

Detention of Refugee Children in Malaysia and Thailand: Are Alternatives to Detention (ATD) Workable?

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Abstract

The refugee issue in Malaysia and Thailand is one of the most protracted human rights issues that both countries face. Regardless of abundant requests and advocacies by non-state actors, both locally and internationally, to persuade the governments of Thailand and Malaysia to provide protection to refugees, the fate of these refugees remains uncertain. One of the key limitations for the human rights protection of the refugees is that both countries did not sign the 1951 Refugee Convention or its 1967 Protocol; moreover, both Thailand and Malaysia do not treat the refugee issue as a domestic problem. This paper examines the detention of refugee children in Malaysia and Thailand with the main intention to advocate for the method of Alternatives to Detention (ATD) as a solution to the shortcomings from a legal method. Based on this advocacy, this paper first explores the human rights situation of refugee children in detentions by looking into the current detention practices of both countries. Secondly, this paper examines the strategies and tactics of how the local non-governmental organizations (NGOs) advocate and convince their governments to adopt the approach of ATD.

Keywords: *Alternatives to Detention (ATD), Refugee Protection, Refugee Children, Malaysia, Thailand*

I. INTRODUCTION

According to the latest statistic made available by the United Nations High Commissioner for Refugees (UNHCR), the Asia Pacific region has a total of 7.7 million people of concern. These 7.7 million people of concern refer to 3.5 million refugees, 1.9 million Internally Displaced Persons (IDP), and 1.4 million stateless people. There is a great number of people in the Southeast Asia region who are involuntarily escaping from dispute, oppression or deprivation, particularly from

Myanmar due to the prolong conflict in the country. Myanmar itself has a populace of refugees which comes up to a total of approximately 500, 000 refugees.¹ In the previous few years, when the refugee influx became more apparent, most countries have since then adopted a closed-door approach to the entrance of these refugees. These countries include those of whom were previously preached for human rights approach and refugee-friendly policies, leaving the refugees to an uncertain future. Rather than providing them protection based on a humanitarian ground, these countries increasingly treat the refugee issue as a security threat.

By definition, the refugee populace consists of all ages, including children, adults and senior citizens. Refugee children can easily fall into the category of vulnerability and can be exposed to risks due to their lack of capacity in protecting themselves. Based on the UNHCR Global Trends 2016 report, there 51% of children below the age of 18 are included in the refugee populace,² meaning that almost 50% of the refugee populace consists of refugee children. This statistic is extremely alarming, however there are many reasons that can force a child to become a refugee child. For instance, some refugee children escape from their home countries by following their mother or father. At the same time, there are also unaccompanied asylum-seeking children (UASC) whom may have lost their parents or guardians. The 1951 Refugee Convention is a major foundation document for the international security of refugees³ that provides a mechanism that allows refugees who have fled from conflict, who face maltreatment in their home countries, to seek protection in another country for security and safety purposes. Based on the international laws, the definition of a refugee child is explained by combining the definition of a child in Article 1 of the Convention on the Rights of the Child (CRC), an individual below the age of 18,⁴ with the definition of a refugee in the 1951 Refugee Convention:

“A refugee is someone who owing to a 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 to or owing to such fear, is unwilling to avail himself of the protection of that country.”⁵

Consequently, in Southeast Asia, the refugee issue is not new, and it has been made worse when countries that host a great number of refugees are not included

¹ UNHCR. (2018), online: *Asia and the Pacific*, <<http://www.unhcr.org/en-my/asia-and-the-pacific.html>>.

² UNHCR. (2016), online: *UNHCR Global trends*, <<http://www.unhcr.org/globaltrends2016/>>.

³ Çetinkaya Lokman B. *Safe zone: a response to large-scale refugee outflows and human suffering*, ed (Cham, Switzerland: Springer, 2017).

⁴ UNICEF. (1989), online: *Convention on the Rights of the Child* <https://www.unicef.org/crc/files/Rights_overview.pdf>.

⁵ UNHCR. (2010), online: *Convention and Protocol Relating to the Status of Refugees* <www.unhcr.org/3b66c2aa10.pdf>.

in the 1951 Refugee Convention. In 2016 alone, Malaysia and Thailand detained more than 2, 290 asylum seekers and refugee children in immigration detention centres (IDCs).⁶ The total amount of child asylum seekers and refugee children in the IDCs of Malaysia and Thailand are as listed in Table 1 below. The statistical indication showcases the significance in the amount of child asylum seekers and refugee children kept in the IDCs of Malaysia and Thailand. Looking at this from a human rights-based approach, countries are the main duty-bearers and have a duty to provide assistance to refugees despite having not signed the 1951 Refugee Convention.

Table 1: Total amount of child asylum seekers and refugee children in IDCs of Malaysia and Thailand from 2014 to 2016.⁷

Year Countries	2014	2015	2016
Malaysia	1, 334	1, 433	647
Thailand	DNA	DNA but 49 in December	DNA but 43 in December
Total	More than 1, 334	More than 1, 482	More than 690

DNA = Data Not Available for relevant period.

Regardless of the protracted issue, Malaysia and Thailand in this circumstance opt not to treat the issue of refugee protection as a global problem, ultimately shifting the responsibility to the shoulders of the UNHCR. For instance, one main challenge in persuading the approach to the Malaysian government was that Malaysia fails to treat the refugee issue as a domestic problem but instead prefers to consider it as an UNHCR problem and an international problem.⁸ Such an approach to not view the refugee crisis as a domestic issue, although it is transboundary and a major hindrance, not only requires international support but

⁶ Button & Lisa (2017). "Unlocking Childhood: Current Immigration Detention Practices and Alternatives for Child Asylum Seekers and Refugees in Asia and the Pacific" Save the Children, online:
<https://resourcecentre.savethechildren.net/sites/default/files/documents/unlocking_childhood.pdf>.

⁷ Button & Lisa (2017). "Unlocking Childhood: Current Immigration Detention Practices and Alternatives for Child Asylum Seekers and Refugees in Asia and the Pacific" Save the Children, online:
<https://resourcecentre.savethechildren.net/sites/default/files/documents/unlocking_childhood.pdf>.

