of origin, some before the end of their procedure with UNHCR. Typically, these urban refugees do not seek support from UNHCR when they return, because it would require them to forsake their asylum seeker or refugee status, which most would rather not do. Such departures, taking place outside of the framework set up by UNHCR, are dubbed “spontaneous returns” by the organization. I witnessed a number of cases of spontaneous returns during my fieldwork; I believe they would fall under any reasonable definition of *refoulement*. Spending time with asylum seekers, especially those affected by detention, I often heard of people who went back after their money ran out or after they had spent too much time in detention, but I only met directly with two refugees who had made the decision to go back. Both of them had not seen their case closed by UNHCR, but nevertheless decided to leave Bangkok and give up on their chances to be eventually resettled.

The character of the first story is Isaac. When Isaac decided to leave Thailand and go back to his home country, after more than a year in detention, he had not yet exhausted all avenues to obtain resettlement. Isaac’s story in that regard is especially tragic, because he gave up at a stage that most asylum seekers never get a chance to reach: he had been recognized a refugee, and his file had been submitted for resettlement. However, his case was rejected for resettlement by the United States. He appealed the decision, but did not hear back within the time frame he was given. Though he was still in the queue for resettlement, he had slim chances. Appealing resettlement rejection rarely succeeds, and in Thailand refugees turned down by the United States were usually turned down by all other countries. He decided that he could not take detention anymore. He gave up, raised money from individuals and charities to pay for a plane ticket, and after two months of fundraising he flew out.

The second character is Sajida, a Pakistani woman. She was an asylum seeker, and her application was rejected in first instance. She appealed the decision, and was waiting for the result of her appeal when I met her. She had hope that her appeal could be successful, and definitely wanted to stay put until the final outcome of the procedure. Yet, six months after the arrest of her husband, she decided to leave. She told me before flying back that taking care of her children without him and without an income had been too tough.

Can Isaac’s and Sajida’s return to their countries of origin be considered voluntary? UNHCR’s guidelines on voluntary repatriation sum up the evaluation of “voluntariness” as follow:

As a general rule, UNHCR should be convinced that the positive pull-factors in the country of origin are an overriding element in the refugees' decision to return rather than possible push-factors in the host country [...].

(UNHCR, 1996, p.11)

Isaac and Sajida both left because dire life conditions over many months and the prospect of waiting many more sapped their morale. Since their departure was caused not by a change in their country of origin but rather by degrading conditions in Thailand, their decision to return does not meet the standards set for voluntary repatriation by UNHCR and would therefore constitute *refoulement*. Whether these cases are representative of the average profile of returnees leaving Bangkok cannot be assessed without better data, but the circumstances both had to face were not exceptional in terms of the length they each had to spend in a country that was hostile to them.

There is another dimension to Sajida's story. Her decision to leave followed the rejection of her asylum application by UNHCR. Being a Pakistani Christian, she belonged to a group that saw itself as targeted by UNHCR, in part because of the discourse deployed by the organization, in part because of their falling recognition rates. Her asylum application went through in late 2015, when the rate of recognition for Pakistanis was at its lowest. Her story fits into a larger one, that of the effect of deterrence. She was caught in the middle of a mass rejection of applications like hers. In July 2016, there were 8,213 asylum seekers and 2,688 refugees in Bangkok. A year later, in July 2017, there 2,968 asylum seekers and 4,243 refugees. In about a year, 5,000 asylum seekers disappeared from the statistics, and only 1,600 refugees appeared. Accounting for the few hundreds at most who were resettled, UNHCR appeared to have closed 3,000 cases in 2016, around the time Sajida left Thailand. I was not privy to the details of her case and even if I would, I would not try assessing whether her claim should or should not have been recognized. The fact is that her living conditions in Thailand eventually ground her down to the point where she left the country despite still having a chance at a happy ending. Her story embodies some of the side effects of UNHCR policy in 2014. Seeing cases after cases of members of their community rejected by the organization, Pakistani Christians stopped believing that they would get a fair hearing, and many decided to leave rather than waiting longer for an interview they felt they could not pass.

The common occurrence of voluntary repatriation among urban refugees in Bangkok is an explicit element of UNHCR's strategy:

Further prioritization is envisioned with respect to alternatives to resettlement as a the [sic] only 'solution', and increased voluntary repatriation and consideration of joint activities with IOM in connection with their Assisted Voluntary Return (AVRR) programme to increase options for [people] of concern, as resettlement is scaled down.

(UNHCR, 2016b, "Needs and response/Prioritized operations results")

It is important to note that the hope of an increase of voluntary repatriation in that quote is done without a reference to any improvements in the refugees' country of origin, and instead connected solely to the lack of alternative options in Thailand as the number of resettlement slots decreased. This runs counter to UNHCR guidelines on voluntary return, which should be conditional to significant improvements in the country of origin, and not on how much it would simplify things for UNHCR if thousands decided to get out of the resettlement queue. In the context of the situation faced by the organization after 2014, it might seem logical for its official documentation to wish for urban refugees to unclog the queue for resettlement by going home. However, it requires a complete disregard for the organization's mandate. It amounts to sanctioning covert *refoulement*, the prevention of which is the core pillar of all efforts to build an international refugee protection apparatus since the end of the Second World War.

## ***Conclusion to Part II***

Asylum seekers are not welcome in Thailand. The Thai state has not bound itself to be responsible for their protection. In alignment with Joppke's theories on the drivers of immigration policy, it has taken no step towards making Thailand a less hostile environment to urban refugees, because it was neither compelled by its national law nor by their sheer number, as in the case of older groups from Cambodia, Laos or Myanmar. Yet urban refugees keep coming, because they can in fact receive international protection in the country from UNHCR, and the promise of a durable solution; though that promise will only be kept for some of them, and that the meaning of "protection" in Thailand is limited to the provision of a dedicated bureaucracy, and little else.

UNHCR in Thailand plays an essential role in the life of urban refugees. It provides them with a status, a process, and a way forward. It runs a dedicated bureaucracy concerned with improving their situation. That bureaucracy is all that stands between them and lawlessness. It constitutes a parallel legal realm in which refugees are acknowledged. Thanks to UNHCR, and regardless of how dire the conditions they find themselves in can be, urban refugees know that there can be an end to their journey. Their situation is uncertain, but not radically uncertain. They know that their files are in a queue, have an idea of where they are in that queue, know what happens if their case is rejected, and what happens if it comes through. They can, to an extent, project themselves, make plans, estimate risks and take informed decisions. As a refugee bureaucracy however, UNHCR does not succeed in providing significant protection against the arbitrariness of the Thai state. Being under the protection of UNHCR in Thailand means nothing beside having a slot in the queue; it does not protect one or one's family against arrest or harassment, and hardly helps paying the bills. In fact, UNHCR Thailand has adopted a management strategy that facilitates the Thai state's policy of deterrence.

In Thailand a choice was made by UNHCR to provide RSD and resettlement without taking effective measures to protect asylum seekers waiting for the end of the RSD procedure and refugees waiting to be resettled, despite the hostile environment in which they find themselves. In addition, the organization takes at least a year, and often several more, to process claims. The result is that the asylum process in Thailand is an ordeal. Candidates for asylum are assessed not only on the credibility of their claim, but also on their capacity to resist duress. Those who can make it through the waiting period have a better chance in Thailand than in most places to be recognized a refugee and to be resettled. For those more traumatized, less healthy, or less well off, the result of their

attempt to seek asylum is a ticket back home before they even get the chance to be heard; or at times, death after years in a crowded cell. The logic that emerges from the whole system, which was certainly not intended, is nevertheless deeply troubling. What Thailand has become with regard to asylum is a trap that maims all those lured in by the bait, and leaves some stuck for good. The bait is the high RSD success rates compared to Western countries, even after it lowered in 2014, and the high resettlement rate. Thailand is a place where asylum seekers face objectively good odds; especially considering that the journey to Thailand, unlike that to Europe or Australia, can be done safely and legally. The trap is that higher odds are not a guarantee, and that whether successful or not, whether the asylum claim is legitimate or not, all have to face the same hardship, for years, on their own. UNHCR does fill some of the protection gaps left by the Thai state for urban refugees by providing them with a dedicated bureaucracy tasked with finding durable solutions for urban refugees. However, that bureaucracy neither constrains the agency of the Thai state with regard to its treatment of urban refugees nor limits the vulnerability of urban refugees to the arbitrariness of the state.

There is no evidence that the current state of things was intended or designed, and pointing fingers at the gaps of UNHCR's operation should not be a distraction from the fact that the ultimate responsibility for the situation of urban refugees in Thailand lies squarely at the feet of the Thai state. However, it is important to set reasonable standards for an organization like UNHCR. As an organization, UNHCR faces a hard decision every time the need to fulfill its global mandate brings it in countries that are not signatory to the Refugee Convention. The stakes are especially high when people start arriving in large numbers in a country that has no obligation to treat them humanely. UNHCR at times accepts uneasy arrangements by which it takes responsibility for people-of-concern without a pledge of the host state to share any of that responsibility. The longer the situation endures, the more problematic the lack of engagement of the state becomes. Yet it is hard to imagine that the international organization mandated to protect the rights of refugees would stay on the sidelines during an emergency on account of the imperfections of the deal it can strike with a given state. Being faced with such decisions would lead any organization into grey ethical areas, and pretending that there is a clear line in the sand is not helpful.

What sets apart the current situation for urban refugees in Thailand is that the system they find themselves at the center of was not designed, was not part of a deal with a reluctant state. In fact, if the exact functioning of the current arrangement had been all laid out in advance, it is unlikely that anyone within UNHCR Thailand would have

considered taking the deal. The only reason the current situation could emerge was because it happened progressively, with each step towards the final outcome looking innocent enough on its own. UNHCR's primary mission in Thailand was and still is the management of the camps. Asylum seekers flying across the world to land at the doorstep of its Bangkok office was never part of the plan. The problem is that once arrivals became a stream, no structures were set up to strengthen Bangkok as a safe haven, perhaps because it was first thought the arrivals were just a fluke, and once the ball was sent rolling no one really thought of looking back and rebuilding. The issue was let to grow and managed with resources far inferior to what would have been necessary to enable efficient, transparent and resilient programs. Somewhere down the line, it was considered acceptable for the organization to run RSD, resettlement, and pretty much nothing else for urban refugees. This approach to the urban refugee problem has created the situation described in this chapter. With the benefit of hindsight, and an understanding of the functioning and consequences of the current system, one cannot help but conclude that the whole logic needs to be reconsidered, which leaves UNHCR with two imperfect options: expanding its protection program in Bangkok or closing its RSD program.

The question of expanding protection programs in Bangkok is one of allocation of scarce resources. UNHCR should create a more efficient RSD process, capable of adapting to sudden surges in arrivals, and provide asylum seekers or at least refugees with the means to have access to safe housing and basic healthcare. The length of the RSD process is an especially important variable. UNHCR cannot force the Thai government to adopt more refugee friendly policies, and has overall a limited capacity to make Thailand a less hostile environment for urban refugees. It can however significantly reduce the length during which they would have to face such an environment. Policy improvements of course carry significant monetary costs. The cost would not be out of reach for UNHCR, which has considerable budgets, but the organization has a sprawling mandate and it would be ludicrous to suggest that a few thousand urban refugees in Thailand are an obvious and pressing priority. I doubt anyone within UNHCR Thailand would argue that the current system is optimal, or even satisfying; in fact, they would certainly point to plans they have for improvements, and to the fact that their allocated budget rarely reaches 50% of their estimated needs. There are ways money could be spent in Bangkok to improve the condition of urban refugees, but how much of a difference new programs could make without the cooperation of the Thai state is an open question. Whether the costs of expanding UNHCR's protection programs would be worth the benefits is a matter



of details, and cannot be answered in the abstract; it might be that it is a completely unrealistic endeavor, or that it could have been done years ago. And it would either way leave open the question of providing durable solutions; no additional spending would increase the number of available resettlement slots, though enough of a financial commitment might be enough to convince the Thai government to look the other way.

The alternative to improving protection would be to stop providing RSD in Thailand. The flow of asylum seekers coming to the country would quickly stop, as the individuals who reach Thailand to seek asylum are not completely constrained in their choice of destination. They are not pushed through a border on foot by an advancing army, and therefore most would be able to seek asylum somewhere else; hopefully in a signatory country, or at least a country where some form of arrangement exists between UNHCR and the state with regard to their management. The downside of course is that closing RSD in Bangkok would remove an option for people fleeing persecution; it is likely that though the majority of asylum seekers would be able to reach someplace else, for some Bangkok would have been the sole option. It is also likely that wherever else asylum seekers would go might not provide similar odds for resettlement, since Thailand appears to be an outlier in that regard. However, if that is because the conditions in that other country are acceptable and local integration is an option, in other words because the need for resettlement is lower, then the tradeoff could be acceptable. In an ideal scenario, a movement towards ending RSD in countries where protection is too poor would be paired with additional investments in signatory countries in order to create new safe havens for asylum seekers. In Southeast Asia, the Philippines could be a candidate for such a redeployment of resources, as the country is a signatory and has demonstrated a willingness to host refugees and asylum seekers in the past. The country is not without issues, and the current administration headed by Rodrigo Duterte has further worsened the human rights situation in the country (Johnson and Fernquest, 2018, Reyes, 2016). Yet, the existence of some legal basis which can be built upon gives hope that some of the obstacles to make it a global safe haven for refugees could be overcome in the middle term.

Expanding protection programs might be unrealistic, and closing RSD creates about as many issues as it helps to solve. Neither approach is an easy solution, but maintaining the status quo is worse. It puts UNHCR at odds with its mandate. The strategies the organization deploys to maintain the status quo make it an objective ally of a state that denies having any responsibility for UNHCR's people-of-concerns. Its officers find themselves overseeing a situation where asylum seekers are incentivized to face additional hardship for a better chance at resettlement, where some have to watch their

children grow up in squalid cells for years while they wait for an interview date, and where they have no relief to offer except to the most desperate cases.



***Part III – The Quiet Watchdogs***



## ***Chapter 7 – Refugee Advocates Keep Quiet***

Urban refugees are not welcome in Bangkok. The Thai state does not recognize the legal currency of refugee status and uses its punitive immigration law as a deterrent against asylum seekers. Asylum seekers and refugees are barred from legal employment, are harassed by the police, and if caught face indefinite detention in Bangkok's IDC. UNHCR, the international body set up to protect refugees' rights, is at times more aligned with the Thai state than with its mandate. This part will address the last element constitutive of Thailand's refugee management system: the ecosystem of Civil Society Organizations (CSOs) and refugee advocates operating in Bangkok.

CSOs play a dual role in the Thai urban refugee management system. On the one hand, they provide additional resources to refugees, either in kind or in cash. These can take the form of direct money transfer, free meals, health products, medical treatment, legal counsel, and psycho-social support. For simplicity, the range of these activities will be referred to in the rest of these chapters as "service delivery". The support provided by CSOs is central in allowing the most vulnerable among the urban refugee population in Bangkok to improve their standards of living and survive their time in the city, though the services offered by CSOs are not sufficient to significantly improve the situation of most of them. On the other hand, CSOs play a role in advocating for changes in the way the Thai state approaches the refugee issue generally and the situation of urban refugees more specifically. This advocacy can take the form of transgressive advocacy, that is overt, public, and takes place in spite of the authorities and not in collaboration with them, or non-transgressive advocacy, that takes place behind closed doors and aims not to embarrass the authorities. Both service delivery and advocacy are integrated into UNHCR Thailand's programs. As I have argued in Part II, the most important role played by the organization with regard to urban refugees is the provision of a dedicated refugee bureaucracy; it is the aspect of UNHCR's work that makes it unique and essentially different from CSOs. But the organization does also provide asylum seeker and refugees with some services, and advocates for the Thai government to change its approach to urban refugees. In these respects, UNHCR plays a role similar to that of CSOs. Therefore, both these aspects of UNHCR's work in Thailand will be discussed in the following two chapters alongside the work of CSOs.

There has been a tendency in academic literature to study non-profit organizations distinctly from other types of organizations such as companies and bureaucracies (see for

example the work of Keck and Sikkink, 2014). This is not however the approach I took. A significant part of my argument in this chapter will focus on the functioning of CSOs as organizations, and will therefore draw less from specialized literature and more from generalist work on the nature and functioning of organizations. In particular, I will use insights from the French school of theory of organizations (Crozier and Friedberg, 1977), following more recent calls to bridge the gap between NGO literature and broader fields of organizational research (Johnson and Prakash, 2007, Watkins et al., 2012).

CSOs working with urban refugees in Thailand are part of the country's refugee management system. They are not integrated in the government's organizational charts, and most are not official partners of UNHCR.<sup>42</sup> They do however play a key role in plugging the some of the protection gaps crated by the state. CSOs are not necessary to the perpetuation of the Thai refugee management system, though they do in a sense protect it by preventing, or doing their best to prevent, its most extreme effects. There would still be people coming to Bangkok to seek asylum without CSOs, and yet leaving them out of the picture means to miss a key component of what they find after their arrival. Moreover, the way these CSOs function within this system and their limitations can teach lessons about problems beyond that of urban refugees in Thailand. While the Thai refugee management system, with its layers of policies, is peculiar, the way CSOs work within that system is not as unique.

Urban refugee CSOs in Thailand comprise of Westerners who came to the country to help. In that sense, they resemble other Western-funded CSOs in developing countries. In fact, urban refugee CSOs in Bangkok are as close as one gets to the ontological Western CSO, because their work is largely disconnected from a lot of what can muddy the picture in other contexts. For example, academics extensively point out that CSOs should not be assumed to be apolitical or morally just because they claim to be so (Reimann, 2017, Hearn, 2007, Kamat, 2004, Petras, 1997, Alvarez, 1999). The nature of the refugee issue in Thailand, a low-profile issue, with neither obvious economic nor political consequences, allows CSOs working on it to exist and work in an ethically uncomplicated landscape, beside whatever conundrum they find themselves stuck in within their own work. They are not serving the interests of colonial powers (Sampson, 2002), who are quite happy that countries like Thailand take a strong stance against refugees and work as an efficient

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<sup>42</sup> A few of the larger CSOs in Bangkok do have official agreements with UNHCR, and receive some funding from the agency.

deterrent. They are not covertly serving the interest of large private corporations, since none sell specific services to urban refugees or are interested in their labor. They are not weighing in on national political life (O'Brien, 2004, Bornstein and Sharma, 2016). They are not promoting a market-centered approach to development (Fowler, 1992, Tembo, 2003). Despite facing fewer structural ambiguities than CSOs in other contexts, they do however struggle to live up to their mission. Their shortcomings highlight the inherent limitations of the capacity of young Westerners with good intentions to bring structural changes to places far away from home, a question studied in depth by anthropologists, who have relied on extensive fieldwork to analyze the last mile of program implementation (Mosse, 2004, Campbell, 2003).

However, before tackling some of the issues faced by these organizations, it is important to understand the role they play in Thailand's urban refugee management system and in doing so, do justice to what they do right. With regard to the refugees themselves, the work done by refugee CSOs in Bangkok is essential. They are the refugees' only unambiguous allies in a country where they are surrounded by stakeholders who are hostile at worst and indifferent at best. None of the CSOs have the resources to serve as many people as they wish to, but collectively they constitute a safety net for asylum seekers and refugees in Bangkok.

This safety net is vital, as urban refugees are vulnerable to any small event, which no matter how mundane it appears at first, can result in dramatic consequences. Any disturbance, no matter how minor, can break a link in the long chain of the conditions necessary to a refugee's survival. An illness can force one to stay in bed, lead to a loss of employment, remain untreated for lack of money, worsen and lead to a significant hospital bill, which would come through around the same time the landlord is threatening to evict because of unpaid rent. The arrest of a family member can leave the rest of the household without income. Coming out as gay can lead to a refugee being rejected by his community and left with neither resources nor a safe place to live. The list of examples can go on. CSOs help urban refugees absorb some of these shocks by providing medical care, supplementary cash to make rent, meals to compensate for the loss of a job, or emergency housing. The majority of refugees are not dependent on CSOs to survive, and CSOs do not have the resources to keep all refugees fed, clothed and healthy. Yet, nearly all refugees are a bad day away from having nowhere else to turn. And hundreds do entirely depend on CSO support to make it to the end of the month.



The central dilemmas faced by CSOs working with urban refugees in Bangkok are not external to their work, but result from contradictions that emerge directly from their central objective to help urban refugees. The two main roles played by CSOs in Bangkok, service delivery and advocacy, are as complementary as they are in tension with one another. On the one hand, they work with criminalized populations. As a result, they need law enforcement agents to stay away from their offices, to protect their beneficiaries from arrest. This gives CSOs an incentive to keep a low profile, collaborate with the authorities when necessary and focus on delivering to refugees and asylum seekers the services they need. On the other hand, supporting the cause of criminalized populations seriously requires questioning the legal framework that criminalizes them, the transformation of which is the only way towards a long-term solution for those served by the CSOs. This implies that the mandate of CSOs to help refugees requires them to engage in advocacy, to work towards transforming the status quo. As a collective, CSOs have to at the same time take a stand, speak up, and keep quiet, lay low. Speaking up potentially puts in jeopardy their operations and their capacity to deliver services at all. Laying low removes much hope they will ever make more than a dent in the policy framework shaping the whole issue.

In practice in Bangkok the dilemma of whether to be quiet or speak up has been resolved the same way by nearly all CSOs: all of them keep quiet, avoid advocacy and focus on service delivery. They do so because central elements in the way they function keep their workers on the move, and limit their capacity to learn from their context of operation and engage in long-term strategic planning. At the end of the day, the Thai state is the sole winner. It does not have to bear the costs of its neglect of urban refugees, thanks to a wide ecosystem of CSOs providing essential services, and neither does it have to deal with vocal and active advocates ready to damage its international reputation and provide ammunition to political opponents.

This chapter will first explore the understanding that urban refugee CSOs have of their role in Bangkok, in particular with regard to advocacy, looking in turn at CSOs focused on service delivery, CSOs dedicated to advocacy, and informal support groups. It will then explore two of the arguments presented by urban refugee advocates in Bangkok with regard to the relative merit of transgressive and non-transgressive advocacy: that transgressive advocacy can achieve little beside leading the government to crack down on CSOs and their beneficiaries, as exemplified by the reaction to a BBC documentary broadcasted in 2016, and that non-transgressive advocacy has proven effective, removing the need for other approaches.

## ***The Ecosystem of Urban Refugee Civil Society Organizations in Bangkok***

This section will present a short overview of the CSO ecosystem in Bangkok. The organizations supporting urban refugees in Thailand come in all shapes and sizes. The most visible are eight officially registered organizations that cater specifically to the needs of refugees. They can be further classified on the basis of their status as independent entities or branches of larger global or regional structures. Six of the eight organizations are local branches of international NGOs:

- Asylum Access Thailand (AAT). The organization's main focus is the provision of legal counseling, mainly to support asylum seekers throughout UNHCR's RSD process, which extends to broader forms of legal support. AAT organizes workshops for asylum seekers and refugees, and provides full legal representation for particularly vulnerable cases. In recent years AAT has expanded beyond legal services and runs a community mobilization project that supports grassroot refugee groups.
- The Jesuit Refugee Service (JRS). The organization provides a range of financial and in-kind support to refugees, including psychosocial counseling, medical care, and financial assistance to ensure access to housing. It runs large programs in the border camps, but also a number of them in Bangkok.
- Boat People SOS (BPSOS) provides legal counseling to refugees as well other types of in-kind support. It had historically focused on refugees from other Southeast Asian countries, in particular Vietnam, but expanded in the past five years to refugees from all countries, and rebranded itself as the Center for Asylum Protection (CAP). CAP is now an independent entity, though it remains mostly funded through BPSOS. CAP took on most of BPSOS's legal counseling work, with only some of the higher-level advocacy remaining with BPSOS. At the time of writing, CAP provided orientation workshops on the RSD process and on the practical challenges of refugee life in Bangkok as well as individual legal counseling to urban refugees.
- The Tzu Chi Clinic offers free medical care to refugees once a month. It started operating in the country in 2015, and is a branch of the Tzu Chi foundation, and international Buddhist charity founded in Taiwan, with a range of activities mirroring that of the Red Cross, though it has yet to operate at the same scale. In Bangkok, the clinic set up by the foundation opens its door to

refugees once a month. They can see a doctor and receive basic care for free, eat a warm meal and receive some hygiene supplies.

- The Catholic Office for Emergency Relief and Refugees (COERR) runs the Bangkok Refugee Center (BRC). COERR is a large organization, with most of its projects run in the border camps. In Bangkok, the BRC provides a number of services to refugees and asylum seekers, with financial support from UNHCR. In particular, it runs a school and a day-care. A number of services provided by BRC were rolled back after the sudden surge refugee influx in 2015 – the organization could not afford to provide the same services considering the increase in demand. COERR is the local branch of Caritas International, a Catholic charity.
- The Asia Pacific Refugee Rights Network (APRRN), is a regional organization. It operates from Bangkok, but promotes refugee rights throughout Asia. It specializes in advocacy, runs conferences, workshops and consultations with refugees. It has limited staff and resources despite the ambition of its regional mandate.

Two of the eight organizations are local organizations, existing independently of foreign legal entities, though both have been created by foreigners:

- Life-Raft. The organization provides financial assistance to refugees in exchange for nominal work. It started as an attempt to centralize and organize the diverse forms of support offered by churches, which after 2012 saw an increasing number of asylum seekers and refugees in need of help. The organization levies funds from abroad, in particular in the United States where the founder is from, and from local churches in Bangkok to run a direct transfer program targeting urban refugees.
- Courageous Kitchen provides financial support to urban refugees and stateless communities in the outskirts of Bangkok. The organization raises funds through events and private donations, and is largely the work of a single person, its founder.

The formal CSOs that operate in Bangkok do so alongside a number of informal CSOs. These groups are loose networks of concerned individuals, some of them working on refugee issues and willing to become personally involved, others who just stumbled onto the issue and decided to do something to address it. Such groups usually provide direct help to refugees, either cash or in kind. The best-organized groups hold regular activities,

such as weekly visits to IDC or fundraisers. Most groups get involved in an irregular fashion, whenever they identify a need or an opportunity to make a difference, for example by paying medical bills, providing bail money or a plane ticket. The better organized groups function as fixed poles around which a swarm of individuals gravitates, many staying involved just long enough to make a few donations before moving on. A lot of what informal CSOs do is to direct these streams of individual actions, shape them into an aggregate that can be more than the sums of its parts. This adds up to a makeshift social insurance. Formal CSOs step up to plug the holes in protection left by UNHCR and the Thai Government, and informal CSOs do the same for the holes left by formal CSOs. In practice, drawing a line between formal and informal CSOs is not straightforward. Formal CSOs sometimes provide services beyond their explicit mandate, and often some of their employees or volunteers help refugees during their free time and out of their own pocket. Urban refugee CSOs are not the only organizations, groups and individuals looking out for urban refugees in Bangkok. A lot of the support they receive comes from generalist organizations, many of them religious charities, which do not specifically target refugees. These organizations in fact are not always aware that refugees are among the people they serve, and do not cater to their specific needs. They however do a lot in terms of addressing the basic human needs of refugees – food, health and shelter.

All urban refugee CSOs in Bangkok struggle with the resources at their disposal. There always is a gap between funding and demand for their services; whether large or small, all refugee CSOs are underfunded. None has enough resources to attend to the needs of the groups they want to serve. They deal with their lack of funding in various ways. They reduce the frequency at which they operate, like the Tzu Chi clinic that only opens once a month or AAT that only takes in new clients one day per week. They extensively triage their beneficiaries and only provide services to the most vulnerable. In fact, triage is at the core of the operation of all of these organizations, the difference lying in the cutoff point. This can lead to major distortions in the operation of the CSOs. AAT and CAP for example started as groups of *pro bono* lawyers, who would help asylum seekers and refugees make their case before UNHCR. In Bangkok, the scale of the demand forced them to reorient their strategy towards group-based legal services, mostly in the form of trainings. The vast majority of their clients at the time of writing can at best hope to attend a training session and get a phone call, while prior to 2012 a large proportion would have been individually represented by a lawyer. Triage leads to extensive waiting lists for all organizations. CSOs also reduce the level of services they provide. The Bangkok Refugee Center, which supports health expenses of recognized refugees, drastically reduced the

range of treatment covered in 2015 down to only the most immediate and life-threatening ailments. Finally, none of the organizations can offer competitive wages to their employees. Hence, they are systematically understaffed and rely extensively on volunteer work.

### ***The Dominance of Quiet Advocacy***

The activities of refugee CSOs in Bangkok can be divided into transgressive contention and contained contention (McAdam et al., 2003). Each encompasses two defined paths. Contained contention corresponds to the range of activities and strategies that the Thai state expects and encourages CSOs to engage in: service delivery and backdoor advocacy, the latter ensuring that relevant members of the authorities maintain access to a reliable stream of information on the urban refugee situation. In other words, contained contention includes anything taking place through government-sanctioned channels, typically anything that is non-public or non-confrontational, or both. Transgressive contention corresponds to any innovative strategy developed by CSOs. In the context of Bangkok, anything done in public to shine light on the way urban refugees are treated by the Thai state is transgressive, because it creates a risk for officials to be embarrassed. More broadly, anything that disregards the preference of the authorities and engages in strategies they disapprove such as public campaigning and/or “naming and shaming” is transgressive.

CSOs working with refugees in Bangkok have a general attitude of wariness towards giving publicity to the urban refugee issue at least, and an open rejection of any efforts towards raising the alarm on the question at most. During my fieldwork, I found an attitude opposed to transgressive activism across the board, in large and small organizations as well as, somewhat surprisingly, in a small informal group of IDC visitors. All urban refugee CSOs in Bangkok see themselves as refugee advocates, but not the kind that makes any waves. They believe that refugees need a change in status quo, but that the only way to obtain it is through convincing the authorities, not pressuring them. As a result, they are largely quiet.

A number of public reports have been published on the situation of urban refugees in Bangkok, but all were written by generalist organizations working either on migration (the Mekong Migration Network) or human rights. The most notable working on human rights are Human Rights Watch, which wrote five reports on urban refugees in Bangkok between 2000 and 2016, and Fortify Rights, which produces regular updates on the

situation of refugees in Thailand though it does not focus exclusively on the country. Both organizations engage in transgressive advocacy, shedding light on the conditions in detention and using unambiguous language to qualify their findings. Among formal refugee CSOs present in Bangkok, only one, APRRN, has advocacy as a central part of its mandate. APRRN's advocacy is squarely contained, and the organization has only a couple of full time staff and is not focused on Thailand alone but on the whole Asia Pacific region, limiting its capacity to engage in sustained advocacy at the scale required by its mandate. The organization does not engage in public advocacy and focuses on sensitization workshops with government officials and other types of high-level advocacy behind closed doors with government representatives.

Other organizations, not only focused on advocacy, do also engage in it; APRRN is not alone. They publish some reports and public statements (Wirth et al., 2014, Asylum Access Thailand et al., 2009, Jesuit Refugee Service, 2012, Tauson, 2018), or work through an *ad hoc* coalition, the Coalition for the Rights of Refugees and Stateless People (CRRSP), to publish advocacy material. However, these publications and other attempts at public advocacy are few and far between – and CRRSP has not been publicly active for 24-months at the time of writing, and has remained silent on a series of mass arrests in the second half of 2018 in particular. Most of the advocacy of service delivery organizations is not public. AAT, JRS and CAP focus their advocacy work on influencing policy-makers and major stakeholders through direct dialogue. Their approach to advocacy is clearly non-transgressive. It aims not at embarrassing the state or other organizations by exposing their practices, but at convincing them to take incremental steps towards a less punitive approach to refugee management in Thailand, and do so by reaching out to the authorities through sanctioned channels, whether it is closed meetings or the courts. Besides, advocacy represents a small fraction of the activities of even the largest service delivery organizations in Bangkok. They are attributed little to no resources and constitute an afterthought in comparison to their work in service delivery. In fact, none of these organizations have managed to keep dedicated, permanent advocacy officers, though some have tried, such as AAT for about a year.

Little advocacy around urban refugees takes place in Bangkok, and a large part of what does take place does so behind closed doors; whether it has any effect is hard to monitor. As a result, the Thai public does not know that Thailand is becoming a haven for refugees from across the world; though large funding campaigns run by UNHCR have raised awareness on refugee issues more generally, using images of Syria, Libya and Iraq, none made any reference to the presence of people fleeing these countries on Thai soil.

This lack of awareness is recognized as a challenge by the CSOs themselves, who wish more attention would be paid to domestic refugee issues, but so far direct efforts at changing the situation have been limited. In fact, further publicizing the issue of urban refugees in Bangkok is actively fought against by most of these organizations.

### ***The Service Providers***

Most of my exploration of the rationale for refusing transgressive advocacy took place in conversations with people involved in one specific refugee CSO in Bangkok, the Refugee Rights Collective (RRC). The attitude towards transgressive advocacy in RRC was that it was an important thing to do, but not something that the organization could engage in. As Gloria, the country director of RRC describes it (interview on the 07/04/2016):

Of course it's many [sic] area where the government violates the people [sic] and deprives the right of the people on this thing [sic], but from our way of approach, not only of RRC but other organizations as well, it's really more cooperative. So say in the UPR<sup>43</sup> thing last week, so we not go [sic] and name and shame the government, like 'you don't do this and this and this'. Our approach is cooperative, we say we provide a service like this, and if you change the policy we will be able to support you. So we don't want the country to be burdened with all these things. So I think the approach we try to go in these areas is cooperative approach [sic].

In a separate conversation with two RRC workers, Angelica and Nora, the choice of the organization not to engage in transgressive advocacy was explicitly framed as a question of conflict between advocacy and service delivery (conversation on the 06/04/2016, in the organization's office):

Angelica: everywhere it's the same, you cannot both do advocacy and service provision because you lose access to your public if you do advocacy.

Nora: [Gloria] wants to pursue the dual role and it's conflicting, we cannot be Amnesty or Fortify Rights.

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<sup>43</sup> The UPR, or Universal Periodic Review, is a process led by the United Nations during which countries have to report on a number of engagements, including improvement of the human rights situation in their country. In Thailand, the UPR was used by a number of NGOs and CSOs to publicly challenge the government on a number of issues.

Angelica: In Australia with the Red Cross it was the same, we had great access so we decided to only do private advocacy, everything behind closed doors. You cannot do public advocacy if you want to maintain access. Amnesty for example did public advocacy and there were guidelines [by the Australian government] never to let them even get close to detention centers.<sup>44</sup>

RRC as an organization saw its mandate as being first of all the smooth provision of services to refugees, not advocacy for the groups to which its clients belonged. In the context of Thailand, its director and workers thought that advocacy endangered service delivery. Since both were not compatible, the organization refrained from advocacy in general and especially anything transgressive, for example confronting bureaucrats.

The more general argument of RRC is that organizations working with criminalized groups, such as foreigners without visas, need to rely on the leniency of the authorities to be able to do their work. Whether they are trying to gain access to clients that are detained or hidden among the general population, they need to be on cordial terms with the authorities to operate.

In some cases, the organization's beneficiaries are physically separated from the rest of the population, and some administrative body has the authority to give or remove access, as in the example of the camps on Nauru mentioned by Angelica. In these situations, all organizations that do have access have a strong incentive not to upset the gatekeepers. This situation occurs in Bangkok with regard to IDC – organizations allowed to operate within the center have to be careful not to raise their voice, unless they lose access. This had apparently happened to the Asylum Protection Network (APN),<sup>45</sup> which had been allowed to station an officer within IDC to provide services to detainees. The staff, with the support of APN, raised issues regarding the quality of the medical care provided in the center, and in particular complained that the resident nurse was endangering detainees. APN subsequently lost its privilege and was not allowed to operate from within the center; and the nurse remained in place.

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<sup>44</sup> Australia has opened detention centers for in-bound migrants on the island of Nauru as part of its deterrence policy. A large number of the detainees there claim they suffered persecution in their country of origin and that they were trying to reach Australia to claim asylum.

<sup>45</sup> The name of the organization has been changed.



The situation for RRC and other service delivery organizations in Bangkok is however somewhat different. Most of their beneficiaries are not physically removed from the population. No administrative body controls access to them. In their case, “losing access” would mean losing the privilege of not being directly targeted by law enforcement. Organizations working with criminalized beneficiaries can easily be shut down. Even in the absence of laws directly criminalizing their work, such as those that exist in France with regard to irregular immigration,<sup>46</sup> they are vulnerable. The authorities can easily deploy law enforcement around the organizations’ points of service delivery and systematically arrest their beneficiaries. Such policy would durably sap their beneficiaries’ trust in the organization and lead to a collapse of the demand for its services. There is little CSOs can do to protect themselves against such uses of law enforcement. They can hide from law enforcement, but they then also prevent access to potential beneficiaries. Hence organizations like RRC require the collaboration or at least the indifference of the authorities in order to do their work, just as much as if their clients were locked up in a detention center.

Losing access, for an organization, presents an issue beyond the incapacity to complete its mandate and the consequences it can have for its beneficiaries. Organizations without access sooner rather than later are at risk of being cut off from their sources of funding, since they would no longer be capable of performing their mission. Smaller organizations are particularly vulnerable to this type of stress, as they are typically dependent on a single source of funding tied to their performance with regard to a single type of activities. Of course, consequences of losing access would be most dramatic for their beneficiaries who would suddenly stop being provided an often vital service. Yet keeping in mind the pecuniary dimension for the organizations that serve them is important, because it is a key element to understand the type of arbitration that takes place when the management of a CSO ponders whether to speak up against egregious abuse. Speaking up presents existential risks, which goes a long way in explaining why service delivery would be given priority.

Academic literature has looked at CSO advocacy, though whether its results are relevant to understand the situation in which refugee CSOs find themselves in Thailand is

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<sup>46</sup> A piece of French legislation designed to target smugglers and trafficker but using broad language has been used to prosecute members of organizations providing services to irregular migrants (Carrère and Baudet, 2004, Damgé and Attia, 2017).

debatable. Overall, existing research finds no dilemma between access and advocacy in liberal democracies. Ambrosini (2015), writing in the vein of authors describing Transnational Advocacy Networks (Carpenter, 2007, Keck and Sikkink, 2014) with a somewhat optimistic view of CSO mobilization, argues against the existence of a tension between advocacy and service delivery. Writing on NGOs providing medical care to undocumented migrants in Italy, he stresses instead the complementarity between advocacy and service delivery work. Castañeda (2007), writing on CSOs providing medical support to undocumented migrants in Germany, extensively discussed the dual role of service delivery and advocacy they play. She does not suggest that access is modulated by how confrontational CSOs are in their advocacy, but does stress a tension between the two, though taking another form.

Castañeda argues that private organizations providing services that should be provided by the state run the risk of removing any incentive for the state to change the status quo:

[...] because the ‘problem’ of providing medical aid is being handled in the private realm – that is, through the NGOs – the state is not encouraged to change anything. Organizations recognize this dilemma, which leads to even further frustration. In their interviews, staff noted that they have become (or are becoming) ‘Lückenbüßer’, which translates literally as ‘gap-fillers’, in the social welfare system. In another example, one physician stated that ‘we (volunteers) are nothing but useful idiots for the state!’ (Castañeda, 2007, p.282)

Castañeda’s evaluation of the long-term implications of large-scale humanitarian operations substituting to state responsibility – in a context where alternative strategies to force the hand of the state are available – is hardly relevant to the context of Thailand, where the avenues to force the hand of the state to take responsibility for urban refugees are limited. Looking more generally at the impact of CSO advocacy in the Western European context, Koser (2005) found that “it is fair to conclude that in most cases the activities of NGOs have not had a demonstrable impact on policy.” (p. 21). This is not to say that a large number do not try. In a systematic review of the third sector’s contribution to migration, Garkisch et al. (2017) found that what they refer to as the third sector, a category somewhat wider than that of CSOs, engaged in a broad range of advocacy, by relaying the voice of migrants and lobbying political authorities. Overall, research on CSO advocacy has not found that it creates major barriers to a parallel engagement in service delivery, though whether the advocacy is successful is at least subject to debate.

The issue with regard to the applicability of this literature to the situation of CSOs in Thailand is that in its large majority it has focused on Western democracies. Garkisch et al. (2017) found that out of 101 articles published on the topic of CSOs and migration since 2002, only four looked at countries other than Western democracies. This is an important point because advocacy in countries such as Thailand, whether it would be classified as a non-liberal democracy or a semi-authoritarian regime, presents a number of essential differences. The situation described by Castañeda in Germany for example, where the state sees positively CSOs stepping up and ensuring that no one is left behind, could not be more removed from the situation in Thailand, where the state has no obligation to provide for migrants at all and has no incentive to let CSOs do their work. The Thai state differs from Western democracies in two essential ways with regard to its attitude towards migrants: the Thai state is the bearer of a significantly less obligations, and the mix of legitimacy and repression that ensures stability in Thailand is more skewed toward repression than it would be in Western democracies.

CSOs in Thailand find themselves in a different environment. They do not substitute for the state with service delivery as much as they create safety nets where none existed; arguing that stopping to provide that service would force the hand of the state is untenable. The stakes for the beneficiaries of CSOs of them losing access are real, and CSOs are right to tread carefully when it comes to maintaining that access. Second, the capacity of the Thai state to block access is far superior than that of Western states, and the risk in terms of loss of legitimacy are mitigated in Thailand since legitimacy is a less important pillar of state authority. Where the authorities in Italy or Germany have to account for potential backlashes by the courts or at the next election when dealing with migrants and NGOs, the Thai government has freer reins to deploy its repressive powers. In fact, at the time of writing the Thai government has little to fear from elections at all; electoral results unfavorable to the entrenched elite are routinely countered by coups, and constitutional reform in 2017 have enshrined the power of the army and limited the capacity of election results to affect political life, a fact confirmed by the outcome of the 2019 election. This is not to say that the Thai state has complete free rein with regard to its handling of civil society – the government cares about the country’s international reputation, and public opinion remains important in Thailand, which has a recent history of popular movements taking down governments. The authorities cannot disregard their public image completely, but can be less concerned with the reputational cost of repression than liberal democracies.

The dominant rationale among service delivery organizations is that engaging in transgressive advocacy would threaten their core mandate of alleviating suffering, because they could lose access to urban refugees or trigger retaliation. Academic literature tackling the reality of that risk is of little help, because it has focused on the situation of CSOs in liberal democracies, where they face very different circumstances.

### ***The Official Advocates***

Not all refugee CSOs in Bangkok face the challenge of having to balance service delivery and advocacy; a few focus entirely on advocacy. None of them, however, engaged in transgressive advocacy. Their arguments to defend their strategy amongst the range of available advocacy strategies center on the idea that playing by the rules was effective, an idea that will be tested at the end of this chapter.

Nithaya is a Thai human rights activist, who has been an advocate for decades in Thailand and worked on numerous of human rights issues. She sees herself as a moderate, and thinks that cooperation works best; though she has admitted that more transgressive approach could be complimentary. I quote a rather long extract, because her personal history includes a number of important elements of context (interviewed on the 18/02/16):

Researcher: So when did you start working for an NGO?

Nithaya: Oh, when I finished from university. But even in university I used to work with the urban poor, in the communities, and after I finished I joined a volunteer program started by professor Prapaporn where you stay in the village for one year, so I also learnt a lot from these kinds of things. I grew up from the ground, it's why I also understand, I have sympathy for the people, I work on the field from before, on so many issues. Since I went to university, I studied with friends who when they finished went to work in different sectors, like government. And on top of that when I was a student I was also an activist, so everybody knew me. So that when I heard they work there, there or there, I could use that in my work. I can contact them, and usually they help. At my age they are all retired [laughs], but the new generation knows me too. My friends tried to transfer the contact to the new generation, so they also accept me. Now I am a channel for the government to contact CSOs. Many of the CSOs, they try to confront the government, confront the policies, confront ... for me I try to do cooperation, because the government also has good people you know. We are friends, so if I talk with them they accept, you know? Why confront, you cannot solve the problem if you always try to confront. But they are some groups that should do some campaigning and pressure, and I know them too you know.

Nithaya thought cooperation should be at the core of advocacy efforts, instead of outspoken blaming and shaming. She believed that the mobilization of her network, and individual meetings behind closed doors, would eventually change enough opinions within the administration to bring reforms. Her insight is especially relevant as, unlike a lot of the individuals working in the refugee field, she is Thai and has lived in Thailand working on these issues for a long time. She describes the process through which she obtained access to key political actors:

Nithaya: You need to go and meet with them, submit a letter, request to meet. Perhaps the first time they will not respond, submit again, do that again and again. That's how I dealt with the national security council,<sup>47</sup> until we became good friends. But now they changed again, the deputy general changed again. So now I start again to build up a good relationship with them. I don't know if they are good or not, but the new secretary general is so scared, when I submitted the letter he said 'We are not ready to meet yet'. Four months already I will submit again, because when they change I don't understand why they don't want to meet me, because I used to meet with the former one. We can raise the issue, we can meet quietly, but we don't have to go to the public. He said 'Pii [a casual mark of respect in Thai, roughly translates as "aunty"]', don't go to the public' but we can talk the issue quietly with them. And I think it is important. Don't show it up, don't promote yourself, promote them! Don't give yourself to the public, give it to them! We are behind but it doesn't matter. This is the benefit of the people. And when I checked what happened, why doesn't the new general secretary meet me, he's so scared, he doesn't want to see NGOs. They said give him time to adopt the knowledge [learn], because this is a new job for him. And I also criticize all the time, because you keep an important role on the policy making, because if you don't have enough information you don't make good policies. He didn't have the information in his own organization, he gets it from the outside, and then how does he know if it's reliable? Because the report I send you says something about the attitude of the reporter, so you get the third, fourth hand, fifth hand information you don't get the first hand information, and we working with the people we have first hand, and ok when I work with you it is second hand but it comes from the first hand. And it is need to have this information, but they feel so scared. Because I met with some general, general brother, and say 'hey, I submit my letter to him, and he said I will

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<sup>47</sup> The คณะรักษาความสงบแห่งชาติ, or National Council for Peace and Order (NCPO) was the name taken by the military junta that held power from the 2014 coup to the official resuming of democratic process in July 2019; though in practice the party of the NCPO leader and prime minister under the junta, Prayut Chan-o-cha, won the election. Hence the junta appears to have remained in control of the country's key political institutions.

support you', however I didn't check again. So I said I will submit again the letter after 6 months in his new position. Everyone says 'give him the time Pii, don't rush!' [laughs].

The preference for non-transgressive advocacy is paired with the idea that there are other groups who engaged in transgressive advocacy, so there is no need for Nithaya or other groups to be transgressive. Below is the argument in their own words, during a meal between Sofia, an officer from Right of Passage (ROP)<sup>48</sup> and Saskia, a friend of hers working for a human rights organization (conversation on the 23/01/2016, in a restaurant):

Researcher: And so, how do you work with the government? Do you work with them, not at all, and how does it work?

Sofia: We kind of position ourselves as constructive I would say, so our approach is not to target the government and blaming and shaming, we work with other organization who do that. So they try to do that...

Researcher: Who does that?