⁸ Nah, Alice M. "Networks and norm entrepreneurship amongst local civil society actors: advancing refugee protection in the Asia Pacific region" (2016) 20:2 *The International Journal of Human Rights* 223.

also domestic support to achieve a long-term solution.⁹ As widely known, one major hindrance that contributes to the worsening of the situation is that both Malaysia and Thailand did not ratify the 1951 Refugee Convention or its 1967 Protocol.¹⁰ There are inadequate protections given for the children of refugees in the IDCs of Malaysia and Thailand although they are part of the CRC. From the legal perspective, both countries have obligations to be in compliance with the universal human rights standards. However, some reservations from these two countries have become obstacles for them to fulfil their obligations. For instance, Malaysia, as a party of the CRC, made a reservation on Article 37. Article 37 spells out the right of the child, in which a child should not be subject to unpleasant, merciless, humiliating treatment or punishment and deprived of liberty illegally or illogically. Malaysia's reservation on Article 37 has unfortunately inappropriately permitted the Malaysian government to violate the human rights of the refugee children. The lack of legal framework has been justified by Malaysia and Thailand to legitimate their inactions, this directly indicates that refugees are not accepted and not recognized because they do not have any legal standings in both countries.¹¹

Qualitative approach is used in this paper based on primary and secondary sources. Three forms of interviews are used as the primary source for this paper, namely direct-interview, Skype-call interview, and email interview. The interviewees consisted of local advocacy groups including NGOs in Malaysia and Thailand, representatives from Malaysia and Thailand governments, UNHCR staff and academicians. Data is then analysed through triangulation method in order to verify the validity and reliability of the collected data. This paper is divided into two main parts. It first discusses the detention of refugee children in Malaysia and Thailand before analyses the challenges of pushing for an Alternatives to Detention (ATD) approach for the governments of Thailand and Malaysia.

II. THE DETENTION OF REFUGEE CHILDREN IN MALAYSIA

Malaysia has a long history of the presence of refugees in the country. One of the reasons that refugees flee to Malaysia is due to the strategic geographical position of Malaysia, as it is located in the Asia Pacific region.¹² For instance, in 1975, Malaysia experienced the influx of Vietnamese boat people, also known as boat people. These are refugees who fled Vietnam by boats after the Fall of Saigon.

⁹ Nah, Alice M. "Networks and norm entrepreneurship amongst local civil society actors: advancing refugee protection in the Asia Pacific region" (2016) 20:2 *The International Journal of Human Rights* 223.

¹⁰ Button & Lisa (2017). "Unlocking Childhood: Current Immigration Detention Practices and Alternatives for Child Asylum Seekers and Refugees in Asia and the Pacific" Save the Children, online:
<https://resourcecentre.savethechildren.net/sites/default/files/documents/unlocking_childhood.pdf>

¹¹ *Ibid.*

¹² Anonymous. *Ministry of Home Affairs Malaysia*, ed (2018).

Vietnamese temporary shelters were established in various areas in the country, for instance in Pulau Bidong.¹³ The incident triggered the formation of the UNHCR office at Kuala Lumpur in 1975. One of the aims of the establishment was to provide protection and assistance for refugees (UNHCR Malaysia, 2018).

According to the UNHCR report, dated in July 2018, a total of 159,980 refugees and people who were seeking asylum were based in Malaysia. The composition of this statistic comprises of people from several countries, such as Myanmar, Pakistan, Yemen, Somalia, Sri Lanka, Afghanistan, Iraq and others. Additionally, around 42,400 children below the age of 18 were registered with the UNHCR. There are several ways for these refugees to enter Malaysia. Many of the refugees come through sea routes by boats, and very often with the help of a person from their refugee community or anyone that is already residing in Malaysia. Even today, Malaysia has only signed three international human rights treaties. These three treaties are the CRC, the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).¹⁴ One of the key reasons for why the Malaysian government has not signed the 1951 Refugee Convention and the 1967 Protocol is because the government deems such action as a pulling factor for the influx of even more refugees to the country due to Malaysia's geographical location in Southeast Asia.¹⁵ If that takes place, the Malaysia government fears it will not able to contain or manage it.¹⁶ However, while Malaysia has not signed the 1951 Refugee Convention and the 1967 Protocol, Malaysia, as a UN Member State, the country is bounded by the universal human rights standards as spelled out in the Universal Declaration of Human Rights (UDHR). In short, it is Malaysia's duty to provide equal treatment to the refugee community.

On the regional scale, Malaysia is part of the Bangkok Principles on Status and Treatment of Refugees, also known as the Bangkok Principles.¹⁷ The Bangkok Principles were founded by the Asian-African Legal Consultative Organization (AALCO) in 1966.¹⁸ One main establishment of the Bangkok Principles is to provide the definitions of the status of refugees, and also to provide a guideline to

¹³ Ahmad, Abdullahi Ayoade, Zulkanain Abdul Rahim & Abdul Majid Hafiz (2016). "The Refugee Crisis in Southeast Asia: The Malaysian Experience" 3:6 International Journal of Novel Research in Humanity and Social Sciences, online: <https://www.researchgate.net/profile/Abdullahi_Ahmad6/publication/318653060_The_Refugee_Crisis_in_Southeast_Asia_The_Malaysian_Experience/links/59758a1eaca2728d02545c9b/The-Refugee-Crisis-in-Southeast-Asia-The-Malaysian-Experience.pdf>.

¹⁴ UNHCR. (2018), online: *United Nations Treaties* <http://www.un.org/my/un_treaties.aspx>.

¹⁵ *Ibid.*

¹⁶ Santiago, Charles. *Refugee Children in Detention*, ed (2018).

¹⁷ Supaat, Dina Imam. "Refugee Children under the Malaysian Legal Framework" Studies, online: <http://repo.uum.edu.my/16031/1/2014_7.pdf>.

¹⁸ Taylor, Savitri (2018). "Refugee Protection in the Asia Pacific Region", online: <<http://www.refugeelaidinformation.org/refugee-protection-asia-pacific-region>>.

the membership states of AALCO as a way to manage the issue of refugees.¹⁹ At the same time, Malaysia is also part of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, also known as the Bali Process. The Bali Process encourages its member states to provide temporary shelters for asylum seekers and refugees.

Currently, due to the limitations of legal framework in refugee protection, refugees in Malaysia are treated in a similar way as other immigrants who enter the country without documentation. This means that the refugees must abide by the same current immigration policy, in which, if any individual does not have lawful documents while entering the border of Malaysia, they are categorised as “illegal” immigrants or undocumented. In consequence, they will be arrested due to their status of illegality. However, for those refugees who manage to reach to the UNHCR for help, they will be given the UNHCR cards, as long as they fulfil certain criteria that have been set by the UNHCR.²⁰ There are two kinds of cards those who are registered as refugees will be given refugee cards and for asylum seekers, they will be given asylum-seeker card. The UNHCR card is considered the only method for these refugees who fled to Malaysia for protection, as a form of “legitimacy”. The loophole is that the UNHCR card is not acknowledged officially by the Malaysian government. But to a certain extent, some refugees have been able to be employed by using the UNHCR cards.²¹ For instance, in some cases, some companies or corporations have hired a small number of employees from the refugee community, those who possess the UNHCR cards. Nonetheless, there have been also reports of abuse of such cards.

1. Conditions of Refugee Children in the IDCs

As highlighted in the previous section, individuals who are found without lawful documentation to stay in Malaysia are subjected to Section 6(1)(c) of the Immigration Act 1959/93. Furthermore, depending on the circumstances, some are subjected to verdict detention.²² The situation worsens when, in some cases, after the serving of a jail term under the Immigration Act, the refugee will be moved to the IDCs.²³ As of now, there are no other alternatives in Malaysia for refugee children to be detained together with their parents, or guardians, during raids. Those below the age of 18 are excused from being detained, as they are considered children under the law. However, it is often that when children are detained with

¹⁹ *Ibid.*

²⁰ Jalil, Haikal. “Pilot project to allow Rohingya UNHCR card holders work legally to begin from March: Zahid”, *The Sun Daily* (2 February 2017), online: <<http://www.thesundaily.my/news/2148173>>.

²¹ *Ibid.*

²² The Commissioner of Law Revision. “Immigration Act 1959/63”, (2006), online: <<http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act 155.pdf>>.

²³ Nambiar, Deepa. *Local Advocacy Groups in Malaysia*, ed (2018).

their family members or guardians, they are also subjected to detention because law enforcement has no option but to detain the entire family in the IDCs.²⁴ Such practices reflect the problem of a weak legislative framework, leading to the mistreatment of refugee children, resulting in potential human rights violations.

Currently, there is a total of 13 IDCs in Malaysia that hold refugee children.²⁵ Adult men and women are placed separately in the IDCs, and, children below the age of 12, stay with either parent, most often with their mother in the women's adult facility.²⁶ Once the children reach the age of 13, they will be separated to adult male or female facilities.²⁷ Table 2, below, showcases the list of refugee children that are currently in the 13 IDCs in Malaysia.

Table 2: The list of refugee children in IDCs of Malaysia as of September 2017.²⁸

Category IDCs	Child under 18 Years – Boys	Child under 18 Years - Girls	Child under 12 Years - Boys	Child under 12 Years - Girls
Ajil, Terengganu	83	7	11	15
Bekenu, Sarawak	4	3	10	13
Bukit Jalil, WPKL	1	1	7	3
Juru, Pulau Pinang	40	2	2	2
KLIA, Selangor	0	0	4	2
Langkap, Perak	14	4	9	11
Pekan Nenas, Johor	25	18	3	6

²⁴ SUHAKAM. "Annual Report 2014", (2014), online: *Suruhanjaya Hak Asasi Manusia* <<https://docs.google.com/file/d/0B6FQ7SONa3PRUG1nc25yRGV3TIU/preview>>.

²⁵ OHCHR. "List of issues and questions in relation to the combined third to fifth periodic reports of Malaysia", (2017), online: *Office of the United Nations High Commissioner for Human Rights* <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared Documents/MYS/INT_CEDAW_ARL_MYS_29497_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT_CEDAW_ARL_MYS_29497_E.pdf)>.

²⁶ SUHAKAM. "Annual Report 2014", (2014), online: *Suruhanjaya Hak Asasi Manusia* <<https://docs.google.com/file/d/0B6FQ7SONa3PRUG1nc25yRGV3TIU/preview>>.

²⁷ Santiago, Charles. *Refugee Children in Detention*, ed (2018).

²⁸ OHCHR. "List of issues and questions in relation to the combined third to fifth periodic reports of Malaysia", (2017), online: *Office of the United Nations High Commissioner for Human Rights* <[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared Documents/MYS/INT_CEDAW_ARL_MYS_29497_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT_CEDAW_ARL_MYS_29497_E.pdf)>.

Detention of Refugee Children in Malaysia and Thailand

Lenggeng, Negeri Sembilan	9	1	9	12
Machap Umboo, Melaka	42	0	1	2
Semuja, Sarawak	4	1	0	0
Tanah Merah, Kelantan	66	3	0	0
Semenyih, Selangor	25	1	7	10
Belantik, Kedah	10	5	3	6
Total	323	46	66	82

There are numerous problems that the refugee children encounter throughout their detention period in Malaysia. For instance, it is common that these refugee children are found to be liable to physical as well as mental health problems.²⁹ They become ill easily due to inadequate nutrition in the IDCs. These refugee children are deprived of their right to have an ordinary life, like other children. For instance, they are denied the right to leisure because they are not allowed to play in an open space area. Moreover, these children are also exposed to various forms of threats and abuses, as they are vulnerable to abuse by adult detainees. They are not allowed to receive formal education because they are not recognised by the Malaysian government due to the ambiguity of nationality and the absence of documentation. However, some are able to attend informal education institutions, such as Muslim religious schools or churches that run refugee schools based on donations from the public or individuals.³⁰ Apart from that, there are also a number of Malaysian NGOs who works on advocacy for the rights of refugees, providing informal lessons for refugee and asylum-seeking children.