Sofia: Like Human Rights Watch they do that, and for example if there are detention issues or similar, we will never come out and say so, because we have our offices in Thailand and we're just scared [laughing].

Saskia: I know tell me about it [laughing]!

The central tenant of the position expressed by both the program officer in ROP and Nithaya is that they do not need to be transgressive because other groups are, and that the choice of one or the other was essentially a matter of personal taste and opinion. One can however identify a number of factors that cannot but contribute to their preference for a non-transgressive approach. One is that transgressive advocacy is perceived as creating the risk of backlash, threatening not only the organization but also each of the individuals employed by it. Another factor has to do with the context in which to replace these conversations. ROP receives most of its funding from UNHCR, a strong incentive not to be too transgressive. Nithaya comes from a well off background and went to one of the country's top university, alongside many of the high-level bureaucrats she now tries to

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<sup>48</sup> The name of the organization has been changed.

influence; she belongs to a segment of society where the idea that “the system works” is prevalent.

Both Nithaya and Sofia expressed the view that transgressive advocacy was a worthwhile endeavor, but that they did not need to engage in it themselves because other organizations already did. This argument was repeatedly expressed by members of CSOs: that other can take care of transgressive advocacy better. The fact is however that these *others* are far from entirely filling that niche.

### ***Transgressive Advocacy and Division of Labor***

Whether refugee CSOs have advocacy or service delivery at the core of their mandate, all stay clear from transgressive advocacy, and state that others already do engage in transgressive advocacy. When asked who these other organizations are however, the same two names are always mentioned: Human Rights Watch (HRW), and its offshoot Fortify Rights.

HRW is the largest of the two, with significant political clout. Though it does not have staff permanently based in Thailand, it communicates on urban refugees in the country on a regular basis. Since 1994, date of the earliest HRW publication on migration issues recorded in their public database, the organization has published four reports looking at refugees in Thailand, two of which looking specifically at urban refugees respectively published in 2012 and 2014. During the same time frame, it has published 29 news articles on refugees in Thailand, 14 of which specifically dealing with urban refugees. Looking at the last 4 years, no news reports on urban refugees had been published by HRW in 2018, four in 2017, none in 2016, four in 2015 and five in 2014. The publication of such reports by HRW is usually accompanied by a number of newspaper articles in the general press, ensuring that the information is brought to the general public. Looking at the content of the news reports published by Human Rights Watch, most of the news articles are focused on one-off events such as the *refoulement* of groups of refugees, deaths in detention and similarly instances of blatant abuse or violation of international refugee law. It is fair to say that HRW press releases focus on events that are outliers in the context of the current treatment of urban refugees in Thailand, rather than on the systematic abuses enabled by the way the Thai authorities manage refugees.

This system is tackled instead in the HRW reports. There has been three HRW reports on refugees in Thailand published in 2004, 2012 and 2014 (Human Rights Watch, 2004, Human Rights Watch, 2014b, Frelick and Saltsman, 2012). Urban refugees are given the

most prominent place in the 2014 report, focusing on minors in immigration detention. All HRW reports on refugees in Thailand are well documented and give an in-depth and nuanced overview of the situation of urban refugees without shying away from being confrontational. The level of access to the field that was necessary to write these reports, and in particular the last one on immigration detention, would only have been possible thanks to the active collaboration of CSOs with significant experience working with urban refugees. The impact of the advocacy on urban refugee issues done by HRW is however limited by two factors: frequency is low, at best every four months with gaps in coverage lasting at times more than a year, and press releases focus on outliers. To a large extent, the limits in HRW advocacy on urban refugees are a direct consequence of the broad scope of work of the organization – it covers a broad range of issues, and only has so much resources to devote to urban refugees in Thailand, a relatively niche issue in the broader context of human rights violations in Southeast Asia.

Fortify Rights is an organization founded by two former HRW employees in the early 2010s. It covers human rights issues broadly, though in practice focuses mainly on migration-related issues including refugees in Thailand and Myanmar. It publishes online material and a regular newsletter; though it has secured a few grants since 2016, the organization is still in its infancy and has nowhere near the reach of HRW. It focuses its activities on press releases looking at individual events, and has yet to release a major report on urban refugee issues. Though it certainly engages in transgressive advocacy by publicizing abuses, its lack of exposure and focus on urban refugees makes it a negligible actor in the field.

Both HRW and Fortify Rights are supported in their work by the organizations working with urban refugees. Even if these other organizations do not want to see their names attached to transgressive advocacy, they claim to be more than willing to facilitate the work of more activist organizations. CSOs pass on tips to organizations that do transgressive advocacy, but they do not routinely commit resources to support them in their work – they do not contribute to their programs financially nor allocate a significant share of their staff's time to helping them. Information sharing is facilitated by the small number of people involved with urban refugee issues in Bangkok. People working for different CSOs often share the same social circles, know each other personally and hence have plenty opportunity to pass on information and maintain access. As Sofia, who worked for ROP, puts it:



Sofia: Yeah they have the same struggle, so what we say usually is that we go to HRW and we say hey we have this information, do you want to come out with something, and they can come out with stronger language. And usually what we will do is that we will work with [magazines and newspapers] for example, we would go to the Human Rights Commission also, or inform other people, if there is a new arrest, you know there has been a lot of arrests recently, so that's what we would do. So we try to act behind the scenes.

The type of task sharing described in this conversation, with some organizations reaching out to others to do the kind of advocacy they could not do themselves, was mentioned by workers at RRC as well (conversation on the 06/04/2016, in the organization's office):

Researcher: So if you have info that you think should get out do you communicate with other organizations? Is there a division of tasks and roles there?

Angelica: Yes, it's kind of an open secret. I mean if you work in the field you would know that it's the way it works.

These remarks suggest a coordinated effort of all refugee organization to let information flow freely from one organization to the other, allowing all to engage in transgressive advocacy through a front to avoid negative externalities on the rest of their work, but in practice these forms of indirect advocacy are limited.

A number of factors create a significant handicap for an indirect public advocacy campaign to be successful. Using the terminology coined by Keck and Sikkink (2014), new norms are promoted through the rejection of existing ones. Fur coats are shown next to skinned carcasses, individual shot by police humanized, female genital mutilation described in gruesome details. Once new norms take hold, they shift the incentives for the main stakeholders: a certain type of behavior or policy, which was seen as normal or routine, is made abhorrent through the systematic publicization of its negative effects. To be successful, campaigns require repetition and consistency in their messaging. Changing the status quo is an uphill battle, and therefore the public needs to have a clear idea of a problem is, and what can be done about it. In the case of advocacy around urban refugees in Bangkok, criteria of repetition and consistency are both missing.

The advocacy efforts led by HRW around urban refugees in Thailand succeed at documenting the present situation. The reports provide interested individuals with the background information necessary to understand what is at stake, and the irregular stream of coverage on out-of-the-ordinary events document the most egregious effect of

the current policy. This ensures that anyone looking for information on urban refugees in Bangkok will not have to contend with official sources, which are not many, or UNHCR statements, which go to great lengths to avoid upsetting the Thai authorities. However, these advocacy efforts hardly represent a campaign. To the casual onlooker, who is not willing to dive head first into 150 page-long reports, the presence of the urban refugee issue in the public sphere can at best be qualified as fleeting. Press releases come out every couple of months at best, and do not focus on one key issue – instead, each focus on one discreet event. In 2015, the Thai public heard of asylum seekers being sent back to China, then nothing for nearly two years, and then in 2017 might have read about a Pakistani man who died in detention.<sup>49</sup> A few months after that an article denouncing the country's treatment of Rohingya, in particular their *refoulement*, and recommending that Thailand sign the Refugee Convention was published on world refugee day. These events cannot coalesce into a clear narrative to a casual onlooker, because they each look at the urban refugee issue from a different angle. As a result, what should be the target of advocacy is not obvious – should it be the conditions in detention, the *refoulement* issue in Bangkok's airport, the push backs of Rohingya boats? All these issues sprout from the same underlying system, but in a way that is only obvious to people versed in the nature of that system in the first place.

There is an effort by a number of CSOs otherwise focused on service delivery and avoiding transgressive advocacy to enable the advocacy work of other organizations with different, and in particular more transgressive, advocacy strategies. The collaboration between these different CSOs is framed by people engaged in service delivery organizations as a systematic division of labor. They argue that this system ensures that service-oriented CSOs can resort to transgressive advocacy when needed and avoid exposing themselves to government reprisals. Taking a look at the actual output of transgressive organizations however shows that this picture is inaccurate. Though information does flow among different organizations in Bangkok, the way it is used by HRW and other outspoken organizations is not akin to a status quo-challenging campaign. The articles and reports published do play an important role in publicizing the issue, but not in a way that facilitates momentum building around the issue that would be likely to lead to policy change.

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<sup>49</sup> I do not know why this particular death was reported in the press when most are not. As mentioned earlier, deaths in detention are common occurrences.

Despite dealing with an issue that would lend itself to innovative, transgressive tactics, advocacy by CSOs around the urban refugee issue has been quiet and contained. In particular, strategies that would have the potential to raise public awareness and outrage on the issue are avoided by all organizations, which all claim that *others* fill that niche. However, these *others* are only Human Rights Watch, and as I have shown their coverage of the urban refugee issue, though useful, is not akin to a systematic advocacy campaign. In Bangkok, everyone working with or around CSOs agrees that the current system is not playing its role which leads to unnecessary suffering among refugees, but no one is calling it out. This is especially surprising considering that urban refugee CSOs in Bangkok are not sprawling bureaucracies and do not appear to have much to lose in the disruption of the status quo.

### ***The Informal Support Groups***

Neither organizations focusing on delivering services to refugees nor those with advocacy at the core of their mandate engage in outspoken advocacy in Bangkok around urban refugee issues. All claim that they would rather maintain a cordial relationship with the Thai bureaucracy. Have they just grown bureaucratic themselves, so used to the status quo that they fear to upset it? This line of criticism has been articulated against advocacy-focused CSOs. Watkins et al. (2012) write for example that NGOs can secure funding over the long-term, guaranteeing their survival, by merely going through the motion of advocacy, employing the right jargon, but doing very little to achieve their objectives; and they are in fact “not really expected to attain their goals” (p.294). This kind of argument fits into a broader one of the complex relationships any organization will have with its mandate when success would result in the termination of the organization. The argument has in fact been made that it is in the nature of all organizations to seek their own continuation, and that they will prioritize it over the achievement of any other goal (Crozier and Friedberg, 1977).

However, arguments along that vein do not fit well the reality of CSO work in Bangkok. First, the organizations working on the issue are a far cry from the heavyweights of the development sector. Both RRC and ROP are small organizations, with staff that are not paid high salaries. In fact, staff are usually not dependent on these salaries to make ends meet – many instead rely on another breadwinner in their household. Neither organization is a sprawling bureaucracy which mandate has long been buried under layers upon layers of internal hierarchies, department infightings and everchanging strategic plans. Instead they are small NGOs, with a couple dozen staff at most, each of

which is capable of making a difference or pushing the organization in a new direction. In a sense, both RRC and ROP are the incarnation of what a “good” CSO is: small and flexible enough to be innovative, relying not on cynical development professionals but on young and idealistic staff committed to the organization’s mandate.

Second, the refusal to engage in transgressive advocacy is not found only among registered, formal CSOs, but also among informal groups. There are numerous informal support groups in Bangkok providing one service or another to refugees. Many have emerged out of the personal interest of people who stumbled upon the issue in a quest to “do something”. Some of these individual initiatives led to the creation of small organizations, like Life-Raft and Courageous Kitchen, but most have retained their informal character. They cannot be suspected of having shelved their mandate to focus on the preservation of the organization, or to strive for nothing but maintaining the status quo as to keep stable funding; informal refugee support groups in Bangkok are not funded, offer no career prospects, are not run by people whose identity has come to rely on their continual engagement with the refugee issue. And yet, these groups are just as averse to any confrontation with the authorities as the formal CSOs.

I joined an informal support group from the end of April 2016 to July 2017. The leader of the group was Jacques,<sup>50</sup> its creator, who had been retired for a few years and was volunteering with various charities. He had stumbled upon the plight of urban refugees one day, and with a few friends and acquaintances started visiting refugees in IDC several times a week. Eventually these visits started taking place regularly whether or not Jacques joined them. By the time I joined the group, it had been running for a few years. That group of visitors was one of many. The only ways in which it really stood apart was by being non-religious, and made up of French citizens. Visitors are only allowed in IDC from 10am to 11am on weekdays, and visits take at least an hour and a half, because visitors have to register for the day before 9:30am. This prevents anyone employed full time to be a regular visitor. In the group I joined, some of the members were retired, but the majority was not employed, either because they were stay-at-home fathers or mothers or because they had only recently moved to Bangkok, often following a partner. This appeared to be true of most groups of visitors to the IDC. The group I joined, like all the other groups, was completely informal. One does not need to be part of a group to be allowed to visit, there

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<sup>50</sup> The name has been changed.

is no compensation for the members and they are not required to make any commitment to remain in the group. What the groups are, in practice, is a guarantee for their members not to visit alone, some emotional support before and after the visits, a channel for coordination on the supplies to buy, and a way to pool resources in view of certain goals, for example paying for the plane tickets of refugees, bail or some financial support for their resettlement. Most of the members of IDC visitors' groups only come regularly for a few months until they find something else to do, and none are dependent on the groups for anything.

One day in November 2016, the members of the group, including myself, received an email from Jacques. He announced that a journalist would join the group on the next visit, because he was looking to write a story on the groups' volunteering and the situation in IDC. The journalist was working for a free local newspaper catering to French migrants. When I met up with the group in a café across from IDC on that particular day, Jacques and the journalist were in the middle of a conversation, surrounded by the other members of the group. Jacques was telling the journalist that the group could not sponsor<sup>51</sup> his visit. He explained to him that he was worried the group would lose access if it were known that it had helped him, and that it was uncertain whether the journalist would be allowed in without being sponsored by one of the groups. The journalist pondered whether to try nevertheless. I knew that it was not a problem, as I had been visiting for months without being sponsored by the group. Not understanding the situation, I jumped in the conversation and said that I doubted not being sponsored would be an issue. Jacques repeated that in his opinion it would be waste of time to try, and after some further back and forth the journalist was convinced not to join and left. As the journalist was leaving, Jacques congratulated himself for preventing the visit and admonished me for not holding the line and implying that the visit was worth trying. He added that the journal the man was working for was "ferociously anti-governmental" and that an article would have only led to reprisals against the detainees and the visitors.

The conclusion reached by Jacques – that any publicity would lead to negative consequences – needs to be unpacked. It is not a trivial fact, especially considering the

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<sup>51</sup> For some time in early 2016, only visitors registered with the IDC management in advance through a fax would be allowed to visit. These faxes were sent for the group by Jacques. By May 2016, the fax stopped being requested for visitors, but were sent nevertheless by Jacques as an extra caution. What Jacques told the journalist is that he had not put his name on that day's fax.

situation. The journalist was working for a French-language free newspaper, the diffusion of which was limited to a subset of French speakers living in Bangkok. Most of its content was relative to local news and entertainment – typically commenting on the latest events held by the French community and announcing the ones to come. A few hundred copies of the journal at most were circulated every other month. Hence the exposure that the article could have gathered would have been limited at best, and the chances that it would have reached the authorities, keeping in mind that it was available only in French, was negligible. On the other hand, the publication of the article could have had a noticeable positive impact on the visitors' group by raising awareness around the issue among their core demographic, French migrants, and leading to new recruits. The group never brought together more than a dozen people – even a couple of new recruits would have made a significant difference. It should not have seemed unreasonable to let the journalist work, or simply abstaining from gatekeeping. Yet, Jacques went out of his way to prevent it.

Part of the explanation lies in the nature of the visitors' groups. Castañeda (2007) distinguishes between two approaches to the support of undocumented migrants: a human rights approach, where action comes from a desire to support all individuals' right, and a humanitarian approach, where action is prompted by the realization of a wrong that one has the power to do right. The groups visiting IDC squarely fall under the latter. Many members of the group have a very basic understanding of the issue of urban refugees in Bangkok at best, and became involved not because they wanted to topple a status quo that created systematic abuse, but because they were told they could help people. Castañeda, commenting on the distinction between the two approaches, clarifies that humanitarian approaches are not typically associated with advocacy, though organizations started on humanitarian grounds do tend to eventually engage in some advocacy. This is to say, it is not surprising that the visitors' group do not engage in vociferous advocacy. However, the role they play as active gatekeepers against any form of publicity to the refugee issue is surprising.

### ***Justifying the Silence***

In late 2015, a journalist from the BBC joined a group of IDC visitors. He had a hidden camera on him and the video he took then was published along with an article on the plight of Pakistani Christians (Roger, 2016), and broadcasted as part of a TV segment, "Thailand Asylum Crackdown", shown on BBC World on February 28<sup>th</sup> 2016. The segment is about 20 minutes long and includes a visit of an apartment block where Pakistani

families live as well as a number of interviews with members of that community, focused on the hardship of their everyday lives. It addresses most of the key elements of the urban refugee issue in Bangkok: that asylum seekers reach the country with tourist visas, that they can be arrested and sent in indefinite detention, that RSD takes years and that without the right to work, most refugee families are very poor. Stylistically, the documentary relies heavily on pathos, with numerous shots of people crying, and slow zooms on their tears. At times, it looks quite exploitative, dramatizing the suffering of others for spectacle. It pushes a narrative of Christian martyrdom that does not do justice to the complexity of the situation in Thailand, but probably helped the average Western viewer relate to the subject.<sup>52</sup> The journalist blames the situation of the Pakistani refugees in Bangkok on the Thai government and UNHCR, using strong language to condemn the conditions in IDC and accusing UNHCR of failing to protect refugees.

This piece of reporting was fresh in everyone's minds when I started my fieldwork. It was mentioned again and again as a textbook example of why one should not talk to journalists about urban refugees, and more broadly as the immediate cause of the rejection among CSOs of outspoken, name-and-shame public campaigns. This section will first discuss whether the BBC article and the reaction it elicited from the authorities can explain the attitude of CSOs towards transgressive advocacy. Then, it will discuss whether the idea that non-transgressive advocacy is effective has merit on the basis of the recent history of the urban refugee issue in Bangkok.

### ***The Case of the BBC Journalist***

The reaction to the BBC piece was overwhelmingly negative among CSO workers in Bangkok. No one I met working with refugees had words strong enough to condemn it. This was particularly true among IDC visitors and people whose organizations relied on access to IDC. The BBC documentary was at the center of conversations for a long time. When I first reached out to Jacques through email to join the visitors' group in April 2016, more than two months after the broadcast, his answer mentioned the "quite irresponsible" reporting. In early April I interviewed Gloria, the director of RRC, who said that the article "[had] created a conflict, a problem. Because the information they provide [sic] is wrong

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<sup>52</sup> The figure of the Middle Eastern modern Christian martyr is one of the few refugee figures to continuously attract political goodwill in Western Europe, at least up to the early 2010s. See for example the comments by the French president after attacks against churches in Egypt and Iraq in 2011, which led to special resettlement quotas in France (Guénois, 2011).

information". Gloria saw a few factors playing into the resentment towards the reporting from refugee advocates. One element was the fact that the reporter had reached out only to organizations that Gloria considered as illegitimate:

Actually, I heard that they got the information partly from UNHCR, but I just listened with the audio right, not read, and I heard that it's the Christian Pakistani Organization [...] that came to Thailand to get all these stories. And actually these Pakistani Christians already create a real drama. They sell the drama thing. We found that many times, on their website, I don't know the organization, most of the time give the wrong information. But it's good for them to do the drama thing. People are more interested but it's not the true story. I remember when I just joined the organization, after just a few months there was big arrests, and at that time more than 100 people were arrested. And I mean everyone was caught, not only Christian. But in that website it said 500 Pakistani Christian arrest and detained and blah blah blah [sic].

She further argued that since the main source of information of the article was unreliable, the information contained in the article was unreliable as well, and some of it simply wrong. The numbers in the piece were indeed blatant overestimates:

[The journalist said that we] have Pakistani Christian 11,000 in Thailand. But total registration here is only 9,000, and 9,000 is from 15 nationality, so what does that mean? What's the implication of that?

Gloria also contested another story reported in the article, implying that detainees in IDC were routinely denied food:

Gloria: [There] is the story that one lady say that she was detained and says she didn't have any food to eat for seven days, something like that, that is also not true!

Researcher: Yeah, conditions in IDC are not good but...

Gloria: Yeah, but they have food, even if the quality maybe not good, they provide. So if you say something like that, it's also... Actually at the time this one is launched the immigration is really mad about that.

The frustration expressed by Gloria and shared by most urban refugee advocates towards the article is understandable since the reporter, to put it simply, did not do his homework too well, and took at face value information received from biased sources. The most problematic aspect of the reporting was the sole focus on Pakistani Christians which, combined with the strong religious undertones of the reporter, suggested that Pakistani Christians were treated worse than other refugees and/or discriminated against because



of their faith. I have encountered this type of discourse, coming from Pakistani refugees, at a training organized by RRC. During the training a refugee had asked the organizer of the workshop, as part of a long tirade, “Why do you think that because we are Christian we are less than other humans?” (Training with RRC, 21/01/2017). Christians are not in fact singled out by the Thai administration, but the narrative of further religious persecution is prevalent among refugees. Performances such as what took place during the training do not sit well with CSO workers, who know that Pakistani Christians are not treated worse and tend in fact to be less vulnerable than other groups, despite being more vocal. In other words, the reporting clearly had flaws, which could have been avoided by reaching out to more organizations and taking a critical approach to the views expressed by groups with stakes in the issue.

Another way to look at the BBC reporting would be to say that the documentary squarely stands with the refugees, and relays their understanding of the situation. They are the only one appearing on screen, with UNHCR and the Thai government only answering through written messages coming from their public relations departments. The views expressed are distinctively that of the refugees, who see UNHCR as failing them and insist on their persecution as Christians, both in Pakistan and in Thailand. It is hard to blame those stuck in a situation as grim as that faced by urban refugees in Bangkok for having opinions that lack nuance, especially when such opinions serve their cause and make it more likely for their odyssey to have a happy ending. No asylum seeker or refugee in his or her right mind would publicly claim anything but to have fled immediate threat of violence and to be in dire need of help. Groups like Pakistani Christians, with lower recognition rates than others asylum seekers, have a further incentive to use incendiary rhetoric as they have even less to gain from the perpetuation of the status quo. The BBC journalist could have tried to go beyond simply relaying these views, but making reporting less dramatic rarely makes for better ratings. And the piece had no pretense to be anything but shock entertainment.

It is also important to note that despite a few blatant factual mistakes, the BBC documentary did effectively summarize the core points of the refugee issue in Bangkok; the responsibility of the Thai government, the conditions in IDC, including the unnecessary deaths they lead to, and UNHCR’s slow process and incapacity to protect urban refugees. As far as TV documentaries go, it did not grossly misrepresent the situation. It rubbed workers in the field the wrong way, in large part because it bypassed them and at the same time, challenged their work by implying that no one was looking out for the refugees’ interest. But it also provided them with potentially useful tools –

some of the images in the documentary are powerful, in particular the visit of IDC in hidden camera. The focus on a unified figure of the refugee to make Pakistani Christians fleeing religious intolerance into a symbol of urban refugees in Bangkok might lack nuance, but its simplicity allows for greater impact.

CSO workers did not only find that the reporting was tasteless and poorly informed – they felt that the documentary actively endangered their work. For example Gloria, the director of RRC, was concerned that the inflated numbers reported by the journalist might lead the immigration division to conclude that there were more Pakistanis in Thailand than the numbers registered with UNHCR:

[They] say they have 11,000 people but the registration of UNHCR is like 2,000 to 3,000, because they have Ahmadi Christians, and total both is around 4,000. What this implicates is that the government can say ‘See you say that you have 11,000 but UNHCR registered only 2,000 something, so where is the rest? The rest can be criminal; the rest did not come with good intentions because they have no registration’. Because our government already has the mindset that all those who come and overstay are all illegal and are criminals. So it’s really giving a good justification to the government.

She also expressed concern over the use of non-anonymized images of refugees and asylum-seekers, saying that she suspected the BBC of “using some photos without consent, and that is a major concern” – though she did not know whether consent was given and shared no information suggesting it had not. Another issue raised was that the documentary might influence the attitude on bail and that the end of bail was connected to earlier attempts at transgressive advocacy (the reopening of bail was a central concern of CSOs in 2016):

Gloria: Before this BBC I think they [the Pakistani Christian Organization] used to do something like this and that’s why they [IDC management] stopped bail. They stopped bail for Pakistanis.

Researcher: And now is bail open?

Gloria: No, no, closed for everyone except women, children and those with serious medical condition. So you see, it has repercussion on all the refugees.

Researcher: And you think it’s because of the BBC article?

Gloria: I mean it's not... The stop on bail had already started before the advocacy work of the Pakistani Christian, they had that in the past but I didn't follow that. But I think also that it will confirm once again that they will not give the bail to Pakistanis.

These concerns were hypothetical. The reporting did not represent a pivotal point in the policy of the Thai government towards urban refugees or Pakistani Christians, and the most dramatic consequences it could have had according to Gloria did not materialize.

This said, she did not simply invent the fact that the reporting had adverse consequences to justify her disliking of the material. It did have immediate adverse consequences. After it aired, access of visitors and CSOs to IDC was shut down for a few weeks, and only gradually reopened afterward. In the words of Jacques "they have tightened things up" (email exchange, April 2016). It is at that time that the IDC management started to require that all visitors be registered in advance through a fax. The measure was not consistently implemented and was eventually stopped altogether. By June the same year I visited on a weekly basis without prior registration, along with a number of volunteers. The fact that there was an official reaction to the documentary, and that it interfered with the work of a number of CSOs, is the primary reason why the documentary took such a central importance in the discussion of transgressive advocacy. It provided the perfect example of what happened if someone spoke up about refugees: no concrete action or change on the part of the Thai government, except additional obstacles to the jobs of service-delivery CSOs. Hence, in the words of Gloria:

That's why when you speak about public awareness raising we have to be very cautious, when the journalists contact us we say that we can provide the general situation, the challenge that all refugees face. [...] I think we have to be very careful about advocacy through the public awareness [sic].

The way the work of the BBC journalist and the consequences of the piece are discussed among CSOs are not however the sole valid interpretation of the events. As I mentioned, the reporting did not only have flaws. One interviewee, Joshua, working for the Soul Food Collective (SFC) and interviewed in March 2016, said "yeah the BBC did not contact me but if they had, I would have been happy to talk with them" and added that he viewed the media generally in a more positive light: "I'm the guy who talks with everyone. So everyone ends up talking with me" (08/03/2016, Interview with Joshua). With regard to the consequences, a few weeks of limited access to IDC was framed as evidence of the dramatic consequences of transgressive advocacy, but could have equally been framed as evidence of the limited risks involved in speaking out. Of the range of potential

consequences, ranging from raids onto CSOs' offices, visa denials for their workers, mass arrest of their beneficiaries or permanently losing access to them, temporary additional hassles to access IDC was far from the worst that could have happened. The status quo was not threatened by the reprisal, despite the BBC pulling no punches towards the Thai government. In other words, the BBC reporting, which at the beginning of my fieldwork was mentioned during every conversation on advocacy with refugee advocates, did not constitute a credible ultimate cause for the concerns among CSOs regarding transgressive advocacy. The BBC documentary is not the reason why CSOs resist public advocacy, but the fact that it was interpreted as a case against advocacy is significant. It is a sign that there is a general attitude of distrust, or even fear, of transgressive advocacy among CSOs, which leads them to interpret events in a way that systematically overestimates the risks it creates both for them and their beneficiaries. The fear is in fact something that is acknowledged, as shown in my interview with RRC's director, Gloria:

Researcher: Just one thing. Something I've heard a lot, is that whenever an organization starts doing advocacy, something I've heard a lot is that 'we don't do that because we're scared because something will happen to us.'

Gloria: Yes, yes that's what I told.

Researcher: And so, do you have examples of interference or threat of the government on NGOs?

Gloria: No, because I mean people are afraid in general, those providing service. If they are too vocal, the government will stop them or whatever. That's true! That's true, if you do very hardcore advocacy like Pakistani organization do, that is very, how to say, not true advocacy, and it's hardcore advocacy and its impact to the refugee, but if you are able to work properly with the government in advocacy with the government, and I told you earlier I'm not going to do naming and shaming, so if you stick to the human rights principle, you don't just claim blah blah blah [sic]. If you stick to the principles, they cannot do anything. It really depends on your approach. You have to play like a diplomat right? So, so far what I'm doing, I do quite a lot of advocacy in the past 8 months, I never got a threat.

This understanding is dominant among people working with refugees in Bangkok, but is challenged by some. Joshua was quite vocal towards the CSOs' approach to advocacy and fear of publicity during our interview. As I asked about his views on the risks created by transgressive advocacy for CSOs, we had the following exchange:

Researcher: So wait. With many of the organizations I've talked with so far, whether it's [ROP, RRC, APN] or activists' like Nithaya, they all say the same thing: we don't talk with the media because if we do, our recipients pay, we get kicked out, etc. Have you ever seen that happen? I feel like they are all scared of that but I feel like it has never happened.

Joshua: There is a fear in the community, and I don't know where the fear comes from. For the UN you know they kind of have a sensitive footing, but...

Researcher: They [UNHCR] got shut down at some point, no? In the early 2000s the government put their foot down and said 'no more registration of refugees'.

Joshua: The government does what they want anyway. So it's like are you gonna do what you need to do to help people, or are you gonna wait on the government that doesn't want you there anyway? You know, they have to decide what you can and cannot do, and they decide that kind of thing all the time. They play around with who is allowed into the IDC, they don't allow the UN to register any Hmong, Lao Hmong, you know, they can pick and choose in function of their relationships. If there was more of them coming I'm sure they would refuse to register Hmong Vietnamese, because of the bilateral relationship with Vietnam. So they do what they want to do anyway. So to me it's not like they can squat on refugees and not have any repercussions, because there are these human rights things, they are so worried about their rating with the US, and all of this stuff. Anyway, that's the politics of it. But I also see it from the other way like, if your organization doesn't know what is going on, you're gonna die anyway because you're never gonna get the funding you need, and that's true for all of us. [...]

Joshua: Like right now the UN has all this pressure on them, to see people more quickly and all. That should have happened before 2008, before you had 7000 Pakistanis. It should have happened then, it's not like the UN was doing a great job at interviewing and seeing people quickly. What, now it's like 5 or 10 years but before it was already 2 to 3 years. The Chinese guy who was in jail he was resettled in the US, he had been here a total of 5 years. It was bad before, now it's just ridiculous. Part of that for me is that no one cried out enough, at that time, you know, maybe because the population was so small, or the UN was fighting other battles, or perhaps the stage has changed and now refugees are [topical], in terms of what the media is writing about and everything. So yeah the BBC did not contact me but if they had, I would have been happy to talk with them.

The rest of this chapter and the next will be more or less an attempt to answer Joshua's question of where the fear in the community comes from, and also to identify what lead him to have a different perspective in an environment that does not encourage the emergence of such views. I will argue that one can link the attitude of refugees CSOs in Bangkok to specific aspects of the strategy of the Thai government towards urban

refugees, which create an atmosphere conducive to unreasonable fears and hopes, and that specific characteristics of the CSOs themselves, related particularly to their human resource strategies, hinder their capacity to understand the approach of the Thai government. The result, I will argue, is a lack of credible challenge to the current Thai refugee management system despite the fact that it is unsustainable. The current trajectory would see the IDC eventually filling up, incapable to meet even basic human rights standards not to mention international obligations. People keep silent, even those that one would expect most likely to speak up.

### ***The Effectiveness Argument***

There are reasons to doubt that the narrative mobilizing the BBC documentary as proof of the risks and lack of impact of transgressive advocacy should not be taken at face value. It is also worth discussing the opposite argument, that non-transgressive or contained advocacy is effective. If contained advocacy can be shown to be the best approach in the current situation, the clear way to obtain results faster, then why CSOs have not relied on transgressive advocacy is not much of a mystery. A critical assessment of the effectiveness of the strategy of contained advocacy shows that there is no reason to believe that it is clearly superior to all available alternatives.

Assessing the effectiveness of the dominant advocacy strategy among Bangkok CSOs can be done by asking “how much has the situation of urban refugees in Bangkok improved since the problem emerged in the early 2000s?” The short answer is that very little has changed in nearly 20 years with regard to urban refugees. In fact, that statement can be generalized to the situation of refugees overall in Thailand. For example, Rogge (1986) wrote:

Thailand's reaction to the flood of refugees has ranged from reluctant acceptance of the problem to outright hostility to suggestions that it could do more for the refugees. [...] Thailand has periodically acted in a manner which observers have suggested as being inconsistent with its declared 'humanitarian' position: it has towed Vietnamese 'boat people' back out to sea; [...] and has instituted a policy of 'humane deterrence', where all newly arriving refugees are interned in austere, prison-like holding camps. (Rogge, 1986, p.2-3)

This statement rings true for the situation in the last decade, even though it was written more than thirty years ago. Little then seems to have changed, except that Vietnamese boats have been replaced by that of Rohingyas. With regard to urban refugees, the earliest source assessing their situation seems to be a review of the protection gaps

for urban refugees in Thailand published by UNHCR in 2006 (UNHCR, 2006). A year later Vera den Otter, an officer for JRS, wrote an article that was published in the Forced Migration Review (den Otter, 2007). These two documents provide sufficient insights on the situation of urban refugees thirteen years ago to create a baseline from which to assess whether progress has been made. Here are a few extracts of the executive summary of UNHCR's review:

#### Legal and Administrative Frameworks

While Thailand has ratified a number of important international human rights instruments, and incorporated these into domestic law, it is not a party to the 1951 Refugee Convention or its 1967 Protocol. As such, refugees and asylum seekers are considered illegal immigrants, permitted to remain in Thailand with executive discretion. This has been exercised in favour of the temporary stay of approximately 140,000 Myanmar refugees who are registered and reside in one of nine closed camps along the Thai Myanmar border. An unverified number of refugees, by some estimates amounting to approximately 200,000, reside in Thailand and are not distinguished from other illegal aliens. They are therefore at risk of arrest and deportation. [...]

#### Registration

Registration for Myanmar refugees in the nine camps is conducted jointly by UNHCR and the RTG [Royal Thai Government]. The Provincial Admissions Boards which were re-established in 2005 and determine admissibility into the camps of Myanmar nationals in need of protection have commenced yet there remains a significant backlog of cases in need of assessment.

There is no official RTG registration or screening mechanism for non-Myanmar asylum seekers and refugees. UNHCR carries out registration and RSD for non-Myanmar nationals in Bangkok and issues documents, but these are not always respected by the RTG.

#### Risks to Security from Violence and Exploitation

Refugees and asylum seekers in urban areas, because of their deemed illegal status, lead a precarious existence marked by the risk of exploitation/abuse, arrest, detention and deportation. (UNHCR, 2006, p.4-6)

The den Otter's article in the Force Migration Review reads as follow:

While Thailand provides a certain degree of protection for most refugees and asylum seekers, their lives are far from easy. Thailand is not a signatory to the 1951 Refugee

Convention nor to the 1967 Protocol. Asylum seekers and urban refugees are under constant threat of arrest and detention. Urban refugees do not have the right to work; although some (mainly Asian) refugees manage to obtain jobs, those from Africa find it more or less impossible. Accommodation is usually overcrowded, increasing the risk of sexual and gender-based violence as many unrelated women and men often share one room. Refugees' diets consist mainly of rice, with little protein-rich nutrition. For the majority of urban refugees in Thailand, the only durable solution is resettlement to a third country. Thailand does not allow refugees to locally integrate and is not likely to change this policy. Resettlement, though, is often a long-term process, and many refugees in Thailand spend years in a legal limbo. (p.50)

More than a decade after both documents were published, the challenges have not changed. As described in Part I, urban refugees in Thailand are still not recognized by the state, most are forced to remain in the country without visa and they do not have the right to access health and social services. Detention and deportation are both common occurrences, and so is abuse and exploitation, including by Thai officials. Establishing whether the average living standard has changed would require systematic surveying, but the type of conditions described by den Otter, both in terms of overcrowding, risk of domestic abuse and sub-standard diet, are as current a problem as they were then.

Regarding the condition in IDC, the improvement of which has been a major battle of several groups for a decade, little has been published beside a report by Human Rights Watch titled *Ad Hoc and Inadequate - Thailand's treatment of Refugees and Asylum Seekers* (Frelick and Saltsman, 2012). It describes the condition in Bangkok's IDC as follows:

Human Rights Watch met a Nepalese refugee in the IDC who had been detained for three years and nine months. Although UNHCR recognized him as a refugee, he said, 'UNHCR is very slow.' The man commented on his long confinement:

'The Bible talks about hell. This is one part of hell. Why am I here? UNHCR says we are under the Thai government. If under them, why do they not open the door? I am in a 55 foot room, 40 feet wide with 80 people in the room, sometimes 150 people, three toilets. Always there are problems. There are six or seven different nationalities in the room. If you get in a fight, the police don't do anything [to protect you]. If you don't follow the rules, you get handcuffed, one week, two weeks. I wrote a letter to the commander asking to go to another room. He never heard my plea [...].'

Human Rights Watch also met a Somali refugee who had been detained for two years and eight months. His wife was detained in the women's section of the IDC. They have two children. He keeps the three-year-old boy with him and the child of less than two years



stays with his mother. The man expressed particular concern about the impact of detention on his children:

‘The room has 50 occupants at the moment, most of whom are smokers. The conditions are not hygienic for the boy. The room is hot and dirty which has caused the boy to be sick frequently. The diet for the boy consists of the same rice that everybody else eats. He needs fruits which are neither provided nor available for purchase. He bathes in the same water as the rest of us in the room and sometimes there is no water at all. It is absolutely difficult for a boy of three years old to grow up amidst 50 plus grown-up men in a locked room and only allowed to go out for a short period of less than two hours in the sunshine after three days.’

The overall picture painted by the report has remained very much unchanged. IDC is still overcrowded, the cells are insalubrious, fights are frequent and children are detained alongside adults. Some changes seem to have taken place since 2012. Funded by IOM, a daycare center has opened in IDC, so detainees younger than 16 spend most of the day outside of the cells. Two other claims about the conditions in IDC are made in the HRW report: that sexual abuse and prostitution are rampant, and that detainees are denied the access to phones. I have not heard reports of widespread sexual abuse or prostitution, and though the absence of proof does not constitute a proof of absence, I am reasonably confident that if this type of issue had been as rampant as described in the report by the time of my fieldwork, at least some of the refugees and CSO officers would have mentioned it. Regarding access to phones, beside the mobile phones that are smuggled into the cells, detainees are allowed to make calls at specific hours every day. The opening of the daycare, the curbing of sexual exploitation and, to a lesser extent, the access to phones all constitute improvements with regard to the condition in IDC. The other major change from the situation described in the report is the moratorium on bail that has been enforced since 2016, which represents a major step backward.

The cancellation of bail is an especially visible failure of backdoor advocacy in Thailand. Mid-2016, when I interviewed UNHCR’s protection officer and the director of RRC, it had been a few months since bail for men in IDC had ended, and there were signs that it would soon to be entirely closed for women as well. Both interviewees treated the new policy as a temporary setback after the Erawan attacks. Until the end of 2016, during each of my visits to the detention center detainees would update me on the progress towards the return of bail. Each time, a rumor circulated that a new deadline had been set. First it was after the new head of the immigration division would take office, then after the new director of IDC had been nominated, then two weeks following their nomination

to give them time to grasp the issue, then in a month because it is after all a big decision, then the king passed away and it made sense that detainees would have to wait for the end of the official mourning period of one month, then the end of the unofficial mourning period of 3 months. It is important to recall that the end of bail is a discretionary policy, the very type that should be efficiently addressed through backdoor lobbying, as it requires no vote, no official declaration, just for the right few people to change their minds. It is also one of the policies that did the most direct harm to refugees, digging deep into their morale, and had ramifications for the operation of CSOs who had invested extensively in facilitating the bailing process. Obtaining someone's release on bail had been one of the few spaces where activists could feel like they made a tangible impact, reuniting families and saving lives. The fact that despite all this, the cancellation of bail stands three years after its introduction strongly suggests that backdoor advocacy is not nearly as valuable as CSOs believe it to be.

Looking backward to assess the impact of advocacy by CSOs and UNHCR since the emergence of the refugee problem in Bangkok, one can see why the dominance of contained advocacy, and the fear among CSOs of departing from that strategy, requires an explanation. Its impact over thirteen years has not been enough to improve conditions for urban refugees; in fact, the conditions may have deteriorated. There has been no drastic change regarding the legal standing of refugees and asylum seekers in Thailand nor in the overall attitude of the Thai government towards them – as the reaction to the arrival of Rohingya boats made clear since 2017<sup>53</sup>. The living conditions of refugees appear to be just as challenging, with refugees being blocked from most income generating activities and hence forced to live in insalubrious housing, vulnerable to exploitation and struggling to make ends meet. The amount of support that could be obtained by refugees has in fact declined, as the sudden arrivals after 2012 have led many organizations to scale down the range of services they provide. The same mass arrivals also lengthened the RSD and resettlement processes, while the number of resettlement slots decreased. Hence for the vast majority of urban refugees outside of detention, if anything has changed at all in thirteen years it has been for the worse.

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<sup>53</sup> See the Human Rights Watch press release on the question, published in the Bangkok Post: PHASUK, S. 2017. *Thailand Needs to Stop Inhumane Navy 'Push-Backs'*, Bangkok, *Bangkok Post*, 22/09/2017, available at: <https://www.hrw.org/news/2017/09/22/thailand-needs-stop-inhumane-navy-push-backs>

The picture is somewhat more nuanced with regard to the conditions in IDC. Some progresses have been made. The overcrowding of the cells has if anything worsened, but children are less exposed to it thanks to the daycare center. The sexual exploitation of female detainees seems to have significantly receded, at least enough that it is not talked about by refugee advocates. However, these improvements are undercut by a major step back, the end of large-scale access to bail, which means that detainees are overall spending more time in detention. Just as importantly, the overall situation in IDC has not changed. The center is still very far from meeting any sort of human rights standard and still allows for indefinite detention.

Though it would be unfair to the advocacy efforts by CSOs to say that it has led nowhere, it is clear that there has been no major breakthrough, and that the improvements that have taken place have only had an impact on the small minority of urban refugees that pass through detention. Hence one would think organizations mandated to look after refugees and fight for their rights would have at least experimented with different approaches to advocacy. As demonstrated above, this has not been the case.

The preservation of this status quo is unambiguously in the interest of the Thai state. When transgressive advocacy has the potential to embarrass the authorities, both on the national and international stage, contained advocacy gives the initiative to the state. Officers are able to easily choose when to resist and when to give in, can more easily set the terms of the discussion and, as long as the other party does not leave the table and change its advocacy strategy, there is no cost for stalling. This is not to say that the approach cannot be efficient; stakeholders will in most contexts be more willing to engage with non-transgressive groups. Moreover, how much pressure transgressive advocacy can really create depends on a number of factors, including how receptive to it the public is and how much the government really needs public support, and some of these factors might arguably not be favorable to a public advocacy campaign in Thailand. However, all these arguments considered, the point is that the state has a stake in maintaining the status quo, while CSOs do not, and neither do refugees.

## ***Chapter 8 – The Imaginary Shackle***

The strategies of CSOs working with urban refugees in Thailand are shaped by a number of policies deployed by the Thai state. These strategies have led to an environment conducive to the primacy of service delivery over advocacy, and within advocacy the primacy of contained advocacy over transgressive advocacy. This chapter will look sequentially to the policies of the Thai state resulting in negative incentives, i.e. sanction for behaviors falling outside boundaries set by state agents, and then to the policies resulting in positive incentives, i.e. rewards or the promise of rewards for collaboration. It will argue that though the state has access to a wide range of repressive tools to contain contention that it could deploy against CSOs working with urban refugees, these CSOs are in fact relatively sheltered from repression – but too often fail to perceive that reality, because positive incentives for collaboration put in place by the government keeps them hopeful that the system is about to change. Finally, the last section of this chapter will stress why CSO workers have been unable to go against the state’s contention strategies, and systematically overestimate the risks they would run by speaking out.

In Tarrow and Tilly’s term, the Thai state is directly and indirectly shaping the repertoire of contention of CSOs in Bangkok. I will argue that like most of the policy towards refugee issues in Thailand, the strategy of the Thai state towards refugee CSOs is not a grand scheme designed by a central figure or department, but an amalgamation of singular decisions that have coalesced into something CSOs perceive as a designed system. Some parts, such as Thailand’s visa policy towards non-profit organizations, appear to be intentional policies while others, like raids targeting refugees, are clearly the result of a lack of intentionality and absence of coordination across administrations, evident in their random rhythm.

### ***The Stick and the Carrot***

CSOs operating in Thailand operate in an uncertain environment. Since the early 2000s Thailand has alternated between elected governments, all related to the political family launched by Thaksin Shinawatra, and military governments or military-appointed governments. The government in place in 2019, at the time of writing, had come to power through a coup d’état in May 2014, during which the Commander in Chief of the army took power and appointed himself Prime Minister. The junta was then re-confirmed into that role through elections in 2019, though after transforming the electoral system as to

ensure a favorable outcome and gagging the opposition throughout the campaign. Thailand is a hybrid regime where popular legitimacy and the rule of law are not irrelevant, but neither are they the supreme arbiters of political life – the running of affairs in the country is influenced by powerful coalitions operating away from public scrutiny and most forms of democratic accountability (Mérieau, 2016). This affects the way the Thai government handles dissenting voices within the country. The state does attempt to shut down contention, and has the capacity to use wide-ranging repressive powers, but it is concerned with maintaining the appearance of respectability with regard to its international and domestic image. The tension within the state between the capacity for overt repression and the will not to appear too repressive forces CSOs, including those working with refugees, to tread carefully.

The Thai state does not welcome overt criticism, and has access to a number of tools to keep individuals and organizations in the country from engaging in any form of transgressive contention. That these tools are available to the state does not mean that they are being systematically deployed. When it comes to CSOs working with urban refugees, they are in fact not routinely targeted by the state's repressive apparatus. But the potential of retaliation, i.e. the fact that these tools exist, creates something to fear for CSOs and forces them to hedge their bets when they consider engaging in activities going against the expressed preferences of the state. This section will discuss both direct and indirect retaliation, and discuss why the latter has the potential to be particularly efficient against CSOs working with urban refugees.

### ***Direct Retaliation***

One particular tool available to the state to keep CSOs under control while maintaining some air of liberal political life can be found in Thailand's immigration policy. The employment of foreigners by non-profit organizations in the country is strictly regulated. Organizations registered in Thailand need their foreign employees to apply for the extension of their visa every three months. The extension procedure is complex and opaque, and a hard cap is placed on the number of foreigners that can work in any given organization. Many organizations in the non-profit sector in Thailand rely extensively on foreign workforce, often rotating between countries every few years. This is especially true of the organizations working with urban refugees, and all of the largest ones (AAT, BPSOS, JRS, COERR) have more foreign than Thai employees, and are therefore dependent on a foreign workforce for their routine operation.