2. Advocacy Strategies by the Local NGOs in Malaysia

The Alternatives to Detention (ATD) is a practice which permits for asylum seekers, refugees as well as immigrants to stay in the public with freedom of movement while their movement status is being decided or whereas in anticipation of deportation from a state.³¹ In international law, detention of children should be implemented as

²⁹ Arshad, Amer Hamzah. "Malaysia's forgotten children", (2005), online: <<https://aliran.com/archives/monthly/2005a/5b.html>>.

³⁰ Santiago, Charles. *Refugee Children in Detention*, ed (2018).

³¹ OHCHR. "There Are Alternatives", (2011), online: <<https://www.ohchr.org/Documents/Issues/Migration/Events/IDC.pdf>>.

the last option with short period of detention. ATD is considered as one of the solutions that could possibly help to resolve issues of refugee children in detention centres. The UNHCR Guidelines on Detention has clearly highlight that asylum-seeking children should not be detained.³² Since Malaysia is not a party to the 1951 Refugee Convention and its 1967 Protocol, there have been various initiatives from domestic advocacy groups to explore the possibility of ATD to overcome the human rights abuses of refugee children in detention centres. Local NGOs have been working together with the authorities for this purpose. For instance, the Human Rights Commission of Malaysia (SUHAKAM), SUKA Society, Yayasan Chow Kit and International Detention Coalition (IDC) are working with the Department of Immigration, the Attorney General's Chambers and the Welfare Department to initiate some form of a working group to explore the feasibility to adopt an ATD approach. Learning the best practices as applied in other countries, will help to come up with a model that can be practiced in Malaysia.³³

As previously highlighted, Malaysia's status as a non-party to the 1951 Refugee Convention and its 1967 Protocol is a major hindrance to refugee protection; however, it is not a justification to the violations of refugee human rights. Recognizing such a hindrance, the local NGOs applied a different approach, based on the argument that Malaysia is a signatory to the CRC, in which the Malaysia government has obligations to respect the rights of children. The process of advocating for the approach of ATD is not easy, particularly in persuading the Malaysian government to obey the compulsions, as indicated in the CRC.³⁴ Nevertheless, this does not prevent local advocacy groups from promoting the issue based on the sections mentioned in the CRC. In order to do so, the local advocacy NGOs apply the innovative approach in terms of creating awareness, especially among the officials who are responsible. For instance, immigration officers must be well-equipped with knowledge of the CRC³⁵ in order to establish the human rights-based approach in handling the refugee children. One common problem as highlighted by some respondents is that the detention of refugee children is treated as a security problem, and there are little attempts by the government to manage the issue from the human rights viewpoint. This adds to the difficulty in persuading the government to work with local advocacy groups and the UNHCR to tackle the problem. The reason of doing such approach is mainly because of the mishandling issues that occur due to the lack of understanding in the Malaysian government, as they recognize these children as refugees first, rather than children first.

SUHAKAM, for instance, has been working systematically in advocating for the ATD approach to the Malaysian government to halt the practice of IDCs for

³² Field, Ophelia. "Legal and Protection Policy Research Series", (2006), online: <<https://www.refworld.org/pd/4472e8b84.pdf>>.

³³ SUHAKAM. "Annual Report 2014", (2014), online: *Suruhanjaya Hak Asasi Manusia* <<https://docs.google.com/file/d/0B6FQ7SONa3PRUG1nc25yRGV3TIU/preview>>.

³⁴ Nambiar, Deepa. *Local Advocacy Groups in Malaysia*, ed (2018).

³⁵ *Ibid.*

refugee children. Moreover, the detention of refugee children is against the universal human rights norms, which cite that children rights should be protected. The legitimacy of the detention practice of these refugee children by the Malaysian government should be questioned. In managing such issues, SUHAKAM, with other concerned local NGOs working on refugee issues, have recommended that the Malaysian government, rather than locking children up in the IDCs with poor conditions, the government should place these children in a conducive atmosphere that is favourable to their development.³⁶

Apart from the strategies mentioned above, local NGOs also advocate for the strategy of social media and technology to continue to bring the plights of these refugee children to the media's attention so that it can reach the general public. In the long run, this can help to shape public opinion into having a more human rights-based narrative when looking into this issue. One of the methods includes using social chats, such as the creation of a WhatsApp group of NGO leaders who are working in the same field for the purpose of resource accumulation and information sharing. The local NGOs also apply the strategy of resource accumulation, in terms of manpower, through collaboration with other NGOs for coalition and volunteer recruitments. Pragmatically, a resource accumulation strategy is significant to create public awareness to understand the refugee children detention issue from the human rights lens. Volunteer programs, as mentioned above, are crucial in getting more Malaysians to participate in advocacy work.

Engagement is another crucial strategy as employed by the local advocacy groups, particularly with key policymakers, in order to put an appropriate legislative framework in place for the protection of these refugee children.³⁷ Very often, the government treats the refugee issue as a national security threat,³⁸ which explains why the government is reluctant to openly discuss this issue with the refugee community and the local NGOs as a whole. In many circumstances, the local NGOs are treated as outsiders on the issue, creating a significant barrier for local NGOs. Having said that, the opportunities for the local NGOs to advance their advocacy is limited especially when consultation is limited; moreover, the opportunities remain restricted when the government is not willing to practice a more open-door approach and to be inclusive when coming up with solutions for the influx of refugees in the country. For instance, there are closed door meetings that are rarely kept private from public, and this type of approach impacts the government-NGO relations in building trust for the same goal.³⁹

This form of direct engagement can enhance the effectiveness of persuasive strategy, whereby amplifying the matter into a nationwide discourse might help to increase involvement of parliamentarians to support the causes. For instance, in

³⁶ Anonymous. *International Detention Coalitions (IDC)*, ed (2017).