In practice, a lot of non-profit organizations in Thailand have more foreign employees than they are allowed to have; either because their quotas are not enough to meet their needs or because they could not jump through all the hoops necessary to obtain quotas in the first place. They obtain visas for their workers through various means, all of which violate immigration law. Little effort is made from the Thai administration to prevent such situations from occurring. Obtaining a long-term visa in Thailand is not hard, especially for white Westerners with funds to spare. No questions are raised when thirty-year-old Australians apply for their third education visa in a row to study at a Thai language school while not being able to put a sentence in Thai together, or when a twenty-seven-year-old starts his second year as an unpaid volunteer in an NGO. This lack of scrutiny is not surprising – strict enforcement of immigration law, as was discussed earlier, is more the exception than the rule in most countries. In Thailand, with regard to the non-profit sector, it serves a clear purpose. By allowing for the routine violation of immigration law, the administration ensures it has leverage over most non-profits – in a way that is reminiscent of how unskilled Burmese, Laotian and Cambodian workers are controlled by making it hard for them to migrate legally. CSOs are scared because they know that their illegal foreign workforce makes them vulnerable to close scrutiny. Enforcement is rare but effective at reminding everyone in the sector of what can happen. At least one organization working on urban refugee issues was visited by immigration officers in 2017, and one worker was expelled for violating the terms of his visa.

Immigration law is one way the Thai government can maintain pressure on CSOs in general, and those working with urban refugees in particular. This use of immigration law is intentional: the rules regarding the employment of foreigners are specifically stricter and more opaque for non-profit than for-profit organizations. CSOs are reminded, through frequent trips to the immigration department and nearly as frequent additional back and forth to add impromptu paperwork to their application, that they are vulnerable, that applications can be rejected and offices can be raided. This manufactured vulnerability ensures that the state will have a legal and somewhat legitimate tool with which to crack down on CSOs if needs be, or to silence a particularly vocal activist. This tool has hardly been used in the years preceding my fieldwork. In part, this reflects the fact that little transgressive advocacy has taken place at all, giving little cause for concern to the authorities, and that other tools have proved sufficient. But the fact that any raid at all took place, and one did, suffices to remind all those involved of the risk they run were the goodwill of a few officials evaporates.

Even if hidden under the guise of violation of immigration law, using repressive tools against foreigners, in particular Westerners, is both costly and ineffective for the state. Costly, for it carries the risk of reputational damage. Ineffective, because Western activists are often resilient enough not to be deterred or silenced by low-intensity official harassment, and any ramping up of repression increases the risk of bad press. In other words, various branches of government have repressive tools they could use against foreign activists, but also have an incentive not to do so unless cornered.

The Thai government is careful not to upset its relationship with foreign donors and investors, and is therefore sensitive to pressure from Western governments when it comes to the treatment of their nationals. Beside the immigration-related issues described above, arrests of activists are not unheard of, but they remain exceptional events that do not escalate beyond a few hours at a police station.<sup>54</sup> This applies to people working with refugees: I only heard of one instance of police intimidation targeting an employee of a refugee CSO, which led to the employee being taken into custody and released after a few hours.<sup>55</sup> This arrest and the immigration raid, unlike the aftermath of the BBC documentary, did not become cautionary tales told among CSO circles. When asking CSO workers about their experience with the authorities, none showed any sign of being worried for their personal safety. During my fieldwork, I did not encounter anything suggesting that they really should be. Workers know that their immigration status could get them in trouble, but also that they would be shielded from the worst consequences.

It is important here to insist on the distinction between foreign and national activists, and between foreigners who come from diplomatically powerful countries and those who do not. Cambodian, Vietnamese or Laotian activists are unlikely to draw much protection from being foreigners. Thais, for their part, appear to be fair game when it comes to the use of blunt instruments of repression. It is dangerous to be a Thai activist in Thailand.<sup>56</sup> However, the refugee issue is low-profile and low-stakes enough, at least for the state, that even more vulnerable refugee activists are not routinely targeted.

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<sup>54</sup> This is however not true of all sphere of activism or political expression. In particular, foreigners are not protected from the consequences of breaking *lèse-majesté* laws.

<sup>55</sup> I was asked not to share details on the event because of concerns over confidentiality.

<sup>56</sup> Political repression has been ongoing since the coup, and activists working on certain issues, in particular land rights, face extreme violence in relative indifference (Pasuk, 2018, Mydans, 2016).

### ***Indirect Retaliation***

The possibility of direct attacks on CSOs exists, but because it would require the targeting of foreigners by Thai officers, it is not a handy tool for routine control. Throughout the chain of command in both the police and immigration division there exists incentives not to make too many waves, as would be created by the routine expulsion of Western activists. Yet the fear of government retaliation among CSOs is present because while their staff are “hard” targets that can resist intimidation, their beneficiaries are not. In fact, their beneficiaries are a textbook case of a soft target for official harassment. CSO workers are aware of that fact, and the strategies they follow are influenced by the fear that they would expose others to retaliation.

Activists fear that instead of targeting them directly, the Thai administration would target refugees and asylum seekers. In the context of refugee work, these indirect attacks would be an effective way for the authorities to keep people scared and collaborative without running the risk of facing major backlashes. The police and the immigration department are empowered to put in detention any foreigner found without a valid visa, which includes nearly all urban refugees in Thailand. More importantly, refugees and asylum seekers by definition are not defended by the diplomatic representatives of their countries of origin, who if anything, are happy to see people claiming to be persecuted by their governments treated as undocumented migrants. Besides, the arrest of urban refugees is a routine event that carries no additional risk for enforcers and requires no particular authorization from high up in the chain of command.

The targeting of urban refugees by law enforcement officials does not create the need for systematic justification. Hence, it can be difficult to prove that there is a causal link between a given series of arrests and a specific CSO action, leaving them in the dark regarding whether or not they stepped over the line. Clear-cut examples of retaliation are few; during my fieldwork I came across only three.

The first and second cases were mentioned earlier. The first one occurred after a CSO voiced complains around 2014 against the resident nurse in IDC. One employee of APN, who was posted in IDC at the time, accused the nurse of providing inadequate care and endangering the life of detainees. Soon after the issue was raised, the right of the employee to work inside of IDC was cancelled, and immigration officers raided the street in front of the CSO’s office where their beneficiaries were queuing for their appointments. The second one took place in the aftermath of the release of the BBC documentary. IDC visitors were not arrested or harassed, but the administrators of IDC used their



discretionary powers to block visits. Visitors were unable to bring in the supplies that allow detainees to make their detention more bearable. Putting visits on hold for a few weeks, and then limiting the total number of visitors who were allowed in, led to the deterioration of the conditions in the cells for a few months. The third case was shared with me by a refugee who had been released on bail. He told me that after being bailed out, he had been invited by a CSO to speak at a conference, where he talked in particular about the conditions in IDC. Someone in the immigration division heard of the event, and the name of the refugee who had addressed the participants was mentioned in a newsletter sent by the organizers. During his next visit to IDC, where he had to report twice a week while on bail, he was threatened with the revocation of his bail if he ever were to speak at a public event again. In each of these cases, foreign activists were left alone while urban refugees were targeted.

The understanding of indirect retaliation however goes beyond cases where there is a clear connection between specific behaviors by an individual or an organization and a specific retaliation from the authorities most directly confronted by the behavior. What CSOs are concerned about is not so much a tit-for-tat attitude of the police and the immigration division, but that overt transgressive strategies targeting any segment of the Thai state would lead all the enforcement agencies to take an overall more repressive stance. What scare CSOs the most is not individual bouts of repression, but the possibility of an overall switch in the attitude of the Thai state towards refugees and asylum seekers. Such a switch could lead, for example, to the systematic and active targeting of refugees and asylum seekers for placement in IDC.<sup>57</sup> The effectiveness of indirect retaliation relies on the sense CSO workers have that if they upset enforcing agencies or groups within the Thai state with influence over enforcing agencies, these agencies will then arrest more refugees overall. And just as CSO staff appear not to be concerned with becoming targets for the enforcement agencies, they are aware that nothing stands between the Thai police, the immigration division, and urban refugees.

I had the following exchange with Gloria, the director of RRC, during an interview on the 07/04/2016:

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<sup>57</sup> As will be discussed later, where the current stance of the authorities is located on a spectrum between systematic leniency and systematic repression is an open question, and so is the capacity of CSOs to pass informed judgment on the matter.

Gloria: They don't want to arrest right? And we do the best already from whatever capacity they have, I think with the immigration officer we have to build a good relationship with them because we still need to... How to say? We don't want to make them mad, that they treat badly the refugees, but that's why we found that we have to work above them for policy or whatever.

And later in the same interview:

I have to say that according to the law, all these 9,000 people should be arrested, but the police doesn't because of the space and these things. So normally... I mean we have to say that arrests is not strange, it's normal, because as illegal people it is something [they have to do].

CSO workers are acutely aware of the vulnerability of refugees to enforcement agencies, and of the fact that stricter enforcement would take very little effort. In other words, anything could lead to more arrests. There would be no need to justify the surge, and there would be little to no cost for the bureaucrats overseeing the arrests. In the mind of refugee activists, the only way to limit the number of arrests and the level of repression faced by urban refugees is to keep a low-enough profile so that the issue stays at the bottom of the enforcers' list of priorities.

### ***The Effectiveness of Indirect Retaliations***

The causal mechanism underlying the effectiveness of indirect retaliation as a tool of control of CSOs in Bangkok is not self-evident. As mentioned earlier, CSOs are vulnerable to official harassment and are dependent on the goodwill of the police and the immigration division, either of which could send officers to their doorsteps and run them out of business. However, the arrest of refugees on the other side of town, whether they are beneficiaries or not, does not affect the CSOs' operations. In fact, I have often encountered the view among CSO workers that the Thai refugee management system was inherently unsustainable because it was reliant on putting an ever-increasing number of people in a detention facility with finite capacity, leading to the conclusion that rising numbers of arrests would bring the system into a crisis and force reform to take place. Looking at CSOs as organizations, the arrest of a number of their beneficiaries is not a vital threat to their operation and could possibly have a positive impact over their long-term objectives by putting additional strain onto an unsustainable system. Such cynical thinking, however, could not be further away from what one actually observes among CSO workers, and it is with them as individuals rather than with the CSOs as organizations that lays the cause of the effectiveness of indirect retaliations.

The fear of indirect retaliation silences activists, because it strikes at their main motivation to work with CSOs in the first place: improving the condition of their beneficiaries. Among the broader public, one often encounters the belief that all NGO and charity workers are heroic and self-sacrificial figures. I have tried to stay clear of this idea throughout my work, in part because extensive contact with the non-profit world quickly undermines the idea that people working in that sector would be somehow wired differently from everyone else. In fact, as I will argue later in this chapter, the assumption that the privilege of engaging in CSO work is a reward in itself is the cause of a number of issues with refugee CSOs in Bangkok, because it shifts focus away from people's working conditions. However, in the case of the CSO workers and volunteers I have met throughout my fieldwork, one could not escape the sense that they did what they did because they cared, and were sincerely scared that their action might ever cause harm to their beneficiaries or other refugees.

Evidence that CSO workers and volunteers in Bangkok care about the broader goal of helping refugees can be seen in the way many go above and beyond their role and let their work extend into their personal lives. One volunteer lawyer working for RRC, who I shared accommodation with during a few weeks in the last quarter of 2014, called me and the other people living in our flat one night to ask us whether we could host a family from Pakistan for a week or two as they were about to be evicted. One of the members of that family was a client of hers and they had nowhere to go. Another lawyer working for RRC, Angelica, staged a sit in in front of IDC to obtain that her client be given access to injectable insulin as he was going into diabetic shock, as mentioned in chapter four. Another RRC officer organized a fundraising campaign to pay for the funeral of one of her client's parents. Many CSO workers would admit if pushed on the question that they have regularly provided financial assistance to some of their beneficiaries, which often goes against the code of conduct of their organizations. The level of emotional involvement of workers must also be noted. During my fieldwork I saw two different lawyers working for RRC breakdown in tears over the situation faced by specific clients.

The level of empathy one finds among CSO workers in Bangkok is not inherent to their field of work; one does not find the same level of empathy and commitment among all UNHCR staff for example. It can be explained by three factors present in refugee CSOs in Bangkok: the alignment of goals between CSOs and their beneficiaries, the type of task assigned to CSO workers and the way the workforce of CSOs is selected.

The alignment of goals between CSOs and their beneficiaries comes from the fact that service-oriented CSOs, like the ones operating in Bangkok, have objectives that put them in a non-adversarial situation vis-à-vis their beneficiaries. CSOs want to deliver services to as many of their beneficiaries as they can, as delivering these services is what keeps them relevant and funded. Refugees, as a group and as individuals, want CSOs to deliver as much services as possible. This of course does not mean that no tension can exist between refugees and service providers, especially in Bangkok where supply is dwarfed by demand. Individual refugees have an incentive to use deception to obtain more than their share, and in inherently unequal relationships like the one that exists between CSO workers and their beneficiaries, one should not expect beneficiaries to be exemplary but instead to use whatever means they have to improve their situation; including lies, call to emotion and the whole range of the “weapons of the weak” (Scott, 1985). In fact, CSO workers do often express that they find many refugees untrustworthy. During my fieldwork at RRC, I witnessed an animated conversation between two officers regarding a fistfight between two refugees after one accused the other of giving him a fake queue number. The officers shared that refugees arriving late to the CSO office, finding a long line, would often tell others ahead of them in the queue that they could not queue unless they already had an appointment, as to get them to leave. The officers expressed their frustration at such a behavior, which they said made the situation harder for everyone. During my time volunteering as a visitor in IDC, I often encountered complains that detainees or their relatives tried to secure more frequent visits by lying about how often they did receive visitors, or that detainees were requesting certain items only to then sell them to other detainees. My personal experience as an IDC visitor also placed me on the receiving end of manipulation and deception, with detainees trying to get more than their share of visits.

Tensions do exist between CSO workers and refugees. However, these tensions are of a different nature than the ones that occur between UNHCR and refugees. They have to do with the allocation of scarce resources rather than with the core of the organization’s mandate; and the majority of interactions between CSO workers and refugees are straightforward and devoid of malice and deception. The difference is that at its core, UNHCR is tasked with establishing the credibility of asylum claims, which requires UNHCR officers to be critical of what asylum seekers tell them. The same does not happen with CSOs, which do not have to take a stand on the truthfulness of those they serve. Many workers, especially among the lawyers who provide legal assistance in AAT or BPSOS, openly state that they are not interested in finding out whether their clients are truthful

or not, but only to give them the tools to best argue their case. A similar attitude can be found among IDC visitors, which usually take at face value anything refugees say about the conditions in detention as well as their experience of persecution. This baseline trust allows for CSOs to be much closer to urban refugees than if their mandate required them to be suspicious and guarded. At an organizational level, the goals of CSOs are not at odds with that of individual urban refugees in Bangkok. This removes a significant barrier to the development of empathy between CSO workers and refugees, though does not in itself explain the existence of the level of empathy found in practice.

That an organization and a group are objective allies does not mean that individuals belonging to either will care, at a personal and emotional level, about one another. That brings us to the second factor, the type of tasks assigned to CSO workers. Most of the work of the main refugee CSOs in Bangkok such as AAT, BPSOS and JRS consists of some form of counseling, either legal or psychosocial. The individualized nature of these services is the central factor that explains the emotional connection that CSO workers feel towards refugees. Counseling and IDC visits mobilize a significant share of the people working with urban refugees in Bangkok, and they both create repeated opportunities for long face-to-face interactions. This is the source of both the workers' concern with the immediate wellbeing of their beneficiaries and the organization's vulnerability to indirect retaliation. To put it simply, it is hard for workers to hear about a police or immigration raid and to think of it as just one more statistic, because they can immediately conjure images of those arrested or some who could have been, and know that behind each of these numbers is a family being pulled apart or a child being sent to a decrepit cell. They know that because they meet all day long with people to whom such things have happened, who tell them how they felt about it and describe the effects it had on their lives. Empathy is further reinforced by the nature of the refugee issue. Refugees are different from most other publics. By definition, each refugee has a story of victimization. This story is their key to a new life if it is accepted by UNHCR, and therefore it becomes a core constituent of a refugee's identity in Thailand. It often takes a central importance in their relationship with CSOs and other organizations in Bangkok. These stories help ensure that refugees are perceived as deserving victims, who have been through enough and should be spared further suffering in the eyes of people working with and for them.

One last factor makes CSO workers vulnerable to the emotional blackmail of indirect retaliation: the nature of the labor force in these organizations. Only people with a specific profile are likely to join refugee CSOs in Bangkok. No urban refugee CSO offers salaries or working conditions that are even close to competitive with what the private sector, large

non-profit organizations such as UN agencies, or major NGOs like Save the Children, PLAN or Médecins Sans Frontière offer to people with the same level of qualifications. Since most of the CSOs in Bangkok are small organizations, there are limited opportunities for workers to progress in their careers within the organizations; and since the wages offered are not much more competitive at management level, the material incentives to stay within the organization rather than move to another one are limited. While the salaries are low and opportunities for growth limited, workload in refugee CSOs is high because there are many more refugees in need than any of these organizations can provide for; in other words, there is always more one could do. The combination of high workload, poor pay and limited career opportunity creates a work environment that selects for a certain type of workers. What makes certain people leave and others stay, beside their capacity to manage their finances, is their conviction in the organizations' goals, and a form of commitment to a cause. The work environment in the refugee CSOs in Bangkok, as I will discuss later in this chapter, has a number of implications for their operations, which are not all positive. It does however select for workers who are committed to their work and not cynical towards the populations they serve; people with a different outlook on their careers or lives are quickly weeded out.

In a different context, the minute details of the functioning of CSOs, the psychological impact of refugee work, or the motivations of workers might not be relevant to understand them as organizations. The inclinations and experiences of the lowest rung of implementers are not typically able to feed into the larger strategic orientations of organizations. The way they feel when they go to work does not always make a difference to their management. Refugee CSOs in Bangkok however are not large organizations, where a clear line could be drawn between the individuals constituting the organizations and the organization as a whole. Refugee CSOs employ a couple dozen individuals at most. This in itself makes each of the employees and volunteers important to the overall functioning of their organizations. They share offices with their management and have flat organizational structures that allows for each individual experience to shape the functioning of the whole organization. As a result, the fact that CSO workers care about their beneficiaries is of central importance in the strategies developed by these organizations, to the point where whistleblowers are scared to blow the whistle for they might endanger people they care about.

CSOs are kept vulnerable to direct retaliation by Thai immigration law, even though it appears that it is not a tool routinely used by the state. In part, because cracking down on CSOs involved reputational risks for the state, and in part because it might not be an

efficient mean to silence foreign activists. Indirect retaliation avoids some of these drawbacks. Agents of the state can easily target urban refugees and risk minimal backlash. I encountered few instances of indirect retaliation being used. However, it is a concern for CSOs, especially in its more diffuse form, where their beneficiaries might not be targeted immediately in response to an incident, but rather police and immigration agents might start to take a more aggressive stance towards urban refugees, leading to a surplus of arrests. These type of indirect retaliation concerns the employees and volunteers working for CSOs because through the nature of their work, they build empathy with urban refugees and commitment to their cause.

### ***The Carrot***

In Bangkok, the fear of retaliation combines with more positive incentives to ensure the collaboration of CSOs. These incentives help explain why refugee advocates dedicated to their cause are nevertheless ready to rationalize not speaking up against abuse. They are willing to argue not only that keeping quiet is a way to limit the scale of future abuse to urban refugees, but also that it can bring change. The current status quo is perpetuated by the willingness of Thai officials to promise that change is around the corner, if only CSOs could let things run their course and not make any waves. Promises made and repeated by government representatives remove incentives for advocates to jeopardize channels of dialogue by speaking out. It also gives an incentive for CSOs to police one another, as any of them crossing the line could cancel out all progresses made.

First, it is important to recall the remarkable stability of the Thai state's management of urban refugees. As discussed earlier in this chapter, little change has taken place between 2006 and 2019, and whatever improvements have taken place are either marginal, such as better access to phones in IDC, or have been counterbalanced by negative changes, such as the cancellation of bail. A long history of stability in any system should lead observers to assume that the system in question is able to resist reform at least to an extent, and is unlikely to disappear unless faced with novel challenges. However, I did not encounter much during my fieldwork the idea that the approach of the Thai state to urban refugees was unlikely to change in the near future. There is a sense among refugee advocates, including UNHCR, that change is in fact likely to come soon, that reforms are on the way, and that they will bring significant improvement. During my interview with Gloria on the 07/04/2016, eight months after her appointment as director of RRC, we had the following exchange:

Researcher: After eight months, would you say you are hopeful?

Gloria: Ya, ya ya ya, I think I am hopeful. We see the progress, I mentioned the visibility of the urban refugee issue, even with the Rohingya issue as well, we see our Prime Minister, military Prime Minister, when he came back from the US he also said something like the government need to respond on the refugee issue because we have so many pressures on the Rohingya issue, even if it's not urban refugees it's related. So we heard rumors that the government is gonna work on a revision of the framework of managing refugee.

The UNCHR protection officer expressed similar views on the 19/01/2016:

The protection situation in Thailand might be on its way to betterment. I say that because of informal talks, and also some of the statements they made. Even top generals say things that are going in the right direction.

And so did Sofia, working for ROP, on the 23/01/2016:

Sofia: [...] So that's what we try to do you know, we try to connect people to each other. Thailand had a law, that was supposed to go to parliament, before the coup, and people had started to gather signatures. Because the law back then was that if you had 10,000 signatures or something the parliament had to look at it. But since we have a 'strange' government now, it's not on the table. And now they are trying to change the immigration laws. It's a first step, to change a specific article in the immigration law to give some status to refugees.

What makes people in the community hopeful is the ongoing dialogue between their organizations and government officials, a dialogue that they highly value and are worried to jeopardize. Government officials attend meetings organized by refugee advocates, come listen to groups discussing alternative models of refugee management, in particular the end of systematic detention or talks about community integration. These officials typically have kind words for the presenters, and give the impression that the message is being heard. Those sent to attend such meetings however are typically not senior officers, are generally not representative of other members of their administration, and have no reason to keep their promises. As a matter of fact they do not, as none of the promised reforms and policy evolution I heard about over 2015-2018 have been realized. Of the various leads mentioned by interviewees in 2016, none have come to anything after four years. Yet refugee advocates take the words of government representatives, people talking on behalf of the administration responsible for the abuse of their beneficiaries, at face value.



In part, this gullibility is the result of their limited agency. CSO workers know that they are not in a situation to change the system by themselves, but can only push for other actors, in particular the government and the administration, to act. Hearing and seeing the very people capable of bringing change agreeing that change should take place can easily look and feel like an achievement in itself, and certainly is more rewarding than holding signs in front of closed office doors or hearing officials saying that nothing can be done.

Another reason why advocates are willing to give officials the benefit of the doubt and work to keep lines of communication open lays in the regular granting of marginal concessions. These allow observers to believe that promises made by officials can generally be trusted. These concessions are also opportunities for CSO workers and refugee advocates to feel useful. Therefore, they are reluctant to jeopardize their capacity to obtain such marginal concessions by being overtly vocal, even though the opportunities they are given to influence decision-making are not substantial. This was the idea summed up by the UNHCR protection officer interviewed in early 2016:

The fact that what we do isn't made public, I mean, it doesn't mean it's not efficient. For example during raids we go to the field and, you know, bargain with policemen to make sure that the refugees, if they are in poor health or if they are too young, they are let go. I'll be there and tell them 'That pregnant lady, really? That guy with one leg? The ten-month baby?'

A Thai activist, Nithaya, interviewed on the 18/02/16, described how the relationship she had built over the years could be used to obtain favors.

Researcher: And does it work well? Do you have an example of a policy you were able to push through that system of personal contact?

Nithaya: Sometimes it works, sometimes it doesn't work, it doesn't mean that I get 100%, but perhaps I will get 50%, 60%.

Researcher: So it's still good! And for example, when was last time you pushed for something and it worked?

Nithaya: The Uighur! I said women and children should not be sent to China, they should be sent to Turkey, and all the women and children were sent to Turkey. However I cannot protect the men, that is so sad, because I thought women and children first, and then I will work on the men, but then it's too late. Because they also talked with me as I told you, but I didn't realize. If China asks for the exchange, what do you think? Women and

children sent to Turkey, and the men... Stupid! I said you cannot exchange the human being like this! But however I didn't realize that this will be happen [sic]. Because I focus on women and children, so they all go and then a week later, the men sent to China.

In both examples, individual advocates are allowed by officials of various ranks to give what amounts to out-of-jail cards to some refugees. Though in the grand schemes of things it does little to improve the overall situation of refugees in the country, it gave each of the advocates in question the opportunity to make a great difference in someone else's life. Seeing the gratitude on the face of the refugees spared from arrest or deportation to the country they fled would give anyone the feeling of meaningful achievement. Workers for other organizations reported similar opportunities to influence the way street-level bureaucrats would use their discretionary powers, for example regarding bail. These advocates are given some badly needed agency in these situations, and owe that agency to having built a relationship with specific officials. However, this type of agency is contained – it grants access to favors within the system rather than disrupting the system itself.

There is in fact evidence suggesting that the favors granted in such instances are not really favors at all and would have occurred no matter whether advocates intervened or not. Advocates share stories of flats being raided and the agents only arresting the men, leaving women and children behind, without any intervention from CSOs. Immigration officers and policemen are known to let go of vulnerable refugees whether someone interferes or not. How much the favors obtained by CSO workers and advocates would have been granted anyway is hard to test, but the fact that they fall within the realm of what the administration does anyway really stresses how little of a problem it is for bureaucrats to shut their eyes for a few seconds to let kids and women leave the room before they take whoever is left to IDC.

Bureaucrats give CSOs some agency, which is kept within specific parameters, ensuring that they have something at stake in these dialogues by occasionally letting a few refugees go. However, it is only a matter of time until those involved realize that the situation has not budged and become more transgressive. Why this has not happened can be explained by looking at the staffing of the NGOs working with refugees.

The repertoire of contention available to refugee CSOs is shaped by the policies of the Thai government. These policies include both the threat of penalties for violation – any form of transgressive advocacy – and rewards for maintaining the status quo – access to government officials and occasionally small favors. These two-faceted policies allow CSO

workers to rationalize their strategy not to be vocal on refugee issues. Listening to CSOs, one gets the impression that the Thai authorities have deployed an interlocking system that corners them into suboptimal strategies, and is ready to let all hell break loose if any attempts are made to make their way out of that system. In fact, this does not appear to be the case. CSOs are not stuck. Indirect evidence strongly suggests that CSOs largely misunderstand what they are up against, and that their ability to systematically fail to understand the Thai refugee management system comes from the way they handle their workforce, which limits their capacity for long-term thinking and strategizing in essential ways.

### ***How Real Is the Threat?***

The dominant narrative deployed by CSOs to justify their reluctance to speak up, the threat of repression posed by the authorities, is not well supported by evidence. In fact, the way different branches of the Thai administration are responsible for different aspects of law enforcement with regard to refugees suggests that what CSOs interpret as retaliation is in fact more akin to random noise; that there is no grand plan to silence them. CSOs in Bangkok appear to systematically overestimate the capacity and willingness of the Thai state to both use repression and reform its refugee management system. The operation of CSO is vulnerable to the Thai state – directly, through the use of immigration law, and indirectly, through the vulnerability of their beneficiaries and the receptivity of CSO workers to emotional blackmail. The fact that CSOs are vulnerable however does not mean that the state is indeed out to get them, nor in fact that it has the organizational capacity to follow up on these threats. The systematic overestimation of the state is a result of the high rate of turnover among the staff of CSOs which affects institutional memory and the building of the necessary expertise for these organizations to make sense of their context of operation.

During my fieldwork, I heard of only three cases of unambiguous retaliation by the state, which were described earlier. The first one, the arrests in front of APN's office, took place sometime in 2013, the threatening of the refugee who spoke at a conference in 2014, the closure of IDC in March 2015. Two more events, the short detention of a particularly vocal activist in 2014, and an inspection by the immigration of the office of a CSO in 2017, are somewhat more ambiguous – they were cases of official harassment, but the immediate causes of each event were not clear to the victims. At most five instances of retaliation during a five-year span, 2013-2018, none of which constituted a long-term threat to the continuing operation of the CSOs, hardly explains the atmosphere of fear one

finds among CSO workers in Thailand. The main source of fear is in fact not these instances of clear-cut retaliations, but instead the constant stream of police and immigration raids and arrests.

There is limited evidence that indirect retaliations, i.e. arrests of urban refugees, are connected to the activities of CSOs. As shown in Part I, the Thai refugee management system is not a centralized system. It consists of a complex layering of various laws and administrations that is inherently decentralized, because it is based on mass criminalization and therefore empowers implementers rather than central decision-makers. A core question is that of the stability of this complex edifice, which one would assume to be inherently unstable, as it is not kept together by any central authority. As this chapter shows, stability is created in part by the silencing of critics, who are kept vulnerable to official harassment and whose beneficiaries are soft targets. This description however suggests an inherent paradox – how can a decentralized system coordinate the silencing of dissent? In fact, nothing suggests that it does. Instead, the system is complex enough and obtuse enough for most outside observers to be able to attribute intent where there is in fact chaos. That chaos is not, at least not primarily, the result of inanity on the part of the Thai authorities, but an inherent property of a decentralized system where the lowest ranking, most local components play the most critical role in policy implementation.

The apparent randomness of arrests and raids was pointed out to me by Joshua during our interview on the 08/03/16, as I was probing him about the presence of fear in the absence of a defined threat:

Research: And so it's so weird because everyone is so scared and yet no one has really been able to point out an example of like... People have been talking about raids and the like but they also say that they don't really know where the raids come from.

Joshua: They are random and they raid anyway. No matter how good your website is, no matter how many articles, they raid anyone! It just doesn't stop, and I feel it has more to do with the government, and what's happening with the government, like the reaction since this bombing [a reference to the Erawan bombing in 2015]. This has had a bigger effect than any evidence that the government is online and reading websites, reading international news...

Joshua argues that the actions of CSOs are not central determinants in the number of arrests of urban refugees, but that processes inside the administration are. In fact, this

view appears to be shared by other refugee advocates, who do not either talk about CSO action as a key factor affecting trends in arrests and raids:

Researcher: And since you arrived did you see trends in arrests? Like was there a moment where there was more arrests or...? And do you know why there was more arrests at that moment?

Gloria: Yeah, actually I have to say that the IDC is so small, so that they cannot detain more than that... I have heard that in the past they used to have 700 or 800 refugees there, but the rest would be foreigners or migrant workers right? So there only have a small place. [...] I mean we have to say that arrests is not strange, it's normal, because as illegal people it is not something...

Researcher: You mean it is to be expected?

Gloria: Yes it is to be expected, and normally they have a timing of arrest, like last year when we had bombing, some incidents like that, bombing in Rachaprasong [the Erawan Bombing] or even bombing in Paris, they say 'Oh, terrorists coming!' so they arrest people who have overstayed. So they would have big arrests, group arrests when they have some incidents happening. Also when they changed the director general of the immigration bureau. So you see last December because he is new one, so he has to show a performance right?

Researcher: Why does the new director care so much about refugees? Why does he feel the need to show...?

Gloria: It is normal for all departments, not only his, in another area as well, when you have a new boss you have to show that you are very active right? [laughs]

And later in the same conversation:

Researcher: And so, who is in charge of the arrests? Who gives the order?

Gloria: Yes. One, actually is from the government, it depends of the policy of the government as well. For example, we entered the ASEAN economic community last December, and announced that they would combat transnational crime, so they have orders coming down from the high level, from the government, that we have to combat transnational crime that we are to expect from those who overstay!

The director of RRC in this exchange shares that the main factor in the fluctuation in the number of arrests is not the activity of CSOs. Instead, trends are influenced by two types of factors: reactions of the upper levels of the government to external shocks, like

the Erawan bombing or the launch by the ASEAN of a new structure leading to a renewed pressure on Thailand to control its borders; and dynamics within the administration itself, like the change of the head of the immigration division. The fact that such factors do influence refugee policy is not surprising, but the fact that at no point when prompted the respondent mentioned CSOs as an influential factor is significant. Though there is a general concern over the way various branches of the administration could react to transgressive advocacy coming from refugee advocates, these concerns are not rooted in past experiences of retaliation. There is in fact an understanding that this kind of retaliation, at least at a scale large enough to make a significant difference, has not taken place in the timeframe used by refugee CSOs, which is usually a couple of years.

Another point to note is that the observed baseline level of official harassment faced by refugees does not always have to do with the attitude of the authorities to refugees in themselves. Since there is no legal distinction between refugees and other types of undocumented migrants in Thailand, periods of more frequent raids and higher volumes of arrest are determined not by a change in enforcement policy towards refugees specifically but towards migrants more generally; in other words, refugees are more often than not collateral damage in the official efforts to target migrant workers. Refugees themselves are not targeted, but bundled in with the rest. Again, during the same interview:

Researcher: Oh yes, but I mean, why are they active on urban refugees rather than on migrants or...

Gloria: Oh no, no they arrest all. So if you see in the news, in one month they arrested almost 10,000 people, but mostly are illegal migrants [sic], so they send in the border. So they arrest all illegal people. And again, it's coming again when the Ministry of Interior is announced the new order [sic], I don't remember the number but it's the penalty for overstay, that is announced in November but is active at the beginning of March, but when they announced they are active again, you see.

Urban refugees are not routinely made into an object of policy at the national or even metropolitan level. In fact, political decision-makers at the higher rungs of the administration lack a good grasp of the issue as distinct from that of unregistered migrants more generally:

Researcher: And you work directly on projects with the government and you actively collaborate with the government with some issues?

Gloria: Actually we are not yet at this stage, because I just joined the organization for a few months, right? So we just start building the relationship. And actually we have to build our visibility as well, because I have to say that when I talk with the Ministry of Justice, Ministry of Health and all that, they may know about urban refugees but not in the detail. In fact they don't have much information about urban refugees things, even though they know they do some things on that, but they don't understand the full context. And in reality they don't understand who are working with them! So I think it's really time for us to build up the urban refugee profile, if we build low profile we cannot bring any change.

Often, arrests of urban refugees are just collateral damage. They are but a drop in an ocean of millions of migrant workers without visas. They are not a priority at the national or local level, but they find themselves stuck in the net during crackdowns on irregular migration. Moreover, the pressure to implement tight immigration law and to crackdown on other groups of undocumented migrants can lead to the disproportionate targeting of refugees, even when they were not identified as the intended target. That is because at the local level, refugees are easy to arrest. Unlike other groups of undocumented migrants, they have limited access to the labor market and are therefore typically not under the protection of a local employer. Moreover, most belong to ethnic groups that are not positively perceived in Thailand. Hence, given the choice between arresting a construction worker, upsetting a building company or that person's neighbors, and raiding a refugee family's flat, upsetting no one, the lowest rungs of enforcement have a clear incentive to pick the latter and save themselves some trouble. In the absence of the tools to discriminate between urban refugees and other migrants, whether one is arrested or the other will make no difference in performance indicators.

As argued in chapter 2, the reliance of the Thai refugee management system on the blanket criminalization of urban refugees results in the empowerment of the lowest rungs of enforcement. One of the consequences of such a system is to make the urban refugee issue a local issue. Officers of the immigration division and the police can arrest any unregistered migrant any time while not having the capacity nor the incentives to arrest all of them. Hence the way they chose to enforce the law is the key determinant of who gets arrested and who does not. Since there is hardly ever pressure from high up in the hierarchy to focus specifically on urban refugees, because the higher rungs of the

administration have limited awareness of the issue,<sup>58</sup> the choice to arrest urban refugees or others lands at the local level. This is understood by CSO workers, who engage in contained advocacy at the local level, looking that way to have a more immediate impact than if they focused exclusively on high level advocacy. RRC in particular organized a series of workshops in police stations to sensitize the police to refugee issues and try to ensure that policemen in areas where refugees live understand what a refugee is, in particular in relation to other undocumented migrants.

The highly local nature of the enforcement of immigration law often prevents refugee CSOs and advocates from understanding the real causes of any given arrest. The lack of understanding of the factors at work behind arrests can mislead observers in seeing an overall trend where there is none. The cause of a given arrest could lie in anything affecting the enforcement of immigration law in a given area. It could have to do with the bias of an individual officer or the influence of a local strongman who wants certain groups of immigrants to be protected from the police, for example because she/he employs them, forcing officers to find new ways to fill their arrest quotas. It could flow from a neighborhood dispute between the owners of an apartment block and a refugee family or calls to police from neighbors bothered by the presence of non-Thai. Such events are not, in themselves, random, but information about each can be hard to collect and made sense of. Since each is the result of local factors, arrests in different parts of the city can be considered to be independent, as they are not linked with an overall policy. From the CSOs' perspective, enforcement patterns influenced primarily by local factors are not easily distinguishable from randomness. This was clear during the interview with Joshua quoted earlier, but a point also present in the interview with Sofia and Saskia (23/01/2016):

Researcher: And on the government side, that sudden increase, did it change something? Did it lead to more raids, less raids, or?

Saskia: More raids. Since the bombings in August, it's been worse. And because of the new government, who's not right friendly in the first place, you know...

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<sup>58</sup> One notable exception is when the issue of specific groups of urban refugees is brought up in international relation, for example China demanding the return of Uighur or Myanmar of Burmese political activists. The Thai government is then put in a position of having to consider the issue, and at least sometimes agree to the demands of the foreign government.



Sofia: It's crazy. We can't predict what is their motive. It's like 'There is a crackdown on the Pakistani community', and we don't know... And it used to be, when there was a crackdown it was in a certain area, but now it's even in some random areas, so really we can't predict.

Saskia: And really when there is a crackdown on refugees, there is a crackdown on other communities as well. The Burmese, or...

Sofia: The undocumented.

Saskia: [Acquiesces] Yeah.

The exchange shows both how people working on the field can perceive trends and attribute a cause to it, and that they recognize their inability to attribute motives to arrests and raids. Patterns of refugee arrest in Bangkok look like dice rolls: they do have causes and are in themselves non-random, but for an outside observer without easy access to granular enough information, they cannot be predicted. The decentralization of the de-facto refugee policy in Thailand has another consequence for the state: it is itself limited in its capacity to manage the problem by the absence of a centralized authority coordinating the action of the different branches of administration in charge of enforcement.

This level of decentralization also means that the capacity of the central state to modulate its policy to make it more humane or more sustainable is limited. On sustainability, and in particular the capacity of the state to cap the occupancy of IDC, Gloria, the director of RRC, had the following remark:

Gloria: Normally the police they don't want to arrest, because they don't have the space in the immigration bureau itself, so normally it's the order from above. But I mentioned that when the director general changed, so from the police itself, from the national police bureau, but the immigration bureau normally they are never the ones who start to arrest people [sic].

Researcher: Oh ok, so you mean that immigration is happy not to arrest anyone?

Gloria: [laughing] yeah yeah!

Researcher: And they only react to pressure from above?

Gloria: Because they don't have the space to keep the people, so I think they are more passive, so if they have no order they look after what they have at the moment.

One dramatic example of the limited reform capacity of the decentralized Thai urban refugee management unfolded in August 2018, when the immigration division announced that it would put an end to the detention of children in IDC. The measure was welcomed among urban refugee advocates as a significant step forward. The end to the detention of children had been a key demand for a number of years, and the topic of one HRW report (Human Rights Watch, 2014b). Less than two weeks after the announcement, a police raid on a Montagnard refugee community from Vietnam and Cambodia led to the largest mass arrest of urban refugees in two decades – more than 180 people, including close to 60 children (Raksaseri, 2018). All those arrested during the raid were placed in IDC, including the minors. This sequence of event and their proximity in time is representative of the erratic way the policy towards urban refugee evolves in the country. One branch of government can say or do one thing only to be immediately rebuked, either in words or in acts, by another branch.

Attempts at understanding refugee policy in Thailand must account for its decentralized character, which helps explain in particular why an inherently unsustainable system has not been successfully challenged by forces inside the administration. In particular, the immigration division, who manages IDC and sees first hand that the endless accumulation of bodies in its cells is an issue, cannot put an end to arrests because many are made by the police, which it does not control. Governing is always messy, but the governance of urban refugees in Thailand is a particularly thick and complex mesh of laws, patterns of enforcement, local and national factors, parallel hierarchies and contradictory incentives of different actors at different levels. Such a complex apparatus does not function smoothly nor does it behave in logically consistent ways. In the absence of clear coordination tools, it seems misguided to assume that the bottom and top, the center and its periphery, all act as one.

Randomness forces the refugee CSOs to stay on their toes. The complexity of the determinants of arrests can mislead observers on the relationships between causes and effects. In a situation where one witnesses an endless trickling of negative news, like arrests, policy changes, or deaths in detention, it can be tempting to assume that at least some of it can be avoided if only one refrains from this or that action. The logical components of the dominant narrative among CSO workers and refugee advocates are sound: the current situation is bad, the government/police/immigration division does not like being shamed for what happens to refugee, and the government/police/immigration division has the capacity to worsen the current situation. However, the mechanism connecting these elements and making them into a system of control are not obviously

present. In fact, there is evidence that the system is complex enough and decentralized enough to have a life of its own, and that it reacts at most marginally to the activities of refugee advocates. In other words, though advocates claim to be kept under control by a refugee management system ready to bring dire retaliation upon their beneficiaries, the actual centralization and coordination infrastructure for such a system to work are not present. What they see as trends and acts of retaliation are merely the erratic convulsions of a system that acts with little central guidance and reacts primarily to micro-local factors that have nothing to do with the refugee issue in the first place.

### ***Engineering Short-Sightedness***

The factors that CSO workers see as restricting their repertoire of contention are in fact overestimates of the actual tendency of the Thai state and its administration to retaliate against transgressive advocacy. In addition, refugee advocates appear to give credit to promises of improvement made by Thai officials despite the fact that such promises have been made for years without consequences. Why would the very people committed to changing the Thai refugee management system be systematically mistaken regarding its functioning?

Few people would be as well placed as CSO staff to understand the workings of the Thai refugee management system. Since the system is not described in official texts or in administrative organigrams, and instead rooted in practices, being close to the ground is a relative advantage to piece it together. CSO workers might spend their time running from fire to fire on the ground, a situation not optimal to grasp the bigger picture, but over time access to the refugees, and day-to-day dealings with the police and immigration division should let them gather enough insights on the functioning of the system. Unlike some of the larger organizations, like UNHCR, CSOs have limited organizational inertia getting in the way of a strong commitment to their mandates, and refugee activists appear to be willing to put themselves on the line to help refugees. Yet, in-depth knowledge of the functioning of the Thai state and its approach to refugee policy appear not to be gathered and processed, at least not to the point of tipping the scale towards less cooperative attitudes. In part as a result, the situation of urban refugee in Thailand displays remarkable stability considering its dramatic effects on those unfortunate enough to end up in the country. The root cause of the refugee CSOs' lack of effectiveness in Bangkok lies not with some specific features that would make them stand out from other advocacy CSOs. Instead, their limitations are rooted in the very basis of their approach to advocacy, the idea that underpaid and idealist young Westerners are best

suites to successfully bring changes to developing countries; an approach that results in the CSOs' inability to accumulate institutional memory and build actionable expertise.

### ***History Repeats***

Institutional memory matters for CSOs in Bangkok because understanding the urban refugee management system in Thailand takes time. CSOs are in a better position than UNHCR officers, refugees or even high-level government officials to put information together on its functioning, but because their day-to-day work is focused on service delivery on the ground rather than policy analysis, it still takes months if not years for them to put together an accurate picture of what they are up against. Moreover, a number of the features of the Thai refugee management system only become apparent over time. In particular, it takes time to see that some of the assumptions one quickly comes to, regarding in particular the willingness of the Thai state to crack down on CSOs or to engage in meaningful reform, are not backed up by evidence. Time is of the essence, and though the urban refugee CSOs have been present in Bangkok for over a decade, they all face a major turnover issue, and very few individual workers have been involved in the country for more than a few years. This high rate of turnover is the reason why CSOs have not engaged in more transgressive advocacy.

The issue of high personnel turnover was apparent in RRC, the organization with which I did a large part of my fieldwork. Between 2014, when I started meeting members of the organization, and 2018, when I finished my fieldwork, the organization had had three different directors and changed staff members for all positions at least once, and usually twice. A single staff member, aside from the office custodian, appears to have stayed in the organization throughout the period. The issue is not unique to RRC, but rather representative of the field. In Save Refugees Now! (SRN), the other organization with which I have worked directly, most staff had joined the organization less than three years prior. High rates of turnover were found not only among fieldworkers, but also among the organizations' key management and strategic positions. The head of the legal teams in RRC and SRN changed respectively four and two times in four years, the position of head of the advocacy program in RRC was recreated from scratch twice over the same period, and the directors of both organizations changed at least twice. The same is true in UNHCR, where all high level staff have to change posting every four years, and lower level staff, like in other United Nations agencies, tend to be promoted out of the Bangkok office after a couple of years. UNHCR staff do not even always stay until the end of their contract; one RSD officer who took her position in the summer of 2014 quit because of a burnout

less than a year later. Administrative staff tend to stay longer in CSOs and UNHCR alike, but are removed from much of the work with refugees themselves, and not in a position to influence the strategic orientation of their organizations. The high level of turnover for all non-administrative positions gets in the way of individual workers getting the opportunity to learn the ropes during their time in Bangkok. More importantly, it takes place at such a high rate for all positions that it limits each organization's capacity to develop institutional memory. No worker gets to stay more than a couple of years, and those who train newcomers have usually only a few months of experience themselves.

A year and a half into my fieldwork, I received another indication that organizational memory and the retention of expertise was an issue in the field. Around that time, and while I felt I had still a lot to understand, I had already become a veteran in RRC's office. I had much more limited access to information than most of the workers in the office, since they spent more or less the entirety of their working hours receiving confidential information from refugees. Yet, by the sole virtue of having been around for more than a year, I was put in charge of orientation, and in particular taking newly arrived lawyers to visit IDC. A constant battle at the beginning of my fieldwork was trying to have access to quantitative data regarding refugees and asylum seekers in Bangkok – their numbers and their nationalities in particular, but also the rate of asylum requests turned down by UNHCR. I was told by all CSO workers I met that the most up-to-date information on all these issues was in the hands of UNHCR, and that information, especially regarding RSD decisions, was only conveyed to them orally and confidentially. I realized however, nearly two years into my fieldwork, that the information was in fact freely available online. Worse, no one among the refugee CSOs, who had been asking for such data to be shared with them for a long time, had realized it was publicly available – or if anyone had, they had since left and the information had been forgotten. The two CSO staff who had most recently been interested in these data, working respectively with RRC and SRN, were thrilled to finally be able to use it in their work. Regrettably, both left their position within months of gaining access to the UNHCR database, another indication of the high rate of turnover.