³⁷ Nambiar, Deepa. *Local Advocacy Groups in Malaysia*, ed (2018).

³⁸ *Ibid.*

³⁹ Lee, Gwen. *Local Advocacy Groups in Malaysia*, ed (2018).

corresponding to the rise of the refugee issue, Amnesty International (AI) has launched its global campaign entitled, “I Welcome” to develop a new narrative of viewing the refugee issue, “From shrinking space to sharing responsibilities”. The key aim of the campaign is to call out for more countries to adopt a “sharing responsibilities” approach in managing the influx of refugees into their countries, as this continues to be a global challenge. There are long term and short term goals under the “I Welcome’ campaign by AI, and, at the same time, AI also established rapid response mechanisms to provide solutions to emergency issues in order to stop violations, raise awareness and generally, to highlight the refugee issue on a broader scale.⁴⁰

Nevertheless, as Malaysia has not signed the 1951 Refugee Convention, at present, there is no policy about refugee issues in Malaysia. Moreover, there are still no alternatives that have been initiated, in terms of the treatment of refugee children in IDCs in Malaysia.⁴¹ A number of ATD-friendly approaches have been proposed by the local advocacy groups. The government needs to first recognize the rights of children, including refugee children. Second, the government needs to recognize the basic rights of these refugee children such as education, food and shelter. The government suggested the usage of the biometric system to the UNHCR, however, there are some reservations from the UNHCR because the biometric system has the potential to breach the rights of refugees.⁴²

III. THE DETENTION OF REFUGEE CHILDREN IN THAILAND

Similar to Malaysia, Thailand is not a state party to the 1951 Refugee Convention and its 1967 Protocol.⁴³ Nevertheless, as a member of the AALCO, Thailand is similar to Malaysia in that it has adopted the Bangkok Principle on the Status and Treatment of Refugees.⁴⁴ The Prime Minister of Thailand, General Prayut Chan-ocha pledged that the Thai government views the refugee issue seriously, at the Leaders’ Summit on the Global Refugee Crisis in New York in September 2016.⁴⁵ In his speech, he highlighted that there is a need for the Thai government to stop refugee children from being kept in the IDCs.

⁴⁰ *Ibid.*

⁴¹ Santiago, Charles. *Refugee Children in Detention*, ed (2018).

⁴² Santiago, Charles. *Refugee Children in Detention*, ed (2018).

⁴³ Human Rights Watch. “Thailand: Refugee Policies Ad Hoc and Inadequate Closed Camps, No Work Authorization Lead to Stagnation and Abuse”, (2012), online: *Human Rights Watch* <<https://www.hrw.org/news/2012/09/13/thailand-refugee-policies-ad-hoc-and-inadequate>>.

⁴⁴ Smith, Merrill. “Rights in Exile”, (2011), online: <<http://rightsinexile.tumblr.com/post/13676403836/the-bangkok-principles-on-the-status-and-treatment>>.

⁴⁵ Human Rights Watch. “Thailand: Implement Commitments to Protect Refugee Rights”, (2017), online: <<https://www.hrw.org/news/2017/07/06/thailand-implement-commitments-protect-refugee-rights>>.

On 10 January 2017, Thailand took the initiative to implement Cabinet Resolution 10/01 and, set up a commission for at screening mechanism for undocumented migrants and refugees. In the same resolution, it also stated that Thai citizens are now allowed to begin to use the word “refugee” in their own Thai Language.⁴⁶ This particular resolution is significant because this was the first cabinet resolution that deliberated on the refugee screening mechanism and the evaluation on the law procedures that were linked to the refugee community in Thailand. Most recently, the Thai government collaborated with civil society groups through the signing of a Memorandum of Understanding (MOU) for refugee children, aiming to relieve them from refugee camps.⁴⁷ |⁴⁸ While the initiative of the Thai government is comparatively stronger than the Malaysian government, Thailand continues the practice of putting refugee children in detention centres,⁴⁹ or more popularly known as “refugee camps.”⁵⁰

1. The Condition in the Refugee Camps and its Challenges

Unlike in Malaysia, which uses the term IDCs, as the place where authorities detain refugees, the term “refugee camp” is used in Thailand to refer to the place where authorities detain refugees. In Thailand, there are two types of refugee camps. The first type of refugee camp is specifically for the Burmese refugee populace, which are located in the sharing boundaries of Myanmar and Thailand. There is no definite period of detention for these refugees, and some refugees have reportedly been residing in the refugee camps for nearly three decades. The second type of refugee camp is specifically for the “urban refugees”. In Thailand, the term “urban refugees” refers to refugees who flee mostly from Cambodia, Vietnam and Syria. The term “urban refugee” does not include refugees from Myanmar, North Korea and some groups from Vietnam⁵¹ because the Thai government has a different arrangement for these groups of refugees since they are not registered with the UNHCR.

Currently, Thailand has a total of approximately 99,000 refugees from Myanmar alone, and most of them have fled from the boundaries of Myanmar and

⁴⁶ Parinya, Ann. *CRSP Thailand*, ed (2018).

⁴⁷ *Ibid.*

⁴⁸ Jones, Evan. “Joint Statement: Thailand Government MOU On Alternatives to Detention for Children”, (2019), online: <<https://aprnr.info/joint-statement-thailand-government-mou-on-alternatives-to-detention-for-children/>>.

⁴⁹ IDC. “Urgent Need for No Child Detention Policy in Thailand”, (2017), online: *International Detention Coalition* <<https://idcoalition.org/news/urgent-need-for-no-child-detention-policy-in-thailand/>>.

⁵⁰ Parinya, Ann. *CRSP Thailand*, ed (2018).