High turnover limits the willingness of organizations to oppose the Thai administration, since workers in positions to make key strategic decisions have not been working long enough to accurately gauge the risks involved and are surrounded by hints that the risks could be existential. It also undermines the efficiency of contained advocacy. Though researchers have had a long-standing interest for the success factors of advocacy by CSOs (or similar non-profit structures), much of this work has focused on the macro-

level (Lake and Wong, 2005, Risse et al., 1999, Price, 2003). A number of the lessons learned at the macro level are relevant to the micro level, and in particular the importance of the capacity to rely on an extensive network, and occupy a strategic position within such a network (Lake and Wong, 2005). Case study in Thailand has stressed the importance of activists' network in their capacity to bring change (Munger, 2014). For contained advocacy, the dominant approach to advocacy among refugee CSOs in Bangkok, to work, it requires that advocates build networks of influence within the institutions they aim to change. In other words, successful advocacy requires advocates to become insiders. Becoming an insider takes time, even in the best of conditions – which is why advocacy organizations with enough means, for example industry lobbies, headhunt former political figure or high-level bureaucrats. It is more efficient when funds are less of an issue to bring in someone with a ready-made network rather than painstakingly build one from scratch. In Bangkok, organizations claiming to engage in contained advocacy are put at a significant disadvantage by the high turnover of their employees. Put simply, no one spends enough time working on a given issue to cultivate the sort of long-term relationships with key bureaucrats that would allow them to pull the right strings and transform the urban refugee management system. This incapacity to harvest the fruits of advocacy is compounded by the fact that a large share of the workers are newcomers to the country, with no relevant pre-existing network at all.

How much of a difference it can make for refugee advocates to have had a longer exposure to the field in Bangkok can be seen through the case of Joshua, the one exception to the high turnover among refugee activists in Bangkok.<sup>59</sup> Joshua stood apart in terms of his views on advocacy. He argued that collaborating with whistle-blowers, journalist and transgressive activists is not something refugee advocates should be scared of, because the threat of retaliation is minimal. Joshua also happened to have been involved with urban refugees for far longer than anyone else I met during my fieldwork.

Researcher: What's your position on talking with the media? Do you never or do you ever?

Joshua: I'm the guy who talks with everyone. So everyone ends up talking with me. Yeah, so there is the Toronto Star or something. Because I think the refugee community they are quite scared to talk with anyone, but for me, I have been here for long enough, I have

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<sup>59</sup> Another interviewee, Nithaya, has been in Thailand for a long time, but her involvement with urban refugee issue dated back only a few years, giving her a vantage point significantly different from that of Joshua.

seen when, in my opinion in 2008-09, I thought it was bad. It was bad already. And I was like no one is talking about this. And I think that because the word didn't get out there enough, when things could have changed.

Joshua had spent more than 8 years working with urban refugees in Bangkok at the time of our interview, far longer than anyone else I met. This allowed him to think on a different timescale, to see that the system had not improved and that contained contestation had not worked. In fact, he was able to see that the system was unsustainable in ways that tended to make the situation worsen rather than improve, and that what appeared as timeless normalcy in terms of refugee treatment, for example the length of the UNHCR process, had not always been the way it was. Just as importantly, he proposed a causal link between the deterioration of the condition for refugees and the absence of active watchdogs calling out UNHCR and the Thai government on their policies. Joshua also called out the government's limited capacity and/or willingness to use repression against refugee CSOs:

Joshua: Because if you can't tell the stories, if I can't put the picture of faces on my website, and if a journalist is ready to do a respectful job, I have no problem with that. That's why people keep contacting me, because I'm the one who talks! And I don't really care what the other organizations think, because if really Thailand was savvy enough to say well we are gonna crack down on these organization, it would be pretty easy to find the brown guy giving out money, you know. It would be pretty easy to track me down if they really were trying to find me.

Researcher: So you never got any sort of... No one came to you and?

Joshua: No, no. I'm pretty much out there. But because I'm independent the risk for me is something I'm ready to put on the line. I don't have any property here, it's not like a church where they are afraid. Some organizations that have staff and offices or whatever. Like I said I think it's a slow death either way, so...

Since Joshua had been working on the issue for much longer than other CSO workers, he had access to greater evidence than other actors in the field, and saw that though one can make a logical argument that angering the government would only lead to more retaliation and a worse situation for all, especially the most vulnerable, it is not in fact what happens in Bangkok. He was also the one to point out that though one can discern trends in arrest, there is too much noise to link any specific raid with CSOs breaking the silence. The case of Joshua is interesting not because he would be right on all accounts, but because he had opinions starkly different from that of all other CSO workers I met.

This suggests that the latter relied on collective wisdom and first impressions, which led them all to the same conclusions, because they lacked the expertise born of experience that Joshua had.

### ***Workers Kept on the Move***

What explains the high rate of turnover one finds among urban refugee CSOs in Bangkok? At its core, the issue is one of insufficient funding, which heightens all other challenges faced by workers, starting with the nature of their work.

Working with refugees is emotionally taxing, like any work that involves marginalized groups. Asylum seekers and refugees by definition claim to have had traumatic experiences. Hearing such stories on a daily basis takes a toll on workers. Unlike the situations faced by people working with resettled refugees in the West, the stories of abuse told by urban refugees in Bangkok are not always old history. Many such stories relate not to fleeing home, but to further persecution in Thailand, whether at the hands of the police or of private individuals. Listening to stories of current abuse coming from someone who has already faced more than his or her share of struggle is not an easy job, and is made worse by the workers' lack of agency. Workers cannot always assure their beneficiaries in good faith that things will improve for them, because most have limited capacity to do anything for their beneficiaries. CSOs only deliver a narrow range of services, which are typically not sufficient to address the wide range of needs most refugees have. Besides, scarce resources force all organizations to heavily prioritize, and most of those reaching out for help are turned away in favor of more urgent cases. The ultimate outcome for the beneficiaries of CSOs, to be resettled or not in a third country, is beyond the control of the CSOs themselves. Worse, they know that since 2012 there has not been enough resettlement slots for all urban refugees, and that a large share of them will not be resettled.

Urban refugee CSO workers are of course, far from having the world's worst jobs. The challenges they face are not far removed from the ones faced by social workers and lawyers everywhere. What does set them apart is who they work for. They work for resource-stripped organizations. Refugee CSOs in Bangkok have very limited funding. They function thanks to annual allowances from foreign headquarters and do not raise any significant additional funding themselves. A first effect of scarce resources is to limit the number of workers that can be hired at any given time. This puts a hard cap on the extent to which the services CSOs supply can match demand from urban refugees. In the context of Bangkok where demand far exceeds supply, the result is a very high workload.



Workers put in long hours every day, with frequent spikes after large arrests or sudden asylum seeker arrivals. Taking time off and keeping a balance between professional and personal life is a challenge for most, worsened by the fact that many are themselves foreigners just arrived in Thailand, who do not benefit from a well-developed support network. Working with refugees in Bangkok is taxing, and many can only take it for so long before they leave.

The question of resources however has effect on work conditions going beyond that of employee workload. In RRC's office for example, the lack of resources was visible at every level. There is not enough desk space to sit all staff at the same time. The organization's laptops are old and barely capable of running basic software. The sole printer keeps on breaking, leading to a running joke in the office that the printer is haunted, for nothing else seems to be able to make sense of its behavior. Confidential interviews have to be held in open spaces offering no privacy, behind a curtain drawn across a room or in a closet. Office furniture falls apart. The list could go on. RRC is not an exception in the city. None of the CSOs working with refugees have enough resources to function optimally.

Finally, the underfunding of the CSOs is reflected in their salary grids. Urban refugee CSOs in Bangkok do not offer tempting career opportunities for either Thais or foreigners, so their workers often leave to find opportunities elsewhere. All non-administrative staff in refugee CSOs, and in fact most administrative staff as well, are skilled professionals with university degrees. The salaries they are offered are not competitive, neither with compensation offered in the private sector nor with compensation offered in the public sector. Full-time staff in the legal team in RRC for example are required to hold a law degree, and are paid between 20,000 baht (app. 568 USD) and 30,000 baht (app. 852 USD) per month, wages in the lower brackets for newly graduated lawyers in Thailand. Thai nationals holding these positions can find better paying employment, especially after a few years gaining experience with CSOs. Just as importantly, these sums considered in absolute terms do not correspond to a high standard of living in Thailand, especially for employees having to support a family.

The situation is even more peculiar for foreigners working in these organizations. To be able to obtain a work permit, organizations wanting to employ a foreigner must prove that they could not have hired a Thai national instead for the position. In practice, this rule is enforced through the shorthand of salary – foreigners cannot usually apply for work visas unless they hold positions paid at least 50,000 baht per month. Hence 50,000

baht per month is a de facto minimal wage for foreigners, leading entry-level positions in private companies to often be paid 70,000 baht or more. Not only the differential between what is offered to foreigners in urban refugee CSOs and private company is significant, but the fact that most positions are paid less than 50,000 baht leaves many unable to apply for work visas, and having to work under precarious immigration statuses.

Another way the salaries offered in urban refugee CSOs lead to high turnover has to do with the strategies developed by employees to increase their living standards despite the numbers they find on their paychecks. Many increase their financial dependency on their partner or spouse, whose supplementary income allows them to pursue a career bringing limited financial rewards. The argument can be made that it is a problem in itself that an organization which mandate is to further the rights of one group does so by asking its employee to sacrifice their own financial independence. But as it relates with turnover, the problem is that financial dependency on one's partner or spouse leads to the partner's career being given a higher priority by the household, since it provides the largest share of the household's income. Hence, in a context where skilled foreigners present in Thailand are often rotating between countries throughout their careers, many of RRC's employees who end up leaving the organization do so because their partner's career requires moving city or country.

To alleviate the workload of their paid employees without having to increase costs, urban refugee CSOs rely heavily on volunteers and interns, who perform essential tasks for the organizations. In RRC, most of the lawyers involved in casework are volunteers, typically joining for six months. Though reliance on volunteers succeeds in allowing the organization to reach more people and handle a higher workload, it also significantly worsens the turnover problem. On the one hand, volunteers themselves do not stay beyond a few months, since most simply cannot afford to live without income for extended stretches of time. But the constant rotation of staff in and out of the organization also affects the working conditions of paid staff, who have limited opportunities to build trust within their teams. In addition, newly arrived volunteers are typically young and inexperienced. Hence, they need to be trained, to the point where training takes up a large share of the all workers' time. By the time the new recruits have learnt the ropes, they leave and training needs to start for a new batch. The constant arrivals and departures create an organizational culture that frames work in the organization as a temporary break rather than a life's career. In fact, the volunteer lawyers explicitly accept to do unpaid work for months at a time because they know that the sort of exposure it will give them will be an asset to move on to a better job.

There is a range of causes to the urban refugee CSOs' turnover problem, but most can be brought back to funding issues. Organizations expect their workers to put aside questions of financial compensation and professional development within the organization, because they do not have the fund to look after their employees. This affects every aspect of the work in refugee CSOs, for the worst. It deteriorates the work environment, increases workload, lowers wages, and forces to rely on volunteers, all of which participates in the creation of organizations that are incapable to retain workers for more than a few years. It is unclear whether the situation could be improved considering the current level of funding. During my fieldwork, some workers have expressed frustration at the prioritization of headquarter expenses, and felt that the situation could be improved if only the country offices received their fair share. Whether this frustration is grounded in evidence or an overestimation of actually available resources cannot be established with the data I have collected. What is however certain is that the way urban refugee CSOs handle their workload as of now gets in the way the pursuit of their mandate to meaningfully improve the life of refugees – they work a lot, but their capacity to disturb the systems in place is limited.

The core of the issue of urban refugee CSOs in Bangkok is related to the assumption that Westerners going abroad to volunteer and help for a few years can be an efficient advocacy tool. The underlying idea that the task is a reward in itself lets CSO managers build staffing models that give only the lowest priority to the welfare of their employees and increases reliance on a constant arrival of new recruits to replace the constant departures of employees looking to make ends meet or that are burnt out. Such a model is unfit for effective advocacy work. Its very logic denies the chance for workers to gain the expertise they would need to be effective.

## ***Conclusion to Part III***

CSOs in Bangkok are a diverse group of formal and informal entities with two things in common: a focus on service delivery over transgressive advocacy, and systematic underfunding. In other words, they are poor and keep quiet despite dealing with extensive human misery on a daily basis. Because they have insufficient resources, their service delivery programs are not able to match the scale of the needs among urban refugees. Because they shy away from confrontational advocacy, they are not able to threaten the status quo and be factors of change. These two sides of urban refugee CSOs in Bangkok are related. The fear of engaging in transgressive advocacy is ultimately a consequence of the CSOs' reliance on a workforce that they cannot afford because of insufficient funding.

The causal chain between both variables is somewhat long. The reliance on foreigners, typically Westerners, without the financial means to reward them adequately for their work and provide them with a comfortable work environment leads to a high turnover rate. This turnover rate prevents those working for CSOs from understanding the context in which they work. One particular misconception found among CSOs workers has to do with the willingness and capacity of the Thai state to squash critics. CSO workers know they are vulnerable, that their beneficiaries are vulnerable, and make a logical jump between this real vulnerability and the likelihood of retaliation. Retaliation is assumed to be very likely, in part because few individuals within the CSOs have been at their position long enough to witness the reality of the repressive capacity of the Thai state. As it turns out, looking at a five-year period from 2013 to 2018, one does not find much pressure on CSOs. As I show, reconciling these two facts requires to look at how the management of the urban refugee issue is actually done within the Thai state. As I show in Part I and again in Part III, one does not find a monolithic administration dead set on squashing opposition, but a decentralized layering of rules and agencies largely unaware of urban refugees as a separate issue, and led by the bottom rather than by the top. The fear of a large-scale crackdown ordered by some high-level official in the police or the immigration division is unfounded, simply because high-level officials are hardly aware that urban refugees exist, and have better things to do than caring about what half a dozen twenty-something Western lawyers do in the offices of SRN, APN or RRC.

Though the situation of urban refugee CSOs in Thailand is shaped by a number of factors unique to the country and the specific issues they work on, a number of broader lessons can be learnt from the strategies they employ and the challenges they face. Much

ink has been spilt criticizing the work of “global”, in fact overwhelmingly Western, NGOs. As I have argued, I think much of the lines of criticisms that have been followed in other contexts, centered around the neocolonial or neoliberal logic embedded in the agenda of such NGOs, are not particularly relevant to the work of urban refugee CSOs in Bangkok. They are a lot closer to the norm entrepreneurs described in the Transnational Advocacy Network literature, with the caveats that this literature tends to paint an overwhelmingly positive picture of such type of work. This chapter, remaining critical, attempts not to hold CSOs up to unrealistic standards of morality but to assess whether they are on path to achieve their mandates – and argues that they are, in fact, not.

Aside from other issues one can level against the work of Western CSOs operating abroad, I show that they can be ill-suited to the task because of their very nature. Not all issues can be efficiently tackled by teams of young Westerners rotating every couple of years, independently of how pure their intents are. At its core, the issue is one of the staffing model of international CSOs, that does not allow for the development of an adequate understanding of their context of operation. This is especially problematic when working on sensitive issues in states with extensive repressive powers. Backdoor cooperative advocacy, despite being the sole form of advocacy found in Bangkok, is terribly suited to such organizations, which have never developed the network and influence necessary to efficiently advocate on their issues. This finding is aligned with literature on norm localization which building on Finnemore and Sikkink (1998) stresses the role of local rather than foreign norm entrepreneurs, who are best suited to interpret and translate norms to a given locale (Acharya, 2004).

Organizations that are not as scared of stepping on toes can make a difference despite their reliance on a Western workforce, since transgressive advocacy does not depend on the same factors to be efficient. In fact, organizations willing to engage in transgressive advocacy can make their reliance on a fleeting workforce of Westerners, who are protected by their embassies and can be taken out of the country if needed, into an asset rather than a hindrance. But seeing that such an approach would be worth the risk itself requires expertise that rapidly rotating staff cannot provide.

The advocacy efforts of urban refugee CSOs in Bangkok do not appear to be on a path leading to reforms. That leaves only service delivery programs. Their impact is not easy to assess precisely. They certainly contribute to the reduction of the vulnerability of urban refugees by creating a safety net that catches some of those falling in the protection gaps left by the Thai state and UNHCR. Yet, the key characteristic of CSOs in Bangkok is that

they are strapped for resources and have to triage to the point where only the absolutely most vulnerable can receive assistance. This results in a situation where CSO assistance is only available to members of specific minority subgroups: women, the elderly, people affected by disabilities, LGBTIQ. CSOs do allow for these vulnerable groups to be protected from additional hardship, in particular by allowing them to be more independent from their own community, which can be a source of abuse. And yet, the bulk of urban refugees in Bangkok never receive any assistance from formal CSOs, who simply do not have the resources to reach everyone. Informal support organizations, and in particular religious-based charities, have a broader impact on the population as a whole, but one that is even harder to quantify as it is decentralized and hidden. Overall, CSOs do make urban refugees in Thailand less vulnerable, but hardly constitute a substitute for state protection; and in particular, they do not limit the Thai state's agency in its dealing with refugees as they stay away from overt criticism and attempts to publicly keep the authorities accountable.

The epilogue to Part III is that during its writing, a conflict erupted between the Western-based headquarters of one of SRN and the head of the organization's legal team. The conflict eventually led to the entire legal team leaving the organization. The head of the legal team had been by that time one of the refugee advocates who had stayed in Thailand the longest, and had started to push towards more innovative strategies, and in particular, test litigation. Without dwelling on the particulars of that story, it illustrates the fact that CSOs can be ill-suited to innovation by developing a work culture that looks at individual staff as expendable, creating an incentive to fit in or leave.



## **Conclusion**

Three questions framed this thesis: What approach has the Thai state taken to the management of urban refugees, without the constraint of the Refugee Convention? Can non-state actors fill gaps in refugee protection left by the state? What level of protection can be provided to urban refugees in a non-signatory country like Thailand?

As I have shown, the Thai urban refugee management system is complex and answering these questions requires a meandering path through its nooks and crannies, following the footsteps of refugees, detainees, UNHCR officers and CSO directors. By the end of that journey, I had detailed the functioning of the urban refugee management system in Thailand, showing how asylum seekers could get access to the country thanks to lax requirements for the obtention of tourist visas, how these visas ran out years before asylum seekers could obtain refugee status from UNHCR, and how they had to face official harassment and the risk of detention while they wait. I explained how the legal pits created by the Thai legal system allowed for the indefinite detention of all asylum seekers and refugees, regardless of age, in overpopulated and insalubrious facilities. I showed that the only way out of detention was resettlement or return to their country of origin, and that the latter constituted a form of *refoulement*. I showed how UNHCR did not allocate adequate resources to RSD, resulting in years-long queues for asylum seekers, and how the resulting situation was not dissimilar to an active deterrence policy. Finally, I showed how CSOs attempted to fill the holes left in that system by providing essential services to urban refugees, but did not have the resources to have as much of an impact in the lives of most refugees, and were unable to challenge the system itself.

Part I of the thesis shows that the Thai state did not take a protection-based approach to urban refugee management. Instead, without the constraint of the Refugee Convention, the Thai state refuses to take responsibility for the protection of urban refugees. No concessions were made in Thai immigration law to accommodate for the specific needs of asylum seekers and refugees, and the Thai administrative bodies developed no informal norm with regard to the treatment of refugees and asylum seekers. Since immigration law in Thailand is already punitive, and gives little importance to the welfare and protection of immigrants, the urban refugees' lack of specific status leaves them vulnerable and leads to their mass criminalization. Not only does the Thai state provide no protection to urban refugees, but its agents constitute a major threat to their wellbeing. Though the state does not implement a policy of active persecution, the combination of



the mass criminalization of refugees with the propensity of the lowest rungs of the Thai administration to resort to racial bias in their implementation of immigration law leads to a situation where urban refugees have to endure high levels of official harassment.

Part II and Part III show that though the Thai state is not the sole component of the urban refugee management system in Thailand, the other actors involved are not in a position to significantly fill the protection gaps left by the state. To an extent, the situation in Thailand suggests that international agencies and CSOs can only ever be substitutes to state protection in situations where the state is somewhat willing to collaborate with them, or at least to turn a blind eye to their operations. If these organizations cannot trust that they will be left to operate in peace, they cannot put in place the kind of large-scale systems that would be necessary to holistically address the needs of asylum seekers and refugees. The situation in Thailand also shows that even faced with a state unwilling to appear soft on migrants, these organizations do have agency, and can choose the way they approach their relationships to the authorities. Therefore, if they always give priority to their relationship with their host state over their protection mandate, they can bear some of the responsibility for the situation in which their people-of-concern find themselves.

Regarding the level of protection effectively achieved in Thailand by the combination of state and non-state actors within the urban refugee management system, and using the criteria derived from Joppke's work of how much the agency of the state is limited in its dealing with refugees, one finds that the system of urban refugee management in Thailand provides almost no such limit. Refugees are at the mercy of the state, both legally and in practice, and have to remain so for years at a time; in other words, the level of protection achieved in the country is very low. Thailand overall is hostile to urban refugees, to the point of threatening their basic safety, because the urban refugee management system in place is not set up to prioritize their safety.

In a strange twist, the country's hostility to urban refugees is also what makes it attractive to asylum seekers from across the world. The environment to which they are exposed during their stay bends the arm of well-meaning foreigners into finding them a way out to a high income country, at a time when other avenues towards safety are being shut down. The chance for a new life however comes at the end of a long trial by fire. To see the process through, one has to face prejudice, economic exclusion, harassment by the police and the threat of detention for years. Many do not make it. They give up and leave the country before getting a chance to be heard.

Though UNHCR itself bears some responsibility, the root of the problem lies with the refusal of the Thai state to take responsibility for asylum seekers, or at least to prevent an environment conducive to their active persecution by its agents. The refusal of the Thai state however is not senseless. It should not be expected to follow the Refugee Convention, a document that it is not bound by. As Joppke argued, states treat migrants as poorly as they can. Considering the length that states bound by the Convention are ready to go to avoid following its spirit and its letter, the extremes to which the Thai state goes should not come as a surprise. This is especially true considering that the system as it currently stands in Thailand did not even have to be designed. It emerged fully-formed from the intersection of a punitive immigration framework and the unique characteristics of the situation of asylum seekers. It does not appear that at any point agents of the Thai state had to sit down and consider the pros and cons of various approaches to the management of Pakistani or Somali refugees; repression was built deep enough into the country's approach to migration management that it just needed not to be stopped to fully unfold.

One could wish that Thailand would be proven wrong. That a careful analysis would show that a system that requires to so thoroughly ignore human distress, and in fact relies on creating more, would be bound to fail to meet its objectives. If this were true, there would be arguments beyond calls to empathy that could back the need for reforms. In the case of the management of urban refugees in Thailand, it appears however that it is largely untrue. The overarching objective of Thai immigration law, as any country's immigration law, is to only permit certain types of international mobility into the country and deny others. In the case of Thailand, these mobilities are that of tourists, wealthy retirees, and some form of very skilled or very unskilled labor seen as not in competition with local labor. Thailand is in fact especially transparent with regard to the role of its immigration division. Over the last three years posters were placarded in its offices, including in IDC, printed with the division's English tagline: "Good guys in, bad guys out". With regard to that objective, the way the urban refugee issue is managed by the state is quite successful. At a limited cost for the state, refugees are either sent back where they came from or sent onward to be another country's problem. The flow of asylum seekers reaching the country has not been brought to zero, but the stock of urban refugees that has built up over nearly 20 years of the current management system has remained quantitatively small compared to other groups of migrants, and in particular camp refugees. The recent spike around 2014 was successfully absorbed without requiring significant reforms. The reputational cost to Thailand has been close to nil, thanks to the silence surrounding the issue. Little in my analysis suggests that there is some essential

imbalance built within that system that is so insurmountable that it will eventually bring the whole system down in the foreseeable future. The Thai refugee management system, as far as the Thai state is concerned, does not seem to hold within itself the seeds of its own demise. Upcoming reforms have regularly been announced during my research, and could lead to profound changes; I merely note that any reform that does take place will not be the outcome of a reckoning with some inherent imbalance existing within the Thai state.

The role of UNHCR and CSOs within that system is probably more surprising than that of the Thai state. They could be elements of instability, pushing and pulling to change the status quo and lead Thailand towards a different path, one that could be beneficial to refugees as well as to the country as a whole. This is not however what has happened. Instead, in different ways, both UNHCR and the major urban refugee CSOs support the continuation of the status quo. UNCHR does so by, voluntarily or not, joining the Thai state in the creation of deterrence. The CSOs do so by omission, by not supporting the publicization of the issue in a way that could shame the state into some sort of reform. No one working for UNHCR or a CSO would be comfortable with that qualification of their work, and yet any critical assessment of their action over the long-term would reach these conclusions. In Bangkok, well-meaning actors see their good intentions bent beyond the point of recognition, and are only allowed to ignore that fact because few of their staff get to stay long enough to have to face that reality.

These organizations, whether large or small, find themselves in a complex situation. CSOs work with vulnerable groups and have to balance obtaining access to them and being vocal, even though as I have shown, they probably overestimate how much of a balancing act they really need to pull off in Thailand. UNHCR has to find ways to operate in a country where on the one hand the state could expel it at any moment, and on the other hand about 100,000 camp refugees and 300,000 stateless people depend on it for their survival. One can only understand that the stakes are high for UNHCR; that it cannot afford to simply ignore the state. Some compromises are inevitable. However, there is little to support the idea that there would be no better ones to make.

The situation in Thailand does not only hold lessons for the organizations working in the country, it has implication on the nature of international advocacy. Though authors studying the issue have shown how much of a role international organizations and advocacy networks can play for the spreading of human rights norms internationally (Finnemore and Sikkink, 1998, Keck and Sikkink, 2014, Risse et al., 1999), the situation

in Thailand suggests that further reflection is necessary to assess the conditions under which they can fulfill their objectives, as in at least some cases they cannot.

Thailand is coming to play a role in the international refugee system similar to that of the global havens of Western Europe, North America and Australia. Yet, the reality of asylum in Thailand has not moved towards the refugee policies of these countries; in fact, the reverse seem to be happening, with traditional global havens moving towards refugee policies giving primacy to national security and immigration control over refugee protection. In a sense, this only highlights the importance of protecting the current international asylum institutions, as the experience of Thailand suggests that such institutions are not likely to emerge again; that they were the result of a unique context without which states are unlikely to look kindly at any commitment to take on the costs of humane refugee management.

The international asylum system functions at a global scale, with ramifications in a whole range of unexpected locales. The study of its central nodes, whether it is large camps or most common destinations, carries important lessons on the type of world on offer for the most vulnerable people in our societies. However, the study of more remote corners of the asylum system, such as Thailand, also holds a number of relevant lessons. It is where one can find hints of what is to come, because the smaller scale of the issues makes them easier to study, and because some changes will affect peripheries first before they become visible in the centers. The refugee issue in Thailand can be seen as one of national policy, but is in fact connected to the overall refugee infrastructure and influenced by it. The fact that Thailand could become a global haven despite the condition it offers for asylum seekers and refugees says something about how far our asylum system has come since the 1950s, and much the protection of refugees has eroded.

Often, the kind of exploratory work that is required to the study of an emerging issue in a new setting, especially ones that are forced to rely on long fieldwork rather than documentary research, are taken on by anthropologist using ethnographic tools to shed light on what can appear at first exotic and foreign. I have to an extent attempted to do the same, but have focused less on culture and meanings and more on how systems function, how organizations address new challenges, with a strong focus on how state action shapes the choices of other actors, large and small. The tools of political science do not entirely depend on the availability of the classic modes of documentation of state action to be effective, and political scientists have much to gain in looking outward and find liminal cases to not only shed light on new aspects of well-understood systems, but

also to test whether models and theories meant to be universally relevant really are. As I show, the situation of urban refugees in Thailand appears coherent with the model of migration policy developed by Joppke on the basis of data gathered in four high income Western liberal democracies. This suggests that there is hope to find regularities in state action that are of very general application.

My work focused on the refugees themselves, the policy of UNHCR and the work on CSO officers and volunteers. To be complete, an analysis of the Thai urban refugee management system should also have incorporated data gathered directly from public servants, in particular within the immigration division and the police, from officers both in charge of enforcement on the ground and of management and strategic orientation. Though I described a stable system, this description was inferred from my point of view as an outsider to these administrations. I might have missed signs of strife in some of their many aisles, and have certainly oversimplified their functioning. The study of the inner workings of any branch of the Thai administration would allow painting a subtler picture and would be a valuable addition not only to my work but to Thai studies as a whole. Considering the size of the migrant population in Thailand, its importance in the national labor market and the important role played by remittances out of the country for its neighbors, a better understanding of the immigration division in particular would be crucial. Its policies not only have major effects on the Thai economy and society, but have important regional implications as well.

As stressed throughout the thesis, the profile of the refugee issue in Thailand is not unique among middle income countries. In fact, a number of them, notably Mexico, Brazil, Malaysia, Turkey and South Africa, have seen a surge in the diversity of their refugee population. The way this issue has been managed in Thailand would be even more informative if it could be compared with what has taken place in these other countries. Research focusing on other non-signatory countries, like Malaysia, would help identify which aspects of the Thai policy are determined by local factors, and which can be connected to broader systemic elements; in other words, in which way exactly is Thailand special and in which other is it representative of non-signatory middle income countries. The study of signatory countries, on the other hand, could help clarify to which degree international instruments like the Refugee Convention really do determine policy. Taking refugee studies out of the traditional global havens of the West is critical at a time where these countries are actively trying to move away from this role, forcing other countries to take on the mantle; if Thailand is any indication, these countries are grossly unprepared

to take on that burden, and perhaps more importantly just as unwilling as their richer predecessors to take it on.



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# Quel asile à Bangkok ?

*Protéger les réfugiés urbains dans un pays à revenu moyen*

Quentin Batréau

*Résumé*



## ***Résumé en français***

Les vingt dernières années ont marqué un tournant vis-à-vis de l'organisation des flux de réfugiés dans le monde. Jusque dans les années 1990, les pays accueillant des demandeurs d'asile et des réfugiés se classaient en deux catégories : les pays en voie de développement, qui recevaient presque exclusivement des réfugiés provenant de pays voisins, et les pays industrialisés, qui recevaient des réfugiés venant du monde entier. En d'autres termes, les pays riches jouaient pour les réfugiés le rôle de havre à l'échelle mondiale, et accueillaient des populations extrêmement diverses, alors que les pays pauvres jouaient le rôle de havre à l'échelle locale ou régionale, accueillant des populations de réfugiés moins diverses et provenant de pays moins distants. Ici il faut noter qu'à l'époque, tout comme actuellement, la majorité des réfugiés et demandeurs d'asile étaient accueillis par les pays en voie de développement. La question des réfugiés comportait donc deux éléments distincts : les réfugiés dans les pays en voie de développement, et les réfugiés dans les pays industrialisés. Les problématiques liées à chacune de ces deux questions étaient assez différentes, à la fois en termes d'enjeux et d'acteurs impliqués, pour être considérées séparément. Cette situation a changé. Depuis le début des années 1990, la question des réfugiés dans un certain nombre de pays en développement a commencé à ressembler à celle dans les pays industrialisés. Des pays à revenu moyen, dont la Thaïlande, ont changé de rôle dans le système international de gestion de l'asile, passant de havres régionaux à havres mondiaux.

Ce changement est passé largement inaperçu dans la recherche française et anglo-saxonne, et cependant il est courant de nos jours de voir des réfugiés pakistanais au Brésil, éthiopiens en Corée, somaliens et russes au Mexique ou encore congolais et iraqiens en Malaisie. Ces réfugiés pour l'instant représentent des populations relativement réduites – la grande majorité des réfugiés restent dans leur région d'origine, environ 80% d'après le Haut-Commissaire aux Réfugiés (HCR) – mais la tendance qui se dessine est claire : de plus en plus de pays à revenu moyen jouent un rôle de havre mondial plutôt que régional ; même si à ce jour la taille des flux en question reste limitée.

Cette transformation des flux de réfugiés vers les pays à revenu moyen n'est pas seulement le résultat de la hausse du niveau de vie dans ces pays : l'évolution de la politique d'asile des havres mondiaux traditionnels, c'est-à-dire l'Europe de l'Ouest, l'Amérique du Nord et l'Australie, joue un rôle clé. Ces pays, depuis les années 1990 en particulier, ont mis en place nombre de politiques pour décourager les demandeurs d'asile. Ces politiques ont principalement concerné la prévention de l'entrée des

demandeurs d'asile sur les territoires nationaux, où la Convention relative au statut des réfugiés de 1951 les protège. Deux types de mesures se sont révélées particulièrement efficaces : l'obligation d'obtenir un visa avant d'entrer sur le territoire pour les ressortissants de tous les pays, et la sanction des compagnies aériennes pour le transport de passagers sans visa. Ensemble, ces deux mesures mènent à la privatisation de fait du contrôle des frontières, et permettent de limiter l'accès au territoire des demandeurs d'asile, tout en respectant la lettre de la Convention. L'efficacité du durcissement de la politique d'asile dans les pays industrialisés est discutable, en partie parce qu'elle n'a pas coïncidé avec une réduction marquée du nombre de demandeurs d'asile dans ces pays. Porter un regard au-delà des pays industrialisés met cependant en avant le succès relatif de ces réformes : les demandeurs d'asile, en tout cas un certain nombre d'entre eux, sont bel et bien détournés vers des pays tels que la Thaïlande.

Ces demandeurs d'asile qui choisissent de se diriger vers des havres mondiaux émergents plutôt que vers l'Europe ou les États-Unis préfèrent en général se tourner vers les grandes métropoles, qu'il s'agisse de Kuala Lumpur, Mexico City ou Johannesburg, où ils ont accès à plus d'opportunités économiques et où la plus grande diversité du paysage urbain leur permet plus facilement de se fondre dans la foule ou de trouver une communauté de compatriotes pour les accueillir. C'est tout particulièrement le cas en Thaïlande, où la quasi-totalité des demandeurs d'asiles et réfugiés ne venant pas de pays limitrophes vit à Bangkok. Pour cette raison, ils sont désignés par le HCR comme "réfugiés urbains", en contraste avec les "réfugiés en camps", qui sont tous birmans et représentent donc, parce qu'ils viennent d'un pays frontalier, un groupe de réfugiés plus traditionnel pour un pays comme la Thaïlande. Suivant la nomenclature du HCR, adoptée tout au long de la thèse, "réfugiés urbains" désigne tout réfugié et demandeur d'asile vivant à l'extérieur de camps. En raison des règles régissant l'admission dans les camps en Thaïlande, la vaste majorité des réfugiés urbains en Thaïlande viennent de pays non-limitrophes. Les réfugiés urbains appartiennent donc en Thaïlande à ces nouveaux groupes de réfugiés qui viennent de loin pour demander l'asile, et qui, jusque dans les années 1990, ne seraient jamais venus dans le pays.

Il est probable que les dynamiques actuellement en place en Thaïlande soient annonciatrices d'une transformation profonde du système mondial de gestion de l'asile. Les facteurs qui poussent chaque année des milliers de demandeurs d'asile à se détourner des pays où ils avaient traditionnellement pu demander l'asile et les amènent à la place vers des destinations lointaines pour chercher refuge ne vont probablement pas disparaître. Les politiques migratoires des pays industrialisés ne sont pas prêtes à

soudainement changer et cesser de construire des frontières toujours plus étanches. Au contraire, les enjeux migratoires sont de plus en plus centraux dans la rhétorique politique, et au niveau mondial le résultat est une surenchère protectionniste. Dans un tel contexte, le rôle des havres mondiaux émergents va probablement continuer à prendre de l'importance, jusqu'à peut-être dominer le système dans son ensemble. Il n'est pas unimaginable que d'ici dix ans, la fraction des réfugiés allant des pays en voie de développement vers les pays industrialisés devienne marginale, et que la question des réfugiés ne concerne plus que les pays en voie de développement. Bien des choses pourraient évidemment changer la trajectoire actuelle, mais sachant qu'elle est présente, il semble pertinent de se poser la question de ce à quoi ressemblerait un tel système de gestion de l'asile, centré sur le sud.

La difficulté cependant à se pencher sur une telle question tient à la diversité des situations que l'on trouve dans les pays émergents vis-à-vis de leur approche de la gestion des réfugiés. Cette diversité est, par ailleurs, mal documentée. D'où l'intérêt de se pencher sur un cas particulier, celui de la Thaïlande, et de consacrer le temps nécessaire à l'analyse de son approche, non pas parce que le pays serait particulièrement représentatif d'une catégorie plus large, mais dans l'optique de décrire dans le détail un des systèmes alternatifs qui pourrait se retrouver à jouer un rôle à plus grande échelle si la tendance actuelle se maintenait.

La thèse est centrée sur la triple problématique suivante :

- En l'absence des contraintes posées par la Convention de Genève de 1951, quelle approche à la gestion des réfugiés urbains l'État thaïlandais a-t-il adopté ?
- Les insuffisances de cette approche vis-à-vis de la protection des réfugiés peuvent-elles être compensées par des acteurs non-étatiques ?
- Quel niveau de protection les réfugiés urbains peuvent-ils recevoir dans un pays non-signataire comme la Thaïlande ?

Pour tenter d'apporter une réponse à ces questions, la thèse se base sur un travail de terrain et des données qualitatives collectées entre 2014 et 2019, une période entièrement passée sur le terrain à Bangkok. Les arguments présentés tout au long de la thèse sont fondés sur des données collectées en observation participative dans trois terrains : en tant que bénévole dans une association travaillant avec des réfugiés urbains de juillet 2016 à août 2017, avec un groupe de visiteurs dans un centre de détention du

département de gestion de l'immigration de mai 2016 à juillet 2017 et comme enseignant dans une école informelle pour réfugiés, un jour par semaine de février 2016 à juin 2016. Ces données ont été complétées par dix entretiens semi-structurés, deux avec des employés du HCR et huit avec des militants et employés d'associations travaillant avec des réfugiés urbains, entre janvier 2016 et juillet 2018 ; ainsi qu'avec l'exploitation de deux bases de données, la base de données démographiques du HCR, accessible au public, et la base de données-client d'une association.

La principale limite des données utilisées par l'auteur est l'absence de données collectées auprès des autorités thaïlandaises, ce qui minore le niveau de détails et la spécificité des conclusions quant au rôle et aux motivations des acteurs qui agissent à l'intérieur des structures étatiques ; un manque regrettable, mais qui ne remet pas *a priori* en cause la valeur apportée par le reste des arguments présentés.

Tout état de la recherche sur les réfugiés urbains dans les pays en voie de développement doit s'ouvrir avec le constat que la question a été peu traitée. C'est particulièrement vrai des problématiques spécifiques aux réfugiés n'appartenant pas aux populations de demandeurs d'asile traditionnelles. Cependant la littérature scientifique existante permet d'établir un certain nombre de faits essentiels, notamment vis-à-vis de l'histoire de la gestion des réfugiés en Thaïlande, et elle permet également de replacer ces faits dans le contexte plus général de l'histoire de l'Asie du Sud-Est. Le fonctionnement des institutions en charge des réfugiés en Thaïlande aujourd'hui est largement l'héritier de la crise des réfugiés d'Indochine, et des institutions qui furent mises en place à l'époque par les États de la région pour gérer les flux d'entrants. Ces institutions ont peu évolué depuis les années 1970. Les institutions qui se sont mises en place pendant cette période, ainsi que le contexte historique général, furent décrites notamment par Robinson dans son livre *Terms of Refuge* paru en 1998. Ce livre et le reste de la littérature produite sur le sujet permettent de montrer que le refus par les pays d'Asie du Sud-Est d'adhérer à la Convention relative au statut des réfugiés peut être attribué aux différences dans le contexte historique qui a vu naître la question de l'asile respectivement en Europe de l'Ouest et en Asie du Sud-Est.

Cette idée est généralisée dans les travaux de Joppke, notamment son livre *Immigration and the nation-state: the United States, Germany, and Great Britain* paru en 1999. Dans ses travaux, cet auteur identifie pour ces pays l'existence et la robustesse de principe de droits limitant la capacité de l'État en matière de gestion de l'immigration comme un facteur clé expliquant les différences de politique migratoire d'un pays à l'autre.

Son idée est la suivante : dans le paysage politique contemporain, les gouvernements de l'ensemble des pays occidentaux déclarent vouloir réduire le nombre d'immigrants, et sont prêts à employer tous les moyens nécessaires pour parvenir à cet objectif. Cependant, l'existence de normes supra-légales limitant leurs pouvoirs empêche les États d'utiliser les outils les plus répressifs à leur disposition, ralentissant les processus d'expulsion, empêchant la fin du regroupement familial, forçant la régularisation de travailleurs sans-papiers, etc. L'idée que les États sont essentiellement prêts à tout pour garder leurs frontières fermées, mais ne peuvent pas légalement tout faire, permet de comprendre l'action de l'État thaïlandais, tout en évitant de recourir à des concepts ou modèles *ad hoc*.

La structure choisie pour décrire la situation des réfugiés urbains en Thaïlande reflète une caractéristique essentielle de la façon dont ils sont gérés dans le pays. En effet, le système en place est complètement décentralisé. Il n'existe pas d'administration chargée de la mise en place d'une politique bien définie. Au contraire, le système est organisé autour de normes informelles, s'appuyant sur diverses couches où s'entrecroisent acteurs publics et privés, chacun plus ou moins indépendants des autres. Pour rendre ce système intelligible, la thèse est organisée en trois parties, chacune centrée sur un acteur : la première sur l'État, la deuxième sur le HCR, et la troisième sur la société civile.

La première partie se concentre sur le rôle de l'État thaïlandais et la manière dont ses politiques influencent les conditions d'accueil des réfugiés urbains dans le pays. L'argument clé de cette partie est que l'État thaïlandais refuse d'avoir une politique explicite vis-à-vis des réfugiés, c'est-à-dire qu'ils sont traités comme tous les autres migrants présents dans le pays. Cette absence de politique explicite ne signifie cependant pas que l'État n'a pas de politique du tout, mais simplement que cette politique est informelle, née de la pratique plutôt que de la loi. Et la politique de l'État thaïlandais, quoique complexe, ne manque pas de cohérence et peut être facilement qualifiée : elle est punitive et répressive. Les lois, quand elles existent, sont systématiquement interprétées pour aller à l'encontre de l'intérêt des réfugiés, et quand elles n'existent pas, leur absence est interprétée de la même façon. En d'autres termes, le modèle de Joppke est applicable à la Thaïlande : l'État traite les réfugiés de façon aussi instrumentale et répressive que possible, et en l'absence de principes supra-légaux limitant sa capacité à agir, l'État est prêt à employer des moyens extrêmes pour parvenir à ses fins.

La deuxième partie analyse le rôle joué par le HCR, et propose l'idée que sa contribution clé à la situation des réfugiés urbains en Thaïlande est la création et le maintien d'une bureaucratie dédiée aux réfugiés et demandeurs d'asiles. Le HCR prend

en pratique le relais pour gouverner des populations abandonnées par l'État. En Thaïlande, le HCR choisit de prendre le relais de façon minimale, en concentrant l'ensemble des ressources attribuées pour les réfugiés urbains dans le financement de deux procédures : le processus de détermination de statut du réfugié, et la réinstallation des réfugiés. Le choix du HCR de se limiter à ce type de programmes reflète en partie sa position délicate vis-à-vis de l'État thaïlandais, qui n'est pas signataire de la Convention relative au statut des réfugiés et qui n'est donc pas tenu de laisser l'Agence agir sur son territoire et pourrait l'expulser à tout moment. Malgré ces contraintes, il n'est pas évident que l'approche prise par le HCR soit optimale. Le HCR ne consacre pratiquement pas de ressources à la protection des réfugiés urbains pendant leur séjour en Thaïlande, mais leur demande d'attendre plus de deux ans avant de rendre une décision sur leur cas. De ce fait, il expose les populations qu'il est chargé de protéger à des risques importants et non-nécessaires.

Enfin, la troisième partie observe le rôle joué par la constellation d'associations et organisations non-gouvernementales qui constitue le dernier acteur clé de la gestion des réfugiés urbains en Thaïlande. L'argument central de cette partie est que la société civile s'est montrée incapable d'être un agent transformateur. Elle n'a pas su obliger l'État thaïlandais à se poser sérieusement la question de la réforme de son système de gestion. Cette incapacité s'explique par la préférence des agents de la société civile pour la collaboration avec les autorités, et la provision de services, plutôt que d'opter pour des campagnes de dénonciation et sensibilisation qui pourraient déplaire aux acteurs publics. Cette volonté de collaboration, de partenariat, avec les agents de l'État, est maintenue grâce à une double surestimation : celle de la capacité de répression de l'État et celle de sa volonté de réforme. Cette double erreur s'explique par la structure des organisations travaillant avec les réfugiés urbains à Bangkok : toutes emploient principalement des étrangers occidentaux diplômés, qui n'ont pas l'expertise requise pour facilement comprendre le contexte dans lequel ils évoluent, et n'ont pas l'occasion de développer cette expertise parce que le modèle de ressource humaine de ces associations les conduit à quitter leur poste au bout quelques années.

Je démontre que le modèle de gestion des réfugiés urbains mis en place par l'État thaïlandais n'est pas protecteur, et qu'il est au contraire répressif et utilitaire. Je démontre également que les acteurs non-étatiques travaillant avec les réfugiés urbains en Thaïlande ne parviennent pas à compenser pour l'absence de protection au niveau de l'État, et qu'il n'est pas certain qu'en l'absence de cette protection ils seraient en mesure de faire mieux. La situation des réfugiés urbains en Thaïlande suggère que la protection des réfugiés est

conditionnelle à la tolérance de l'État pour l'action des acteurs non-étatique. Finalement, je démontre qu'en l'absence de limite sur la capacité de l'État thaïlandais à utiliser des outils répressifs pour la gestion des réfugiés urbains, le niveau de protection qui peut être atteint dans le pays est très bas, et qu'en l'absence de réforme profonde, il semble improbable qu'il s'améliore de façon significative. L'idée que la politique d'un État vis-à-vis des immigrants est fonction de l'existence de normes supra-légales, un argument formulé par Joppke dans le contexte des pays industrialisés, semble renforcée par l'analyse de la situation thaïlandaise.

Il ne semble pas qu'une généralisation de l'approche thaïlandaise de la gestion des réfugiés pourrait mener à l'émergence d'un système mondial de gestion de l'asile qui présenterait les mêmes garanties de protection que le système actuel. De leur côté, les organisations mandatées pour prendre le parti des réfugiés ne sont pas en position de changer la situation. Trois leçons peuvent être tirées du cas de la Thaïlande : la première, que le consensus d'après-guerre sur la gestion des réfugiés, maintenant mis à mal par le refus des pays industrialisés d'en respecter l'esprit, ne réapparaîtra probablement pas tel quel si le flambeau de la protection des réfugiés tombait sur des pays tels que la Thaïlande. La deuxième, que le rôle du HCR dans les pays non-signataires n'est plus celui d'un gardien de la Convention, mais d'un gestionnaire de flux, et que cette situation mène à l'abandon des réfugiés en terre hostile. Troisièmement, que la bonne volonté de la société civile internationale en matière de Droits de l'Homme ne suffit pas toujours, et que les modèles actuellement dominants peuvent se montrer incapables de faire la différence, comme c'est le cas en Thaïlande.