⁵¹ *Ibid.*

Thailand.⁵² The second refugee camp currently has a total of about 7,000 “urban refugees” and people who are seeking asylum from more than 45 countries, including 490,000 that have been recorded as stateless.⁵³ Similar to Malaysia, the Thai Government remains reluctant to ratify the 1951 Refugee Convention and the 1967 Protocol. This is because of two main reasons. The first reason is to avoid any policy that can potentially create misunderstanding to their neighbors next to the borders.⁵⁴ The second reason is because Thailand has a policy to not be labelled as a receiving country, in terms of refugee. As Thailand’s politics remain unstable, moreover, it also shares borders with less developed economic neighbors. Despite these challenges, Thailand has, thus far, in 2017 hosted more than 100, 000 refugees and more than three million migrant workers from its neighboring states.^{55, 56, 57}

Similar to the Malaysian government, the Thai government also signed and ratified the CRC. But in the case of Thailand, it has specifically made reservations in not accepting Article 22 of the CRC, which protect the rights of refugee children. The number of “urban refugees” is relatively small compared to the refugees who have fled from Myanmar. The arrests could happen because of two reasons. The first reason is due to the long process to obtain the UNHCR card. Frequently, refugees are potentially arrested due to their -overstay in Thailand and this is considered “illegal” entry. The second reason is that some refugees enter Thailand with fake passports.⁵⁸ Once these refugees are arrested, they will be sent to court for hearings, either to pay fines or to serve jail time, yet it is common that the sentence is to pay a fine. But the plight does not just end there for these refugees, according to Thailand immigration laws, after the penalty, the person will be deported due to the offences of “illegal” entry or overstay. Normally these refugees will be deported back to their home countries. In the case where these refugees are unable to go home due to the status, they will then be detained in the refugee camps based on where they come from. For people from countries, such as Cambodia, Vietnam, Laos and Myanmar, normally the Thai government will send them to the borders, through land connections. What often takes place is that the detention period is indefinite, and their futures remain uncertain in the refugee camps, with conditions that are not in compliance with human rights. These refugees will normally stay in the refugee camps until they decide either to return voluntarily or

⁵² Thailand, UNHCR. (2018), online: *UNHCR Thailand* <<https://www.unhcr.or.th/en/about/thailand>>.

⁵³ *Ibid.*

⁵⁴ Sooktaewee, Siwawong. *Local Advocacy Groups in Thailand*, ed (2018).

⁵⁵ *Ibid.*

⁵⁶ Lefevre, Amy Sawitta. “Thailand’s New Labor Rules Send Thousands of Migrant Workers Fleeing” (2017), online: Reuters <<https://www.reuters.com/article/us-thailand-migrants/thailands-new-labor-rules-send-thousands-of-migrant-workers-fleeing-idUSKBN19O0B6>>.

⁵⁷ FortifyRights. “Thailand: Provide Legal Status, Protections for Refugees”, (2019), online: <<https://www.fortifyrights.org/publication-20170706.html>>.

⁵⁸ Parinya, Ann. *CRSP Thailand*, ed (2018).

the UNHCR comes in to assist by finding them a resettlement, however this process takes a long time.⁵⁹

Overall, the practice of detention is slightly different in Thailand, compared to Malaysia. In the matter of refugee children, they are mainly detained while following their family members. One reason is when the parents refuse to separate from their children and insist on staying together for the purpose of safety.⁶⁰ In Thailand as well, the detention period can be indefinite just like the practice in Malaysia. In such cases, if there is no assistance given to the refugee children, there is potential for them to be in the refugee camps for a long period. There are some cases where refugee children have been forced to stay in the camps for over a decade.⁶¹ For the refugees that are being detained as “urban refugees” in the second category of refugee camp, the refugees are separated based on their gender. Nevertheless, most of the time the refugee children follow their mothers into the female cells. For the boys who reach above the age of eight, they are allowed to move to a male cell with their fathers.⁶² However, there is a lack of standard procedures on this rule because the separation also depends on the physical size of the boys and their looks, and such practice could easily become abused and become harmful for the children.

For the Thai government, the decision to detain refugee children together with their parents or family members is a form of protection, so that the children can continue to be together with their parents.⁶³ What is concerning is that the condition of the Thai refugee camps where it is generally poor, because refugee camps are built for short-term stays and not for long-term purposes. For instance, there are a few refugee camps where the camps were built with limited space for the detainees. The refugee camps in Thailand are also known as “24/7 cells” because the detainees, including the refugee children, spend all their time in the camps. They are only permitted to leave the cell only once in a while for exercise, to meet a visitor, or for a phone call. Such conditions have exposed the refugee children to health and development risks. The inadequate space in the refugee camps are due to the high number of refugees, exposing the children to skin diseases and infections, due to the lack of hygiene. It is also reported that there are only three washrooms available in the refugee camps, and these washrooms are in poor condition in terms of hygiene.⁶⁴ The conditions of refugee children in Thailand and Malaysia share

⁵⁹ *Ibid.*

⁶⁰ Human Rights Watch. “Thailand: Implement Commitments to Protect Refugee Rights”, (2017), online: <<https://www.hrw.org/news/2017/07/06/thailand-implement-commitments-protect-refugee-rights>>.

⁶¹ Parinya, Ann. *CRSP Thailand*, ed (2018).

⁶² Mala, Dumrongkiat. “Cell Conditions”, online: *Bangkok Post* <<https://www.pressreader.com/thailand/bangkok-post/20180708/281526521812907>>.

⁶³ Human Rights Watch. “Two Years with No Moon Immigration Detention of Children in Thailand”, (2014), online: *Human Rights Watch* <<https://www.hrw.org/report/2014/09/01/two-years-no-moon/immigration-detention-children-thailand>>.

⁶⁴ *Ibid.*

similarities, where the process of development for these children are negatively affected due to the bad conditions that they are in,⁶⁵ and if it is prolonged, it may cause depression and further psychological issues.⁶⁶ In addition, there are also cases where the refugee children in detentions are inclined to self-harm, due to continuous fear and anxiety as well as abuse by the adults.

2. Advocacy Strategies by Local NGOs

In Thailand, the Asylum Access Thailand and Coalitions for Refugees and Stateless Person (CRSP) are two key local advocacy groups that actively advocate for refugees, and they specifically focus on the plight of refugee children in detention centres. Both also advocate for the ATD approach in managing the issue of refugee children's detention. Asylum Access Thailand, for instance, offers services for refugees and asylum seekers who are in need of legal assistance for the process of determining refugee status.⁶⁷ Broadly, Asylum Access Thailand provides services such as law counselling, and also advice in advocacy-related work.⁶⁸ As for CRSP, the organization focuses on advocacy and awareness for the rights of refugees and asylum-seekers.⁶⁹ For instance, the CRSP engages with the Thai government directly by sharing information for the purpose of negotiations to advocate for policy reforms related to the protection of refugee rights in Thailand.⁷⁰

Apart from the Asylum Access Thailand and the CRSP, there are also other organizations, such as the International Organization for Migration (IOM), who offers day-care services for refugee children. The IOM also organizes programs that are related to education, such as mathematics and language classes for refugee children.⁷¹ The Bangkok Child Protection program, for instance, is a joint collaboration program organised by the Jesuit Refugee Service (JRS) of Thailand and the UNHCR.⁷² At the beginning of the program, as established in 2014, it was initially intended to be a short-term set up of a duration of three-month to help the UASC who are staying in Bangkok, by providing them with emergency assistance,

⁶⁵ Parinya, Ann. *CRSP Thailand*, ed (2018).

⁶⁶ Human Rights Watch. "Thailand: Refugee Policies Ad Hoc and Inadequate Closed Camps, No Work Authorization Lead to Stagnation and Abuse", (2012), online: *Human Rights* <<https://www.hrw.org/news/2012/09/13/thailand-refugee-policies-ad-hoc-and-inadequate>>.

⁶⁷ Asylum Access. (2018), online: *Asylum Access Thailand* <<http://asylumaccess.org/program/thailand/>>.

⁶⁸ Chawarangkul, Chawaratt. *Asylum Access Thailand*, ed (2017).

⁶⁹ Sooktawee, Siwawong. *Local Advocacy Groups in Thailand*, ed (2018).

⁷⁰ Parinya, Ann. *CRSP Thailand*, ed (2018).

⁷¹ Human Rights Watch. "Two Years with No Moon Immigration Detention of Children in Thailand", (2014), online: *Human Rights Watch* <<https://www.hrw.org/report/2014/09/01/two-years-no-moon/immigration-detention-children-thailand>>.

⁷² Thailand, UNHCR. (2018), online: *UNHCR Thailand* <<https://www.unhcr.or.th/en/about/thailand>>.

assessments as well as referrals to service providers. Since the establishment of the program, there are a total of 162 children supported by this joint collaboration program.⁷³ As a way to identify the security gaps, assessments are conducted by visiting homes and interviewing the children that are registered in the program to find out their basic needs. Once the gaps are identified, assistance such as financial aid, health care services, education and legal assistance are provided to these children through the program. Apart from that, programs related to mind-social, education and exercise for refugee children are also conducted, even though it comes with various challenges, particularly in Thailand because these children are not officially recognized.

Over the years, the working relationship between the Thai government and the local and international NGOs working on refugees has improved. Previously, before the configuration of the CRSP, the NGOs did not advocate actively in terms of policy reforms with the Thai government because most of the NGOs in Thailand worked on “urban refugees.” There is also limited collaboration between the international and local NGOs.⁷⁴ One of the reasons is the various restrictions imposed by the Thai government. Now, as the CRSP has, to some extent, gained recognition from the Thai government with their engagement approach, it has created close negotiations with some policymakers. CRSP, while engaging with the Thai government, also provides assistance to the local NGOs. For instance, CRSP conducts research to support their advocacy work, as well as collect groundwork information.

However, there remains some form of reluctance from the Thai government in engaging with international NGOs, such as the AI and Human Rights Watch (HRW), because these NGOs are seen to be more confrontational, holding strong criticisms against government conduct.⁷⁵ At the same time, there are also a limited number of local NGOs that advocate on issues related to refugees and asylum seekers in Thailand. Many of the work nature of these NGOs provide support to refugee or government agencies with limited advocacy for policy changes.⁷⁶ In short, the advocacy groups in Thailand apply different approaches in pushing for an ATD approach in the Thai government.⁷⁷ While there are differences, the different approaches can be summarised as an accumulation of resources to persuade the Thai government to adopt a more human rights-based approach to refugee children and to finally adopt the ATD approach.

⁷³ Parinya, Ann. *CRSP Thailand*, ed (2018).

⁷⁴ *Ibid.*

⁷⁵ Parinya, Ann. *CRSP Thailand*, ed (2018).

⁷⁶ Sooktawee, Siwawong. *Local Advocacy Groups in Thailand*, ed (2018).

⁷⁷ *Ibid.*

IV. CHALLENGES IN PUSHING FOR ALTERNATIVES TO DETENTION (ATD)

ATD is defined as a form of procedure or practice which permits asylum seekers, refugees and immigrants to enjoy their freedom of movement while their movement status is being decided.⁷⁸ As stipulated in the UNHCR Guidelines on Detention, it highlights that asylum-seeking children should not be detained. The ATD is considered as one of the solutions that could possibly help resolve issues of refugee children in detention centres. In international law, detention of children should be implemented as the last option with a short period of detention.⁷⁹ This paper identifies five challenges for the domestic advocacy groups in Malaysia and Thailand in persuading their governments to adopt the ATD approach as an option due to the lack of legislation enforcement mechanisms to protect the rights of refugee children. First is the coordination among the local NGOs working on refugee issues.⁸⁰ Most of the local NGOs face similar problems in the shortage of financial and manpower resources. In view of such challenges, the establishment of the Asia Pacific Refugee Rights Network (APRRN) comes in as an advantage for the local NGOs as it provides a network alliance for these local NGOs to strengthen their advocacy by connecting to other local and regional NGOs working on the same goal. This could function as a way to overcome the lack of coordination among the domestic advocacy groups. Moreover, in attempt to increase the effectiveness of protection to refugee children in detention, the advocacy cannot be done within a state boundary as it is a transnational concern. The APRRN, as a coalition of NGOs working for the same cause, advocates for the protection of refugees, helping to further promote the concept of the ATD and popularise it so that governments, whom have not sign and ratify the 1951 Refugee Convention and the 1967 Protocol will consider adopting them.

The second challenge involves the role of the media.⁸¹ Media can work as a double-edged sword. Very often, local media in Thailand and Malaysia portray the issue of refugee children as a world crisis. That approach is similar with both the Thailand and Malaysia governments, where they are more inclined to view the refugee issue as a global issue rather than a domestic issue. Moreover, the common

⁷⁸ OHCHR. "There Are Alternatives", (2011), online: <<https://www.ohchr.org/Documents/Issues/Migration/Events/IDC.pdf>>

⁷⁹ Field, Ophelia. "Legal and Protection Policy Research Series", (2006), online: <<https://www.refworld.org/pdfid/4472e8b84.pdf>>.

⁸⁰ Angus Francis & Rowena Maguire (2016). "Protection of Refugees and Displaced Persons in the Asia Pacific Region" Routledge, online: <<https://www.routledge.com/Protection-of-Refugees-and-Displaced-Persons-in-the-Asia-Pacific-Region/Francis-Maguire/p/book/9781409455400>>

⁸¹ Pascale Allotey, Peter Mares & Daniel D. Reidpath Francis (2016). "The Health of Refugees: Public Health Perspectives from Crisis to Settlement" Oxford University Press, online: <https://books.google.com.my/books?hl=en&lr=&id=1ZSBDwAAQBAJ&oi=fnd&pg=PT236&dq=role+of+media+refugee+issue+malaysia+and+thailand&ots=pXkXqse4E7&sig=kbOP05kH54g0KznaAZP3_9U-1Ks&redir_esc=y#v=onepage&q&f=false>.

narrative that is associated with the refugee crisis is that refugees pose security threats and could potentially bring more social problems to the society. Such narratives lead to the misunderstanding of the public and their perception of refugees.⁸² Facing such challenges, it is important for the media to be educated in the proper manner of communicating the issue from a human rights perspective and to transfer it into a domestic problem rather than depicting it as an international problem.⁸³

Third, the interest of the government regarding refugee matters is another challenge faced by NGOs advocating for the ATD to be implemented.⁸⁴ In Asia, most of the governments did not sign the 1951 Refugee Convention and the 1967 Protocol,⁸⁵ and many view refugees as not an internal issue. For instance, from the experience of the APRRN's encounter with the Thai government insisted that the Thai government insisted that refugees are an issue that concerns the UNHCR because the government did not sign the Refugee Convention.⁸⁶ ;⁸⁷ Thus, the challenge is on ways to persuade these governments to treat refugees as part of their responsibility to ensure the refugees can access healthcare, education and other basic rights and not being detained.

Four, perception is also a challenge for NGOs pushing for ATD.⁸⁸ Linking to third challenge on the role of media, at times there are misperceptions and limited understanding about the rights of refugees. While international pressure is crucial, local pressure is equally important, and it means something when the local is aware with the issue. In the context of ASEAN, in which both governments of Malaysia and Thailand are members, the policy of non-interference is the fifth challenge due to its non-interference policy when ASEAN, could not interfere in Myanmar government.⁸⁹ For instance, ASEAN did not act on the 2015 Rohingya refugee boat

⁸² Lee, Gwen. *Local Advocacy Groups in Malaysia*, ed (2018).

⁸³ Nah, Alice M. "Networks and norm entrepreneurship amongst local civil society actors: advancing refugee protection in the Asia Pacific region" (2016) 20:2 *The International Journal of Human Rights* 223.

⁸⁴ Bradley, M. "Unresolved and Unresolvable? Tensions in the Refugee Regime" (2019) 33 *Ethics & International Affairs*.

⁸⁵ Kneebone, S. (2014). The Bali process and global refugee policy in the Asia-Pacific region. *Journal of Refugee Studies*, 27(4), 596-618.

⁸⁶ Jones, Evan. *Asia Pacific Refugee Rights Network*, ed (2017).

⁸⁷ Nah, Alice M. "Networks and norm entrepreneurship amongst local civil society actors: advancing refugee protection in the Asia Pacific region" (2016) 20:2 *The International Journal of Human Rights* 223.

⁸⁸ Senay Yitmen & Maykel Verkuyten. "Positive and negative behavioural intentions towards refugees in Turkey: The roles of national identification, threat, and humanitarian concern" (2018) 28:4 *Journal of Community & Applied Social Psychology* 230-243.

⁸⁹ Khairi, A. "The Dilemma of Rohingya Refugees "Boat People": The Role of Malaysia, its Neighbors and ASEAN" (2016) 6:12 *International Journal of Academic Research in Business and Social Sciences* 481-489.

crisis that fled from Myanmar due to ASEAN's non-interference policy as it is seen as an internal problem of the Myanmar government.

V. CONCLUSION

In the view that both the Malaysia and Thai governments have yet to ratify the 1951 Refugee Convention and its 1967 Protocol, both countries do not currently have specific policies related to the protection of refugees because there is no recognition of the refugee community. While there have been constant initiatives by domestic advocacy groups in persuading the governments of Thailand and Malaysia to implement ATD, there remains to be limited impacts. Based on the collected data, it is acknowledged that both governments should consider the rights of refugee children by approaching the issue from the human rights perspective, where the refugee children should ideally be considered as children first, then refugee after. Furthermore, as both governments of Malaysia and Thailand are state parties to the CRC, it is necessary for both governments to acknowledge the basic rights of the refugee children by drafting human rights-friendly policies for protection purposes. Ideally, the advocacy groups aim to advocate for both countries to finally ratify the 1951 Refugee Convention and its 1967 Protocol. At this point of time, it is still challenging to determine whether both, the governments of Malaysia and Thailand, will adopt the ATD approach, but it is possible with the continuous collaboration between the domestic and global advocacy groups, through the approach of engagement.

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